

What are IR35 and Off Payroll Working

IR35 is the name commonly used for legislation that was introduced to tackle the perceived problem of 'disguised employment'. A disguised employee is an individual operating as though they are running a business, when in fact they are actually an employee. The result of this is a reduction in the tax and national insurance paid by both them and their would be employer (the 'end client').

Historically the responsibility for determining whether a worker falls within IR35 has rested with the individual. In April 2021 the Off Payroll Working legislation came into force which meant that in most, but not all, circumstances, the responsibility for determining whether an individual is a disguised employee or not rests with the end client.

Whilst both of these are reasonable concepts, the legislation and the application of that legislation has brought with it some significant issues.

The Problems

The rules are complex, and it is very rare that you can be absolutely certain which side of the line an individual falls. Since the Off Payroll Working legislation was enacted, a lot of end clients have either been unwilling to put the necessary time into determining the status of contractors, or else have been unwilling to accept the risks that getting the decision wrong would entail. Even where end clients do their best, as they cannot know the full circumstances of the personal service company, end clients are often not in a position to make an accurate assessment as to whether an individual is a disguised employee or not. In practice the Off Payroll Working legislation has meant that a lot of contractors have been incorrectly declared as being caught by IR35. In those situations where the individual determines their own status, the uncertainty means that a taxpayer can spend years worrying about an enquiry from HM Revenue & Customs even if they are not actually a disguised employee.

Actions needed

If you provide services through a limited company, partnership, or LLP, or you are considering doing so, then this is an important area. If you are a "non-small" business that utilises workers who operate through limited companies, partnerships, or LLPs then again, this is an area that may well impact on your affairs. The first step is to discuss your circumstances with an expert. It may be that your situation falls so far outside of the rules that you won't have any concerns around disguised employment. However, the tax consequences of this can be significant so you may need a more detailed review of your position. This is likely to involve the review of contracts with a view to possible amendments. It may also involve a detailed review of other factors around the possible disguised employment such as working conditions as they can also be important factors.

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