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IR35 & its Potential Impact on the Temporary LGV Driving Sector

WHITE PAPER

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INTRODUCTION

In mid-2019 the Government stated its intention to proceed with the roll-out of its IR35 legislation to the Private Sector in April 2020. In December, Sajid Javid announced that the decision would be "reviewed".

It is important to appreciate that the "review" will not necessarily result in a delay or cancellation of the planned changes, and that we must continue on the basis that the roll-out will still go ahead in April 2020 — Refer to our action plan in Appendix A for more information.

By permitting the use of Ltd Companies (Personal Service Companies) by agency workers for tax avoidance purposes, the government has effectively subsidised agency labour costs by around 20% over the last decade — making agency workers disproportionately cheap compared to full-time employees. This has especially affected blue-collar workers earning between £25,000 - £40,000 per annum, as the cost of agency workers in this bracket has dropped below the cost of employing them full-time.

These savings on direct employment costs, alongside lower Industrial and Human Relations administration and reduced reputation risks, has led to employers replacing their full-time staff with agency workers. Larger employers have outsourced not only the variable element of their workforce but also their “standard operations”, while the agencies they use have taken on a large quantity of stable work.

In turn, these large-volume agencies have been able to drop their margins by up to 10% by subsidising their variable work with the revenue gained from this easier, repetitive & stable work. This has *further* reduced the labour cost, per worker, to the end client.

IR35 will effectively raise agency labour costs by up to 25%, which will raise the cost to the end client by around 20%.

This hike in costs means employers who have outsourced their standard operations to agencies will reconsider their agency policy and, most likely, bring their "standard operations" labour needs back in-house — reducing their agency workforce to just what's needed to cover variability.

Large-volume agencies affected by these worker movements will retain most of their costs, but for a much-reduced and more variable revenue base, so they'll have to increase their margins.

We estimate this could be by up to an additional 10% of revenues, bringing them back into line with the majority of small to medium-sized agencies.

The result? Professional blue-collar agencies will be forced to raise their charge rates by up to 20% and large volume agencies by up to 30%. This effectively constitutes a government tax on Private Enterprises with none of this extra cost benefitting the workers or agencies.

We expect to see reduced numbers of agency LGV drivers, with large volume, low-margin agencies returning to the traditional model of catering for clients’ variable and seasonal requirements, but at a higher margin. We also expect most professional blue-collar agency workers will migrate to PAYE, resulting in a level playing field where ethical & specialist agencies can compete fairly, growing their market share by providing superior services.

Our key concern is that the regulators, HMRC and the government do not rigorously enforce the IR35 legislation, tempting all parties to exploit tax avoidance methods to suppress costs. We could find ourselves in a marketplace where the unethical and unscrupulous operators have a competitive advantage over professional, ethical agencies — ultimately damaging the entire sector and the haulage industry as a whole.

The more strictly the legislation is enforced, the quicker the transition to a stable and fair marketplace, which will be beneficial to all of us.

A BRIEF HISTORY OF AGENCY SECTOR TAX AVOIDANCE

Prior to the 2008 financial crisis, most agency workers were employed as PAYE workers...

The ensuing recession hit the logistics sector hard, with agency requirements halving almost overnight. Hauliers, under extreme pressure to reduce their own margins, passed this onto agencies, relentlessly forcing down agency charge rates.

The agencies responded by putting pressure on driver pay rates, who in turn resorted to creative tax avoidance methods to maintain or even increase their take-home income.

Lower paid workers, mainly van and 7.5 tonne drivers, adopted the Sole Trader model while higher paid workers, mainly LGV2 (rigid) and LGV1 (articulated) lorry drivers, opted for the Limited Company (aka the Personal Service Company, “PSC”) model. The PSC model provides greater tax relief per pound earned but has higher fixed costs. The Sole Trader model, although less tax efficient, has lower fixed costs making it the better choice for incomes under £25,000.

HMRC has been working to put an end to these schemes and has implemented a sequence of six phases designed to eliminate agency tax avoidance, culminating in the final phase: the application of the new IR35 legislation to the Private Sector.

A SIX-PHASE APPROACH

1

When HMRC's campaign against agency worker tax avoidance started in 2000, the introduction of IR35 legislation targeted contractors working primarily for a single client when they should have been regarded as an employee. The liability for non-payment or under-payment of tax lay squarely with the contractor — not the client or any intermediary. This first initiative was not particularly effective; contractors worked out how to play the system and avoid prosecution, while HMRC lacked the resources to pursue claims against the vast number of PSC contractors.

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HMRC's next big initiative was targeted at the other end of the scale: construction workers operating as Sole Traders. This was a revamp in 2007 of the Construction Industry Scheme (CIS), which permitted the workers to continue operating as Self-Employed so they could pay less tax and National Insurance (NI) when working on a B2C (Business-to-Consumer) basis. However, when they worked for a construction company on a B2B (Business-to-Business) basis, they had to comply with the CIS scheme. Workers register under the scheme and construction companies deduct money from their pay, passing this on to HMRC. Deductions count as advance payments towards the subcontractor's tax and NI. The CIS worked well for the construction sector but was not easily applicable to agency workers in other sectors.

3

In April 2014, HMRC brought in the Onshore Employment Intermediaries legislation, which made the intermediary, i.e. the agency, liable for any non-payment or underpayment of tax and NI for workers who were falsely operating as Self-Employed workers when they should be PAYE employees. This did not apply to Ltd Company workers as they were theoretically covered by the IR35 legislation in place. This resulted in an overnight shift: risk-averse agencies refused to engage workers operating as Self-Employed, wiping out the Sole-Trader model within the agency driving sector. Looking for a solution, lower paid agency workers flocked to Umbrella schemes that were able to offer tax relief on their travel and subsistence expenses.

A SIX-PHASE APPROACH

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Naturally this became HMRC's next target. In April 2016 HMRC passed legislation removing tax relief on travel and subsistence expenses for workers engaged through "employment intermediaries", i.e. Umbrella Schemes. Lower-paid agency workers were now treated the same as regular PAYE workers from a tax and NI perspective. It was time for HMRC to return to the thorny issue of Ltd Company contractors and IR35. It started in April 2016 with legislation to replace the Dividend 10% Tax Credit with a £5000 tax-free Dividend Allowance. This particularly affected individual shareholders earning up to around £30,000 after expenses, i.e. most professional blue-collar agency workers, including LGV drivers.

5

This was followed swiftly with changes to the Flat Rate VAT scheme in April 2017, which reduced the ability of Ltd Company LGV drivers to obtain an HMRC contribution to their income from 10% to 3.5%. After deduction of administrative costs, it was no longer commercially beneficial to the agency contractor; Ltd Company contractors went from paying virtually no tax or NI and receiving an additional HMRC Flat Rate VAT contribution of 10% of revenue, to tax on dividends of approximately 5% of revenues and no Flat Rate VAT contribution. These Ltd Company workers also incurred accountancy and administration costs of approximately 3-5% of revenue. This means their effective 0% tax rate pre-April 2017 rose to a net 8-10% tax rate after April 2017.

6

In 2017, HMRC also started its final move against Ltd Company contractors by bringing in the changes to IR35 legislation in the Public Sector. To date, the move to apply similar changes to the Private Sector has been delayed twice but, in April 2018, HMRC reduced the £5000 Dividend Allowance to £2000, essentially adding a further 1% to the contractor's tax bill.

April 2020 is the new proposed date for application of the IR35 changes to the Private Sector.

SO, WHAT ARE THE CHANGES TO THE IR35 LEGISLATION?

IR35 defines a list of criteria, used to determine a worker's employment status. Under the current rules for the Private Sector, the *contractor* is responsible for determining their own employment status and for paying the relevant tax and NI.

If HMRC suspects that a contractor is avoiding tax through "false self-employment", i.e. by working as a Limited Company contractor, it has to pursue the Director of the company through court action to recover any underpaid taxes. This is a laborious task for relatively little return, and HMRC doesn't have the resources to pursue such a large number of Ltd Company contractors, nor can it pursue a class action as each case is unique.

The threat of HMRC action on falsely self-employed Ltd Company contractors has been so low, it's essentially been non-existent; unlawful Ltd Company workers continue to avoid tax with impunity.

Under the new IR35 legislation, there are two key changes:

The end client becomes responsible for determining the employment status of their agency workers. If they wrongly determine the status of a worker they become liable for any underpayment of tax by the worker.

If the client correctly determines the agency worker to be within the scope of IR35, i.e. an employee for tax purposes, then the "Fee Payer" becomes responsible for deducting the relevant tax and NI contributions at source. The Fee Payer will be either the payroll company or the agency, whichever directly pays the worker/contractor (normally the agency).

SO, WHAT ARE THE CHANGES TO THE IR35 LEGISLATION?

This legislation makes it much easier for HMRC to take legal action against either the Fee Payer or the End Client, preventing tax avoidance through the incorrect use of Ltd Company arrangements.

It also works on the basis that clients and agencies are generally risk-averse and will lean towards declaring their workers to be within IR35, rather than risk being pursued by HMRC along with the associated reputation risks. This results in a tendency towards “false employment”.

Another key element of the legislation is that “Small Businesses” will be exempt from the IR35 legislation when it is applied to the Private Sector.

A Small Business is defined as a company which satisfies two or more of the following requirements:

- Has an aggregate net turnover less than £10.2 million
- Has an aggregate balance sheet total less than £5.1 million
- Has fewer than 50 employees

It might seem like this excludes a large numbers of companies, but when you consider that larger companies use the majority of agency workers, it becomes apparent that most agency workers will be affected by the IR35 legislation.

This begs the question: What are the criteria for a worker to be included within IR35?

CRITERIA FOR EXEMPTION FROM IR35:

Right of substitution:

the worker must be able to substitute themselves without the client's permission.

Provision of tools:

the worker should provide their own tools to carry out the work.

Provision of materials:

the cost of materials should be included within the contract price as part of the service.

Self-determination of work:

the worker should not be under the Supervision, Direction or Control (SDC) of the client and must determine how, when & where work is carried out.

Mutuality of obligation:

the worker should carry the financial risk if they do not deliver their work to specification or on time.

Worker benefits:

the worker should not receive benefits normally awarded to PAYE employees, such as holiday pay, pension contributions, sick pay etc.

Client interaction:

the worker should not appear to be a representative of the client to its customers, i.e. they should not wear the client’s logo or uniform or pretend to be employed by the client.

In the driving sector, a driver who owns or leases their own vehicle is likely to be considered to be outside of IR35, while those who do not will generally be considered to be within IR35, i.e. PAYE workers.

WHY AGENCY DRIVERS FALL UNDER IR35:

Right of substitution:

Agency drivers are not allowed to subcontract their services, i.e. provide a substitute without the approval of the Agency or end client.

Provision of materials:

They do not provide materials that are consumed as part of their service.

Self-determination of work:

They are under the Supervision, Direction and Control of the end client; they are told where they must go, how (in which vehicle) and at what time, though they do have some influence over the route they take.

Mutuality of obligation:

They have little to no risk if the work takes longer than expected, i.e. they get paid for the hours they work and the client takes the risk if they are delayed or have to night out. The client also accepts 3rd party liability for any accident or costs incurred even if due to the worker's negligence

The Office of the Traffic Commissioner has considered this in depth and the Senior Traffic Commissioner, Richard Turfitt, has included a section on "Employees" in his latest Statutory Guidance, in which he states:

> **In road haulage, it is rare for someone to be genuinely self-employed unless they are an Owner-Driver.**

If an operator is deemed to be contravening Turfitt's guidance, they risk being disciplined and could ultimately lose their Operator's Licence. Reputable operators are unlikely to determine that their agency LGV drivers fall outside of IR35 and will insist they be employed as PAYE workers, regardless of the cost implications.

AWR: A FURTHER CONSIDERATION

Under the Agency Worker Regulations ("AWR"), agency workers are entitled to parity remuneration after they have completed a 12-week qualifying period.

Currently, there's a way of legally getting around the AWR rules: Swedish Derogation (Pay Between Assignments, or "PBA") contracts.

With PBA contracts, agencies can avoid paying parity remuneration to workers after they've spent 12 weeks working for the client, in exchange for punitive termination conditions. This exemption allows agencies to pay consistent rates to their workers rather than a specific rate per client and it much reduces the administrative burden on both the client and the agency. It also means that, where the agency market pay rate is below the parity rate, agencies can pay their workers less than the parity rate.

The government has realised that, if it's going to eliminate the Limited Company model and force agency workers onto PAYE, it's logical to also remove the temptation for agencies to pay below the parity rates. Consequently, it has announced that it will repeal the AWR Swedish Derogation legislation in April 2020 to coincide with the IR35 legislation.

So what does this all mean?

It means that all PAYE agency workers will be entitled to parity rates after their 12th week of engagement with the client, creating a completely level playing field.

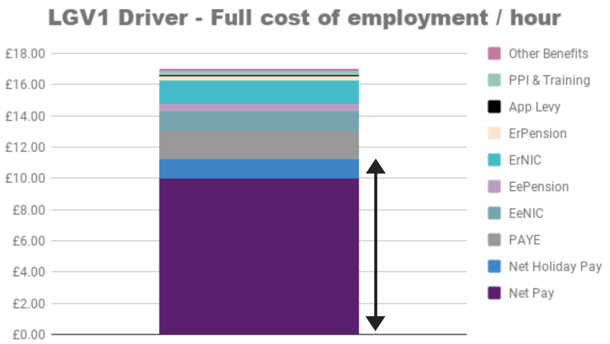
Essentially, it forces an "open-book" approach for parity workers where agencies will charge their clients the full cost of a parity worker plus an agreed margin.

THE POTENTIAL IMPACT ON AGENCY COSTS

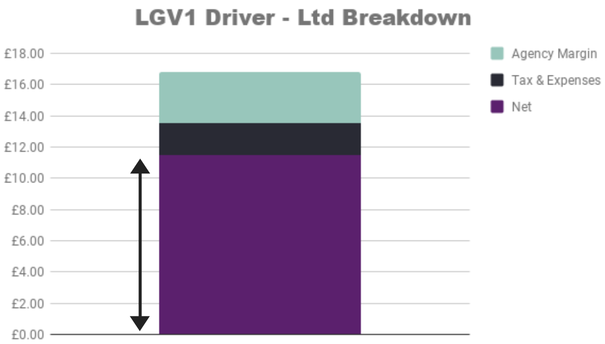
As explained in previous sections, since the last recession over 10 years ago, the government has essentially been subsidising the cost of professional agency workers to the tune of around 20% by permitting tax avoidance through the use of Limited Company arrangements.

Agency rates have been artificially depressed, when you'd normally expect agency rates to be at a premium to the cost of a full-time effective, due to the fact that an agency worker has no security of employment and that it's necessary to add on the agency's costs and profit.

What we've seen happen, is that agency charge rates have stabilised at a level close to the total cost of a full-time effective, and the net pay of an agency Ltd Company driver is roughly equivalent to that of a full-time employee, inclusive of holiday pay.



*Based on employed driver salary of £32.5kpa for a 48 hour week



THE POTENTIAL IMPACT ON AGENCY COSTS

If Ltd Company workers were forced to move to PAYE and agency charges remained static, the net pay to agency workers would drop to an unacceptable level.

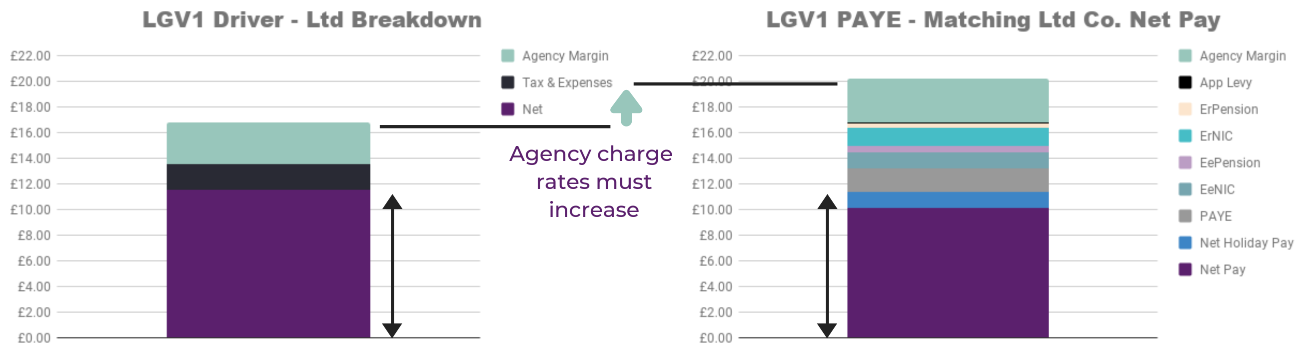
This would force many agency LGV drivers to consider giving up agency driving and, in the case of Eastern European drivers, consider moving back to the continent.

There is already a perceived driver shortage; it would be unwise to trigger an exodus of agency drivers from the UK market.

> The only way to prevent drivers leaving the agency workforce would be to pay them the same net income as they received as Ltd Company contractors.

THE POTENTIAL IMPACT ON AGENCY COSTS

If we do this and maintain the agency margins, the result is approximately a 20% increase in agency charge rates:



Hauliers will attempt to get agencies to share this cost increase by reducing their margins. However, the brutal reality is that after ten hard years of recession, agency margins are as low as they can go.

If they are depressed further, many agencies will make a net loss and will be pushed into insolvency.

WHAT DOES THIS MEAN FOR AGENCY VOLUMES & COSTS?

Over the last decade, large operators have realised that agency charge rates are equivalent to (or lower than) the full cost of employment of their own full-time drivers, so they've "outsourced" their driver workforce to agency.

Agencies working for these large operators have taken on a large volume of stable work, alongside a relatively small proportion of variable shifts, which can be absorbed easily using the large pool of drivers.

The stable and predictable nature of the work made it efficient for these agencies to manage their large pool of drivers, meaning they were able to operate profitably at lower margins. When they passed this back to their clients in the form of lower agency charge rates, it further reinforced their clients' desire to outsource their LGV operations.

Hauliers outsource "normal" operations to agency → Agency gets increased volume of stable work → Agency can reduce % margins — greater savings for haulier

Keep in mind, these lower margins are restricted to high-volume contracts. Smaller, higher volatility contracts require more agency effort per shift, which means higher margins.

A driving agency working with a client base of multiple small to medium-size clients with high variability requirements would operate at typical margins of around 20-25%.

TYPICAL MARGINS ACROSS INDUSTRIAL & DRIVING CONTRACTS:

Agency Margin	5-10%	10-15%	20%	25-30%
Typical work type:	Large Volume, unskilled industrial with set shifts*	Large Volume, stable req's. Skilled industrial / driving	Typical driving contracts w/ variable requirements	Highly ad-hoc, specialist work (e.g. HIAB, ADR etc)
Variability:	None - Low	Low - Medium	Medium - High	High / Ad-hoc
Shift consistency:	Very High	High	Medium - Low	Low
Compliance:	Low	Low	High	High
Insurance costs:	No	Possible	Yes	Yes
Agency support:	Booking only	Limited	High	Extensive
Response levels:	Booking only	Limited	High	High
Recruitment costs:	Low	Medium - High	High	High
Specialist knowledge:	Low	Medium	Medium	High
Worker development:	Limited	Limited	Yes	Yes

*<5% is unsustainable:
Net profit < Zero

THE EFFECT OF INCREASING AGENCY CHARGE RATES

As IR35 pushes up charge rates, employed workers will become cheaper than agency workers.

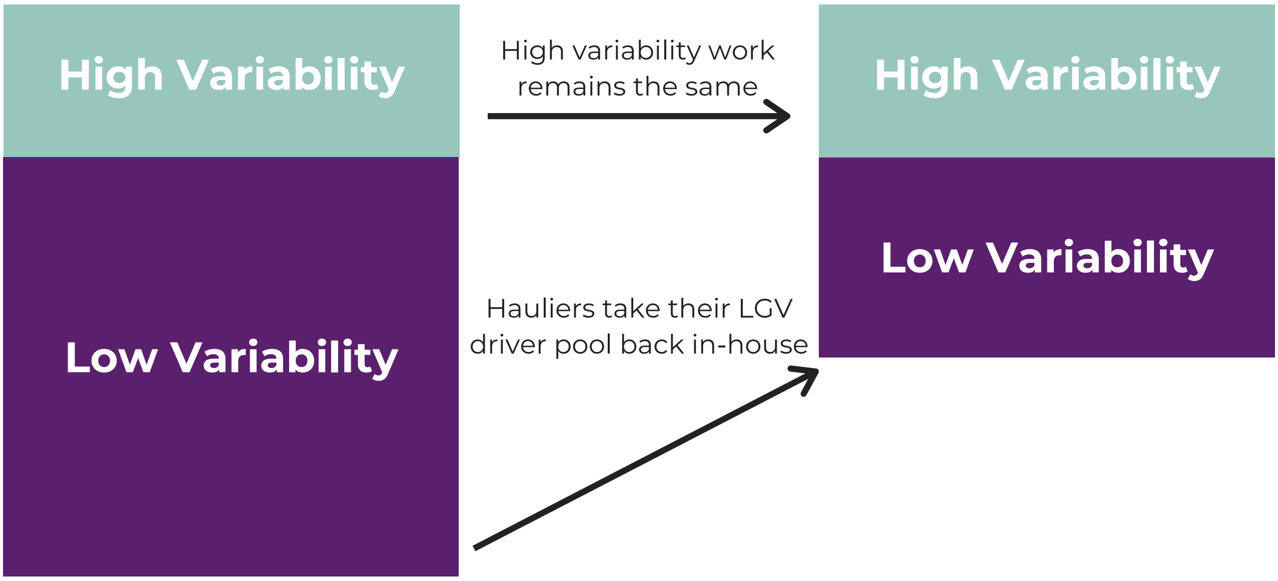
The inevitable consequence will be that hauliers will explore how to reduce their agency costs, often by bringing their agency workers back in-house.

This will mainly affect large volume contracts where the haulier has previously outsourced their normal operations to the agency.

They will naturally bring in-house the stable, non-variable work which is easiest to manage, leaving the high-effort, variable work for the agency to deal with.

The amount of high-effort, high-variability work will remain the same, while the agency's overall account revenue will drop as stable work is taken away from them.

This results in agencies being unable to reduce their staffing and account management costs proportionately to the reduction of revenues; they'll have to increase their margins to remain profitable.



THE EFFECT OF INCREASING AGENCY CHARGE RATES

Each haulier will naturally settle on a permanent and agency-worker mix that matches their level of variability of requirements.

This will be determined by number of factors:

Hauliers won't want to employ too many permanent workers. They need enough to cover their regular customer demands, holidays and sickness but if they employ too many, they will have workers being paid to sit idle during quiet periods.

Agency workers will now carry a premium over the cost of permanent workers; there will be a real incremental cost associated with using agency workers.

The optimal balance will be where the cost to the haulier of having their drivers sit idle during quiet periods equals the marginal cost of using agency workers to cover peak, contract and ad-hoc variable requirements.

Clients who have regular agency requirements and a distinct candidate specification — e.g. where drivers need to be assessed — will likely work in partnership with a limited number of preferred agencies or on a master vendor basis.

The agency pool will then be determined by the variability of the requirements and must be large enough to cope with the worst-case variability without failing to supply assessed drivers.

SUMMARY OF EFFECTS ON AGENCY COSTS

Agency charge rates will be affected differently across the agency contract spectrum.

For those contracts where the workers are already predominantly PAYE, such as industrial and van operations, it will be business as usual with no impact on agency costs or charges.

In stark contrast, for those large volume contracts requiring professional blue-collar workers, such as LGV drivers and skilled industrial workers, we will see the biggest impact. Hauliers will bring in-house a significant proportion of the agency worker pool and agency charge rates will increase by up to 30%.

For lower volume and ad-hoc accounts, we will see a transfer of the IR35 tax effect and agency charge rates will increase by approximately 20%.

Work type:	High volume industrial & van	High vol. skilled industrial & LGV	Lower vol/ad-hoc LGV & skilled industrial	Low vol/ad-hoc LGV & skilled industrial
Business Size:	Large	Large	Large	Small
Worker Status:	No change. Remains PAYE	Non-variable move in-house. Agency PSC move to PAYE	PSC workers move to PAYE	Two categories: - PSC - PAYE
Agency labour costs:	Remains the same	~20% increase	~20% increase	PSC = lower cost PAYE = 20% increase
Agency margin:	Remains at 5–10%	Increases from 10-15% to 15-20%	Remains at 20% rising to 30% for specialist	Remains at 20% rising to 30% for specialist
Total cost to end client:	**Remains the same**	**Increases by ~25-30%**	**Increases by ~20%**	**Possible increase of up to 20% if using PAYE**

ONE QUESTION STILL REMAINS...

Will the Small Business exemption make a difference?

We believe that the answer is "not really".

Even with the major Third-Party Logistics providers bringing a large proportion of their agency pool back in-house, they will still dominate the agency marketplace. These companies are large businesses and will only accept agency workers who have moved to the PAYE model.

Meanwhile, reduced agency worker pools will mean many agency workers will have to work for multiple clients to maintain a consistent income, and agency LGV drivers will have to work for a mix of small and large businesses.

The fate of the Ltd Company model:

It will not be cost effective to operate a Ltd Company model in cases where the majority of an agency worker's assignments are paid on a PAYE basis, so we expect that most agency LGV drivers will abandon the Ltd Company model completely.

An exception will be for agency LGV drivers who work predominantly for one, or a limited number of, small businesses. This is the only case we see them continuing to use the Ltd Company model.

This may raise a case for offering two charge rates to small businesses: one for PAYE workers and one for Ltd Company workers — in saying that, we suspect that it's more likely that the PAYE worker charge rate will become the standard "market rate" and, where a Ltd Company worker *is* deployed, the extra margin will be shared between the agency and the Ltd Company worker.

SO, WHAT NOW?

The Recruitment and Employment Confederation (REC), the professional body representing many blue-collar agencies, and other similar groups have been lobbying hard for the government to delay the implementation of IR35.

Their main arguments are that hauliers and agencies are not prepared and that the enforcement mechanisms are not sufficiently robust.

The government has nevertheless recently declared that the IR35 Off-Payroll legislation will be applied to the Private Sector in April 2020; it published the draft legislation on 11 July 2019. Since then, the government has declared that it will "review" its intentions.

Saying that, a "review" will not necessarily result in a delay or cancellation, and we therefore strongly advise that hauliers continue to prepare as though it was going ahead in April 2020 refer to Appendix A for our recommended action plan.

> In the meantime, we're working with the REC Driver Sector Group to educate REC member agencies who provide LGV drivers, while putting pressure on the government and regulators to delay the legislation so that companies have more time to prepare and so that mechanisms can be put in place to robustly enforce the new legislation when it comes into force.

- ✓ Agencies need to ensure that their clients, both workers and hauliers, are educated on the potential impact of IR35.
- ✓ Hauliers must review the nature of their agency worker assignments and determine if they fall in or out of IR35.
- ✓ Agencies must work with hauliers to agree new charge rates and possibly agree separate rates for Parity and Non-Parity workers. Part of this exercise will involve the haulier reviewing their agency requirements in light of the higher charge rates and possibly resizing their agency worker pool.

OUR EXPECTATIONS

We expect to see the larger players start bringing agency workers back in-house to rebalance their agency workforce in anticipation of the new legislation.

Where they are bringing substantial numbers of workers back in-house, they must consider the impact on their internal Payroll, HR, IR, Training and Compliance functions.

Meanwhile, agencies must ensure that their systems can cope with a predominantly PAYE worker model; managing not just PAYE and NIC, but also the HMRC reporting burden (RTI), as well as the administration of holiday pay, Auto-Enrolment Pensions and the Apprenticeship Levy. If their systems are not able to scale, they can consider outsourcing their agency worker payroll to an external payroll service provider.

The more that agencies work collaboratively with their clients, the easier the transition will be to the new regime.

Lastly, and very importantly, we call upon HMRC and other regulators to strictly enforce the new legislation by making clear examples and by setting strong precedents in advance of April 2020. Disreputable operators need to be discouraged from resorting to unlawful tax avoidance schemes and undercutting the ethical players.

> **It would be a massive injustice if this legislation were to result in the proliferation of unlawful and illegal payment practices and the destruction of ethical agencies in favour of disreputable operators.**

— Kieran Smith, CEO

APPENDIX A: IR35 ACTION PLAN

1

Hauliers must determine if they are a “Small Company”. If so, they will be exempt from the IR35 legislation, but they will still be impacted by the repeal of AWR Swedish Derogation and the need to determine Parity Pay Rates:

- ✓ Hauliers are obliged under the IR35 Regulations to formally communicate their Company Size status to their agencies so that they are officially made aware of whether the Haulier falls within or outside of the scope of the IR35 Regulations.
- ✓ We recommend hauliers work with their company accountants to formally determine their company size.

2

If a haulier is a larger company, i.e. not a “Small Company”, they will be subject to the IR35 legislation. In this case they must:

- ✓ Work with their HR team and employment law advisers to determine the employment status of each category of agency temporary worker they engage.
- ✓ For each category of agency worker, they must produce a Status Determination Statement “SDS”. The SDS is a formal and legally enforceable declaration.

3

IMPORTANT: While the IR35 legislation remains under “review” we strongly recommend that hauliers continue as though the legislation will still be implemented in April 2020, BUT that they do not publicise or formally communicate their SDS decisions pending the outcome of the review. This way they will be ready to act should the implementation of IR35 go ahead, while maintaining flexibility should it be delayed or changed.

APPENDIX A: IR35 ACTION PLAN

4

Meanwhile, ALL hauliers, regardless of "Small Company" or not, should ensure they are prepared for the repeal of AWR Swedish Derogation, which will enforce Parity Pay Rates for all PAYE agency workers after 12 weeks on assignment. The process for determining Parity Pay Rates is as follows:

- At the request of the agency, the haulier must complete an "AWR Comparator Information Request Form" for each Comparator Role. A Comparator Role is a distinct agency worker role that is substantially different from other agency worker roles for the same customer in terms of work performed and remuneration received. For example, it is easy to separate agency LGV drivers into class of vehicle driven, i.e. C+E, C, C1 and van, but comparator roles may be determined at a more granular level, e.g. for C+E Night Trunking, as distinct from C+E Day Delivery Work or C+E Multi-Drop etc.

- For each Comparator Role the haulier completes full remuneration and benefits information such as: basic pay, night, weekend and overtime rates, shift premiums, bonuses, holiday entitlement and other tangible benefits.

- Now the agency and the haulier need to work together to agree the Parity Pay Rates for parity agency workers. There is no clear-cut way of doing this, as most agencies use pay rate schemes that differ from those used by their customers. The objective is to ensure that, for a typical bundle of shifts in a given week, the agency worker will earn approximately the same income, inclusive of holiday pay, as a permanent worker for the same shifts.

5

Now the agency can establish the cost of employment for its temporary workers. The governing principles are that, for each of the categories below, it must pay:

- Ltd Company workers (Small Companies ONLY): Ltd Company worker market rates.

- PAYE workers up to 12 weeks on assignment: PAYE worker market rates.

- PAYE Parity Workers (over 12 weeks on assignment): The greater of the PAYE worker market rates or the agreed Parity Pay Rates.

This means that Small Companies can have up to three sets of pay rates, one for each of the above agency worker categories, while larger companies can only have the two PAYE variants.

APPENDIX A: IR35 ACTION PLAN

6

The haulier and agency now need to negotiate charge rates. These will be a compromise between the agency's need to generate enough margin over the total cost of employment of their temporary workers and the amount the haulier is willing to pay. There are two approaches:

- Closed book, where the agency does not disclose its pay rates and margins, but simply proposes charge rates with no breakdown or other explanation.
- Open book, where the pay rates and agency commission are completely transparent to the haulier. In this case it is very important that the agency can justify their margin by demonstrating value for money and by being able to provide a clear breakdown of its costs and value-added services.

7

If the result is increased charge rates, it is reasonable to expect the haulier to review and optimise its agency requirements, probably looking to reduce the size of its agency worker pool. This is likely to trigger the haulier to request the transfer of agency drivers to permanent roles; either via direct transfer for a fee or via a Temp2Perm arrangement. The agency should be prepared for this eventuality and have relevant terms agreed.

We hope that this process will create more transparency, thereby bringing hauliers and agencies towards closer partnership, which should have positive ramifications through the sector.

To promote better awareness of the factors that ought to be considered, we are producing a further White Paper on Temporary Driving Agency economics and how agencies add value.

Please e-mail marketing@driverrequire.co.uk to register your interest and we'll alert you when this White Paper is released.