

IR35 IN THE PRIVATE SECTOR

WILL YOU BE READY?

Today's Agenda

- IR35 – a quick recap
 - What is IR35?
 - When will it change and what will it involve?
 - Who is the fee payer?
- Tax status background
- Assessment considerations and key factors to determining IR35 status
- Recent updates to CEST and guidance
- Anticipated challenges and risk areas
- Your top 10 questions
- Next steps

What is IR35?

- Tax legislation to prevent 'disguised employees' avoiding tax
- 'Disguised employees' = individuals who act like employees but disguise themselves as companies by providing their services through an intermediary / personal service company
- Currently it is the individual's responsibility to determine their tax status and, if they are an employee for tax purposes, then the intermediary has to account to HMRC for tax and NI contributions
- Implementation of IR35 has been pushed back from April 2020 to April 2021 due to the Covid-19 outbreak



When will it change?

- The public sector off-payroll working rules will be extended to the private sector from 6 April 2021
- The rules will only apply to large and medium-sized businesses, with the existing IR35 rules continuing to apply to small businesses
- Large / medium sized if meet 2 of the following 3 criteria:
 - Over 50 employees
 - Over £10.2m net aggregate turnover
 - Over £5.1m on the balance sheet

What does this involve?

The law itself is not drastically changing.
There is a higher emphasis on enforcement.

The IR35 rules for the private sector are largely aligned with the public sector rules introduced April 2017.

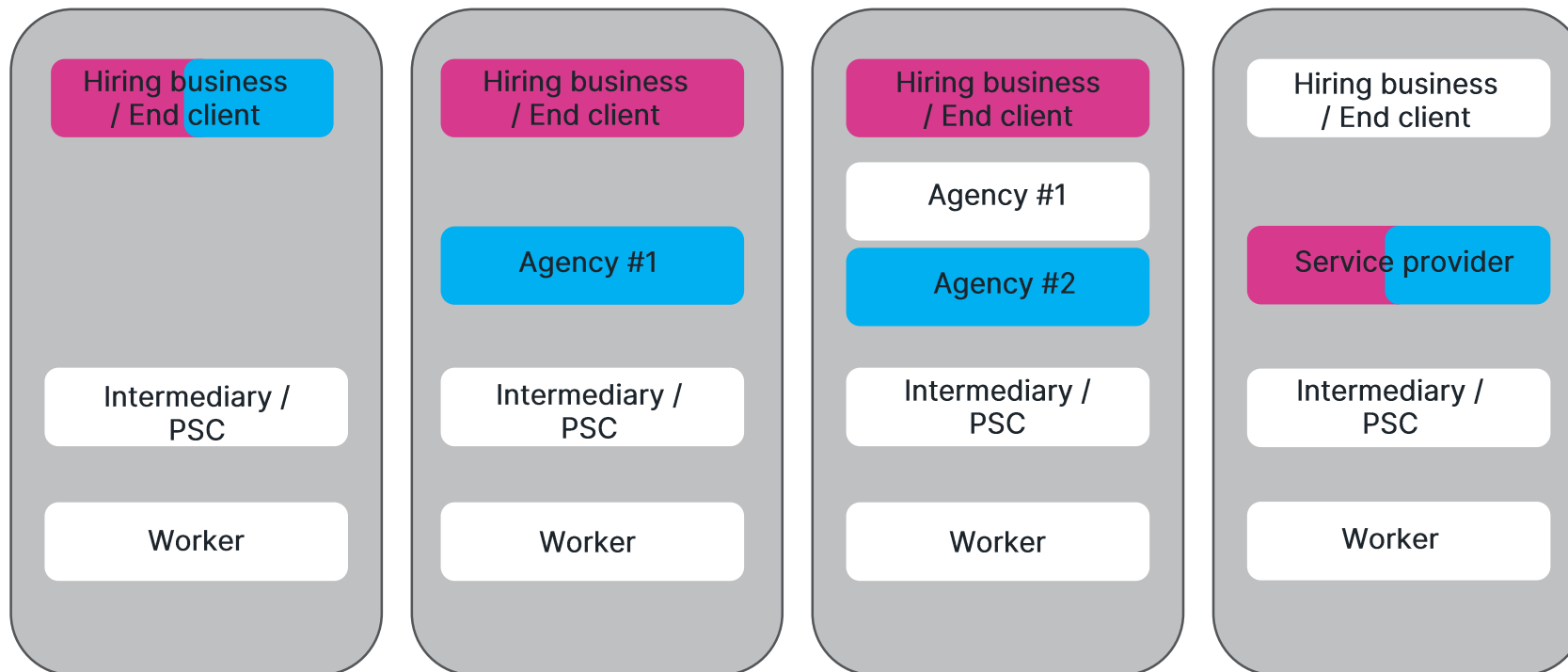
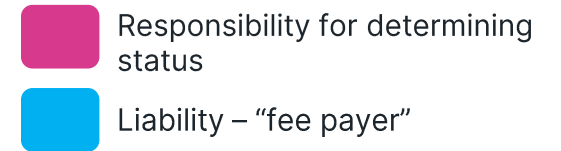
HMRC will seek recovery of tax and NI from the “fee payer” in the first instance
BUT liability can pass up the chain.

The hiring business/end user will be responsible for determining the status of the individual.

Who is the “fee payer”?

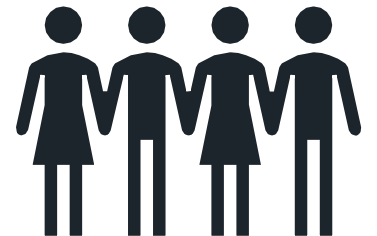
- Where an individual is deemed to be an employee for tax purposes, it will be the fee payer who needs to account to HMRC for tax and NI contributions
- “Fee payer” = the entity which pays the intermediary/personal service company e.g. hiring business or agency
- Agency workers: paid by the agency but deployed into the hiring business/end user
- NB: Buying-in fully contracted out services will not be caught

Roles in different supply chains



Tax status background

- Issue of status for tax purposes is separate from that for employment law purposes
- For tax purposes, an individual is either:
 - an employee; or
 - self-employed
- For employment purposes, an individual can be:
 - an employee;
 - a worker; or
 - self-employed

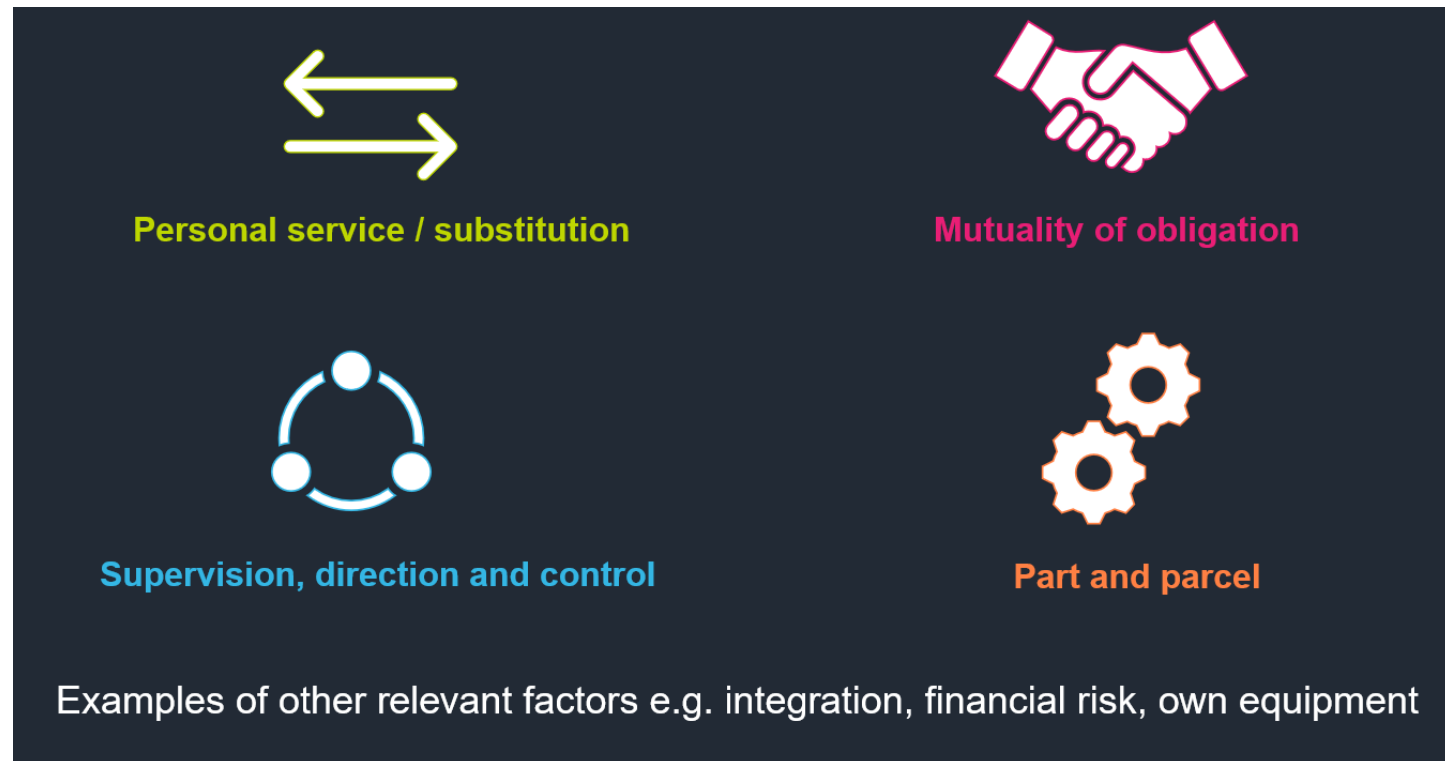


Does IR35 apply? Assessment Considerations

- Need to consider hypothetical contract – not just the actual contract
- IR35 works on an engagement by engagement basis
- 'Inside' or 'outside' of IR35



Key factors to determine IR35 status



Recent updates to CEST

- Enhanced CEST was launched on 25 November 2020 following criticism that it was not fit for purpose
- Enhanced CEST includes a new section assessing whether a worker is in business on their own account (i.e. to determine exclusivity)
- CEST now asks all questions before delivering a result to allow for all information to be considered before making a determination
- HMRC updated its disclaimer to make it clear that it “will not stand by results achieved through contrived arrangements, designed to get a particular outcome from the service. This would be treated as evidence of deliberate non-compliance, which can attract higher associated penalties.”

Recent updates to guidance

- HMRC updated its Employment Status Manual throughout 2020
- IR35 only applies to payments made for services provided on or after 6 April 2021
- HMRC has confirmed that information resulting from changes to the rules will not be used to open new investigations into PSCs for tax years prior to 6 April 2021 (unless there is reason to suspect fraud or criminal behaviour)
- Clients will not have to pay penalties for errors relating to off-payroll in the first year, except in cases of deliberate non-compliance
- What remains outstanding?
 - Potential updates could include questions about the industry the worker is operating in

Anticipated changes and risk areas

- CEST has previously been heavily criticised because:
 - it often produced an “unable to determine” result
 - how you interpreted a question can affect the outcome received
 - HMRC in some cases has not honoured the CEST result
- However, HMRC has updated CEST to make the language and presentation of the questions clearer. It also now includes links to HMRC’s updated guidance
- But it is still not perfect – e.g. CEST assumes there is a contract in place
- Contractors or fee payers can challenge a status determination if it is thought to be wrong



Anticipated changes and risk areas

- Hiring business needs to inform the entity it contracts with (e.g. the agency or the personal service company) and the worker of status determination reached
- If hiring business does not pass on status determination, liability rests with them
- If hiring business deems the individual is not an employee for tax purposes and HMRC successfully challenges, liability rests with fee payer
- If HMRC cannot collect liability from the agency as fee payer, liability passes up the chain to hiring business
- Need to consider tax indemnities within agency contracts / consultancy agreements



Anticipated changes and risk areas

- Any tax and NIC paid re. off-payroll workers count towards employer's payroll bill for calculating apprenticeship levy
- Blanket decisions should not be made when making status determination
- Many individuals will not want to be deemed employees – final decision rests with the hiring business but may mean individuals leave
- Status disagreement process will be legislated for
- Individuals who are determined to be an employee for tax purposes may assert potential rights as workers or employees for employment purposes as well



So...what are your options come April 2021?

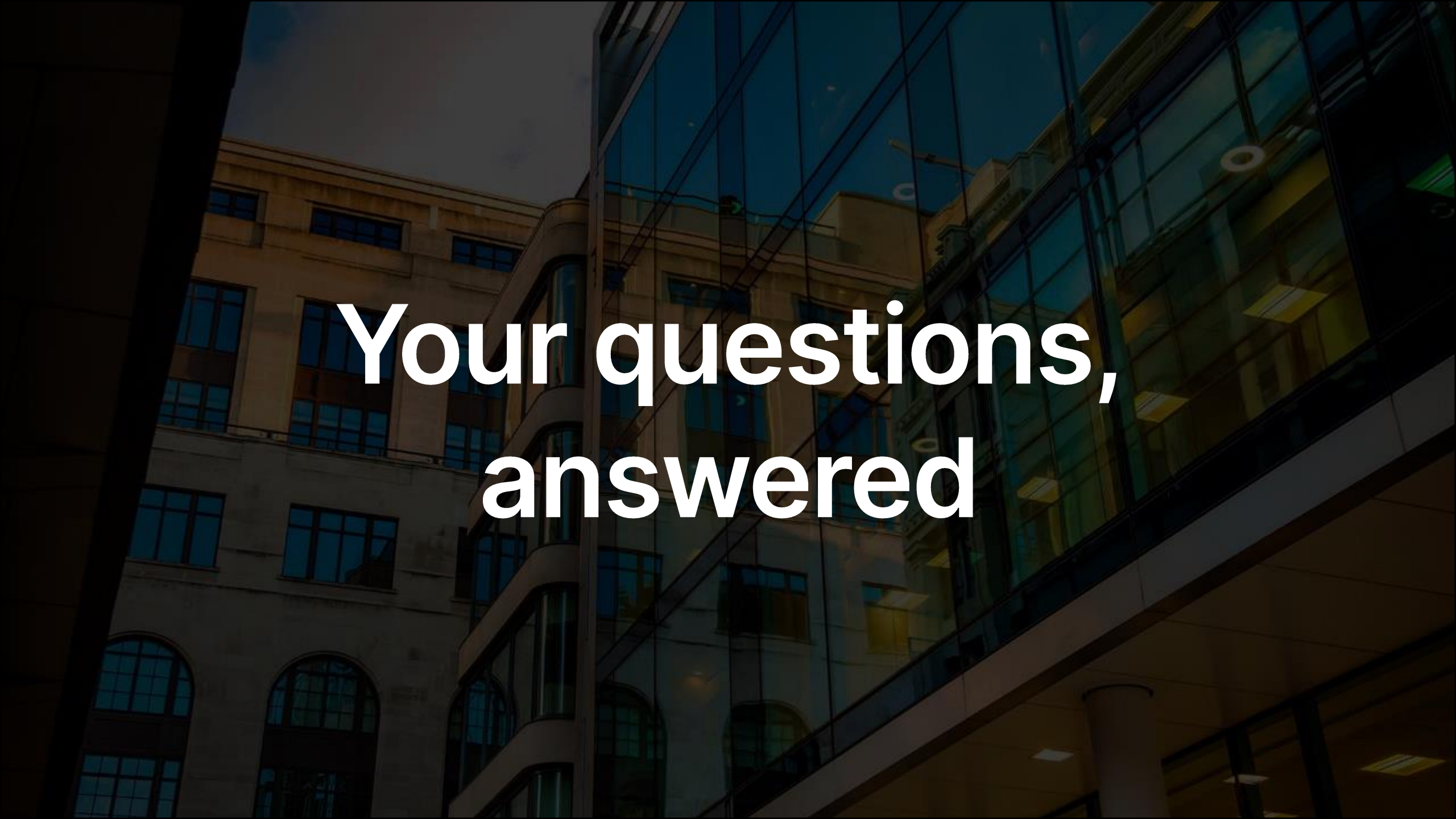
Directly engaging with an individual – self-employed (no intermediary)

Engaging an agency / umbrella company to provide labour

Employ the individual

Contracting with a PSC – inside the rules (PAYE / NIC)

Contracting with a PSC – outside the rules (no PAYE / NIC)

A low-angle photograph of a modern glass skyscraper reflecting an older stone building. The text "Your questions, answered" is overlaid in white, bold, sans-serif font in the center of the image.

**Your questions,
answered**

Your questions answered...

Question 1

Can you rely on the status determinations carried out last year when the changes were expected in April 2020?

and...

If we have already prepared for IR35 when we thought it was coming in last year is there anything else we need to do now?

Your questions answered...

Questions 2 and 3

How do you determine whether a service is genuinely outsourced and therefore outside of the new rules?

Exactly what is the position with workers who are:

- resident in the UK but provide services abroad? or
- are based abroad and provide services to a UK company?

Your questions answered...

Questions 4 and 5

What does “reasonable care” actually mean in practice?

How should you record your status determinations?

Your questions answered...

Questions 6 and 7

What to do if CEST produces an “inconclusive outcome”?

Can you rely on the status determination of one worker for a group who are engaged on the same T&Cs?

Your questions answered...

Question 8

How long should you give a worker to challenge your status determination?

and...

What you should do if you receive a late challenge?

Your questions answered...

Questions 9 and 10

What are the consequences if you or others in the chain don't comply with the new rules?

Do you need to keep status determinations under review – if yes... when, why and how often?

Steps you need to take now

- Carry out audit of workforce to identify relevant individuals and their status
- Consider updating terms of engagement to ensure they include appropriate indemnities and individuals are self-employed or take them on as employees
- Speak to those individuals who will be caught by IR35 to discuss approach
- Consider communications / FAQs

Steps you need to take now

- Are your current systems sufficient or do they need to be updated?
e.g. booking and payments systems to allow you to record and make the necessary deductions
- Consider cost implications and budget appropriately
- Begin to advertise roles inside or outside of IR35
- Do not rely on a further delay

How have we been supporting clients?

Assisting clients with carrying out status determinations:

- ensuring that client scenarios are correctly interpreting CEST so the outcome is accurate
- where the outcome is not determinable, providing our own assessment and determination

Advising on processes to adopt to ensure IR35 assessments are carried out correctly:

- advising on best practice and particularly guiding employers to understand who is and who isn't in the scope
- preparing IR35 policies so that employers have a guide to carrying out assessments
- contractual reviews and updates – specifically we have been advising on adjustments needed to agreements with intermediaries or PSC companies and providing standardised wording where appropriate as well as preparing consultancy agreements for those falling both inside and outside IR35 arrangements
- providing training to clients

Advising on the appropriate process for dealing with challenges to assessment outcomes

#EMPLOYMENT

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Connect with your hosts on LinkedIn by scanning the QR code below.



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