



Understanding IR35: A Guide

What is IR35?

IR35 is UK tax legislation that aims to ensure contractors who work similarly to full-time employees pay appropriate Income Tax and National Insurance Contributions (NICs). Officially known as “off-payroll working rules,” IR35 applies to contractors operating through an intermediary, such as a personal service company (PSC), but working under similar terms as a direct employee.

Why was IR35 Introduced?

IR35 was introduced to address “disguised employment,” where contractors might benefit from tax efficiencies through their PSC, despite effectively working as employees. By enforcing IR35, HMRC aims to ensure fair tax contributions from those working in employee-like capacities.

Key Criteria for Determining IR35 Status

IR35 status hinges on a few core factors to determine if a contractor is “inside” or “outside” IR35:

1. **Control** - How much control does the client have over the contractor’s work (e.g., hours, location)?
2. **Substitution** - Can the contractor send a substitute to complete the work, or must they perform it personally?
3. **Mutuality of Obligation (MOO)** - Is the client obligated to provide work and is the contractor obligated to accept it?

These factors assess whether the working relationship mirrors traditional employment or genuine self-employment.

Inside IR35 vs. Outside IR35

- **Inside IR35:** If a contractor is deemed inside IR35, they are subject to PAYE tax and NICs, akin to a regular employee.
- **Outside IR35:** Contractors outside IR35 are considered self-employed and can pay themselves via dividends, allowing greater tax efficiency.

Who Determines IR35 Status?

Since April 2021, for medium and large private sector organisations, IR35 status must be assessed by the client, not the contractor. The client is responsible for determining the contractor's employment status and communicating it via a **Status Determination Statement (SDS)**.

In smaller companies, the contractor remains responsible for determining their IR35 status.

Importance of Accurate IR35 Assessment

Misclassification can lead to penalties, back taxes and NIC liabilities. Businesses and contractors should carefully assess each engagement to ensure compliance.

How to Determine IR35 Status

- **HMRC's CEST Tool:** The Check Employment Status for Tax (CEST) tool provides guidance on IR35 status <https://www.gov.uk/guidance/check-employment-status-for-tax>
- **Professional Advice:** Given the complexity of IR35, seeking guidance from IR35 specialists or tax advisors is highly recommended.

IR35 Compliance Tips for Clients and Contractors

1. **Draft Clear Contracts:** Ensure contracts reflect genuine contractor status by emphasising project-based deliverables, flexibility and substitution rights.
2. **Maintain Documentation:** Retain all documents supporting IR35 status, including SDSs, contracts and payment records.
3. **Stay Informed:** IR35 legislation and HMRC's interpretation evolve; keeping up with changes is essential.

How Can We Help?

As experienced recruitment consultants, we work with businesses to navigate IR35 compliance smoothly. Whether you're looking for compliant talent solutions or simply need guidance, we're here to support you in building a fair, inclusive and IR35-compliant workforce.

For more details or specific queries, please get in touch with us at info@arcitreruitment.com.