



What do recruiters need to know and do about IR35?

Crunch and Professional Passport





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Why are Crunch qualified to help?

- We've been experts in our field for over 10 years
- In-house IR35 expertise
- Huge bank of resource and support



Solutions:

- An online IR35 classification tool specifically for recruitment agencies
- Detailed contract reviews by IR35 experts
- Limited company accounting & umbrella payroll packages covering all IR35 scenarios
- Option to buy legal and liability insurance following an 'outside IR35' classification outcome

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Professional Passport



- Review the providers offerings for compliance
- Only those that meet the standards will be listed on our website as approved providers:
 - Umbrella – No Expenses
 - Umbrella – Expenses
 - Joint Employment
 - CIS
 - Accountancy Services
- Only insurance backed Compliance Review
- Free agency and client membership to create insurable interest
- Provides due diligence evidence

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Recap on IR35

- Legislation introduced in 2002 when HMRC was called Inland Revenue
- Number 35 in the press release hence the name IR35
- It affects individuals using their limited company as a Personal Service Company (PSC) who work for an end-client
- Also known as 'disguised employment' or 'off payroll working' rules.
- Designed to make sure workers and employers pay the right amount of employment taxes and remove differences between employed workers and the self-employed undertaking similar work
- IR35 rules are designed to make sure individuals pay the right amount of employment taxes - Income Tax and National Insurance (both employee's at 12% and employer's at 13.8%)
- It's a complex area and case law is still emerging.

In 2002 the rules stated the PSC is responsible for determining the IR35 status of its contracts

Public sector IR35



In April 2017, new rules were brought into the public sector which meant the end-client (and not the PSC) decided whether an assignment (and worker) was 'inside IR35' or not

- Many government organisations (NHS, Local Authorities, Central Government) immediately stopped offering assignments to PSCs, assessing all contracts as inside IR35 and employed people directly, deducting employment taxes at source
- Government believes this has led to increased tax revenues, (£400 million in tax year 2017/18) - but this amount is challenged by most commentators
- Many PSCs decided to close or stopped working in the public sector

IR35 - what's changing?



HMRC will be extending the rules currently applied to the public sector, to the private sector from 6th April 2020.

End-clients who are considered to be 'small' won't be affected by the changes - if end client meets at least 2 of the following, they are 'small':

- Annual turnover less than £10.2 million
- Balance sheet total less than £5.1 million
- Less than 50 employees

The PSC will still be responsible for establishing IR35 status where the assignment is with a 'small' end client.

IR35 tests - HMRC



HMRC applies tests to judge if a worker under a contract is **self-employed** or an **employee**

Main factors	Secondary factors -	
Personal service (substitute / assignment)	Equipment	Holiday, sick pay and pension rights
	Insurance	Financial risk (non payment)
Control (when / where / what / how)	Basis of payment	Opportunity to profit from sound management
	Intention of the parties	Part and parcel of the organisation (management role, supervising staff)
Mutuality of obligation (more work / right to terminate a contract)	Length of engagement	

Off-Payroll Working



Accurate assessment is required - HMRC has said the following:

- Government wants clarity throughout the supply chain
- End-clients responsibility to **produce a Status Determination Statement (SDS)**
- **End-client must pass on the determination and the reasons for the determination**
- Government believes supply chain is robust enough to ensure this is passed to all parties including the worker
- HMRC is clear that it is **not right** to rule all engagements to be within or outside of the rules irrespective of the contractual terms and actual working arrangements.
- All organisations are required to take **reasonable care** in making their decisions.
- Medium and large organisations have the skills to carry this out
- There are clear incentives for them to make accurate determinations where someone is likely to fall outside of the off-payroll working rules.

Off-Payroll Working



What if there's a disagreement over the SDS?

- The government will legislate to set out the minimum requirements for the 'status disagreement process'
- Workers can expect the same treatment regardless of which client they engage with
- Clients must respond to representations made by off-payroll workers that disagree with their status determination.
- Failure to respond to representations made by the fee-payer or worker will result in the client being liable for the tax and NICs liabilities.

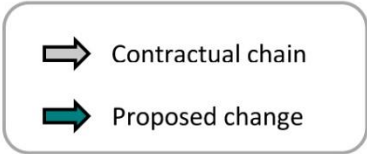
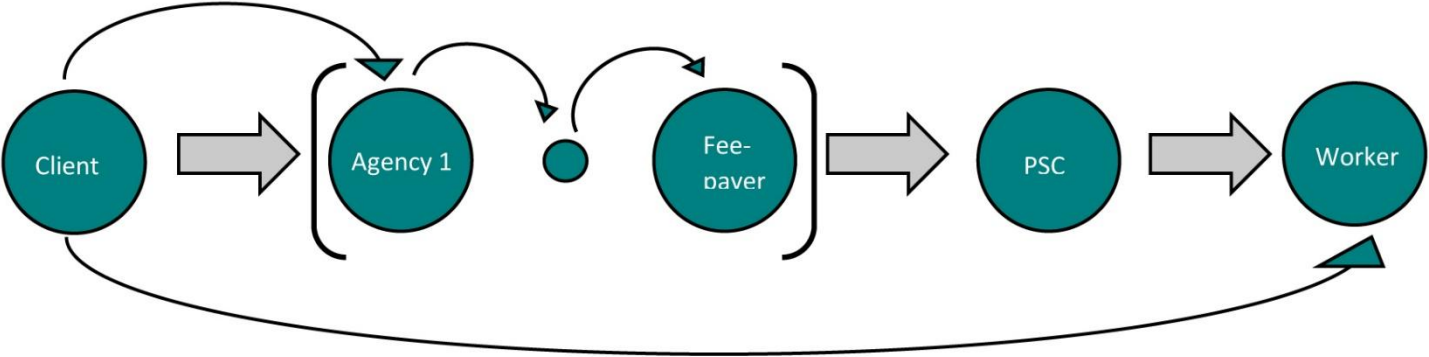
The government believes the client remains the party best able to understand the contractual terms and the expected working practices of those it chooses to engage, and to respond to any concerns or disagreements in real time.

Off-Payroll Working

Diagram: Flow of information through the labour supply chain

1. Client required to provide status determination together with the reasons for determination to party they contract with and the worker

2. Status determination and reasons for determination are required to be passed down the contractual chain



3. Client required to provide status determination and reasons for determination to worker

Liability post April 2020

Who is liable for unpaid tax?

The end-client or the fee-payer is responsible for the payment of employment taxes.

- The first agency has enough visibility of the labour supply chain to influence compliance
- The end-client is similarly able to influence compliance in its choice of the first agency in the contractual chain
- The government believes transferring tax and NICs liabilities where there has been non-compliance in the labour supply chain and where it is not possible to secure the tax liability from the non-compliant entity to the first agency and then to the client, will incentivise all parties in the labour supply chain to take steps to apply the rules as intended.
- Where IR35 applies, the end-client, as the fee-payer, is responsible for all employment taxes
- If an agency is involved in the supply chain, and the agency is responsible for paying the PSC, then responsibility for all employment taxes passes to the agency
- This means the agency (or end-client) must deduct income tax and NICs from the payments made to the PSC and the agency (or end-client) must pay Employer NICs to HMRC.

Liability in the event of an appeal

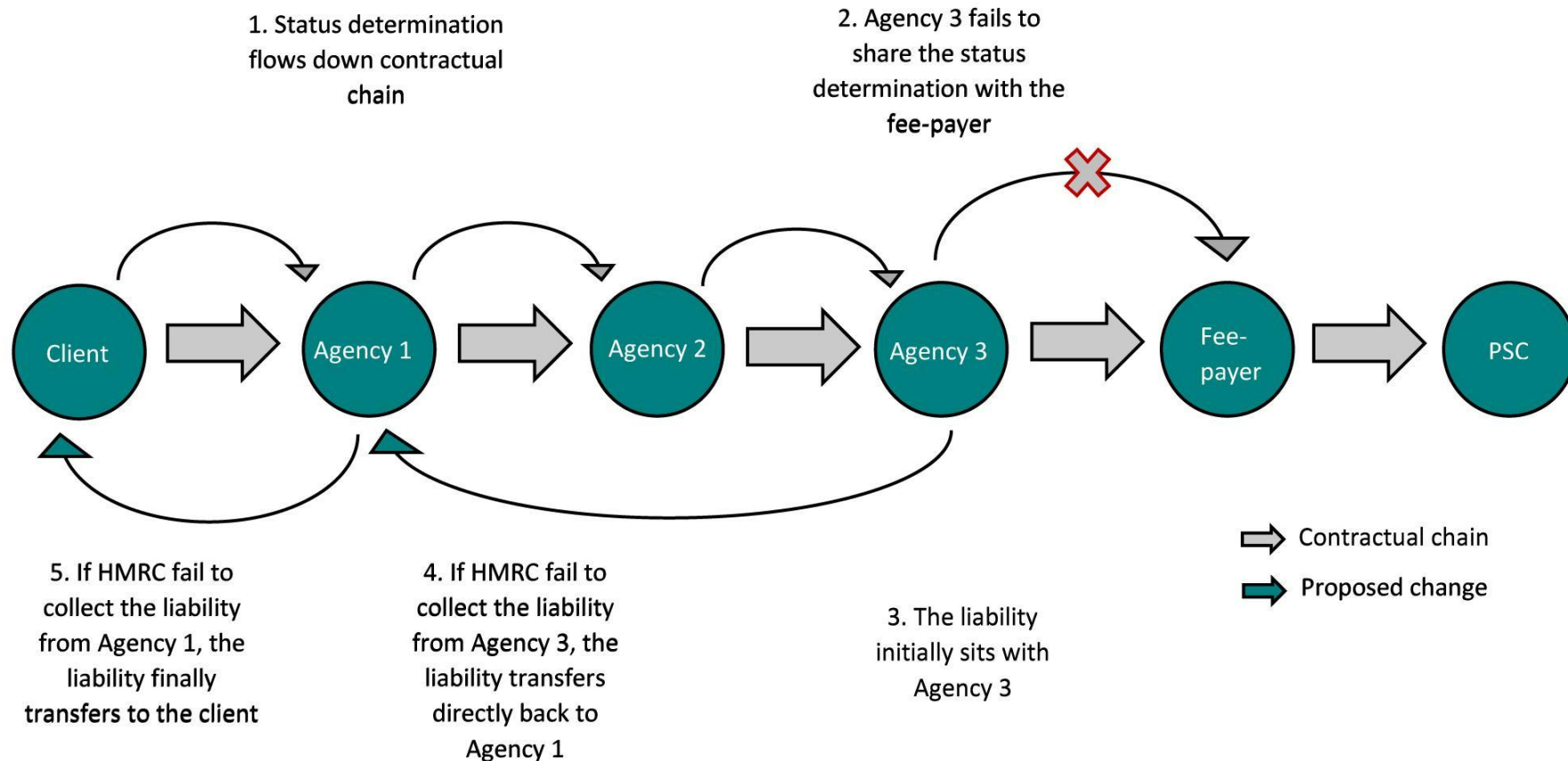
What if an agency or worker appeals against an SDS ?

If a PSC or an agency does not agree with the employment status determination made by the end-client, they have a right to appeal. The end-client needs to have processes in place to:

- Receive appeals from PSCs or agencies
- Consider the matters raised in each appeal
- Decide whether the determination is correct and should be maintained - providing their reasons in writing
- Withdraw the original SDS and replace it with a revised version
- Keep a record of all appeals and the outcome.
- End-client has 45 days to consider and respond
- Original SDS remains in place until the appeal is concluded
- If the end-client does not respond within 45 days of receiving an appeal, it will be **liable for paying all employment taxes.**

Transfer of liability

Diagram: Transfer of liability across the labour supply chain



Supply Chain Compliance



Working with Umbrella Companies:

- Where an umbrella company employs the worker directly as an employee and does not contract with the worker's PSC, the off-payroll working rules do not apply
- Some umbrella companies do not employ the worker directly and continue to contract with the worker's PSC - so these arrangements should be checked
- If the worker's PSC continues to receive payments for the off-payroll worker's service through their PSC then the off-payroll working rules continue to apply

Make sure all providers in the supply chain are compliant!

Legislation: Impact on rates



Where the rules apply, the fee-payer will be treated as an employer for income tax, NICs and Apprenticeship Levy purposes. The fee paid to the PSC is to be treated as a payment of the off-payroll worker's employment income when it is paid.

The amount treated as the off-payroll worker's employment income will be the VAT exclusive amount paid to the worker's PSC. For income tax, NICs and Apprenticeship Levy purposes, the worker will be treated as having an employment with the fee-payer.

Summary



- End-client responsible for an accurate assessment (SDS)
- Potential Cost Implications
- Ensure Supply Chain Compliance
- Avoiding Liabilities

Become an IR35 Expert ?



- Until now this has always been the contractors responsibility and if they assessed incorrectly it was their liability. The proposals change all of this.
- End clients and recruitment companies have not had to consider this previously.
- Result – Low knowledge and awareness.
- Big learning curve to get up to speed.

HMRC aren't even winning the cases they bring and they wrote the legislation!

Correct assessment of employment status is critical - blanket decisions won't work, so what do end-clients and recruiters need to do?

The Transition Period



Step 1 – Review Current Assignments

Create a status profile for all current assignments

- Role Based Assessment
- Relationship Based

Assess each assignment for IR35 status - 3 main options:

- Use HMRC 'CEST' tool
- Use a third party online assessment tool
- Engage a specialist firm to advise

Use HMRC 'CEST' tool



Step 1 – Review Current Assignments

- Has been subject to much publicity on its short-falls and failings, ignores mutuality of obligation.
- Of the respondents that considered CEST, many expressed the view that the current tool did not accurately reflect current case law, used language which was overly complex, and was ambiguous about how it reached its decisions. Many of these respondents suggested that CEST required an overhaul to meet the requirements of the varied set of working relationships that will be in-scope of the off-payroll working reform from April 2020.
- HMRC has been working to better understand the needs of organisations and to enhance the service.
- Too simplistic in its approach.
- Provides an outside, inside or unable to assess result – no commentary
- Outcomes guaranteed by HMRC with significant caveats – effectively removing the guarantee.
- www.gov.uk/guidance/check-employment-status-for-tax

Use 3rd party tool - Crunch



Step 1 – Review Current Assignments

- Quick and easy to use online tool
- Proves due diligence and duty of care
- Includes Mutuality of Obligations
- Recommended actions based on results
- Independent from HMRC

Premium options

- Verified by leading insurance provider
- Legal and liability cover on determinations (Initially for contractors only)
- Upload contract function for expert review

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Engage a specialist firm - Crunch



Step 1 – Review Current Assignments

- Look at each assignment in detail, the individual approach
- Obtain suggested actions and considerations to strengthen position
- Most costly option in the short term

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Legislation - Direct Engagements



Step 2 - Map the operating structures

What HMRC says about Direct Engagements

- On employment rights, at present there is no direct link between employment status for rights and employment status for tax. As set out in the Good Work Plan published in December 2018, the government agrees with Matthew Taylor's view in his review of modern working practices that aligning employment status for tax and rights is the right ambition. However, as Matthew Taylor recognised, this is not straightforward and any changes will need careful consideration to avoid unintended consequences.
- In the meantime, it is right that the government takes action to improve compliance with existing rules. Those who wish to challenge their employment status for rights can take their case to an employment tribunal, regardless of their tax status.

This could be a positive opportunity for agencies

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Potential cost implications



Step 2 - Map the operating structures

Understand the operating structures used by agency supplied contractors (workers):

- Limited company 'PSC'
- Umbrella company
- Self-employed
- Agency PAYE
- Other

Potential cost implications



Step 2 - Map the operating structures

If assignment is 'Outside IR35'

- Limited company 'PSC' – Nothing changes
- Umbrella company – Nothing changes although some may move to Ltd
- ~~Self-employed~~
- Agency PAYE – Nothing changes
- ~~Other~~

Potential cost implications



Step 2 - Map the operating structures

If assignment is 'Inside IR35'

- Limited company 'PSC' – Big changes
- Umbrella company – Nothing changes
- ~~Self-employed~~
- Agency PAYE – Nothing changes
- ~~Other~~

Limited Company 'Inside IR35'



If assignment is 'Inside IR35' and worker is using a limited company

HMRC rules state:

- The fee paid to the PSC is to be treated as a payment of the off-payroll worker's employment income when it is paid.
- The amount treated as the off-payroll worker's employment income will be the VAT exclusive amount paid to the worker's PSC. For income tax, NICs and Apprenticeship Levy purposes, the worker will be treated as having an employment with the fee-payer.

Worked example - Impact of IR35

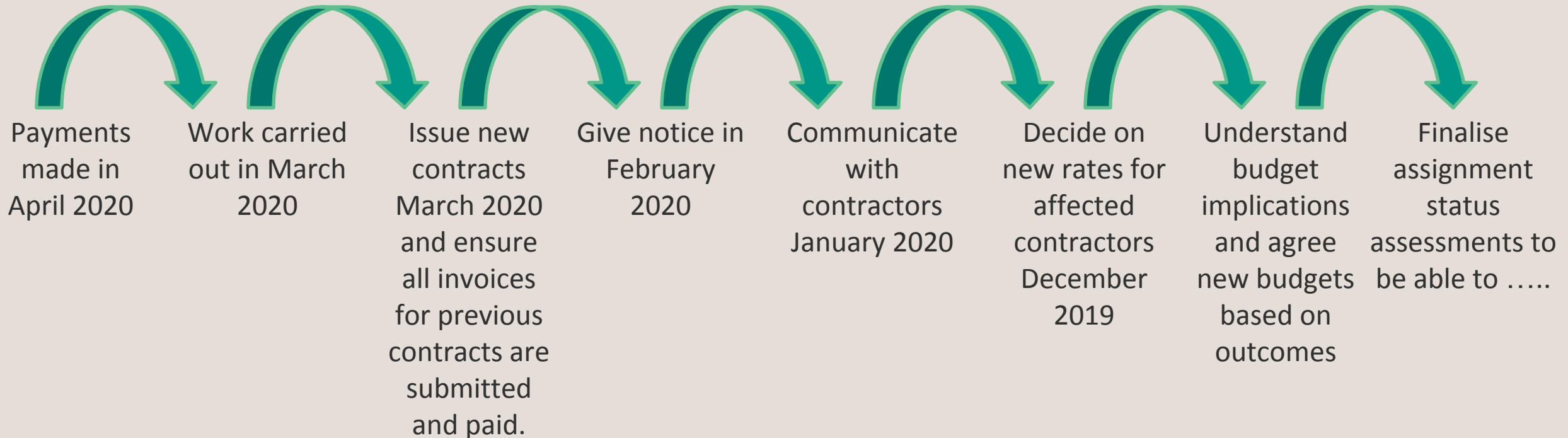


Current: Limited Company 'Outside IR35' assignment	After April 2020 Actually Inside IR35 – no contract changes	After April 2020 – End Client costs remain the same	After April 2020 – Contractor take home the same
Contract Rate £300 per day [ignoring VAT]	Contract Rate £300 per day [ignoring VAT]	Amend rate to £266	Amend rate to £325
Invoice for 20 days work = £6,000	Invoice for 20 Days work = £6,000	Invoice for 20 Days work = £5,320	Invoice for 20 Days work = £6,500
Pay £6,000 to the limited company bank account	£6,000 is gross taxable pay	£5,320 is gross taxable pay	£6,500 is gross taxable pay
	Employment costs on top Deduct PAYE [£728.73 ers NI + £30 a/I = £758.73]	Employment costs on top Deduct PAYE [£634.89 ers NI + £26.60 a/I = £661.49]	Employment costs on top Deduct PAYE [£797.73 ers NI + £32.50 a/I = £830.23]
Net pay assuming outside IR35 - £4,505.08 [+£491.58]	Net pay to limited company bank account - £4,191.62	Net pay to limited company bank account - £3,797.22	Net pay to limited company bank account - £4481.62
Total cost = £6,000	Total cost = £6,758.73	Total Cost = £5981.49	Total Cost = £7330.23

Timeline for assignments



Implementation Date: Payments made after 6th April 2020



Recruiter response



Step 3 – Avoiding Liabilities and Supply Chain Compliance

- Off-Payroll Legislation
- Criminal Finances Act
- Senior Accounting Officer Rules
- Plus various Targeted Anti-Avoidance Rules

Professional Passport can help!

- Contractual requirement for the use of Professional Passport approved providers

Contractor Solutions From Crunch



Limited company accounting packages

- Covers all IR35 scenarios
- IR35 tax accounting
- IR35 payroll (small business exemption)
- Umbrella payroll
- IR35 contract review
- Insurance options to protect themselves

Umbrella Payroll

- Professional Passport approved
- Dedicated payroll support
- Comprehensive insurance cover
- Fully compliant with HMRC
- Holiday pay, expenses and pension for worker
- Employee perks package add-on (Coming soon)

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Questions?

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