

Aaron Shone – Written evidence (OPR0003)

My experience of IR35

I work as a cyber security consultant, running my own limited company. In 2018 I was engaged to provide Cyber Security services to a small pharma company. When the new IR35 regulations were scheduled to be applied in April 2019, the end client conducted a review, and decided that all contractors within IT were inside IR35, despite there being no mutuality of obligation, and each contract had a right of substitution. The reason for being inside IR35 was that all users needed to use company supplied IT to access the network and company applications. (This is common IT security practice, as having lots of unmanaged contractor devices, unpatched and with different security policies is a huge cyber security risk!).

I did not accept the IR35 determination, as the HMRC CEST tool, and the QDOS IR35 contract review service both suggested the contract my company had with the pharm was outside IR35, The client did not want to take on the risk of having an incorrect IR35 determination, and insisted the only way to continue the contract was to work inside IR35 so I gave notice, and went to work for another pharm company in March 2019. This company initially said the contract was outside IR35, but then changed their position and said it was inside IR35, even stating in email that they would not honour the substitution clause in the contract if my company tried to substitute the services I provided with another colleague.

As the government then proceeded to lock down the UK economy in response to the COVID19 pandemic, I decided to work inside IR35 for 6 months, while the economy tanked. Even when the IR35 rules were deferred for a year, the company still insides the contract workforce worked inside IR35

The umbrella company I was asked to use by the client wanted to provide a workplace pension, and made it difficult to opt out. They also retained my holiday pay, and applied a number of hidden fees to my payroll, reducing my income. After 6 months, I had enough, and left the contract. The umbrella didn't provide a P45, and also reported my income incorrectly to HMRC, leading to a formal query from HMRC when I submitted my self assessment tax return based on my last payslip from the umbrella company.

I have since taken a number of contracts in Europe, both in Germany and in Zurich, all of which were based on working from home, and am currently working in Qatar. I do not see any reason to work for a UK company that forces contractors into IR35, or 'no-rights employment' where I have to pay for my own pension, my own expenses, my own professional indemnity and public liability insurance, my own travel, accommodation, my own equipment, but not get any job security, no sick or holiday pay. Simply put, as a contractor, I have overheads that an employee does not. Why then should I be taxed as an employee, who has all these benefits, which I have to pay for after tax?

The IR35 proposition is not appealing to me. If I am to be taxed as an employee, I would expect all the workplace employment rights, benefits and protections of an employee of the company. If I am a contractor, I do not expect those rights, but I don't expect to be taxed as if I was an employee given my company overheads to provide those benefits directly. As a contractor I accept the risk of not having client providing work after the current engagement is completed. My work is delivery focussed – once the project is delivered and handed over to long term support, I have no further justification for being retained, and by mutual consent, I can move onto another contract (or take multiple smaller contracts). It is unclear what problem IR35 was put in place to solve, but it does seem incompatible with modern ways of working.

3 November 2021