

Source.

Inside or Outside IR35? Status Determinations Explained





IR35 Explained

The IR35 tax legislation is coming in to force in the private sector on April 6th 2021.

The aim of the legislation is to capture individuals operating through a Personal Services Company (PSC), where for all intents and purposes they would be an employee of the client to ensure the correct tax & National Insurance Contributions (NICs) are paid.

There are four main principles to decide IR35 status

Determining whether IR35 applies to your contract is a complex matter. These are the key principles that will determine your IR35 status:

- Mutuality of obligation
- Supervision, Control & Direction
- Right of Substitution
- Part & Parcel

Contracts need to accurately reflect the working practices followed in the client/contractor relationship. If HMRC decides the relationship is of an employment nature, they will seek to recover all income tax and National Insurance contributions due over the period of the contract affected.

This guide is designed to look at each of these factors to help you understand whether the majority of the work you engage with will fall inside or outside IR35 and in turn, will help you get prepared for April 6th.

The team at Source are committed to help support you on this journey we need to embark upon.

IR35 Explained

There are also several other factors that contribute to determining your IR35 status.

Unfortunately for each, it is not a simple yes or no answer and is a complex combination of them all. Our clients will be using a variety of tools to make Status Determinations for each contract brief they need filling. You will be told by your consultant whether each role is inside or outside of IR35.

To help you get a feel if your contracts will fall inside or outside of IR35, we've listed each factor and what helps or hinders you operating outside of IR35.

What hinders you being outside IR35?

What helps make you outside IR35?

Mutuality of Obligation

An independent contractor should not expect to be moved from task to task outside any terms within the agreed schedule of works. Neither should you believe you have to accept any work offered, nor should a hirer expect you to have to accept any new role offered by them. If this expectation existed, this type of relationship would be indicative of employment.

Outside

The client is not obliged to offer work and the contractor is not obliged to accept the work.

Inside

The client has an obligation to keep offering work to the contractor, the contractor is obliged to accept.



Control

If you are operating outside IR35, you should be able to demonstrate some autonomy in relation to the manner in which the work is carried out.

Outside

The contractor has the freedom to decide how what, when and where they complete the work.

Inside

The contractor is told how, what, when and where they complete the work.





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Right of Substitution

One of the most important factors when considering employment status is whether or not there is the provision of a personal service. If you were unavailable to carry on the role, for example, because you were sick, would you have the right to get someone else to carry out some or all of the work that needed to be done? If you could substitute then this is a strong indicator of your role being outside IR35.

Outside



The contractor has the right to substitute the service to someone else who is qualified.

Inside

The contractor is personally obliged to carry out the services.



Part and Parcel of the organisation

The 'part and parcel', or 'integration' employment status test asks whether the worker is integral to the end client's business or merely an accessory to it. A genuinely self-employed person should only be an accessory to their client's business, carrying on a business outside and separate from the client's organisation.

Outside



Project based, has an end date, uses own equipment, treated as an independent contractor etc...

Inside

Rolling contract, appraisals, eligible for bonus, is detailed in an org chart, and invited to employee functions etc...



Termination Clause

The ideal IR35-friendly contract would have no notice period as notice periods are reminiscent of an employee and employer relationship where both parties are required to give notice, this is however not always possible. A typical contract that is outside of IR35 will state that the contractor is there to deliver a particular service or project and once completed the contract will end. If a notice period is required, it should be an immediate notice or a short notice period.

Outside



Either party is able to terminate the contract without notice.

Inside

The contract between parties has lengthy notice periods.



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Contract Length

Having fixed start and end dates when working outside the legislation matters. By not working on a rolling contract you can strengthen your status as a genuine contractor. It's therefore worthwhile to set a project or contract length, which may prove useful in evidencing that you aren't 'part and parcel' of your client's organisation.



Outside

The contract isn't related to the length of time, but instead the specific piece of work.

Inside

The contract is for a fixed term or on a rolling basis.

Financial Risk

A contractor who is working outside of IR35 will normally undergo an element of financial risk by taking on a contract. This could be the cost of new equipment, a training course or professional indemnity insurance to cover the course of the contract.



Outside

The contractor risks their own money, (i.e. marketing, equipment). A reduction in pay from missed deadlines or poor work standard.

Inside

The contractor doesn't risk their own money or have responsibility for the standard of work.

Employee Benefits

An independent contractor is not entitled to employee benefits such as, holiday pay, sick pay and maternity pay.



Outside

The contractor is not entitled to the employee benefits.

Inside

The contractor does receive employee benefits..

What hinders you being outside IR35?

What helps make you outside IR35?

Tools and Equipment

Unless there's a sound reason (such as for safety, security or practicality), you should be using your own equipment, rather than equipment supplied by your client.

Outside

The contractor provides their own tools and equipment.

Inside

The client is responsible for providing the tools and equipment to the contractor.



Intention of the Parties

The contract should always clarify the intentions of the contractor and client (or agency) to be one of supplier and customer and not employee and employer. The nature of the work should be described accurately. If the intentions of the parties, as expressed in the contract, bear no resemblance to the real intentions of the parties, the written intentions will likely be ignored by HMRC.

Outside

All parties are clear that it is a business-to-business agreement.

Inside

One of or all of the parties think the contractor is actually an employee of the client.



Other things you should take into account are being able to demonstrate that you are “in business on your own account” – you may not have stock, premises, or staff but you will probably have an office (even at home), a website, be VAT registered, have business stationery, advertising, invoices, insurance and have other clients and an accountant.

We at Source are committed to support you through this journey.

Source.



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