

- IR35 -

MYTHS & FACTS

with Eton Bridge Partners
& Brookson Legal



MYTH: If I fail one of the "three tests", then I must be inside IR35...



FACT: You must fail all three of the tests to be deemed inside of the IR35. Employment status is concerned with many tests, the most influential three relate to personal service, control and mutuality of obligations.



MYTH: The Status Determination Statement (SDS) I receive should explain why that IR35 decision was made...



TRUE: The SDS should contain a detailed explanation of why the business came to the IR35 decision and summarise the outcomes of the three key tests:
One - Substitution
Two - MOO
Three - Supervision Direction and Control



FACT: Whilst managing permanent staff of your client is a pointer towards being inside of IR35 it is not determinative in its own right.



MYTH: If I have people reporting into me I must be inside IR35...



MYTH: If I am a project manager or PMO taking direction from the program lead, then I must be inside IR35...



FACT: This points towards there being a degree of control from the client, however that would need to be examined and other key factors such as personal service, mutuality of obligation, financial risk, integration etc would need to be considered.



MYTH: If I am outside IR35 pre-April 6th, then I should remain outside post-April 6th?



TRUE: The way that IR35 is assessed isn't changing. It's only the person responsible for carrying out the IR35 audit that is changing.



FACT: Use of client equipment indicates that you may be integrated in the clients business and you may be under control of the client - other tests would need to be considered.



MYTH: If I use the clients equipment, it puts me inside IR35...



MYTH: If I don't have the right to substitute I must be inside IR35...



FACT: Not being able to provide a substitute is an indicator that the contract requires personal service and therefore falls in one of the three tests for IR35. An IR35 assessment would still need to consider the degree of control and mutuality of obligation with the client.



MYTH: I have the right to challenge my Status Determination Statement (SDS) if I don't believe it to be correct.



TRUE: You are entitled to challenge the SDS you receive, should you disagree with the information provided. To do this, the business must have a documented challenge process and they must respond to your challenge within 45 days.



FACT: This is a common misconception and it is not correct. The length of the contract is a factor which is considered as part of an IR35 review, but it is not determinative in its own right.



MYTH: If my contract length is longer than two years, I'm automatically inside IR35...



MYTH: The CEST tool is 100% accurate and recognises mutuality of obligation



FACT: The CEST tool omits a review of MOO, so does not consider all relevant factors. It is also reliant on the person entering the answers to be conversant in IR35 case law and understand the working practices and contracts behind each assignment.



For more information and advice on IR35 visit us at:
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