

# Off-payroll reform - changes to IR35 and the impact on labour-only subcontracting

FIS Webinar

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# Introduction

- From Intermediaries Legislation to Off Payroll Working:
  - Construction Industry and IR35
  - Brief review of the fundamentals of IR35
  - The legislative changes and the new responsibilities
- How end clients are reacting with 4 weeks to go
- How this is impacting the market
- Preparing for the changes

# Construction Industry and IR35

- Construction Industry and Employment Status
- IR35 doesn't affect sole traders
- But limited company doesn't guarantee self employment
- Limited Companies: IR35 before CIS
- Inside IR35 means no CIS deductions



# From IR35 to Off Payroll Working

# Creating the hypothetical contract



# New legislation: but issues don't change

Remember *Ready Mixed Concrete*

## Primary Factors

- Control
- Personal Service
- Mutuality of Obligations

## Secondary Factors

- Financial Risk
- Business enterprise

# Responsibilities redefined by the 2017 Public Sector changes

- Public Sector bodies became IR35 decision-maker
- The concept of the fee-payer

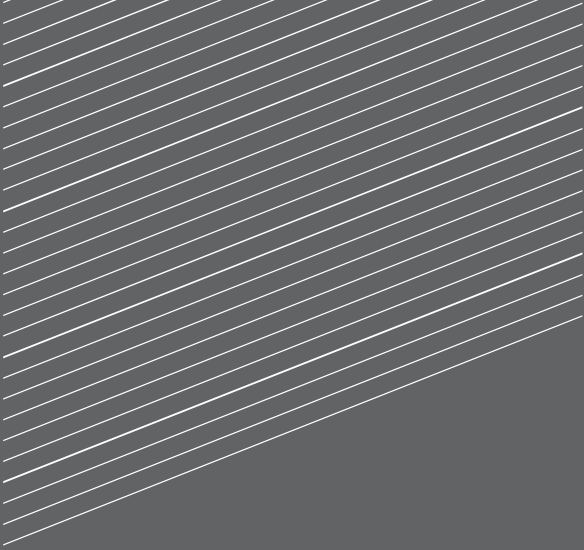
## But...

- Reasoning behind decisions unclear
- No right of appeal for contractors

# Calculation of Deemed Direct Payment – No 5% deduction (Chapter 10)

- Without the 5% general deduction, where is the mechanism for claiming overheads?
- What is the point of operating a company in the public sector if all engagements are 'caught'?





# Changes to the rights and responsibilities of the parties

## Amendments to Chapters 8 & 10 Part 2 ITEPA 2003

**End Client:** IR35 status decision-maker  
(and fee-payer if PSCs engaging directly)

**Agencies:** the agency closest in the  
chain to the PSC is the '**fee payer**'

**(Personal) Service Company**

# Who is the 'decision-making end client'?

- Filling a role v 'contracted out' services (ESM10010)
- Doesn't apply to small companies (as defined by s382(2) of CA2006):
  - *Turnover of no more than £10.2 million*
  - *Balance sheet total of no more than £5.1 million*
  - *No more than 50 employees (ESM10006)*
- Greater clarity in construction

## End Clients: making the decision (ESM10014)

- Must make a decision about status
- Must take reasonable care to arrive at decision
- Must communicate that decision
- Must respond to a challenge

**Failure to address these issues will result in the End Client assuming fee-payer liabilities**

# End Clients and the SDS

- **Status Determination Statement (SDS) – s61NA**
  - Given to the worker; and
  - Party immediately below in the contractual chain
  - Must contain reasoning: contract/working practices
- **“Client-led disagreement process” – s61T**
  - Each client implements own process
  - ‘Reasoned response’ within 45 days
  - What more can one say?

## Fee payers and fee 'payer agencies'

- Fee payer responsible for making the correct tax & NIC deductions and are liable for any unpaid tax
- How prepared are agencies for IR35?
- Insurance-backed due diligence solutions

## Transfer of debt - s688AA

– Keeps the chain “honest”:

**End Client**

**Agency**

**Payment Intermediary**

**Personal Service Company**



28 days to go ...



## End clients: participants or onlookers?

- Do they understand the issue?
- Will they be reviewing each and every engagement...?
- ... Or avoid the issue?
- Will they be ready?
- [www.offpayroll.org.uk](http://www.offpayroll.org.uk) for an overview

## To CEST or not to CEST?

### HMRC's Check of Employment Status for Tax Tool

- Voluntary
- Not always definitive
- Doesn't fully match case law
- No MOO
- No human interaction
- Can be manipulated
- Will HMRC stand by the result?

## What due diligence should be done?

- Review of contracts
  - Direct to subbies
  - With agencies
  - With other payment intermediaries
- Review of working practices
  - Do you know the working arrangements?
  - Do the working arrangements support the contractual terms?

# Agencies

- How do they protect themselves as fee payers?
- Due diligence options
- Insurance-backed solutions

# PSC Contractors

- Talk to your clients and agencies
- Review your contract to evidence outside IR35
- Be aware that your circumstances may change



# Conclusion / Q&A

## Conclusion: unsettled picture

- End clients taking IR35 seriously will benefit
- Banning PSCs is not a long-term option
- Most of the damage has been done ...
- ... and it is certainly not the end of freelancing!

# Links

- Finance Act 2017 - New Chapter 10 Part 2 ITEPA 2003  
[http://www.legislation.gov.uk/ukpga/2017/10/pdfs/ukpga\\_20170010\\_en.pdf](http://www.legislation.gov.uk/ukpga/2017/10/pdfs/ukpga_20170010_en.pdf) (p39 onwards)
- Overview of the changes: <https://www.markeltax.co.uk/industry-news/ir35-where-are-we-now-what-does-the-future-hold>
- FAQs: <https://www.markeltax.co.uk/industry-news/ir35-private-sector-changes-faqs>
- Mutuality of Obligations making a 'come back':  
<https://www.markeltax.co.uk/industry-news/question-of-moo-pgmol-v-hmrc-at-the-ut>
- Counce O'Hara tax calculator  
<https://www.caunceohara.co.uk/ir35/resources/ir35-calculator/>



# Q&A

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