



# IS YOUR BUSINESS READY FOR THE NEW IR35 RULE?

Talk to the experts

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April 2021

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## Introduction

In April 2021, the government will extend IR35 to the private sector. Is your business ready for the change? Get to grips now with the options available. Understand the risks and the opportunities.

Back in 2019, the Upper Tribunal rejected *an appeal from television presenter Christa Ackroyd* concerning an IR35 ruling made earlier in the year. Having lost her case against HM Revenue & Customs (HMRC), Ackroyd now faces an extra tax bill of £400k.

Ackroyd's is just one of a string of cases involving high-profile media professionals working for the BBC who either fall foul of, or (in some cases) defeat the IR35 'off-payroll' rules. Countless other IR35 cases have been through the courts, including a £240k IR35 appeal case *won by an IT contractor* who worked for Accenture and the Department of Work and Pensions on the universal credit system.

So far IR35 has not directly impacted companies or individuals working in the private sector. But this is set to change. In April 2021, *the government will extend IR35 to 'larger and medium-sized businesses'* – identified against *3 criteria taken from the governments Companies Act 2006*. If your business fits this criteria and uses the services of people who work under the banner of 'a private limited company', it's important to get to grips with IR35 now.

This article will explain what IR35 is, how it could impact your business and your business' relationship with contractors, and the solutions available.



## What is IR35?

The Intermediaries Legislation has been in force since 2000. It was created to take away the tax advantages of individuals providing services through a limited company who are not strictly in business of their own account. In other words, the rule is aimed against so called 'disguised employees' – people who are providing a service to one client and whose working practices mirror those of a traditional employee.

However, it's only in more recent years that the government has given the legislation real teeth.

The government clamped down on 'off-payroll working' in the ***public sector in April 2017***. Public sector clients became responsible for working out whether their workers were caught by IR35. Any workers subject to IR35 would have to have PAYE tax and NICs deducted at source. To help employers and workers decide if IR35 might catch them, the government introduced an Employment Status Test to mixed reviews.

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## Impact of IR35 on the public sector

Opinions vary, of course, but there is a broad consensus that the introduction of IR35 in the public sector has had a significant impact. Some NHS trusts and Transport for London initially decided on a blanket ban of all contractors working under a private limited company, moving instead towards management consultancies and fixed term contractors to deliver projects. Some contractors decided to pull out of the public sector entirely.

*A 2018 report by the CIPD and IPSE*, the association for independent professionals and the self-employed, was unequivocal in its conclusion that IR35 had led to ‘damaging unintended consequences’ for public sector employees. The study found that over half (51%) of public sector hiring managers thought they had lost skilled contractors because of IR35, while 71% were struggling to retain their contractors. Chris Bryce, chief executive of IPSE, went so far as to state that the rule had ‘stalled’ major public projects and ‘contributed to the NHS’ staffing crisis’.

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## Preparing your company for IR35

It's arguable that some of the problems encountered by the public sector following the introduction of IR35 could have been avoided by a more considered response. However, highly risk averse companies in the private sector have already followed suit with *HSBC, Barclays, Lloyds and Tesco Bank all recently announcing that they will move away from using personal services companies (PSC).*

But blanket bans are a blunt instrument. It's important to use the time between now and April 2021, to first consider whether your contractors might be caught by IR35. If they are caught, you need to think about how you can manage the new rule in a way that strengthens your relationship with contractors.

Here are the three key options available:



**Bring contractors in-house.** This option assumes your contractor would be willing to forgo the tax advantages enjoyed as a self-employed contractor. The upside is that you retain your talent. The downside is that you are adding to your employer responsibilities by way of legalities and insurances etc.



**Engage an umbrella company for 'caught' contractors.** This would preserve headcount but there is a cost implication. Higher agency costs, lower gross pay, more tax and lower net pay are all unavoidable by-products of an umbrella company compared to a private limited company.



**Partner with a Professional Employment Organisation (PEO).** This model is built around the HMRC recognised joint-employment method and carries a multitude of benefits. The PEO becomes the 'employer of record' and takes on all the usual employer responsibilities leaving your business to carry on using your contractors without adding to your employer liabilities.

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## More on PEO

In the context of IR35, a key benefit of partnering with a PEO is that you can likewise offer contractors full access to employee benefits such as pension provision, holiday pay, statutory payments (maternity / sick pay) and tax and NI payment at source. Yet, workers employed through PEO remain 'off-payroll' for you because the PEO is the employer of record. This is a huge drawcard for employers, for example those in the banking sector, that aim to keep headcounts to a minimum.

Another key benefit offered by the PEO model concerns VAT. Currently an organisation might pay their contractor – through their private limited company or PSC - £500 a day plus £100 in VAT to HMRC. The organisation cannot reclaim that £100. However, with a PEO in place, there is no VAT to pay. The organisation can afford to pay the full £600 direct to the worker, helping to retain their services.

Other benefits of PEO, specifically for your business, include compliance savings, insurance savings and an overall reduction in admin. Contractors will also save on accountancy and additional insurance costs.



## Talk to the experts

IR35 may have been around for almost 20 years, but many employers are still in the dark when it comes to understanding its potential risks for their business. It follows that many employers are yet to do their homework and find solutions for managing IR35.

Use the time you have now to get ready for IR35. Explore your options. But beware of solutions that seem too good to be true. These might include 'Statement of Work' contracts that don't hold water with HMRC, or artificially structured small business exemption models.

The PEO model is still a relatively new concept in the UK, but the advent of IR35 means that demand for this model is growing rapidly. People Group's PEO model is the only PEO model in the country to have been reviewed and certified by HMRC. With a range of benefits to offer both employer and contractor, PEO can even exploit IR35 as an opportunity to strengthen, and add value to your relationship with the highly skilled workers that help your business thrive.

To find out more about IR35 and how People Group can help your business manage the new rule, [click here](#) or call **0345 034 1530**.



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