

IR35 in the Private Sector

The Future Contracting Landscape

Introduction

After more than a year of consultations, in July 2019, the Government confirmed that its proposed roll out of IR35 legislation in the private sector would be implemented from **6 April 2020**. However due to the coronavirus pandemic, on 17 March 2020, the government announced a further delay to the implementation date to **6 April 2021**.

The Key elements of the legislation and the consultations are:

Small sized companies are exempted from this legislation

The End Client will be responsible for making a determination if a Contractor falls inside or outside of IR35. Candidates inside IR35 will have to have PAYE & NICs deducted at source, in the absence of which the Fee Payer will be liable for those taxes to HMRC.

This determination will have to be documented and communicated to all parties in the chain.

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.**

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**

HMRC have guided that they will be updating their CEST (Check Employment Status for Tax) tool to be better suited to making Determinations in the private sector.

How can Arrows Group assist?

In preparing for the roll out of a IR35 determination process

Arrows Group will work with our Clients to group the relevant contractors into tight job categories/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 determination

Arrows group have partnered with IR35 Shield and Kingsbridge and have highly trained staff who will assist Clients in making their IR35 determinations.

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

Any contractors who have gone through the above online assessment who are determined as outside IR35 will have this status confirmed by having a full legal and working practices review with Larsen Howie, a leading specialist law firm in IR35 legislation.

Arrows group will assist the Client in co-ordinating the entire process

What happens once a determination is made?

Contractors INSIDE IR35

We will assist the Client to work with our chosen advisors 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 Client to establish if the particular skill set(s) should be replaced by permanent resources. Arrows group's permanent specialists to assist in the recruitment of such perm resources as required.

If skills set(s) 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 our legal partner, Larsen Howie as necessary

Contractors OUTSIDE IR35

Arrows group will be the Fee Payer for all relevant contractors and thus the IR35 liability flows down to Arrows Group'

Arrows Group will indemnify Client for all IR35 liabilities for Contractors where we are the Fee Payer

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.

What are our 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 teams 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 advise Clients to adjust the day rates for such candidates to 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

Arrows Group have a Team Build solution, where we will construct an appropriate team (minimum of 3 resources) with the required skillsets 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 will not be as high as through the first option above

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

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.

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 as otherwise this could open up a Client to having a determination challenge by HMRC upheld upon investigation.

APPENDICES

Appendix 1

What are the key components in determining if a Contractor is inside or outside IR35

Appendix 2

Example rate card for Inside and Outside IR35

APPENDIX 1

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
- Is there any financial risk borne by the Contractor
- What benefits and perks does the Contractor have access to that Employees have access to
- Did the Client 'Interview' the individual performing the tasks
- How short or long is the notice period

APPENDIX 2

EXAMPLE RATE CARD

DAILY RATES	Outside IR 35	Inside IR 35	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%



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