

# IR35 INFORMATION SHEET

## IMPORTANT NOTICE

### IR35 – DOES IT AFFECT YOU?

**IT IS VERY IMPORTANT THAT YOU READ THIS NOTICE AND CONSIDER WHETHER THE IR35 LEGISLATION COULD AFFECT YOU**

#### 1) What is IR35?

IR35 is a tax charged where an individual is working through an intermediary (for example, a personal service company or “PSC”) under terms and conditions which amount to employment, but paying less tax than an employee would. The idea of IR35 is to ensure that broadly the same tax is paid by employees and contractors who are working like employees. In the past HMRC have referred to this situation as ‘disguised employment’ but now it is usually called ‘off-payroll working’ by HMRC.

It is important to decide whether IR35 applies to your circumstances. HMRC carry out inspections of PSCs and if it is found that IR35 should have been applied, your PSC could be liable for unpaid tax, national insurance, interest and potentially penalties.

#### 2) Who is responsible for deciding whether IR35 applies?

There are special rules if you are working for a public sector client, but in the private sector it is the responsibility of the PSC to decide whether IR35 applies and to pay the appropriate taxes.

#### 3) How do I decide whether IR35 applies?

There is no detailed statutory definition of ‘employment’, so HMRC and the courts look at cases that have been decided over the years and apply certain principles. Whilst some terms are fundamental to employment the courts have emphasized that this is usually a balancing exercise, not a checklist, and these factors can have varying significance depending on the circumstances.

In order to decide whether IR35 applies the following factors are often relevant:

	<b>Indicates IR35 applies</b>	<b>Indicates IR35 does not apply</b>
Whether you personally have to do the work yourself for the client	If you have to do the work personally (i.e. you cannot send a substitute to do the work), this is more consistent with employment.	If you can send a substitute to do the work, this is a strong pointer away from IR35 – if there are no restrictions on you sending a substitute you are highly unlikely to be caught by IR35.
What degree of control is exercised over you by the client	If the client can exercise the sort of control over you that is typical of an employment relationship, you are more likely to be caught by IR35.	The more independently you are working and the more say you have in what, where, when and how the work is done, the less likely you will be caught by IR35.

Whether there are obligations to offer work (or pay a retainer) and do work under your contract	An employment contract requires an obligation to offer (or pay a retainer) and to accept work.	If there is no obligation on the client to offer you work and/or you can freely turn work down, this points away from IR35.
Who provides the equipment to do the work	Where the client provides all or most of the equipment, this is a pointer towards IR35.	If you have invested in your own equipment to do the work, this is a pointer away from IR35.
Whether you qualify for benefits such as sick pay or holiday pay from the client	The presence of this benefits is a pointer towards IR35.	Genuine independent contractors do not usually qualify for these benefits.
Whether you receive benefits such as a mobile telephone or a company vehicle	If you receive perks from the client, this points towards IR35 applying	An absence of these benefits is more typical of self-employment
Whether you are integrated into the client's organisation	The more integrated you are (e.g. carrying the client's business cards, having an internal email address, participating in grievance/disciplinary procedures) the more of a pointer this will be towards IR35	Remaining independent and arm's length is an indicator that IR35 does not apply
Whether there is financial risk within the contract	Employees do not typically face financial risks, and therefore the less risk in a contract, the more indicative it is of IR35 applying	Business are often exposed to financial risks, and the courts will look at your contract and if there is exposure to risk this will point away from IR35
How many other clients you have, and the duration of your contract	Working exclusively for one client is more typical of employment.	Shorter term contracts and multiple clients are more suggestive of self-employment
Your wider business circumstances	If your company does nothing other than supply your services then this is more indicative of IR35 applying.	If your company has the trappings of business – a website, office premises, other capital items of expenditure, etc. – this points away from IR35. Advertising and insurance costs are also relevant factors.

As mentioned above: these are indicative factors, and it is important that you make a detailed assessment of your entire circumstances if you think that IR35 might apply.

There are further resources available, such as HMRC's online employment status service:

<https://www.gov.uk/guidance/check-employment-status-for-tax>

You can also engage an independent adviser to carry out a formal review of your contract and provide you with an opinion on HMRC if you are unsure whether it applies. The IR35 test applies separately to each assignment you undertake. Just because one assignment is inside or outside IR35, it does not mean that other assignments will have the same outcome.

#### **4) What if I disagree with HMRC's decision?**

There are independent rights of appeal if you disagree with HMRC over whether IR35 applies. You can ask HMRC to review the decision internally or you can appeal to an independent tribunal.

#### **5) How much extra tax will I pay?**

The rules are complex, but broadly speaking the IR35 legislation seeks to remove any NIC advantages of taking dividends from your company. There may also be interest and penalties on the liability.

#### **6) Where to go for further help**

There are further resources on HMRC's website:

<https://www.gov.uk/guidance/ir35-find-out-if-it-applies>

Our customer services helpline can also assist you further with IR35 queries.

Disclaimer: This note is for general guidance only and is not a substitute for obtaining legal advice on your particular circumstances.