

Event Supplier And Services Association

IR35 -

29 March 2021



LUCAS ROSS

**BUSINESS RESCUE
RECOVERY & INSOLVENCY**

The logo for Contractor unlimited, featuring a stylized lightbulb icon with a person inside, followed by the word 'contractor' in a bold, lowercase font, and 'unlimited' in a smaller, lowercase font below it.

contractor
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IR35 – Another Change



Today:

Some key changes

What it means for you

How to make yourself better off

Brighter future



IR35 – Quick reform recap

- Autumn budget 2016
- 6 April 2021
- Changes to tax on you and customers
- Changes to customer attitudes and structure

What is IR35 and who does it impact?

IR35 was originally put in to force in 2001 and was meant to stop people who were really employees, avoiding National Insurance and income tax.

It aimed to decide if someone working through a Limited Company, effectively as a one man band or a Personal Service Company, was in fact a 'disguised employee'.

If you use Contractors or, are in fact a Contractor, this obscure piece of legislation matters to you. It used to only matter to the Contractor, because if HMRC found out they were a disguised employee, they taxed them accordingly.

On April 6th 2021, the responsibility of deciding inside or outside IR35 moves to the end user of the Contractor. This means that users of contractors (companies like yours) could become liable for the resultant tax bill....HMRC originally expected about 30% of Contractors to be caught, the reality is closer to 70% because the market is justifiably worried about 'contingent liabilities' within complex organisations.

IR35 REFORM BACKGROUND

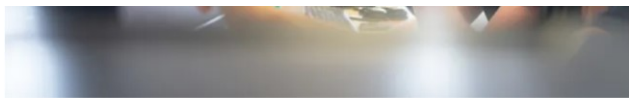
- From 6th April 2021 responsibility for determining IR35 falls to the payer
- Meant to catch 'Disguised Employees'.....it is only 'fair' after all
- Entire value chain drawn in
- Determination + Appeal
- CEST (The HMRC tax assessment tool for Contractors – basically the equivalent of a Morris Marina in 2020)
- Expected - 70/30
- Reality - 40/60
- What this means in practice
 - Umbrella, Permie, Outside



IR 35 IMPACT, MARKET AND OPPORTUNITIES

Presented by Tony McKenna - Contractor UNL Limited
29th March 2021 to the Event Supplier and Services Association





By Seb Maley

The imminent arrival of the 2021/22 financial year on 6 April brings with it the introduction of IR35 reform in the private sector - a change that affects thousands of businesses engaging contract workers, the recruiters who place them and, of course, hundreds of thousands, if not over 1m, contractors.

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Much has been made about IR35 reform recently, particularly in light of HMRC losing a high profile IR35 case against the TV presenter Kaye Adams at the Upper Tier Tribunal just weeks before the roll out of this controversial reform.

Yet another HMRC loss, which has done nothing to improve the

taxman's woeful record in IR35 tribunals, simply reinforces the opinion of most contractors, businesses and experts (myself included) who are still gravely concerned about the government's understanding of this tax legislation.



IR35 reform can be managed through a pragmatic approach.

Despite having created the IR35 rules more than two decades ago, it is clear that HMRC cannot recognise if a contractor should belong inside or outside the confines of the legislation they not only police, but insist on reforming too.

Feedback

"THEIR BULLYING TACTICS HAVE BEEN EXTREMELY STRESSFUL"

HMRC has suffered an IR35 Tribunal defeat, losing a case against an IT contractor who the tax office was pursuing for more than £240,000.

IT consultant, Philip Alcock's working engagements, which spanned from April 2010 to April 2015, took place at Accenture and the Department for Workplace and Pensions (DWP), the former of which Mr Alcock was an employee of.

To an extent, the fact that Mr Alcock was once an employee of an organisation he then contracted for looks to have given HMRC the incentive to argue that the relationship he held still reflected employment, meaning it belonged inside IR35.

However, the Tribunal Judge firmly disagreed that Mr Alcock was motivated to become a contractor in order to avoid tax, stating: "The tribunal does not accept HMRC's submission that the long history of Mr Alcock's previous engagement and operation of this contract in practice led to an expectation that Mr Alcock would be provided with work every business day during the course of an assignment."

As a result, the £243,324 that HMRC was demanding Mr Alcock paid them in National Insurance contributions and income tax will be cancelled.

Two of three tests - Check ✓

- Turnover of **£10.2** Million
- Balance Sheet of **£6.5** Million
- Less than **50** employees



The contractor market

- Our experience - dismal
- The banks have deserted the market, because VAT
 - Let go or contract withdrawn often followed by.....
 - Permanent employee OR
 - Worker – PAYE by agency or Umbrella Company
- The Pension Provider API development timeline.....
- Larger companies have left the market, because, fear
- The dread of contingent liability
- The impact upon the net pay of Contractors
- The perfect storm of IR35 and Covid

The problem with 'worker status'

- No benefits but all of the taxes...
- In many cases, for good earners, the calculation looks like this:

Day rate

(Employers National Insurance at **13.8%**)

(Apprenticeship levy at **0.5%**)

(Employer's pension contribution at **3%**)

(Holiday pay)

Actual Day Rate

(Employees National Insurance at **2-12%**)

(Employee's pension contribution at **5%**)

(Tax at **20, 40 or 45%**)

(earning trap at **£50k** and **£100k**)

Net Pay

100%

45-55%

'Clients need to be clear about what they are looking for. Recruiters need to be clear about options.'

If a client needs a key employee but is unable to recruit a suitable candidate given pay constraints, that's a technical HR matter. Resolve this by employing someone.

If a client is looking for a temporary hired gun to turn up and do whatever they are told, approach a reputable agency then use workers legislation with a high enough daily rate.

If a client has a problem they don't know how to solve then they need to approach an independent consultant who will expect to work outside IR35.'

Robert Burrell Donkin



Mutuality of obligation - MOO

- I see Frank sitting around doing nothing, so I find something for him to do because I have to pay him anyway.
- So, I find a broom.
- Frank doesn't feel like sweeping the workshop, but feels he has to do it anyway.
- **That's - MOO**

MoO held the key

That there was no expectation from Mr Alcock to be offered work by his clients and accept it was the crucial factor in the tribunal deciding that his various engagements were outside IR35. Therefore, it was Mutuality of Obligation (MoO) that held the key to this contractor's successful appeal.

Despite having previously been an employee of Accenture, it's clear that when Mr Alcock started contracting through his personal service company, the nature of his working relationship changed from a 'contract of service' (employee) to a contract for services (genuine contractor), which was deserving of outside IR35 status.

The team that represented Mr Alcock's limited company, RACL Consulting, had their argument accepted by the tribunal that MoO didn't exist beyond the irreducible minimum.

Dave Chaplin of Contractor Calculator and Chris Leslie of Tax Networks, explained: "Mr Alcock is clearly self-employed. He agreed the work to be done, and only that work to be done. Then he got to work and worked very hard indeed to meet the outcome goals. And then he billed only for the work done. His contract specifically states that he can only charge for work actually completed."

Mr Alcock also demonstrated that MoO wasn't present, by including in his submission that when his company stopped working with Accenture, he "was not paid for around 10 days" and his contract was "brought to an end in January 2013."

The myth of substitution

- Dependence upon the contract clause that allows a worker to send someone if they can't make it.
 - **Has it ever been exercised?**
 - **Can the 'client' decline the sub?**
- In a proper B2B relationship the 'client' doesn't care who does the work, they just care its done and done well



The seven tests

one

MOO

two

Substitution –
theoretical or real

three

Commercial risk –
evaluate and demonstrate

four

**Working
practices**

five

**Management
and supervision**

six

The contract –
written

seven

The contract – real world
...canteens and parking spaces

Opportunities

- Assume 55% retention, or lower
- Contractors that maybe cost £150k + a year can now afford to work for maybe £100k and are available
- VERY significant expertise – lets talk about manufacturing Dave's journey
- Hoover up disgruntled talent
- Supplement their income with well thought out projects that fit:

'If a client has a problem they don't know how to solve then they need to approach an independent consultant who will expect to work outside IR35'

Squaring the circle

- If you cannot fix the contingent liability then you can:
 - Transition support to enhance package
 - Choose the RIGHT umbrella that allows this transition
 - Enhance Employee Benefits (not just by throwing money at it)
 - I'll be back
- We have been here before although not as badly
 - Markets adapt and recover
 - Prepare your company and work on your contracts
 - Choose the right contractor....educate them
 - Supplementing contractor's packages with contract work alongside the day job they now almost certainly resent.

What this means for you

Superb opportunity to pick up great talent at a great price.....if you want a job doing that you don't know how to do, work on the basics, choose the right agency, offer outside IR35 conditions and the phone will be ringing off the hook with genuine talent almost begging to work for you!

Where do contractors hang out? Search for IR35 forums, they are rammed with the very people I talk about here!



Financial impact

1. Wealth extraction

- a) <£25k
- b) >£25k = Solvent (members voluntary / MVL)
liquidation

2. Now unable to pay debts

- a) Business
- b) Personal



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