

## IR35 public sector consultation released

Limited company contractors working in the public sector will have their **IR35 and employment status**, and therefore how and how much income tax they pay, determined by their client or agency. Currently, contractors in the private sector will remain unaffected.

A new Government **consultation**, Off-payroll working in the public sector: reform of the intermediaries legislation, is proposing a new framework where from April 2017:

Clients, recruitment businesses or other third parties such as consultancies will become responsible for determining the IR35 status of contractors trading via their own limited company who are working on public sector contracts

If judged by their public sector client or agency to be inside of IR35, contractors will be forced onto the payroll or have income tax and National Insurance Contributions (NICs) deducted at source via Pay As You Earn (PAYE) from their gross fees by their engager

The engager will become responsible for "calculating, reporting and paying the relevant taxes"

HMRC will provide a "new interactive online tool" that will provide a "real-time and definitive view on whether or not [IR35] applies to a particular engagement" that provides "upfront certainty", and the taxman "will be bound by the outcome of the test" if it believes the facts of the case are accurate

The client, agency or third party will be responsible for paying tax and NICs, and will be liable for any shortfall or non-payment determined by HMRC

The contractor's limited company or the contractor themselves could also become liable for unpaid tax and NICs if HMRC believes that inaccurate or false information is used to obtain a decision by the online tool

Contractors will have the right of appeal to a Tax Tribunal "in the same way as other PAYE and NIC determinations".

Existing employment law will remain unchanged and the consultation highlights that engagers and contractors in the private sector can use the online tool "if they wish" to secure clarity over IR35 status.

In launching the consultation, Financial Secretary to the Treasury David Gauke noted: "The government believes public sector bodies have a duty to ensure the people working for them are paying the right tax.

"This consultation sets out proposals to reform the intermediaries legislation where people work in the public sector through their own limited companies, known as personal service companies (PSCs). This reform will improve the effectiveness of the rules in the public sector."

According to ContractorCalculator CEO **Dave Chaplin**, the proposals are no surprise, but still no less damaging: "Based on previous consultations and Treasury announcements, we knew this was coming.

"But that won't make it any easier for the UK's struggling public sector when the Government's short-term tax grab drives highly skilled specialists away from front line service delivery, or results in massive labour cost increases as contractors quite rightly seek to replace lost income."

Chaplin concludes: "The consultation already shows a mismatch between existing employment case law on employment status and HMRC's proposal framework, so how is the digital tool going to provide accurate responses? And how can clients and agencies be expected to have the time and skills to be making such key decisions over a contractor's livelihood?"

Further analysis of the consultation and its potential impact will be published on ContractorCalculator soon.

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