



IR35- What do you need to do to prepare?

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Hosts



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Q&A

Send us your questions!

If there isn't enough time to answer in the webinar, we'll follow up with you directly.



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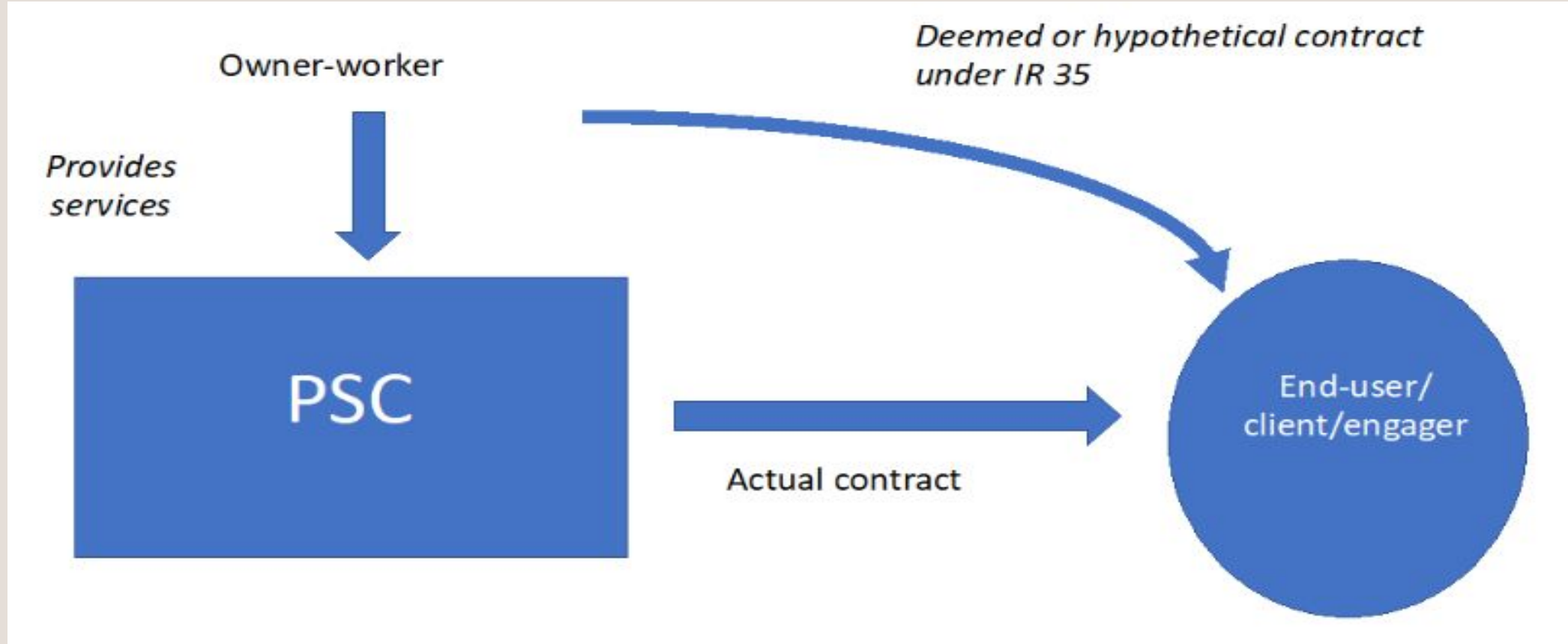
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Recap on IR35

- Legislation introduced in 2000
- Designed to make sure workers and employers pay the right amount of employment taxes and remove differences between employed workers and the self-employed undertaking similar work
- It affects contractors (workers) providing services through an Intermediary - usually a Personal Service Company (PSC)
- Also known as 'disguised employment' or 'off-payroll working' rules.
- Rules on who decides the IR35 status of an assignment introduced for the public sector in April 2017 are now due to be implemented in the private sector on 6th April 2020
- It's a complex area and case law is still emerging.

In a diagram.....



Why IR35 is important

Put simply:

- An employed worker (under PAYE) pays more income tax and National Insurance than a self-employed contractor working through an Intermediary.
- The end-client pays Employers National Insurance (NI) at 13.8% for each employee - doesn't pay for a worker who is self-employed.
- The contractor can extract profit from their company using a tax-efficient combination of salary and dividends.
- The PSC can build up significant retained profits for future distribution.

Private sector changes

From 6th April 2020, Private and Public sector arrangements largely harmonised.

The end-client - not the PSC - will determine the IR35 status of an assignment.

Private sector end-clients who are considered to be 'small' won't be affected by the changes - if they meet 2 of the following criteria:

- Annual turnover less than £10.2 million
- Balance sheet total less than £5.1 million
- Less than 50 employees.

No such exemption for the public sector.

Private sector changes

The end-client is responsible for issuing a **Status Determination Statement** (SDS) which must include the:

- Worker's employment status following an IR35 assessment
- Reasons for reaching the employment status conclusion

The end client is responsible for the deduction and payment all employment taxes (income tax, Employee NI and Employers NI)

Where an Agency is involved in the labour supply chain and is the **fee-payer**, the Agency is responsible for deduction and payment of all employment taxes

5% expenses allowance for PSCs removed for all assignments.

What to do about existing private sector assignments

Until March 2020, PSC will still be responsible for determining the IR35 status of assignments.

PSC should take steps to understand the IR35 status of existing assignments through reviews of each contract and working practices.

As new contracts are entered into, and continue after April 2020, find out what the end-client is doing to:

- Provide your PSC with a 'Status Determination Statement' (SDS)
- Establish a 'Status Disagreement Process' if you wish to appeal an SDS decision
- Account for tax liabilities via Real Time Information (RTI) and pay HMRC
- Pay you for work done before 5th April 2020.

Find out if the small business exemption applies to your end-client.

Check of Employment Status Tool (CEST)

Review the status of existing assignment(s) for IR35 using HMRC's Check of Employment Status Tool (CEST). The tool covers contractual aspects and working practices.

Tool due to be updated by the end of 2019.

HMRC says it will stand by the CEST outcome unless a compliance check finds the information provided isn't accurate - but this is a grey area based on recent Tribunals.

If you're in doubt, seek a specialist review of your assignment contract and working practices by an accountant or employment specialist - this will help prove you have taken 'reasonable care' to establish the IR35 status of your assignments.

HMRC can still investigate at the PSC level.

Impact on future assignments - information sharing

The IR35 determination and rationale must be cascaded to all parties in the labour supply chain via the Status Determination Statement (SDS) which means:

- End-clients must provide the SDS directly to the PSC worker
- All parties in the labour supply chain must cascade the SDS to the next contractual party
- Above must happen before first payment is made to the PSC worker

Shortcut for lengthy supply chains: End-client informs fee-payer and worker directly.

Impact on future assignments - reasonable care

End-client must provide the SDS direct to the PSC (worker) and use 'reasonable care' which means:

- Taking independent legal advice
- Making a full assessment on an individual basis

Client led disagreement (appeals) process means:

- PSC to raise any concerns to client about the SDS (including the conclusion)
- End-client considers evidence provided by the PSC
- End-client provides written response to PSC with outcome

If still disagree, PSC can attempt to reclaim tax and NICs overpaid via end of year HMRC procedures.

Overseas clients - complex after April 2020

If you and your limited company are based in the UK, IR35 applies. HMRC guidance says the following about overseas clients:

Where the agency or third party that would be the fee-payer is offshore, the liability moves to the next person above them in the contractual chain which is in the UK. If only the client is in the UK then they will be the liable party. Where a party in the contractual chain, including the client is outside the UK but the off-payroll worker performs services in the UK, fee-payers must still deduct tax and NICs.

HMRC therefore say the legislation applies to overseas companies and intend to treat these (overseas) companies as UK resident (Finance Act 2017 Section 61R(7)) for the purposes of SDS and deducting the relevant taxes. How this is enforced is yet to be established.

HMRC guidance is less than clear and there is no indication how it will enforce the new rules.

Overseas clients - complex after April 2020

Our **interpretation** is as follows.

- Where an overseas end-client engages a UK based PSC directly, the overseas client determines the IR35 status of the assignment and **issues the SDS**. Where an Agency is involved, the Agency will be responsible for issuing the SDS based on the end-client determination of the assignment.
- If the UK based PSC is paid on a gross basis **directly by the end-client**, it **could** be argued the PSC is the 'fee-payer' and needs to account for UK employment taxes - you should seek expert advice in any scenario where an overseas client is not providing an SDS or deducting employment taxes.
- If the fee-payer is an overseas based Agency and the End-Client is overseas, the fee-payer (Agency) deducts employment taxes.
- If the End-Client is the fee-payer and is based in the UK - the end-client pays the employment taxes.
- **If you have overseas clients, find out how they are implementing these new rules.**
- It is important you review contracts and working practices in these scenarios with your overseas clients.
Seek expert advice.

IR35 tests - HMRC

HMRC applies tests to judge if a worker under a contract is self-employed or an employee

Main factors	Secondary factors	
Personal service (substitute / assignment)	Equipment	Holiday, sick pay and pension rights
	Insurance	Financial risk (non payment)
Control (when / where / what / how)	Basis of payment	Opportunity to profit from sound management
	Intention of the parties	Part and parcel of the organisation
Mutuality of obligation (more work / right to terminate a contract)	Length of engagement	

Retrospective application of new rules

HMRC will undertake investigations at the end-client level under the new rules.

HMRC said it will only apply the rules retrospectively in cases of suspected fraud or criminal behaviour.

Position remains unclear where PSCs haven't applied the rules correctly in prior years.

Latest news

In August 2019 HMRC wrote to 1,500 contractors who worked for GlaxoSmithKline (GSK).

The letters asked the contractors to confirm their employment status and notify HMRC about the outcome.

The *'investigate one catch many'* approach from HMRC is now in action.

Some major banks have announced they will not be dealing with PSCs - all workers will be on payroll from April 2020.

HMRC record at Tribunal is still patchy.

Closing remarks

You must start talking to your End-Clients and Agencies now to see how these new rules are being implemented and how your assignment is classified. Understand the impact on your net income.

If you're working across multiple clients and different assignments, IR35 changes shouldn't be feared - use your own terms and control the assignments where you can.

You can still operate your limited company, working on some assignments inside and others outside IR35 - Crunch has an accountancy solution for your company.

If you disagree with your end-client's SDS ensure you raise this formally via the appeals process, seek your own specialist review of the assignment - Crunch can do this for you.

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How Crunch can help

- Our [IR35 calculator](#) is a good starting point to help you assess your risk
- We already have [Business Protect Insurance](#) to cover you against legal costs, including the costs involved in an IR35 investigation (included in our plus package)

Coming soon:

- We will shortly be upgrading our calculator to collect more information about your assignment
- We will also be launching **IR35 insurance** backed assessments to cover yourself against any claims for unpaid tax if our tool has assessed you as outside IR35.

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How Crunch can help - continued

We can provide a comprehensive **IR35 review** of your individual assignment contract and working practices - one review is included in the annual fee for Crunch 'Plus' package customers

We have an **enhanced 'Plus' package** available to keep your limited company trading while you work on contracts inside and outside of IR35. You can also use our Crunch Umbrella service when you need it

For 'Basic' package Crunch customers, you can select any **additional services** you require to work on assignments inside and outside of IR35 rules - including IR35 payroll, limited company accounting for contracts inside IR35 and our Crunch Umbrella service

Our **Crunch Umbrella service** works with a range of agencies.

For more information contact your client managers or visit our IR35 hub at crunch.co.uk/ir35/

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