

IR35 Q&A

with Eton Bridge Partners & Brookson Legal

QUESTION: If I'm no longer charging via a PSC (person with significant control), how does the contractor cover indemnity insurance?

ANSWER: If you're working via a PAYE scheme, i.e. umbrella then this would be provided for the contractor. If via a deemed payment (net payment) to a Ltd company then you would still require these insurances.

ANSWER: No, you wouldn't require those insurances as your employer would cover this.

QUESTION: I am currently in an 'inside' role - paid as FTC/ Umbrella company - would I need to have PI insurance?

QUESTION: If the fee payer is an intermediary and a small business using associate consultants, that means an SDS is not needed - does that mean the liability to affirm outside IR35 remains with the consultant? Is there a risk to the consultant in that situation?

ANSWER: It is not the 'fee payer' that is exempt is 'small', it needs to be the client that is a small business for these rules not to apply. If the client is a small business then chapter 8 of ITEPA applies and the contractor carries the responsibility and liability.

ANSWER: If there is no UK presence then the client doesn't need to assess and it's likely that Chapter 8 applies and the contractor would need to do their own assessment and carry liability.

QUESTION: What if your client is in Europe without a legal presence in the UK?

QUESTION: Is length of time in a role an indication that they are in a role that is inside of IR35 i.e. same role for 2 years?

ANSWER: No, this is a common mistake - 2 years is a tax rule for expense relief. The longer the contract, the more integrated the contractor will look, but this does not mean that it is definitely an inside role - a full assessment is still required.

ANSWER: Each assignment should be assessed and you could have multiple assignments some inside and some outside.

QUESTION: Are there implications of having a number of individual assignments with one client being deemed inside IR35 even if each assignment is classified as outside IR35?

QUESTION: Is the SDS a legal requirement for work globally or is it region specific? I am a Director of a UK Ltd Company, a fiscal resident of Spain working with a US company.

ANSWER: This is UK tax law, if the client is wholly overseas then chapter 8 of ITEPA applies and UK contractor is responsible. If the client has a UK presence then Chapter 10 applies and they are responsible.

ANSWER: Yes, if the role is extended, or scope changed then a re-review is needed.

QUESTION: I have an outside IR35 determination however at the time it was only envisaged that I would be required for 2-3 months beyond the change in regulations. How relevant is that likely to have been in the determination? I assume I should get the determination reviewed again as this period is coming to an end.

QUESTION: Is there recourse if you are wrongly determined as inside?

ANSWER: You can challenge the process via your hirer or via your SATR at tax year end directly with HMRC.