



## Make your views count

We need as many contractors as possible to complete the latest Contractors' Opinion Poll to ensure we have enough real data to influence and support the arguments for change.

It takes two minutes - don't miss the opportunity!

## Have your say in defining a Professional Contractor

Give us your thoughts and feedback on defining a Professional Contractor.

We do not collect any personally identifiable data on the feedback form.

## IR35 Review Needs To Go Further

**This is arguably the biggest opportunity the contracting sector has had to shape its future let's not miss it!**

Since the first pre election promise of an IR35 review, contractor news sites have been filled with articles and stories all shouting for IR35 to be reviewed and why IR35 does not work. What every story fails to address is what form the review should take, what should be included within the review and what the world should look like following the review.

The objective and outcome of the review must be to achieve legislation that works for all sectors of the market. It must be clear and unambiguous. This is why we have never supported an objective that is simply to abolish IR35.

Our fear has always been that an objective to abolish IR35 could be achieved but leave the market, and contractors, in a significantly worse position.

The Government has been clear from the start that any review needs to produce a revenue neutral outcome; abolishing IR35 fails to deliver this revenue neutral position, unless it is replaced with something new, untried and untested. As we have stated before we must be careful what we wish for!

If, as a result of the review and consultation, it is felt that the best way forward includes abolishing IR35 then this is fine; it's just that we

believe this should not be the starting objective.

If organisations are not disclosing their preferred approach and the outcome they seek, how can contractors views be fairly represented?

Professional Passport has been clear on its position; disclosing its agenda in January of this year.

The fact that the Government has confirmed its commitment to a review suggests that they have already accepted that IR35 is not working and therefore we would suggest that just replaying the same old arguments of the last 10 years could miss the point.

We have always believed that taking a positive and proactive approach to engaging with Government allows the best opportunity to influence a positive outcome.

This approach has already delivered results for our members with Professional Passport becoming the first organisation to agree a procedure with HMRC to confirm the IR35 status of assignments directly with them, providing our members with a level of certainty they told us they wanted and never before achieved.

We have adopted the same positive proactive approach on this issue.

Our belief is that any review of the Temporary Workers Market needs to go beyond IR35. In the last ten years this sector has experienced excessively high levels of new legislation and regulation by many Government Departments, not just HMRC.

Much of the regulation and legislation presents conflicts within the market and clearly demonstrates a lack of joined up thinking across many Government Departments.

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## Support our Work

### Become a member of Professional Passport

Membership starts at just £25.00 (+VAT) per annum and provides a wide range of benefits.

Membership fees support our work with government and future developments of our services and website.

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We believe that with IR35 principles now enshrined in much of the legislation, any review carried out will need to go beyond just IR35.

Prior to the election we met and wrote to over 140 MP's, policy advisers and senior civil servants to press this point.

We have produced a 20 page detailed report on a review of the Temporary Workers Market incorporating a review of IR35. This detailed report was sent to a wide range of new Government Ministers in an attempt to influence a wider review of the regulation and legislation aimed at the Temporary Workers Market. This now seems to have some traction and we are hopeful that a wider review may result.

David Gauke MP and Exchequer Secretary to the Treasury has just released a new HM Treasury document entitled Tax Making Policy: a new approach. **[Download a copy of the document here.]**

The document sets out the Government's approach to this highly sensitive area.

He states *"The issue of tax policy making is high on the agenda of tax professional bodies and many business representatives. There have been many reports written by well-respected experts in this field, but with little comment from government to date. As a Government, we share the objectives of business and the tax profession to have a more deliberative process in making tax law, with legislation of the highest quality. I hope that this discussion document will provide a platform for the Government to engage with interested parties over the summer, to help shape a new approach to tax policy making."*

Professional Passport wrote to Mr Gauke MP in May following his appointment as Exchequer Secretary to the Treasury. We included our 20 page detailed report on a review of The Temporary Workers Market incorporating IR35.

His response to our letter and report was *"I wanted to thank you for taking the time to send to me your report on IR35 and the wider aspects of the issues currently faced in the temporary labour market, which also sets out your suggested alternative approaches."*

He went on to say *"It is always helpful to hear the views of those organisations, such as yours, which have significant relevant experience."*

Damian Green MP and Minister for Immigration wrote *"Many thanks for these valuable thoughts."*

The Treasury document outlines consultations that the Government intends to carry out through the summer and to assist our input in to these we need to understand the views of contractors.

## How can contractors become involved?

One of the greatest issues faced in attempting to influence change in the contracting market is the lack of available data to support arguments for change. This can often result in a perception that arguments are based on no more than emotion.

As we are going to be part of the consultation process it is essential we obtain the views of as many contractors as possible.

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## Have your say in defining a Professional Contractor

Give us your thoughts and feedback on defining a Professional Contractor.

We do not collect any personally identifiable data on the feedback form.

## Got an issue and need to talk to a real person?

Our members helpline provides one to one support covering a wide range of issues. This service is available to our Professional Members

## Umbrella or Limited?

Our assessment reports will help you decide on the most appropriate route for you; providing a bespoke report based on your circumstances.

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There are two key areas we are seeking your input on:

### Contractors' Opinion Poll

We are running our second Contractors' Opinion Poll.

This seeks to build on the data provided through our first poll. It is essential that we obtain as many responses as possible so the data becomes meaningful and a representative sample.

If you have not yet completed the Poll please take just two minutes to express your views.

**You can access the Poll through this link.**

You can also encourage any other contractors you know or work with to complete the poll; the more responses we obtain the more weight the data results hold.

**Send all contractors you know a copy of this newsletter and encourage them to become involved.**

Everyone's opinion counts and it does make a difference as we have already seen from the first Contractors' Opinion Poll.

### Defining a Professional Contractor

One of our suggested alternative approaches is to segment the contractor market; recognising Career Professional Contractors as a separate and distinct sector of the market.

We believe that achieving this segmented approach will bring significant benefits to Professional Contractors and will allow much of the current legislation to be removed from them.

We have set out some of the key measures and suggestions for Defining a Professional Contractor and are seeking as many views as

possible on these.

It will take no more than 1 minute to complete and it does make a difference.

The feedback received will formulate our final position on Defining a Professional Contractor and be a key part of our involvement in the consultation process.

**You can access the feedback area here.**

We would once again ask that you encourage all the contractors you work with and know to provide feedback on the proposals. The more feedback we have the harder we can press the case.

### Privacy and Confidentiality

We would like to confirm that no personally identifiable data is collected in either the Contractors Opinion Poll or Defining a Professional Contractor feedback.

All responses are anonymous; this way we believe we are likely to receive the most accurate feedback.

If you have already completed the poll and given your feedback then thank you.

**Do not put this off as as we stated at the start "This is arguably the biggest opportunity the contracting sector has had to shape its future let's not miss it!"**

If you would like further details on our campaigns you can access them through our website.

You will also find further information through our newsletter archive.

## Join our Network on LinkedIn.com

Join our network on LinkedIn to keep up to date with the latest news and topical issues.

## IR35 Concerns?

Have all your contracts reviewed for a fixed fee; providing a conclusions report to protect you from IR35 penalties.

## Are you paying too much for your PI insurance?

Our members scheme will save you money. You only pay whilst you are on active contract.

## What returns can you expect?

Use our earnings calculators to get a true comparison across the operating options available to you.

# EBT's - What does the future really hold? Here's an idea to avoid and save tax!

**As tax rates rise and are likely to continue to do so, more companies are resorting to marketing Employee Benefit Trusts to contractors promising high returns of take home pay. In this article we look at these arrangements in more detail and examine the long term risks these can hold for contractors.**

“Retain up to 85% of your earnings”

“Take home over 88% of your contract”

“Safe, compliant, signed off by leading UK Barrister”

These are just some of the claims made by the organisations offering these “tax efficient” solutions to contractors.

Whilst it could be argued that these claims are partly correct they only show half the story and do not present a true reflection of the real returns a contractor can realistically expect to receive over a longer period of time.

The first point to make is that whilst it is entirely possible to operate a compliant EBT; where the arrangement is considered as manufactured for tax saving purposes, this is seen as highly aggressive and has a high probability of challenge from HMRC.

Contractors work on assignments worth good levels of income, say £75,000; then pass all the money earned through the contract to an unknown third party in exchange for the promise of a small salary, say £20,000.

As the contractor now does not have enough income to support their outgoings they will need to organise a series of loans to make up the income shortfall and meet their bill payments.

This way you will only pay tax on the small salary; as you have given away all your rights to any of the other monies, effectively gifting £55,000 to the unknown third party.

Whilst the majority of people reading this tax saving idea are probably thinking who would do this? and, have we gone mad? this describes the principles of an Employee Benefit Trust without the additional sales spin.

One of our fundamental objections to the marketing of EBT's to contractors is that rarely are they properly explained with full disclosure of the risks involved. Furthermore these arrangements usually rely on trusted contractor websites and advisers for their marketing as a way of creating an illusion of endorsement.

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## Can't decide on umbrella or limited?

Our Beginners Guide to Operating Structures will help you understand your options.

## Trying to understand IR35?

Our Beginners Guide will help you understand the key points. It's written in plain English with clear guidance and links to many support tools available.

## Got an issue and need to talk to a real person?

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HMRC have a document called 'Spotlights' which is specifically focused on tax avoidance. [**You can view Spotlights by clicking this link**]

Now whilst this is an HMRC document, and therefore likely to present a harder image, it does hold some useful pointers for contractors considering any tax avoidance arrangement - it states:

*"It will help you to understand what we are likely to see as tax avoidance by identifying the types of arrangements or scheme which we are likely to challenge. We will do this both by providing you with some help to understand how we distinguish between artificial avoidance schemes and ordinary sensible tax planning and by describing specific schemes. Where we think there may be particular drawbacks to a scheme that might not otherwise be obvious, we will describe these."*

HMRC also describe a wide selection of activities that consumers should be wary of; here is a relevant sample of their list:-

*It sounds too good to be true.*

*Artificial or contrived arrangements are involved.*

*There are guaranteed returns with apparently no risk.*

*There are secrecy or confidentiality agreements.*

*The scheme is said to be vetted by a top lawyer or accountant but no details of their opinion are provided.*

*The scheme is said to be approved by HMRC (it does not follow that this is true).*

*Taxation of income is delayed or tax deductions accelerated.*

*Off-shore companies or trusts are involved for no sound commercial reason.*

*It involves money going in a circle back to where it started.*

We think it is fair to conclude that many of the EBT style arrangements offered to contractors would meet most of the warnings on this list.

That in itself does not mean that they will not work; it merely highlights that these arrangements are extremely high risk and anyone entering in to such an arrangement should be fully aware of the associated risks.

Spotlights goes on to specifically look at the area of Trusts stating:

*"We're aware that companies have been seeking to reward employees without operating PAYE/NICs by making payments through trusts and other intermediaries that favour the employees or their families. The arrangements usually seek to secure a Corporation Tax deduction, as if the amounts were earnings at the time they are allocated, and also defer PAYE/NICs or avoid them altogether. Our view is that at the time the funds are allocated to the employee or his/her beneficiaries, those funds become earnings on which PAYE and NICs are due and should be accounted for by the employer.*

*In addition our view is that an Inheritance Tax charge may arise on the participators of a close company. Unless the participators are excluded beneficiaries and have not had funds applied for their benefit, such as the receipt of a loan, a charge to Inheritance Tax arises on participators of close companies at the time the funds are paid to the trustee by the close company.*

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**If you are currently using an EBT and have any concerns our Telephone Helpline can assist and is available free of charge to all our Professional Members.**

**You will receive unbiased guidance from an independent expert.**

Useful Links

[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

[www.icaew.co.uk](http://www.icaew.co.uk)

[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

[www.shout99.com](http://www.shout99.com)

[www.contracteye.co.uk](http://www.contracteye.co.uk)

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*Relief is only available to the extent that a deduction is allowable to the company for the year in which the contribution is made. Later payments of earnings out of the trust that may trigger a deduction to the company would not qualify for relief.*

*Participants affected by this may need to self-assess a liability to Inheritance Tax. There is further technical advice on Inheritance Tax on Contributions to Employee Benefit Trusts on the HMRC Internet site.*

*We are actively challenging examples of such arrangements and considering legislative options to end further usage of these schemes."*

The last paragraph of this statement should hold a clear message to any users of such schemes. The Budget confirmed that the Government is looking to introduce new legislation to close these, and many other arrangements, by April 2011.

**So what risks are faced if the schemes are not compliant or new legislation is introduced to prevent their use?**

**In our opinion the greatest risk is that the Trustees of the EBT demand repayment of the loans and keep the money.**

If the marketing opportunity is closed there is no need for those providers to maintain relationships with their clients.

They have full legal rights to demand repayment of all loans to the point that they could apply to the courts to seize assets if repayments were not made.

Contractors have no legal rights to keep the money.

**The providers just write off all the loans.**

Whilst this is a far more favourable option to the first it does mean you will pay more tax than you would have done in the first place.

If these schemes are successfully closed by new legislation, expected to come in to force in April 2011, then it is unlikely the trustees will want to manage the trusts for any significant period of time.

They are more likely to write to all contractors advising them that the trust is being closed and their loans have been written off.

This means that the contractors will have to disclose the total value of the loans written off in the Tax Year it happens. With tax rates higher now than in the past most contractors will find that they are paying more tax than they would have done if the income was disclosed as they went along.

**The scheme is challenged successfully by HMRC.**

Where the scheme is offered by a provider who is based offshore, typically the Isle of Man, it is likely that HMRC will write to the contractors first in making their challenge as they have no jurisdiction in the Isle of Man.

Without a provider getting behind any challenge it is unlikely that contractors would be in a position to defend the case.

If schemes have been closed there is little incentive for providers to spend hundreds of thousands of pounds defending historic cases.

If HMRC are successful in their challenge they are likely to apply penalties which will probably result in contractors being worse off than if they had paid the tax as they went along.

Contractors using these arrangements must ensure they fully understand the risks associated with them.