IR35 and the BBC settlement

Agenda

- Background
- Regulation 80 Determinations
- BBC proposed settlement
- Next steps
- Questions and contacts
Background
IR35 and the BBC settlement

Background

Pre-April 2017
- Personal Service Companies ("PSCs") responsible for determining whether IR35 legislation applies and operating PAYE (where appropriate)
- HMRC has opened numerous enquiries into employment status, including sole traders and PSCs
- Entire media industry affected (plus other industries) - not just a BBC issue
- Some presenters have open enquiries in respect of fees received from the BBC during this period

From 6 April 2017 onwards
- "Public Sector IR35" introduced
- HMRC’s "Check Employment Status for Tax" (CEST) on-line tool introduced
- Public Sector engagers must now assess employment status and apply PAYE/NIC to payments to PSCs
- From 6 April 2020 – these rules will also apply in the private sector i.e. to whoever you work for

Work undertaken to date
- BBC has been seeking to agree a settlement with HMRC to bring an end to all BBC status enquiries
- Huge and complex exercise, seeking to agree "self-employed" status for BBC roles wherever possible
- Some roles will inevitably fall to be treated as employed for tax purposes - the BBC is offering a settlement for these roles
- Also working in parallel with the entire media industry to agree new guidance on status for tax purposes for media industry roles
Regulation 80 determinations
IR35 and the BBC settlement
Regulation 80 overview

**What is a Regulation 80 determination (a “Reg 80”)?**

- Where HMRC wishes to collect tax they think is due, they have to issue an assessment (aka “determination”)
- For tax HMRC thinks is due under IR35, the Statutory Regulation that allows this is “Reg 80”
- Where HMRC doesn’t know if tax is due or not, or doesn’t know how much is due, the assessments are known as “protective assessments”
- The assessment doesn’t have to be accurate. Numbers can be based on HMRC’s best estimate

**Given the BBC settlement, why did HMRC issue Reg 80s?**

- It was hoped to have agreed the BBC settlement by 5 April 2019
- However, it is extremely complicated
- BBC settlement discussions are ongoing and hope to be completed soon
- The assessment just protects HMRC’s position for 2014/15. It doesn’t mean IR35 applies to you or any tax is due
- Options for dealing with the assessment are discussed later

**Sources for figures on HMRC Reg 80s**

- Your PSC accounts
- Your PSC tax return
- An annual return businesses are required to submit to HMRC, listing all payments made gross to PSCs – a “Schedule 23 Return”
IR35 and the BBC settlement

Regulation 80 example

This should relate to the 2014/15 tax year only

BBC fees HMRC believes were paid to your PSC in that year

Date to be used to determine last date that notice can be appealed

The tax HMRC thinks might be due on those BBC fees.

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**Notice of Regulation 80 Determination**

SAFE reference number

Employee's PAYE reference

Amount determined

Cassflow reference number

Tax determined under Regulation 80

Income Tax (Pay As You Earn) Regulations 2003

Accounts Office reference

Year

Date of issue

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**About this determination**

This determination shows the amount of tax we consider is due from you as an employer. It has been made to the best of our judgement. The notice is addressed to you as required by law, but if you have a professional advisor or agent, let him or her see it immediately.

**Statement of tax due**

- Name and National Insurance number of employee - enter 'E' in right-hand space if a Director
- Pay for which tax remains unpaid (£)
- Total pay (£)
- PAYE code
- Tax payable at Month 12 of the Tax Tables (£)
- Tax paid or certified (£)
- Tax now due (£)

Individual A

<p>| | | | | | |</p>
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>50,000</td>
<td>50,000</td>
<td>1000L</td>
<td>6,709</td>
<td>6,709</td>
</tr>
</tbody>
</table>

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This should relate to the 2014/15 tax year only

Date to be used to determine last date that notice can be appealed

BBC fees HMRC believes were paid to your PSC in that year

The tax HMRC thinks might be due on those BBC fees.
IR35 and the BBC settlement
Options for dealing with Reg 80 determinations

**Appeal directly to HMRC and apply to postpone the tax showing on the determination**

- Follow the instructions on your assessment
- **Appeal and postpone** (If you just appeal, you still have to pay)
- Appeal in writing **no later than 30 days** from the date of your assessment
- You must **state your grounds of appeal**
- If in doubt, seek personal tax advice from your accountant

**OR**

**Appeal directly to HMRC but do not postpone the tax**

- Follow the instructions on your assessment
- Appeal in writing **no later than 30 days** from the date of your assessment
- You must **state your grounds of appeal**
- **You will need to pay the tax on the assessment** as a payment on account
- This will stop interest accruing from the point of payment
- You may be able to recover some or all of the tax paid when your tax position for 2014/15 is finally agreed with HMRC
- If in doubt, seek personal tax advice from your accountant

**OR**

**Accept the assessment and settle the liability personally**

- You should only accept and pay your Reg 80 if you are absolutely sure that:
  1. You are subject to IR35 in respect of your BBC income; and
  2. The amounts quoted are correct
IR35 and the BBC settlement
Why is it so important to appeal if you do not think the Reg 80 is correct?

If you do not appeal the assessment, the assessed income tax will become final and payable, without any further enquiries being made by HMRC.

This means the assessment is treated as being correct, even if it might not be.

Unless you are sure you are subject to IR35 and the amounts are correct, we recommend you take advice with a view to appealing it by the deadline.

The BBC is still in discussions with HMRC on a proposed settlement.

HMRC may agree a particular role is self-employed.

If this applies to your role, and you have settled independently, you may later find you have done so unnecessarily.

If you appeal and the BBC agrees a settlement with HMRC, you will be able to ask HMRC to have your Reg 80 determination for 2014/15 dealt with under the terms of that settlement.
IR35 and the BBC settlement
If you appeal, you must state your grounds

You should only appeal if you have grounds to do so. Below are some examples.

01. If you do not consider that IR35 applies to you (because you consider you were self-employed in your role) you should state this.

02. If you believe that HMRC has issued the Reg 80 without any new information having come to light since you and your PSC submitted accounts/tax returns covering 2014/15, the Reg 80, you should state this. The Reg 80 may be invalid.

03. If any of the figures appear estimated, you should state that the Reg 80 appears to be a protective assessment and is only estimated at this stage.

04. You may state that you are aware of the BBC’s proposed settlement and wish for your affairs to be dealt with as part of this, if and when that settlement is agreed.

05. If you do not agree with the amounts/level of BBC fees in the assessment, you should state the income assessed is incorrect.

06. If you are in radio and believe you meet the conditions of the Radio Industry Guidelines, you should state this.

- Include all grounds of appeal that apply to you
- Seek independent tax advice if in doubt
- Appealing without good grounds can lead to penalties
- There may be other grounds of appeal that apply to you. Please discuss these with your accountant
IR35 and the BBC settlement
Offsetting tax you may have already paid

If your PSC has paid Corporation Tax on the fees received from the BBC in 2014/15

If you have paid Dividend Tax on dividends received from your PSC in 2014/15

You may be able to have some or all of these taxes offset against any IR35 PAYE/NIC liability

If you have chosen to settle your assessment yourself, you will need to make your own separate claims for offset of any Corporation Tax and Dividend Tax you have already paid

If you request that your assessment is dealt with through the BBC settlement process, HMRC has already agreed that it will process the offsets as part of the central process. You will just need to sign a letter of authority in order to do so
Proposed BBC settlement
IR35 and the BBC settlement
BBC’s proposed settlement: overview

The BBC is seeking to agree a settlement process with HMRC

Covers the four tax years from 2014/15 to 2017/18 inclusive

If that process is agreed, you will have the option for your assessment to be dealt with through the BBC settlement, rather than having to deal with it yourself

The BBC settlement will aim to determine whether or not IR35 applies for each BBC role, on a without prejudice basis i.e. for the purposes of the BBC settlement only, not for any other purpose

If IR35 applies, the BBC will contribute an amount towards the IR35 liability arising

The amount will be determined based on a set of principles that will apply fairly and consistently to all presenters
IR35 and the BBC settlement
Who will be assessed for other tax years?

<table>
<thead>
<tr>
<th>Tax year</th>
<th>Engaged via PSCs – Who is Liable?</th>
<th>Sole traders</th>
</tr>
</thead>
</table>
| 2014/15  | PSC  
  Tax assessed by HMRC via Reg 80 as tax year now “time barred” | BBC |
| 2015/16  | PSC  
  Tax not yet assessed by HMRC as the tax years are not “time barred” | BBC |
| 2016/17  | PSC  
  Liability of the BBC as directly engaged individuals | BBC |
| 2017/18  | BBC  
  Liability of the BBC under “Public Sector IR35” rules | BBC |
IR35 and the BBC settlement
Principles of the BBC’s proposed settlement

<table>
<thead>
<tr>
<th>BBC principle applied to ensure consistency</th>
<th>Alternative position HMRC will apply, based on facts and circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>All BBC Fees earned in a tax year are paid out as dividends in the same tax year (after paying Corporation Tax)</td>
<td>• You may not have paid out any dividends, or you may have paid them out in a different tax year</td>
</tr>
<tr>
<td>All BBC Fees paid to the PSC have been paid out to the presenter</td>
<td>• You may have paid amounts to a spouse or another individual involved with the PSC</td>
</tr>
<tr>
<td>You were entitled to a personal allowance (abated for earnings over £100,000)</td>
<td>• HMRC may apply a different PAYE tax code to the one used in the BBC calculations</td>
</tr>
</tbody>
</table>
IR35 and the BBC settlement

BBC’s proposed settlement: numerical example (gross fees £50k)

<table>
<thead>
<tr>
<th>IR35 calculation</th>
<th>(£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start with your Fees from the BBC in 2014/15</td>
<td>50,000</td>
</tr>
<tr>
<td>Deduct 5% expenses (this was available in 2014/15 – but ceased in 2017/18)</td>
<td>(2,500)</td>
</tr>
<tr>
<td>Deduct Employer NIC</td>
<td>(4,795)</td>
</tr>
<tr>
<td><strong>Balance = IR35 “Deemed Employment Payment”</strong></td>
<td><strong>42,705</strong></td>
</tr>
<tr>
<td>Income tax due under PAYE (on the Deemed Employment Payment). Assume 1000L tax code</td>
<td>(6,709)</td>
</tr>
<tr>
<td>Employee NIC (on the Deemed Employment Payment)</td>
<td>(4,086)</td>
</tr>
<tr>
<td>Net pay if IR35 had been applied in 2014/15</td>
<td>31,910</td>
</tr>
<tr>
<td><strong>Total tax and NIC due (4,795 + 6,709 + 4,086)</strong></td>
<td><strong>15,590 (A)</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Calculation of Corporation Tax and Dividend Tax without IR35</th>
<th>(£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start with your Fees from the BBC in 2014/15</td>
<td>50,000</td>
</tr>
<tr>
<td>Corporation Tax on fees</td>
<td>(10,500)</td>
</tr>
<tr>
<td><strong>Net profit paid as dividend</strong></td>
<td><strong>39,500</strong></td>
</tr>
<tr>
<td>Income tax on dividends (after tax credit)</td>
<td>Nil</td>
</tr>
<tr>
<td>Net income</td>
<td>39,500</td>
</tr>
<tr>
<td><strong>Total Corporation Tax and Dividend Tax due</strong></td>
<td><strong>10,500 (B)</strong></td>
</tr>
<tr>
<td>Difference (A) – (B) = BBC settlement Amount (before interest and gross up)</td>
<td>5,090</td>
</tr>
</tbody>
</table>

HMRC will check the Corporation Tax and Dividend Tax you have actually paid on your Self Assessment Return and your PSC Tax Return

Say HMRC finds that your PSC has only paid £8,500 Corporation Tax instead of £10,500 as expected

The difference HMRC will require for settlement will then be £15,590 - £8,500 = £7,090

The BBC will pay £5,090
You will need to pay the balance of £2,000
IR35 and the BBC settlement

BBC’s proposed settlement: numerical example (gross fees £100k)

### IR35 calculation (£)

<table>
<thead>
<tr>
<th>Step</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start with your Fees from the BBC in 2014/15</td>
<td>100,000</td>
</tr>
<tr>
<td>Deduct 5% expenses (this was available in 2014/15 – but ceased in 2017/18)</td>
<td>(5,000)</td>
</tr>
<tr>
<td>Deduct Employer NIC</td>
<td>(10,555)</td>
</tr>
<tr>
<td><strong>Balance = IR35 “Deemed Employment Payment”</strong></td>
<td><strong>84,455</strong></td>
</tr>
<tr>
<td>Income tax due under PAYE (on the Deemed Employment Payment). Assume 1000L tax code</td>
<td>(23,405)</td>
</tr>
<tr>
<td>Employee NIC (on the Deemed Employment Payment)</td>
<td>(4,921)</td>
</tr>
<tr>
<td>Net pay if IR35 had been applied in 2014/15</td>
<td>61,119</td>
</tr>
</tbody>
</table>

**Total tax and NIC due (10,555 + 23,405 + 4,921)**: 38,881 (A)

### Calculation of Corporation Tax and Dividend Tax without IR35

<table>
<thead>
<tr>
<th>Step</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start with your Fees from the BBC in 2014/15</td>
<td>100,000</td>
</tr>
<tr>
<td>Corporation Tax on fees</td>
<td>(21,000)</td>
</tr>
<tr>
<td><strong>Net profit paid as dividend</strong></td>
<td><strong>79,000</strong></td>
</tr>
<tr>
<td>Income tax on dividends (after tax credit)</td>
<td>(9,331)</td>
</tr>
<tr>
<td>Net income</td>
<td>69,669</td>
</tr>
</tbody>
</table>

**Total Corporation Tax and Dividend Tax due**: 30,331 (B)

**Difference (A) – (B) = BBC settlement Amount (before interest and gross up)**: 8,550

HMRC will check the Corporation Tax and Dividend Tax you have actually paid on your Self Assessment Return and your PSC Tax Return.

Say HMRC finds that you have only taken some (not all) Fees as dividends in 2014/15 e.g. your dividend tax paid was only £5,000 instead of £9,331 expected.

The difference HMRC will require for settlement will then be £38,881 - £21,000 - £5,000 = £12,881.

The BBC will pay £8,550.

You will need to pay the balance of £4,331.
IR35 and the BBC settlement

BBC’s proposed settlement: numerical example (LLP rather than PSC)

**IR35 calculation**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start with your Fees from the BBC in 2014/15</td>
<td>100,000</td>
</tr>
<tr>
<td>Deduct 5% expenses (this was available in 2014/15 – but ceased in 2017/18)</td>
<td>(5,000)</td>
</tr>
<tr>
<td>Deduct Employer NIC</td>
<td>(10,555)</td>
</tr>
<tr>
<td><strong>Balance = IR35 “Deemed Employment Payment”</strong></td>
<td><strong>84,455</strong></td>
</tr>
<tr>
<td>Income tax due under PAYE (on the Deemed Employment Payment). Assume 1000L tax code</td>
<td>(23,405)</td>
</tr>
<tr>
<td>Employee NIC (on the Deemed Employment Payment)</td>
<td>(4,921)</td>
</tr>
<tr>
<td>Net pay if IR35 had been applied in 2014/15</td>
<td>61,119</td>
</tr>
<tr>
<td><strong>Total tax and NIC due (10,555 + 23,405 + 4,921)</strong></td>
<td><strong>38,881 (A)</strong></td>
</tr>
</tbody>
</table>

**Calculation of Income Tax and Class 4 NIC without IR35**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start with your Fees from the BBC in 2014/15</td>
<td>100,000</td>
</tr>
<tr>
<td>Income Tax due. Assume 1000L tax code</td>
<td>(29,627)</td>
</tr>
<tr>
<td>Class 2 and 4 NIC due</td>
<td>(4,358)</td>
</tr>
<tr>
<td>Net income</td>
<td>36,388</td>
</tr>
<tr>
<td><strong>Total Income Tax and Class 2 and 4 NIC due</strong></td>
<td><strong>33,984 (B)</strong></td>
</tr>
</tbody>
</table>

The difference HMRC will require for settlement will then be £38,881 - £30,000 = £8,881

The BBC will pay £4,897

You will need to pay the balance of £3,984
Next steps
IR35 and the BBC settlement
What are my next steps?

If you want to settle your Reg 80 directly with HMRC
• Take advice from your accountant first to ensure you don’t regret this later on

If you are unsure whether to appeal the assessment
• Contact your accountant/adviser

If you want to appeal and postpone the assessment
• Appeal in writing to HMRC within 30 days of the date on your assessment (and request postponement of the tax charged by the assessment), stating all the grounds of appeal that apply in your circumstances

NB. Do not include any grounds that do not apply otherwise this could lead to penalties

If you choose to appeal your assessment, you then have two choices:
IR35 and the BBC settlement
What are my next steps?

If you choose to appeal your assessment, you then have two choices:

1. Deal with the appeal yourself (or with your adviser)
   You will have to make the claims for any Corporation Tax and Dividend Tax paid to be offset against any IR35 PAYE/NIC liability. The BBC cannot do this for you.
   If you do not do this, you may pay considerably more tax than you need to.
   HMRC may ask you to pay the PAYE/NIC first, and then have the Corporation Tax and Dividend Tax repaid.

2. Request that your affairs are dealt with under the BBC settlement once detailed terms are agreed with HMRC
   You will still need to appeal your Reg 80 assessment.
   To join the central BBC settlement, HMRC will ask you to sign a letter authorising your appeal to be dealt with in this way.
   And authorising any CT and DT paid to be offset against any IR35 PAYE/NIC liability, reducing it to the net amount after offset.
IR35 and the BBC settlement

What are the next steps for the BBC settlement?

1. **BBC settlement discussions ongoing**
   There are a number of technical/practical points still left to agree with HMRC, for example, the employment status of each category of presenter included in the BBC settlement.

2. **Submission of BBC settlement**
   BBC is expected to submit its latest proposal to HMRC’s Governance Board in June.

3. **BBC-Deloitte helpline and webinar**
   Being run in the meantime, to support presenters with any questions they may have on Reg 80s.

4. **HMRC acceptance of BBC settlement**
   The BBC will confirm the amount it will pay towards any IR35 liability under BBC principles. HMRC will confirm the total they consider is due. You will need to pay the difference. Full instructions will be published on how to take part in the BBC settlement.

5. **Individual decision to partake in BBC settlement**
   Once you have considered the amounts at point 4, you will have the option to decide whether you want to take part in the BBC settlement, or whether you would like to deal with your 2014/15 assessment (and other tax years) separately.
Questions and contacts
IR35 and the BBC settlement
Contact details

If you would like to arrange a call to discuss your Reg 80 determination or anything else covered in this webinar in more detail, please request this by emailing:

**bbcpresentersandcontributors@bbc.co.uk**

You can also contact this mailbox if you would like to discuss your personal circumstances with the BBC to inform your decision around whether to appeal your Reg 80