

# IR35 Guide



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# What is IR35?



This is a rule which prevents workers from working 'off-payroll' or working as 'disguised employees'. The IR35 rule is very much based on the principle of whether the service you provide is an 'employment' or a 'Self-employment'.

The rule generally affects workers, contractors and Ltd companies who do not meet HMRC's definition of 'self-employment'. The contractors who fall under the IR35 rules are essentially treated as employee, therefore pay the same tax and national insurance contribution.

Getting your IR35 wrong can result in unforeseen tax liabilities and penalties so it is important that you are clear about your employment status and should work your clients to establish your position.

# How your **IR35 status** may be determined?



Unfortunately there are no “hard and fast” rules as each case is assessed on its merit and HMRC uses the following or a similar “Tests of Employment” to decide if a worker, contractor or intermediary fall within the scope of IR35.

Question or Area	Likely to be within	Likely to be outside
Do you generally have control over what, how, when and where you complete your work?	Client decides	Yes, I decide
Is it just yourself or your work can be picked up by someone else?	Only I complete the work	Another worker can pick up the work and there is a cover in place
Is there a financial risk with the work or service you are providing?	No, there is no risk involved with the work	Yes, there is a risk involved with the work
Do you receive benefits such as holiday pay and bonuses?	Yes, I receive	No, I do not receive
Do your clients provide equipment you work on?	Yes, they provide	No, I provide
Are you part and parcel of your client's organisation?	Yes, I am	No, I am not

# How can you legitimately stay right side of the **IR35** rules?



- Have appropriate documentations (e.g. contract) and paperwork (e.g. audit trail) in place confirming your self-employment status
- HMRC look beyond the contract so ensure your working practices matches with the contract and avoid being part of the client organisation
- Secure a right of substitution with your client as it proves that this is NOT a personal service
- Ask for a Status Determination Statement (SDS) letter from your client, to confirm that your working relationship is a business-to-business one
- Do not let your client control you e.g. you can take on other projects whilst with the client. Remember to keep evidence and audit trail
- If you have taken all the actions and still have concerns about the potential costs of IR35 in the future, you could explore taking IR35 insurance cover to protect yourself against the potential future tax liability.

## Why IR35 matters?

Generally, independent contractors benefit from favourable taxation through avoiding taxes and NI contributions compared to employees. They are also able to claim other expenses (e.g. business travel) which employees may not be able to claim.

## What is the impact of being found liable under IR35?

If you are found liable under IR35, the main impact is that you will need to pay more tax. The amount will vary depending on your circumstance but generally is based on difference in taxes and NI, including penalties and interest. HMRC is likely to go back up to six years and demand these payments retrospectively.

## What can I do if I am affected by IR35?

Unfortunately, there is not much that can be done. If you believe you could be caught by the IR35 rules, you should take an employment contract with your client as soon as possible. You should also speak with your accountant to understand what your tax and NI liabilities are likely to be so that you can provision for the upcoming costs.

## Who does not need to worry about IR35?

If you're a permanent employee of a business, receiving salary and making National Insurance (NI) and tax payments as normal or a temporary employee providing services via an agency then it should not be relevant to you.



# Contact Us

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