

# Employment Status and 'IR35'

An increasing tax risk for employers



Recent and upcoming reform to tax legislation, along with developments in employment status case law, mean it is more important than ever for employers to consider the tax implications of the way in which they engage with individuals and especially contractors engaged via a Personal Service Company (PSC).



## Why is employment status important and challenging?

Aside from the legal issues regarding employment rights, correctly determining status for tax purposes is an important issue for employers in order to remain compliant with the relevant legislation.

Employers must ensure they are withholding and paying to HM Revenue & Customs (HMRC) income tax and National Insurance Contributions (NICs) via Pay As You Earn (PAYE) where required.

Failure to comply can lead to significant historic liabilities and penalties, and status is an area on which HMRC will often focus during an employer compliance review.

Also, incorrectly treating genuinely self-employed individuals as employees will cost unnecessary employers' NICs and may result in contractors not wishing to continue to engage on this basis – a talent retention risk currently being noticed by the public sector (see below).



## Recent developments – Gig Economy & 'IR35'

With complex new legislation having been introduced in recent years, it is more challenging and important than ever for employers to consider the impact on their compliance. Additionally, evolving case law in the 'Gig Economy', with cases such as Uber, Deliveroo and Pimlico Plumbers, is further clouding the issue.

Legislation known as 'IR35' dictates that an individual engaged via their own PSC could be deemed an employee for tax purposes. The obligation to determine if 'IR35' applies and, therefore, the associated tax and NIC obligations / risks, have previously belonged to the PSC. However, this has now changed for public sector employers and is likely to also be the case soon for private sector employers.



### Public sector employers since 6 April 2017

New legislation applying since 6 April 2017 transfers the obligation (and associated tax risk) for determining if 'IR35' applies from the individual's PSC to the engaging organisation, where this is a public sector body.

Where this is the case, if the public sector body is also the 'fee payer' then they are required to operate PAYE on payments to the individual or their PSC. Alternatively, if an intermediary (ie an agency) is used to pay the fee then the public sector body must instead inform the intermediary that they must operate PAYE accordingly. Both scenarios come with significant challenges and risks.

Some public sector employers are taking the default position that all PSC engagements are within scope of 'IR35' and paid via PAYE, rather than making a critical assessment of the legislation. However, this is not the correct approach nor one which HMRC wish to be taken.



### Private sector – upcoming changes?

At the Autumn 2017 Budget, it was announced that there will be a 2018 consultation into tackling non-compliance in the private sector. It is highly likely that the public sector reforms will be extended to the private sector, either in the current or a revised form.

Private sector employers may wish to start preparing for this now, starting with understanding their own workforce and whether they are compliant with existing legislation.



## Grant Thornton can help

Our employment taxes team has a wealth of experience in these areas and can assist in a number of different ways, including:

- Training for your key stakeholders and decision makers
- Ad-hoc advice or 'helpline' service
- High-level review of your workforce and engagement processes / policies
- Ongoing review of individual engagements to correctly determine tax status and treatment
- Fully outsourced status / 'IR35' and payroll service, taking the burden and risk off your hands

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