

IR35 changes...

An employment lawyer's perspective

Fudia Smartt, Partner

SPENCER WEST LLP

In a nutshell....

- * IR35 and off-payroll working rules
 - Purpose
 - Concerns of widespread tax avoidance
 - April 2017 - changes to the public sector
 - April 2021 - changes for the private sector

Employment status

Key questions

- Would the worker have been an employee for tax purposes but for the arrangement?
- IR35 rules – focus on determining status for tax purposes but take into account the wider ramifications!
- Differing employment law and tax tests – *Autoclenz* case
- CEST tool



Employment status – HMRC guidance

- Personal service
- Mutuality of obligation
- Control
- Substitution
- Provision of equipment
- Risk
- Opportunity to Profit
- Length of engagement
- Part and parcel of the organisation
- Employee-type benefits
- Right to terminate contract
- Mutual intention
- Personal factors



Employment law implications

- IR35 changes - an auditing opportunity
- Hiring contractors directly – considerations:
 - Type of contract – fixed term v permanent, part time or zero-hours?
 - Holiday pay
 - Pension auto-enrolment
 - Other employment rights – unfair dismissal, discrimination etc.
 - Apprenticeship levy



Where next?

- Rise of self-employment
- Taylor Review and creation of “dependent contractor”

Longbow House
20 Chiswell Street
London EC1Y 4TW

+44 (0)20 7925 8080
info@spencer-west.com

 twitter.com/Spencer_West_
 linkedin.com/company/spencer-west

 Business lawyers to the business community

spencer-west.com



For 55 Years Representing, Educating
& Supporting Barristers Working in
Commerce, Finance & Industry

