

IR35 Changes - How to manage the risks & costs

25 February 2021



Now, for tomorrow





Richard Maitland



Agenda

- What is IR35?
- What is changing in April 2021
- How IR35 status is determined
- What do you need to do to prepare for April 2021?



What is IR35?

- Legislation introduced in 2000 to combat what HMRC see as “disguised employment”
- Aims to ensure that workers who work like employees through limited companies are treated in the same way as employees for tax purposes
- Requires **workers** to examine their relationship with end clients and operate PAYE if appropriate – at present.....
- **The key question: would the worker be an employee for tax purposes if the limited company wasn't there?**



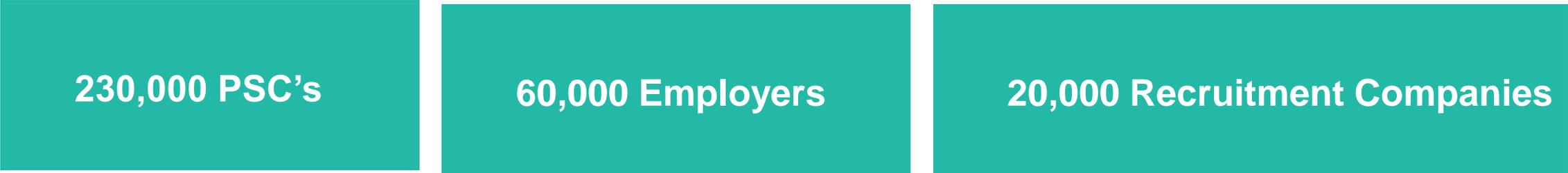
Background

- Why Is IR35 Changing?
 - No one really applied IR35 correctly
 - HMRC didn't have resources to impact this
- Case law not going HMRC's way
- Becoming “endemic” as a way to save tax
- Its easier to just change the law!



Who will be impacted by the changes and how?

HMRC Impact Statement - this will affect:



The real reason?

Exchequer impact (£m)

2018 to 2019	2019 to 2020	2020 to 2021	2021 to 2022	2022 to 2023	2023 to 2024
-5	-150	+1,165	+595	+635	+725



Who are the changes likely to affect?

1

Individuals supplying their services through an intermediary, such as a personal service company, to a medium or large-sized organisation who would be employed if engaged directly

2

Medium and large-sized organisations outside the public sector who are the end-client and engage with workers through intermediaries

3

Public sector organisations, regardless of size, who are the end-client and engage with workers through intermediaries

4

Recruitment agencies and other intermediaries supplying staff through personal service companies

Clair Williams





What is changing in April 2021?

<p>Medium and large-sized private sector end-clients will be responsible for determining whether the IR35 rules apply</p>	<p>Fee-payer to withhold PAYE tax and NIC</p>	<p>Cascade of status determination statement</p>
<p>PAYE/NIC obligation for entity that fails to communicate status determination</p>	<p>Transfer of liability provisions</p>	<p>Client-led status disagreement process</p>



What is changing in April 2021?

Medium and large-sized private sector end-clients will be responsible for determining whether the IR35 rules apply instead of the worker

Small company exemption applies where 2 of the following 3 criteria are met:

- Turnover of no more than £10.2 million
- Balance sheet total of no more than £5.1 million
- 50 employees or less

Easy guide to size - does end-client need an audit?

Simplified test for unincorporated businesses - is turnover no more than £10.2 million?

For companies that are in a group, if the parent of the group is medium or large, all subsidiaries will also have to apply the off-payroll working rules

Size of end-client

Fee-payer
withholds tax

Cascade of SDS

Failure to
communicate

Transfer of liability
provisions

Status
disagreement



What is changing in April 2021?

Fee-payer to withhold PAYE tax and NIC before paying worker's intermediary

In most cases the organisation paying a worker's intermediary will be the fee-payer, but there are exceptions to this

Fee-payer will pay PAYE tax and NIC withheld, along with Employer NIC and potentially Apprenticeship Levy to HMRC

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What is changing in April 2021?

End-client must issue Status Determination Statement (SDS) directly to the worker and the party they are engaging if this is different (e.g. an agency)

At a minimum it must meet the following basic criteria:

- Be in writing (an email will suffice)
- Identify all the parties in the supply chain, providing names and addresses and description of role in the supply chain (eg Contractor's personal service company, recruitment agency)
- Start with the finding of the determination: within IR35 or not within
- Contain a reasoned argument for why the determination outcome
- Provide details of process to appeal the determination outcome

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What is changing in April 2021?



The SDS **must** be passed down the labour supply chain until it reaches the fee-payer

No requirement for small end-clients to issue SDS – and they shouldn't!

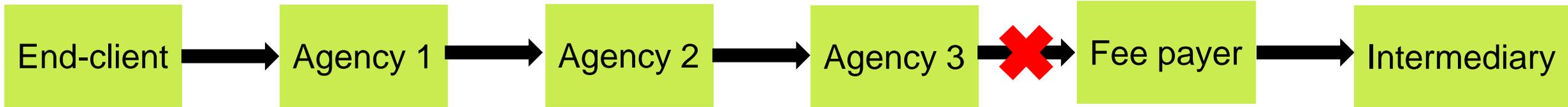
If end-client in private sector ceases to be medium or large, **must** withdraw SDS

Size of end-client	Fee-payer withholds tax	Cascade of SDS	Failure to communicate	Transfer of liability provisions	Status disagreement
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What is changing in April 2021?

If a party in the supply chain fails to pass the SDS to the next party, the party who has failed to pass the SDS to the next party can potentially become the 'fee-payer' responsible for the Income Tax and NIC payment



Liability will sit with agency 3

Record the date you pass the SDS to the next party in the chain along with the date you receive confirmation that the recipient received it!

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Cascade of SDS

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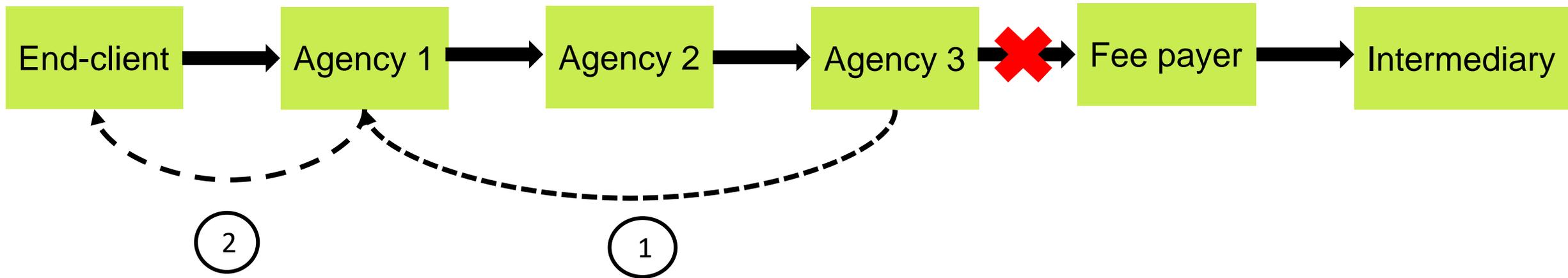
Transfer of liability
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What is changing in April 2021?

Transfer of liability provisions will form part of the new legislation



Our recommendation – carefully check who is in the complete supply chain and carry out due diligence to establish the credibility and legitimacy of each party in the chain

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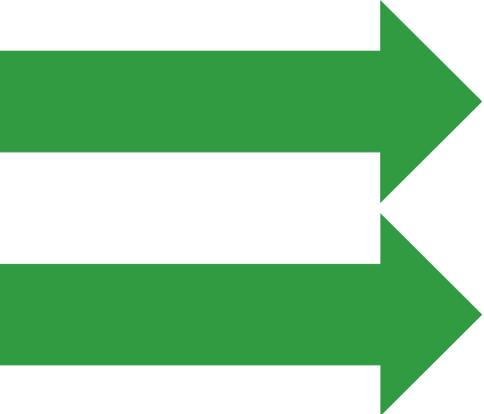
Status
disagreement



What is changing in April 2021?

Clients **must** have a status disagreement process in place to deal with disputes raised by any workers, or the party the client contracts with, in relation to the SDS issued

The client **must** consider the representations and respond to the worker / party contracted with within 45 days of the representation being received:



advise the worker / party contracted with that they have decided that their original SDS was correct and provide reasons, or

inform the worker and party contracted with that they have considered the representations and decided the original conclusion was incorrect and provide a new SDS stating the previous SDS is withdrawn

Size of end-client

Fee-payer
withholds tax

Cascade of SDS

Failure to
communicate

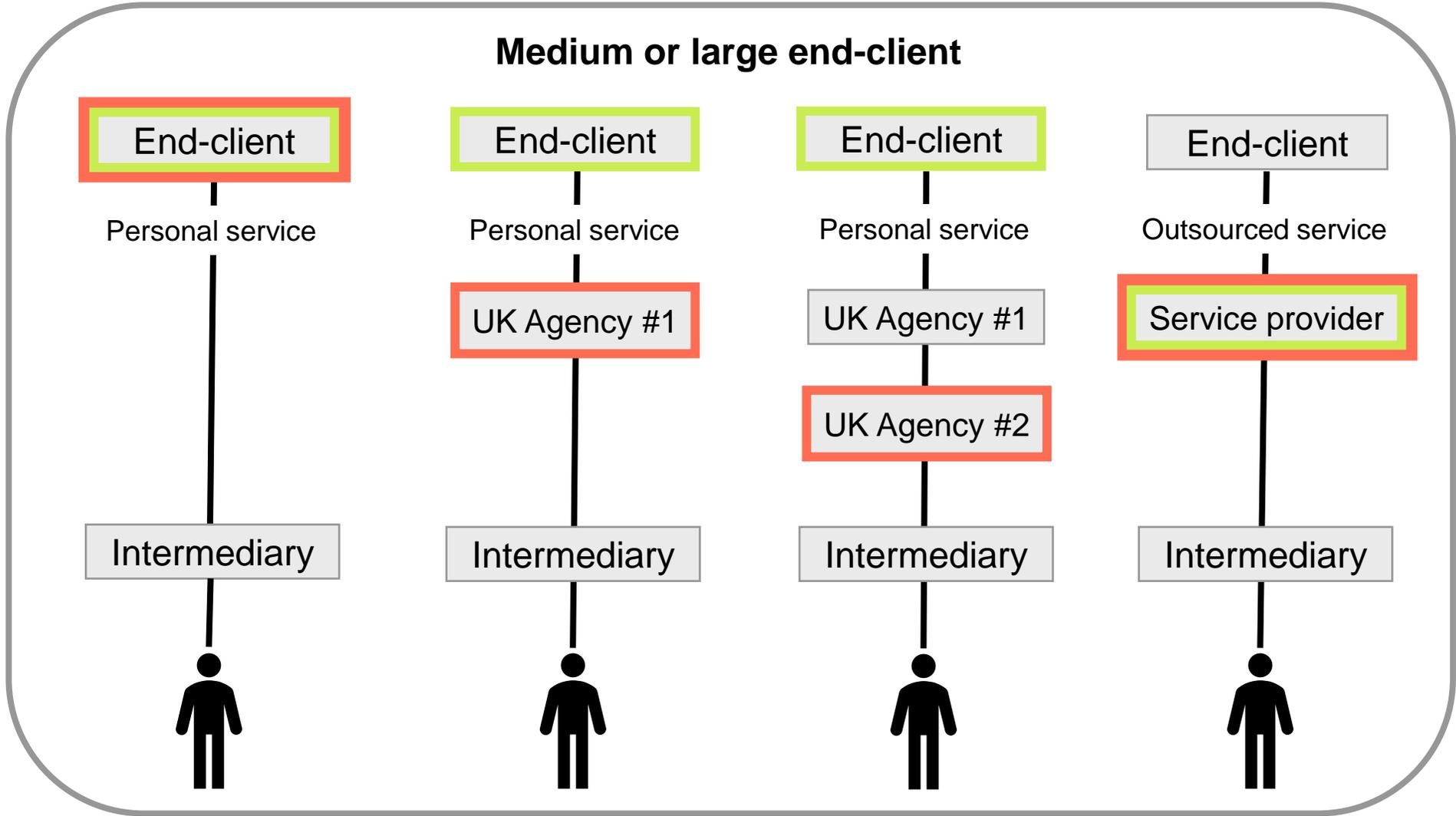
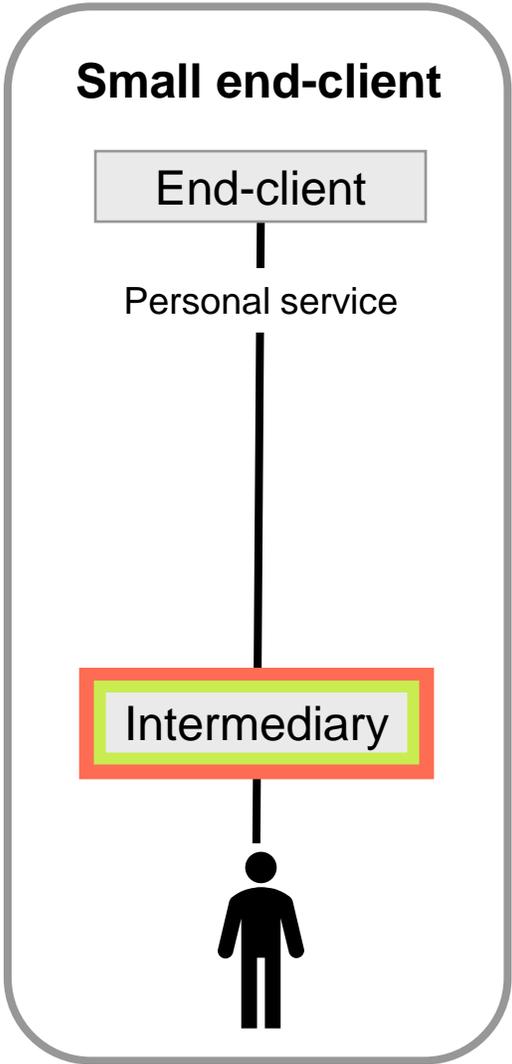
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Status determination responsibility

PAYE tax, NIC, app levy liability





Gordon Thrower



Determining Status - 3 Main Factors

Personal service / substitution

Is there an obligation on the individual to perform work personally?

- Right to substitution - Unfettered? Real?
- Limited right is insufficient

Mutuality of obligation

Is there an obligation for work to be offered and for this to be carried out?

- Contract of Service v Contract for Services
- No MOO if
 1. the worker does not have to turn up for work and / or the engager does not have to offer the work if it is available or
 2. the worker has agreed to work, but there is no obligation on the engager to pay anything at all

Supervision, direction and control

Is the individual subject to the control of the engager as to the manner in which the services are provided?

- How, what, where and when? Is there a “boss”?
- Does anyone have a right of control - master / servant relationship?
- Lorraine Kelly case – taxpayer won



Determining Status - Other Factors

Business on own account

Own business premises and equipment?
Markets business and has client base?
Kaye Adams case – taxpayer won

'Part and parcel' of the organisation

How integrated into the end client's business is the worker?
Do employees report to the worker? Involved in appraisal process?
Does he / she attend training, team meetings, team building, staff parties?
Does he / she have access to the staff car park, staff canteen?

Financial Risk

How is the worker paid - fixed fee or hourly / daily rate?
Negotiation of terms on which work is carried out?
Paid on submission of invoices? Bad debts / credit terms?

Own equipment

Who provides equipment fundamental to delivery of task?
If only "small tools" this is a neutral factor



What do you need to do to prepare for 6 April 2021?

1

End-clients with off-payroll workers need to consider if the small business exemption applies

2

Identify all off-payroll workers (both current and future)

3

Consider supply chain and priorities

4

Use HMRC's online 'Check Employment Status for Tax' tool

5

Where relevant, review the CEST tool result using MHA Tait Walker's IR35 tool

6

Review the contract and working practices

7

Issue Status Determination Statements

8

Design and set up a status disagreement process

9

Ensure payroll is set up to process payments made after 6 April 2021

10

For PSCs consider past and future compliance position



Richard Maitland



Who are the rules changing for?

Rules changing for	Rules not changing for
Medium and large-sized organisations outside the public sector who are the end-client and engage with workers through intermediaries	Self-employed individuals not providing services through an intermediary – still CEST (different version)
Public sector organisations will be affected by changes to improve the operation of the reform	Umbrella companies
Individuals supplying their services through an intermediary, such as a personal service company, to a medium or large-sized organisation who would be employed if engaged directly	Small end-clients not in the public sector – but let workers know you are small
Agencies	Organisations fully contracting out services to a third party



**Any
Questions?**



Contact us

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