

# IR35 in the Private Sector

The Future of utilising Contractors



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# IR35: Gaining Commercial Advantage in the War for Flexible Talent.



**Bala Shanmugam,**  
Group Finance Director, Arrows Group Global.

New **IR35 legislation will come into force from 6 April 2021**, changing the way you handle hiring contractors and paying tax in the private sector.

For many companies, these changes may seem daunting, but they are happening and we at Arrows have spent the last two years consulting with our clients and our candidates to become experts in this field. We have taken our stakeholders through a step-by-step process to make sure they are fully compliant, successfully navigating the changes to gain commercial advantage and competitive edge.

There are some real positives to come from sharpening up the way your business handles contractors too. We've found that the companies that are:

- A) Thoroughly prepared for disruption**
- B) Engaged with their workforce and understanding of their perceptions of the changes**
- C) Clearly communicating how they are going to adapt...**

... attract the best talent, every time.

This document **explains what the IR35 changes are in detail**, what they mean for you and how our solutions and recommendations can help you get to grips with implementing them, fast.

With the onus being for some on the perceived time and resource required to identify which contractors fall within IR35, it may be tempting to take a blanket approach to hiring contractors post implementation. We can help you to identify your real risk factors and leave you feeling confident in your new approach.

**"In a recent project we advised Just Eat on how to change their working practices, using our IR35 friendly contracts and engagement methods to ensure only 7% of their candidates were deemed to be inside IR35"**

**We recently sourced 30+ highly skilled contractors** for a client in a matter of 4 weeks, covering over 60 interviews, communicating all IR35 requirements to internal hiring managers and candidates alike. We ran all status determination processes and assisted in the remote onboarding of the candidates too.

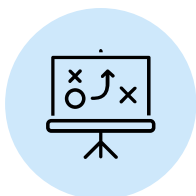
Our offering includes handling the admin burden for you entirely, if you should so wish. We are here to advise, answer your questions, talk through your working practices and determine how best your business can manage the IR35 challenge.

**If you would like your business to become fully compliant, whilst gaining competitive advantage, please get in touch.**

– Bala

# About Arrows Group

Our customers range from household names to pioneering start-ups, all around the world. And our job is simple: to ensure they have access to the best tech talent and workforce management services on the market to enable their growth and expansion. And we'd love to help you too.



## Staffing

We deliver contract and permanent recruitment solutions for some of the world's leading technology companies.



## Partnerships

Our Client Partners can be embedded onsite as an extension of your talent or management teams, sharing IP and establishing strong candidate networks.



## Consulting

Building and deploying teams under Statement of Work to help customers deliver projects in high demand, niche technology areas.

# What is IR35 & what does the new legislation do?

**IR35 is legislation introduced in 2000 that sets out criteria for determining whether an individual working through a Personal Service Company (PSC) is a 'deemed employee' for tax purposes**

New legislation for **IR35 in the Private Sector will be implemented from 6 April 2021**. The Key difference being that End Clients rather than the PSC will be responsible for making the determinations & carrying the liability for tax.



**The End Client will be responsible for making the determination if a Contractor falls inside or outside of IR35.** The End Client must take reasonable care in making the determination.



Where an individual is deemed to be Inside IR35, **PAYE and NICs must be deducted at source by the entity paying the PSC or they will be liable for that tax**



**Small sized companies are exempt**  
(<£10m t/o, <50 employees, <£5m gross assets)



The Fee Payer and the Contractor will have the right to challenge the determination – **the End Client will need to set up and communicate a disputes process to enable this to happen.**



**Determinations will have to be documented and communicated** to all parties in the chain.



As long as the **End Client uses reasonable care** in making the determination and communicating this to the Fee Payer and Contractor – the liability passes down the chain to the Fee Payer (usually the agency/intermediary)

# What are the components of a determination?

The 3 key elements in determining if a Contractor is inside or outside IR35 are:



## Supervision, Direction & Control

Does the Client supervise, direct and control the regular activities of the Contractor, by and large as they would an employee or does the Contractor have large autonomy over how, where and when to deliver the outputs?



## Substitution

Does the service have to be provided by a particular individual or can anyone working for that company (who has the requisite skills and experience) perform the work with little or no input from the Client as to who that individual is?



## Mutuality of Obligation

Is there an obligation for the Client to provide work to the individual and is the individual obliged to accept work given by the Client? This can apply to both within and inbetween contractual periods.

## Other Considerations

- Terms of the legal contract with the Contractor – no employment type clauses
- Is there any financial risk borne by the Contractor (or financial gain)
- Is the individual Part & Parcel of the End Client ie do they receive benefits as an employee or have supervision/HR responsibilities etc
- Can the PSC bring in a 'helper' at no additional cost to the End Client
- How short or long is the notice period
- Does the PSC provide its own equipment



# How can Arrows Group assist?

## In preparing for the roll out of an IR35 determination process

Arrows Group will work with our Clients to **group the relevant contractors into tight job roles** so that determinations can be made on a group by group basis

Arrows group will **provide assistance in communicating the process** and holding Q&A sessions with all relevant hiring managers & Contractors prior to rolling out any processes

Arrows group will **assist hiring managers in developing milestones and objectives** that can be captured into a contract. Such a structure will assist in moving the determination further outside IR35

Arrows group will provide **advise on practical changes to working practices** that will help in moving determinations further outside IR35

## In making the IR35 determinations

Arrows Group have partnered with Kingsbridge, a leading insurance firm and have highly trained staff who will assist Clients in making their IR35 determinations.

All **contractors will initially be determined using our online determination tool**, which is significantly more sophisticated than HMRC's CEST tool.

Any contractors who are determined as outside IR35, utilising our online tool, will have this **status confirmed by having a full legal and working practices review** with one of the specialist law firms in IR35 legislation that are on our panel.

**Arrows group will administer the entire process on behalf of our Clients**

Where our services and process are used for making determinations, **Arrows Group will provide an indemnity for all IR35 liabilities**

# What happens once a determination is made?

## Contractors inside IR35

We will assist the Client to see if there are any [legitimate changes to working practices](#) that can be implemented that will change the determination to outside IR35

Arrows group will work with Clients to [establish if the particular skill set\(s\) should be replaced by permanent resources](#). Arrows group's permanent specialists can assist in the recruitment of such perm resources as required.

If skills set(s) are to be maintained as a flexible resource – Arrows Group will present options available to retain such resources ( see next slide)

Arrows Group will [assist Clients in setting up a dispute process](#), with involvement from one of our legal partners, as necessary

## Contractors outside IR35

Arrows group will be the [Fee Payer](#) for all relevant contractors

Arrows Group [indemnifies Clients for all IR35 liabilities](#) for Contractors outside IR35 where we are the Fee Payer and our process has been followed

Arrows Group will review the determination every time there is a change to the Contractor and/or working practices. In any case all determinations will be revisited at least once every 12 months to [ensure continuous compliance](#).



# What are your options if a contractor is **inside IR35**?

We recommend that all Clients firstly evaluate if that particular skillset should be a permanent resource for the business. This is the most 'secure' and cost effective solution. Our specialist perm team can assist in hiring such Candidates. If the above is not the preferred or a viable solution, the options depend on what is most important:

## Flexible access to high quality skillset(s)

We are advising Clients to adjust the day rates for such candidates to (part) compensate them for the additional tax they will be paying

Majority of our Clients will be pursuing this route for 'hard to access' skillsets. We have witnessed this in our European markets where such changes were implemented a few years back

We have rate cards for all skillsets that we serve both Inside and Outside IR35

We can also provide remote teams fulfilled from our European offices

## Project Delivery

We have a Talent as a Service solution, where we will construct an appropriately skilled team and swap the individuals delivering on the project as required

Projects will be delivered on a SOW basis with defined milestones and outputs

Fees will be payable on delivery of milestones plus a project completion bonus

## Lower cost access to flexible skillset(s)

Arrows Group will use its vast global network to access Candidates who are willing to take home lower pay (by having tax deducted at source)

We will arrange for such individuals to be payrolled by one of our partner Umbrella companies. We audit all our partner umbrella companies on a quarterly basis to validate compliance

We do advise that the quality of candidates accessed using this option may not be as high as through other options

# What else is important?



A clear communication strategy and process to your Contractors & hiring/line managers is essential. This will keep Contractors engaged and bought into your brand and line managers apprised of what to expect and how to handle queries. Arrows Group can assist in this process and host Q&A sessions for small groups.



In making a determination it is vital that that line managers and others interviewed regarding working practices are open and honest about the working practices and are not stating what they think should be said. We are adept at building strong relationships at all levels and can help ensure the robustness of the process.



If you are paying Contractors directly – you may wish to consider taking out appropriate insurance to protect you against legal claims for IR35 liabilities. We are happy to advise on suitable insurance providers.



# An example rate card inside IR35 vs outside IR35

Daily Rates	Outside IR35	Inside IR35	Increase %
Category 1	£400	£490	22%
Category 2	£450	£550	22%
Category 3	£500	£600	20%
Category 4	£550	£680	23%
Category 5	£600	£760	26%
Category 6	£650	£815	24%
Category 7	£700	£855	22%

# Thank you for reading.

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