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## OTS Review Not Just About IR35

**The Office of Tax Simplification's review of small business taxation is tasked with a much wider review than IR35. In this article we look at some of the other areas which could fall within the review that affect contractors operating through their own limited companies.**

Contractors could be forgiven for thinking that the review of small business taxation, to be carried out by the OTS, is nothing more than a review of IR35; based on the number of stories that have focussed exclusively on this aspect.

Whilst the review of IR35 is an important part of the overall review; small business taxation covers a broad spectrum and we believe it is essential to consider these wider areas as many could have a significant impact on contractors income and operating methods.

It should also be remembered that one of the main objectives that must be achieved by the review is a tax neutral position for The Exchequer. This objective adds an additional layer of complexity to the review.

### **Perception versus Reality**

One of the challenges faced by anyone reviewing the contracting market is the lack of hard market data available. This lack of data has resulted in many decisions being made on the perception of the market which, as our surveys suggest, is not always truly

representative. Without hard data there is a real danger that the wrong conclusions could be reached.

**To address this short coming Professional Passport has a number of areas we are seeking contractors feedback on; all responses are anonymous and there is no personally identifiable data.**

The more responses we can achieve, the more representative the data becomes and we can assure all contractors that this information will be provided to the Office of Tax Simplification as part of the review process.

Contractors can have a direct input in to the review by completing our surveys and providing their feedback; this will help to influence the outcome.

### **Disguised Remuneration**

There has been an expectation for sometime now that it is only a matter of time before HMRC seeks to challenge dividend payments and have them reclassified as remuneration making those payments subject to a higher tax classification.

The case earlier this year of PA Holdings was viewed by many experts as the first sign of this challenge.

Being a director of your own limited company allows you the flexibility to select a salary at a level you feel appropriate; many small business directors select a level around the NI threshold. You are then able to distribute profits from the company by way of dividends which avoid National Insurance Contributions.

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## Make your voice count -

**The Office of Tax  
Simplification wants to  
know what you think**



**We need your feedback  
Help us define a  
PROFESSIONAL  
CONTRACTOR**

**IR35**

**Tell us what  
you think**

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The issue that has been widely debated across the accounting profession is whether a low salary and frequent dividends strategy could increase the risk of a HMRC challenge on the dividends as disguised remuneration.

**We have produced a remuneration risk profiler tool that allows you to assess the risks associated with your current strategy and makes recommendations on actions you can take to reduce this risk; this is available to our Professional Members.**

The small business taxation review by the OTS is likely to consider this point and we hope will result in clear guidance to the small business community allowing them to make an informed decision on their remuneration strategy aligned to their own risk profile.

### **Husband and Wife Limited Companies**

Historically Government websites advised business owners that it was perfectly acceptable to have both the husband and wife as shareholders of the company and distribute the company's profits between spouses resulting in a lower tax position overall. This all changed when HMRC challenged husband and wife business Arctic Systems limited. The eventual outcome of the case was a defeat for HMRC which then resulted in the first appearance of proposed new legislation entitled 'Income Shifting'.

The proposed legislation was universally condemned and as a result it was withdrawn for further consideration. At present the concept remains, although no new legislation has been forthcoming. Additionally we are aware that HMRC is still pursuing a number of cases under the existing S660 legislation.

This issue of husband and wife companies, shareholding and the distribution of profits is likely to fall within the OTS review. We are likely to see a sharper focus on this following the recent announcement on child benefit. The Government has proposed that child benefit be stopped for any family that has a high rate tax paying spouse; and this theme seems to underpin a number of current reviews.

Small business owners potentially have an advantage where they are able to share income between spouses or even leave profits within the company to ensure they still qualify for these benefits. As a result we would expect this area to come under close scrutiny and hope that clear guidance will be provided as part of the outcome of the review.

### **Tax Law or Employment Law**

Over the last ten years there have been many areas of tax law that have become entwined with employment law; IR35 being a good case in point, this will have to be considered as part of the review and could open up a whole new area of complexity.

### **Underlying Principles**

We have reported on a number of occasions that the evidence would suggest that the Government does not believe that contractors are genuinely in business in their own right and select their operating structure solely on the most advantageous tax position. We have never accepted this view.

The contracting market has matured significantly over the last ten years and is now at a point where clear segments of contractors exist.

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## **Confused; need some help -**

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## **Concerned over IR35**

Don't be - The Professional Passport Professional Assignment Review assesses all your assignments in a year and provides protection against reasonable care penalties

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Each of these segments has different views and expectations; as shown through the responses obtained in our Contractors Opinion Poll.

Temporary contractors, those that contract until they can find a new permanent position, are clearly seeking enhanced rights and protection where as professional contractors, those that see their long term career as a contractor, do not want any enhanced rights or protection and see themselves as operating their own business with all the associated risks.

The issue seems to stem from the current approach of 'one size fits all' and as we have argued this style is no longer appropriate.

Establishing clear underlying principles will be a critical part of the review and will significantly change the potential outcomes.

If a way could be found of correctly identifying the category of contractor then appropriate legislation could be applied to that segment.

**We believe this can best be achieved by identifying Professional Contractors using definitive criteria with no ambiguity. This is explained further on our web site and we are seeking the views of contractors on the measures using our feedback form.**

### **Clear and Effective Enforcement**

There are many examples across many other markets where rules, regulation and legislation is only effective when supported by a robust enforcement regime.

The first stage of this has to be to achieve legislation that is easily

understood by its target audience; the contractor.

Contractors are not tax experts and rely on the advice given to them by their selected professional advisers.

One of the most commented on aspects in our Contractors Opinion Poll is the lack of clarity in existing legislation, responders made it clear that they just want to know their position rather than the present lottery situation where they constantly fear the brown envelope letter from the taxman.

The current rules have much ambiguity resulting in differing opinions and advice given to contractors. Contractors are not always in a position to recognise what is the correct advice although in almost every case it is the contractor that holds all the liability.

We believe that more accountability should be placed on those organisations that purport to be professional advisers and where a contractor relies on the advice provided by such an organisation it is the organisation, not the contractor, that should be held to account.

This simple change would, in our opinion, have a positive effect on compliance in the market and create real barriers to entry limiting the number of new providers to those that embrace a compliant approach.

Furthermore it allows for a more cost effective enforcement regime resulting in a positive net income to the Treasury where non compliance is identified as opposed to currently where enforcement of IR35 costs more than the returns achieved.



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

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## OTS is listening and wants your views

**The Office of Tax Simplification (OTS) is to take onboard the results of a series of contractor polls and surveys, to help in its mission to review the way small businesses are taxed - including IR35.**

Professional Passport, has long held the view that many of the key decisions made on legislation impacting the contracting market have been based almost exclusively on perception rather than reality. This situation has come about due to little identifiable hard data on the sector.

In an attempt to ensure that future discussion are underpinned by real evidence, we have been running a series of surveys to obtain contractors views and opinions on a variety of subjects.

The results of these surveys will be provided to the OTS.

You can contribute to all three surveys online:

**Contractors Opinion Poll** - a wide range of questions on many of the issues facing contractors whether operating through umbrella or limited companies.

**IR35 Survey** - specific questions relating to IR35

**Defining a Professional Contractor** - how to identify Professional Contractors and remove them from the red tape and bureaucracy that currently exists.

## OTS announces its full board

**Contractors can be confident that their views will be fully represented as the OTS announces the inclusion of Kate Cottrell from Bauer and Cottrell to the review board.**

Contractors should take comfort in the fact that the OTS has appointed Kate Cottrell to the main review board. We believe this demonstrates their real desire to fully understand the issues before reaching any conclusions.

Professional Passport has been working closely with Kate for a number of years and her company, Bauer and Cottrell, provide our **professional assignment reviews** for our members. Kate is also one of our experts available through our **members telephone helpline**.

Earlier this year Professional Passport announced that for the first time we had agreed a process with HMRC to confirm a contractors IR35 status at outset; Kate was instrumental in assisting us to make this possible.

In our opinion this appointment should provide contractors with the reassurance that their difficulties will be presented and understood.

As we have already highlighted it is essential that we obtain hard data on the issues and would encourage all contractors to complete the surveys and feedback requests.