

IR35 JARGON BUSTER

Addressing the elephant
in the room

www.integroaccounting.com | 0207 0962659





INTRODUCTION

IR35 has always been a bit of a pain. It isn't something that many need to worry about, although everyone in the contracting world does need to understand what it is and the difference between working on a contract both inside and outside of IR35.

With this in mind, and with HMRC using scaremongering tactics to question the integrity of Limited Companies and their working practices, we thought now would be the best time to demystify all the information out there and provide an update on the private sector IR35 legislation change.

WHAT IS IR35?

IR35 was introduced in April 2000. It was the 35th press release published by Inland Revenue for the budget, hence IR35. The legislation is used to prevent contractors working as 'disguised employees'. Some would say this came about due to the instances where permanent employees would resign from their current job and then return a few days later to the same role but as a limited company contractor. They would reap the benefits of a permanent employee whilst also benefiting from the tax and NI saving opportunities that came with being a limited company.

Contracting work is temporary which means you should not have the same benefits as a permie, i.e. sick leave, holiday pay, company pension etc. If contractors benefit from any of these, they could be classed as a disguised employee and could be required to pay full NI and tax, equivalent to that of a permanent employment, thus classed as 'Inside IR35'.

IR35 JARGON BUSTER INDEX

We all use certain terminology in the contracting market, so we've put together the below index which we hope clarifies key terms used throughout this guide:

Recruiter/agency

They have been engaged by a customer/end client to source a service provider capable of completing a specific task/assignment.

End client/customer

The company you directly engage and work with. You may have gone directly to the 'end client' to source your current contract.

Fee payer/engager

This can be either the recruiter or the end client - ultimately the person your company invoices for assignments completed.

Clauses/terms and conditions of your company contract

Specific working practices and expectations of the assignment stated in the contract.

PSC (Personal service company)

A PSC is quite simply your limited company. The fee payer will more commonly use the term PSC.

Working practices

The way in which you carry out the assignment. For example, the contract could state you need to do action X, but you can decide how you are going to achieve action X. Your working practices should reflect the clauses stated in the contract.

Off-payroll

This is the name of the legislation introduced in 2017 to the public sector to reform who decided the IR35 status of contracts. This took the decision making away from the contractor to the fee payer. HMRC have subsequently announced their plan to extend this to the private sector in April 2021. It is designed to identify 'disguised employees' and ensure they and their engagers pay employment taxes, by treating the contractors fees effectively as salary payments.

IR35 ROLES AND RESPONSIBILITIES

Who is responsible for determining the IR35 status?

2000

Contractors working in both the public and private sector had sole responsibility on determining whether their contract was inside or outside IR35.

2017

Off-payroll working rules (IR35) for the public sector was introduced.

Responsibility for determining a contractors IR35 status shifted from the contractor (who had full liability) to the fee payer. This would apply only to the following sectors and very often decided upon before the contract was issued:

- Government departments and their executive agencies
- Many companies owned or controlled by the public sector
- Schools and universities
- Local authorities
- The National Health Service (NHS)

2021

The roles and responsibilities will shift again...

OFF-PAYROLL WORKING IN THE PRIVATE SECTOR

What is the IR35 off-payroll roll out to the private sector in 2021?

Quite simply, HMRC have decided to use the same process for public sector contractors and roll this legislation out to contractors working in the private sector. This means that instead of the contractor determining their contracts IR35 status, the fee payer would determine the status before the contract was issued.

Who is affected by the new IR35 private sector legislation?

Limited company contractors are impacted by this legislation. Sole traders, self-employed, or umbrella companies are not impacted by the introduction of this legislation.

When does the new legislation start?

HM Revenue and Customs were originally expected to roll this out in April 2020, however they have postponed this reform until April 2021.

IR35 Business 'Clauses' - Do they still apply to my contract?

Absolutely. The following 'clauses' listed help to determine if (on paper) your company is working inside or outside IR35. The fee payer will need to consider these when reviewing the contract:

- **Substitute:** can you as a limited company decide who carries out the assignment?

You should always be able to send a substitute with equal skill sets to complete the assignment/project.

- **Obligation:** is the fee payer always required to provide your company assignments? If there are periods of the contract where you are not required to work, there should be no obligation for the fee payer to provide you with tasks so your company will not receive any income.
- **Control:** are you under direct supervision from the fee payer or not? You are a service provider not a direct employee and should therefore not directly be managed by the fee payer.

The above contract clauses should align with your working practices.

Why are my working practices important in determining my IR35 status?

HMRC can always challenge a contractors working practices, this has been the case since IR35 was introduced! And although the clauses in your contract help define your IR35 status, your working practices also have to reflect this. They should work in parallel to show how you work outside IR35.

See the following examples to understand more.



TWO SCENARIOS TO HELP EXPLAIN

SCENARIO 1*

The below is considered Inside IR35 – this is because the contract clauses do not reflect the working practices.

Contract clauses

Can send a substitute for the PSC
Will not be under any direct supervision
Must use own office space and equipment

Working practices

Fee payer will not accept a substitute
Will report directly into commercial manager
Uses company equipment and has a dedicated office space on site

SCENARIO 2*

The below is considered Outside IR35 - the contract clauses listed work perfectly in sync with the working practices.

Contract clauses

Can send a substitute for the PSC project
Will not be under any direct supervision
Must use own equipment
Secures own office space

Working practices

Fee payer will accept substitute provided for
No direct supervision
Uses own equipment and for security reasons uses clients equipment in some scenarios
Works from home office and will be on site only when required

*Please note these are examples and there are several variables to consider when determining your status, so always speak to an adviser.



WHAT CAN I DO TO SUPPORT MY STATUS AS AN 'OUTSIDE IR35' CONTRACTOR?

START SPEAKING TO YOUR FEE PAYER NOW

Contractors can often refer to themselves as a 'me' and 'I' when as a limited company/PSC they should be referring to themselves as 'my company' and 'the business'.

Remember the following points when next speaking to the fee payer:

- **Job spec or project plan?**
An employee would get a job spec. As a company you should be provided a project plan/business plan with a timeline. Expectations and deliverables should be confirmed with the fee payer, as you are a service provider.
- **Sending a substitute**
As a company you should be entitled to send a representative of the company as a substitute for the work being done. Clients should not be surprised or demand your presence for the project. Is this allowed?
- **Office working space**
The number one reason people go contracting is the flexibility. Limited company contractors should be able to determine where and when they work. Naturally, if the project requires you to work with staff on site or in an office in order to complete the tasks, that is different. However, the hours in which you complete the task with them is determined by you, the contractor.
- **Interviews are not for Limited Companies**
As a limited company, you absolutely can be head hunted and approached for a specific project, but these should be classed as business meetings, and not interviews. Employees have the luxury of an interview, whereas limited companies/PSCs should approach this as a business meeting.
- **Employee benefits are just that**
If the fee payer offers you a parking space, subsidised canteen, office equipment, clothing, or merchandise used by employees they may have the misunderstanding that you are an employee and not a business.
- **Working with you, or working for you?**
You as a company are providing a service to the fee payer, so of course there will be a level of reporting into a senior point of contact, however you as the contractor should never be classed as under someone's direct supervision.

Should I be nervous about this new legislation roll out?

No. A significant majority of contractors fall outside of IR35, but risk being considered inside because of a fundamental lack of understanding on the rules of IR35 by clients, agencies, and contractors alike.

If your end client, recruiter or fee payer, understands the requirements of this new legislation, there is nothing stopping Limited Company contractors working outside IR35. The misunderstanding can derive from not speaking to your end client soon enough.

Start speaking to your fee payer now

HOW IS MY CONTRACT IMPACTED IF THE FEE PAYER CHANGES MY STATUS FROM OUTSIDE TO INSIDE IR35?

HMRC have stated that previous contracts should NOT be impacted, and that this new legislation has no weight against past contract work. All contracts that cross over or start from April 2021 will be affected by this new legislation.

For example: Bob started his contract October 2020. This contract ends May 2021. If the fee payer states your contract will fall inside IR35 from April 2021 then you will benefit from the tax advantages up until the end of March 2021 and only pay extra tax and NI April and May 2021.

Point to consider

Ask yourself though. If the fee payer was happy with you working outside IR35 already, then why have they moved you inside IR35? Have a chat with them and ask what their argument was in making this change.

WHAT IF THE FEE PAYER DEEMS MY CONTRACT INSIDE IR35?

If you feel the fee payer is using a 'blanketed' approach, and is incorrect in their decision, you have every right to appeal this with the fee payer. Remember all contracts are different and the fee payer should be reviewing the contract based on the project spec and requirements for your contract and not as an employee.

ARE THERE STILL BENEFITS TO CONTRACTING THROUGH MY LIMITED COMPANY, WHILST INSIDE IR35?

The number one question! Ultimately, there is no 'one size fits all' answer, but consider your circumstances and variables before making any hasty decisions. Consider:

- **Will the fee payer increase your rate to allow for your tax and NI?** If so, your tax and NI burden would be covered now the increase has been factored.
- **How long is the length of your contract?** Closing your company, to then later reopen it can be timely and the short-term taxes could outweigh the costs. Dependent on your circumstances, closing your company could have long term implications. All situations are different, so we recommend speaking to one of our dedicated accountants before making any decisions.
- **Do you have multiple contracts?** Some roles may fall outside IR35 meaning you can still build your company reserves and pay dividends later by keeping your limited company open.
- **Challenging the fee payer.** Contract roles and projects still need to be completed, are they prepared for the job to cease? Most fee payers should have a legal team in place to manage this legislation so speak to them about your options.

WHAT SHOULD YOU DO NEXT?

Speak to your recruiter, end client, engager, fee payer... whoever ultimately decides your IR35 status and ask them:

- **What is their plan for April 2021?**
- **Do they have a team in place to support the new legislation?**
- **Do they understand what IR35 is?**

If you would like us to engage with the fee payer, [click here](#) and complete our online form. We can then engage to start these conversations on your behalf.



WHAT ARE OUR THOUGHTS?

CEO of Integro Accounting, Christian Hickmott, shares his views on the matter:

In my opinion, if you are genuinely in business for yourself, there is nothing to fear from this legislation and the changes it will bring.

It is true you may need to educate your clients and/or the fee payer you engage with and the sooner you do this the easier it will be to plan for your future.

HOW CAN WE HELP?

At Integro Accounting we aim to help our clients any way we can.

Please contact us on **0207 0962659** if you require further advice on IR35, or support from one of our recommended partners. You can also email IR35@integroaccounting.com where all IR35 enquiries can be answered by an industry expert.

