

Public sector contractors and clients need answers as HMRC postpones ESS tool launch

With public sector IR35 reforms imminent, HMRC's [failure to develop a workable IR35 tool](#) means contractors are being asked to contract without confirmation of their IR35 status.

The taxman has yet to unveil its much anticipated Employment Status Service (ESS) tool, leaving public sector clients in disarray and contractors who are paid in arrears facing a tough decision.

"The Government has made a major mistake," warns Andy Chamberlain, deputy director of policy at the Association of Independent Professionals and the Self Employed (IPSE). "Many public sector clients view the ESS tool as the only way they can be seen to be fully compliant with the IR35 public sector reforms, so until it's released, contractors are left in no man's land."

"The ESS tool is desperately needed now – in fact, it was desperately needed months ago – but HMRC keeps pushing back the launch date."

Contractors need urgent IR35 assurance

Last month IPSE issued a warning to public sector contractors paid a month in arrears to renegotiate contracts prior to 6 March to avoid the risk of excessive taxation on their April fee invoice.

Stakeholders had been assured by HMRC that the ESS tool would be launched with some – albeit little – time for contractors, clients and agencies to agree contractor IR35 status.

HMRC has missed the original 20 February launch date, meaning there are serious implications for public sector contractors and clients, as Chamberlain explains:

"Contractors need answers now because, if their public sector clients choose to use it, the ESS tool will determine how much they will be taxed after April. For some, this will include work that they're being asked to do right now. So essentially, contractors are being asked to carry out work, but not being told how much they will be paid to do it."

Contractor exodus concerns are realised

Concerns over a contractor exodus – something that was [forecast by ContractorCalculator](#) – were reported in the [mainstream media recently](#), and Chamberlain adds that the ongoing uncertainty is causing many additional contractors to flee the sector:

"It's leaving public sector bodies in a really difficult situation. Contractors are walking out of projects as a result of the uncertainty over their tax status and clients are in limbo. HMRC is now admitting that its tool is difficult to get right, but it has committed to this regime and this timeframe, so it has an obligation to follow through with its promise."

"This lack of clarity is unacceptable, and the Government needs to offer guidance to public sector bodies, agencies and contractors about how they can take this forward as a matter of urgency."

What can contractors do to stay outside IR35 in the public sector?

Not all contractors will be so quick to leave their public sector assignments, but committing to work without clarity over IR35 status is a significant risk. Chamberlain notes that each decision needs to be made on an individual basis, but advises contractors to speak to their clients and agencies to get an understanding of how they view the engagement.

"If the contractor feels that they are outside IR35, they should explain that to the client and agency. They should then ask if there's any form of assurance that they could give to these bodies to help them to agree that the engagement is outside IR35."

"Unfortunately, in many cases clients are reluctant to test IR35 status by any means other than the ESS tool. But in absence of the tool, contractors can try and persuade clients that there are other ways to determine IR35 status, such as getting a contract review."

“If clients and agencies can be persuaded to accept [other forms of IR35 assessment](#), contractors can get the assurance that their tax status won't change overnight for work they're being asked to do tomorrow. It's a big 'if' but it's certainly worth a conversation.”

Contract sector growth can't be hampered by IR35

Contractors will at least be buoyed by news that the contingent workforce is continuing its strong trend of growth. Recent figures released by IPSE show that freelancers' (including the contractor population) [contribution to the UK economy increased by £10bn to £119bn](#) in 2016, compared with 2015. Meanwhile, the total number of independent professionals in the UK hit the 2m mark.

“I'm constantly amazed at how much UK contractors and freelancers contribute to the economy, but it's such a quickly growing and innovative sector that I suppose it shouldn't be that surprising,” says Chamberlain.

“More and more people are choosing this way of working and more businesses are turning to contractors to provide that on-demand resource. So I think we can expect to see it continue to grow.”

Chamberlain adds that the Government has been made aware of the latest figures, and stresses the need for a more considered approach to taxation and policies impacting the self-employed to help ensure this trend continues:

“What we're concerned about is if the Government is too stringent with its taxation of contractors and its insistence on tinkering with IR35 in particular, it will dissuade these individuals from making the choice to work for themselves and making that contribution to the UK economy.

“To help preserve this growth, the Government needs to ensure it considers very carefully any regulations that impact on this part of the labour market.”

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