



HELPING FOOD MANUFACTURING BUSINESSES NAVIGATE THE MAZE OF THE NEW IR35 TAX REFORMS

Find out more →



SUMMARY

The intermediaries legislation – more commonly known as IR35, is a piece of anti-avoidance tax legislation introduced in 2000 to combat what HMRC call “disguised employees”. It applies to contractors who supply their services through a Professional Services Company (PSC).

The legislation requires the PSC to pay equivalent employment tax to directly engaged employees i.e. PAYE tax and NIC if the reality of the work is akin to employment. Since the introduction of IR35, it has been the responsibility of the PSC to determine whether they were working inside IR35 (i.e. effectively an employee) or outside of IR35 (i.e. a genuine independent contractor) and to pay the appropriate taxes due.

However, there are reforms happening from April 2020 that will change the way this legislation works. Food manufacturing businesses will need to know about these changes if they hire any contractors operating via a PSC.

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IR35|BE READY FOR THE CHANGES



WORKING OUTSIDE IR35

There is one basic rule: does the engagement between the end client and contractor look and feel like employment? If it does, it is more likely IR35 will apply. There are a number of very clear factors to consider when determining IR35 status. It is important to take into account working practices as well as contractual terms. Below are the key factors that need to be considered when determining status:

1. PERSONAL SERVICE (INC. SUBSTITUTION)

Is the contractor required to carry out the work themselves? Can they send a substitute?

Being required to offer personal services points towards working inside IR35. A genuine right of substitution also requires the worker to be responsible for finding and paying the replacement worker. It is not only substitution that can help disprove personal service but also the ability to sub-contract significant pieces of work and/or engage assistants to carry out non-trivial elements of work.

2. CONTROL

What degree of control does the end client have over what the contractor is doing?

As employees are controlled by their employer, the existence of control points towards being inside IR35. The truly self-employed have more influence over how they complete their work. Contractors working outside IR35 should have a reasonable degree of control as to where, when and how they undertake the work.

3. MUTUALITY OF OBLIGATION (MOO)

Is the end client obliged to offer work beyond the agreed project, and is the contractor obliged to accept it?

Employees and employers have mutual obligations, so the presence of MOO points to being inside IR35. The end client should not pay the contractor for any 'down time' and the contractor should also have the ability to refuse any other work offered during the contractual term.

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WHAT'S CHANGING?

The actual method by which status is assessed is not changing. However currently, it is the contractor's responsibility to determine whether their assignment falls inside or outside of IR35, and they are liable for any unpaid taxes should this determination be challenged by HMRC and found to be incorrect. From April 2020, it will be the 'end hirer' or 'engager' of the company procuring the services, who will need to assess and determine whether a role falls in, or outside of IR35. If it is determined that it is inside IR35, the "fee-payer" (end hirer or agency) will be responsible for paying and reporting of PAYE tax and NI.

WHERE DOES THE LIABILITY SIT?

The fee payer bears the responsibility for accounting for the PAYE/NIC due under the IR35 legislation and the liability where any failures arise.

- If you hire contractors directly you are the engager and fee payer, therefore liability sits with you.
- As an engager (end hirer) you must take reasonable care to assess if the assignment is caught by IR35. Failure to do so will mean the liability is transferred to you.
- A status determination statement must be provided by you to the worker and the party the client contracts with (i.e. the agency). Until the statement is provided, the client will be treated as the fee payer – therefore the liability remains with you until this statement has been passed on.

POTENTIAL RISKS INVOLVED TO YOU THE CLIENT

- Liability for unpaid taxes.
- Rate increases for contractors who fall inside of IR35.
- Admin burden of status determination statement.
- Potential holiday pay claims.
- Blanket ruling may result in losing contractors.



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LESSONS LEARNT FROM THE PUBLIC SECTOR

After the public sector changes, Transport for London famously issued a blanket ruling, placing all of their roles inside of IR35. This led to contractors leaving, and ultimately impacted projects. The end result was that this decision was subsequently reversed.

Private sector organisations considering this approach should learn from the public sector. Losing highly skilled contractors to organisations that have adopted a more flexible approach could be damaging to your food manufacturing business. There is also the question of interpreting the requirement for organisations to take “reasonable care” in making their assessments. It may well be argued that a blanket ruling does not demonstrate “reasonable care”.



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OUR SOLUTION

Silven have partnered with Brookson Legal Services and Kingsbridge Insurance to offer the following solution to help our clients evaluate their risk, demonstrate reasonable care in their assessment and comply with the legislative changes.

Brookson Legal Services are the only SRA regulated law firm that focuses on IR35.

www.brooksonlegal.co.uk

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LEGAL**



1 IDENTIFY

- End hirer to assess current contract workforce and identify all contractors who work via a PSC.
- End hirer identifies roles requiring an IR35 review – it is possible to group roles where the contract and working practices are the same.

2 AUDIT & EDUCATION

- RAG audit every current off payroll engagement and review hiring pattern for your food and drink manufacturing organisation.
 - Contract review
 - Working practices survey
 - Review documentation
- Each engagement will then be classified.



Red: Inside of IR35, transfer PSC to umbrella company or permanent



Amber: Further review required



Green: Outside of IR35, document working practices and issue new contracts

- Education and training delivered to all hiring managers and relevant personnel.

3 ASSESSMENT & EVIDENCE

- Audit trail of decision-making process for every role outside and inside IR35, as required by HMRC.
- Decisions and audit trail passed to recruiters.
- Status determination statements produced for each role identified.

4 ONGOING SUPPORT

- Monthly MI demonstrating reasonable care application.
- Off payroll worker report filing and continual management of the audit trail.
- Evidence collated that decision was applied by the fee payer.
- Periodic audits.

5 FINAL STAGE

- Fully insured solution covering IR35 for all parties in the supply chain.

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so you have an unfair competitive advantage,
the compliant way.



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