IR35 – Personal Service

IR35 in summary….

HMRC estimate there are 200,000 Personal Service Companies in the UK compared to their estimate in 1999 of 90,000 when IR35 came into existence.

The Term "IR35" became established following a Budget press release issued by the Inland Revenue on 23rd September 1999. That press release was called "IR35". At its simplest, IR35 is the way in which the taxman closed a loophole that was allowing many contractors and freelance professionals to avoid paying large amounts of Tax and National Insurance.

Interestingly, HMRC admit to employing 8 Occupational Phychologists through Personal Service Companies. The risk to the Exchequer is valued at £475 million and despite the large increase in PSC's this estimate hasn't changed since the introduction of IR35 in 1999.

In 2012-13 opened 256 enquiries into cases believed to be high risk and the tax year 2013-14 112 cases were opened in the first 6 months. In 2011-12 only 59 cases were opened.

Currently it is taking 28 weeks per enquiry which is faster than in previous years when it took between 110 and 140 weeks.

Currently only 5 cases under investigation which are expected to go to tribunal.

HMRC have 40 specialist staff working on IR35 Compliance, they had 1,200 calls in 2012-13 requesting advice and 80 detailed contract reviews were sought. If a contract review is carried out HMRC will issue a written certificate of opinion, the committee was assured that any contract review is totally confidential and not passed to the compliance team.

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In deciding whether a contract is within IR35 or outside IR35 the key factors are:

1. Personal Service and Substitution
2. Control
3. Mutual Obligation

If the contract is outside of IR35 then you are free to apply normal business rules and take dividends and pay expenses.

If your contract is within IR35 it's not the end of the world, the chances are that you will still pay less tax than a direct employee, to calculate the tax you have to work through 8 stages of calculation, here is a summary:

1. How much were you paid? deduct 5% for business costs
2. Add any other payments/non cash benefits
3. Deduct business expenses – travel, meals, accommodation
4. Deduct capital allowances relevant to the work done
5. Deduct pension contributions made by your company
6. Deduct any NIC paid by your company on your salary and benefits
7. Deduct any salary or benefits already paid and taxed
8. If the answer is zero or negative then there is no deemed payment, if the answer is positive you do have a deemed payment which will be taxable

New rules are planned for 2014 – so seek professional advice if you are concerned about your IR35 Status

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