



IR35 – What You Need to Know

<p>How does IR35 work?</p>	<p>IR35 applies where individuals seek to avoid paying employee income tax and National Insurance Contributions (NICs) by supplying their services through their own limited company, a Personal Services Company (PSC).</p> <p>Currently, most contractors are required to determine their own status as employee or contractor. From 6 April 2021 the liability to determine this employment status will usually pass to the employer in the private sector.</p> <p>This change had been due to be introduced in April 2020, but this was delayed until April 2021 due to the Covid-19 crisis. It is expected that this change will lead to a significant number of “contractors” having to pay extra tax and national insurance as it is estimated that only 10% correctly determine their employment status.</p>
<p>How do you know if the IR35 rules apply?</p>	<p>Private sector businesses will now adopt the rules for the public sector which were originally implemented in 2017. These businesses will need to determine themselves whether a contractor is to sit inside or outside of IR35.</p> <p>This will be the case for all businesses in the private sector, unless they satisfy two or more of the following:</p> <ul style="list-style-type: none">• They have less than £5.1 million in assets• Their turnover is £10.2 million or less• They employ 50 people or less <p>Businesses can refer to the HMRC tool, the Check employment status for tax tool (CEST) at https://www.gov.uk/guidance/check-employment-status-for-tax.</p> <p>The type of indicators that need to be considered when determining IR35 status are the usual ones in determining if a person is an employee or independent. Where the contractor has a right to substitute another person for his or her own services, this is seen as a strong indicator that the relationship is</p>



	<p>contractor and customer rather than employer and employee. Where the client has significant control and direction over the worker this will be seen as an employee and employer relationship. Conversely, where the worker has control over how the job or assignment is completed this is seen as a contractor/client relationship.</p> <p>HMRC also look for what is called mutuality of obligations. That is, is there an obligation to provide work and accept work between the parties? This is an area of dispute between HMRC and many practitioners and can be difficult to determine with confidence.</p>
<p>Example</p>	<ul style="list-style-type: none"> • A Mr Smith sets up a company and works for his company Mr Smith Limited. • Mr Smith Limited enters into a contract with ABC Ltd to provide services under an agreement that Mr Smith will carry out the actual work. • Realistically there is never any intention for anyone other than Mr Smith to perform the services via Mr Smith Limited and Mr Smith acts, and is treated, in a very similar way to ABC Limited's employees. <p>It's likely that IR35 will be applied here so HMRC will regard ABC Limited as the employer of Mr Smith and they will be liable for making the appropriate deductions for tax and NICs prior to making payments to Mr Smith Limited. HMRC may apply IR35 if it considers that the purpose of the PSC was to avoid being deemed an employee/worker and avoid payment of employment tax and NICs.</p>
<p>What does IR35 mean for the private sector?</p>	<p>You should be reviewing their self-employed relationships and ensuring contractors are in fact self-employed. The proposed changes mean that private sector businesses will also need to consider whether their relationship with Limited Companies who provide services to them could fall foul of the IR35 rules.</p>
<p>What does outside IR35 mean?</p>	<p>If a contract is deemed outside IR35, the contractor is considered self-employed for tax purposes and are free to pay themselves in the most tax efficient way, which is typically through a mixture of salary and dividends taken from their company.</p> <p>Contractors working outside the scope of IR35 are responsible for making sure all their personal and company taxes are calculated correctly and paid on time.</p>
<p>What does inside IR35 mean?</p>	<p>If a contract is deemed inside IR35, the contractor is considered an employee for tax reasons. This means they are effectively required to pay tax at the same rate as an employee in the same tax bracket.</p>



	Tax and employment legislation are currently separate. So, whilst a contractor may be considered an employee for tax purposes, they are not automatically entitled to employment rights.
What are the next steps?	<p>If you engage with self-employed consultants or contractors, you can prepare for the changes by taking some simple steps to ensure you don't get caught out:</p> <ul style="list-style-type: none">• Identify and review your consultant/contractor relationships.• Ensure your terms of engagement with contractors and consultants are clear and accurately reflect their true status.• Consider how the services are delivered and by who, then potentially change contractors or consultants into employees, possibly with zero-hour contracts or casual worker agreements with gaps between engagements to avoid continuity of service.

KEY ACTIONS

1. As of 6th April 2021, If you're in a position where you need to determine the employment status of your contractors, this is compulsory.
2. You can use the online HMRC tool if you're unsure whether a contractor sits inside or outside of IR35.
3. You'll need to confirm this decision by providing a Status Determination Statement (SDS) to your contractor(s) and keeping a copy for the business, too. If an agency is involved, you'll need to give them a copy of the SDS, too.
4. Review your payroll systems, as you'll need to enrol contractors within IR35 for tax, NI, P45 and P60s.

For more help, guidance or assistance with managing IR35, contact the ForrestHR team on 01892 726060 or hello@forresthr.com