

# IR35 and the Impact on Planning Analytics

New legislation on the employment  
status of contractors explained



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# IR35 - Facing the Challenge

IR35 describes two sets of tax legislation that are designed to combat tax avoidance by workers, and the firms hiring them, who are supplying their services to clients via an intermediary, such as a limited company, but who would be an employee if the intermediary was not used.

IR35 changes experienced in the public sector are now scheduled to be imposed upon the private sector commencing April 2020.

This is expected to increase the cost of utilising contractors to deliver technology projects.

From April 2020, medium and large companies that engage contract workers will be responsible for determining the IR35 status of their workers, rather than allowing the workers to define this themselves.

Fee payers for contractors will be responsible for deducting the correct tax and national insurance.

If the company that engages the worker decides incorrectly that the contractor is self-employed, HMRC can investigate and insist on back payment of tax, as well as fines for late payment.

# IR35 - The Changes Explained

**Changes in IR35 mean that any tax liability has been shifted to the beneficiary or end-user of any contractor service – in order to allow HMRC to collect money.**

At risk are Personal Service Companies PSC's falling into the categories of Limited Company and Limited Liability Company or Partnership who currently determine the level of NIC and Tax due to HMRC usually via their associated accountants.

From April 2020 the employer of contractor services must communicate to any entity involved (such as recruitment agencies) the status of the contractor.

Each party must fulfil its obligations to the HMRC who will deem each party liable for tax collection and will turn to others in the chain in the event another fails to pay.

# Are you exposed?

Employers only have the unpopular and much criticised CEST tool at their disposal to assess if a contractor falls in or out of IR35.

Too many contractors are deemed within IR35 using the CEST tool yet employment specialists show them as outside the legislation.

Inclusion within IR35 falls into the following categories

- Right of Substitution
- Supervision, Direction and Control
- Mutuality of Obligation
- Financial Risk

# The Right of Substitution

The 'Right of Substitution' is the first test of whether a contractor should really be treated as an employee.

Whilst this has been challenged in court, this catches many contractors.

It hinges on the difference between an employee and a supplying company being the ability within the contract to switch out a resource for another of equal ability.

The contractor has to be equally skilled, qualified and cleared to perform the substitute workers role.

No previous interviews between the contractor and company should have taken place other than verification checks.

The contractor should not have been known to the company from a pool or bank of workers.

The substitution is the result of company workers unwilling to perform the tasks and not a lack of capability.

# Supervision, Direction and Control

**Contractors must work without being micro-managed and pay for their own equipment, training and development.**

A Statement of Works (SoW) will determine how the contractor delivers the solution and smaller contracts with their own SoW are always better than one all-encompassing statement.

# Mutuality of Obligation & Financial Risk

**The contractor and client must agree a piece of work which is then delivered and subsequently paid for.**

Smaller individual contracts are always better than one larger piece.

Technical milestones are more beneficial than date driven windows of work.

## Financial Risk

The more financial risk a contractor incurs lessens the chance of falling foul of the IR35 trap.

An obvious way of achieving this is to withhold part of the contract value until completion.

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# Why use Spitfire to mitigate IR35 risk?

You will receive the same level of support enjoyed from single contractors.

A pool of industry specialists equals greater expertise for your projects.

Consultants not contractors will be deployed keeping within the IR35 boundaries.

Easier HR management leads to cost effective project resourcing.

Ready to go and fully trained consultancy.

Statement of Works for all pieces of work to fragment project into smaller parts

Fully accredited solution provider delivering in depth training packages

**Talk to us, we know your pain – we can help.**

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We do this by designing and implementing the automation of your planning, budgeting, forecasting and analysis processes, using IBM® Planning Analytics, powered by IBM TM1.

Get in touch:

Southgate 2,  
Wilmslow Road,  
Cheshire  
SK8 3PW

[www.spitfire-analytics.com](http://www.spitfire-analytics.com)

[info@spitfire-analytics.com](mailto:info@spitfire-analytics.com)  
+44 (0) 161 464 3687