
PUBLIC SECTOR IR35 QUESTIONS & ANSWERS

(for Recruitment Agencies)

Brookson, here with all the right options

Public Sector IR35 Q&A (for Recruitment Agencies)

Introduction

The draft legislation which will reform IR35 in the Public Sector has now been announced, this will move the responsibility of assessing IR35 away from the worker / Personal Service Company (PSC) to the 'end-client', with HMRC offering an online tool to assist in this decision. However, the responsibility for deducting tax, NIC's and completing the RTI will rest with the 'engager'. In addition to this, the draft legislation currently states that, the liability for any unpaid PAYE deductions will also rest with the 'engager' (usually the agency in a conventional contract chain). Companies recruiting into the Public Sector should be speaking to their clients and informing them of this change to advise them that 'blanket bans' on PSC's is not a sensible option if they rely on a flexible workforce. Partnering with specialist providers who can offer PSC services with full IR35 reviews by qualified legal professionals can assist in easing this new process and mitigating risk

Q. What is IR35 and how does this affect the client and or agency?

A. IR35 is tax legislation which came into effect in the year 2000. It was designed to ensure any worker operating in a self-employed manner and not subject to PAYE by the client or recruitment agency could do so compliantly by providing a range of rules that the supply chain had to comply with. The risk for incorrectly determining the IR35 status of a worker has always been with the individual. As of April 2017 this responsibility now lies with the Public Sector hirer.

Q. How do I assess the IR35 status of workers?

A. HMRC will be developing an online tool which recruiters can use to submit a role and worker details to determine the IR35 status, you can also use a professional advisor such as a legal business to determine this for you. Brookson haven't only been providing contractor accountancy services for 20 years, but Brookson Legal Services also provides over 8,000 IR35 reviews per year and sit on the IR35 reform panel.

Q. Will the client take away the risk (from the agency) if the decision is incorrect?

A. NO, whilst the Public Sector hirer has responsibility for determining the IR35 status of a role and can support you in gathering information the PAYE liability if the decision is incorrect sits with the agency. The liability can be transferred to the end hirer if they fail to provide you with the IR35 status of a role within 31 days of you asking. We are also aware that HMRC are considering amending the draft legislation to allow the liability to be transferred to the end hirer if they have not taken "reasonable care" when concluding on the IR35 status.

Q. Will I have to change my processes?

A. Yes, IR35 reviews will be required pre selection of candidates and when publishing vacancies to your candidates you should state from April 2017 what you expect the IR35 status should be and only accept candidates that are willing to operate in this way. This will also result in agencies needing a range of payment solutions for all workers' situations.

Q. Could this affect my ability to attract the right candidates for the roles?

A. This legislation affects the whole of the Public Sector. If a worker wants to engage on a temporary basis they will be subject to these rules regardless of the client or agency they use. Although this requires careful communication, the worker does not have a choice anymore, this sits with the Public Sector hirer. This could mean contractors may choose to move to the Private Sector, where the IR35 rules remain unchanged and the risk and decision sits with the contractor. Some contractors may look to remain in the Public Sector and possibly seek an improved rate of pay, which would help cover the potential extra tax implications but will effect agency margins.

Q. What support can Brookson offer agencies?

A. Brookson are meeting all key agencies placing into the Public Sector to discuss this in much more detail – especially the risks to be aware of, but more importantly the risk mitigation Brookson and our Legal team can offer agencies. Brookson Legal Services complete over 8,000 IR35 reviews per year, once a review has been carried out, we will provide an employment certificate to the contractor (and their LTD company) which means they can provide tangible evidence to the agency / or end-hirer that they have successfully had external legal advice and believe they are inside / outside of IR35. It is important to note that each assignment warrants a different IR35 review and therefore a new employment certificate will be provided with each new assignment or extension.

Q. How do I book in a session to understand more about how Brookson can support with the public sector IR35 reform?

A. Simply email paul.lloyd@brookson.co.uk or call 01925 694521.

“ Brookson is a great company, but, it is the people working there that makes the difference. I wish I'd joined earlier! ”

Dimitrios Papadopoulos