



Formal consultation response from the Chartered Institute of Payroll Professionals in respect of:  
Intermediaries Legislation (IR35): discussion document

Organisation response to be submitted to: HM Revenue & Customs

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Author: Samantha Mann

Dear Sirs

The Chartered Institute of Payroll Professionals (CIPP) welcome the opportunity to feed in views and opinions at this early, discussion stage of consultation.

The CIPP have worked together with BDO in gathering views and opinions in a joint survey which I believe you have a copy of. However, any statistics or comments quoted within this response are from survey respondents who identified themselves as CIPP members (see Appendix 1). The percentages quoted are based on answers provided to that question.

We respond from the viewpoint that use of a Personal Service Company simply to gain a tax or NIC advantage is unacceptable.

### **Compliance**

We are concerned that the underlying premise of this discussion piece is that HMRC are unable to fully police the current IR35 regime due to limited resources and yet can quote with confidence amounts of lost revenue, commentators have questioned the basis of these figures.

We would therefore question the wisdom of immediate further regime change. Time should be allowed for the measurement of success, or otherwise, of recently introduced reporting requirements.

Any change, whenever it is intended to be made, will be resource intensive for all parties, including HMRC, and it is with this thought that we consider the current regime.

Active and well publicised compliance activity by HMRC will reap its own rewards. Anecdotal evidence seems to suggest that the lack of any visible compliance activity by HMRC since the introduction of the IR35 regime has encouraged greater non-compliance as the belief has grown that 'we won't be looked at'.

Whatever changes are made, HMRC should be in a position to actively and publicly police the regime.

Over 84% of respondents believe that HMRC should be policing IR35 more intensively and directly with the PSCs.

## Guidance

It is widely believed that the current IR35 regime is not understood by stakeholders who should be fully compliant. We believe that clear, concise guidance produced in a variety of mediums and aimed at a variety of users, PSCs, engagers, workers and agents will provide a cost effective measure that could be undertaken in a shorter time span than the time needed for further consultation and regulatory change.

The advanced development of digital services should be utilised to develop existing guidance and educational materials and to highlight the IR35 regime. It is viewed as being only a specialist area i.e. 'it doesn't affect us'.

## Increasing complexity of employment status

Much research has been carried out and continues to be so, on the subject of employment status. The Office of Tax Simplification published a report under the previous Government that highlighted the benefit to be gained of having a range of well-designed Employment status Tools aimed at the different users. IR35 was identified as being one of those users.

Clearly laid out and agreed business principles that underpin such a tool should also be openly available within guidance to ensure that there is clarity for all stakeholders. When asked, the majority of respondents believed that rules could be simplified if there was a clearer definition of employed and self-employed.

Helplines staffed by knowledgeable and experienced subject specialists available to provide to guidance.

26% of our respondents believe that HMRC should already be providing this support, with a further 38.7% believing that they could apply the IR35 rules if they were provided with the appropriate training/guidance.

## Engagers

From survey results it is clear that the reasons for engaging the services of a PSC are many and varied, but by far the strongest reason given is that it is the only way to source specialists needed for the business.

The proposal to transfer the obligation for ensuring compliance is achieved by making the engager, rather than the PSC responsible is viewed by the majority as being a significant and costly burden.

56% of respondents believe that the liability for Tax penalties and interest should remain with the PSC.

## Additional comments to survey responses included:

*"The proposed legislation changes are far too wide hitting. Policing supervision, direction and control will be near on impossible for HMRC so clearer, more defined legislation needs to be considered."*

*"The key is identifying those employers who deliberately move existing employees to self-employed for the purposes of escaping liabilities, nothing in this consultation recognises the existence of this, particularly in the public sector, but then they won't want to expose that, will they? "*

*"If there was no tax incentive for becoming a PSC, IR35 would not need to exist"*

### In summary

We can see and can sympathise, to a degree, with the situation that HMRC finds itself in as the Government looks to balance its books. However, moving the burden of policing IR35 from HMRC to business is not the answer if the economy is to continue its steady albeit fragile growth.

Many changes under the heading of improvements and simplifications have been made recently. We believe therefore that a small amount of time be granted to allow a period of review – to establish whether those changes will indeed bring forward the improvements they are predicted to make.

### In the meantime:

- raise the profile of the exiting IR35 regime
- raise the profile of the penalties that exist under IR35
- Monitor and review the date provided under the new reporting mechanisms by employment intermediaries.

I would welcome the opportunity to clarify any points raised within this response, please do not hesitate to contact me or a member of the Policy & Research team. Contact details below.

Yours faithfully



Samantha Mann MAAT MCIPPDip  
Senior Policy & Research Officer  
0115 9226423

Policy & Research team contact email:

Policy & Research Manager  
[Helen.hargreaves@cipp.org.uk](mailto:Helen.hargreaves@cipp.org.uk)

Senior Policy & Research Officer  
[Samantha.mann@cipp.org.uk](mailto:Samantha.mann@cipp.org.uk)



the chartered institute  
of payroll professionals

*leading the profession*

Senior Policy Liaison Officer  
[Diana.bruce@cipp.org.uk](mailto:Diana.bruce@cipp.org.uk)

## Appendix 1 IR35 Survey questions and responses

**CIPP results taken from BDO joint survey** – 46 overall [CIPP] responses but some answers were skipped – percentages shown below are expressed as a % of those who actually answered the question not those who looked at survey.

Percentages shown in brackets are those expressed overall in BDO survey report.

### Do you believe it is acceptable for individuals to be able to gain a tax or NIC advantage by using a Personal service Company (PSC)?

Over whelming majority believes it to create unfair consistency between employees and workers.  
87.5% (66%) v 32.5% (34%) who expressed an interested.

### Why would your organisation engage a PSC?

- Headcount Flexibility 15.38% (11.7%)
- Cost Management 11.53% (9.6%)
- We don't want employer level employment law obligations in respect of contractors 15.38% (10.6%)
- It is the only way to source the specialist people that the business requires 30.76% (38.3%)
- All of the above 23.07% (26.6%)
- Other 3.4% (10.6%)
- To manage Compliance Risk 0 (3.2%)

### How confident would your organisation be in applying the IR35 rules for the PSCs you use?

- Very Confident 12.90% (15.40%)
- Confident, but only after training 38.70% (35.60%)
- Not confident 22.58% (20.20%)
- Very worried – HMRC should provide a template/assistance for use during the process 25.80% (28.80%)

### Do you believe that HMRC should instead put more resource into policing IR35 more intensively direct with the PSC's?

- Yes 84.37% (67.30%)
- No 3.12% (12.5%)
- Only where high amounts are at risk 12.5% (20.20%)

### How much of an administrative burden would it be to identify, deduct and pay over tax and NIC for using PSCs?

- A substantial burden (threatening the viability of our business) 16.12% (9.5%)

- A large, if manageable, burden and additional cost 48.38% (48.6%)
- A minor burden only 16.12% (24.4%)
- No impact on our business 19.35% (9.5%)

**Who should suffer tax penalties and interest on tax paid late if there is an error in deducting tax and NIC?**

- Engager 22% (23.8%)
- The PSC 56% (52.4%)
- Worker 22% (23.8%)

**To level the playing field, should engagers have to pay employers NIC on the amount identified as well as deduct employees NIC?**

- Yes 71.87% (48.1%)
- No 28.12% (51.9%)

**What is the best way for the rules to be simplified?**

- Make the worker an employee if the engagement will last more than 6 months 12.5% (11.4%)
- If the worker will be under the supervision, direction and control of the engaging organisation then tax and employees NIC should be deducted by the engager. 21.87% (19.%)
- The tax and NIC responsibility should belong solely to the PSC 28.12% (31.4%)
- Clearer legal definition of employed and self-employed (with no other status allowed) 37.5% (38.1%)

## Comments

*"The proposed legislation changes are far too wide hitting. Policing supervision, direction and control will be near on impossible for HMRC so clearer, more defined legislation needs to be considered."*

*"The key is identifying those employers who deliberately move existing employees to self-employed for the purposes of escaping liabilities, nothing in this consultation recognises the existence of this, particularly in the public sector, but then they won't want to expose that, will they? "*

*"If there was no tax incentive for becoming a PSC, IR35 would not need to exist"*

## Company Information

The Chartered Institute of Payroll Professionals (CIPP) was established as an official industry body in 1985 when the Institute of British Payroll Managers (IBPM) was formed. In 1998, the IBPM merged with the Association of Pensions and Superannuation Administrators (APSA) to form the Institute of Payroll and Pensions Management (CIPPM), which became the Institute of Payroll Professionals in September 2006 and was granted Chartered Status in November 2010. The CIPP is the Chartered Institute for payroll professionals in the UK and currently has in excess of 10,000 members enjoying a range of benefits. In addition, the CIPP is the UK's leading provider of education for payroll, and has established the friends of automatic enrolment which is responsible for bringing together and educating all of those responsible for implementing automatic enrolment for pensions.

The mission statement of the CIPP is:

Leading payroll and pension professionals through education, membership and recognition

### Representation

The views of the Chartered Institute are sought and valued by Government departments and other organisations, as witnessed by its representation on bodies ranging from HMRC, and other external Employer Consultation Groups. The Institute, through its Policy team headed up by Helen Hargreaves, has been responding to consultation documents and attending consultation meetings for more than 16 years.

As a result of this sustained effort, we have created sound working relationships with the DWP, HMRC, BIS and other Government departments.

The Chartered Institute operates an Advisory Service staffed by professionals able to provide accurate and authoritative advice on a wide range of topics. It also runs national forums which allow members direct contact with representatives from HMRC and other relevant bodies and also provides a forum for members to input and feedback on the CIPP's policies.

### Education

The Institute validates and controls a wide range of professional qualifications in both the payroll and public sector pensions sectors, from Foundation Degree level to Masters level. CIPP Education, a wholly owned subsidiary of the CIPP, delivers the qualifications and provides tutors at officially recognised standards. CIPP Education also runs a comprehensive range of short training courses throughout the UK.

### Events

The CIPP also runs a series of conferences throughout the year, culminating in the Annual Payroll & Pensions Conference and Awards Ceremony.