

APSCo responds to IR35 reform consultation document

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Following the unexpected publication of the HMRC's consultation document on IR35 reform in the public sector, Samantha Hurley, Operations Director at APSCo comments:

"Despite HMRC originally saying that they were unable to publish the consultation document before the summer, they issued it at the very last minute before the purdah period started – the upside to this change of plan is that we now have almost 12 weeks to respond."

"APSCo will be organising a working group of members who wish to input into our response document and we will be reiterating our position that the proposed reforms are contrary to the established public law proposition that legislation must be fair and rational. We believe the proposals are unworkable, disproportionate and unreasonable."

"The current legislation gives responsibility and liability for determining whether or not an assignment falls within IR35 to the individual worker and his or her Personal Services Company (PSC), through which services are provided. The proposed reforms will mean that from April 2017, recruitment firms will be responsible for determining the status of an assignment to supply services through a PSC to the public sector under IR35. They will be liable for unpaid taxes and NICs should HMRC determine their decision incorrect."

"However, recruitment firms do not have sight of the day to day operations of either the end client, the worker or the PSC – they would not typically be present at a client's site and would consequently have no visibility of the role undertaken or how the services are performed. The recruitment firm would have to rely on other parties to provide them with up to date information during the whole assignment – information which would be required to ascertain tax status on a real time basis. This is clearly unjust as they could end up bearing penalties attributable to other people's lack of disclosure and conduct over which they have no control."

"We believe that recruitment firms will not be able to take on this kind of unknown liability and so will have to assume that the contractor is outside IR35 which will result in large numbers of contractors in 'false employment' – and it will also mean that contractors lose control of their business tax affairs. Last but not least the public sector is likely to lose access to the skills they need as contractors will be too expensive – and will choose to work in the private sector."

"We do not believe the public sector wants or intends to avoid its taxation and employment responsibilities. We are sure it has serious concerns about its continuing ability to source the skills and services it needs to deliver its many significant ongoing infrastructure projects, including the ongoing digitalisation programme."

"HMRC are not even consulting on whether it is fair and appropriate for the public sector's duty to determine its own taxation responsibilities be transferred to private third party recruitment firms and we consider this to be challengeable. "

"If these proposals are a dry run for the private sector then we fear for the whole future of the

flexible workforce.”

Ends

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