

# A Client Guide to IR35:

*What is it,  
How does it affect me,  
& What should I do about it*



## Contents

- What on earth is IR35?
- What is “Outside IR35”?
- What is “Inside IR35”?
- What is changing?
- Do these reforms apply to all companies?
- What do I do?
- To Do List
- Making the status decision
- Passing status decision through the supply chain
- Preparing for & resolving disagreements over status
- Liability

**IR35 is nothing new, all that is changing is who decides whether the temporary role falls inside or outside of IR35.**

## **SO – WHAT ON EARTH IS IR35?**

IR35 applies to any temporary/contracted worker who is being paid via their own limited company. It does not apply to those who operate through a compliant umbrella company or those on an agency payroll.

These workers are also known as “off-payroll workers”.

As off-payroll workers who are paid via their own limited company they pay income tax and National Insurance contributions (NICs) in a different way to an employee.

The off-payroll working rules (known as IR35) are in place to ensure that if an off-payroll worker is providing the same services as a permanent employee, then they are paying broadly the same tax and NICs as a permanent employee.

## **WHAT IS “OUTSIDE IR35”?**

If a role is deemed outside of IR35 it means the temporary worker is not performing the same role as a permanent member of staff. The temporary worker is deemed “self-employed” for tax purposes, meaning they are responsible for their own tax affairs **and no additional charges will be applied to you.**

*e.g. Some project roles with set deliverables or niche skill-set roles*

## **WHAT IS “INSIDE IR35”?**

If a role is deemed inside IR35 it means the temporary worker is performing the same role as a permanent member of staff. The contractor must therefore pay NICs and PAYE tax in the same way as a permanent employee – these statutory deductions are deducted by the agency & reported via Real Time Information to HMRC. As the client you become responsible for Employers NI meaning **the daily cost of that worker will likely increase to cover the additional taxes.**

*e.g. Some interim roles and cover for maternity leave / illness*

It should be noted that this is a tax law, not employment law, therefore the assessment of IR35 does not give the worker the right to statutory payments (Sick Pay, Maternity Pay etc) or holiday pay.

## WHAT IS CHANGING?

At present the contractor themselves decides whether their assignment falls inside or outside of IR35, but due to non-compliance the government are introducing reforms meaning that from 6th April 2020 it is now the **end client's decision** as to whether the role falls inside or outside of IR35 for tax purposes.

The off-payroll reforms were made in the Public Sector in April 2017, and due to continued non-compliance in the private sector, HMRC now believe the time is right to roll the reforms out into the private sector too.

## DO THESE REFORMS APPLY TO ALL COMPANIES?

The only companies the reforms do not apply to are those deemed as "Small Companies". A Small Company in the eyes of HMRC must meet two or more of the following criteria:

- 1) Annual turnover of less than £10.2 million
- 2) Balance sheet total of less than £5.1 million
- 3) 50 employees or less

Please note – If you are a small company who sit under the umbrella of a large parent company or group then HMRC will class you as part of the large company/group and you will not be exempt.

## SO – WHAT DO I DO?

These changes will not come into effect until **6th April 2020**, but we recommend you start to **prepare now** for what is a fundamental change in tax rules affecting how you engage with your temporary workers.

To ensure you are including all relevant parties we recommend you create an IR35 project team, including representatives from HR, Finance & affected line managers.

## To Do List

Assess whether or not you are a “small company” and therefore whether the change in rules applies to you

Assess who amongst your temporary worker population might be affected by the change and why

Identify who within your organisation can make a status decision for roles and ensure that those individuals understand how to assess status and have the appropriate tools to do so. Put processes in place to pass down the status decision (to the agency / temporary worker) and the reason for that decision

Work with agencies who will have their own processes to implement

Agree with your agencies how the increased employer costs will be met – agencies will not simply be able to absorb these costs and pay contractors the same rates. Clients should also not expect agencies to agree to indemnify them for their own statutory obligations

Once you have assessed your immediate existing temporary worker population, best practice would be to assess every role that you might hire a temporary worker into in the future, so that you can budget effectively

## **MAKING THE STATUS DECISION**

As the client you will need to understand the IR35 rules and use an appropriate assessment tool to reach an accurate status decision. In 2017 the government introduced Check employment status for tax (CEST) which is an online tool. HMRC have said they will stand by CEST outcomes provided the information inputted is accurate.

Importantly – CEST is not mandatory, **there are other online tools available**, and as the client you can use any assessment method that you wish as long as you are using ‘reasonable care’ in making its tax status assessment.

## **WARNING**

**If you make a blanket decision such as “all contractors are inside IR35” or “all contractors are outside IR35” then HMRC will assume that you have not taken ‘reasonable care’ in making the decision and you will be liable for unpaid tax and national insurance.**

Understanding IR35 can be a challenging and below are a few factors to take into consideration, this is not an exhaustive list, but it covers some of the main points. HMRC are looking at a picture of the how the whole role looks, rather than one get out clause, which used to be the “substitution” clause that are in most contracts.

Inside IR35	Outside IR35
<p>The contractor has to provide the services personally, cannot send in a substitute and has no financial risk, such as providing their own equipment or making good any errors at their own cost. They are expected to work hours as stated by the client and aren't able to decide how and when they work.</p>	<p>The client will accept a suitable substitute to complete the role, the contractor carries financial risk to their own company, should the job over run past the agreed date of completion and could possibly work on multiple roles, as long as the assignment was completed within the timeframe fixed.</p>
<p>The contractor is part of the company structure, has an email address within the client's network, manages a team or reports to a manager and their work would be monitored. Needs consent for time off and is directed as to how the assignment is completed. Attends social events, benefits from such things as subsidised canteens etc. Carries no financial risk to complete the role.</p>	<p>There is no integration with the client's dealings beyond the project in hand. Would not be directed on how the role should be performed. Could take time off and not be on site without seeking permission. Carries financial risk to their company, such as reduced payment for missed deadlines or poor standards of work.</p>
<p>The client can dismiss the contractor -this indicates employment. The project is completed before the agreed end date, the client is obliged to offer other work to take this time up and the contractor is expected to accept this work.</p>	<p>If the project is completed prior to the end agreed date the contractor would be free to leave and still expect the same payment, so the project was based on a body of work rather than time to complete it.</p>
<p>The overall picture is of an employee</p>	<p>Looks like a separate contractor</p>

## PASSING YOUR STATUS DECISION THROUGH THE SUPPLY CHAIN

Once you have made a decision on the IR35 status of a role (inside or outside) you will need to pass that status (and reasons as to why) onto the party the worker is contracted to, usually a recruitment agency. The agency then passes that status onto the worker.

For any temporary roles hired after 6th April 2020 you will need to make the status assessment BEFORE you hire for the role. You will need to give your status decision (and reasons) in writing to the agency at the time of releasing the role, the role will then need to be advertised & recruited as either "inside" or "outside" IR35.

## PREPARING FOR & RESOLVING DISAGREEMENTS OVER STATUS

If the worker is already in the role prior to 6th April 2020 and your assessment of the role status is different to the worker's original assessment of the role, there will be a disagreement.

*e.g. If the worker has assessed the role outside of IR35 and is currently receiving payment of their invoices gross, then on 6th April you assess that the role should actually be inside IR35, then the worker will need to work inside IR35 from 6th April.*

*This means they will commence paying PAYE tax & Employee National Insurance, meaning they will effectively lose money in their pocket. Some workers may ask for a rate increase to cover their perceived losses.*

If this happens you will need to work closely with your agency to see how the land lies with that contractor & what they are going to do. They have the right to challenge your status determination of the role, so in some cases you may need to plan ahead to replace that worker if they refuse to continue to work onsite as a result of the disagreement.

## LIABILITY

**After 6th April 2020, if your status determination is incorrect and tax is not paid when it should be, then as the client you are liable to pay that tax to HMRC.**

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

# DISTINCT.

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