

# Reform of IR35 in the public sector

CIPFA Seminar – 6 October 2017

# Introduction

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- ▶ With effect from 6 April 2017
- ▶ Responsibility for operating the rules moves from the individual worker's personal service company (PSC) to the:
  - ▶ public sector body,
  - ▶ agency,
  - ▶ third partypaying the worker's company
- ▶ Public sector - scope is defined in the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002

# Overview of legislation

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- ▶ Introduces concept of “fee payer”
  - ▶ The person paying the PSC – is the employer for PAYE/NIC, or
  - ▶ First intermediary onshore if payer is offshore
- ▶ Public sector body required to inform the person they contract with whether or not contract is within IR35
  - ▶ Public sector becomes the “fee payer” if they do not comply with duties or fail to take reasonable care
- ▶ Legislation specifies “deemed direct payment” calculation
- ▶ Deemed direct payment excluded from IR35 deemed payment calculation by the PSC
- ▶ 5% expenses deduction removed (public sector only)
- ▶ Fraudulent document provisions

# Public sector body duties

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- ▶ Inform the person they contract with whether or not contract is within IR35:
  - ▶ Contracts in place pre 6 April 2017 – on or before first payment on or after 6 April 2017
  - ▶ New contracts from 6 April 2017 later of:
    - ▶ On or before the time of entry into the contract; or
    - ▶ When the services begin to be performed
- ▶ Respond to written request for reasoning behind decision within 31 days
- ▶ Take reasonable care in determining status

# On-line tool overview

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- ▶ HMRC's view of status
- ▶ If data is correct can rely on the outcome
- ▶ Do not have to use it or agree with the outcome
- ▶ Can be used by end user, intermediary or contractor – scope for disagreement
- ▶ Can be used by private sector and self-employed individuals
- ▶ Matrix approach
- ▶ Initial filtering if pass the substitution or control tests
- ▶ Future and current contracts

# Challenges

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- ▶ Identifying contractors in scope
- ▶ Composite services
- ▶ Communication through the supply chain
- ▶ The decision making process
- ▶ Who is bearing the employer NIC costs?
- ▶ Relations with contractors
- ▶ “Substitution” and “Control”
- ▶ Corporate Criminal Offence legislation

# What we are seeing in the market

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- ▶ Direct employment/direct engagement
- ▶ Umbrella employment/agency payroll
- ▶ Self-employment?
- ▶ Intermediary in contractual supply chain
- ▶ Outsourcing of IR35 assessment and/or payroll
- ▶ Insurance backed arrangements
- ▶ Composite service model

# What auditors need to consider

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- ▶ Clear policies and processes
- ▶ Staff responsible for engaging / paying agencies and other third parties knowledgeable
- ▶ Good working knowledge of status tool
- ▶ No blanket applications (e.g. re “sending a substitute”)
- ▶ Review preferred supplier list
- ▶ Update contracts (e.g. for employers NIC)
- ▶ Spot checks – has worker had tax / NIC deducted
- ▶ Ongoing process – not just an initial appointment
- ▶ Consider Corporate Criminal Offence legislation



# Questions

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# Contact details

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