

IR35: What are your options if you're blanketed?



The Emergence of Blanketing PSC Contractors

The Covid-19 pandemic has led to the postponement of IR35 reform until April 2021. Prior to this temporary reprieve, the impending rule changes caused a number of prominent businesses to cease engaging limited companies. This is widely thought to be down to a lack of coherent guidance from HMRC, which leaves companies liable for making incorrect status determinations. The practice, along with other forms of action that seek to 'opt out' of making individual assessments (such as role-based IR35 determinations) has become known as 'blanketing'.

Although recent inquiries into the legislation have identified blanketing as a widespread and non-compliant issue, the government position on blanketing continues to be problematic. Despite the provision that 'reasonable care' must be taken when making determinations, the draft legislation states that it is acceptable for a client to make a determination for a group of workers, providing those workers are engaged under the same contractual terms and conditions, and in practice work under the same terms and conditions. This leaves an obvious margin for interpretation and error. The government has also declined to acknowledge the PSC ban as a result of their lack of guidance, including their faulty assessment tool, CEST, which fails to take into account important factors such as Mutuality of Obligation.

The one-year reprieve has allowed many contractors to keep operating through their limited companies as many businesses reversed or deferred their decision to ban PSC contractors. However, it's likely that as the new deadline approaches, the practice of blanketing will once again become a major issue. **Recent attempts to stop off-payroll reform pending an independent inquiry have failed,** which means that the 29 issues identified by the recent **Lords inquiry** are likely to remain unchanged. The effects of the pandemic could also force many contractors to accept unfair blanket determination or risk losing contracts in a difficult climate. Although a contractor's course of action may partially depend on the choices their engager gives them, below is a summary of the main options that contractors might be faced with.

Go Permanent

By becoming a permanent employee of your engager, your tax and NI will be deducted by the company's internal payroll via PAYE and IR35 will not apply. This option may be offered to contractors where the company feels it can justify permanency. Because of contractual obligations, it's not likely to be offered as a temporary solution, this means that you will cease to be a contractor. If you've worked for a single client for a long continuous period of time and have previously considered going permanent, this may be the best option for you.

Drawbacks

- The impact of the Covid-19 pandemic on the jobs market means that there will be fewer permanent jobs on offer.
- Most companies have indicated that the PSC ban is just a temporary measure. Any subsequent changes to the legislation may mean that firms change their mind and become more open to negotiation.
- Going permanent means closing down your limited company, which incurs a fee.
- Many contractors are concerned about the possibility of retrospective action from HMRC if they go permanent, although the treasury has claimed it won't take this action unless it suspects 'fraud or criminal activity'.



Leave the contract

If you don't want to work inside IR35, even temporarily, then leaving is another option. Depending on your skillset, it may be possible for you to find another contract with a company that isn't adopting a PSC ban, or by working for a smaller company that isn't affected by the changes. Work out what the status on most of your contracts will be and the line being taken in those sectors. If you're reasonably sure you can find an alternative contract, then leaving your present one could be right for you. Also, if your contract is short-term or nearing its end, then it could be a good time to cut your losses.

Drawbacks

- Companies are adopting PSC bans all the time, this means you could jump out of the frying pan and into the fire.
- If your skills are industry specific, and this industry is heavily regulated, you could find it difficult to find contracts outside IR35.

Become an employee for tax purposes - "inside IR35"

While some companies have introduced a 'no PSC' policy, others, like Tesco Bank and Sainsbury's, have said that most of its contracts will automatically fall 'inside' IR35. If contractors are allowed to continue working through their limited companies, but are blanket ruled inside IR35, they must weigh up whether it's financially worth it. If you work on contracts that are both 'inside' and 'outside' IR35, then it could be worth keeping your limited company but also sourcing a reliable umbrella company to give you the most contracting options.

Drawbacks

- If you operate through your limited company on contracts that are inside IR35, you'll be taxed as an employee without receiving any employment benefits.
- If less than 50% of your contractor income comes from outside IR35 contracts, it may not be worth working through your limited company, especially given the risks. In this instance, it may be better to go full umbrella, at least until companies reconsider their policy in light of any changes to the legislation.

Agency PAYE

If you opt for Agency PAYE the agency will deduct tax and NI before you're paid, which will remove the need for IR35 assessment. However, many agencies don't have the resources to offer a payroll service. Contractors should understand that they're only entitled to employment benefits if they're classed as agency workers, which means they have a direct contract of employment with the agency following 12 continuous weeks of employment.

Drawbacks

- Agencies are paid by the end client and can therefore be conflicted in the advice and support they give contractors.
- With Agency PAYE, each new contract is a separate run of employment that will end when the contract ends. In order to remain on the agency's payroll, contractors are limited to contracts sourced via that agency.



Umbrella PAYE

Working via an umbrella company automatically removes the IR35 risk as the umbrella company becomes your employer, deducting taxes and NICs at source. You'll still be able to operate outside IR35 on other contracts simultaneously and easily after your current contract concludes, by keeping your limited company. Another advantage is that although you may have multiple contracts with different agencies and end clients, you will have one continuous employer – the umbrella company. Umbrella companies receive their income from the contractor rather than the end client, so are more easily able to act in their best interests. With an umbrella company, you'll automatically receive employment related benefits, such as holiday and sick pay.

Drawbacks

- You will pay employment taxes plus a service charge, which impacts the amount you take home.
- **Contractors may not be given the choice of an umbrella company if their engager requires them to go onto the payroll of the agency they use.**

Dispute the Status Determination

It should be noted that clients who make blanket decisions are taking a very risky approach. If there's even a minor difference between the terms and conditions or working practices of workers under that blanket decision, the reasonable care test will not be met. Contractors who feel that reasonable care has not been taken might first try gently reminding the end client of the provisions outlined in the draft legislation and request a review via their agency. Where a contractor feels certain that reasonable care has been ignored, then they could seek to overturn the end client's decision utilising the appeals process.

Drawbacks

- The appeals process is 'client led' and therefore likely to be biased in the client's favour.
- Ultimately a client cannot be forced to take on contractors so there's a risk of losing the assignment altogether.

Ultimately, contractors have a choice whether they accept the end client's terms, or whether they choose to seek preferable ones. While many contractors are opting to wait and see what the situation will be come April 2021, this course of action risks them being caught by blanket policy at any time. While clients who blanket assess will lose the best talent and end up paying for their one-size fits all approach further down the line, this leaves contractors in a difficult position in the meantime. **If you're concerned that you might be blanketed, it's better to take affirmative action that eliminates risk and protects all your options.**

This content has been supplied by IR35 Guru.

At Umbrella Exchange we can offer you an IR35 solution to suit your personal circumstances. We have access to an excellent range of specialist umbrella companies, and can also help you with suspending or closing your limited company, depending on your situation. If you've been affected by the IR35 reforms and feel unsure about your position, get in touch with us and we'll talk you through your options.

