

IR35: Our Guide

What is IR35?

Properly known as the Intermediaries Legislation – IR35 was implemented by the UK government in 2000 to ensure that contractors pay the same tax and national insurance contributions as an equivalent employee would. There have been many changes to the legislation since then and one of the most significant of these comes into play on 6th April 2021, transferring responsibility from contractors to large and medium companies to assess IR35.

It is important to be aware of the rules and how they can affect the way you work as a contractor, or the way you treat your workers as an end-user.

New IR35 rules

Here are the new IR35 rules to consider when recruiting or searching for contract workers or positions past April 2021

- From 2021, the liability for assessing IR35 status for tax purposes is no longer solely on the contractor's intermediary but the end business organisation.
- Small organisations will be exempt*
- HMRC will provide support and guidance to help businesses implement the rules and ensure the guidance is appropriate to the larger and more diverse private sector. For guidance
- Responsibility will now sit equally with the contractor and the end user client. So, this means that any unpaid tax can be collected from both parties if there has been an error made.

*What is a 'small' business for IR35 purposes?

The definition of what is a 'small business' is taken from the Companies Act 2006 and will apply to limited companies, LLPs, unregistered companies and overseas companies.

A business will be small if it satisfies two or more of the following requirements:

- It has a balance sheet total not more than £5.1m
- It has no more than 50 employees

To determine whether the small business exemption applies to a tax year, these requirements are applied to two consecutive financial years; the latest financial year where the filing date for the accounts ends before the beginning of the tax year and the financial year before that one.

Where two or more of these requirements are met for two consecutive financial years, the small business exemption applies and responsibility for applying the IR35 rules remains with the intermediary.

Determining IR35 status

Finding out whether or not you are inside or outside IR35 will determine how you should be paying tax and NI. For clarification, HMRC has developed an online employment status tool (CEST) for contractors unsure of their liability under IR35. HMRC uses the following factors to test your IR35 eligibility.

1. **Substitution**

If the contractor or the end business is able to send a substitute to complete works in the contractors' place, this suggests the contractor isn't providing a personal service, and the worker isn't a disguised employee.

2. **Control**

If an end business controls the workload of the contractor or how the work is carried out, it suggests the person is inside IR35 as they are not providing a specialist service as a contractor.

3. **Mutuality of obligation (MOO)**

If both parties pass the above tests, it is unlikely that MOO applies as it will be deemed outside IR35 anyway. MOO can be present in both contracts of service and contract for service.

4. **Risk**

If a contractor can make a profit or a loss i.e. financial risk, this would suggest that the contractor is outside IR35.

Taking responsibility for IR35

As stated above, the responsibility of determining and declaring whether or not IR35 applies no longer sits with the contractor alone. End user clients are now responsible for determining and paying for contractors that could be deemed as "disguised employees". If a contractor is suspected to be inside IR35 when they have claimed they are outside IR35, then they should be prepared to be investigated by HMRC. This investigation can be backdated by up to six years, and any owed tax from that period will be claimed back by the government.

If you would like to know more about IR35 and how it affects you. Please contact Natalie, our Head of Interim

This material is intended as a guide & does not constitute legal advice. Specialist legal advice should be taken in relation to specific circumstances.