



John Deane: Change happening in April 2020

Tax changes on way

John Deane, a partner at Gannons Solicitors, tells operators how best to manage the IR35 tax legislation changes they face from April 2020

The job market is changing across the catering industry, with workers increasingly demanding greater flexibility in payments and working arrangements.

The latest survey findings from YouGov show 55% of employees saying more control over work and shift patterns would make them less likely to leave the industry. This is relatively good news when, according to UKHospitality, the industry faces a recruitment deficit of 60,000 a year.

Caterers have become extremely aware of the importance of nurturing and retaining their existing workforce, but implementing a flexible culture within a business can prove to be a minefield, not least when calculating tax payments.

There is some guidance from courts and tribunals on whether, when a person is working for a catering operator, they are carrying on a business in their own right. HMRC also provides guidance on what it considers employed and self-employed.

What creates anxiety for caterers is the complexity of determining employment, self-employment and worker status, and the resulting uncertainty about financial liabilities – and, ultimately, this will be for a court or tribunal to decide.

Workers who use an intermediary company to supply their services pay themselves largely by way of dividends from their personal service company (PSC), and in so doing an employer's national insurance contributions (NICs) are substantially reduced and generally less tax is paid.

If you, as a caterer, have such arrangements in place with some workers then to understand the new IR35 rules means scrutinising the underlying nature of your relationship with them.

If you were to remove the PSC, would the worker actually have been your employee? If the answer is yes, the income of the PSC is regarded as the worker's

earnings, and is subject to tax and Class 1 NICs as their employment income.

Until now, the risk of an arrangement falling inside IR35 meant payroll liabilities would fall on the PSC and not you, the paying caterer. However, in April 2017, responsibility for assessing engagements with PSCs working in the public sector shifted to the end-user operator.

As a result, where arrangements between a public sector end-user operator and a PSC have the features of employment, the fee-paying end-user operator must account for tax and NICs under PAYE when paying the worker (including employer NICs). This means an extra cost for the end-user operator.

In 2018, the Chancellor confirmed that public sector rules would be extended to the private sector from April 2020, but with an exemption for small businesses. To qualify as 'small', a business must meet two of the following three requirements:

1. Annual turnover of not more than £10.2 million
2. A balance sheet total of not more than £5.1 million
3. Not more than 50 employees.

If that is not you, then what will you need to do from April 2020? Provide the 'status determination' they have decided – not only to the contracting party (a PSC or other intermediary, such as an employment agency), but also directly to the individual worker – and account for tax and NICs under PAYE when paying the worker (including employer NICs).

As a catering operator you will naturally want to send out a positive message about your willingness to embrace flexible working and adaptable contractual arrangements to accommodate staff requirements.

However, with these new regulations coming into force from 2020, the important factor here is that you understand where your obligations, responsibilities and potential liabilities start and conclude. ■