

Associate Guide to IR35



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Introduction

It is commonplace for many people working in the contract or temporary employment market to use a Limited Company through which they are paid. These companies are referred to, when used in this way, as Personal Services Companies (PSCs). Such arrangements are considered by HMRC under an arrangement known as IR35, something as a Director of a PSC you should be aware of.

IR35 is not new, in fact it became law in 2000 as part of the Government's plans to clamp down on the growing use of PSCs to provide professional services to clients, where the individual was still working in a manner similar to a traditional 'employee', but enjoying the tax benefits of a corporate structure.

Central to your position is the determination made to decide whether the role you are performing falls inside or outside IR35 and from April 2021 this assessment will be made by your clients – in other words the business for whom you work for – because they will now be responsible for any unpaid employment tax liabilities.

This guide is designed to help you understand IR35 regulation and the impact it will have on you in 2020 so you can prepare appropriately for what will be one of the biggest changes for the UK contract worker market.

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why have IR35?

The use of personal service companies delivers benefits to both the client and the contractor.

Clients engaging you via your PSC can employ you as if you were ‘self-employed’ and therefore not have to worry about deducting tax and National Insurance or be bound by employment rights such as holiday and sick pay. Accepting these conditions, you as the contractor have the freedom to work with numerous clients without the constraints of formal employment. In addition, you can enjoy the benefits of being paid by your own Limited Company.

The reality is that even though you are working in this way, most contractors work for a single client at any one time, performing a role that might otherwise be carried out by an employee of your client.

For years the Government had seen this as ‘disguised employment’ and believed that in such cases you should pay tax in the same way as a direct employee might and it was this that led to the creation of IR35 in 2000 aimed at reducing these disguised employment arrangements. The intention was not to stop the use of personal service companies as such but to ensure that when you worked as if you were an employee of your client, and were therefore ‘inside’ IR35, you paid the appropriate employment taxation.

The onus, in 2000, fell on you as the contractor to determine if you fell inside or outside the rules as well as it being your responsibility to make the right deductions and payments to HMRC.

If, on assessment the HMRC felt the incorrect determination had been made it would have to prove its case which presented several challenges and difficulties leading to calls for change.

IR35 in 2017 and the Public Sector

In 2017 IR35 reforms were introduced to address the issues preventing HMRC to effectively collect revenues due from contractors performing roles inside IR35 working in the Public Sector.

The key development was to shift the onus on to the ‘employer’ to make the IR35 determination, and tax and National Insurance deductions from contractors working through Personal Services Companies.

To support the ‘determination’ HMRC launched an online tool ‘Check for Employment Status (CEST)’

IR35 in 2021

In 2018 the Government stated that the reforms launched in the Public Sector would be extended to the Private Sector with effect from April 2020 and published a policy and consultation document in March 2019 setting out the Private Sector legislation. Due to Covid-19 it delayed the implementation of the change by 12 months and is now due to become effective from 6th April 2021.

The policy document covers some specific areas for contractors, such as a small company exemption, (if you are working for a company as a contractor with less than 50 employees, a balance sheet value of less than £5.1m and an annual turnover under £10.2m), for whom IR35 will not apply.

With the IR35 status now being carried out by the employer there is a process by which you can appeal the role determination, if you feel an incorrect assessment has been made although in real terms this may not have value as there is no independent arbitration being made available as yet.

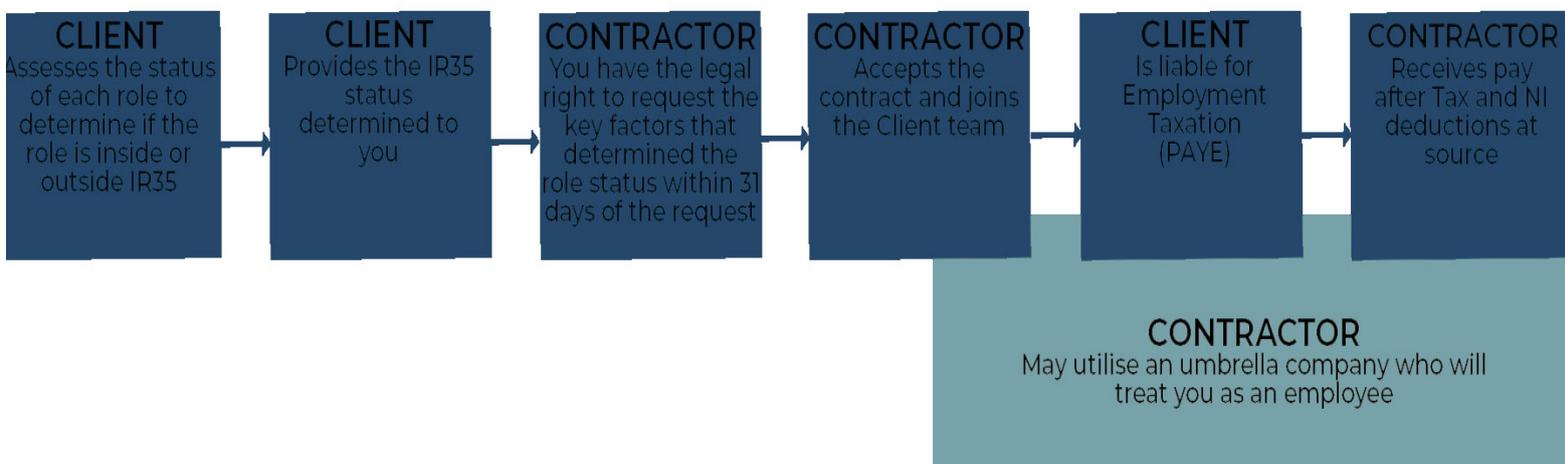
It is important to understand the caution likely to be displayed in the early days by clients as the supply chain settles over the new arrangements and fully becomes accustomed to understanding the liabilities each party has under these reforms.

The Impact of IR35 Reform on You

When working as an independent or self-employed contractor you must be aware of the criteria that affect your status under the legislation and how it impacts you. The impact only affects contractors operating via a PSC.

It is highly likely that when you are considering a new role going forward, the roles on offer will state whether they are inside or outside IR35 which will mean you will have to consider if you will be best served by working through your PSC or via another 'employed' route such as an umbrella company. The onus is on you, the contractor to inform the company paying your fees the structure of how you are working (umbrella or PSC). Clearly for roles outside IR35 you will see little or no impact if you work via your own personal services company.

It might be the case that many clients will wish to remove their IR35 risk and not wish to contract with PSCs leaving the umbrella employment route as the only option, unless being directly employed by the client is on offer.



Ideally you might like to look for roles that keep you outside the IR35 rules but when accepting any such role you must take responsibility for checking that role's status. HMRC will be keen to investigate these marginal cases for fraudulent behavior and you must remember they have the powers to go back over time to check your IR35 compliance.

IR35 Status Determination

Each role must have its status determined and when determinations are made evidence should be kept, along with any appropriate rationales applied, for future reference.

There are a range of considerations made for each determination and we have covered these below. You should note however that it is the practicalities within the execution of the role that is as important as the details contained in your contractual terms. Here are some of the key considerations for role assessment:

Provision of Equipment

Do you use equipment provided by the client, or your own? If you use the client's owned equipment it could be viewed as an indication of employment.

Financial Risk

How much financial risk do you as an individual undertake in your work? If all the risk lies with the client, then this is an indicator of 'employment' rather than 'self-employment'.

Basis of payment

How regularly you are paid may have some bearing on your IR35 Status, for example are you paid by the day or hour or for the completion of a specific job?.

Control

Does the client directly control and supervise your work? An employee would generally be closely managed whereas a genuine self-employed worker would look to, and be able to, complete tasks autonomously.

Substitution

Are you able to provide a substitute for the work you do under the contract? An employee would be operating by delivering the role personally or exclusively rather than like a business delivering a service. Contracts outside IR35 would generally allow for the contracted services to be delivered by a substitute from within the contracted 'company'.

Mutual Obligations

This would exist in a situation where an employer expects the employed worker to carry out their duties when asked to do so and more over to be given a continual stream of work, as opposed to a self-employed worker who would, in simple terms, be engaged on a task basis with no guarantee of continual work.

It is worth noting that continual contract renewal from the same employer, or client might be construed by HMRC as 'employment'.

Exclusivity

A genuine self-employed worker would usually have work supplied by several clients throughout the year and sometimes there might be more than one being fulfilled at any one time.

How to Show You Are Self-employed

Based on some of the determination considerations above and if you are offered work deemed to be outside IR35, you must still take steps to make sure you remain outside IR35 and be able to demonstrate that you are actually self-employed.

Here are a few things to consider:

- Try to work for more than one client at a time either with different consecutive contracts or by delivering into concurrent contracts.
- Where you can, invoice for specific tasks and ensure the details are documented within your invoice.
- Have 'quality' clauses in your work agreements. Being able to demonstrate refunds or discounts for poor or substandard work is a good demonstration of self-employment.
- Be able to show that you have control over what you are delivering and where possible when and where you will undertake the work.
- Vary the hours (and keep a record) you attend a client's office to perform your duties.
- Try to appropriately distance yourself from company specific events run by your client as a matter of routine, i.e. stick to special one-off occurrences relevant to your work.
- Have the ability to provide a substitute for cover in the event of absenteeism for what ever reason and that the expense of doing so will be met by you (or your company). It is important to be able to demonstrate that you are not providing personal service as that would indicate your role is inside IR35.
- Use your own equipment, such as a laptop, where possible.
- Don't be seen to receive 'employee' type benefits from your client such as training or attending conferences and where possible evidence that you are responsible in this context for your own development.





FAQs

What's in the new rules?

At a high level, the objective is to level the playing field, in terms of tax and National Insurance, paid between full time employees of a business and contract/temporary/'off-payroll' staff who, by the roles they fulfil, are deemed to be performing as 'full time employees' of the business with whom they have been 'contracted'.

Will this apply to all 'contractors'?

No. The rules apply to all people whose job falls under IR35. Therefore, for each role for which you are engaged there will have to be a 'determination' made in order to establish whether the role falls inside or outside the IR35 framework. In other words, and simply put, is the role (or service) you are providing akin to that being performed by 'traditional' employees?

HMRC provide an on-line 'Check Employment Status for Tax' tool known as CEST which can determine whether the job you do is inside or outside IR35 by taking you through a series of questions.

If my role is inside IR35 what will happen to my pay?

If you work via an umbrella company, you are unlikely to see any change in your pay.

For contractors working via a PSC, the key financial impact of this change lies in the payment of employment taxation, in particular Employer's National Insurance Contributions (NICs).

I already account for my tax liabilities within my PSC – so what will change?

If your role is inside IR35, the business for whom you are providing your services, as the proposals currently stand, must make employment tax deductions from your invoice before paying you the net balance.

How much will be deducted?

Based on how things have worked in the Public Sector. The deductions will include:

- Employer's National insurance Contributions
- Employee's National insurance Contributions
- PAYE Income Tax

If I'm already in a contract when the changes come in, what will happen?

Momenta is currently in discussion with clients about transitional arrangements and as soon as HMRC have finalised the rules, and hopefully issued guidance on their application following the consultation period, we will take the necessary steps to guide you through any required changes.

Will there be choices?

Depending on the way you currently work, yes there may be. It is worth noting though that the IR35 reforms are going to affect absolutely every contractor in every business sector across the UK.

How will Momenta help me?

Firstly, we will be communicating regularly with all our Associates to both build awareness and knowledge so that everyone is fully informed on developments as we head towards April 2021.

Secondly, we are engaging with our 3rd party service providers, such as the umbrella companies you may already be familiar with, in order to make sure you can get the help and support you need in order to optimise the way in which you manage your finances.

The increased focus on IR35 will impact our business too and we will be looking to ensure that the teams you speak with at Momenta will be able to support you and direct you in the most appropriate way.



If you would like to discuss your contracting career and IR35 further, please get in touch with us - IR35@momentagroup.com