



Chester & North Wales Branch
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IR35 – What Contractors and Companies need to know

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What is IR35?

- IR35 is a piece of tax legislation targeting tax avoidance by contractors operating via a limited company, who should be classed as and, most importantly, taxed like a permanent employee of their end client.
- Basically, if you are a limited company contractor, working very much like a permanent employee of your client as opposed to having more of a business-to-business relationship, then the tax man sees it that you should be paying just as many taxes.

What will IR35 disrupt?



Ben

Ben is an IT Contractor



Ben Limited

Ben sets up Ben Ltd, he is the only Director and shareholder and the only person providing services.



Client

Ben Ltd provides services to Client.
Ben carries out those services as 'Ben Ltd'

What will IR35 disrupt?



Ben

Is not taxed through PAYE



Ben Limited

Ben Ltd can operate tax efficiently.



Client

Client pays Ben Ltd's invoices and doesn't have to worry about PAYE, holiday pay or employee liability (sick pay, pension etc..)

IR35



Ben

Ben taxed as a 'deemed employee'



Ben Limited

Tax benefits of Ltd company lost

CLIENT



Client

Bill for PAYE and potentially holiday pay, pension, sick payments etc....

Whose responsibility is IR35?

1. Does the end client have a turnover of over £10.2 million?

- This is the total “group” turnover

2. Does the end client has gross assets of over £5.1 million?

3. Does the end client employ over 50 employees (FTE)?

If YES is answered to more than 2 of the above questions, it is the end clients responsibility to assess your IR35 status.

If not it is YOUR responsibility.

The different types of workers



Self Employed



Worker



Employee

Definition of employees



1. Personal Service
2. Control
3. Mutuality of Obligation

RECENT CHANGE



It was announced by the Government that the changes will only affect contracts carried out after 6 April 2020.

Ongoing contracts or new contracts after 6 April will therefore be caught.

HMRC: 'This means organisations will only need to determine whether the rules apply for contracts they plan to continue beyond 6 April 2020, supporting businesses as they prepare'

The legal assessment applied

1. Personal Service

- Is the service you provide your client a personal one or do you offer a genuine business to business service?
- Do you have the right to provide a substitute worker to perform the duties, as any other business would be able to?

2. Control

- To what extent does your client control the services you carry out, if at all?
- Do you fall under the direct control of your client or are you able to dictate how the work is carried out?

3. Mutuality of Obligation

- Is there an obligation for the client to provide consistent and paid work and are you obliged to accept this work?

Other factors

4. Provision of equipment/Insurance
5. Financial risk
6. Basis of payment
7. Exclusive Services and Length of Engagement
8. Part and Parcel of the Organisation
9. Right of dismissal
10. Intention of the Two Parties
11. Business-like Trading

Making the decision

- Assess the job and be realistic
- Outsourcing assessment is not outsourcing risk but use solid expert advice where circumstances warrant it
- A tick box exercise will not be enough
- Resist temptation to be persuaded to declare 'outside'

Making a status determination

- A 'status determination statement' must be produced whether the circumstances in IR35 are met or not met.
- It must be properly formulated
- The reasons must be clear
- Reasonable care must be taken in drafting the document

Financial impact of application of IR35

Inside IR35

- If your contract is deemed inside IR35, you're considered an employee for tax reasons. This means you're effectively required to pay tax at the same rate as an employee in the same tax bracket.
- Tax and employment legislation are currently separate. So, whilst you may be considered an employee for tax purposes, you are not automatically entitled to employment rights.

Inside IR35 - Indicators

- You have no right to provide a substitute
- There's an obligation for your client to provide work and an obligation for you to accept it
- Your client dictates how, when, and where you provide the service
- You have a rolling contract, with no fixed start or end dates

Inside IR35

- When working inside IR35, you'll need to pay National Insurance Contributions (NICs) and Income Tax on your earnings.
- This is calculated by way of a 'deemed employment payment'
- Like many things related to IR35, calculating the 'deemed payment' is fairly complex. That's why, in many cases, contractors seek professional help in doing so.
- You are allowed a standard 5% allowance and any allowable expenses that relate to the relevant engagements

Outside IR35

- If your contract is deemed outside IR35, you are considered self-employed for tax purposes and are free to pay yourself in the most tax efficient way, which is typically through a mixture of salary and dividends taken from your company.
- Contractors working outside the scope of IR35 are responsible for making sure all their personal and company taxes are calculated correctly and paid on time.

Outside IR35 - Indicators

- You have the right to provide an able substitute in your place
- Your company carries financial risk and is liable for any mistakes you make
- You do not fall under the control of your client and have the freedom to carry out the work as you see fit, when possible
- You are not 'part and parcel' of the client's organisation and do not enjoy benefits similar to an employee
- Your contract has a start and end date

Cost of non-compliance

- Your time
- Professional fees
- Additional tax
- Penalties
- Disclosure

Strategy to manage IR35

- Every individual circumstance is going to be different.
- You will require accountancy and legal advice to help determine your individual status.
- Ron.davison@gamlins.co.uk / elissa.thursfield@gamlins.co.uk
- 01745 343 500

How Can We Help?

- Individual Contractors: Legal Advice and support
- Companies engaging contractors: Legal support and HR Outsourcing

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