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**PRIVATE  
SECTOR**

**MARCH 2020**

## Introduction

With just weeks to go until the new IR35 rules hit the private sector, it is vital to ensure your agency and team understand the implications for your business and have acted accordingly. Unless the end-client meets the statutory definition of a small company, the new rules will apply from 6th April 2020 and a contractor's IR35 status must be considered if payments are made to a Personal Service Company ('PSC').

For any 'inside IR35' role, the deemed payment rules will apply and whoever pays the PSC will need to account for tax and national insurance, based on the amount due under the contract. This could see agencies facing increased costs in the form of employer's national insurance on payments to contractors deemed to be inside IR35.

## Status Determinations

The responsibility for determining IR35 status lies solely with the end client.

For each role, they must:

- 1** Determine the role's IR35 status, taking 'reasonable care'
- 2** Provide a Status Determination Statement to **both** the contractor and agency, confirming the role's IR35 status and the reasoning for the decision.

If either of these conditions is not met in full, any deemed payment liabilities transfer automatically to the end-client.

Although there is no statutory definition of 'reasonable care', blanket decisions are unlikely to suffice, as is any decision that places a role inside IR35 just because it is seen to be the safer option.

There are several online tools that claim to give accurate assessments in line with current IR35 case law and also offer insurance to protect against any decisions that are overturned. Properly used, these tools might allow clients to meet the 'reasonable care' test. However, any inaccuracies in the information fed in by the relevant parties could threaten this, as well as undermining both the status determination and any insurance protection.

Another key issue also remains unclear. If an end-client acts with reasonable care in declaring a role to be outside IR35 but turns out to be wrong, who is liable for the unpaid tax and national insurance? Unfair as it may seem, this could well be whoever has paid the PSC and failed to make the deductions, even though they had no reason to do so at the time.

## Debt Transfer Provisions

The introduction of the IR35 rules into the public sector in 2017 saw a huge rise in non-compliant companies paying contractors gross, despite an 'inside IR35' assessment from the end-client. In many cases, commercial pressures left agencies feeling they had no choice but to engage in a race to the bottom and allow these companies into their supply chain.

To counter this, the new legislation introduces debt transfer provisions, allowing HMRC to recover any unpaid tax and national insurance liabilities direct from the agency. If this is unsuccessful, the end-client is next in line. With liabilities potentially exceeding 60% of the contractor's gross rate. This risk to agencies and end-clients brings sharply into focus the need for a compliant and transparent supply chain.

***"The new IR35 debt transfer rules create potentially business-critical liabilities for any agency that does not have a compliant supply chain. Agencies should ensure they are working only with FCSA Accredited Members that have an established trading history and a strong balance sheet"***

**Robbie Smith**  
Finance Director, Generate

## Handling The Transition

Inevitably, the new rules will result in many contractors being newly taxed as employees, either under the deemed payment rules or directly as an employee. This will need sensitive handling, a clear explanation of the new rules and an outline of any take-home pay impacts, as well as the potential benefits of moving to a fully employed solution.

Having helped several agencies through the 2017 public sector reforms, Generate is ideally placed to offer guidance and support throughout the transition period.

***"Generate were helpful and professional in assisting us with the IR35 Public Sector reforms. They sent an account manager to our office for several weeks, who educated our consultants and contractors to help make sure everyone knew where they stood. Moving from a 'Primarily PSC' model to a 'Primarily Umbrella' model was a big shift for us, but Generate played a key part in helping things run smoothly and continue to be our preferred umbrella supplier"***

**Stephen Simmonds**  
Finance Director, DRC Locums

## Next Steps

HMRC has confirmed that for the first year there will be no penalties unless there is evidence of deliberate non-compliance. However, it appears any unpaid tax and national insurance will still be due, so it remains crucial to get things right from day one.

If you have any queries or concerns about how best to deal with the upcoming IR35 reforms, please contact us so we can run through your options and help you put an effective plan in place to mitigate your risk and ensure a smooth transition as the new rules take effect.

## Key Dates

- March 11 2020: Budget Announcement
- April 6 2020: IR35 reforms take effect