

IR35 TAX SCHEME

We have recently received questions from levy paying and in-scope companies concerning the impact of the "IR35" tax scheme. There is a commonly held view that the scheme prevents companies who engage people under the IR35 scheme from training such individuals. Consequently, this is felt to be unfair, as levy is assessed and paid in respect of such individuals (as payments for "labour-only" agreements are included in the levy assessment).

Strictly speaking, the commonly-held view is incorrect. The following brief explanation of the IR35 scheme may assist.

Generally speaking, most individuals are employed under contracts of employment. As such, tax payable by the employee is deducted at source by the employer (PAYE), and the employee and employer pay National Insurance contributions.

Alternatively, some individuals set themselves up as businesses (very often limited companies) or independent "consultants" or sub-contractors. Such service providers are paid by invoicing the business for which services are provided. This type of arrangement is set up for a variety of reasons (as an alternative to employment) including the following:

An independent contractor may provide services for several companies. The independent contractor may wish to structure his/her activities for his/her own tax or other reasons. Independent contractors may not derive the statutory or contractual employment rights which apply to employment (for example, holiday pay, pensions accrual, redundancy and other employment protection rights). The hiring company and the independent contractor may avoid the payment of NIC, the deduction of tax at source (PAYE). Because some "independent contractors" and hiring companies choose to set up arrangements under IR35 simply in order to avoid the payment of NIC, the deduction of tax at source (PAYE) etc, the tax authorities (HMRC) look very closely at such arrangements in order to verify whether they are "genuine" independent contractor arrangements, or in reality contracts of employment. Various tests are applied to see whether in reality a contract of employment exists. If, for example, an independent contractors works exclusively for a contractor for tax purposes, this is highly likely to be construed as a contract for employment.

There are other tests. HMRC has advised that whether or not an individual is trained by the company is one of the evidential tests on the issue of whether or not the individual is an employee or a business is his/her own right. HMRC takes the view that companies generally train employees, and that independent contractors make their own training arrangements. Accordingly, in order to minimise the risk of IR35 arrangements being construed as employment contracts, some companies may choose not to train IR35 sub-contractors. However, this is a choice which a contractor may make . **there is nothing in either the tax or levy regulations which prevent contractors from training individuals working under IR35 arrangements.** Just because an individual is paid under IR35 doesn't preclude the company from training them.

So, as far as ECITB is concerned, an in-scope and/or levy paying contractor can train an "IR35" person, and derive ECITB support. Payments and other details relating to such labour-only arrangements must be declared annually and will be assessable to levy. If companies choose not to train IR35 individuals this is their decision.