

IR35 and the Uber case

Webinar

16th March 2021



- Off payroll working rules and IR35
 - To what type of engagement will the new rules apply?
 - Must you complete status determination statements and to whom should you give them?
 - What are the consequences of getting the status determination statements wrong?
- Uber BV and ors v Aslam and ors
 - Why did the UK Supreme Court decide that Uber drivers are 'workers' for UK employment law purposes?
 - What does it mean for employers?
 - What should you do now?



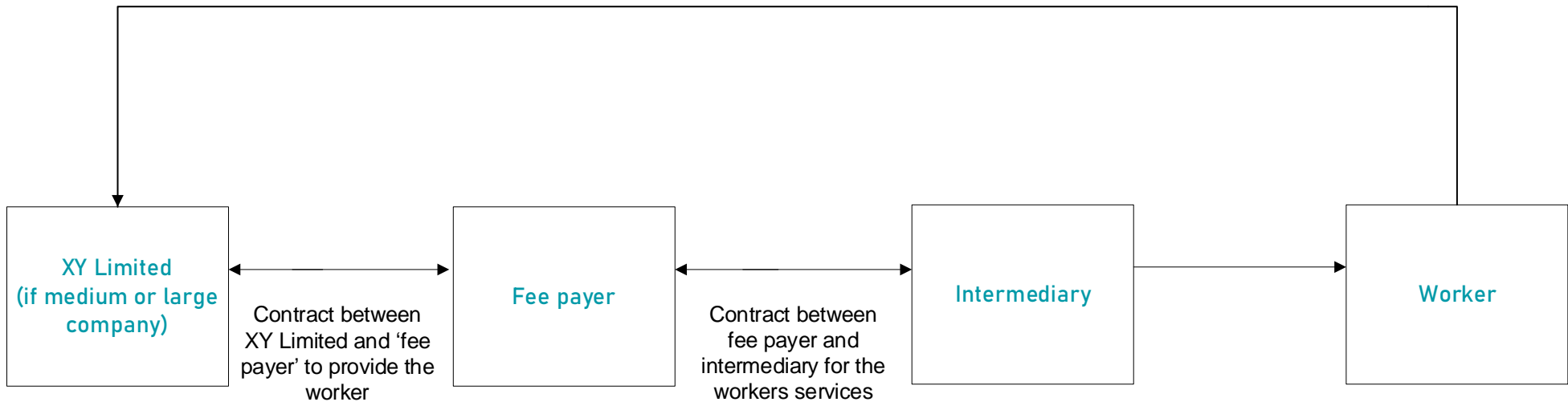
- Effective from 6th April 2021
- Apply if a worker provides their services personally through a limited company or other type of intermediary to a client
- Such workers who, following an assessment, are deemed to be employees of the client so must have PAYE deductions made at source
- The responsibility for making deductions rests with the fee payer



Off payroll working rules: to what type of engagement will the new rules apply?



Worker provides personal services to XY Limited



- Points to note:**
- sole trader
 - an agency
 - fully outsourced

Off payroll working rules: to what type of engagement will the new rules apply? (2)



- They do not apply:
 - Where the client is a small organisation (as defined by the Company's Act 2006), which is a business meeting two or more of the following:
 - An annual turnover of not more than £10.2m
 - A balance sheet total of not more than £5.1m
 - Not more than 50 employees
 - To workers providing personal services as a sole trader
 - To fully outsourced services
 - Where agency legislation applies

Off payroll working rules: must you complete status determination statements (SDS) and to whom should you give them?



- What is an SDS?
 - An analysis of the true underlying circumstances of the service provision to determine whether a personal service is provided such that the worker should be considered a deemed employee

- An SDS considers:
 - Mutuality of obligation
 - Substitution
 - Supervision and control
 - Part and parcel

Off payroll working rules: must you complete status determination statements (SDS) and to whom should you give them? (2)



- Clients must take reasonable care when making decisions about whether the off payroll working rules apply
- A status determination assessment must be done for respect of any worker that provides personal services through an intermediary
- The client will be responsible for providing the SDS to the fee payer and the contractor



Off payroll working rules: what are the consequences of getting the status determination statements wrong?



- Financial
 - HMRC has powers to investigate the tax compliance of businesses and issue late payment fines, charge interest and apply penalties as well as requiring any unpaid income tax and National Insurance to be paid



Off payroll working rules: what are the consequences of getting the status determination statements wrong? (2)



- Reputational

- If a business does not take appropriate care over making IR35 determinations, or makes incorrect determinations, there is a very real risk that obtaining contractors and other temporary workforces could become difficult

- Business

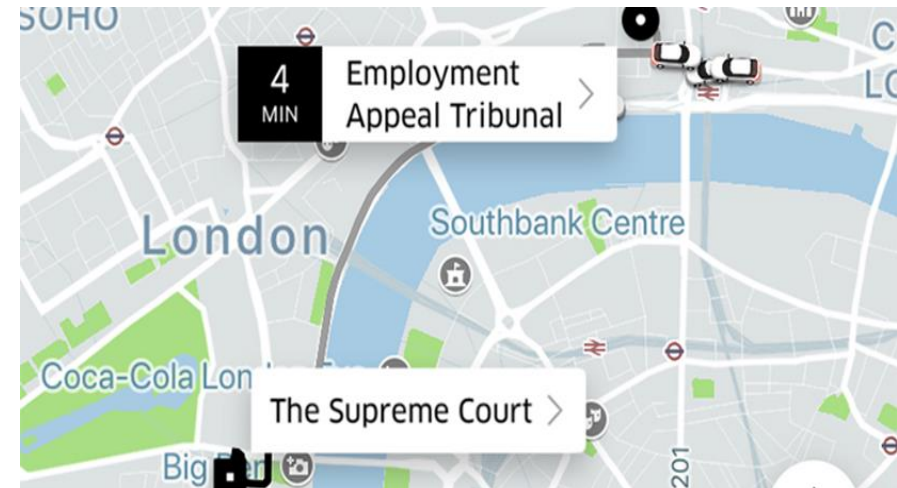
- If a business becomes known for its poor approach to the IR35 rules it could very much suffer a disadvantage in comparison to its competitors

Why did the UK Supreme Court decide that Uber drivers are 'workers' for UK employment law purposes?



A worker is defined under section 230(3) of the ERA 1996 as an individual who has entered into or works under:

- A contract of employment
- Any other contract, whether express or implied, whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual (section 230(3)(b))



Why did the UK Supreme Court decide that Uber drivers are 'workers' for UK employment law purposes? (2)



- The drivers' remuneration was fixed by Uber
- The contractual terms on which drivers performed their services were dictated by Uber
- Although drivers were free to choose when they logged in to the app, once they did so, their choice about whether to accept requests for rides was constrained by Uber
- Uber exercised significant control over the way in which drivers provided their services
- Uber restricted communication between passenger and driver



What does it mean for businesses?



- Potential claims for holiday pay and the national minimum wage
- Tax and pensions liabilities
- Whistleblowing
- Vicarious liability





- The purpose of employment legislation when assessing worker status
- Courts should look to protect workers despite the contractual documentation they sign
- The contract is no longer the starting point



What should you do now?



- Audit your arrangements with your contractors
- Assess their status
- Draft agreements that reflect the relationships





- Decide the relationship that your business needs with its service providers
- Decide whether you require sufficient control that means the service provider is subordinate in the relationship?



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