

IR35: are you ready this time?

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Where are we now?

- It's happened! Legislation in Finance Act 2020
 - Government needs to level the playing field with the public sector to stop unfair competition and the talent drain
 - It (really) needs the money from the tax and particularly employer's NI
- Best guidance is to refer to ESM: bit.ly/2x8peXu
 - New guidance generally and specifically for creative sector
- Public sector changes delayed too
 - Issuing Status Determination Statements (SDS)
 - Handling appeals against status
 - Public sector have had to set new 'off-payroll worker' marker to stop student loans since April 2020

Definitions

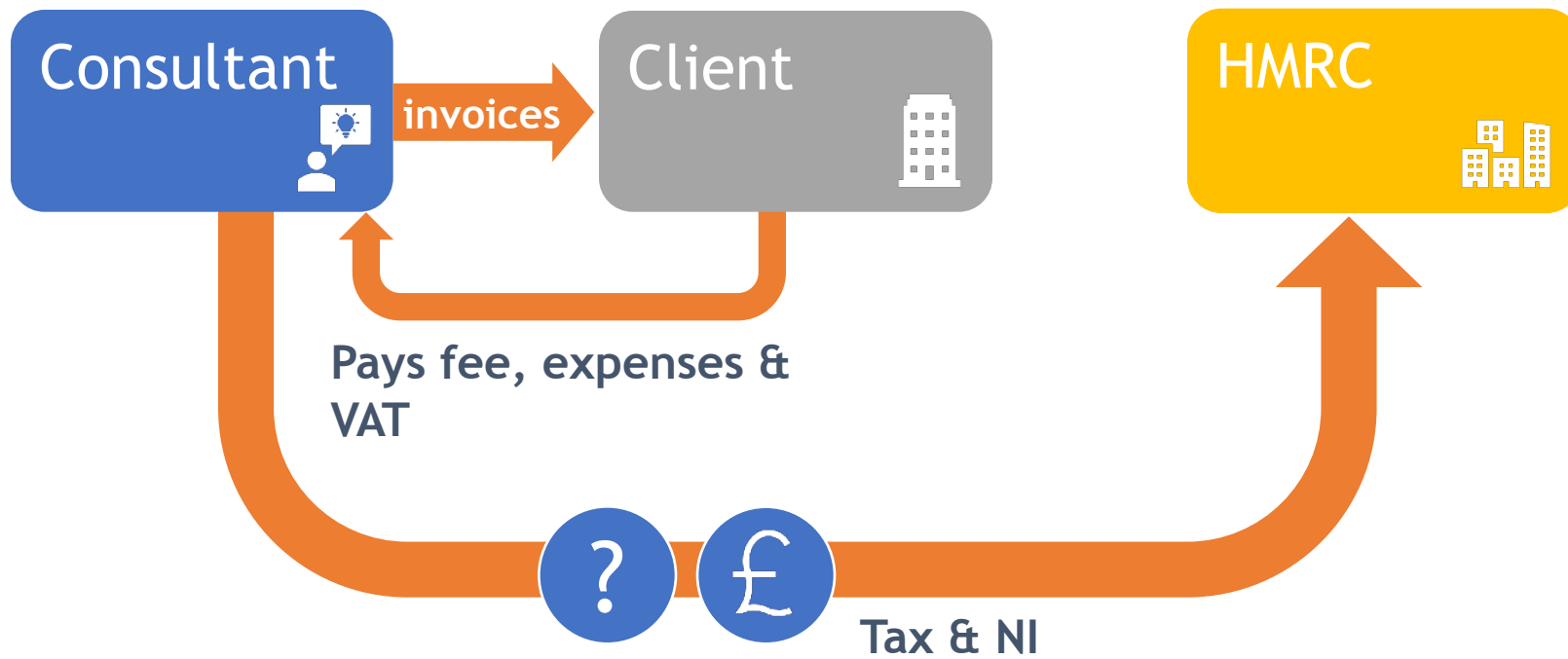
Off-payroll	HMRC's description of contractors they think ought to be 'on payroll'
Engager	An end client using off-payroll workers
PSC (Personal Service Company)	<ul style="list-style-type: none">• Usually single director limited company offering specialist labour who invoices the engager for their services• Can also be other intermediary such as a limited liability partnership where one partner/family receives 60% or more of the profits
Fee payer	<ul style="list-style-type: none">• The entity who pays the PSC• Could be an agency or engager

This has got nothing to do with sole traders!

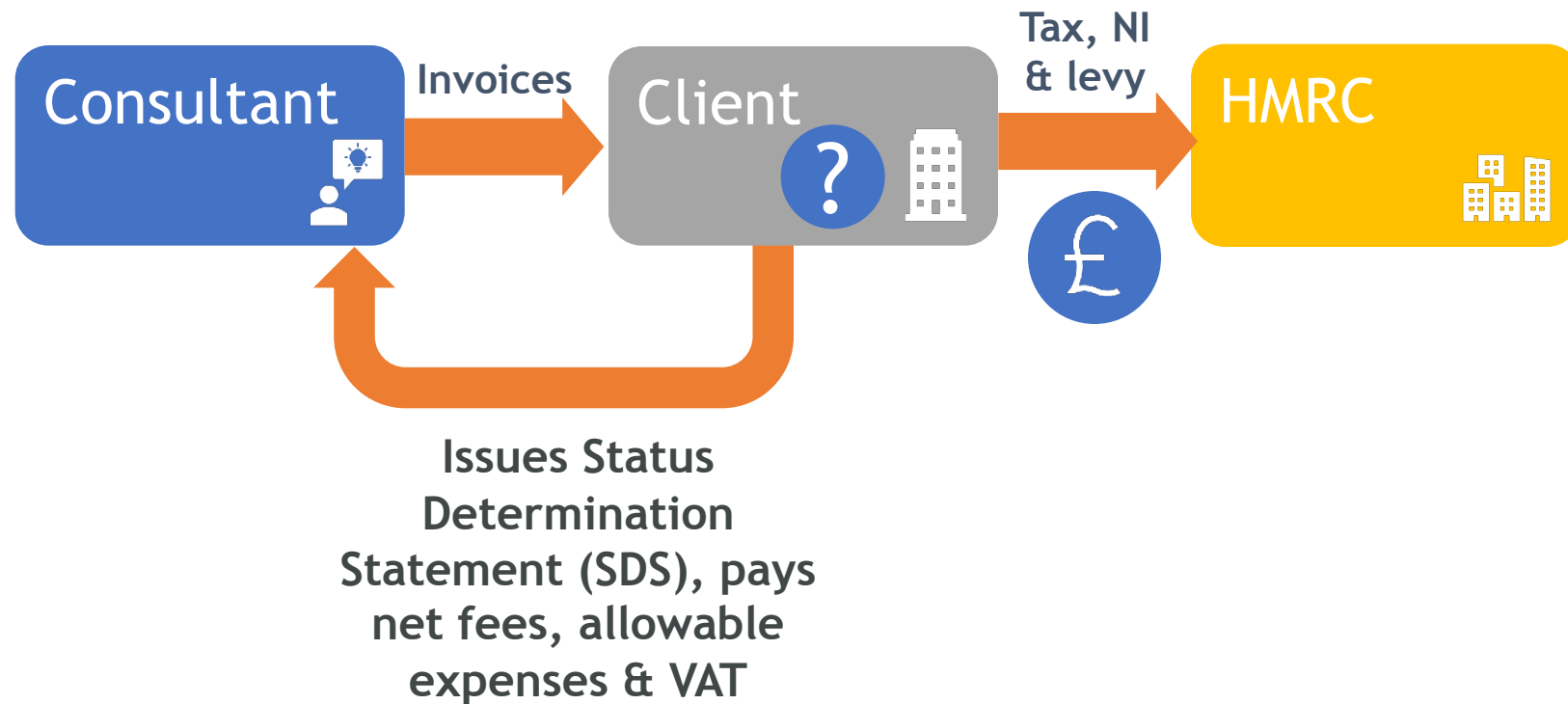
Definitions

CEST (Check Employment Status for Tax)	HMRC's online tool for working out whether the IR35 rules apply
Deemed employee/off-Payroll worker	A PSC director who is added to the payroll of the fee payer so their fees can be subjected to tax and NI
SDS	Status Determination Statement
Small engager (employer)	<ul style="list-style-type: none">• In the private sector the rules don't apply to a business that is small<ul style="list-style-type: none">– A company that doesn't need an audit is small• They can continue to use PSCs and pay them gross• What is 'small' later

Private sector until 05.04.21



Public sector and medium and large engager in the private sector 6.4.21



'Small' definition

- An engager (client if you're a payroll agent) is always small for its first financial year
- Limited company client, if 2 of following 3 for two successive accounting years' reporting deadline, rules apply from start of tax year after end of accounting period
 - Turnover not more than £10.2m
 - Balance sheet not more than £5.1m
 - Average number of employees not more than 50
- Some clients can never be small e.g. a PLC
- You can check company size on the Companies House website so
 - Agents: you know which clients might want you to pay off-payroll workers and you can renegotiate fees
 - Engagers: is your consultant a PSC or a bigger supplier?
- Guidance: bit.ly/3idviPS

'Small' definition

- Unincorporated client - charity, trade union (who could also be an intermediary supplying the consultant), not for profit
- Only turnover matters, if it exceeds £10.2m then the tax year that starts at least 9 months after financial year end they're inside the rules

When does this affect you/your clients?

Entity	Key date for 2021/22	Effective tax year	Notes
Incorporated (limited)	Companies House deadline 31.3.21	2021/22	If not small for two successive years
Unincorporated (charity)	Year end is 5.7.20 or earlier	2021/22	Only most recent year considered to decide size
Sole trader	Turnover as at 31.12.20	2021/22	

Overseas clients and consultants

- Overseas client: not caught by rules as long as
 - Immediately before the beginning of the tax year there is no UK connection i.e. it is not UK tax resident nor any UK permanent establishment
 - Any contractors with that engager who are UK tax resident would have to consider current IR35 rules
- Overseas consultant: To decide if a contractor is not UK tax resident so you can pay gross client needs to know a lot about their circumstances to demonstrate they've taken reasonable care

What to agree with your payroll agent, agency or in-house payroll team

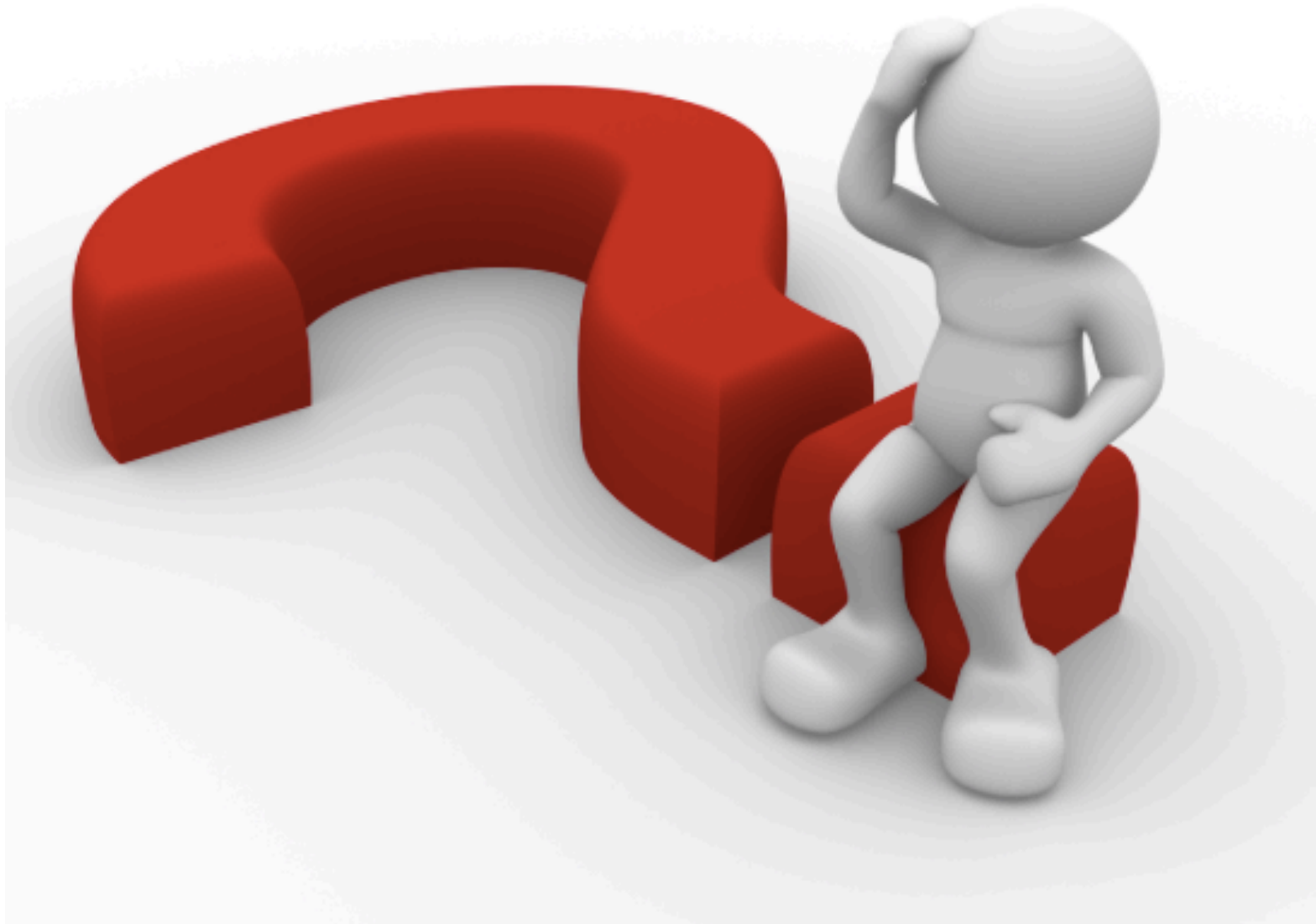
- Do you directly engage any consultants operating through PSCs or Partnerships
 - Yes – you could be paying deemed employees/off-payroll workers
 - No – then you must be using an agency
 - Are they all on PAYE via an Umbrella or the agency payroll?
 - If not the agency will be paying deemed employees on your behalf
- For any direct engagement or non-umbrella agency consultants as soon as you issue an ‘inside IR35’ status determination statement (SDS) you need to tell your
 - In house team, or
 - Payroll agent, or
 - The supplying agency...and tell them what?

Deemed employee payroll process

- Provide a starter checklist from the deemed employee ?
 - It's completed about the worker not the company, but money goes to company
 - Normal starter RTI data required: residential address vital
 - Start date: 6.4.21 or contract start date
 - Agree normal NI status & tax code
 - Set OPW marker: suppress NI from EA calculation, pensions, sick pay, holiday, gender pay gap reporting
 - Payslip not legally required but sensible
- 'Resign' consultant and produce P45 – who will tell you?
- P60 if contract goes over year end (again P60 not required but sensible)
 - If more money is due it will be a normal 'payment after leaving' with OPW marker ticked

How do appeals affect payroll?

- If the business reverses the SDS and says they made a mistake in the status decision you/your agent/the agency will have to reverse the payroll
 - Set the YTD values to zero on the next FPS to reduce your liabilities so you can repay the consultant's PSC and yourselves
 - Set date of leaving to same as start date



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