



IR35

DEFUNCT, DELIVERED OR DEFERRED?

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OUR SPEAKERS

- Ian Brookes-Howells – Chair for tonight
Chair, BACFI and Interim Senior In-House Barrister
- Andrew Webster, IR35 Director, Workr Group
- Joseph Brown, Chartered Tax Adviser, Cubicstone Tax Services
- Fudia Smartt, Employment Lawyer, Partner from Spencer West





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Changes since we last met in 2020:

- Private sector off-payroll rules finally enacted in July 2020
- HMRC will NOT use information that they may have previously obtained to check whether IR35 applies for earlier years
- A new template for businesses to use when responding to a worker if new rules apply.
- Further guidance and explanation on how businesses have decided that IR35 applies to the service provider and the PAYE calculations.
- Guidance on the application of IR35 and statutory payments and also the interaction with IR35 and the CIS rules

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Things to do to try and avoid an IR35 situation

1. Always offer your services.. The offer and acceptance of services is paramount
2. Are you in control. Can you be told what to do and how to perform your services?
3. Helpful, if you can avoid replacing an employee carrying out exactly the same duties
4. Agree with end user/client that a substitute can be used in your absence
5. Agree for a specific project period and for the fee to be project based – avoid timesheets
6. Where possible, avoid using an employment agency
7. Try to work from your own office – do not portray that you are an employee

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Things to do to try and avoid an IR35 situation

8. Take out your own professional indemnity insurance
9. Invest in your own professional development – training
10. Where possible, try and have a few contracts at the same time
11. Clearly define with client that a *Master/Servant* relationship does not exist
12. Invest in your own equipment
13. Make good any work performed in an unsatisfactory manner in own time/own expense
14. Avoid being a fixture of the client that you are performing services for.

So what are my options if I am certain that IR35 applies?

- Review your position as to whether you may be able to change the Status Determination Statement (SDS) using facts that the client may not be aware of.
- Consider paying a substantial salary each year instead of small salary and large dividend
- Consider setting up a company pension scheme. Try and establish the annual pension limit for 2021/22 and the unused relief for previous three tax years, and consider making pension payments for the 2021/22 tax year.
- Consider Closing down the PSC before 6 April 2021 – MVL. However, watch out for Phoenix rules