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Contractor Financials

IR35 after 15 years

Insights, analyses and strategies for contractors

- IR35 has been in force for 15 years and still threatens contractors
- Being caught inside the tax rules could cost up to 25% of net pay
- Understand what the key events of the last five years mean to you
- Find out how you can use pensions to manage IR35 risk
- Learn the ultimate IR35 strategies to stay below HMRC’s radar

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IR35 after 15 years: Insights, analyses and strategies for contractors
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Executive summary

IR35 is now 15 years old and continues to pose a very real threat to contractors. Despite the time that the legislation has been in force, HMRC persists in poorly implementing IR35. This has mitigated many attempts at reform over the last five years by the Office of Tax Simplification, the IR35 Forum and the House of Lords. The underlying IR35 legislation has not changed, which means that contractors must adopt IR35 best practice and strategies to stay below HMRC's radar.

On the tenth anniversary of IR35, we published *IR35 Special: 10 years that shook and shaped the world of UK contractors (Click to read report)* in which we predicted a future government would need to urgently tackle IR35. The Coalition did make IR35 a priority. This led to the period up to IR35's 15th anniversary being one of intense activity. We saw major reviews, attempts at reform, new legislation, multiple IR35 cases and major pensions reforms.

Despite this intense activity during a period that included the UK climbing out of the deepest recession and worst financial crisis since the Second World War, contractors have continued to thrive. Contractors have overcome the challenges created by HMRC introducing a new IR35 administration framework that included the Business Entity Tests (BETs). There was a public sector witch-hunt which resulted in tough new off-payroll rules and a new BBC employment status test. These measures have damaged public services delivery and taxpayer value more than they have the contracting sector.

However, despite the good intentions and hard work of the IR35 Forum, it appears that the brief honeymoon period of HMRC keeping to the promises it made when IR35 administration processes were overhauled in May 2012 is at an end. The taxman is reverting to form, making life difficult for contractors and dragging out IR35 investigations.

Fortunately, the last five years have also seen some positive events, the most important of which are the pensions reforms of 2014. Pensions, a vital weapon in the armoury of contractors caught by IR35, have become an even more attractive and tax efficient method of making long-term savings, investments and retirement planning. The new measures also provide significant tax advantages for all high earning contractors, inside and outside IR35.

Based on past experience, the likelihood of IR35 being significantly changed or abolished is low. A General Election in 2015 will delay any significant tax reforms to at least 2016 or beyond, even if the political establishment was prepared to accept any change. This seems unlikely following the government's negative response to the House of Lords' inquiry into the use of personal service companies (PSCs) that focused heavily on IR35's shortcomings.

So, what will the next five and fifteen years hold in store? They will almost certainly feature IR35 or something similar. That is unless the drivers behind IR35, 'disguised employment' and the tax disparity between earning and investment income, are removed. As this seems unlikely, contractors must take measures to ensure they manage IR35 and adopt the strategies we present in this report. IR35 has not changed in 15 years, and it may be with us for another 15 years, so taking action now will ensure that contractors remain outside of IR35 and below HMRC's radar.

Foreword by

Tony Harris of ContractorFinancials

As a contracting sector veteran, I remember all too well when IR35 was first introduced 15 years ago. In 1999, there was a very real sense in the contracting community that this could spell the beginning of the end for what had already become a method of choice for the more entrepreneurial professional.

Fast forward fifteen years and we are in a very different world where contracting has become one of the key drivers of our vibrant knowledge based economy. Contractors can be found in virtually every walk of life, but the sector is still fundamentally about matching highly skilled knowledge workers with clients and projects that need them.

The past 15 years have been an exciting journey for the contracting community and contractor demographics have definitely shifted over this time, with much greater gender, age and cultural diversity. Mindsets have altered too, partly as a response to IR35 but also as the sector has matured with the vast majority of contractors now thinking and acting like the small businesses they are. Collaboration is commonplace, with virtual teams using technology to work together in ways that were not possible when IR35 first appeared. Clients have changed, too, as ever greater numbers of organisations have begun to understand how access to highly skilled knowledge workers on a contingent basis can better support their organisational objectives.

There is now a belated realisation on the part of policymakers and politicians of the importance of the flexible workforce, both in terms of what it does for the economy and as a new, powerful and sizeable constituency that must be courted for support. Some stakeholders, such as elements of the political establishment and the trades unions, persist in voicing concerns that contractors are in some way oppressed and forced into doing what they do. Our experience of 15 years of helping contractors is that this could not be further from the truth. Far from being oppressed and exploited, the vast majority of contractors have actively chosen their life, are very happy and don't want unnecessary overregulation complicating a working landscape that they greatly enjoy and in which they thrive.

What this report clearly shows is that alongside all of the macro-environmental changes, the practicalities around IR35 have experienced huge development in the past five years alone. Hardly a month has gone by without a significant IR35 related story surfacing, yet contractors have also proved to be incredibly resilient in the face of so much change. Contractors have adapted to IR35 and HMRC's relentless campaign against them. Those that are caught by IR35 still use pensions as a very effective way of softening the blow, and the pension reforms we have seen in 2014 now make these investments an even more attractive solution for contractors, whether they are inside IR35 or not. In addition to even greater scope to ensure your financial wellbeing in retirement, these reforms now enable contractors to cascade the wealth they generate throughout a successful contracting career down the generations. Surely there can be no better twin legacy of your time as a contractor.

ContractorFinancials has been one of the constants during the last fifteen years and has gone from strength to strength over the last five years of change, a period that has seen so much debate over IR35. Having helped over 20,000 clients throughout the period that IR35 has been with us, we have evolved alongside our specialist client base, helping highly skilled contractors from the UK and beyond to put down roots and buy properties, invest to save tax today whilst providing for their long-term financial security and helping replace lost employee benefits. Our intention is to continue our work to support contractors to make informed decisions for their financial wellbeing for the next 15 years, no matter what the future of IR35 brings.

1. Introduction

IR35 has been in force for 15 years and HMRC's poor implementation of the legislation continues to threaten contractors' livelihoods. Organisations such as the Office of Tax Simplification, the IR35 Forum and the House of Lords have all tried to change or mitigate its impact, but with limited success . Contractors unfamiliar with IR35 and HMRC's compliance tactics face the loss of up to 25% of their net income if caught by the legislation. So that you can mitigate this risk, this report provides you with IR35 best practice and strategies alongside insights and analysis into the major events of the last five years.

Five years ago ContractorCalculator published its review of IR35 after ten years, *IR35 Special: 10 years that shook and shaped the world of UK contractors (Click to read report)*. We ended that report, published in November 2009 on the tenth anniversary of IR35, with a prediction that the 2010 election would have the biggest impact on the future of contracting. Five years later and four years into the Coalition Government, it is clear that IR35 was indeed high on the agenda of the new administration.

2009-2014: years of much activity but little change

Since 2009, there have been a great many events revolving around IR35. These include Office of Tax Simplification (OTS) review of IR35, the creation and ongoing work of the IR35 Forum, the numerous new test cases contributing to case law, the public sector contractor witch-hunt, off-payroll rules and the amendments to remove the exclusion of office holders from IR35, the BBC's flawed employment test and the House of Lords' Select Committee on Personal Service Companies (PSCs) inquiry.

However, none of these momentous events in the contracting world have changed the underlying legislation that is IR35, although they have forced contractors to make other changes. The incoming Coalition government did swiftly address the IR35 problem by commissioning the OTS review in 2011. This review outlined three options: abolish IR35; suspend it or better enforce it. But at the time no politician had the political will or motivation to choose the abolition option. Instead, the 2011 Budget resulted in the better administration option of the three proposed by the OTS that in turn led to the creation of IR35 Forum.

The IR35 Forum working towards better administration of IR35

The IR35 Forum, comprising both HMRC and non-HMRC members, began its work to fulfil the objective of improving IR35's administration. Just over a year later in May 2012 that better administration manifested itself as new guidance that included the Business Entity Tests (BETs) and three, growing to four, dedicated HMRC IR35 compliance teams. HMRC consistently refused to publish any performance figures related to the BETs and its new administration regime during the years that followed. Then, in October 2014, two years and four months after they were introduced, HMRC announced that the BETs and supporting guidance were to be abolished in April 2015.

A public sector witch-hunt led to the off-payroll rules

When the IR35 Forum was completing its preparatory work on the better administration of IR35 during the spring of 2012, the next major contracting event occurred. In February 2012, the then chief executive of a government agency, the Student Loans Company's Ed Lester, was 'exposed' by the media for being a limited company interim management contractor. Politicians were shocked to discover that limited company contractors, or 'off-payroll workers' as they became labelled, were used widely by government departments, and commissioned a Treasury review into their use.

The resulting report was then used to underpin a new set of rules for public sector organisations hiring limited company contractors – the 'off-payroll' rules. These stipulate that any public organisation hiring an off-payroll worker for more than six month or earning over £219 a day must ensure that the worker's tax affairs were in order. If the worker cannot prove this, they must either go onto the client's payroll and have income tax and National Insurance Contributions (NICs) deducted at source under Pay As You Earn (PAYE), operate inside IR35 or resign the contract.

The result, covered more extensively in section 4, has been damaging both for contractors and public sector clients. Hundreds of contractors have been subject to unfair and unnecessary IR35 reviews as a result, and thousands more are threatened. Yet a follow-up Treasury report into off-payroll workers published in March 2014 found that 94% of public sector contractor off-payroll contracts were legitimate.

What is IR35?

IR35 is a piece of tax legislation announced in 1999, which took effect from April 2000. Designed to combat 'disguised employment' and to stop employees leaving their jobs on a Friday only to return as a consultant paying much less tax on Monday, the Intermediaries Legislation, as it is correctly called, means that HMRC can tax some contractors as though they are employees of their clients. Contractors caught by IR35 pay significantly more tax, reducing their take home pay by up to 25%.

The BBC introduced its own status test that was fundamentally flawed

The media-generated attention that bordered on hysteria over tax avoidance and off-payroll arrangements in the public sector spread to the BBC when it was revealed that many of its leading presenters used personal service companies. In response, the BBC announced that it would develop, in association with HMRC, its own employment test that would be applied to presenters and other freelancers. Many months later in July 2014 the BBC finally published its one page employment test.

One expert told ContractorCalculator that not only is attempting to determine employment status using a one page questionnaire flawed, but the tests bear no resemblance to the actual tests of employment that underpin IR35. Despite these flaws, the test has been widely applied to BBC presenters and other freelancers. Many legitimate freelancers have been forced to choose between going on the BBC's payroll and paying tax like employees, or having their contract terminated.

AWR, IR35 amendment for office holders and False Self-Employment

The last five years has seen sweeping new legislation introduced to further regulate the UK's flexible workforce. The Agency Workers Regulations (AWR) came into force on 1 October 2011 and are designed to give temporary workers the same rights and pay as their equivalent employed counterparts. Prior to its introduction, it was feared that AWR could threaten the very existence of contractors by pricing them out of the market. Fortunately, only contractors working via agencies are affected, and limited company contractors are excluded. But umbrella company contractors are within the scope of the rules.

As a result of the public sector focus on contractors, the underlying IR35 legislation was changed in April 2013 to extend its scope to the previously excluded category of 'office holders'. This measure was a political move and designed to ensure that IR35 could apply to interim management contractors holding senior positions classified as an 'office' within government agencies. However, the impact has been wider as office holders in any organisation, including non-executive directors and interims in managing director, financial director and other 'office'-type roles may be forced to apply IR35.

A further round of new legislation introduced in April 2014 has been the False Self-Employment rules, or to give them their official name, the Onshore Employment Intermediaries legislation. These rules say that agencies must deduct income tax and National Insurance Contributions (NICs) at source if the absence of supervision, direction and control of the worker cannot be proved. Despite causing concern in contracting circles that contractors would also be covered, HMRC confirmed that limited company contractors are excluded.

House of Lords' Select Committee on Personal Service Companies (PSCs)

One of the major events during the 2009-2014 timeline has been the inquiry by the House of Lord's Select Committee on Personal Service Companies (PSCs). The committee was tasked with determining "the consequences of the use of personal service companies for tax collection". Such committees have little or no power over policies and government departments such as the Treasury and HMRC, so the direct impact of the inquiry has been limited. HMRC and other stakeholders have learned lessons from the report, but no legislative or administrative changes have been made.

However, the indirect impact of the process and findings has been significant. The evidence gathering process was extremely valuable in exposing many key contracting issues to a much broader range of stakeholders by an authoritative body. Furthermore, the conclusions about IR35 were highly critical, casting doubt on the benefits of the legislation as an effective revenue generating tool for the Exchequer. Section 5 explores this significant event in detail.

The new pensions landscape

The most recent event impacting on contractors is the pensions reforms. Pensions have traditionally been a core tax strategy that contractors caught by IR35 can use to extract cash tax efficiently from their limited company. Contractors have been able to channel significant sums into a pension pot, benefitting from potentially significant tax savings and mitigating the impact of IR35.

Before April 2014, there were few options available for contractors on retirement, and these included a rigid annuity or a capped drawdown arrangement. That is no longer the case as the rules have been changed by the pensions reforms of 2014. The reforms provide contractors with considerable freedom to access and invest their pensions savings and benefit from further tax breaks. Section 7 details how contractors, both inside and outside of IR35, may benefit.

IR35 now and in the future

Despite the multiple IR35 events between 2009 and 2014, with the exception of the office holders amendment, the underlying IR35 legislation has not changed. Contractors are still at risk of an IR35 investigation. If you work in the public sector, that risk is even greater. IR35 best practice recommends measures such as comprehensive record keeping, creating and maintaining contract by contract files and securing confirmation of arrangements that describe your working relationships with your clients. Taking out tax investigation insurance is essential.

IR35's 16th year, 2015, will see it through another General Election. This may lead to change in government, but will that in turn lead to any changes to IR35? HMRC's decision to abolish the BETs in October 2014 suggests that the taxman may be responsive to overwhelming evidence that something does not work. Convincing the Treasury and politicians, who are still very focused on the anti-tax-avoidance agenda, may be more challenging. If the government can ignore the very negative conclusions of the Lords' PSC inquiry, then IR35 is likely to remain in place until or unless there is a more fundamental reform of the UK's tax system. As a result, IR35 is unlikely to be abolished in the near future.

In contrast, HMRC has upped its game with its four teams of IR35 compliance specialists. To counter this continued threat, we would urge you to use the guidance in this report, and other resources available on ContractorCalculator, to ensure that your contracting career is both successful and free of unwelcome and expensive IR35 investigations.

What happens if you are inside IR35?

If IR35 applies to your contract, you have to pay income tax and NICs as if you were an employee. First, you deduct your pensions contributions and pay 20% corporation tax on your fee income. Then you deduct 5% for expenses, and subtract travel and subsistence costs. Next, either pay yourself a salary, with income tax and both employer and employee NICs deducted via your Pay As You Earn (PAYE) payroll. Or you make what the IR35 rules call a 'deemed payment' that calculates the income tax and NICs you must pay on your remuneration. Either way, you lose up to 25% of your net pay.

2. IR35 in numbers

IR35 investigations

The full picture of IR35 investigations is incomplete as there is no published data for some tax years. We do know from published data that between 2000 and the 2013/14 tax year at least 4,576 contractors have been investigated by HMRC where the primary risk was IR35. These investigations have contributed over £12.1m to the Exchequer. HMRC generated an average of approximately £866,000 in IR35 taxes per year. This works out to be about £2,600 for each contractor investigated.

Since 2000, HMRC has opened 4,576 IR35 investigations that have generated £12.1m in tax revenue

Contractors operating IR35

Each year, limited company contractors have been asked to confirm on their annual P35 whether they have been operating IR35. Although contractors have not been obliged to answer the question, the responses to this question provide the closest estimate of contractors who are operating IR35. In 2011/12, the most recent year we have data for, 12,000 contractors said they were operating IR35. The highest number was 29,000 in the 2007/8 tax year.

HMRC estimates that there are 200,000 limited company contractors in the UK. Other sources suggest this figure is likely to be massively understated – for example the Office for National Statistics (ONS) confirms that there are over 800,000 trading limited companies with directors but no employees. But even if there are only 200,000 limited company contractors, only one in 17 is operating IR35.

IR35 tribunals

According to evidence that HMRC gave to the Lords' PSC inquiry in 2014, there have been 25 tribunal cases since IR35 was first introduced. Out of these, 12 were won by the contractor and 13 were won by HMRC. The taxman confirms that there have been no new cases going to tribunal since 2011. However, HMRC anticipates that there are five cases currently under investigation that it expects will go to tribunal. In 2012-13, for cases that were opened since April 2012, it took 28 weeks on average from opening to closing a case. That compares in earlier years to 110 weeks and over 140 weeks.

In the early days it took up to 140 weeks to resolve an IR35 enquiry. That has fallen to an average of 28 weeks

HMRC's resources

According to HMRC, as of April 2012 it employed 29 employment status inspectors, who are specialists in the employment legislation and case law that underpins IR35. In early 2014, HMRC confirmed to the Lords' PSC inquiry that there were 40 HMRC employees spending most of their time on IR35 reviews. IR35 experts estimate that a team

The full breakdown of statistics is available in appendix 1.

this size should be able to handle up to 1,000 IR35 investigations each year. During the Lords' PSC inquiry, Jason Piper of the Association of Chartered Certified Accountants' (ACCA) said that there should be 20,000 contractor investigations each year and that HMRC needs a taskforce of 3,000 status inspectors to effectively police IR35.

Key lessons for contractors:

- The number of IR35 investigations each year is small compared to the number of contractors
- However, IR35 remains a tangible risk and enquiry numbers are predicted to increase
- An IR35 investigation can last well over six months
- Tax investigation insurance is essential to cover the costs of professional assistance necessary to close down any investigation quickly.

3. ContractorCalculator research

To provide unique insights into contractors and contracting and to support our reporting on IR35 and other key contracting issues, we routinely survey our readership. This is typically over 100,000 unique visitors per month. We also reach out to a broader stakeholder base such as permanent employees, service providers, recruiters, clients and other industry players. Another robust source of data is the results of the ContractorCalculator Free Online IR35 Status Test. Our test includes 53 questions over 10 key areas and a bespoke algorithm based on case law takes into account the relative importance of factors like substitution, control and so on.

During the summer of 2014, in anticipation of IR35's 15th birthday, we conducted a survey and completed an updated analysis of the online status test. These results show that there are many actions contractors can take protect themselves against IR35.

ContractorCalculator IR35 reader survey

We asked both contractors and permanent employees about their knowledge of IR35. The survey's responses tell us that:

- 98% of contractors and 74% of permanent employees are aware of IR35. This suggests that the number of employees who are aware of the tax is significant
- 40% of employees have considered incorporating a limited company so that they can benefit from tax savings. This low figure suggests that tax is not the only reason to incorporate
- 70% of employees would incorporate a limited company to save tax if they could, but 74% can't because their employer won't let them. HMRC believes that IR35 prevents many high earning employees from incorporating a limited company and calling themselves a contractor. The survey confirms that this is not the case, and that employers are the barrier.
- 92% of contractors consider themselves to be very or fairly familiar with IR35 legislation. So, the overwhelming majority of contractors should be aware that IR35 poses a risk.

ContractorCalculator Free Online IR35 Status Test results analyses

So far, over 56,000 contractors have taken our online status test. The findings of our latest analyses are:

- 24% of contractors pass the test and are outside IR35. That leaves 31% who fail and 45% who are borderline (see figure 3.1)
- 68% of contractors fail the test because they cannot substitute. Substitution is a key factor in determining IR35 status
- 66% pass the control element of the test. Control is also a key factor in determining IR35 status. The pass rate on mutuality of obligation (MOO), the third key factor used to determine IR35 status is 60%
- According to our online test, 31% of those contractors currently in contract are caught by IR35. Many may require help to better understand IR35 and a strategy to move outside the legislation's scope. This is

considerably less than the percentage of contractors that HMRC actually investigates, and it could suggest that large numbers of contractors are ignoring the legislation.

- Only 18% of contractors use the Business Entity Tests (BETs) and their risk score has little correlation to the contractor's IR35 position. This confirms that the tests, which HMRC announced in October 2014 will be abolished from April 2015, are not widely used and have little actual relevance to IR35 status.

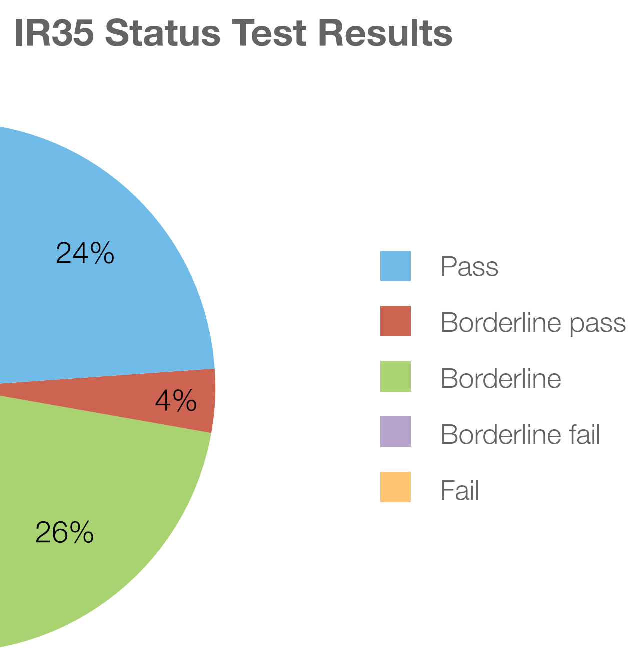


Figure 3.1 ContractorCalculator Free Online IR35 Status Test results

Key lessons for contractors:

- Nearly all contractors have heard of and are fairly knowledgeable about IR35
- Contractors are weakest on substitution and this could be an area to address by ensuring your contract includes a substitution clause
- Only a quarter of contractors would pass IR35 outright and many could not prove IR35 does not apply if challenged by HMRC
- This underlines the importance of adopting IR35 best practice and taking out tax investigation insurance.

4. IR35 and the public sector

Limited company contractors are a vital resource for the public sector. Contractors provide specialist skills that the public sector cannot afford or does not need full-time. As austerity measures have forced many public sector organisations to cut permanent headcount, contractors have often been used as the solution to maintain frontline delivery of essential public services.

Despite their importance, since February 2012 contractors working in the public sector have been the targets of an unwelcome witch-hunt that has left many being investigated by HMRC. This started with a news story about Ed Lester, a career interim management contractor who was working as the chief executive of the Student Loans Company in early 2012.

Lester was 'exposed' by the media and accused, without evidence, of not "abiding by the tax law" and that his fees were "channelled into a private company" that was "tax avoidant". One media outlet even said Lester "looks just like" he was inside IR35. The incident underscores the poor understanding of contracting and how contractors work.

Off-payroll workers and the off-payroll rules

Unfortunately, Lester was forced onto the payroll of his client, even though it was likely that at that time his contract may not have been inside of IR35. A review of the use of 'off-payroll workers', as contractors were labelled, in the public sector was immediately commissioned. In May 2012, the Treasury published the results of its review and by September 2012, new off-payroll rules came into force. The rules require contractors on contracts lasting more than six months, or earning more than £219 a day to prove to their public sector clients that their tax affairs are in order. If a contractor can't provide sufficient evidence that they are paying the correct amount of tax, then they either have to go onto the payroll, operate IR35 or be terminated.

Some public sector clients misunderstood the off-payroll rules and thought that all contractors should be inside IR35. A further misunderstanding of HMRC's new administration introduced in May 2012 and the off-payroll rules resulted in other public sector clients using the flawed Business Entity Tests (BETs), due to be abolished in April 2015, as a proxy IR35 test. IR35 service providers that support and defend contractors who are being investigated by IR35 have confirmed a substantial increase in the number of public sector contractors being investigated by HMRC.

Off-payroll rules

Is your public sector contract longer than six months? Is your daily rate greater than £219 per day? Then be prepared to prove your tax affairs are in order

These service providers believe that the surge in public sector contractor investigations is because many public sector clients have passed on details of all their contractors to HMRC, and the taxman is currently working through these 'easy' targets. Despite the actions and beliefs of public sector clients, when the Treasury conducted a follow-up review in March 2014 it actually found that 94% of public sector contractors' off-payroll contracts were legitimate.

Key lessons for contractors:

- IR35 risk is greater if you work in the public sector
- If your contract is more than six months in length or your are earning £220 a day or more, then the off-payroll rules apply
- Be prepared to share your tax status and IR35 best practice with your public sector client
- Commission an IR35 expert to review your contract and verify that you are outside of IR35
- Ensure you have tax investigation insurance – you will almost certainly need it, and an expert can usually shut down an enquiry before it gets off the ground.

5. The House of Lords' PSC inquiry

The Lords' PSC inquiry, or to give it its full title, the House of Lord's Select Committee on Personal Service Companies (PSCs) inquiry, comes close to being the biggest event in IR35's fifteen year history. House of Lords' Select Committees cannot force government departments, or indeed the government itself, to make changes. And in the case of this inquiry, the government completely disregarded the findings. However, the outcome has been to collate the single largest body of evidence about the use personal service companies (PSCs) in the UK and how IR35 has performed.

The inquiry began with the formation of the select committee on 12 November 2013 under the chairmanship of Baroness Noakes. The committee was formed to consider "the consequences of the use of personal service companies for tax collection". The final report was published in June 2014, which was effectively ignored by a government that had refused to send its key Treasury ministers to appear as witnesses at the inquiry.

The inquiry was about PSCs, right?

Despite the title of the committee, contractors could be forgiven for thinking at times that the inquiry was into IR35. The tax legislation managed to dominate the proceedings of several evidence sessions. The oral evidence, and in particular the evidence delivered by HMRC's representatives, focused heavily on IR35 and its failings. It also revealed a range of performance data about the legislation that was previously withheld that included the news of HMRC's intention to take at least five more IR35 cases to tribunal.

It was clear from HMRC's evidence that the deterrent effect is IR35's main reason for existence, as it has been shown that it generates very little tax revenue directly. Yet HMRC's assumptions behind the £550m it believes is generated by this deterrent effect were clearly weak. So the Lords recommended that HMRC "publish a detailed assessment" of this figure and also of the cost to taxpayers affected by IR35. In the inquiry's final report, the Lords found that:

> *"HMRC failed to demonstrate that that they had a sound basis for the £550m of tax and national insurance that they cited as being at risk if IR35 were to be abolished or suspended"*
>
> **Baroness Noakes, chairman of the House of Lord's Select Committee on Personal Service Companies (PSCs)**

- There is no proof that IR35 acts as a deterrent. "HMRC failed to demonstrate that they had a sound basis for the £550m of tax and national insurance that they cited as being at risk if IR35 were to be abolished or suspended," highlighted Baroness Noakes
- PSC use by the UK's flexible contracting workforce is increasing, but there are many reasons why limited companies are chosen as a trading vehicle, and it is not simply about avoiding tax. "The motivation to incorporate is not driven solely by financial incentives," confirmed the Lords

- Should IR35 remain in force following HMRC's review, then its guidance to contractors must be improved, and this includes undertaking a full review of the Business Entity Tests (which HMRC has reviewed and will abolish from April 2015). The membership of the IR35 Forum should also be reviewed.

Clearly HMRC has completed its assessment of the BETs, but has yet to publish its findings on whether the £550m deterrent effect can be substantiated or on the cost of IR35 to the taxpayer. The government's response to the report was dismissive. In response to the criticism of HMRC's methodology over the deterrent effect, the government said: "The figure quoted for exchequer protection from IR35, and the methodology used in the calculation of that figure, is robust." ContractorCalculator CEO Dave Chaplin commented at the time that: "IR35 is with us for the foreseeable future."

Key lessons for contractors:

- Despite the Lords' view that IR35 is not fit for purpose, HMRC continues to attempt to enforce the legislation
- HMRC believes that IR35 is scaring many employees and company directors into taking remuneration as salary rather than dividends and so paying more tax than they should
- If you trade via a limited company and pay a salary instead dividends, seek professional advice – you could save a fortune in tax
- Maintain IR35 best practice to combat HMRC's IR35 compliance resources.

6. HMRC and IR35: what is happening now?

IR35 is in exactly the same format as it was when it became law in 2000, apart from one minor amendment that extends the legislation's scope to include office holders. Following the measures designed to better administer IR35 introduced in May 2012, contractors enjoyed about 18 months when HMRC broadly kept to the spirit of the recommendations by the Office of Tax Simplification (OTS). Status enquiries were kept short – the average has fallen to 28 weeks instead of taking years as in the past. If it was clear from the outset that a contractor was outside IR35, the status inspector closed the enquiry promptly. Contractors who took the Business Entity Tests (BETs) and received a low risk score had their case dropped. If they were targeted again by HMRC and explained their history, HMRC kept to its word and backed away.

HMRC is resorting to its 'bad old ways'

However, since the final quarter of 2013 IR35 service providers have reported that HMRC in the words of one IR35 expert is returning to its "bad old ways". There are repeated incidences where HMRC is refusing to accept evidence at face value and insisting that it speaks to the end-user client. Status inspectors are dragging out cases and making unreasonable requests for more information. Many are stepping beyond the bounds of their authority. If it were not for their professional advisers, many contractors would become hopelessly tied up in knots by the inspector and be caught by IR35 when they shouldn't be.

IR35 is expensive and can't be ignored

IR35 remains HMRC's primary tool for targeting and combating what it views as 'disguised employment'. IR35 cuts a contractor's net pay by up to 25% through additional income tax and NICs. As a result, if a contractor is found to be inside IR35, they could be facing a significant bill for back taxes, NICs, interest and penalties. IR35 is assessed on a contract by contract basis, so HMRC could review your past contracts and decide that you were inside IR35. Based on the number of HMRC IR35 investigations and the amount of additional tax that has been raised through these, the average IR35 tax bill is around £10,000.

IR35 cuts your take-home pay by up to 25% through additional income tax and NICs

For HMRC, it is business as usual

As the underlying legislation has not changed, despite measures such as the guidance and new administration measures introduced in May 2012 and the conclusions of the Lords' PSC inquiry, then its processes and procedures remain the same. IR35 is a horrible mix of tax and employment law and depends on HMRC proving that, according to employment law, you are in fact an employee and not in business on your own account. If you are targeted by HMRC for an IR35 review, your IR35 status will be assessed by an experienced HMRC inspector who is well versed in employment case law. The inspector will apply the classic tests of employment that look at control, substitution and mutuality of obligation (MOO). Secondary factors such as demonstrating that you are in business on your own account, or are part and parcel of your client's organisation will also be considered.

IR35 is not going away: what do you need to do?

The silver lining of having lived with IR35 for 15 years is that it is as well understood as it can be considering the subjective nature of the case law and how the legislation must be applied. That means there are straightforward measures you can take that will minimise both the risk of an investigation and also of you being found inside of IR35 if you are targeted by HMRC. The days of random HMRC inspections for contractors are long gone. The taxman now uses sophisticated risk profiling techniques that include data mining and targeting specific sectors – contracting is one of those sectors targeted.

For a comprehensive range of IR35 guidance including strategies to avoid IR35, visit ContractorCalculator.co.uk. You can also use ContractorCalculator's Free Online IR35 Status Test to evaluate your IR35 status.

Key employment tests/ factors:

- Control: how, what, where and when
- Unfettered right of substitution
- Mutuality of obligation
- In business on your own account
- Part and parcel

Reduce the risk of being targeted for an HMRC IR35 investigation by:

- Filing tax returns accurately and on time – hire an accountant to do this
- Include explanatory notes if there are significant variations in your accounts between years
- Don't give partners/spouses/business associates a reason to report you to HMRC (even if you have done nothing wrong) – this is a surprisingly common reason behind tax investigations.

Use IR35 best practice so you can close down an IR35 investigation quickly:

- Pay for an expert contract review before signing a new contract
- Open an IR35 file at the start of each contract and keep copies of contracts, emails and meeting notes – this can be an electronic file
- Get a confirmation of arrangements signed by your client that details your working relationship with them
- Send a substitute in your place and/or hire a specialist subcontractor to complete and element of the contract
- Keep records of key conversations and email exchanges with your client that indicates you are not being controlled
- Avoid becoming 'part and parcel' of your client's organisation. This means you should sign-in daily, wear a visitor's pass and avoid using employees-only facilities like canteens
- Don't go to employee events such as training courses, team building days or socials.

Key lessons for contractors:

- IR35 is still in force and actively enforced by a dedicated team of 40 HMRC status inspectors
- HMRC is dragging out inspections, being unreasonable, bullying contractors and insisting on speaking to clients
- Take effective measures to reduce the risk of being targeted by HMRC for an IR35 review
- Don't try to defend your IR35 status without expert assistance and take out tax investigation insurance
- Adopt best practice so that if you are targeted for an investigation your professional adviser can shut it down quickly.

7. Pensions – the new landscape

Pensions have always been a contractor's best friend. Even if you are a long way from retirement, pensions have always offered contractors a highly tax efficient method of saving for their future. In early 2014 pensions were deregulated. These changes offer you a much broader and potentially even more tax efficient range of options before and on retirement.

Pensions have also provided contractors caught by IR35 with a strategy to minimise their additional tax. If you are inside IR35, you can legitimately channel up to £40,000 of your surplus fee income each year into a pension tax-free. Should you be under investigation by HMRC and you are concerned that IR35 will apply, then you can extract all of the cash from your limited company and divert it into your pension. HMRC can use tax legislation known as 'Regulation 72' to transfer debt from your company to you personally. However, if you have followed IR35 best practice then HMRC is highly unlikely to satisfy the provisions of Regulation 72, and so won't be able to try and tax your personal and pension assets.

Use pensions to mitigate a potential IR35 tax bill

Pensions provide an excellent pre-emptive defence for contractors who operate outside IR35 but who could potentially be faced with a large tax bill if they are later found by an HMRC investigation to be inside IR35. You can legitimately channel up to £40,000 of your surplus fee income each year into a pension tax-free, in addition to your taxable dividends. This strategy ensures that your company bank balance remains low. If you are later caught by IR35, then it is your company that is liable, not you. However, if there is no money left in the company to pay the IR35 tax bill, it is unlikely to cause you a problem. HMRC can consider using tax legislation known as 'Regulation 72' to transfer debt from your company to you personally. However, if you have followed IR35 best practice then your behaviour is highly unlikely to satisfy the requirements of Regulation 72 and HMRC won't be able to tax your personal assets. With the new flexible pensions rules allowing 100% withdrawal at age 55, pensions are now not only excellent tax savings vehicles for contractors, but can also minimise the chances of having to pay a substantial IR35 bill at a later date.

What used to happen pre-pensions reforms

Before the reforms introduced in 2014, you paid your money into your pension pot and this grew over the years. At retirement, you could draw down 25% of your pension tax free, and the rest of your pension savings had to be used to buy an annuity providing you with a regular income during your retirement.

The tax saving on pensions can be the equivalent of as much as 64%

Your options now

You no longer have to buy an annuity when you retire. You can now withdraw multiple lump sums from your pension from the age of 55. Up to 25% of anything withdrawn is tax free, and you then pay tax at your marginal rate on sums above that level. These withdrawals are treated as income and taxed accordingly. You can then protect your pension cash in a tax efficient environment for months or years until you need to access more cash. Lump sums can also be taken as part taxable / part tax free, and enable you to be creative with your personal allowance to minimise tax even further. For contractors outside IR35, and especially those caught by IR35, pensions are now an excellent and fully flexible tax efficient vehicle.

Pensions Example

Let's assume you have £40,000 of gross profit that you do not need to take as a dividend to support your lifestyle (£40,000 is your annual tax free pension allowance). HMRC investigates, and you are concerned that the taxman will find you inside IR35. To avoid paying IR35 tax, you need to extract that £40,000 from your company. If you leave it in the company, you will pay £8,000 of corporation tax and 25% on your net dividend (making the assumption that you are a higher rate taxpayer – there are other factors, but we're keeping this example simple). Taking the cash via the dividend route effectively means total tax of 40%, or £16,000, leaving you with a new amount of £24,000.

Alternatively, you can channel all £40,000 into a pension. When you are 55 or wish to retire, £10,000 of this sum is tax free, and £30,000 is taxable (assuming you have no other income). You have a personal allowance of £10,000, so £20,000 is taxable. You pay £4,000 income tax, leaving you with a net amount of £36,000. Using this strategy saves you £12,000 of tax. You only pay 10% on the £40,000. If you are in your late 40s or early 50s, you can use this strategy now to secure 25% tax relief when you are 55.

Using a pension versus a limited company to extract remuneration

The limited company route, extracting your cash as a dividend from profits:

Sum to be extracted:	£40,000
Corporation tax at 20%:	£8,000
Dividend from profit:	£32,000
Tax on dividend at 25%:	£8,000
Net income:	£24,000

Net result: you have paid 40% tax

The pension route, channelling the income directly into a company pension:

Sum to be extracted:	£40,000
Paid directly into a company pension scheme:	£40,000
Tax free @ 25%:	£10,000
Taxable element of pension:	£30,000
Tax free allowance of:	£10,000
Taxable contribution:	£20,000
Tax at 20%:	£4,000
Net income:	£36,000
Tax saving:	£12,000

Net result: you have paid 10% tax

Your pensions strategy

Find a contractor specialist IFA

The first step to developing your pension strategy is to use an independent financial adviser (IFA) who specialises in dealing with contractors. High street IFAs and banks struggle with limited company contractors, who in their eyes are neither an employee nor a conventional self-employed sole trader. A specialist IFA understands the concept of you being employed by your own limited company, or by an umbrella company. They will understand your income has the potential to fluctuate. A specialist IFA also has access to specialist products that are designed for contractors, such as mortgages that are based on a multiple of contract rates. Finally, a specialist IFA will know all about IR35 and, if you are caught, will work hard to minimise the financial impact.

Outside IR35 – be more tax efficient

No matter what stage you are at in your contracting career, it is never too late – or too soon – to start a pension. Pensions are highly tax efficient, allowing you to invest up to £40,000 per tax year and giving you tax savings of as much as 64%. The more you can invest in a pension, the earlier you will be able to retire and the greater income you will have when you do.

Inside IR35 – mitigate the pain

Since IR35 came into force in 2000, pensions have traditionally been one of the best methods of reducing the financial impact of the tax. If caught, IR35 forces you to pay tax like an employee. You can do this either by paying yourself a regular salary via your Pay As You Earn (PAYE) payroll, or by using the 'deemed payment' calculation allowed in the IR35 rules. In either case any pension contributions are deducted from your gross fee income. That means you can divert fee income into a pension and so reduce your corporation tax, income tax and NIC liability.

Key lessons for contractors:

- Even if you have decades ahead of you, think about starting a pension now so you have more choices at 55 and when you retire
- Channelling your fees into a company pension is a tax efficient way of reducing your company bank balance in case you are found inside IR35
- If you rigorously adopt IR35 best practice, HMRC is unlikely to be able to target your personal assets for your company's IR35 tax bill
- Pensions are a hugely tax efficient method of diverting your fee income into a long-term savings plan
- Don't tackle pensions investments alone. Seek professional advice from an independent financial adviser (IFA)

- Don't go to your bank or a high street IFA for pensions – they won't understand you and you won't get the best advice
- Choose a specialist IFA who can offer you contractor-specific advice and financial products tailored to the needs of contractors by providers who understand them.

8. IR35 – what does the future hold?

The most common question most contractors ask about IR35 is: ‘when will it be abolished?’ The answer is that it probably won’t be until the UK’s tax system is completely overhauled and income tax and NICs are merged. That may never happen. At things stand, unfortunately IR35 represents more years of stress, uncertainty and expense for contractors.

If the Lords and the OTS can’t lead to change, what will?

The OTS in 2011 and the House of Lord’s Select Committee on Personal Service Companies (PSCs) in 2014 both identified that IR35 needed to change. The conclusions of both were underpinned by the input and views of experts in UK taxation. So, if on two occasions some of the brightest and most expert tax minds in the UK won’t be listened to, should we be drawing the depressing conclusion that no government is likely to change IR35?

There are glimmers of hope. In October 2014, HMRC took the decision to abolish the Business Entity Tests (BETs). There was overwhelming evidence from the work by the IR35 Forum, the evidence submitted to the Lords’ PSC inquiry and through other sources such as ContractorCalculator surveys, that the BETs were not fit for purpose. They were distrusted, rarely used and gave false positives, which rather defeated their object as a risk profiling tool.

HMRC may have also reviewed its own data about how the BETs were used, which has yet to be revealed, which convinced them they were not providing the anticipated benefits they had expected. Whatever the reason, HMRC listened and the BETs will be abolished and will no longer be used from April 2015. There is no replacement planned.

IR35: rarely used and distrusted

The words ‘distrusted’, ‘rarely used’ and ‘gave false positives’ could equally be applied to IR35. Given its subjective nature, IR35 is certainly not trusted by either contractors or their advisers. Given that HMRC believes there are at least 200,000 contractors – we believe the figure is at least double that – and only around 12,000 contractors operate IR35, it suggests it is rarely used. Using HMRC’s assumptions, only about one in 17 contractors apply IR35.

And when applied by HMRC’s status inspectors, IR35 certainly gives false positives. Several of the key IR35 cases between 2009 and 2015 such as Primary Path, Marlen, ECR Consulting and MBF Design Services (see Appendix 2) demonstrate how easy it is to make mistakes. So, will HMRC apply the same logic it used for the BETs to IR35? Of course, it is not HMRC’s role to abolish legislation – that’s for politicians and Parliament. But if HMRC said IR35 should go, politicians and policy makers would be forced to listen.

HMRC has been asked by the Lords to review its IR35 assumptions

There were several recommendations made in the Lords’ PSC final report. One of these was for HMRC to review the underlying assumptions it has made about the deterrent effect of IR35. If these assumptions could be properly challenged and if HMRC were to listen, it could form the basis of a strong argument to suspend and eventually abolish IR35. Suspension was one of the options recommended in the March 2011 OTS review, to test whether there would be any impact.

Data from ContractorCalculator surveys challenge some of HMRC’s core assumptions about the deterrence effect. Specifically, HMRC believes that many more highly paid employees would incorporate if they knew IR35 no longer applied. Our evidence suggests otherwise, that highly paid employees would absolutely like to incorporate, but their employers won't let them. Contrary to HMRC's belief, abolishing IR35 is unlikely to result in mass incorporation by employees.

If there is more evidence such as this, then we could help HMRC come to the conclusion that perhaps suspending and then abolishing IR35 won't bankrupt the country.

What would replace IR35?

A key question when discussing IR35's abolition is its replacement. There needs to be a mechanism to tackle the Friday to Monday phenomenon, or blatant examples of disguised employment. Equally, contractors want tax certainty and to benefit from tax savings that reflect the risks and costs associated with being in business on their own account that employees don't face.

Many alternatives have been suggested that mainly revolve around making contractors pay income tax and NI in line with what self-employed sole traders and partnerships pay. This would not be such a good outcome for contractors, and would be almost as difficult to create and enforce as IR35.

Key lessons for contractors:

- IR35 will be with us for the long term unless major taxation reforms take place
- This means you need to maintain IR35 best practice and keep your tax investigation insurance current
- There is hope: HMRC abolished the BETs in the face of overwhelming evidence. Could it do the same for IR35?
- Be careful what you wish for: an IR35 replacement could leave contractors worse off and paying more tax even if they are outside IR35.

9. Conclusions

IR35 continues to pose a threat to contractors. As the timeline below shows, the last five years between 2009 and 2014 have been a period of huge change for contracting and contractors. There have been sweeping legislative changes related to contracting and the flexible workforce that include the Agency Workers Regulations (AWR) and the False Self-employment legislation. There have been twelve rulings on IR35 employment status and related cases.

IR35 has been analysed from every angle through two major reviews. In 2010-11, the OTS researched IR35 in detail. During 2013-14, the House of Lords Select Committee on Personal Service Companies performed what is probably the most exhaustive IR35 review to date. The OTS launched a review into how employment status is determined for tax purposes in July 2014 – the findings of this review will inevitably have a major bearing on how IR35 is implemented.

Contractors and their way of life came under unprecedented attack in early 2012 by the media, politicians and the public sector. What this episode confirmed was a broad and profound misunderstanding of contracting and how it works. From this point forward, limited company contractors have been branded as tax avoiders, placed in the same contemptuous bracket as tax evaders. Contractors operating in the public sector are at high risk of being investigated by HMRC, but the loss of contracting talent in the delivery of public services would be highly damaging.

The BBC's poor handling of the accusations levelled at the corporation and of its freelance talent is still playing out and may irreparably damage the UK's world-leading reputation for public sector broadcasting. HMRC's highly variable management of IR35 continues, showcased through the work of the IR35 Forum and through the real experiences of contractors at the sharp end that are reported to us.

Yet this incredible volume of activity in just five years has not altered IR35's fundamental DNA and the legislation is proving to be remarkably resilient. With the exception of one minor amendment to remove the exclusion of office holders, IR35 has not changed since it came into force in 2000.

Is IR35 likely to change in the next five or fifteen years? It is possible, but before this happens the underlying reasons for its existence will need to be addressed. Until alternative, tax neutral and politically acceptable solutions can be found for 'disguised employment' and the tax disparity between employment income and investment income from contractor limited companies, IR35 is likely to stay.

IR35 Timeline: from 2009 to 2014

KEY EVENT — JULY 2009
Tilson v Alstom: Landmark case. Contractor awarded employment rights.

AUGUST 2009
Stringer v HMRC: Contractors can claim holiday pay under specific circumstances.

NOVEMBER 2009
ContractorCalculator published its 10th Anniversary Report, *IR35 Special: 10 years that shook and shaped the world of UK contractors*.

FEBRUARY 2010
Tilson v Alstom: EAT overturns the original ET ruling.

MARCH 2010
IPSE (then PCG) secures commitment from Conservative Party to review IR35.

APRIL 2010
Larkstar v HMRC: Contractor gives in and retires, escaping tax liability but still a victory for HMRC.

MAY 2010
Novasoft v HMRC: Contractor wins, although experts believe ruling was flawed and likely to be overturned.

JULY 2010 — KEY EVENT
Office of Tax Simplification (OTS) begins its review of IR35.

KEY EVENT — AUGUST 2010
ContractorCalculator launches its Free Online IR35 Status Test.

NOVEMBER 2010
Tilson v Alstom: The contractor Andrew Tilson loses his appeal.

JANUARY 2011
ContractorCalculator publishes its IR35 Solutions Whitepaper in support of the OTS IR35 review.

JANUARY 2011
MBF Design Services v HMRC: Contractor wins IR35 case, HMRC criticised for weak case.

KEY EVENT — MARCH 2011
OTS publishes landmark report recommending IR35 suspension or better enforcement.

2011 Budget - Chancellor opts for 'better administration' of IR35.

MAY 2011
ECR Consulting v HMRC: Contractor victory, case focuses on 'in business' tests and not classic tests of employment.

KEY EVENT — MAY 2011
IR35 Forum created. Inaugural meeting held.

JULY 2011
Marlen v HMRC: Contractor victory. Contractor clearly failed the tests of employment.

Primary Path v HMRC: Contractor fails all three tests of employment.

OCTOBER 2011
The Agency Workers Regulations (AWR) come into force.

DECEMBER 2011
JLJ Services v HMRC: Contractor wins partial victory. Case highlights that contracts can change from being outside IR35 to inside IR35.

FEBRUARY 2012
'Ed Lester affair' story breaks, public sector contractor witch-hunt begins.

APRIL 2012
IR35 Business Entity Tests (BETs) leaked to ContractorCalculator ahead of official launch.

KEY EVENT — **MAY 2012**
HMRC announces 'new administration' of IR35, including BETs, compliance teams, helpline and review service.

Treasury publishes review of the tax arrangements of off-payroll workers.

JULY 2012
Autoclenz v Belcher & Ors: Landmark ruling says working arrangements can override written contracts.

KEY EVENT — **SEPTEMBER 2012**
Off-payroll rules introduced controlling contractor use in the public sector.

DECEMBER 2012
BBC decides it needs its own employment status test.

APRIL 2013
IR35 amended to remove the exemption of office holders.

NOVEMBER 2013
House of Lords Select Committee on Personal Service Companies created.

DECEMBER 2013 & JANUARY 2014
Evidence delivered to the House of Lords' PSC inquiry.

MARCH 2014
Treasury review of off-payroll rules confirms 94% of contractors' tax affairs are in order.

KEY EVENT — **APRIL 2014**
House of Lords Select Committee on Personal Service Companies report published heavily criticising HMRC and IR35.

The False Self-employment legislation comes into force.

JULY 2014
Government rebuffs findings of Lords' PSC report.

Lords debate the PCS report, heavily criticising government, HMRC and IR35.

BBC's employment status test is revealed.

OTS begins its employment status review.

KEY EVENT — **OCTOBER 2014**
HMRC announces it plans to abolish BETs from April 2015.

Employment status expert calls for judicial review of BBC's employment status test.

NOVEMBER 2014
ContractorCalculator publishes its review of IR35 after 15 years.

A comprehensive overview of the key events since IR35 was first introduced in 1999 and leading up to 2009 can be found in *ContractorCalculator's IR35 history & overview* (*Click here to read*).

10. IR35 best practice: Your ultimate strategy to avoid IR35

1. **Don't put your head in the sand:** We know from our surveys that nearly all contractors are aware of IR35. However, our data also shows that many could be unnecessarily inside IR35. Don't put your head in the sand and disregard the risk of IR35. Use resources such as this report, its bibliography and sources and the ContractorCalculator website to learn about IR35.

2. **Secure professional contract reviews:** Before you start any contract, invest in a contract review by an expert IR35 service provider. If necessary, try to renegotiate the terms of your contract if the review tells you it may put you inside IR35.

3. **Get a confirmation of arrangements signed:** Confirmation in writing by your client that you are not controlled, can send a substitute and there is no mutuality of obligation can shut down an IR35 enquiry before it gets off the ground.

4. **Keep an IR35 file for each contract:** Open a file for each new contract that includes the evidence that you are outside IR35. This can include emails from your client and meeting and telephone conversation notes confirming things like the lack of control and your unfettered right to substitute.

5. **Manage control out of your client relationship:** Ensure that you can demonstrate that your client does not 'control' you from an employment law perspective.

6. **Invest in tax investigation insurance:** You can secure tax investigation insurance cost effectively as an addition to your company's liability and professional indemnity insurance. The insurance premiums are a fraction of what you would spend if you had to pay for an IR35 defence.

7. **Treat HMRC's IR35 resources with caution:** You may be tempted to use HMRC's free contract review service. Don't. Although HMRC promises that its contract review service will not to share your details with its compliance team, you can't be sure of this.

8. **Clear out your company bank account:** Set-up a company pension scheme and use it to keep the levels of cash in your company low. You can also use the scheme to save tax efficiently and it can be an essential part of your IR35 management strategy if you are investigated by HMRC and/or caught by IR35.

9. **Always seek professional help to deal with HMRC:** HMRC status inspectors apply a range of successful strategies to find unwary contractors inside IR35. If you are under investigation, seek professional advice. An IR35 expert can often close an investigation before it gets off the ground.

10. **Stay current and up-to-date with IR35:** IR35 is complex, new case law emerges all the time and HMRC's tactics change. Keep your IR35 knowledge current by taking actions such as subscribing to ContractorCalculator's newsletter.

Bibliography and sources

We have drawn on multiple sources for the content of this report. Much of the information is based on our own news, analysis and guides that you will find on ContractorCalculator.co.uk. The following resources will help you to better understand the risks of IR35 and to manage them more effectively.

ContractorCalculator Free Online IR35 Status Test
This free tool will provide you with an indication of your IR35 status:
http://www.contractorcalculator.co.uk/IR35_Test.aspx (Click here to read)

ContractorCalculator's IR35 resource centre
The definitive online source of guidance about IR35, our resource centre includes nearly 100 guides about every aspect of avoiding and managing the legislation. You can also use our online interactive calculators to calculate the financial impact of the tax:
http://www.contractorcalculator.co.uk/IR35.aspx (Click here to read)

ContractorCalculator's Office of Tax Simplification IR35 review
If you would like to understand the thinking behind the OTS review and read ContractorCalculator's analysis, you can access our white papers and commentary here:
http://www.contractorcalculator.co.uk/ir35_review_ots.aspx (Click here to read)

ContractorCalculator's IR35 history and overview
We have created a detailed timeline spanning fifteen years of IR35's life with links to the relevant articles:
http://www.contractorcalculator.co.uk/ir35_history.aspx (Click here to read)

House of Lords Select Committee on Personal Service Companies
This website is the key source of all the evidence, the final report and the government's response to the Lords' PSC inquiry:
http://www.parliament.uk/personal-service-companies (Click here to read)

HMRC's IR35 resource centre
HMRC has a range of online resources to help contractor understand IR35:
http://www.hmrc.gov.uk/ir35/index.htm (Click here to read)

The Treasury's off-payroll rules – background
The May 2012 review of public sector contractor use:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220745/tax_pay_appointees_review_230512.pdf (Click here to read)

The evaluation of how the off-payroll rules are being implemented:
https://www.gov.uk/government/news/first-evaluation-of-tax-arrangements-for-off-payroll-contracts-in-the-public-sector-published (Click here to read)

ContractorFinancials pensions information
A resource centre for pensions information:
http://www.contractorfinancials.com/pensions/ (Click here to read)

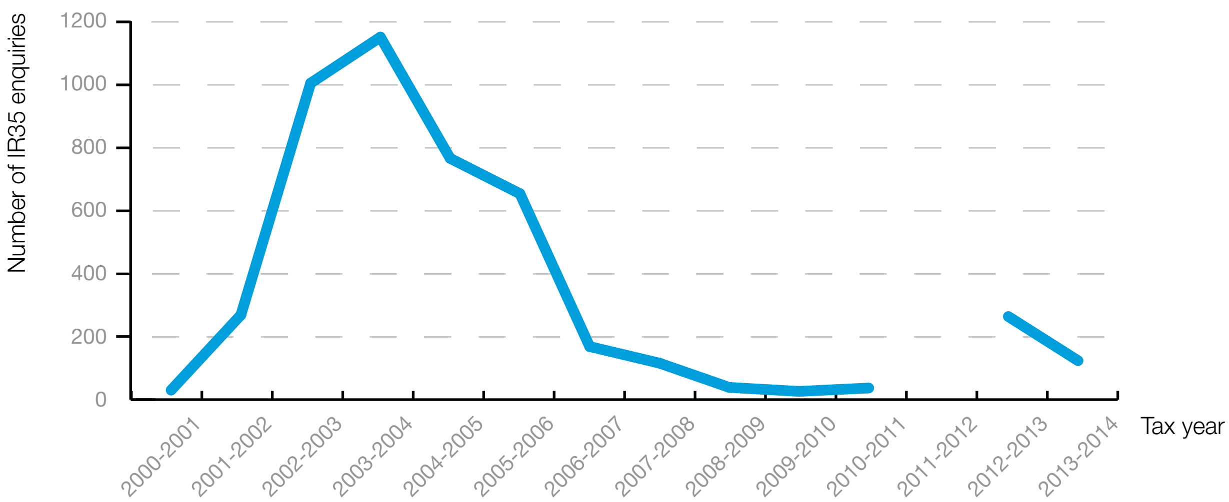
Appendix 1: IR35 data

This page includes the full dataset of the information discussed in section 2.

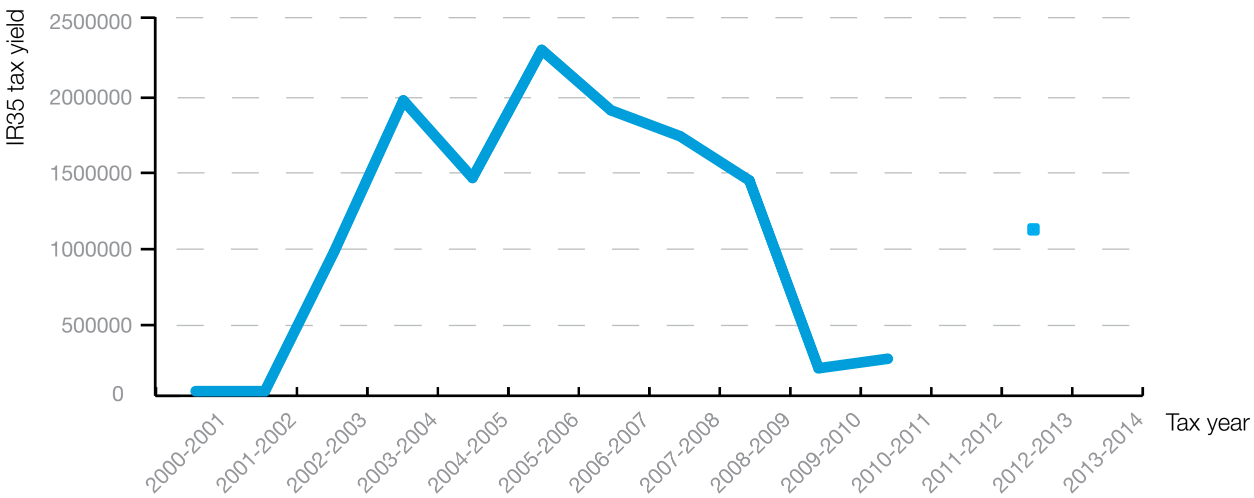
Here is how HMRC has performed to date:

Tax year	Number of IR35 enquiries	Total tax yield	Number of contractors saying 'yes' to P35 IR35 question
2000-2001	16	0	7,000
2001-2002	261	0	10,000
2002-2003	1016	£946,275	7,000
2003-2004	1166	£1,973,851	2,000
2004-2005	771	£1,447,796	5,000
2005-2006	656	£2,316,351	6,000
2006-2007	158	£1,906,619	6,000
2007-2008	104	£1,730,640	29,000
2008-2009	25	£1,430,358	10,000
2009-2010	12	£155,502	10,000
2010-2011	23	£220,000	10,000
2011-2012	Not known	Not known	12,000
2012-2013	256	£1,100,000	No data
2013-2014	112	Not known	No data

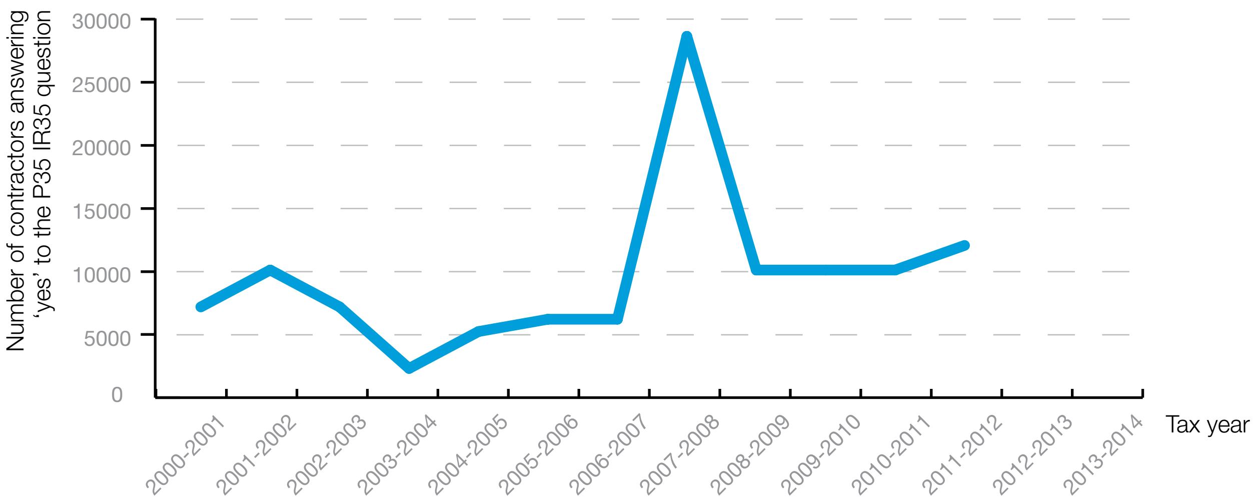
Number of IR35 enquiries 2001-2014



Tax yield from IR35 2000-2014



Number of contractors applying IR35 according to their P35



Appendix 2: IR35 case law updates

You can access the full commentary that discusses the significance of each of these cases in *ContractorCalculator's IR35 history & overview (Click to read)*. The key IR35 cases between 2009 and 2014 are:

July 2009

Tilson v Alstom Employment Tribunal ruling: In a landmark case, an Employment Tribunal (ET) awarded employment rights to contractor Andrew Tilson from his client, Alstom. Previous case law had denied contractors employment rights, even when inside IR35.

August 2009

Stringer v HMRC House of Lords ruling: This case allows contractors to make claims for holiday pay from their clients under very specific circumstances. This encourages clients to help their clients to prove they are not disguised employees, and therefore outside IR35.

February 2010

Tilson v Alstom Employment Appeal Tribunal ruling: The Employment Appeal Tribunal overturns the original ET ruling in favour of the contractor. As a result, contractors return to having limited scope for claiming employment rights against their clients.

April 2010

Larkstar Data v HMRC settlement: Contractor Alan Brill retires and gives up his fight against HMRC and IR35. Brill escapes any further tax liability, but this is considered a victory for HMRC, if only for the taxman's relentless inertia.

May 2010

Novasoft v HMRC Tax Tribunal ruling: Contractor Novak Brajkovic wins a hollow victory in his eight-year battle against HMRC. Experts believe the tribunal judge's ruling was flawed and likely to be overturned should HMRC decide to appeal.

November 2010

Tilson v Alstom Court of Appeal ruling: Contractor Andrew Tilson's bid to secure employment rights fails on appeal. This closes any avenue that contractors may have had to claim employment rights from a client.

January 2011

MBF Design Services v HMRC Tax Tribunal ruling: Contractor Mark Fitzpatrick wins his IR35 case. Judge criticises HMRC for preparing a witness statement, as the case was weak from the outset and should never have been pursued.

May 2011

ECR Consulting v HMRC Tax Tribunal ruling: Contractor Elaine Richardson wins her five year battle with HMRC. The tribunal found the contractor to be 'in business on her own account', rather than focusing on the classic tests of employment.

July 2011

Marlen v HMRC Tax Tribunal ruling: Contractor Phil Hughes' two-year battle with HMRC ends with the judge ending the tribunal early because the contractor completely failed the core tests of employment. There was no control or mutuality of obligation.

Primary Path v HMRC Tax Tribunal ruling: Contractor Phil Winfield failed all three key tests of employment, with the judge noting that any contract with a substitution clause is unlikely to be an employment contract.

December 2011

JLJ Services v HMRC Tax Tribunal ruling: Contractor John Spencer won a partial victory against HMRC. This landmark case confirmed that a contract can change from being outside IR35 to inside IR35 part-way through.

July 2012

Autoclenz v Belcher & Ors Supreme Court ruling: Landmark ruling that says working arrangements can override written contracts enabling workers to claim employment rights. This may encourage clients to help contractors stay outside of IR35.

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