

IR35: going nowhere fast

Hurrah, [IR35](#) is dead! Long live the child of IR35!

Celebrations for the assumed demise of IR35 are somewhat premature. This nasty little piece of legislation is a long way from bequeathing its death-in-service payout to its successor.

Let's take a look at the facts.

The emergency budget is due in under two weeks. And although the government could technically strike IR35 from the statute book with the resulting emergency budget finance act, to do so in isolation is unlikely to happen. Very unlikely.

After all, IR35 is not just some quirky bit of tax law designed to irritate contractors. It's a whopping piece of anti-avoidance legislation, and we've got two parties in power pledged to crack-down on tax evasion. And IR35 doesn't exist in isolation; it is now enmeshed in many other parts of tax law – what would happen to the [MSC legislation](#) if IR35 was thrown out, for example?

So, we have the emergency budget on 22nd June, VAT goes up as everyone expects, public services are axed and the formation of the Office of Tax Simplification (OTS) is announced. The OTS has to fit its activities into the government's planned five-year roadmap, a roadmap to be based in part on 'what the people want'. And guess how many responses were submitted under the [business category of 'Have Your Say By June 10'](#), feature on the Department of Business Innovation and Skills website? One hundred and twenty six. And how many of these mentioned IR35? Two. So, how high up the priority list will IR35 sit?

OK, let's be optimistic and assume that IR35 will be an OTS priority. Let's go wild and dream it becomes the top priority. The OTS still has to consult on the abolition of the tax, which is unlikely to happen until after the summer recess. After first and second stages of a consultation, a decision may be taken to do something about IR35 and another six months pass. The next opportunity to repeal unwanted tax legislation probably won't come until next year, and the earliest date is likely to be the April 2011 budget.

The commitment made by the government is to review IR35, not to abolish or repeal it. And to seek to replace it with 'measures that prevent tax avoidance'. But what are we seeing at the moment? An indecent scramble of numerous high earners from all walks of life, apart from legitimate and established contracting disciplines, seeking to incorporate and so avoid the top-rate of tax. One wonders what the OTS will make of that example of tax avoidance – a method of tax avoidance the Treasury and HMRC will argue IR35 was originally introduced to combat.

Add to that the increasing Friday-to-Monday syndrome in sectors still under recessionary pressure, such as construction and engineering. What employer, with little to occupy full-time employees, would not consider a deal whereby their professional staff left full-time employment on Friday and returned on Monday as contractors, costing considerably less to employ, whilst their former employees ended up taking home significantly more take-home pay? That would be a win-win, for everyone but the Exchequer. Just the sort of collusion and avoidance IR35 was designed to end.

Finally, let's remind ourselves again that IR35 is still very much a law in force, and enforced by HMRC. Contractors failing to [correctly ascertain their status under IR35](#) and subsequently found to be caught by the legislation can still expect to suffer huge penalties.

Of course, it's business as usual for legitimate contractors [in business on their own account](#) who get their [contracts checked](#), and renegotiated if necessary, by IR35 experts; who take out sufficient levels of [tax insurance](#); and who work like professional, independent knowledge professionals providing a business-to-business service to end-user clients.

For everyone, for now, it's business as usual. IR35 is going nowhere fast.

	<p>Dave Chaplin CEO ContractorCalculator</p>		<p>View all our commentators </p>	<p>Dave Chaplin is a former IT contractor in the City of London, and is founder and CEO of ContractorCalculator, and author of the Contractors' Handbook.</p>
<p><i>Market Commentator</i> </p>				<p>Started in 1999, ContractorCalculator (this site) is the leading independent website for the UK contracting industry – most of whom are highly skilled knowledge workers.</p>
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