

IR35 – Journey to April 2020

December 2019

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IR35 – a brief reminder

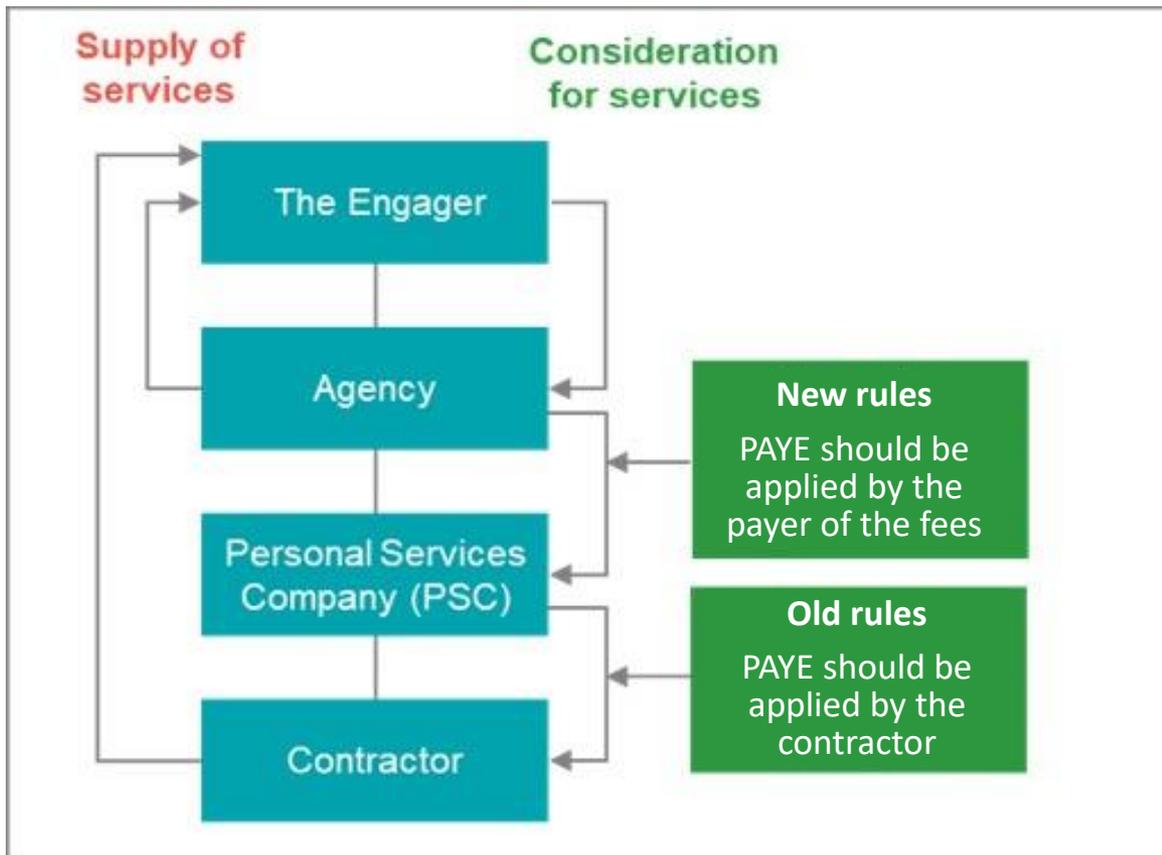
Currently, anyone working in the private sector through a Personal Service Company (“PSC”) has to account for PAYE/NIC as a deemed employee if the way in which they worked would have been employment had they not been engaged via a PSC



1

IR35 – a reminder

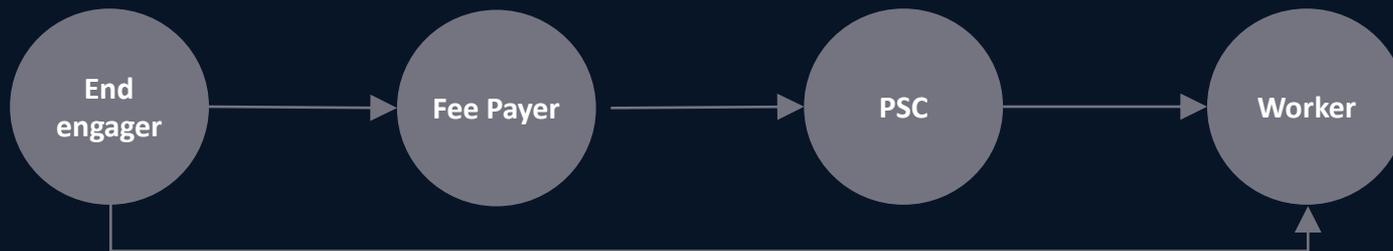
An example of an arrangement with the use of a Personal Services Company



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IR35 going forward - information flow

Status determination flows down the supply chain



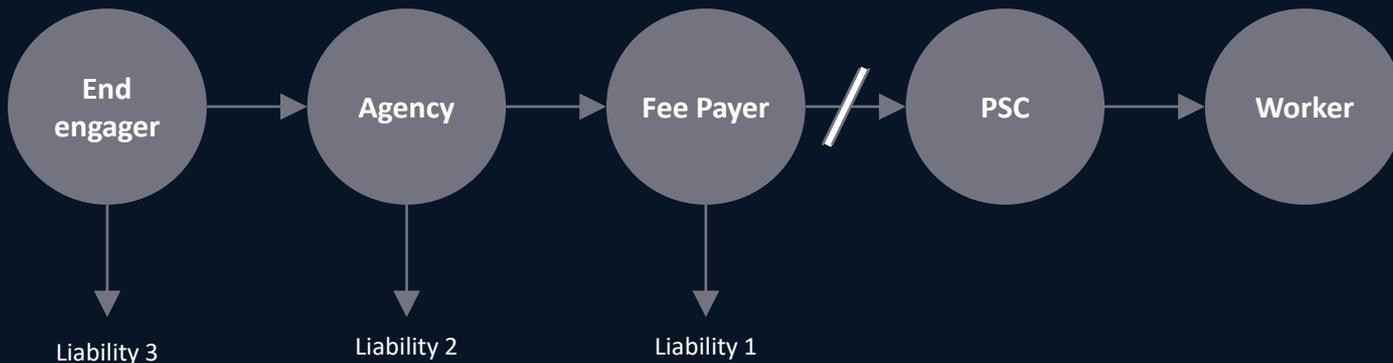
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IR35 going forward - liability

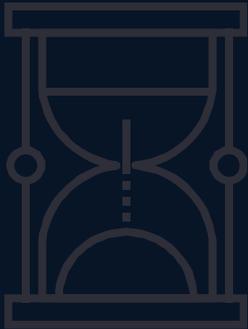
Liability flows down the supply chain as each party fulfils their obligations



Liability falls back to agency/end engager if HMRC cannot collect



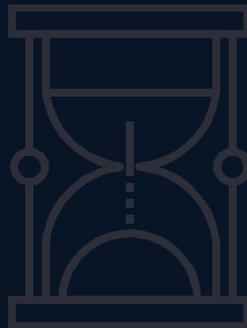
2 IR35 going forward - client-led status disagreement process



- ▶ The legislation allows for individuals and fee-payers to challenge the engager's determination
 - ▶ The engager must respond before the end of the period of 45 days beginning with the day the representation is received
-
- ▶ The engager must inform the worker and fee-payer that it has considered the representations and decided that the conclusion is correct with its reasoning, or provide to the worker and fee-payer a new status determination
 - ▶ If the engager fails to comply with process within the 45 day window, it becomes the fee-payer



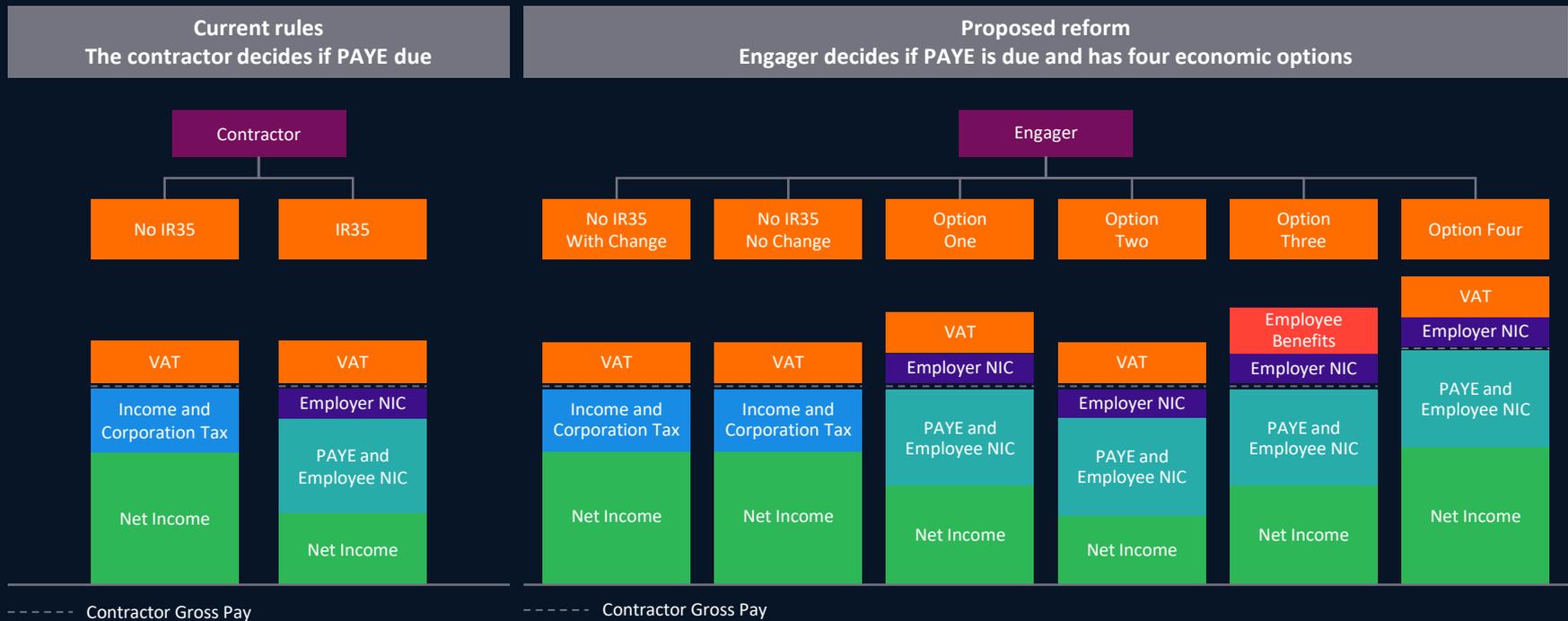
- ▶ Examples of reasonable care
 - ▶ Seeking the advice of a qualified, professional tax advisor
 - ▶ Having someone with a good understanding of the work to be undertaken involved in the determination process
 - ▶ Checking existing individual determinations at regular intervals to ensure they remain valid / accurate
 - ▶ Accurately applying and keeping a record of the assessment
- ▶ Examples of NOT taking reasonable care.
 - ▶ Blanket decisions and group assessments where there are variations
 - ▶ Failing to reconsider determinations where there has been a material change
 - ▶ Failing to have any proper support / training within the organisation to properly consider the off-payroll working rules
 - ▶ The person tasked with completing the assessment does not possess the knowledge required to complete it, and is not provided with the required level of support.



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The choices to be made

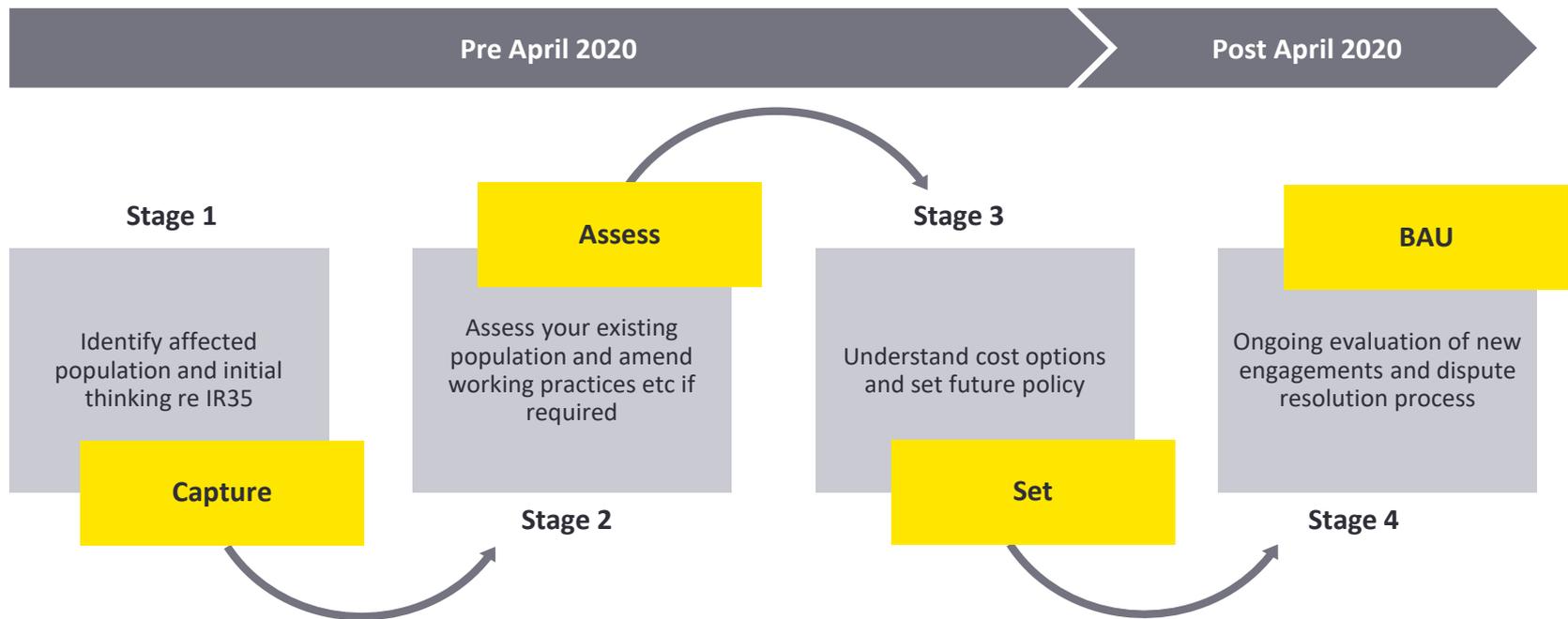
Options for private sector and the economic implications



- ▶ No IR35 – Preferred but may require changes to the ways of working
- ▶ Option One – Engager bears the costs of VAT and employer NIC only
- ▶ Option Two – Contractor bears the cost of employer NIC (and PAYE and NIC)
- ▶ Option Three – Contractor becomes temporary employee where Engager bears the costs of employee benefits and employer NIC
- ▶ Option Four – Engager keeps the contractor whole so no impact for contractor

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How are engagers tackling the issues?



- Engagers delayed their projects until now
- They are finding it to be more complicated than imagined
- Reluctance re budgets and responsibility
- Questions over CEST
- Potential for knee-jerk reactions
- Need for help from agencies
- Focus on current state – BAU comes later!
- Approach to talent being reviewed generally
- High initial rates for 'in IR35' assessments

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Some initial challenges

Most organisations have had to overcome some initial challenges, such as:

- 1 Who leads the project, bears the costs, makes the decisions etc?
- 2 Will they need individual or role based assessments?
- 3 Who will undertake the status assessments?
- 4 When will they start communications with internal/external stakeholders?
- 5 What will the future position look like and what will it cost?
- 6 How can they be certain to have captured everyone?
- 7 How will this impact or be impacted by the broader workforce strategy

7 Is CEST suitable?

		EY IR35 Confirm	HMRC CEST
1	Does the tool consider all factors, including mutuality of obligation, a key status indicator?		
2	Can you bulk upload contractors to the tool?		
3	Does the tool offer an audit log for decisions made?		
4	Does the tool contain sufficient technical detail to cover a variety of possibilities?		
5	Does the tool show a sliding scale of risk for each contractor?		
6	Can the tool be easily manipulated to allow contractors to “game” their answers?		

**Welcome to
EY IR35 Confirm**

The way in which employment status is assessed is changing. From April 2020, all large employers will be required to determine whether the work performed by any individual is akin to employment, regardless of the way in which they are contracted.

Your organisation is currently working with EY in order to assess any potential implications of these changes on your current contingent workforce. In order to assess this as accurately as possible, they have asked EY to gather certain information from each hiring manager.

Share questionnaire

Link 2

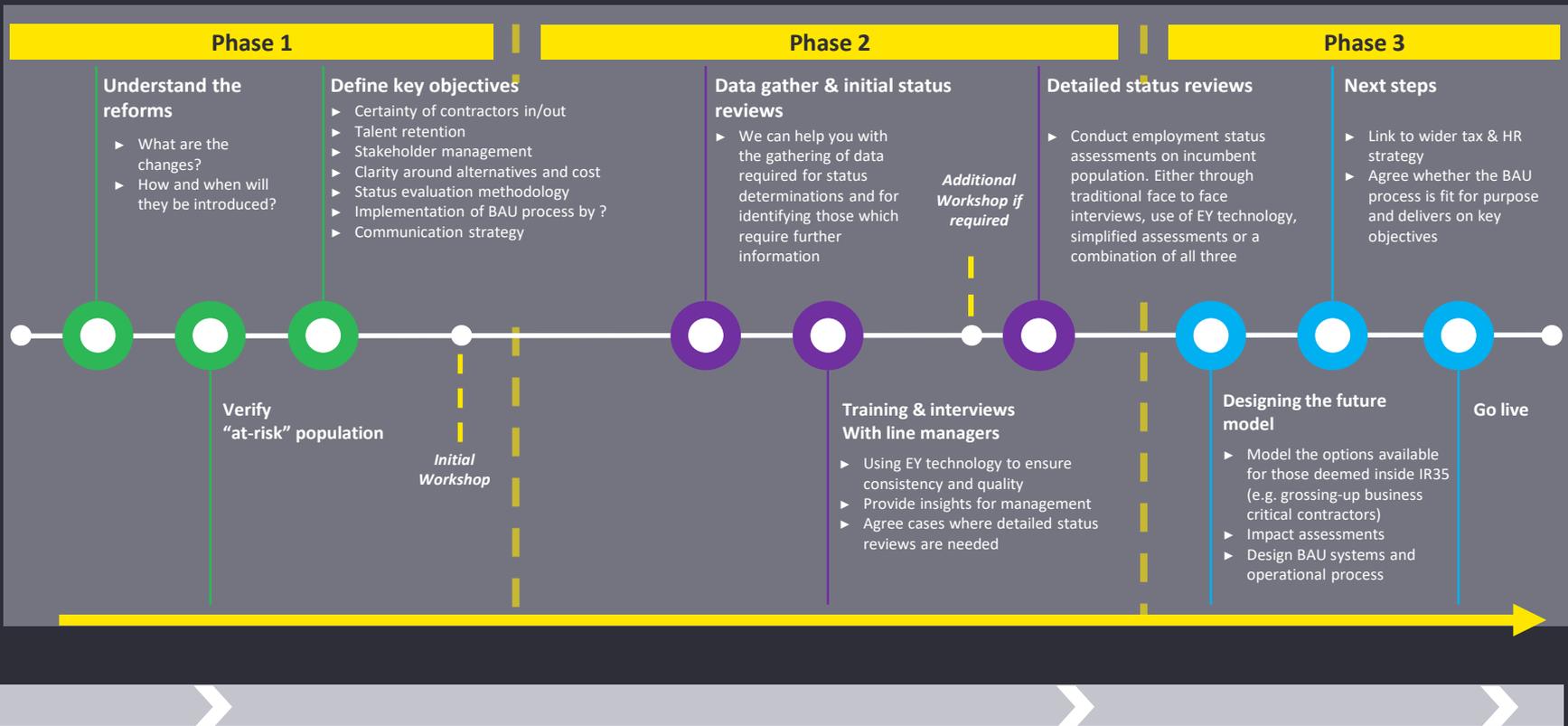
Employee Profiles

Reports

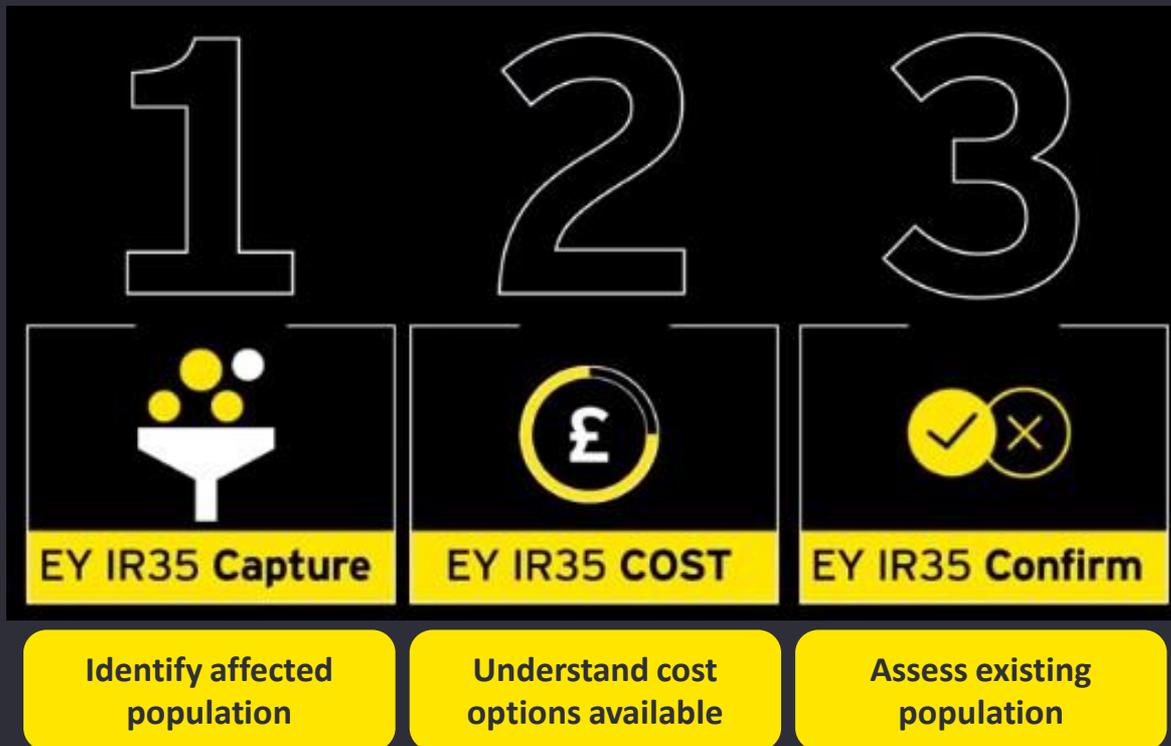
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EY IR35 Confirm is EY's employment status evaluation tool. It uses extensive logic, based on HMRC guidance, case law and EY's practical experience, to determine the likelihood of contractors falling within IR35.

Through obtaining, comparing and weighting question responses received directly from the business and contractors (where required), EY IR35 Confirm is able to make accurate and un-biased risk determinations at the click of a button.



10 How technology can support



Questions?

