











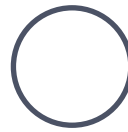
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IR35 GUIDE: Recruiters



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IR35: What does it mean?

Simply put, IR35 describes two pieces of legislation that are designed to differentiate between self-employed workers who own their own business and (deemed) employees of the client.

IR35 seeks to prevent tax avoidance, as those supplying services through an intermediary, such as their own business, should broadly pay the same tax and NICs as employees working directly for a client.

Employed or Self-Employed?

This depends on the facts of each assignment. IR35 takes in a number of factors to determine a worker's status, including:



Control

The number of hours worked, work, notice period, supervision and more.



Substitution

How easily workers can be replaced?



Mutuality of Obligations

If there's an obligation to take on new projects.



IR35: An example

Kate would be considered self-employed for this contract

Kate is taken on by a pharmaceutical company (end client) to design and build an app. Kate and the client agree a price, timeline and scope for the project. Kate will work from home, using her own equipment to complete the task. Kate is free to work with other clients but faces a contractual penalty if work isn't delivered on time, to the agreed standard.



Dave would be considered an employee for this contract

The pharmaceutical company hires Dave to maintain the app. He works at a firm twice a week, eight hours a day. They give him a laptop he can use in the office, or at home with permission. The company pays for all of the software used by Dave. Dave reports to the marketing team and must follow company guidelines and procedures. Dave is paid for any overtime required and can also work elsewhere on days he is not working.



Looking at these two examples, you can easily see the difference in Control, Substitution and Mutuality of Obligations. Whereas Kate is free to complete the project without supervision and in her own time as long as she meets the agreed deadline, Dave has to abide by set working hours by the same company.

IR35: How does it work?

From the 6th April 2021, medium and large Private Sector end clients will decide if you are deemed to be an employee of the client or self-employed (Limited Company) for their assignment.

This decision is then passed onto the Fee-payer (usually the organisation paying you). If they're found to be inside IR35 guidelines, they will need to be paid as an employee of the client. If they decide that they want to continue being paid through their Limited Company, the Fee-payer will need to deduct NIC's to HMRC and pay the Income Tax from source (gross amount). These payments are reported via a Real Time Information (RTI) report to HMRC.

Large and medium clients decide if the contractor is self-employed or an employee.

This information is passed to the Fee-payer (responsible for any payments), who then notifies the contractor.

The Fee-payer pays the employee or Limited Company, making the necessary tax deductions.

Who is liable for unpaid tax?

Pre 6th April 2021

As a contractor, they're completely responsible for determining their employment status and correct level of tax. This means they're liable for any unpaid tax.

Post 6th April 2021

Responsibility sits equally between the contractor and the client. The client communicates the contractor's employment status to the fee-payer, who then communicates it to the contractor. However, if you as the Fee-payer/agency, continues to pay them via their Limited Company and they are deemed inside IR35 (and therefore an employee of the client), you will also be liable for any unpaid tax. This can be collected from both parties.

IR35: Are there any exemptions?

According to the Companies Act, smaller organisations (end clients) will not be liable for any unpaid tax. Smaller organisations are defined as:



HOWEVER, if the end client is a small organisation but not a Limited Company, and therefore an unincorporated entity, then the IR35 rules will still apply.



IR35: How can we help?

Legal Services

Our IR35 consultants can offer legal services, including reviewing your contracts and providing expert advice on your contractor's employment status.

If you were to continue to make payments to your contractors inside IR35 you will need to:

- Administer IR35 status decisions
- Ensure correct contracts are issued as a result
- Deduct the correct NIC'S and Income Tax in-house
- Charge your clients a sum if Employers National Insurance is due (if candidate is found to be inside IR35)
- Pay the contractor the net amount as opposed to gross invoice value
- Submit RTI (Real Time Information) to HMRC

All of the above can be time consuming, not to mention you're liable for ensuring everything is done correctly. That's where we come in! Our experts take on your payroll and admin burdens, ensuring all payments are done compliantly, efficiently and on time.

IR35: How can we help?

Why use Umbrella Payroll?

Your candidates will become an employee of Optimum Pay for the duration of their contract. We take responsibility for all their invoicing and cash collection, along with managing their personal tax reporting directly to HMRC and ensuring they are fully compliant with HMRC's ruling.

Whilst they are fully employed via Optimum Pay Group, they will receive full employment rights and benefits such as:



No Hidden Charges

From day one, we're open and honest about our low weekly margins, which cover the admin cost.



Customer Care

We're always there to help your contractors, from the start to the end of their assignment.



Flexible Payment

We process our payroll daily. This allows for more flexibility when it comes to payments.



Peace of Mind

We process our payments quickly and insure them up to 17 million through Hiscox.



Portable Payroll

Your candidates can use our services for their next assignment for continuous employment and better mortgage prospects.



Statutory Pay

We've got your contractors covered! Receive full statutory payments including, Sick pay, Maternity/Paternity pay and Holiday pay.

IR35: Your questions answered



What happened on 6th April 2021?

The responsibility of determining whether your contractor's employment status will fall to the end client. In addition, the Fee-payer (usually the organisation paying into the Limited Company) will need to make correct deductions of NICS and income Tax to HMRC.



How will this affect me?

As the agency, you're responsible for deducting Income Tax and National Insurance from any amounts payable into your contractor's Limited Company and paying it to HMRC. Where HMRC does not receive the tax due, the government proposes to pass the liability onto the party who have failed to enforce the new ruling. For example: if the end client deems your contractor inside IR35 (and therefore an employee) and your agency continues to pay into their Limited Company without the necessary deductions, the liability will fall onto you. Additionally, if you fail to inform your contractor of their employment status, as determined by the end client, your agency would be liable for any income tax and NICS due.



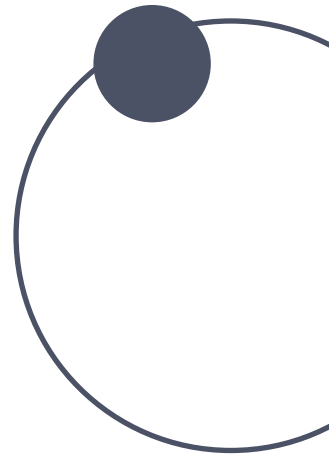
How will this affect my margins?

It may affect your costs when it comes to your clients. With Limited Company contractors, you are not paying for additional costs like Employers National Insurance or Apprenticeship levy. This may mean that the margin you make for your Limited Company contractor is at risk.



What advice should I give to my clients?

Your client must understand how the significance of accurately deciding your contractor's employment status, and the consequences should this decision be wrong. The client can be liable for any unpaid Income Tax and National Insurances should the contractor be deemed an employee of the client, as opposed to a Limited Company. Optimum Pay Group can offer independent IR35 assessments, as well as offer legal information, but the final decision lies with your client.



IR35: Your questions answered



Can my client put a blanket approach to everyone on site?

Absolutely. It can be difficult for end clients to make an accurate determination of a contractor's IR35 status, as the complex rulings rely on in-depth knowledge of case law, individual contracts and working practices. Therefore, in cases of doubt a blanket approach may be applied.



Will my contractors need to close down their Limited Companies?

No. If your contractor is deemed to be inside of IR35, they can still be paid via their Limited Company. However, the Fee-payer (usually an agency) must make sure to deduct the necessary NIC'S and Income Tax before paying the net to the Limited Company.



My contractors have done an IR35 test and are deemed outside of IR35!

Unfortunately, the decision now sits with the end client. If your contractor is suspected to be inside IR35 when they have claimed to be outside IR35, they must be prepared to be investigated by HMRC. Most likely the end client will issue an IR35 test to your contractors and contracts will be reviewed.



What happens to contractors working in the private sector via a limited company?

If they are suspected to be inside IR35 when they have claimed they are outside of IR35, they must be prepared to be investigated by HMRC. This investigation can be back dated by up to six years, and any owed Tax from that period will be claimed by the government. For this reason, we suggest that you or your contractors take our independent assessment from one of our IR35 specialist.



How do Umbrella Companies work?

Umbrella Companies are outsourced employment payroll. We offer HMRC compliant payroll services that take away the admin burdens and responsibility that comes with payroll.

For more information about how our services work or to see the benefits of working with us contact us on:



salesuk@optimumpaygroup.com



www.optimumpaygroup.com



020 3962 4212

IR35: Jargon Buster

Private Sector - The private sector is the part of the economy, sometimes referred to as the citizen sector, which is owned by private individuals or groups.

Apprenticeship Levy - This is paid by employers with annual pay bills in excess of £3 million. In this context, the pay bill is defined as the earnings liable to class 1 secondary National Insurance contributions.

Employer NIC - Employers pay National Insurance contributions on their employees' earnings and benefits.

NIC's - National Insurance Contributions.

Limited Company - A limited company is an organisation that is set up to run an individual business.

Fee-payer - The party next to the Limited Company, usually an agency.

HMRC - Her Majesty's Revenue and Customs.

Regulations - A rule or directive made and maintained by an authority.

PSC - Personal Service Company.

Contractor - A person or business which performs services for another person or entity under a contract between them, with the terms spelled out such as duties, pay, the amount and type of work and other matters.

RTI/Real Time Information - is an improved way of reporting, designed to make PAYE submissions more efficient. This means you'll need to submit information to HMRC in real time, every time you pay employees.

In-house - Something that is done or existing within an organisation.

Turnover - The amount of money taken by a business in a particular period.

Balance Sheet - A statement of the assets, liabilities, and capital of a business or other organization at a particular point in time, detailing the balance of income and expenditure over the preceding period.

Unincorporated - A company or organisation not formed into a legal corporation.



Your Next Steps

Our promise to you is to ensure that we offer you and your candidates the best customer service and advice when it comes to their wages and compliancy.

If you need further assistance, or are looking for advice, please don't hesitate to contact our dedicated sales team through one of the following channels:

salesuk@optimumpaygroup.com

www.optimumpaygroup.com

020 3962 4212

We pride ourselves on our excellent customer service and are always happy to help you out.



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