ics Accounting

IR35 GUIDE



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WHAT IS IR35?

The IR35 legislation came into force with the Finance Act of 2000. Its purpose is to determine if contractors are 'disguised employees' and therefore liable for full PAYE and National Insurance via deemed salary.

WHAT DOES IR35 MEAN FOR ME?

Your IR35 status on a particular assignment determines whether you can take advantage of the tax benefits of operating via your own limited company.

The status depends on whether, when ignoring the contractual chain which includes the limited company, you are effectively an employee of the client which you are working for when considering certain indicators.

IR35 status could vary from assignment to assignment, so it is important that it is reviewed each time you begin working on a new assignment.

Being found to be inside of IR35 does not mean that you cannot work through a Limited Company, it simply means that the profits which result from those relevant engagements will be taxed as though a salary is paid to you.

WHAT ARE THE IR35 CHANGES?

Legislation changes to IR35 came into effect on 6 April 2021 for contractors working in the private sector. The public sector changes came into effect in 2017.

The changes mean a contractor is no longer responsible for determining their own IR35 status, it will be the **end client** where the assignment is being carried out, that decides the IR35 status of a contractor's assignment. They then take on financial responsibility for potential underpayment of taxes.

The contractor's end client will be required to carry out an IR35 assessment for each assignment and pass the Status Determination Statement (SDS) assessment to each party in the supply chain, including the contractor.

WHAT ARE THE IR35 RULES?

THE CONTRACT

Your contract should make the following points very clear, so there can be no debate if your IR35 status is ever drawn into question.

1. Lack of Control and Supervision

Although a contractor would usually be expected to provide services during certain times at a specific location, the contract must make it clear that the client does not control the manner by which the services are provided. That's a key difference between client-supplier and employee-employer. As a director of your own business, you will need to be able to demonstrate to HMRC that you are not influenced by your client and that you are in sole charge of your business. You must be able to demonstrate that there is not undue control exerted over you and your company whilst you are carrying out work under your assignment, as you are the one who holds the necessary skill, expertise and experience.

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2. Lack of Mutuality of Obligations

In general, this means that there is no obligation on the client to provide work, nor is there an obligation for you to accept any work which is provided. Of course, there would be this 'mutuality of obligations' under an employer/employee relationship.

A contract which is strong from an IR35 perspective would explicitly stipulate that there is no mutuality of obligations when it comes to further work not within the scope of the current one. There also ought to be the ability to walk away from the assignment with little or no notice on the contract. However, this may cause an issue from a commercial perspective.

3. Lack of Requirement for Personal Service

There ought not to be a requirement for your personal service whilst working on the assignment. This requirement is broken contractually, where you have the right to provide a replacement consultant on the assignment. There is no issue with the clause stating that the substitute should have the equivalent level of skill, qualification and experience. There would be an unreasonable degree of constraint if the clause stated that the substitute would only be accepted at the client's discretion without stating on what basis.

WORKING PRACTICES

Working practices should reflect the above terms of the contract. Here are some of the tests HMRC may use to ascertain if someone is a genuine contractor:

- Does the contractor use the client's equipment or their own computer or tools? (This can be a grey area, as the cost of equipment and its maintenance may be factors)
- Does the contractor have a designated parking space, or are they a 'visitor'?
- Does the contractor work with multiple clients?
- Does the contractor have a company website?
- Does the contractor appear on the company organisation chart, website or phone lists?
- Does the contractor have client business cards in their name?
- Does the contractor attend group training aimed a team-building or similar activities?

Any of these points could be interpreted to, when taken as a complete picture, mean the contractor is really a disguised employee.

LENGTH OF ENGAGEMENT

Although not conclusive, the length of engagements can indicate whether a person is treated as employed or self-employed.

For example, if you work solely for one client for many years, this can be indicative of being an employee. Whereas working for a series of clients for short periods of time would be a sign of a genuine contractor.

INTENTION OF THE PARTIES

It is not enough for a contractor to deem himself a consultant providing services under an agreement for such. It should be clear that both parties understand the terms on which the assignment is based. Ideally, that would also be expressed within the contract.

FINANCIAL RISK

If you stand to lose money as a result of providing services, then this can be indicative of an agreement for services rather than an employer/employee relationship.

You may need to buy assets or equipment to do the job. You may incur other expenses such as for training. If you have to remedy any work which you had done under the agreement previously at your own expense, then that is also a useful indicator.

HOW CAN ICS ACCOUNTING HELP WITH IR35?

Using our expertise of IR35 within the temporary worker market we have developed our own IR35 role assessment tool, which helps determine where a contractor sits within IR35.

The assessment tool delivers an instant result to an 'inside' or 'outside IR35' decision, together with the next steps to be considered.

This is a vital step that allows a contractor to determine their IR35 status for a specific role and to take action where required.

To start a **FREE** role assessment, please click **here**.

INSIDE IR35 STATUS

If, after completing a role assessment you are found to be 'inside IR35', we are able to offer ICS Umbrella, our fully Freelancer & Contractor Services Association (FCSA) compliant umbrella solution.

If you fall within IR35, HMRC will treat you as an employee for tax purposes, which means you cannot claim travel and subsistence expense to and from client sites. Such expense would be seen as ordinary commuting, which is not deductible. Our Umbrella Solution is fully compliant with expenses, and we are happy to discuss your options available for this.

ICS UMBRELLA

ICS Umbrella offers a hassle-free way for contractors to get paid and provides full employment rights as they become ICS Umbrella employees. This includes statutory sick pay, holiday pay, parental leave as well as comprehensive insurances.

ICS Umbrella retains a margin for processing payroll on either a weekly or monthly basis and will only be retained when a timesheet is submitted, meaning when a contractor does not work, we won't retain a margin.

As an employee, the contractor will get access to a benefits portal with a whole range of retail discounts, Health and Wellbeing amenities.

ICS Umbrella is the best option for contractors deemed to be working inside IR35 or working for end clients who are no longer engaging with a limited company contractors from April 2021.

When employed by ICS Umbrella, tax and National Insurance liabilities will be paid directly to HMRC when we process payment. This takes the stress out of bookkeeping and calculating tax liabilities meaning the contractor can rest assured they are working compliantly.

For more information on how our ICS Umbrella solution works, please click **here**.

OUTSIDE IR35 STATUS

When a contractor is deemed 'outside IR35' and in receipt of a Status Determination Statement (SDS) from their end client that confirms this, they can carry on using a limited company, just as before.

WHERE DO I START?

Starting with assessing your role is the perfect place to start, to use our **FREE** role assessment tool, please click **here**.

If you have any questions about IR35, please call us on **01524 580720** or email **info@icsuk.com** to speak to one of our highly trained experts.

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