

IR35 IN THE PRIVATE SECTOR

HAVE BUSINESSES DONE ENOUGH
TO REASSURE CONTRACTORS?

BROOKSON

HOW PREPARED ARE PRIVATE SECTOR BUSINESSES?

In 2019 we conducted an insights report; "Avoiding an IR35 Talent Drain". This report showed the findings of 718 UK contractors that we surveyed to understand their opinions on how prepared Private Sector businesses were for the upcoming IR35 changes. The key themes from our report found only 3% of contractors believed that end hirers would take the necessary action to implement correct IR35 policies and 80% would be more likely to find work with other businesses who have implemented these changes. The message from contractors was clear – businesses needed to educate themselves on IR35 and correctly prepare for the change, or risk seeing a loss of talent across their flexible workforce.

With a 12-month delay, we wanted to understand if hirers were now doing enough to prepare for the upcoming changes after listening to contractors' feedback and, in turn, contractors felt more confident about their hirer determining their IR35 status. In August we conducted a second survey with 907 UK contractors to learn whether end hirers have shifted the opinions voiced in 2019.

WHAT'S CHANGING?

From April 2021, the responsibility for determining a contractor's IR35 status is shifting up the supply chain from the contractor to the end hirer that engages them. The hirer must provide the contractor with an outcome and a Status Determination Statement (SDS) explaining the decisions that led to that outcome.

IR35 itself isn't changing; a contractor who has been correctly assessed as outside IR35 today should remain outside from April 2021 onwards.



WILL WE SEE A REPEAT OF APRIL 2020?

We are hopeful that this won't be the case. Whilst the delay may have been unwelcomed by those businesses who had prepared early for April 2020 and are now faced with an extra 12 months of disruption, the delay came as a welcome relief for many contractors who had previously voiced their nervousness about their employer's ability to correctly assess their IR35 status. Contractors will be hoping that the extra time will provide many Private Sector businesses with extra time to review their approach to IR35, alongside the ongoing pandemic, with many calling this a third chance to learn from past mistakes and take appropriate action prior to April 2021.

Better guidance published from HMRC should see businesses that have previously used quick online automated tools, or implemented blanket bans on their flexible workforces, reconsider this strategy after having more time to educate themselves on IR35. By understanding IR35, or seeking advice and support from a specialist, means that hirers can avoid potentially costly fines and losing key talent. This can be achieved by knowing what constitutes reasonable care, understanding how to conduct thorough reviews, and suggesting changes in engagement practices that may have otherwise led to an incorrect determination and the potential loss of contractors.

UNCERTAINTY CONTINUES AMONGST CONTRACTORS

Our latest data shows that there continues to be a large proportion of contractors who are still nervous about the lack of IR35 understanding in the supply chain, with **63% of contractors negatively rating their current employer's IR35 knowledge**. With end hirers not yet doing enough to demonstrate a clear understanding of the rules to their flexible workers, it has contributed to a significant lack of trust. Only 30% of contractors trust their client to make the right assessment of their IR35 status.

When looking more closely at what contractors would do if they felt they were incorrectly assessed by their hirer, the top three responses were:

These responses should come as a real concern for hirers who depend on contractors to fill key roles across their business. With the data clearly indicating contractors see these changes as a negative and prepared to take action should they not agree with the outcome; Private Sector businesses need use this information to adopt new strategies to they retain their flexible workers.

61% LOOK FOR ANOTHER CONTRACT ROLE OUTSIDE OF IR35

46% REQUIRE A RATE INCREASE IN ORDER TO CONTINUE

38% LOOK FOR A PERMANENT ROLE

87%

72%

76%

FURTHER PROBLEMS

- It will cause further problems for Contractors who have already been hit hard through COVID

PRIVATE SECTOR AT RISK

- Private Sector businesses will ultimately be the ones to lose out

LESSONS STILL TO BE LEARNT

- The Private Sector still hasn't learnt from the mistakes made in the Public Sector

The knock-on effects of this nervousness could quickly become a real headache for businesses if their contractors decide to leave for other more appealing roles elsewhere that have adopted correct IR35 policies; something that we believe will turn businesses into beacons for the best flexible talent.

For those contractors that choose to remain in their existing roles, large proportions would consider challenging the determination. In our survey, 53% said they would do this if they didn't agree with their hirer's decision. This would put pressure on internal recruitment departments that may be unable to support other business priorities, including attracting new talent, as they are required to meet the 45 day challenge process for each contractor that makes one.

ARE RECRUITERS DOING ENOUGH?

Recruitment agencies also didn't fare well in our survey. **We found 55% of contractors felt that their agency wasn't doing enough to educate or advise them on the IR35 changes**. With IR35 being a perfect opportunity for agencies to be seen as experts, advising and supporting both contractors and hirers on the private sector changes, it comes as a surprise that not more are using this time to potentially improve their knowledge, get ahead of their competitors and grow their contractor and client book, thus driving growth in their business.

THE COST OF GETTING IT WRONG

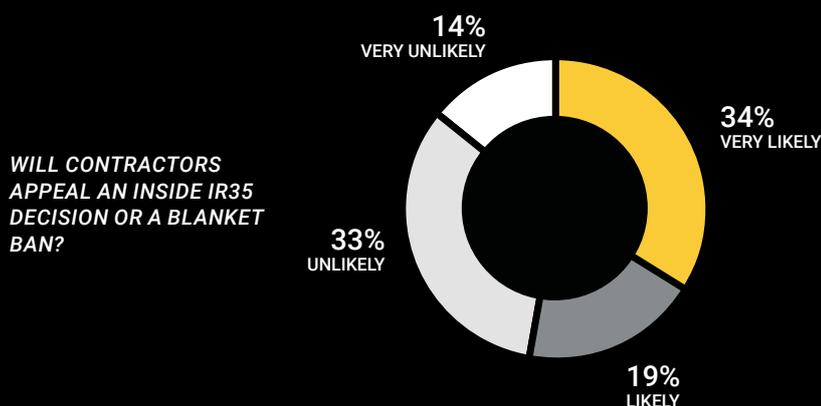
Businesses who are still of the view that IR35 will be delayed again, that blanket bans or algorithmic based online tools are an easy, cost-effective, viable solution, with insurance policies offering protection from an incorrect status determination, may wish to reconsider their preparations and readiness.

Failing to prepare for the changes is going to be costly for businesses. We have already looked at the impacts of failing to prepare when trying to retain and attract contractors, but businesses may be putting themselves at further financial risk. If businesses get a determination wrong and HMRC investigates, it's highly likely they will demand that the workers National Insurance Contributions (NIC's), that haven't been deducted, along with potentially a large penalty and interest for late payment, is owed. This means the cost of getting it wrong is substantial.

To put this into context, the minimum a business could expect to be liable for, in respect of Employer's NIC's alone, for **a contractor paid an hourly rate of £40 per hour on a 12 month engagement is around £10,000**. Multiply this number by how many contractors that business engages and they could be looking at a sizeable amount, even before penalties (which could amount to 100% of unpaid taxes) and interest are taken into consideration.



Comparing these potential costs with obtaining help and assistance from an experienced and professional law firm, that specialises in getting IR35 right, the obvious question many businesses will ask themselves – Is it worth the risk?



WHY ARE CONTRACTORS SO IMPORTANT?

With the temporary workforce making up 22% of the UK's overall labour market in March 2020, contractors play a pivotal role in supporting our economy and giving businesses the flexibility to quickly deliver projects in a cost effective manner.

COVID-19 has had a profound impact on the economy, plunging the UK into the biggest recession on record. Contractors will be key to a business's ability to get through this challenging time, with history showing that UK businesses have come out of a recession largely down to the use of contractors, as they provide businesses with the ability to react to change, quickly scaling up and bringing in skills where required. **With 61% of contractors surveyed saying they would look for another role if incorrectly assessed and 53% likely or very likely to challenge a decision if deemed inside or part of a blanket ban**, it couldn't be more important that hirers do everything they can to take on board the views of their contractors, and seek the correct advice to get IR35 right for all parties.

REBUILDING THE TRUST WITH CONTRACTORS

Whilst time is running out for businesses to prepare for April 2021, there is still enough time to turn this change into a positive; embedding fully compliant IR35 processes that become BAU for the business and meet with HMRC's reasonable care, will see a business become a magnet for future talent and subsequent growth.

It's clear from our survey that the main reason for contractors losing trust in hirers is a result of not providing visibility and transparency during the review process. Whilst the responsibility for determining IR35 sits firmly with the hirer, contractors are less likely to challenge a decision if they have been informed and received opportunities to provide input during the process. **This is something that 90% of contractors would like to see** and are prepared to offer solutions and changes to engagement practices for hirers to consider that may otherwise see them fall in inside IR35.

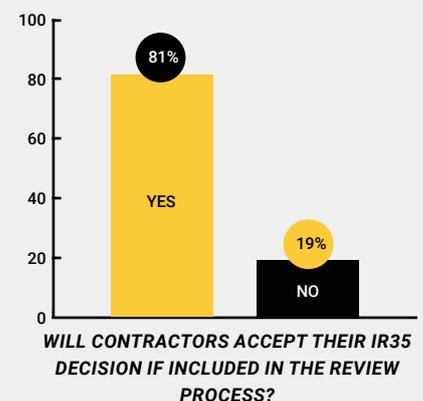
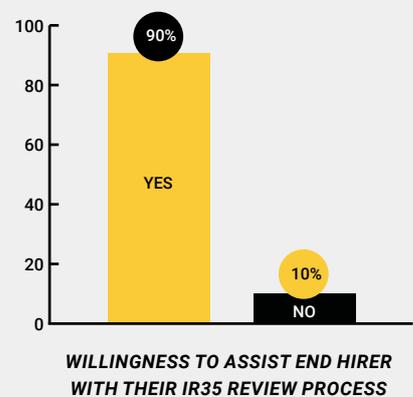
We have always believed that collaboration and open communication across the supply chain is the key to getting IR35 right; something we have already seen businesses take on board by putting the following steps in place:

Implementing open communication with the contractor to inform them of the steps being taken with IR35.

Adopting an open review process that allows the contractor to contribute to it

Providing a detailed SDS that clearly explains what led to this decision, demonstrating reasonable care

If a business can implement these changes into their existing IR35 processes, or seek an IR35 specialist that can, **81% of contractors surveyed would accept the decision regardless of the outcome.** We are confident that the data we have gathered and from what we have seen with existing clients, this will have a positive impact on rebuilding contractor trust and seeing a smooth implementation.



It's also important to remember that these changes are an ongoing obligation for Private Sector businesses. With IR35 responsibilities beginning in April 2021, businesses need to consider:

- How they will centrally manage their flexible workers
- How they will assess new roles for the business which require an upfront SDS and IR35 determination before being recruited for
- That every role needs to be reassessed every 6-12 months, in order to ensure that SDS's remain up to date and compliant
- How they will manage the risk, wider supply chain and time consuming & costly administration of payroll
- How will they provide visibility, cost control, efficiencies and consistent processes across their contingent workforce



Matt Fryer, head of Brookson Legal Services:

Whilst the data suggests contractor uncertainty and trust towards the Hirer remains, there are clear signs on what needs to be achieved - collaboration and open communications with all those impacted by the changes, particularly the contractors themselves, helping prevent past mistakes being made again. I agree with the 35% of contractors that believe there is still time for hirers to turn this into a positive change.

Closing paragraph amend to - For the last 4 years we have supported a large number of recruitment agencies and end hirers in both the public and private sectors with their IR35 preparations. In recent weeks it's been great to see businesses getting to grips with the challenges presented by COVID-19 and now looking towards dealing with this legislative change - wanting to implement correct procedures and polices early and getting ahead of their competition, putting them in a great position to become a beacon of talent during this uncertain time for the UK economy.

WHAT YOU SHOULD BE DOING NOW

CONTRACTORS

- + Educate yourself on the IR35 changes to understand what to look for when seeking new roles and what you can do if you disagree with your status determination.
- + If your current role sees you working past April 2021, begin communicating with your hiring manager to establish what they are doing to prepare for the changes as this could have a significant impact on the way you work and how you're taxed.
- + Find a reputable accountant that can support you with Limited Company working and Umbrella Employment.

RECRUITERS

- + You play a key role in supporting and facilitating communication in the supply chain; make sure you are educated on IR35 and are seen to be visibly supporting contractors and clients.
- + Use this time to grow your contractor and client book; a successful recruitment agency will turn this change into an opportunity.
- + Seek a partner that you can work with in providing support to your clients, helping them prepare.

HIRERS

- + Adopt an open review process into your IR35 strategy that starts to re-build the trust with your contractors. Clear and open communication is the key to a smooth implementation and you becoming a beacon of talent.
- + Consider what steps you have put in place to demonstrate your obligation to meet HMRC's reasonable care; if you don't have internal IR35 experience seek a professional law firm that can help you with this.
- + Review your internal systems to ensure they provide visibility of your existing flexible workers, can manage their payroll and that IR35 becomes BAU.

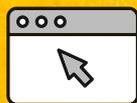


DON'T LEAVE IR35 UNTIL 2021

Brookson's SRA regulated employment law specialists can support your business with IR35:



Educate, advise and assist you with your IR35 audit



Implement systems & processes to help IR35 become BAU



Centrally manage your off-payroll workforce



Manage the risk, supply chain and payroll



Provide visibility, cost control, efficiency and consistency

Find Out More
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