

# IR35 - essential read

## What is IR35?

The aim of IR35, FA 2000 (Schedule 12), was to ensure that individuals did not leave permanent jobs only to continue working in a similar way, but via limited companies (intermediaries or personal service companies) to save tax.

## IR35 summary

Substitution / Personal services	Control	
Do you have to provide the services personally? Can you send someone else in to do the work for you? Do you source and pay your substitute? Can the client refuse? Do you have an unqualified right to substitute?	<b>HOW</b> Are you instructed how you should complete your workflow?	<b>WHAT</b> Working on a role? Working on a project? Can you be moved from your role or project?
Do you have an unqualified right to substitute?	<b>WHERE</b> Can you carry out the work tasks where you want?	<b>WHEN</b> Discretion over hours? Are there any restrictions? Do you have permissions for time off?
Mutuality of Obligation	Other Factors	
Is the client obligated to provide you with work? Are you obliged to accept the work offered to you? Do you have to work during termination periods? Can you be let go as soon as the project finishes? Do you get paid for time or work done?	<b>PART AND PARCEL</b> Are you treated and behave like one of the employees?	In business on your own Financial risk Length of contract Notice period required Equipment Intention of parties

## How to check your employment status?

If you would like to check your employment status for tax [<https://www.gov.uk/guidance/check-employment-status-for-tax>], HMRC has developed an online tool. It could help you find out whether IR35 rule changes are likely to apply to you.

According to HMRC "You should choose answers that best match the usual working practices of the engagement." The service will provide HMRC's view of your employment status. The questions you will be asked seek to establish the true employment relationship between you and the organisation you work for, but that organisation will decide whether off-payroll working rules should apply.

Experts have warned of the inadequacies of the ESS tool, and contractors have been advised to avoid it.

The government announced in 2018's Budget that private sector businesses will become responsible for assessing the employment status of the off-payroll (commonly known as IR35) workers they engage.

From 6 April 2021, medium and large private sector businesses will need to decide whether individuals who work through their own company fall inside or outside of IR35.

The new rules will only apply to medium and large businesses. The criteria is expected to be similar to the definition in the Companies Act 2006 which stipulates "the qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements:"

- Turnover not more than £10.2 million;
- Balance sheet not more than £5.1 million; and
- No more than 50 employees

The government has announced that small organisations will be exempt from the changes proposed for April 2021. Meaning that workers engaged in contracts with small businesses will remain responsible for determining IR35 and not the client. HMRC confirmed in their March 2019 consultation that this will remain the case even if the worker is hired via a recruitment agency.

For workers whose assignments will fall inside IR35, PAYE and NI contributions will need to be deducted at source from their income by the 'fee payer' (agency or end client).

The end client is advised to communicate to the worker the IR35 status of their assignment.

Provided that everyone in the supply chain fulfils their responsibilities, the 'fee payer' will carry the liability.

As of the 11th June 2023, the IR35 rules as announced in 2018 will continue to hold into 2023 and beyond.

## **IR35 in the public sector?**

In April 2017, the responsibility for determining whether a PSC worker is inside or outside of scope of IR35 legislation was shifted to the hiring organisation. This included liability for tax and national insurance contributions.

Public authorities impacted include:

- Government departments and their executive agencies
- companies owned or controlled by the public sector
- schools and universities
- local authorities
- NHS

## **Recommendation**

It is advisable to our clients that they should get their contract and working practices checked by a professional. If the result is negative then they can address this issue with their current employers if they can amend the working practices so that they fall outside the IR35 law.

**0207-490-5470 | [www.sipheraccounting.com](http://www.sipheraccounting.com)**

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