Your Guide to IR35

CORVIN FOX

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IR35 legislation was brought in to combat tax avoidance. It's where Contractors, Interims and Consultants supply their services through an intermediary (Ltd. Or Personal Service Company) and carry out the same role as an employee for the client. In these cases, individuals should be subject to PAYE and National Insurance. The client should also be subject to Employers National Insurance.

A brief History lesson...

1999 – The Inland Revenue (IR) issued a press release which was number 35. Hence, we have IR35! It described the government's plans to clamp down on "one person" Ltd companies working as a traditional employee but getting the tax benefits of a Ltd company.

2000 – IR35 legislation introduced through the Finance Act 2000. Under this legislation Interim managers were responsible for deciding whether they were inside or outside of IR35. Where inside, the Interim Manger had to pay PAYE and NI. Since then there has been a huge amount of push back from the contracting and business sectors as many felt professional Interim Managers were being unfairly targeted.

2011 – The government pledged to overhaul the way the HMRC had been dealing with the legislation.

2017 – Off Payroll Legislation was introduced where all Public Sector organisations were responsible for deciding if Interim Manager assignments were inside or outside IR35. Many of these organisations made blanket decisions putting projects and roles "inside IR35". This, in turn contributed to an exodus of contractors from the public sector putting major projects behind and contributed to skills shortages.

2019 – Off Payroll Draft Legislation introduced for the Private Sector. Similar to the Public Sector legislation with a few tweaks, this legislation is targeting a roll out in April 2020.

2020 – COVID-19 disrupts the landing of the IR35 Legislation and implementation. After many debates and discussions around if/when the new Legislation will take effect, it was decided that everything will go ahead in April 2021.

What is happening in April 2021?

Personal Service Company (PSC) – A limited company that typically has a sole director, the Interim Manager / Consultant, who owns most or all of the shares.

End User – The end client who receives the services from the PSC. In our market this is the Food and Drinks Manufacturers.

Fee Payer – The party who pays the PSC.

From April 2021, the end user will be responsible for determining whether the personal services company (PSC) works in a manner which would mean they were an employee if engaged directly. The end user will therefore need to carry out a Status Determination Statement (SDS) assessment. This assessment needs to be carried out with "reasonable care" before the work begins and fed back to the PSC and the Agency if they are involved.

If the assessment determines they are outside IR35, it's business as normal e.g. The PSC pays their own taxes. If it's deemed inside of IR35 then the PAYE, Employee NI and Employer NI is due. The fee payer will be responsible for these deductions.

Any Liability will sit with the Fee payer. For all our Contracts we, Corvin Fox, are the Fee Payer and therefore liable. If the End User (Food or Drink Manufacture) goes directly with the PSC, then the End User is liable.

The breakdown as to what this means for you as the client

- **When you work directly with a PSC any potential HMRC tax liability will sit with you.**
- **You will need to review all your Terms and Conditions to ensure they are compliant with the new legislation.**
- **You will need to review all "Contract for Services" to ensure they are also compliant.**
- **Any assignments after April 2021 will need a workplace assessment.**
- **All assignments after April 2021 will need an SDS (Status Determination Statement).**
- **You need to understand the factors that will make your decision which is explained below.**

Making your SDS decisions

Determining whether IR35 applies to your contract is a complex matter. There are three key factors that will determine your IR35 status. Theoretically you only need one factor to prove an assignment is outside IR35.

The 3 Key Factors

- **Supervision, Direction, and Control: What degree of supervision, direction and control does your client have over what, how, when and where you complete your contract and day to day work? You will need to review all your Terms and Conditions to ensure they are compliant with the new legislation.**
- **Substitution: Are you required to carry out the work yourself, or you can you send someone in your place?**
- **Mutuality of obligation: Is your client obliged to offer you work, and are you obliged to accept it?**

Supervision, Direction, and Control (of the worker)

Supervision, Direction, and Control are tests of 'employment' that could put a contract inside IR35.

'Supervision' means the extent to which your client oversees your work and how you perform it to a standard they have specified.

'Direction' means your client directing how you complete your assignment, by providing instructions, guidance, and advice as to how the work is to be done. Someone providing direction will often coordinate how the work is done as it progresses.

'Control' is where you have someone dictating the work you do and how you go about it. This also includes the power to move you from task to task as priorities change.

Substitution

Another test of 'employment' is whether your business can provide a substitute to do the work. You should be able to send a substitute to complete the work on your behalf or reassign the work. If you genuinely can provide a 'substitute' and on occasion actually do, then the contract is likely to be outside the scope of IR35.

If the client is only interested in your own suitability and skills and no substitute can be offered or accepted, then any substitution clause will likely fail under HMRC scrutiny. If you have to personally provide the services agreed with your client, this is usually a good indicator that you're an employee and are not self-employed.

Mutuality of Obligation

To qualify as a contractor, there must not be a 'mutuality of obligation'. There are two obligations to consider:

- **An obligation for one party to offer work.**
- **If work is offered, an obligation for the other party to accept it.**

Put simply, a contractor must work from project-to-project, with no obligation to carry on working for the client after the work is complete. A contractor also has the right to terminate a contract part-way through. An employee, on the other hand, can only work for one company and has an obligation to carry on working when their tasks are complete.

Other Factors That Affect the IR35 Status of a Contract

Along with the three key areas highlighted above, you need to be aware of the following:

- **Alternative work: If you're contractually obliged to have one client at a time, you're probably an employee, not a contractor.**
- **Equipment: Unless there's a sound reason (such as for safety, security or practicality), you should be using your own equipment, rather than equipment supplied by your client.**
- **Financial risks: Regular, guaranteed weekly or monthly work specified in a contract looks more like an employee 'contract of services' rather than professional fees paid to a person who is self-employed. Any errors made during the contract must be rectified in the contractor's own time, and the contract should say this. A requirement to maintain professional indemnity insurance is normal.**
- **Employee Type Benefits: This includes holiday, sick pay, pension – the contract should state these do not apply.**

- **Part and parcel: If a contractor becomes so integrated into the client's organisation that they, for example, appear in organisation charts, or have staff reporting to them, then they're behaving exactly like an employee and the contract could fail an IR35 test. The freelancer or contractor should distance themselves from the client's corporate structure.**
- **Termination: The contract should state that it will be terminated at the end of the project or if there is a breach of contract.**
- **Misc.: Other things you should take into account are being able to demonstrate that you are "in business on your own account" – you may not have stock, premises, or staff but you will probably have an office (even at home), a website, be VAT registered, have business stationery, advertising, invoices, insurance and have other clients and an accountant.**

Things you can do to prepare

There are a couple of different ways, as a business, to best prepare for your company for the new legislation.

- **Use HMRC tools to your advantage – This can be time consuming depending on how many interims you have at your site. However, using the CEST (Check Employment Status for Tax) tool is a great way to see whether a role sits inside or outside. The positives to this tool are that it's completely free and it gives you reasons for your SDS which is vital! The draw backs to this tool is that it can't determine an SDS for "grey" roles and doesn't take mutuality of obligation into account.**
- **Engage us and take advantage of our Corvin Fox Shield service which will remove the administration burden as well as protect your brand and business from the HMRC liability risk.**

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