

Contractors Guide To **IR35**



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WHAT IS IR35?

IR35 legislation came into force with the Finance Act of 2000. Its purpose is to determine if contractors are “disguised employees” and therefore liable for full PAYE and National Insurance via deemed salary.

WHAT DOES IR35 MEAN FOR ME?

Your IR35 status on a particular assignment determines whether you are able to take advantage of the tax benefits of operating via your own limited company: your personal service company (PSC). The status depends on whether, when ignoring the contractual chain which includes the PSC, you are effectively an employee of the client which you are working for when considering certain indicators.

IR35 status could vary from assignment to assignment so it is important that it is reviewed each time you begin working on a new contract.

Being found to be inside of IR35 does not mean that you cannot work through a PSC, it simply means that the profits which result from those relevant engagements will be taxed as though a salary is paid to you.



WHAT DIFFERENCE HAS IR35 MADE TO CONTRACTORS?

IR35 has had a big impact on contractors since its inception as it makes each individual contractor responsible for determining their own IR35 status. There are several factors for consideration which can make this difficult, and this means it's very important to seek professional advice.

WHAT ARE THE IR35 RULES?

BROADLY SPEAKING, THE FOLLOWING ELEMENTS DETERMINE IR35 STATUS

THE CONTRACT

Your contract should make the following points very clear, so there can be no debate if your IR35 status is ever drawn into question.

1. Lack of Control and Supervision

Although a contractor would usually be expected to provide services during certain times at a specific location, the contract must make it clear that the client does not control the manner by which the services are provided. That's a key difference between client-supplier and employee-employer. As a Director of your own business you will need to be able to demonstrate to HMRC that you are not influenced by your client and that you are in sole charge of your business. You must be able to demonstrate that there is not undue control exerted over you and your company whilst you are carrying out work under your assignment, as you are the one who holds the necessary skill, expertise and experience.

2. Lack of Mutuality of Obligations

In general, this means that there is no obligation on the client to provide work, nor

is there there an obligation for you to accept any work which is provided. Of course, there would be this 'mutuality of obligations' under an employer/employee relationship. A contract which is strong from an IR35 perspective would explicitly stipulate that there is no mutuality of obligations when it comes to further work not within the scope of the current one. There also ought to be the ability to walk away from the assignment with little or no notice on the contract. This may cause an issue from a commercial perspective, however.



THE CONTRACT (CONTINUED)

3. Lack of Requirement for Personal Service

There ought not to be a requirement for your personal service whilst working on the assignment. This requirement is broken contractually where you have the right to provide a replacement consultant on the assignment. There is no issue with the clause stating that the substitute should have the equivalent level of skill, qualification and experience. There would be an unreasonable degree of constraint if the clause stated that the substitute would only be accepted at the client's discretion without stating on what basis.



WORKING PRACTICES

Working practices should reflect the above terms of the contract. Here are some of the tests HMRC may use to ascertain if someone is a genuine contractor:

- Does the contractor use the client's equipment or their own computer or tools? (This can be a grey area, as the cost of equipment and its maintenance may be factors)
- Does the contractor have a designated parking space, or are they a 'visitor'?
- Does the contractor wear a company uniform or badge, or are they clearly independent?
- Does the contractor appear on the company organisation chart, website or phone lists?

- Does the contractor have client business cards in their name?
- Does the contractor attend group training aimed a team-building or similar activities?
- Does the contractor enjoy employees benefits such as a subsidised canteen or gym facilities?

Any of these things could be interpreted to (when taken as a complete picture) mean the contractor is really a disguised employee.

HMRC may look at the structure of your business for signs that it is a legitimate entity:

- Does it have a business name?
- Do you have a business bank account?
- Is your company registered at Companies House?
- Is the company registered for VAT and does it have a registered address?



LENGTH OF ENGAGEMENT

Although not conclusive, the length of engagements can indicate whether a person is treated as employed or self-employed.

For example; if you work solely for one client for many years, this can be indicative of being an employee. Whereas working for a series of clients for short periods of time would be a sign of a genuine contractor.

INTENTION OF THE PARTIES

It is not enough for a contractor to deem himself a consultant providing services under an agreement for such. It should be clear that both parties understand the terms on which the assignment is based. Ideally, that would also be expressed within the contract.

FINANCIAL RISK

If you stand to lose money as a result of providing services then this can be indicative of an agreement for services rather than an employer/employee relationship. You may need to buy assets or equipment to do the job. You may incur other expenses such as for training. If you have to remedy any work which you had done under the agreement previously at your own expense then that is also a useful indicator.



HOW DOES ICS HELP WITH IR35?

Since we were established in 2002 our priority has always been care and compliance. Our IR35 contract review has been vital in allowing contractors help to determine their status. This is supported by advice provided by our experts who have many years' worth of experience with dealing with our contractor customers and the IR35 legislation itself.

WHAT IS AN IR35 REVIEW?



An IR35 contract review is a standard part of our service and is available to clients on packages of £125 + VAT – just ask for details. We conduct an initial IR35 contract review when a client first joins us, ideally before the assignment has even started.

We also complete regular reviews when a client is on a long-term contract to help them to determine their IR35 status throughout the assignment. Each time a contractor changes their contract they can request that ICS undertake a new IR35 contract review.

WHY IS AN IR35 CONTRACT REVIEW IMPORTANT?

Our IR35 contract review provides our clients with all the support needed to managing their own IR35 status. By adhering to our advice our clients minimise their risk of non-compliance with the legislation. As a Director of your own company this will prevent any further complication and the possibility of being landed with a bill for unpaid tax.

WHAT SHOULD I DO NEXT?

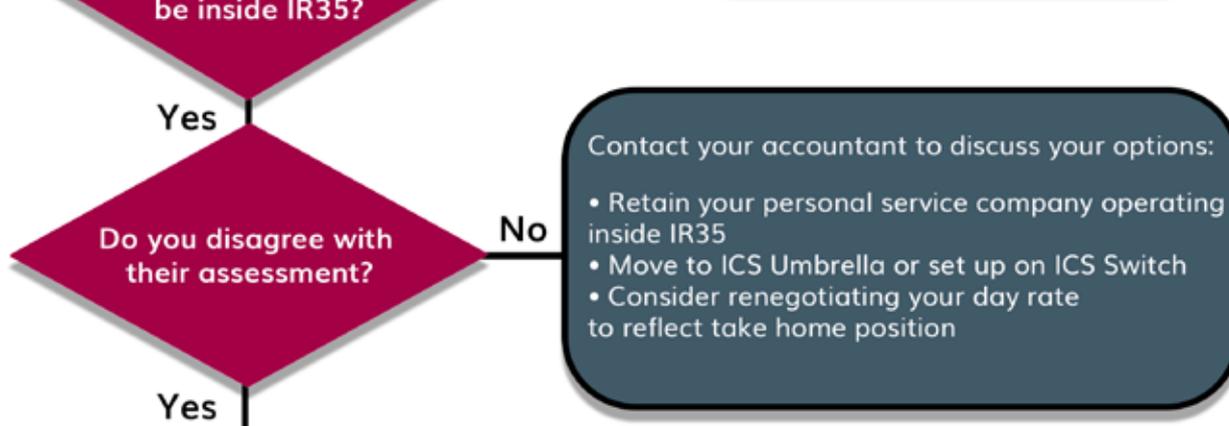
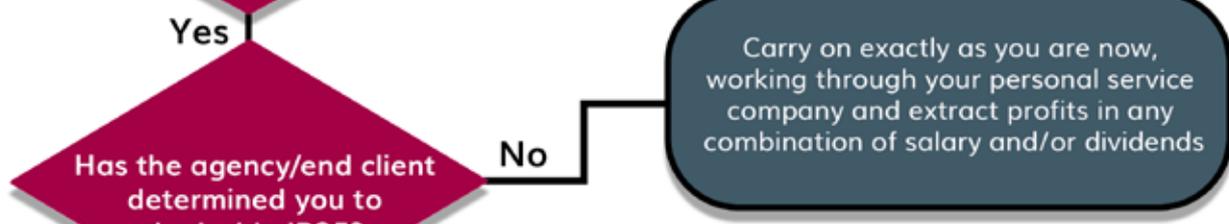
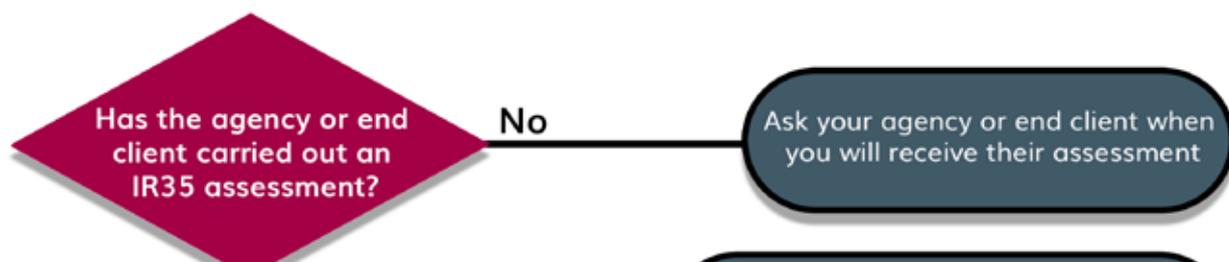
Use our simple flowchart overleaf to decide what your next action should be.

If you have any questions about the upcoming changes to the private sector, please call our IR35 helpline on **0800 880 7056** to speak to one of our in-house experts.

Alternatively please email us at newbusiness@icsuk.com

Once all the Government guidance has been published, this guide will be further updated.

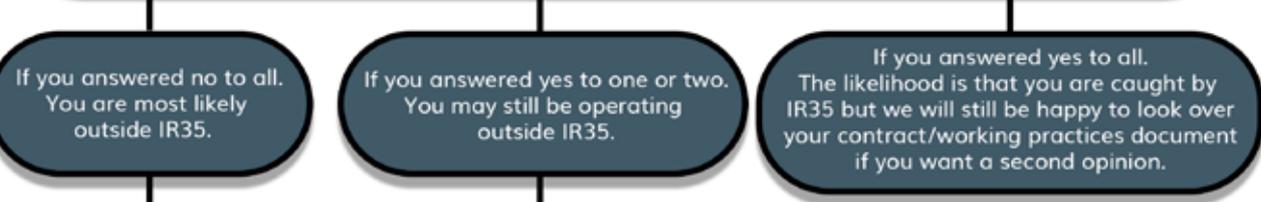




Yes

Ask for a copy of the assessment and work through the following areas to check accuracy:

- Is there a mutuality of obligation between the parties? This is where the engager is obliged to offer the supplier further assignments and the supplier is obliged to accept the work.
- Are you subject to supervision, direction and control by the end client? As a contractor being engaged for your expertise, you should be able to determine the method of delivery of the services.
- Is there a requirement for the services to be provided by you personally? There should be no requirement for your personal service and therefore there should be a right for you to provide a suitably qualified substitute.



Before going back to your client, we suggest:

ICS carry out a contract review (reviews are free if you're on a standard package of £125+VAT and above, otherwise it is £100+VAT per review).

Produce a working paper document on how you consider yourself to operate outside IR35. You should then relay all the evidence back to the client to update their assessment.



Accounting
Payroll
Umbrella



Contact ICS Accounting
on **0800 195 3750**
or newbusiness@icsuk.com