

IR35 Information for Contractors

Useful terms and information for contractors:

Control - Does the client (the company you are working for on site), have the right to dictate the role performed each day, and how and when this is achieved? **A** - If they do then this is a strong indication that you are 'Employed' If not, then you are stating that you control and dictate, what you do, when you do it and how the work is completed.

Contract - Now that you have assessed your role above, review your contract as this is the starting point for the Inland Revenue. Irrespective of what you actually do, in the event your contract suggests that you are controlled, the Inland Revenue will regard this within IR35. **A** - Should your contract confirm the above points then it would support the self-employed status.

Payment - How will you be paid? **A** - In the event your contract states that you will be paid by the hour/day/week/month, then you look more like an employee. However if you are paid an agreed sum for completion of a project/task even in staged payments or by retainers then this leans towards being self-employed.

Sound management - Does your business offer the opportunity for to profit from any success if managed well, or financially suffer in the event it is managed poorly? **A** - If you are paid regardless of how well you have completed a task, simply by default by turning up, then this leans towards being employed. Like most businesses, you are trying to increase profitability. In the event you can work more efficiently and complete work earlier and receive the same sum this leans to-wards self-employment.

Financial risk - Are you putting your own money at risk? E.g. buying your own equipment and using it for the role, quoting a fixed cost/price in a set time, or incurring substantial training costs to be able to undertake the project. **A** - Whilst on the project/contract if you use the client's equipment and receive payment regardless of the satisfactory completion of the task - this leans towards being employed. By buying and using your own equipment on site, you potentially suffer a loss of value on this. Equally by quoting a fixed cost in a fixed time, you may not be able to complete the project in time and therefore have to work at a loss thereafter. These points strongly lean towards self-employment.

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Substitution - Do you have freedom to choose whether or not you, or someone you have hired completes the work? **A** - If working through an Agency, most contracts will state the name of your company and the individual working on site. This effectively removes the ability to substitute and therefore leans towards akin to employed. If you do have the right to substitute, then regardless of whether or not you have it is a strong indicator of self-employment.

Dismissal - Can either you or the client terminate the engagement by giving notice? **A** - If yes, notice periods tend to apply to employees, and such a contract clause would indicate akin to employed status. If termination of the contract can only be taken if either party is in breach then this suggests akin to self-employment.

Duration - How long have you, or will you be on this site? **A** - If a long time, this suggests that the role is long term and a career. If you are on site for a short-term then this may suggest self-employment.

Mutuality of Obligation - In the event the client and/or the Agency involved is obliged to offer continued work then this would also place you within IR35. All contracts should have a non mutual obligation clause to ensure that neither party are expected or contracted to offer or accept future work (after the initial project has expired). This does not preclude either party agreeing new terms under a further contract but it would be unwise to have a rolling contract for services.

Personal factors - Are you classed as a skilled worker, working for numerous clients in a business like fashion? **A** - If your answer is no, then it is likely that you have highlighted the akin to employed status on a number of points above, and this would suggest that you are akin to employed. If however you can answer yes, then this suggests that you are akin to self-employed.

Your status - Do you qualify for any normal employee benefits such as sick pay, holiday pay? Are you part of a team, and as such become a part of the company? Does the client prepare business cards for you to use? **A** - If you have answered Yes, then the Inland Revenue would deem that you are akin to the other employees working around you, and suggest that you are akin to employed. Albeit not a major point, if you can state that you simply get paid as detailed above and no other benefits are available, then this would suggest that you are more akin to self-employed.

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After answering the questions on the previous pages, if your engagement is regarded as a form of 'employment', then you will lose some of the control over the way you draw income from your business. To explain this in reality, the income from 'employed' contracts would go through the following process:

It is possible that you may well have a number of engagements throughout the course of the tax year. Some of these may well fall into the 'akin to employed' category and others quite clearly are deemed as a form of 'self-employment'. That being the case the contracts that are deemed 'caught' under IR35 will be treated and taxed as earned income, other contracts will tend to be taxed under the pre 1999 rules. All expenses incurred during the course of the year will be apportioned to both types of engagement.

What should I do if my contracts appear to be caught by IR35? You will need to determine the level of monthly salary taken. This is considered based on two things: Firstly, by considering how much you require to live on, and secondly how much of the monthly income can be taken as salary. It is our suggestion that you take no more than 60% of your monthly fees charged as salary. We suggest this based on the fact that you must allow for employers National insurance, any expenses and employee benefits. Should you retain a balance over and above this in any tax year, it can be paid as a bonus as required by the 5th April, to comply with the new rules.

Expenses are typically divided into two categories, firstly "Employee/reimbursed expenses", which takes into consideration the general expenses you may incur such as - postage, stationary, telephone calls and Internet calls, business travel and many more. Please contact for further information These expenses are allowed as a deduction in calculating your salary, please see the chart above.

Secondly, "Company expenses" - these are generally paid for by the company and are not allowed as a deduction in calculating your salary. They are taken into account when calculating any annual company profits and VAT charged can usually be re-claimed. Your 5% allowance is not deducted when calculating company profits; the actual amount of company expenses is used. Company paid Pension contributions and Professional Indemnity insurance are both allowable in calculating your salary level.

By far one of the most significant features of post IR35 tax and business planning is the use of Pensions. It is our suggestion that you take full advantage of the potential contributions into a pension plan. In the event IR35 applies to your contract/s, the difference between

your turnover and allowable expenses will be treated and taxed as salary. If you become a higher rate taxpayer, the effective rate of tax and National insurance payable will be in excess of 46% (inclusive of higher rate tax and employers National insurance cost on your gross salary).

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Please note that in the example shown previously, salary paid includes bonuses and benefits paid by the company. It is often the case that advantages can be achieved by taking a lower salary and sizeable bonuses / benefits through the course of the year.

When planning any steps within the business such as the level of pension contributions care must always be taken to ensure that the level of salary is sufficient to meet the pension funding. As with all of the services we offer, we will be on hand to guide you through this and all other business matters. It is also the case that as your contract rate changes, so will your business and personal circumstances, as such please take this into account when making any financial decisions. PAYE & National insurance over payments on salary income cannot be subsequently reclaimed after 5th of April.

In Conclusion

When the Inland Revenue introduced IR35 it was their aim to try and catch the general population within the contractor market trading via service companies. It has been our experience over the last few years that when considering the criteria the Inland Revenue have introduced, you may well find that you are 'akin to employed'. It is therefore essential to be aware of the different ways that the Inland Revenue will treat each of your contracts, because you would not want to apply the IR35 rules to contracts to which they are clearly not applicable. Sometimes you may have the option to consider a different way of working on a new contract such as, working from home, employing sub-contractors etc. by doing so this can only serve to increase the likelihood that IR35 will not apply to you.

Overall within the contract market we can all rest assured that the level of income paid in terms of contract rates is substantially higher than that of a typical employee in the market. So please don't worry, just contact us and we can ensure that you get the best use of the income generated by each engagement you enter into.

For a full and comprehensive overview you can contact:

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