

A Contractor Guide to IR35:

*(Off Payroll Working
or Intermediaries” Legislation)*



WHAT IS IR35?

IR35 is a tax law that was introduced in April 2000 and is aimed at those who provide services through a **Personal Service Company (PSC)**. The aim of the law is to ensure the correct amount of Income Tax and National Insurance (NICs) is paid.

If certain conditions are met, with regard to the role, then the earnings of the PSC are considered as a salary and the relevant Tax and NICs are due to be deducted from the gross pay and Employers NICs are due on the earnings also. This is classed as **“INSIDE IR35”**. If the conditions aren't met, then the role is classed as **“OUTSIDE IR35”** and the contractor earnings can be paid gross. (i.e. No deductions for Tax and NICs)

WHEN DOES IR35 APPLY?

When the following conditions are met:

- **An individual performs services for another (the client)**
- **The services are provided under a contract with a PSC.**
- **If the services were provided under a contract directly between the client and the individual, rather than a PSC, then the individual would be regarded as an employee.**

This final point is the most contentious and two different experts may come to two different conclusions. Case law and previous judgements are used to interpret this point and there are three distinct tests to assess employment status:

The Right of Substitution: The client must be prepared to accept a substitute in your place, you are not personally obliged to complete the work if the role is to be deemed as OUTSIDE IR35. If you are obligated to perform the role yourself, that would indicate you are an employee and therefore INSIDE IR35.

Control: This is one of the most important factors under IR35. It is often grouped with Supervision and Direction, which also point towards control. Within the scope of IR35, it means how much control, as the contractor, do you have over the work you are performing?

- If your client decides where you work, when you work, how the work is performed, if you need permission for time off, then this indicates control and would probably be INSIDE IR35.
- If you, as the PSC, have the right to decide how the contract is completed and work to your own schedule, this indicates you are not under the client's control and are more likely to be OUTSIDE IR35.
- It is important to remember that even if control is not actually exercised, if it exists in your contract or is an expectation of the client, that is enough to indicate INSIDE IR35.

Mutuality of Obligation: This is a shared obligation between both the client and the contractor.

- The client is obliged to offer work and the contractor is obliged to accept the work. This constitutes a contract of employment. Should you have a contract that you complete earlier than expected, if the client is obliged to offer you more work to fill the time still left, then your contract is **INSIDE IR35**. This is irrespective of what your contract states or what you have quoted.
- If the contract states you are unable to work with another client whilst performing work for your current client, then this also indicates you are **INSIDE IR35**.

WHAT ARE THE CHANGES TO IR35?

This will come into effect from April 2020 and follow similar reforms implemented through the Public sector in April 2017. The new rules transfer the responsibility for assessing the IR35 status of a contract from the individual performing the work through their PSC, to the client. The aim is to ensure that those who bill for their services via a limited company, whilst actually working in the same manner as an employee, are paying the correct Tax and NICs.

From April 2020, medium and large companies (the client) become responsible for assessing the IR35 status of the role. If the client is a small company (as defined in the Small Companies Act 2006) then they are currently exempt from making this assessment and the contractor will continue to assess the IR35 status of the role. If the role is deemed to be **INSIDE IR35**, then your income will have the appropriate Tax and NICs deducted by either the client, or your recruitment agency (the fee payer)

These assessments will ensure that Tax and NICs are deducted in the same way as an employee, however, you will not receive the statutory benefits associated with employment (e.g. holiday pay, SSP, SMP, SPP etc) IR35 is Tax Law **NOT** Employment Law.

HOW WILL THE CLIENT CONDUCT THE STATUS DETERMINATION OF A ROLE?

There is no compulsory tool that clients must use. The HMRC online tool (CEST) is the one most discussed, but Umbrella Companies, Employment Law firms etc are producing their own tools. It is also possible for a client to take the “whole picture” approach to determine employment status. However it is assessed, the client is responsible for informing all parties involved of their decision of status, but it must be stressed that contracts which are produced to be “IR35 friendly”, but do not truly relate to the actual work practices will not be a defence in the event of an HMRC investigation.

WHAT DO I DO IF I DISAGREE WITH THE STATUS DETERMINATION OF THE ROLE?

The appeal can be on the basis that the client hasn't taken reasonable care in their assessment or that certain information hasn't been considered. The client has 45 days to respond to this challenge.

WHAT WILL HAPPEN FROM APRIL 2020?

Outside IR35:

- No change you will continue to be paid gross on production of your invoice.

Inside IR35:

- Whoever your fee payer is will deduct the appropriate Tax and NICs from your invoice. Employer's NICs will also become payable by the fee payer.
- The fee payer is obliged to remit to HMRC deductions made from you and report information in regard to the pay and deductions to HMRC

WHAT ARE MY OPTIONS IF THE ROLE IS INSIDE IR35 AND I DON'T WANT TO BE PAID VIA PAYE?

Continue as your own PSC.

- Issue an invoice as usual, but you would have Tax and NICs deducted from your pay. For this the fee payer requires your National Insurance number and a tax code if you have one. If you don't provide a tax code, you will be taxed at Base Rate. If you are registered for VAT, then the VAT is still calculated on the gross figure of your invoice (prior to the deduction of the Tax and NICs deduction). Employer's NICs will be calculated and paid by the fee payer to HMRC.
- You would still be responsible for providing your own Public Liability Insurance

It is worth remembering the deduction of these statutory payments does not entitle you to employment benefits.

Operate under an Employment Umbrella Company.

- You will become an employee of the Umbrella company and they will deduct the relevant statutory deductions from your pay. This option also gives you employment rights, such as holiday pay etc. It also offers the benefit of providing you with continuous employment status, despite the fact you may be moving between contracts, which may be of benefit when applying for financial products.
- Should you choose the Umbrella route, you should be looking for FCSA accreditation at the very least.
- You will be covered for Public Liability insurance and different Umbrella Companies offer various perks/discounts.

Umbrella Employment Companies that Distinct Recruitment have worked with are below, but there are also many other companies who would be happy to discuss IR35 with you and help you understand the implications. All of those companies have extensive sections on IR35 and are FCSA accredited so are able to give advice.

<https://www.danbro.co.uk/>

<https://www.paystream.co.uk/>

<http://giantumbrella.co.uk/>

**IT IS ESSENTIAL YOU SEEK
YOUR OWN INDEPENDENT
FINANCIAL ADVICE, TO FULLY
UNDERSTAND ALL THE
IMPLICATIONS OF IR35 AND
YOUR PAY.**

DISTINCT.

R E C R U I T M E N T