

Issue:

IR35

Key Points:

- IR 35 is legislation designed to prevent the avoidance of PAYE and NI by employers and employees by 'hiding employment'
- It can affect those Interim Managers and clients who unintentionally create 'service contracts'
- Professional Interim Managers who provide a business-to-business service to clients should be aware of the IR35 legislation to make sure that they are not inadvertently caught by it
- HMRC have an aggressive approach to applying IR 35 – which has been challenged successfully.

Summary:

HM Revenue and Customs introduced Intermediaries Legislation (also known as IR35) with the stated aim "to eliminate the avoidance of tax and NICs through the use of intermediaries, such as service companies or partnerships, in circumstances where an individual worker would otherwise - for tax purposes, be regarded as an employee of the client; and for NICs purposes, be regarded as employed in employed earner's employment by the client."

If you contract your services to a client and are "acting" as an employee, you cannot avoid IR35

HMRC and case law have indicated that the following criteria could be used to determine if assignments may fall within the IR35 net:

- You work set hours, or a given number of hours a week or a month.
- You do the work yourself rather than hire someone else to do the work for you.
- Can someone tell you at any time what to do, when to work or how to do the work?
- You work at the premises of the person you work for, or at a place or places he or she decides.
- You generally work for one client at a time, rather than having a number of contracts.

Impact on professional interim managers:

HMRC assumes that interim managers use their personal service companies (PSCs) in order to avoid tax and NICs and place the onus on interims to prove otherwise. HMRC are able to impose a tax on the PSC equivalent to the tax and NICs which it would have received if the interim had been an employee.

Case law is establishing certain criteria that interims may be able to rely on to prove that they are providing a B2B service and that they and their PSCs should be subject to normal taxation rather than the special IR35 regime.

Professional interim managers set up and operate PSCs to provide a business-to-business service to clients and should be aware of the IR35 legislation to make sure that they are not inadvertently caught by it.

HMRC often takes an aggressive line on applying IR35, and many such aggressive interpretations have been successfully challenged.

IIM position:

The IIM represents the interests of professional interim managers, for whom nearly all assignments are strategic and project-related. Their services are provided through 'contracts for services' (rather than 'service contracts') that would very rarely fall within the scope of the legislation.

There are however other forms of interim management – such as 'stopgap management' and 'head renting' – where it is possible that *[to quote HMRC]* "the relationship between the worker and the client would have been one of employment had it not been for an intermediary, such as a service company or a partnership". In such cases IR35 has the effect that "the worker pays broadly tax and NICs on a basis which is fair in relation to what an employee of the client would pay." *[to quote HMRC]*

If the interim manager was not operating through an intermediary such as a PSC, HMRC would in such circumstances be likely to impose employer and employee NICs directly on the client and the interim manager respectively.

Further information:

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Date:

September 2009