

How much do you know about IR35?

SEPT. 2019





Introduction

It was announced in the Autumn 2018 budget that IR35 public sector reform is to be extended to the private sector, albeit it won't apply to smaller firms that meet certain criteria (see below). For IT contractors, their employers and agents, the single biggest concern is how Off-Payroll working (commonly called IR35) will affect their businesses, whether as independent contractors or as one of the many firms that employ these contractors.

When IR35 was introduced to the public sector in 2017, organisations only had 12 weeks' notice to prepare. This time, for the private sector, the (previous) Chancellor gave the business world to April 2020 to get ready. There have been two government consultations on the subject, the second of which closed on 28th May 2019, with the results published in July. However, irrespective of the results of these "consultations," it is clear IR35 plans for the private sector will be implemented in full by HMRC come April 2020.

Be-IT has a substantial number of contractors working through its books so clearly it has a commercial interest in the subject, but, more importantly, the changes to IR35 will have a profound impact on the entire IT sector. Given the importance of technology to all our futures, in our view it's incumbent on government to do nothing that makes it more difficult for the sector to prosper. We have not been convinced that IR35, and especially the ways in which it will be implemented, will be beneficial for the individuals affected, the industry as a whole or, indeed, the wider economy.

With that in mind, we commissioned a third-party researcher¹ to conduct an independent study, investigating both contractors and employers' knowledge of IR35 and its implications for individual contractors, their agents and the employing companies across the private sector. We also received professional guidance² on IR35 from a CTA to ensure we got the facts right.

The purpose of the research

The purpose of this study is to investigate employers' and contractors' knowledge of, and concerns about, IR35 and its implications for the private sector.

To that end, the questions were split into two sections: one for contractors and one for employers. The questions asked cover more or less the same range of topics in each case, but with some minor changes so that they make sense from each perspective, whether as an individual contractor or an employing company. A key section of the questionnaire seeks to find out how much respondents actually know about the subject of IR35 and this is followed by a series of questions asking respondents what they believe the impact of IR35 will be for themselves or their businesses, especially as regards the amount of tax they might have to pay. Finally, there was a small section asking those who have already been through the roll-out of IR35 in the public sector to tell us about its impact there.

Executive Summary

1. We have serious concerns about the lack of knowledge about IR35 amongst contractors and employers. A substantial percentage of respondents were unable correctly to answer a number of questions, each of which asked them to say whether a statement about a key aspect of IR35 was true or false (see Qs.6 and 21). For example, these included:
 - a. Fewer than 10% of contractors and no employers are aware that sole traders are exempt from IR35.
 - b. Some 29% of contractors and 38% of employers believe that it is the contractor who is responsible for deducting PAYE (it is the final employer's responsibility)
 - c. A substantial number (75% of employers and 41% of contractors) think that all contractors, agents or umbrella companies, regardless of size, will fall under IR35. Note it is only small companies as defined by the Companies Act 2006 (i.e. with two or more of the following - a turnover of £10.2M or less, £5.1M or less on its balance sheet, and those with 50 employees or fewer) that are exempt. Medium-sized companies as **defined** by the Companies Act 2006 will be caught by the new legislation.
2. Very few of our respondents had taken part in the recent government consultation (only 10% of contractors and none of the employers). Bearing in mind that the vast bulk of responses to our survey came before the government consultation reported its results, almost all of our respondents (90% of contractors and 100% of employers) believed that the government intended to create a mirror image of the public sector IR35 legislation. This pessimism has been borne out by the proposals for the new IR35 legislation published by the government on July 11th and with basically no concessions or revisions of what was originally planned. See: [government rules](#) and [government consultation](#)².
3. Virtually all (96%) contractors surveyed deliver their services via a Limited company.
4. Nearly one third (31%) of contractors are thinking about becoming a permanent employee, with a further 42% undecided and only 27% intent on continuing to work as a contractor. If followed through, this could have profound implications for the way in which IT projects are delivered by the private sector. For employers, 44% expect that contractors will seek to become permanent employees, with only 11% thinking that there will be no change in the number of contractors working for them.
5. Virtually two-thirds (65%) of contractors and employers (67%) would be prepared to accept a terminal bonus upon completion of a contract. This would increase the financial risk to the contractor, thus, potentially, helping put them outside IR35, although, as we explain below, this is certainly not guaranteed. Contract and client may think this is a potential loophole but it may be more complicated (see below)
6. Providing a substitute contractor (substitution) to work on part of a contract is recognised as one of the ways in which a contractor might be outside IR35. 56% of employers were not prepared to consider such substitution, but, unsurprisingly, a clear and resounding majority (86%) of contractors would be prepared to do this. However, as with the terminal bonus issue, this 'loophole' is by no means guaranteed.

7. When asked specifically who is responsible for informing a contractor that he or she comes under IR35 (or not, as the case may be), there were considerable levels of ignorance, with 44% of employers and 28% of contractors not being aware that it is their responsibility.
8. The vast majority expect IR35 to increase their tax bill, with 97% of contractors and 89% of employers expecting this to happen. This may explain why so many contractors are considering (Point 4 above) whether to continue as self-employed.
9. Nearly half (46%) of contractors believe that their tax will increase by between 15% and 25% under IR35. Less than one third (37%) think their tax will grow by 15% or less. Employers are more pessimistic, with three-quarters (75%) believing that contractors' tax bills will grow by between 15% and 25%. Will this lead to contractors increasing their rates?
10. Interestingly, and following on from point 9, two-thirds (67%) of employers are not planning for an increase in contractor costs after IR35 is implemented.
11. Some 70% of contractor respondents who have experience of using the CEST in the public sector said that it is not easy to use.
12. Of those contractors who had experience of the CEST tool in the public sector, exactly two-thirds (67%) said that it had put them outside the scope of IR35.
13. Of those contractors who work(ed) within IR35 in the public sector, 85% say they pay more tax and only 15% pay less tax than they did previously. This will not be good news for those contemplating what they might do when IR35 hits the private sector.
14. When it comes to the sources respondents use to find information on IR35, accountants (cited by 67%) were, perhaps unsurprisingly, the most popular with contractors, closely followed by online magazines (64% of respondents used them). Employers, in contrast, are far more likely to go to a recruitment agency (55%) or a solicitor (44%).



Conclusions

As IT recruiters, we are concerned about the relative lack of knowledge about many key aspects of IR35. While ignorance of the law is no excuse, the results of this survey suggest that HMRC really does need to beef up its marketing and run (a lot) more “information and advice” campaigns about IR35 before April 2020. Parallel with this, it’s incumbent on contractors to ensure they really know what IR35 involves and how it might affect them.

Of those contractors who work(ed) within IR35 in the public sector, 85% say they pay more tax and only 15% pay less tax than they did previously. This study suggests most respondents expect to be clobbered for a lot more money by the government, with all that implies for their desire to continue working as a contractor over the next few years.

From a political/economic point of view, the government needs every penny it can get as there is the small issue of Brexit on the horizon (at least there is at time of writing) and, if the runes are correct, a global recession coming soon (with much of the firepower required to tackle it already used up since 2009). However, it is Brexit specifically that exercises the UK public and it seems a Keynesian boost is coming, with huge investment in a wide range of public projects, including, we hope (and the new Prime Minister has explicitly mentioned these), a vastly speeded-up roll-out of fibre broadband and significant changes to immigration policy (contractors who are not resident in the UK for tax purposes are exempt from IR35). While the new Chancellor seems intent on borrowing to fund these measures, it is unlikely that, having identified the growing army of self-employed as one of the areas where there is potential to pluck the goose of taxation a bit further, the government will gladly accept any additional tax HMRC can gather. Much of the current tax strategy vis-à-vis the self-employed is a result of the previous Chancellor’s views on the economy and the Taylor Report (Review of Modern Working Practices) was part of his response to the growing numbers of contractors and levels of tax they pay. However, with the recent change of Prime Minister (again, correct at time of writing), there may be a change of thinking here, but we doubt it! IR35 doesn’t look good for private sector IT contractors...

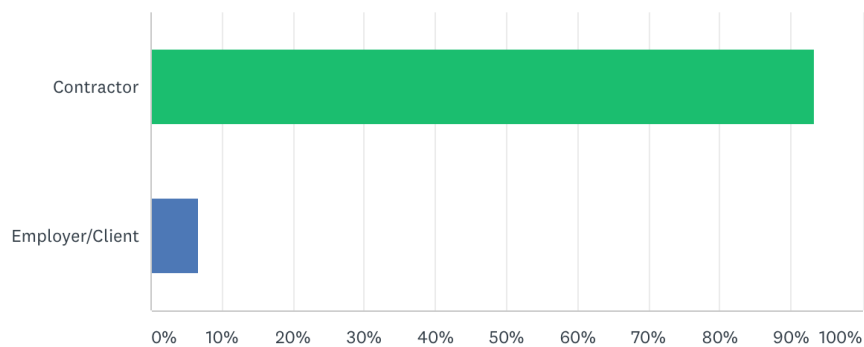
The Survey

PREAMBLE

The interest in this subject was such that it provoked a greater response than any of our previous two major projects (on Sexism in IT in 2017 and Graduate Employment in IT in 2018). The Survey ran from 3rd June 2019 until 31st July 2019. In total, 353 people took the time to complete the survey, the vast majority of them individual contractors. Here is what they told us...

Question 1 was for all respondents and simply set out to identify whether they were contractors or employers.

Q.1 Are you a contractor or an employer?

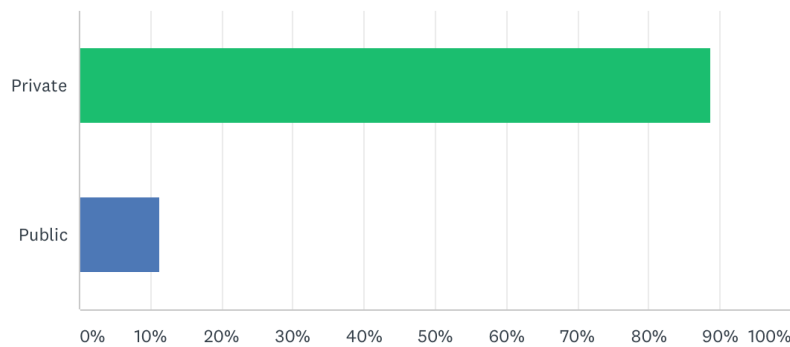


Unsurprisingly, the vast majority were contractors. More specifically, 93% of respondents were contractors and only 7% were employers.

Contractors' Questions

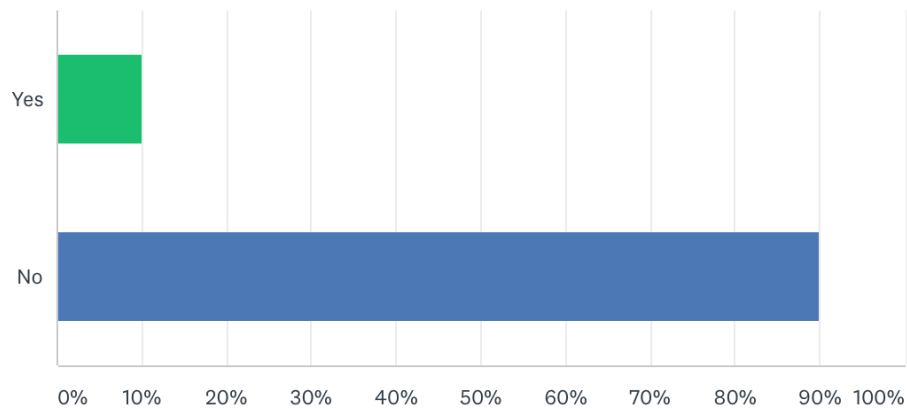
Questions 2–16 were specifically for contractors.

Q.2 Do you work in the private or the public sector?



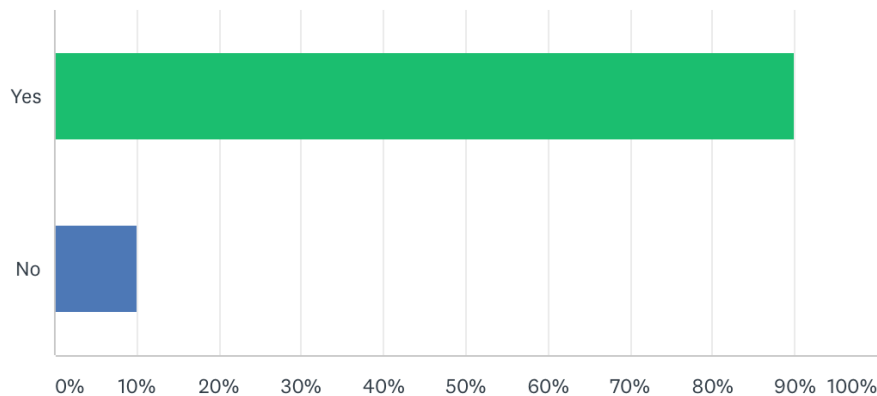
Again unsurprisingly, a substantial majority work in the private sector. More specifically, 89% of respondents work in the private sector and only 11% in the public sector.

Q.3 Did you take part in the government's recent consultation?



Yet again, the result here is hardly a surprise, with only 10% saying that they had taken part in the IR35 consultation. While many might say that “if you don’t take part then you can’t complain,” it would, in retrospect, have been useful to have asked how many were aware of the consultation taking place. That said, the consultation was widely referred to on a range of contractor websites and, in our opinion, it was highly unlikely that the consultation would result in a change of policy – although, as we note in our conclusion, the current administration’s approach to tax may change as a result of Brexit. This was explored further in our next question...

Q.4 Do you think the government will implement a mirror image of the public sector off payroll legislation, irrespective of the comments it receives on the Consultation? Please add any comments you have.



Once again, the results are conclusive. Some 90% of respondents expected the government to plough ahead, which, as we now know is, on the whole, what has been done. However, it's important to note that there are some changes being introduced on flow of information through the supply chain; a formal process where the end-user considers disagreements over status and the fall back of who will ultimately be liable for the recovery of tax and NIC. As we note elsewhere in this report, the last point of pay is where the liability sits.

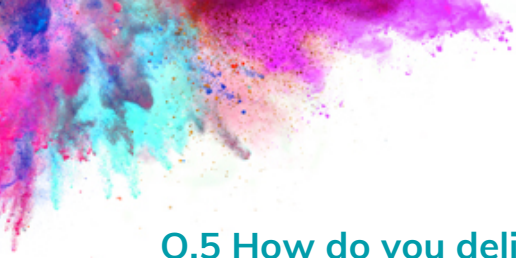
There were 53 comments after this question. These are all shown in the Appendix, but, as you might expect, they are almost universally of the view that the government was not listening. For example, typical comments in this vein include:

"I believe the government sees all contractors as a soft target to increase revenue irrelevant of comments or anything else for that matter"

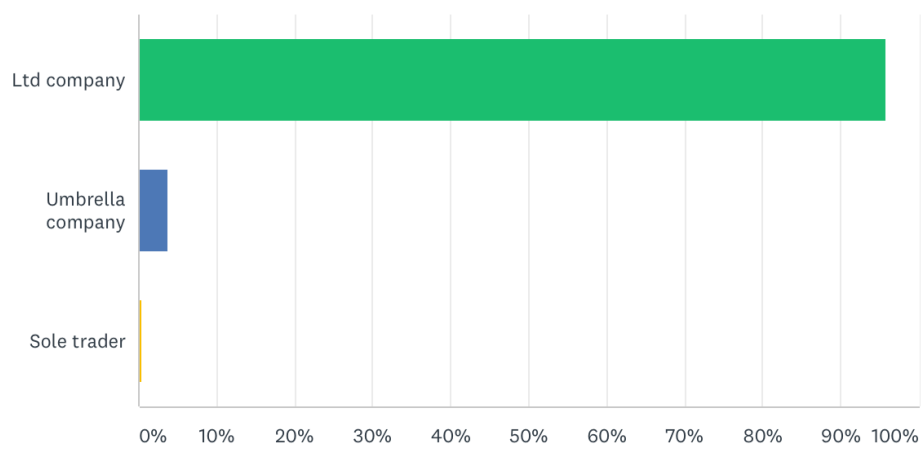
"Why wouldn't they - the government needs to increase its revenue, and this initiative, will do that."

"The government is not listening to advice."

"I think the government wants to shutdown ltd company contractors and this will be the method they use. I imagine they see it as more transparent and that it will generate more tax income - their view perhaps but not mine."



Q.5 How do you deliver services presently?



Unsurprisingly (a word we are using a lot in this report!), the vast majority (96%) of contractors' businesses are constituted as a Limited company, with negligible numbers working through an umbrella company or as a sole trader.

Q.6 Tick all the following statements that you believe are true. Leave blank/don't tick if you think they are false. Please answer straight away (no Googling!)

This question was intended to start to find out whether contractors really do understand IR35 or if their 'understanding' is only superficial.

The statements offered were as follows (with the correct true/false answer given after each):

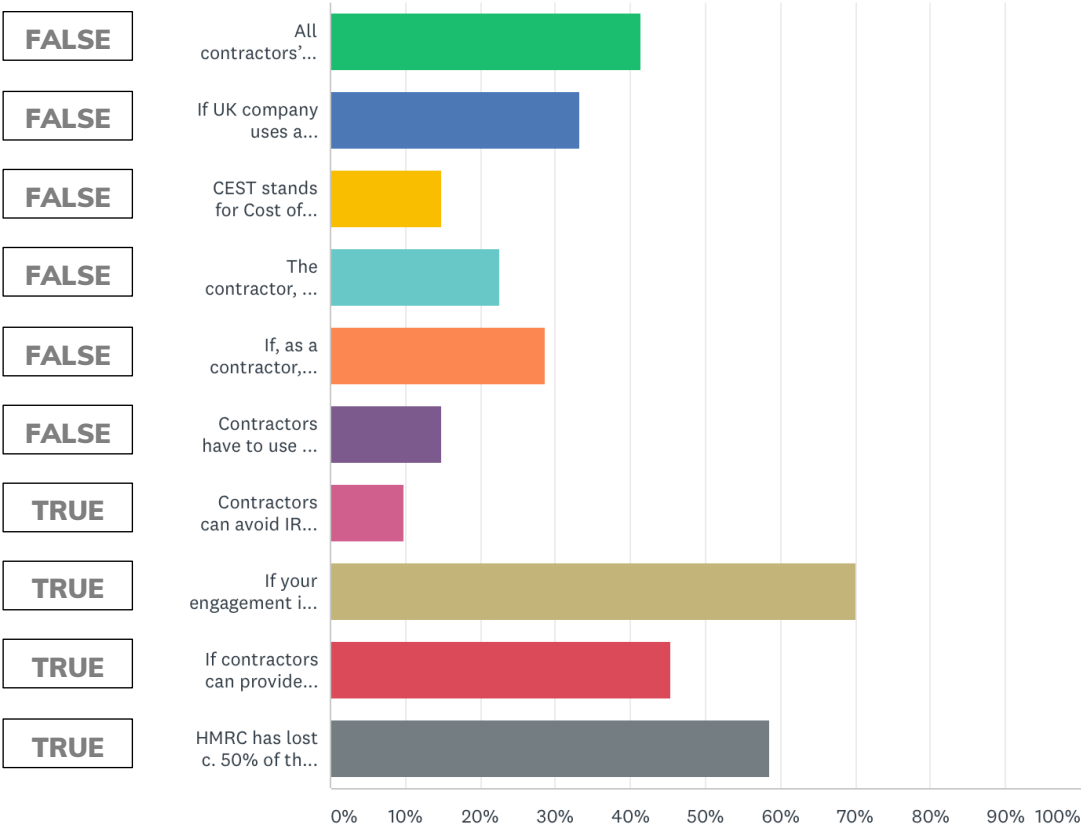
- All contractors' agents or umbrella companies, regardless of size, will fall under the remit of IR35 **(False)**
- If UK company uses a contractor who is not based in the UK, they still have to apply the IR35 regulations **(False)**
- CEST stands for Cost of Engaging (contractors) for Standard Tax **(False)**
- The contractor, not HMRC, determines whether he or she is inside the scope of IR35 **(False)**
- If, as a contractor, your work with a client is inside the scope of IR35, it is you who is responsible for deducting PAYE **(False)**
- Contractors have to use an accountant to complete annual tax returns under IR35 **(False)**
- Contractors can avoid IR35 simply by becoming a sole trader rather than a limited company or working through an umbrella company or agency **(True)**
- If your engagement is inside the scope of IR35, then your agency or client will be responsible for paying you net of PAYE tax regardless of whether you operate through a limited company **(True)**
- If contractors can provide 'substitutes' on a contract they can avoid coming under the scope of IR35 **(True)**
- HMRC has lost c. 50% of the IR35 tax cases it has brought against contractors **(True)**

Obviously, in theory, if every contractor was perfectly informed then everyone ticking the box for "true" would give us 100% for those statements that are true and 0% for those unticked boxes for the 'false' statements. The divergence from 100% or 0% gives us some indication of the state of knowledge of contractors about some key aspects of IR35.

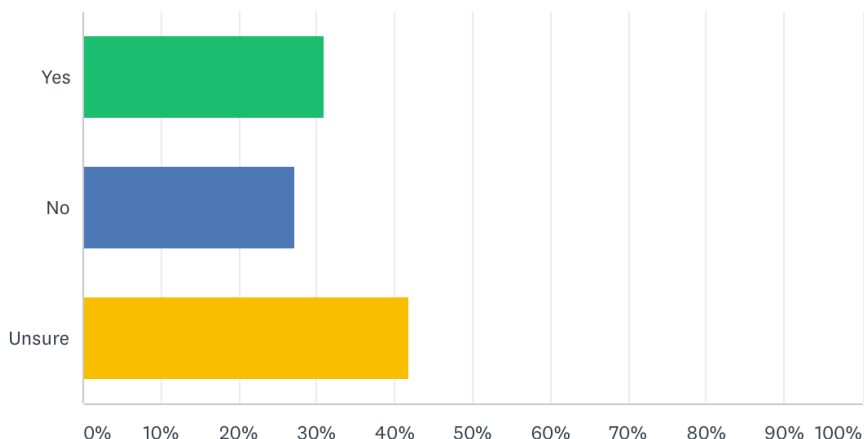
What actually happened, as you can see in the chart below, is that in general, most people got the correct answer, other than for the statement about contractors avoiding IR35 by being a sole trader, where the majority were wrong (although this is actually a more complex situation than it might seem: see more on this under Q.21 below). Moreover, the issue of contractors being exempt if they are based abroad is another that is not quite as clear cut as it may seem (again, see under Q.21 below for details).

All that said, there are still very large numbers who do not know what's happening. Generally, the percentage getting the answer wrong varies between c. 15% and 40% depending on the question asked, but over 90% in the case of the question about being a sole trader. One statement where the response was a particular surprise was the third one, suggesting that CEST stands for "Cost of Engaging Contractors for Standard Tax" (it actually stands for Check

Employment Status for Tax). Given the amount of publicity around CEST, and especially its alleged shortcomings, we would have expected that almost all contractors would get this right, but 15% did not!

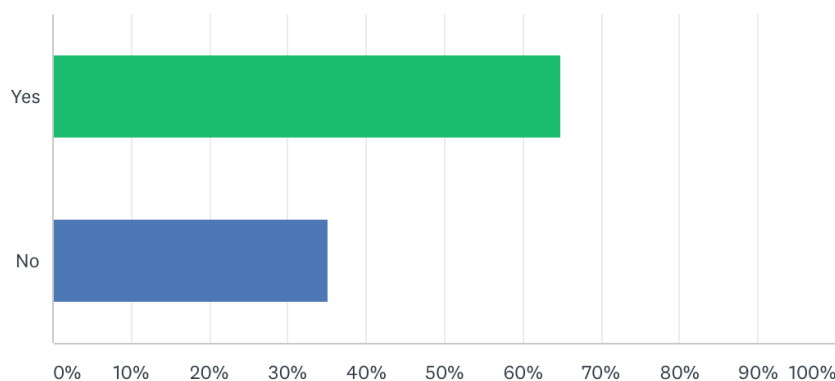


Q.7 Will you think about stopping working as a contractor and seek permanent employment with a company?



This is an extremely important question for those sectors within IT (e.g. FinTech, Software, Public Sector, etc.) who currently depend on contractors to get projects over the line. As we can see, nearly one third (31%) say they will definitely think about making this change, while only 27% expect to continue to work as contractors. More worryingly in some respects, 42% are unsure of how they will jump. If a substantial proportion of those who are not sure what they will do then decide that, when push comes to shove, they want out of the contracting market, this could have a significant impact on the ability of medium and large firms to complete contracts for their clients. Equally obviously, a shortage of contractors is likely to push rates up, thus reducing profitability and the incentive to use contractors in general. It remains to be seen if the law of unintended consequences has a deleterious effect on the IT contracting market over the next few years. Our expectation is that the market will continue to work as it should, with rates fluctuating depending on supply and demand. However, currently, and for the immediate future, if employers need contractors and want the best then they will pay a premium for them. This will give the best contractors an opportunity to claw back some of the money they will lose to HMRC.

Q.8 Would you accept a contract that has a terminal bonus, e.g. 10% of fee retained until the project is complete?



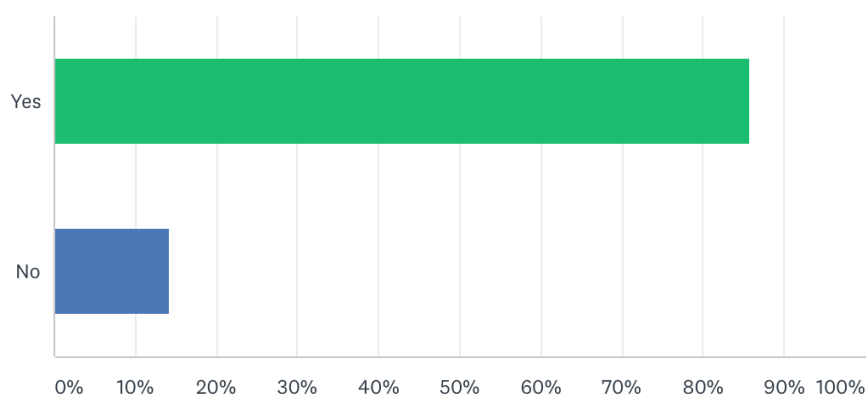
Almost two-thirds (65%) of respondents were willing to accept such a stipulation. On the fact of it, this could increase the financial risk to the contractor, thus, potentially, helping put them outside IR35, however, our professional adviser suggests that what matters is whether this constitutes 'real' financial risk. When considering using bonuses and relying on financial risk, it would be important to see the terms of the contract. Other factors that would help determine this issue are: could there be a financial penalty clause for not completing on time; can there be scope to renegotiate if delays are complex and outwith your control; does the contract cover matters such as defects, warranties, ownership of IP, confidentiality, indemnity insurance, etc? These matters have been tested many times before the courts over the years with mixed success for taxpayers.

It is also important to note that if all other factors in the contract and the actual arrangement pointed to employee status then financial risk on its own might not be enough for a contractual engagement to be adjudged to be outside the new legislation. Essentially, it is not as simple as saying that there is a terminal bonus for fulfilling a contract: you have to be able to prove that any bonus is linked to KPIs that demonstrate real financial risk.

In other words, this is by no means a clear-cut issue. Like many aspects of IR35, once you start to investigate it in more detail, it becomes more difficult to ascertain whether any one project/contract falls inside or outside the proposed legislation.

We have more on this subject under the equivalent question for employers (No 23 below).

Q.9 Would you consider working in teams with other contractors so that you can offer substitute staff to complete different phases of a project?

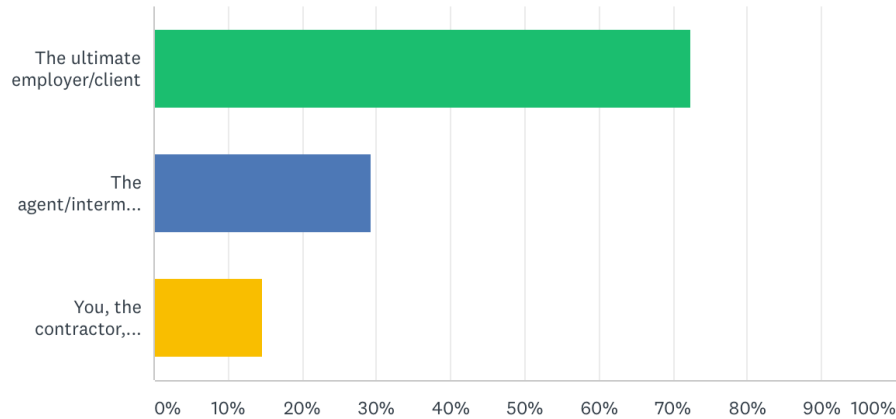


A clear and resounding majority (86%) said they would be prepared to do this. The advantages are obviously that doing so demonstrates clearly that there are substitutes who can be part of the contract, thus potentially increasing the likelihood that all participants are outside IR35.

We say “potentially increasing the likelihood that all participants are outside IR35,” but the reality is more complex. Leaving aside the commercial dangers of disputes between shareholders on the sharing of income, payments of expenses and a whole host of other matters, this will not work if the terms of the engagement are effectively still caught by the IR35 rules and the individual has a ‘material interest’ of more than 5% of the shares in the intermediary company. In other words, a team of at least 20 collaborators would need to be involved, with all that implies for the organisation and co-ordination of diaries of people who are used to being their own boss. Put simply, the question is, “will many contractors collaborate in this fashion?” and the answer is “probably not once they realise the complexities”!

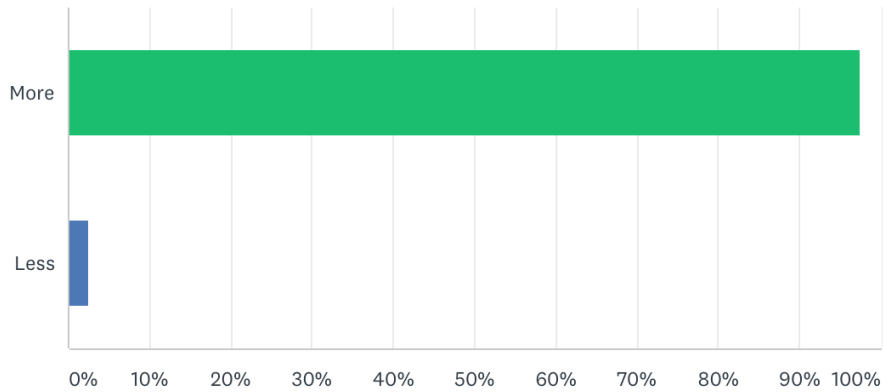
Effectively, what the tax experts tell us is that although a lot of the debate and comment on IR35 to date has attempted to make things simple and clear for contractors and employers, the reality is that, when you delve deeper, for HMRC there are a host of reasons why (and methods of proving that) any individual contractor will actually fall under the new IR35 regulations for the private sector.

Q.10 When the new regulations start to apply, who will be legally responsible for informing you, the contractor, that your work falls under the scope of IR35? Tick one box only.



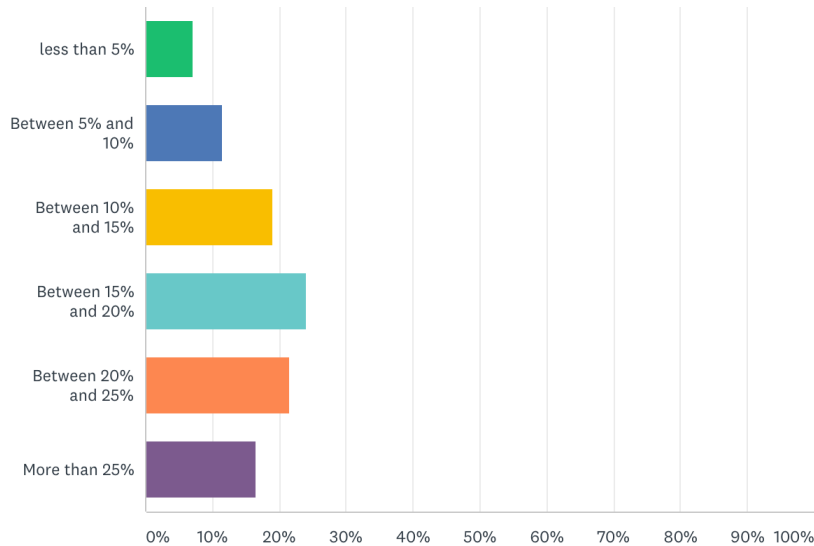
Although a substantial majority (72%) know the answer to this question (to wit, that it's the ultimate client who has this responsibility), the fact that 28% do not know the answer is a concern. Taken with Q.6 above, this answer suggests that the potential for a lot of confusion and wasted time – on the part of HMRC and employers – is beckoning after April 2020, unless more efforts are made to educate and inform contractors and employers before then.

Q.11 If you continue to work as a contractor, do you think you'll pay more or less tax once the new changes are implemented?



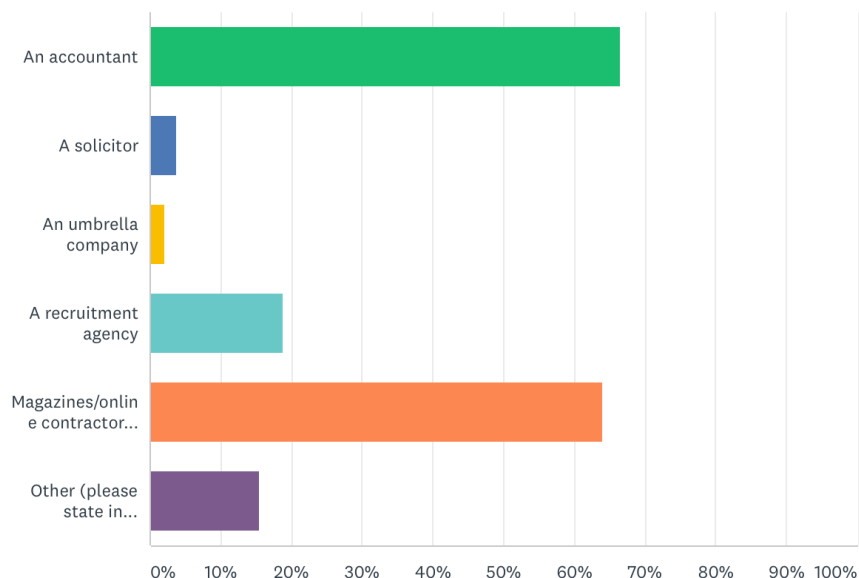
An overwhelming 97% of respondents think that IR35 is going to cost them money, via more tax. That's not an incentive for these individuals to keep on contracting, unless, of course, becoming a permanent employee is going to cost them more. While there will undoubtedly be some disruption, as noted in our comments under Q.7 above the market will decide. Some contractors will become perm employees; others will be able to command higher rates that partially offset what they might lose under IR35 being extended to their private sector employers. That said, an individual contractor's decision whether to stick or twist will be influenced by the actual amount by which their tax will increase – which is what our next question seeks to address.

Q.12 If you answered more to Q.11, how much more tax do you think you'll have to pay?



The biggest single group – some 24% of respondents – believe that their tax will increase by between 15% and 20%. The second biggest group (22%) think it will increase by even more, between 20% and 25%. Only a little more than one third (37%) think their tax will grow by 15% or less. Overall, that suggests most respondents expect to be clobbered for a lot more money by the government, with all that implies for their desire to continue working as a contractor over the next few years.

Q.13 Where do you currently go to find information/advice about IR35 (tick as many as apply)?



In some respects, the results here surprised us a little, while in others they help explain what we've seen so far.

While the accounting profession will be pleased to see that their expertise is being called upon by the IT contracting world, it was slightly concerning that magazines (principally online nowadays) were virtually as popular (64% of respondents used them) as accountants (67%). What we don't know here is the combination of sources that contractors are using. It might seem reasonable to surmise that those who took professional advice from an accountant would then be less likely to get the answers wrong in our 'true/false' statements. In our opinion there is no substitute for genuinely impartial and professional guidance on this subject, and that is most likely to come from an accountant – or indeed a lawyer - who specialises in this area.

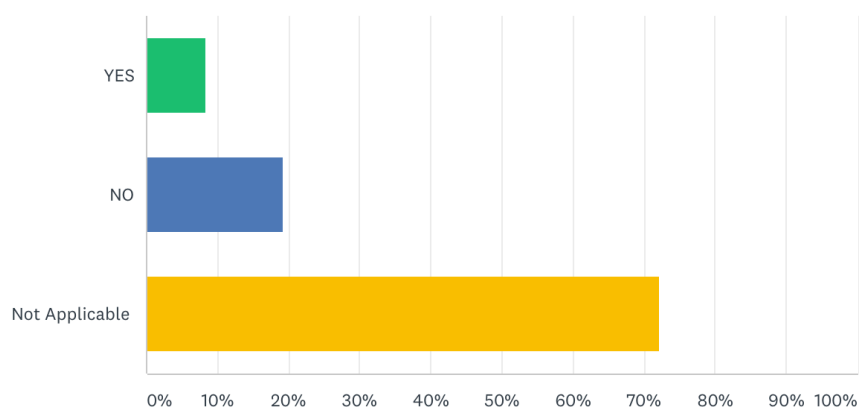
There were a lot of comments on this question. The full list is in the Appendix, but the sources of information that featured most heavily included QDOS, IPSE, LinkedIn, Dave Chaplin, Contractor Calculator and "Google."

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The next few questions are designed to find out information from those contractors who already have experience of IR35 in the public sector.

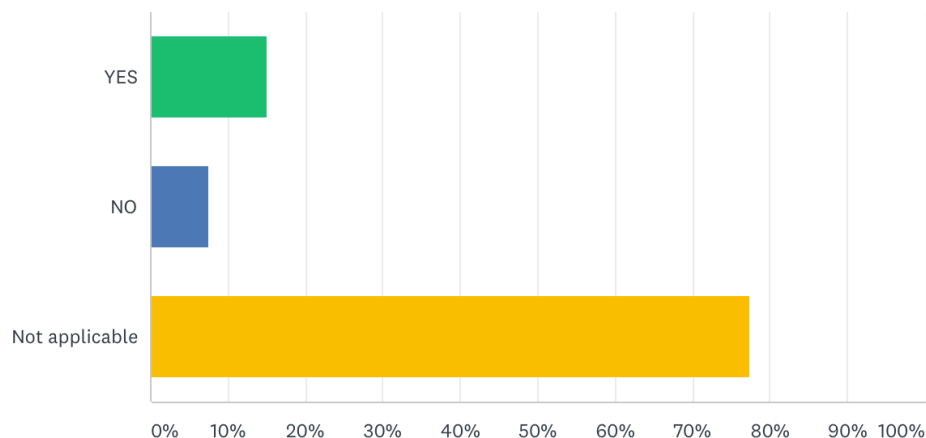
Q.14 If you work(ed) as a contractor in the public sector and have used the CEST tool, did you find it easy to use?

The CEST (Check Employment Status for Tax) has been a subject of some considerable criticism for its alleged shortcomings. It is only fair to say that HMRC deny this, but there does appear to be evidence that its operation has not been completely flawless. Consequently, this question set out to investigate what those respondents who have had experience of CEST in the public sector, think about it.



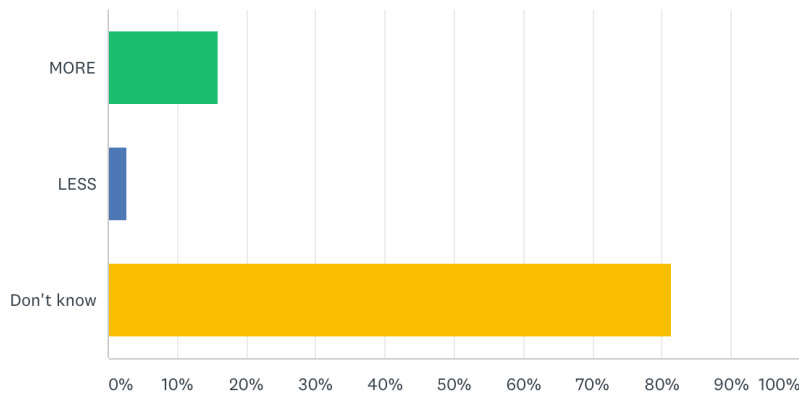
Based on our sample, while, unsurprisingly, the majority have had no experience of CEST, of those who have 70% said that it is not easy to use. As noted, this chimes with many other commentators and surveys (see, another example, [here](#)) and suggests that, despite their protestations to the contrary, HMRC still have some work to do to give contractors complete confidence in the tool.

Q.15 If you work(ed) as a contractor in the public sector and use/have used the CEST tool, did it show you were outside the scope of IR35?



Of those who had experience of the CEST tool, exactly two-thirds (67%) said that it had put them outside the scope of IR35. That doesn't surprise us because in a lot of cases contractors are doing work genuinely outside IR35 – and this will continue to be the case in the future. However, we have seen clients/employers starting to think more carefully about whether a particular job is or is not classified as off payroll working. For companies, the primary driver is what they need to fulfil their own contracts and goals, so they are becoming more savvy in the way they approach these matters.

Q.16 If you work as a contractor in the public sector within IR35, how much more in tax do you now pay?

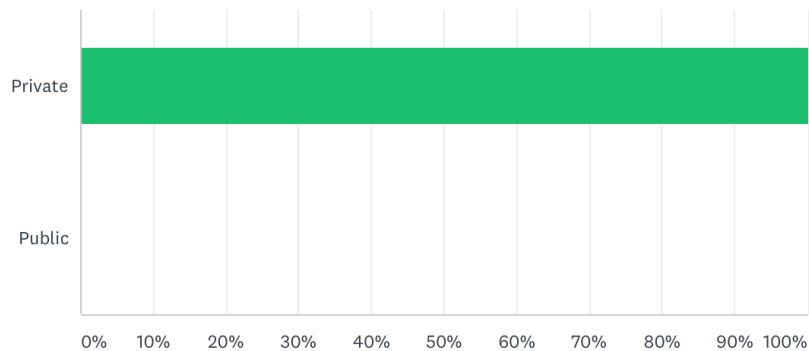


Of those who work within IR35 in the public sector, 85% say they pay more tax and only 15% pay less tax than they did previously. This is not a ringing endorsement for those contemplating what they might do when IR35 hits the private sector.

Employers/Clients Questions

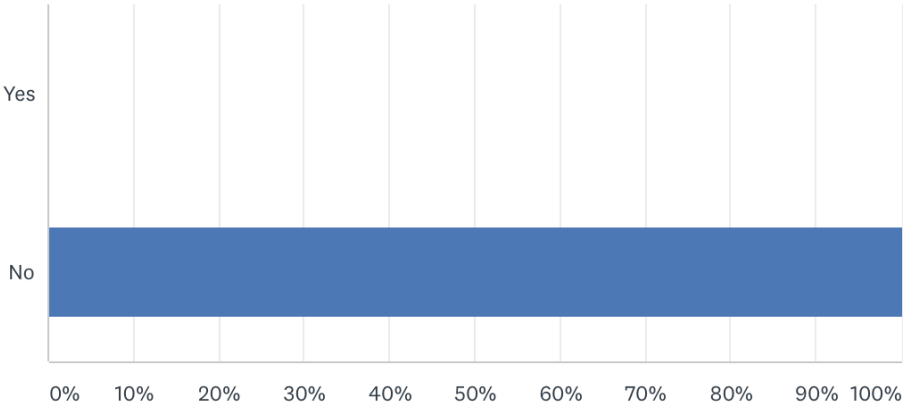
The next set of questions was specifically for employers/contractors. As far as possible, these mirror the questions for contractors so we can make comparisons between the two.

Q.17 Is your business/organisation in the private or public sector?



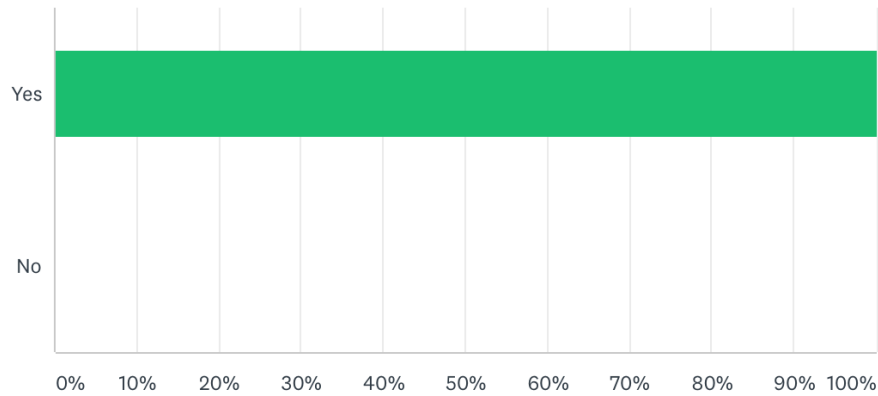
All our respondents were all in the private sector.

Q.18 Did you take part in the recent government consultation?



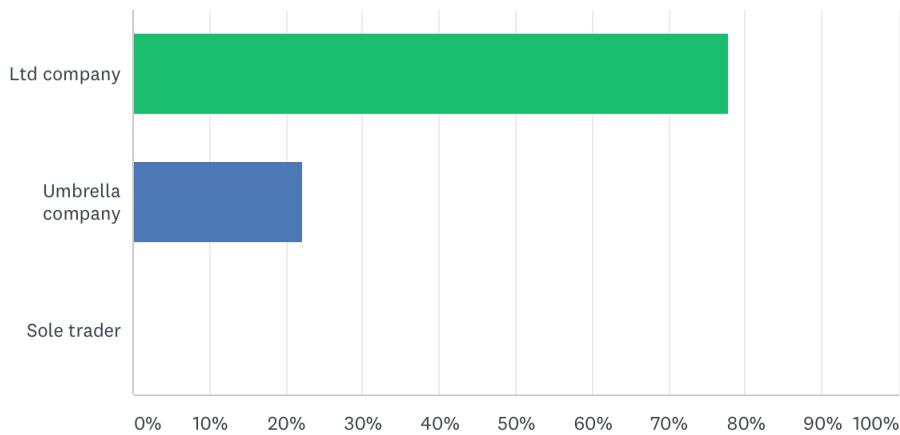
None of our respondents took part in the consultation.

Q.19 Do you think the government will implement a mirror image of the public sector off payroll legislation, irrespective of the comments it receives on the Consultation?



All pretty conclusive! None of the employers/clients who responded thinks that the government will do anything other than mirror the public sector payroll legislation (although note our comments under Q.4 about some changes that are being made).

Q.20 How do your contractors mostly deliver services at present?



Some 78% deliver their services through a Ltd company, 22% via an umbrella company and none as a sole trader. This partly mirrors the response from the contractors (Q.5 above), although for the contractors' response the percentage using a Ltd company was far higher at 96%. The vast majority of contractors deliver services via a Ltd company.

Q.21 Tick all the following statements that you believe are true. Leave blank/don't tick if you think they are false. Please answer straight away (no Googling!)

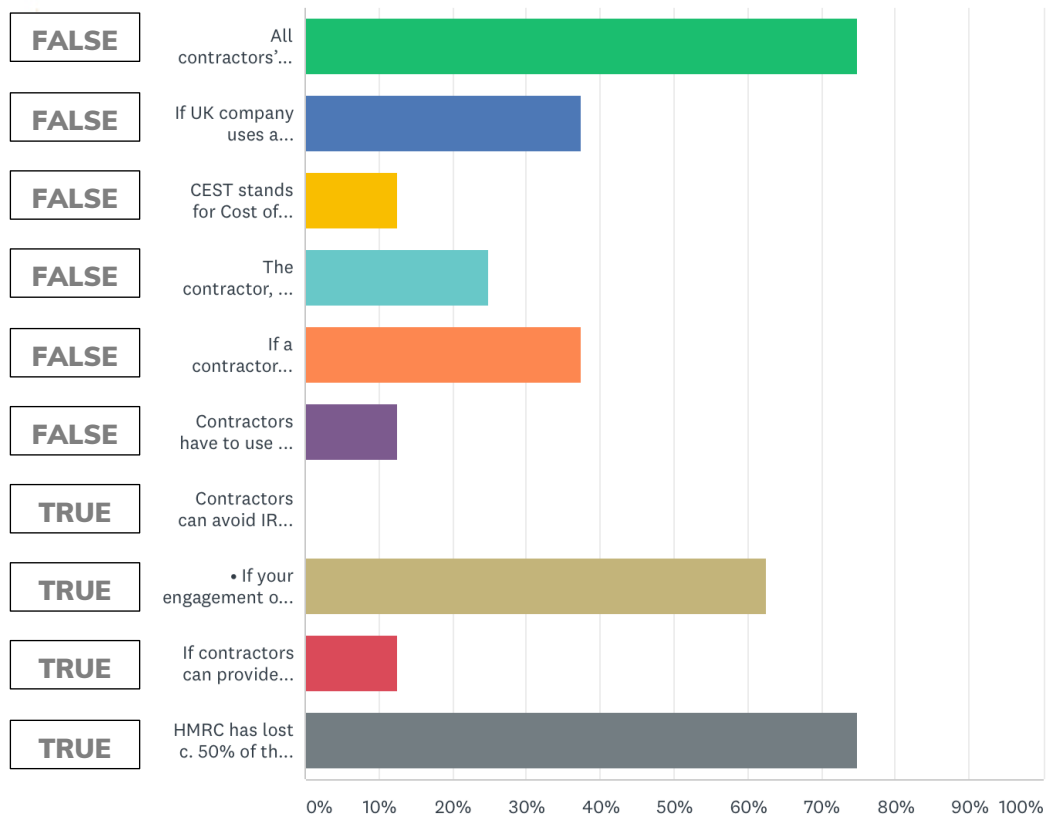
This is the equivalent of Q.6 above, with the statements altered so they make sense from an employer's perspective. As with Q.6, it is intended to find out whether employers/clients really do understand IR35 or if their 'understanding' is only superficial.

The statements offered were as follows (with the correct true/false answer given after each):

- All contractors' agents or umbrella companies, regardless of size, will fall under the remit of IR35 **(False)**
- If UK company uses a contractor who is not based in the UK, they still have to apply the IR35 regulations **(False)**
- CEST stands for Cost of Engaging (contractors) for Standard Tax **(False)**
- The contractor, not HMRC, determines whether he or she is inside the scope of IR35 **(False)**
- If, a contractor working for you is inside the scope of IR35, it is the contractor who is responsible for deducting PAYE **(False)**
- Contractors have to use an accountant to complete annual tax returns under IR35 **(False)**
- Contractors can avoid IR35 simply by becoming a sole trader rather than a limited company or working through an umbrella company or agency **(True)**
- If your engagement of a contractor is inside the scope of IR35, then your business, as the client, will be responsible for paying the contractor net of PAYE tax regardless of whether they operate through a limited company **(True)**
- If contractors can provide 'substitutes' on a contract they can avoid coming under the scope of IR35 **(True)**
- HMRC has lost c. 50% of the IR35 tax cases it has brought against contractors **(True)**

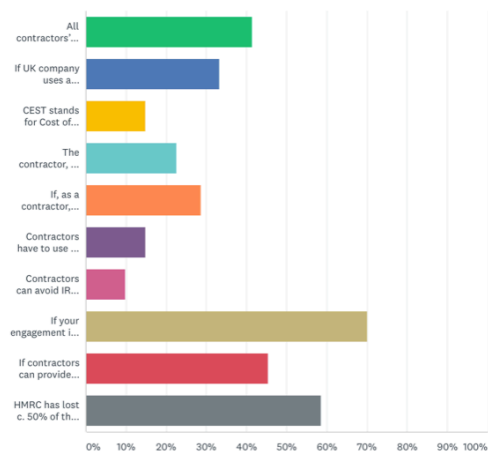
As with Q.6, if every employer was perfectly informed then everyone ticking the box for "true" would give us 100% for those statements that are true and 0% for those unticked boxes for the 'false' statements. The divergence from 100% or 0% gives us some indication of the state of knowledge of employers about some key aspects of IR35.

In general, as with the contractors, most respondents got the correct answer, other than for the statement about all contractors regardless of size falling under IR35 (it does not apply to small sized businesses) and the one about contractors avoiding IR35 by being a sole trader (in the latter case, all respondents were, strictly speaking, wrong).

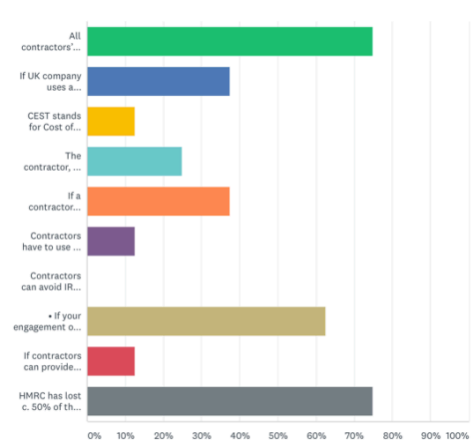


When we look at the difference between the contractors' response to this question and the employers' response (see graphic and table below), it's clear that, apart from one or two of the statements, there was general, albeit sometimes ill-informed, agreement.

Contractors



Employers



Answer Choices	Responses		
	Employers	Contractors	Difference
All contractors' agents or umbrella companies, regardless of size, will fall under the remit of IR35	75.00%	41.45%	34
If UK company uses a contractor who is not based in the UK they still have to apply the IR35 regulations	37.50%	33.33%	4
CEST stands for Cost of Engaging (contractors) for Standard Tax	12.50%	14.96%	2
The contractor, not HMRC, determines whether he or she is inside the scope of IR35	25.00%	22.65%	2
If a contractor working with you is inside the scope of IR35, it is the contractor who is responsible for deducting tax	37.50%	28.63%	9
Contractors have to use an accountant to complete annual tax returns under IR35	12.50%	14.96%	2
Contractors can avoid IR35 simply by becoming a sole trader rather than a limited company or working through an umbrella company or agency	0.00%	9.83%	10
• If your engagement of a contractor is inside the scope of IR35, then your business, as the client, will be responsible for paying the contractor net of PAYE tax regardless of whether you operate through a limited company.	62.50%	70.09%	8
If contractors can provide 'substitutes' on a contract they can avoid coming under the scope of IR35	12.50%	45.30%	33
HMRC has lost c. 50% of the IR35 tax cases it has brought against contractors	75.00%	58.55%	16

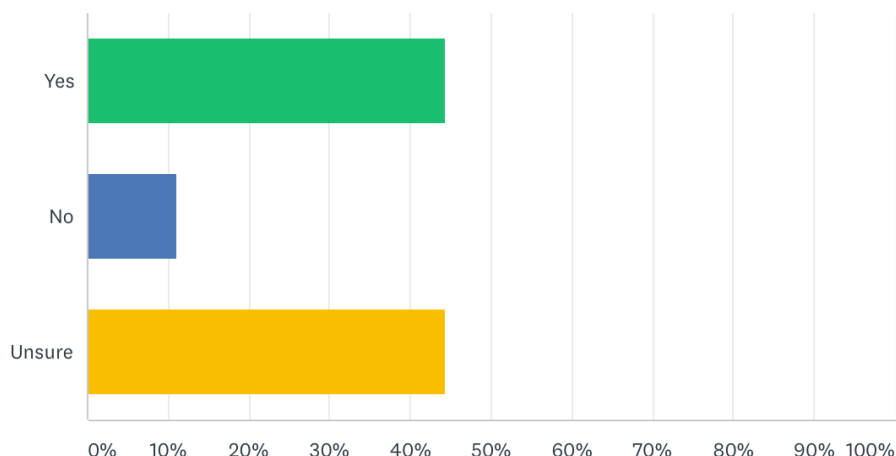
To illustrate that things are never as simple as they seem, we need to draw attention to the fact that care needs to be taken in evaluating the precise outcomes of all these statements. For example, in the case of non-resident workers, for an individual undertaking all of the duties outwith the UK then it is true that this exemption will apply but it is likely the occasions on which these particular circumstances apply are limited. The reality is that, irrespective of where the contractor is based, the application of IR35 will depend on where the employment duties are performed. Any duties undertaken by the worker in the UK will be caught under IR35.

Moreover, although the IR35 legislation does not apply to sole traders, ultimately, unless the contract is a 'genuine' one of self-employment, the outcome is likely to be the same if HMRC investigates the employment status of the individual and they are deemed to be an employee. PAYE and NIC will then be applied to the earnings and the employer held responsible for payment of these. Furthermore, if this issue is not picked up for several years, HMRC are likely to apply penalties for failing to operate PAYE so it could be a costly outcome for employers (it's worth noting that it was this concern that led to most end users insisting on contractors operating through limited companies [intermediaries] many years ago).

That said, the reality is that there are very few sole traders (as shown by the tiny number of our respondents who come into this category) and in general employers are not usually interested in employing them.

What is clear is that neither employers or contractors really understand IR35 completely. In our conversations with a tax expert, it became obvious that although a lot of issues are, on the face of it, straightforward, the nuances and complexities are such that it's very hard for any, non-expert contractor to be 100% sure of where they stand. And if that's the case, it does rather make us wonder how successful the implementation of Off Payroll working for the private sector is going to be and, more importantly for the individuals/firms concerned, just how many will unfortunately, and with no malicious intent, simply get the rules wrong – and then suffer at the hands of HMRC as a result?

Q.22 Do you expect more contractors to seek permanent employment with your (or another) company?

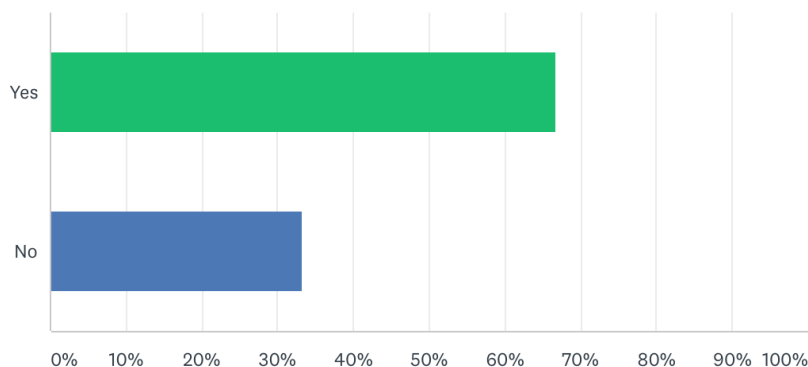


As with the corresponding question for contractors (Q.7), the majority opinion is that most contractors will head for the relative safety of a permanent role rather than stay in the temp world.

Some 44% of employers (31% of contractors) seem likely to make this change, while only 11% (27%) of contractors do not expect any change. Virtually the same percentages (44% of employers, 42% of contractors) are not sure what will happen/what they will do.

As we noted under Q.7, this may have implications for the supply of IT contractors in the years ahead. Depending on how this plays out, government(s) may have to consider whether to change the rules to allow more flexibility in what is one of, if not the, key sectors in the country's future. Immigration policy should have a part to play here. The government has to consider short-term changes but also have a long-term strategy for the skills required in the different areas of the business and the wider economy. At present, in IT we have a spike in terms of need and a short-term relaxation of some of the current restrictions would be very helpful.

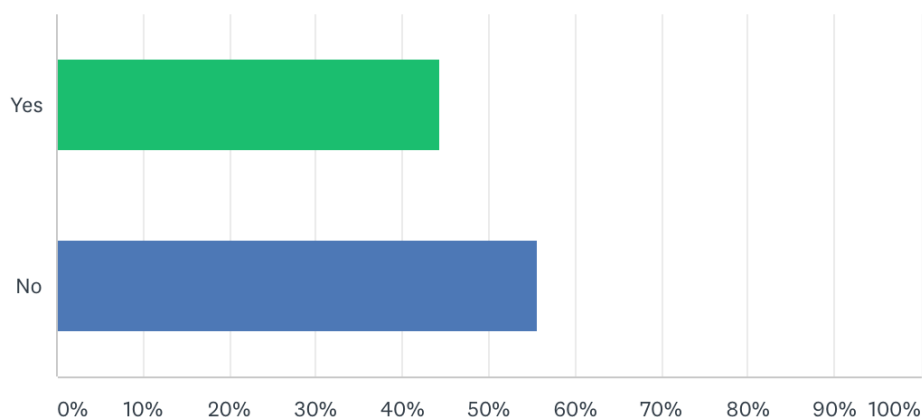
Q.23 Would you offer a contract that has a terminal bonus, e.g. 10% of fee retained until the project is complete?



There is marked enthusiasm amongst employers for this, with two-thirds saying they would offer a terminal bonus. This is virtually identical to the 65% of contractors who would accept such a contract (see Q.8 above). This convergence of opinion suggests this is one area where both parties should have no difficulty coming to agreement, however, as we noted in our comments after Q.8, the key question is what actually constitutes 'real' Financial Risk.

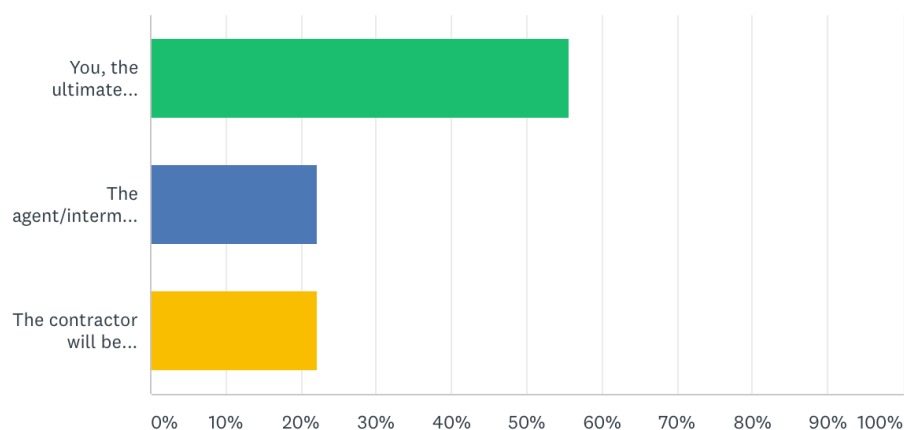
For example, in Qs. 8 and 23, the question a 10% retention is mooted. If that form of bonus was to be offered, there is a concern that it would not be regarded as real financial risk but would simply be an element of window dressing if it is effectively still linked to the overall value of the contract. However, if the project is anticipated to last the equivalent of say 60 days but the contractor is offered a range of bonuses if it is completed earlier then this may qualify. It may seem that there is not much difference between the two, but there is a clear incentive that if the project is completed earlier, most likely by the contractor choosing to working longer than his or her 'normal' days/hours, then the contractor benefits by his own good management of his time.

Q.24 Would you consider working with contractors who have joined together in teams so they can offer substitute staff to complete different phases of a project?



Interestingly, and unlike the previous question and its earlier equivalent, here the position of the employers is different from that of the contractors. A majority (86%) of the latter said they would consider this, whereas for the employers there is a (smaller) majority (56%) who would not. This may be a reflection of the different concerns/thought processes of each group; with employers less keen on the idea of a (perceived) lack of continuity and consistency on their projects. Contractors, on the other hand, do not see this as an issue, although we do wonder if this is simply because they see it as a way to preserve the status quo and retain their status outside IR35? If so, they need to note our comments under Q.9 above, where we make clear that matters are not quite as simple as telling the employer you will bring some mates in to cover for you for a day or two! Everything has to be contractually watertight and properly evidenced to withstand HMRC testing. The 3 Ps - Process, Payment procedures and the Permissions required are all vital if you want to stay on the right side of the law.

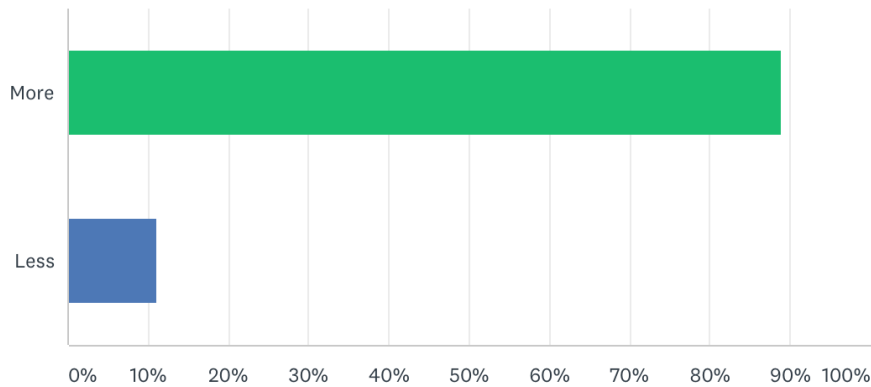
Q.25 When the new regulations start to apply, who will be legally responsible for informing the contractor, that his or her work falls under the scope of IR35? (Tick one box only)



Although the majority of employers here (56%) answered this correctly (it is the ultimate employer who has this responsibility), it is alarming to see that 44% (nearly half) got this wrong.

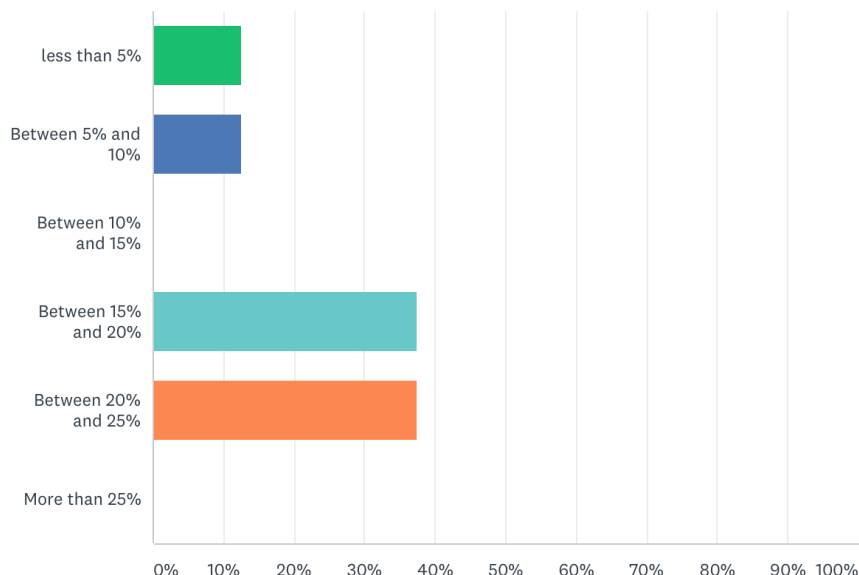
This is in marked contrast to the contractors, where a clear majority (72%) knew the correct answer. Once again, we see a lack of knowledge which may, over time, be reversed, but currently does not fill us with hope as we get closer to the April 2020 start-date for the implementation of IR35 into the private sector.

Q.26 Do you think IT contractors will pay more or less tax once the new changes are implemented?



A clear majority (89%) of employers think that IT contractors will pay more tax under the new law. This is slightly less than the 97% of contractors who think this, but the common view of both sides to future contracts is that this is going to hit IT contractors in their pocket.

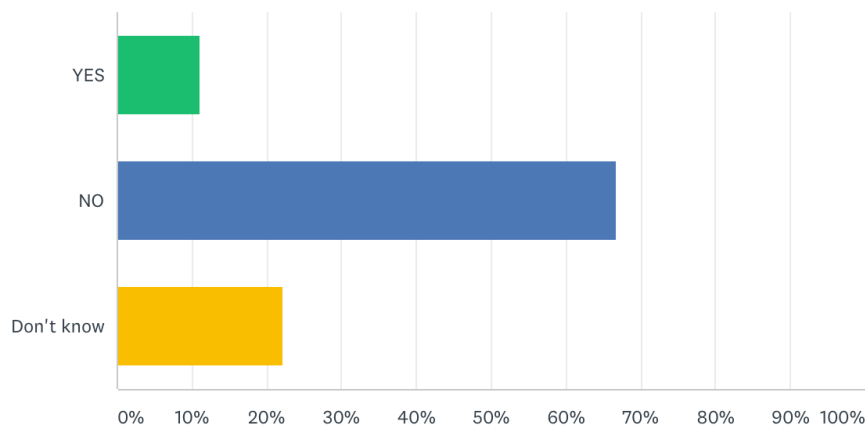
Q.27 If you answered "More" to Q.11, how much more tax do you think they'll have to pay?



As with the contractors, the majority opinion was that contractors will have to pay a hefty amount of additional tax. In fact, 75% of our employer respondents believe that this will be more than 15% and 25%. This contrasts with the 46% of contractors who thought it will be between 15% and 25%.

Clearly, the majority of both contractors and employers expect the former to have to pay more tax, post-IR35. What the implications of this will be for the private sector companies remains to be seen, but we can make a reasonable guess that at least some contractors will try to put up their rates to compensate. If this increases the cost of individual projects or causes companies to delay necessary work, then, even if HMRC is happy about its increased tax take, it might have a minor, yet still detrimental, impact on the IT sector as a whole, especially as a recession may well be coming down the line, with potentially dire effects on self-employed contractors and the wider gig economy. The extent to which organisations are prepared for this is something we sought to answer in our next question.

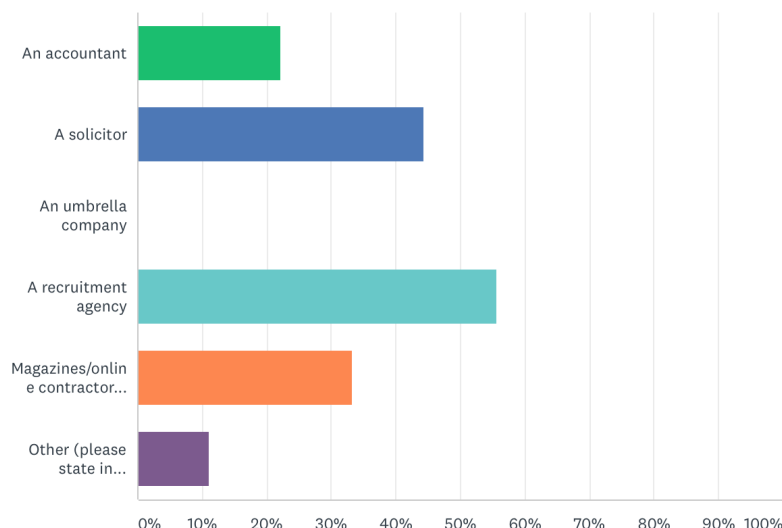
Q.28 Is your organisation preparing for an increase in contractor costs after IR35 is implemented?



This is an extremely important question. If, as we implied in our comments on the previous question, contractors seek to increase their rates to compensate for having to pay more tax, then how will the employers react? The answer, according to our respondents, is that they are not expecting to pay more!

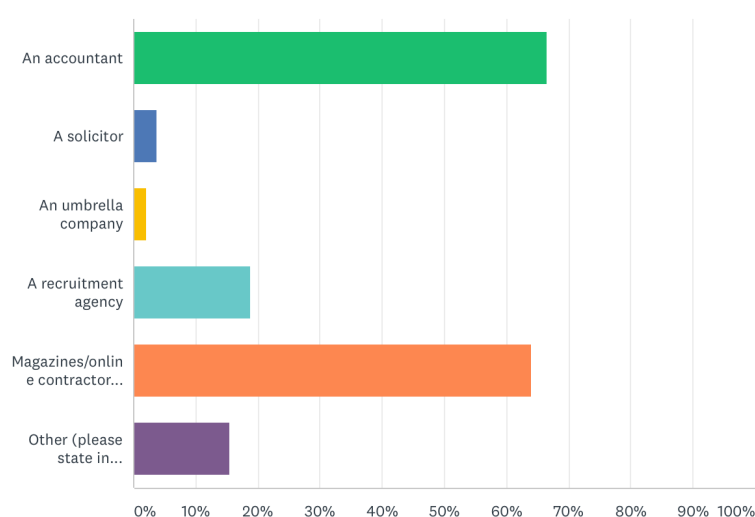
If this is correct, then the market will, as it inevitably does, decide what will happen. It may be that employers simply bite the bullet and increase their standing costs by taking on more permanent IT employees. If that puts pressure on the contractors then we might see a Mexican stand-off, with neither side really gaining. In truth, we simply don't know, although the public sector experience of IR35 shows that contractors are still wanted and needed. As noted in our response to Q.7, employers will pay for good contractors and this will, in time, trickle down to those others who stay in the temp/contracting market. Ultimately, as we've stressed throughout this report, the market will decide.

Q.29 Where do you currently go to find information/advice about IR35? (tick as many as apply)



When we compare the responses here with those for the equivalent question for contractors (Q.13 above – shown below), the difference between a company and its IT contractors is immediately apparent. Employers are far more likely to go to a solicitor or, perhaps unsurprisingly given the relationships between the two, a recruitment agency for information on IR35, whereas contractors overwhelmingly opted for an accountant and online magazines.

Response to Q.13 (for contractors)



As with our section for contractors, the final questions here looked to find out information from those employers who already have experience of IR35 in the public sector. However, given that this survey was unambiguously aimed at the private sector, it should not be too much of a surprise to discover that we did not get sufficient volume of response to these questions to allow us to draw any meaningful conclusions, so they have not been included.



Notes:

1. The survey was conducted thePotentMix, an extremely experienced recruitment, media and marketing company with an established track record in research work, on behalf of Be-IT Resourcing Ltd.
2. Thanks to Stewart McKinnon, CTA and Director of M&S Accountancy & Taxation Ltd, for his professional guidance with this report.

Appendix

COMMENTS ON INDIVIDUAL QUESTIONS

Q.4 Do you think the government will implement a mirror image of the public sector off payroll legislation, irrespective of the comments it receives on the Consultation? Please add any comments you have.

- Way of them getting more money, we pay corporate tax employers & employees NI.? This just is not fair
- HMRC have no regards for people or circumstances, they will steam-roller legislation through
- I believe (sic) the government sees all contractors as a soft target to increase revenue irrelevant of comments or anything else for that matter
- This is proving to be true.
- I can't see them making it more complex for themselves by introducing another framework
- HMRC will rely on businesses blanket assessing people to keep costs the same as they won't want to manage risk
- Why wouldn't they - the government needs to increase its revenue, and this initiative, will do that.
- The government is not listening to advice.
- Looking to pay for brexit bill
- They (sic) want more money on budget but do not realise that it will back fire on them as in other countries did like in Poland. People when told to pay more taxes because people in government wants more cash (mainly for social benefits and their political game), private sector reacts in a way that anyone would. Stop their business in that country and starts to open businesses in places where taxation is smaller. Because we live in EU and in free market private (sic) sector can have business wherever it want and work somewhere else . That IR35 if applicable will not bring more cash to government. It will slow down the economy and in long term will lower the country income.
- I suspect they are more interested in collecting taxes than making it work correctly. As it has worked for them in public a mirror image will be the cheapest option
- This has been decided by HMRC already
- Don't think they care about us and flexibly we bring to employers.
- They will do anything they like
- Was already a foregone conclusion. Government had no intention of listening to industry.
- It's plain foolish. Most contractors won't want to work inside IR35, most business won't take the risk of declaring them outside IR35, I think it may impact the productivity of the nation as a whole.
- I think the government wants to shutdown ltd company contractors and this will be the method they use. I imagine they see it as more transparent and that it will generate more tax income - their view perhaps but not mine
- Unfortunately, few of the decision makers have any understanding of the flexible workforce.
- The government has no interest in changing anything and will take what it sees as the easiest route to increase tax revenues. Contractors make for easy pickings.
- No consideration has been given to additional public sector costs with focus on additional revenue...
- Despite having rid ourselves of Gordon Brown, the fake Tories have done nothing to repeal IR35 which is deliberately designed to be vague as hell to ensure few can escape it
- HMRC falsely led HMG to believe that their implementation in the public sector was a success and that their CEST tool is accurate
- I've seen no signs anything will be changed
- Because they are lazy and incompetent
- HMRC have not shown themselves to be very thorough, adaptable or capable of feedback, either directly or by the courts. Perhaps they are delivering to their remit, but the government is otherwise distracted to guide HMRC further.
- They do not care if this damages business
- The current Tory leadership race and potentially a new chancellor does present a small opportunity for a change of policy but I don't expect it
- The current government had little interest in listening to anyone, including it's own experts so there is no reason to think they will change now.
- They are not interested in listening.
- They are neither listening, nor looking at the evidence
- The Government hasn't considered the impact of the changes it has had on the Public Sector so don't see them considering the impact on Private Sector.
- It appears that way from recent discussions in parliament and it's a votes winner with the general public
- Even the implementation was regarded as failure causing numerous issues which ultimately impacted the ability to deliver hmrc continue to push on without listening to feedback
- The agenda is to decimate contracting so the big consultancies can have free reign. They back the government and the ministers are in their pockets.
- There is a track record of not listening and fake consultation here
- I don't think the government really knows or cares about the impact. Its about being seen to be doing something about perceived cheating (rightly or wrongly)
- They are losing out on tax / income so will go ahead with this.

- The government don't seem to have taken into account the issues currently within the Public sector therefore I cannot see them taking individual comments on board.
- Believe that they will implement this.
- I believe that they will face too much resistance from the private sector to apply the changes if they even wished to. There would be too much of a vacuum to fill if all contractors left due to the application of the rules in this manner.
- The government has already decided the outcome it wants.
- Tory govt don't care about it listen to people as a rule
- This government won't listen to feedback unless it comes from their wealthy donors
- I do not believe the Government is listening to the concerns raised on IR35 in the private and also the public sectors.
- The government had already made up its mind to introduce the reform and method of implementation. The consultation is merely a tick-box exercise to follow the protocol
- The impact to skilled public sector staff could cripple the private sector.
- I don't believe there will be anymore sophistication in the application of the rules
- I thought ir35 already applied irrespective of sector
- Don't know
- Only have to look at the government's handling of Brexit to see they care not what the public thinks.
- The government did not listen from the 2017 rollout and if you look at the ignorance around the 2019 loan charge they will steamroller on with it no matter the cost
- I believe the government will implement this no matter what evidence is presented to them.

Q.13 Where do you currently go to find information/advice about IR35? (tick as many as apply)

- HMRC Website
- Google
- QDOS Consulting
- Qdos. IR35 campaign.
- qdos ipse
- LinkedIn
- Discussions with other contractors
- HMRC site - which is rubbish
- Google
- Online Consultancy
- Qdos
- LinkedIn mostly but I will admit to being fairly uneducated on the full picture
- IPSE
- Online forums, Contractor UK, Shout99 etc.
- QDOS and IPSE
- Contractor specialists such as David Chaplin
- LinkedIn contractor resources
- Contractouk
- Contractor Calutair, LCAG
- Websites
- Nowhere as yet as I've not experienced it
- A lot of contractor sites have been peddling stories to sell insurance products. Some articles of late have wholly been untrue
- LinkedIn
- IPSE Membership
- Hmrc
- contractor.co.uk forum
- Don't seek outside advice
- QDos
- QDOS and Google
- google
- LinkedIn
- Hmrc
- Dave Chaplin of contractor calculator
- online resources
- Social media, contractor calculator and other sites.
- Main source is Dave Chaplin on LinkedIn
- LinkedIn and contactor websites, email, twitter feeds
- IPSE