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AWARDS 2018
LAW FIRM OF THE YEAR

Managing IR35 risks What should your business be doing?

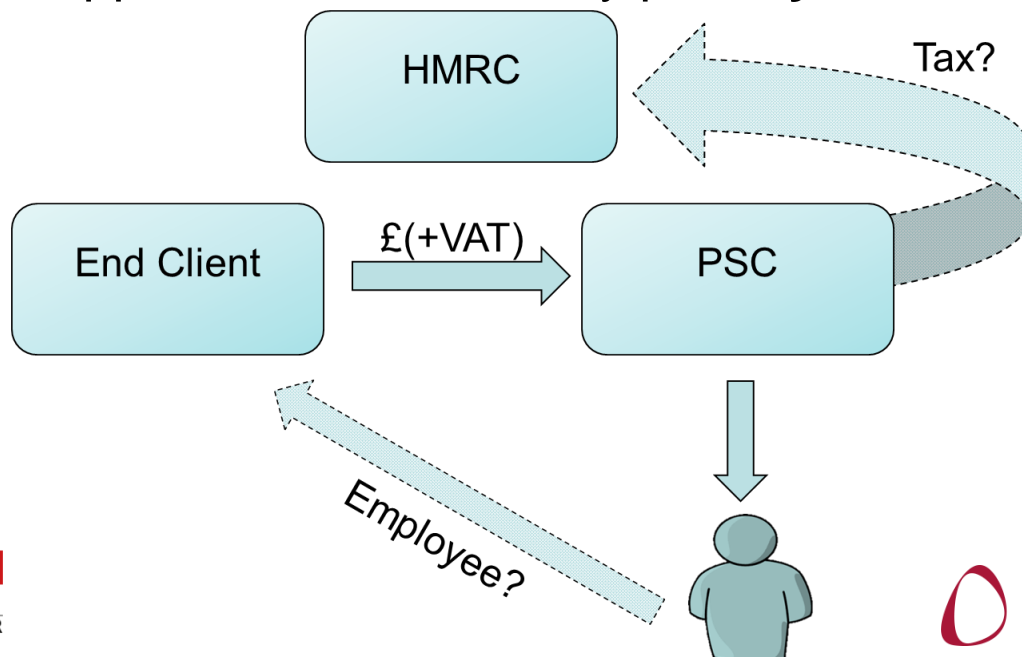
Claire Scott
11 June 2019



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IR35 – What is it?

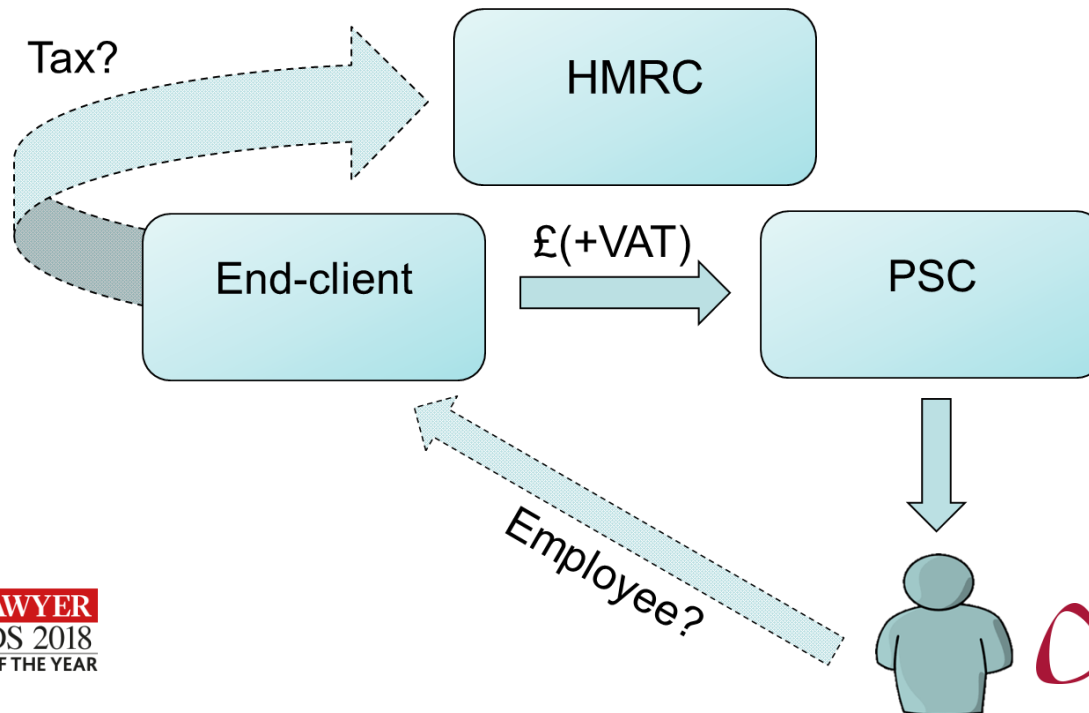
- What is IR35?
 - Anti-avoidance rule
 - Imposes tax and NICs where engager contracts directly with PSC
 - Applies if contractor would have been “employee” if engaged directly
- Use employment status test
- Where IR35 applies – tax is currently paid **by the PSC**



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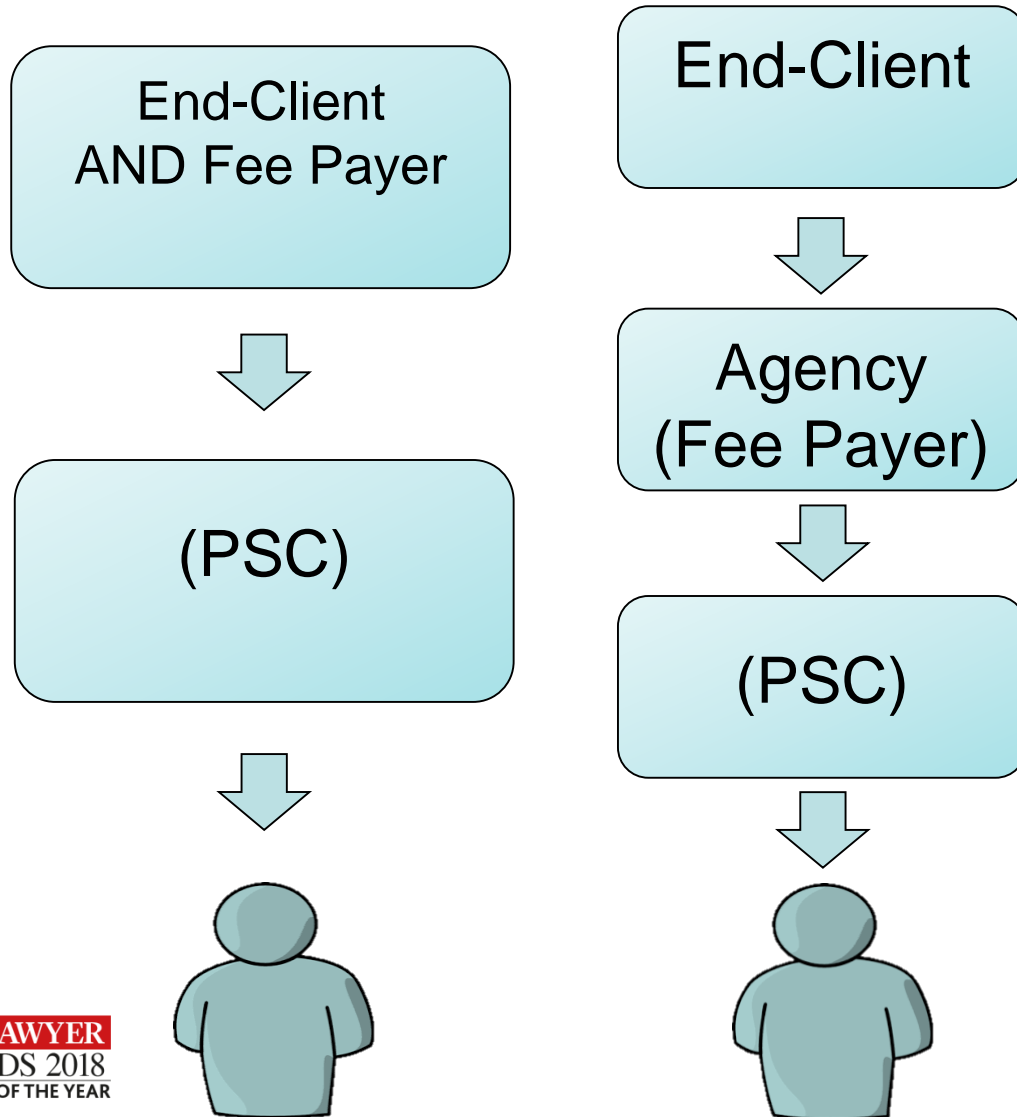
What's changing?

- From 6 April 2020 'end-users' will have to determine if contractor would have been an employee if engaged directly (and therefore falls within the IR35 rules)
- Where a contractor does fall within IR35 rules, 'fee-payers' will be responsible for deducting income tax and NI from payments the contractor



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What's changing?



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Planning

- Identify project team , method and project plan
- Identify PSC population and related information
- Decide IR35 status & CEST – sample?
- Risk assessment
- Consider cost implications
- Consider reactions of contractors and the market



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What are the implications?

- **Tax/ Legal/HR** implications:
 - Taking on increased risk?
 - Big exercise to identify degree of exposure/ categorisation
 - Re-negotiation of agency arrangements?
 - Unhappy contractors
 - Commercial risk, increased costs.



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How are contractors expected to react?

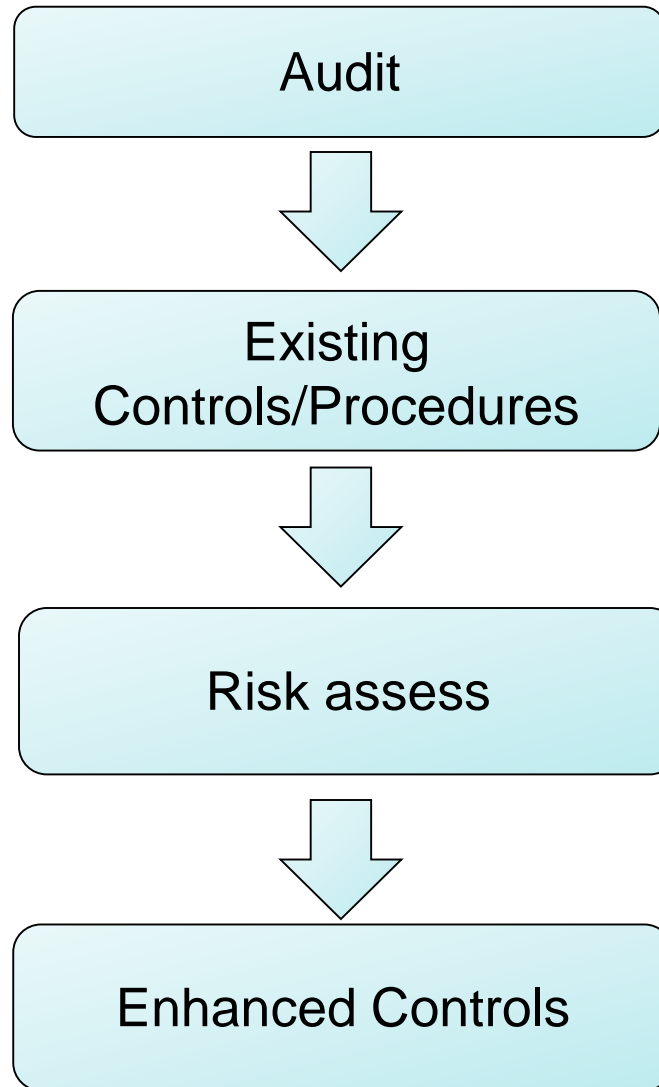
You may encounter the following scenarios:

- Contractors who cease work or move jurisdiction;
- Contractors ask for a higher daily rate;
- Claims that they are employees;
- Contractors who dispute their IR35 assessment;
- Contractors who ask to be employees.



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Building robust assessment procedures



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Building robust assessment procedures

- Accurate IR35 risk assessment
 - Profile of existing contractors
 - Engagement/retention patterns
 - Procurement Process
- Review recruitment/onboarding process
- On-going monitoring



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Decisions, decisions...

- Treat all PSCs the same? What about critical contractors?
- Keeping it cost neutral or not? Push elsewhere in supply chain?
- Employ as staff?
- Use agencies?
- Engage directly?



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Reliance on contractual protections?

- Never enough in themselves
- Look at reality of arrangements
- But do make sure contracts (with both individuals/PSCs and agencies/subcontractors) contain appropriate protections for engaging business



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Facilitation of Tax Evasion



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Reliance on CEST?

- HMRC may stand by CEST determination
- **BUT** no answer in 15% of cases
- Tool currently under review



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Implementation

- Liaising with your supply chain
- Consider your contracts
- Training and guidance for managers
- Communication plan
- Payroll changes
- CEST
- Appeal
- Keep under review



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Summary

- Plan now!
- Identify project team, method and project plan
- Audit
 - Identify PSC population and related information
- Risk assessment
 - Consider cost implications
 - Consider commercial and reputational risk
 - Consider reactions of contractors and the market



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Questions



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Get in touch



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