Intermediaries legislation (IR35)

Employment Tax

04 December 2015

CIOT has responded to HMRC’s request for views on the current IR35 system

The CIOT has responded to HMRC’s request for proposals to improve the effectiveness of IR35, including transferring liability from the personal service company (PSC) to the engager and changing the IR35 test to a supervision, direction or control test (SDC).

The government cannot ignore an estimated £430 million loss of revenue to the Exchequer from IR35 non-compliance. It is therefore right to explore possible solutions for tackling non-compliance. At the same time the compliant and those who are genuinely self-employed and operating through a company for legitimate business reasons must be safeguarded.

Replacing the IR35 measure with an SDC test may seem like a good idea to the government but in reality the decision will still probably depend on the view of the person making it. The CIOT’s believes that a simplified test, such as the SDC option, would catch many who are genuinely in business for themselves and who would now pass a hypothetical employment test. As a result, the CIOT considers that an SDC test would be contrary to one of the aims of the review: not to widen the scope of IR35.

The CIOT also feels that transferring liability to the engager does not simplify the administration of IR35. Contracts would still need to be considered individually. There are also inherent issues around who is the engager and when is a personally owned company supplying services to an end client a PSC. The CIOT, therefore, proposes an alternative: a reporting obligation on the part of the engager based on the PSC notifying the end client whether it considers that IR35 applies and the end client then reporting this to HMRC (and whether it agrees with the PSC’s opinion).