

IR35 Policy

IR35 meaning

IR35 is another name for the off-payroll working rules. The term 'IR35' refers to the press release that originally announced the legislation in 1999.

Self-employed IR35 rules are designed to work out whether a contractor is someone who's genuinely self-employed rather than a 'disguised' employee, for the purposes of paying tax.

That's because contractors who set up and work through a limited company enjoy some tax efficiency. While they don't usually get employee benefits (like holiday and sick pay), they have flexibility and control over their work.

Some contractors try to take advantage of this tax efficiency by appearing self-employed on the surface, when they'd actually be an employee were they not providing their services through their limited company. The off-payroll working rules are designed to tackle this, but they aren't without their problems.

What is IR35?

IR35 is the name given to the government's tax legislation which focuses on identifying 'disguised employees', being individuals who are providing services to a client through an intermediary company, such as a PSC, but whose relationship with the client would be one of employment were it not for the presence of the intermediary. Where this is the case, the IR35 rules require the intermediary to deduct and make payment of the equivalent taxes as would be payable by and for an employee.

When does IR35 apply?

HMRC says that when working out whether IR35 applies to a contract or engagement, "you must work out the employment status of the person providing their services."

HMRC goes on to say that the off-payroll rules apply if the contractor "would be an employee if there was no intermediary". The intermediary in many cases is the contractor's limited company (often called a personal service company).

Intermediary meaning: what is an intermediary?

IR35 is also known as the 'intermediaries legislation' because it applies to workers who provide their services through an intermediary, rather than working as an employee.

As mentioned, the intermediary will often be the contractor's own limited company, or personal service company.

A personal service company is a limited company where the sole director, the contractor, owns most or all of the shares. The contractor then delivers services to clients.

But gov.uk says that there can be other intermediaries:

- a partnership
- another personal service company
- an individual

What does IR35 status depend on?

IR35 status tests usually relate to **supervision, direction** and **control**. We go into more detail as part of our IR35 checklist below.

HMRC also has a tool to check employment status for tax called CEST that you can use to see whether IR35 applies to a contract, plus an IR35 helpline.

But in reality, IR35 status hinges on IR35 case law and employment legislation, itself reliant on decades worth of employment tests heard in UK courts.

Another problem is that CEST may not be entirely accurate, as it doesn't take a key piece of case law (mutuality of obligation, or MOO) into account.

Who works out IR35 status?

Off-payroll working rules in the public sector

If you contract with a public authority, they're responsible for working out whether you fall inside or outside of IR35. If you fall inside, the hirer, agency or other third party who pays you then needs to deduct tax and NICs and report them to HMRC.

Off-payroll working rules in the private sector

Off-payroll working rules in the private sector changed in April 2021.

If you contract with **larger businesses, they're responsible for working out your IR35 status**. As above, the party who pays you then needs to deduct tax and NICs.

IR35 changes: what happened in April 2021?

After a delay, private sector IR35 changes were introduced in April 2021. These changes introduced public sector rules to the private sector, shifting responsibility for working out IR35 status from the contractor to the client.

April 2021's IR35 changes mean that:

- medium-sized and large businesses are responsible for working out the contractor's employment status, not the contractor
- contractors should be given the reasons behind the decision in a **Status Determination Statement**, and can dispute the decision if they disagree with it (public sector clients also now need to give contractors a Status Determination Statement)

- small businesses are exempt from the changes, so if a contractor works for a small client, the contractor will still be responsible for working out their employment status

End clients in both the private and public sector need to show they've taken reasonable care when working out IR35 status. If they haven't, HMRC holds them responsible for getting things wrong. They also need to keep records relating to employment status determinations, including how they've made their decisions.

IR35 rules: am I compliant?

In general, IR35 won't apply if the contract is for services rather than employment. To untangle that, you should see whether the contract specifically mentions these principles:

- **supervision, direction, control** – this relates to how much say your client has over how you complete your work. For example, if you have to work at certain times, this implies employment
- **substitution** – could you bring someone else in to complete the contract, or do you need to do the work yourself? If you can't send someone else, you're likely to be inside IR35
- **mutuality of obligation (MOO)** – is there an obligation on the employer's end to offer work, and do you have to accept it? This is called **mutuality of obligation**, and if an element of it exists, the contract may fall inside IR35

The contract has to reflect your actual working practices – essentially, the clauses need to be genuine.

Supervision, direction, control

For a contract to fall outside IR35, contractors should have freedom over how they complete their work.

- a contract that specifies things like the time you can start and finish work, or the days you're required to work, points towards employment
- a contract might also point towards employment if a client oversees your work excessively and gives guidance on how to complete it
- plus, if you're not only providing your services for the agreed job but also working on different tasks as your client sees fit, the contract is likely to be inside IR35

Substitution

For a contract to fall outside IR35, you should be able to send a substitute to complete the work instead.

- does your client only want you, or services more broadly? An outside IR35 contract might state that someone else can provide their services to complete the work
- the clause has to be genuine – you should know which skilled contractors you would ask
- plus the contract can't be so restrictive that you essentially need to do the work yourself

Current process and how it is implemented within the business

Currently all our roles fall within IR35 meaning we only pay paye whether that is internal payroll or through an umbrella. We tax at source meaning we deduct all the payments from the gross wage.

If the candidate goes through an umbrella they must be on our panel and approved by us, this is because we vet all umbrellas to make sure they are taking all the right deductions. Along side vetting them we also audit them. This is explained further down in this document.

We liaise with the client to confirm whether the roles fall within or out of IR35, to date all clients and there roles are within.

If a candidate is paid internally we retain all the tax and pay across meaning there is no concerns raised.

To date we have not had any issues with the umbrella companies on panel or our internal payroll. Internally we are audited by third parties who also make sure we are keep the appropriate standards. Again this is explained further below.

For the latest list of approved umbrellas please request from finance.

How umbrella companies are vetted and how they are audited to evidence compliance with IR35

Currently we have a number of umbrella companies on panel that are approved and vetted by ourselves. We have a lot of requests for new umbrella companies but before we can bring them on board we have to make sure that they are up to our standard in terms of quality of service and they follow the law in making all the appropriate deductions. Below is how we look at umbrella companies and the process we take to make sure they are suitable to be offered to our candidates.

- On request of a new umbrella company first the finance team will carry our research on the financial viability and history.
- We then liaise with client gathering a point of contact to understand more about them and there service level. Communication is key and we want to make sure they are the right partners for our candidates.
- Once we are happy with the first two stages we send out a due diligence check list, once completed finance go through and pick up any quires they may have. This gives us confidence on them abiding by the law and service they provide.
- Fourthly we then sign the contract of service and start using the umbrella with a small portion of candidates
- After 4 weeks we review the service and approve fully on panel.
- Once they are fully on panel, documents are updated and send across in the monthly newsletter to candidates.
- All umbrellas are audited on a 6 month basis, in this we gather all candidates that have gone through the company. We select 10% of the candidates and request payslips for the matching ours we send across. We also speak to compliance to make sure all documents for candidates are collected appropriately.
- After 7 days on request we review all documents and a report is created and stored, actions taken if any, in some cases taken off panel.



To date we have not had to take any umbrellas off panel due to under performance or failing a audit.

The current list of umbrellas can be gathered from the finance team. The due diligence checklist is attached for your reference.

How our internal processes are vetted and audited

Internally we run payroll and have processes we follow in regards to shifts, clients, hours and pay. These processes have been created by the finance team who verify candidates that work and the appropriate pay that is put into the payroll.

We are audited by a number of parties that look over compliance, processes, finance and quality every year. Depending on the client there would be a different auditor but financially we are audited by the accountants to make sure all appropriate deductions are being paid across to the HMRC.

This gives all parties a secondary peace of mind that we follow standards to the highest level.

How internal staff are offering / implementing these services

On a candidate registering, candidates are given the option of umbrella or internal payroll. Each is offered and explained in detail with the candidates making the final decision. Candidates can move at any time between the option and if umbrella can use one of the vetted and audited ones we have on panel.

Any new candidates are reconfirmed before the payroll if processed by the finance team to make sure they are still have with the option chosen at the registration point. All points such as tax, holiday allowance and fees are explained.

All internal staff are trained on this subject so that the same message goes out to the candidates. Any query the candidate has in regards to IR35 can be picked up directly with the finance team who can support in more depth. This is also explained in the handbook provided to the candidates.

Every quarter we hold refresher training with all the teams in which we recap any changes and review how the above is done.

We make sure that candidates have 3 points of contact and that all decisions on the method of payment is firm and there decision. The 3 points of contact consist of compliance, finance and account managers.

How will the decision-making process work in practice?

The public sector client will first determine whether a particular assignment is inside or outside IR35. A new digital employment status tool, developed by HMRC, is expected to be available for this purpose from the end of February. The client will then be responsible for notifying Kingdom



Medical of its decision, along with written details of the relevant circumstances and assessments upon which it has reached such a decision.

What are my engagement options with Kingdom Healthcare going forward?

If your assignment is deemed to be inside IR35 which all are at the moment, Kingdom Healthcare is able to offer the following engagement options for you to choose from and we are happy to provide more information on request:

- 1) Move to a PAYE engagement via a contract for services with Kingdom Healthcare,
- 2) Move to an umbrella model – Kingdom Healthcare has an approved supplier list (ASL) of umbrella companies who will support your transition to your chosen Umbrella should you wish to use this option, these will be confirmed shortly.

Of course, if your assignment is outside IR35, the above options are still available at your request, or you can continue to work via your PSC outside IR35, subject to completion by both the public sector client and you as the individual supplying the services of HMRC's decision tool and provision of the decision by the tool as evidence to Kingdom Healthcare that the assignment is out of scope.