

What is IR35?



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IR35 guide

Do you provide your services without employment? If so, do you use a limited company or partnership as an intermediary to provide those services through?

If the answer is yes, then you will need to prove that you are not using your limited company as a buffer to what essentially would be direct employment with the end client.

Why do you need to provide proof? Well, depending on your term of engagement - whether through a limited company or as an employee - the amount you pay in tax differs. HMRC wants to make sure the tax you pay accurately reflects your employment situation. The IR35 rules were introduced to police this behaviour.

IR35 is notoriously complicated to grasp and, when trying to wrap your head around this complex legislation, online information and even HMRC's own guidance can often be more confusing than helpful.

This guide will explain IR35 in simple terms, and provide a few scenarios to better equip you to understand if you're paying tax correctly under IR35.

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What's IR35 & why is it important?

A very brief history - IR35 was introduced in the year 2000 to combat employees who disguised themselves as personal service companies in order to reap the tax benefits of operating as a contractor, as opposed to an employee.

Through a limited company you are able to split your Income Tax and National Insurance Contributions favourably between a low salary and dividends – thereby achieving a higher take home pay than a full time employee. Conversely as an employee you will be placed on your employer's Payroll, and will have PAYE Income Tax and National Insurance Contributions deducted from your salary at source.

Essentially the regulations are there to determine whether, if not for your limited company, you would in fact be an employee – in which case you will need to pay tax accordingly. *Breaking it down: IR35 determines if you're an employee of the client or a limited company contracting your services to that client.*

Terms

Self-employed: You can be called a freelancer, sole trader or contractor and you operate outside of employee status.

Personal Service Company: A company that sells the work or services of an individual (or group of individuals) that is owned and operated by that individual (or group of individuals).

Employee: You will have a permanent contract whereby you receive a salary and benefits and your employer deducts PAYE and National Insurance Contributions from your wage. You also have employment rights.



Am I an employee or a contractor?

You might imagine this would be a fairly straightforward process - 'If I have a limited company and the work isn't permanent I'm therefore a contractor.' Well, unfortunately it isn't that black and white, and there's a variety of questions you should ask to gauge your true status. It's important to remember that there is no definitive 'rule' to IR35 and if you can convincingly justify your reasons you won't be placed on Payroll as an employee.

HMRC are becoming increasingly tough with regards to IR35 enforcement - particularly in the Public Sector. This makes it even more important that you're able to substantiate your claim as a legitimate contractor.

The first thing to consider when approaching IR35 is whether your work is controlled and directed by you, or if you are subject to an employer / employee relationship.

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Considering your position

Background:

When you are contracted to provide a service through your limited company, you need to consider if you have simply replaced another worker who was an employee.

If you have, then you are likely to be caught by IR35, as your limited company is disguising the conduct of your duties as an actual employee.

Drafting your own contract:

When you create a contract yourself you should have it verified by a specialist, to ensure that it doesn't fall into any existing IR35 mandates. As a limited company the responsibility of compliance (paying tax correctly) is yours alone, and not the clients.

Control & supervision in the workplace:

Even though your limited company has been contracted to provide a service, you maintain control over your working conduct during that time - whereas an employee would be subject to their employer's direction.

Principles to look out for in your contract are:

- Start and finish times appearing in the contract.
- Specific days the contractor should work in the contract.
- Allocated lunch time breaks and their duration in the contract.
- Any direct clauses which dictate that the client has supervision and control over the contractor.

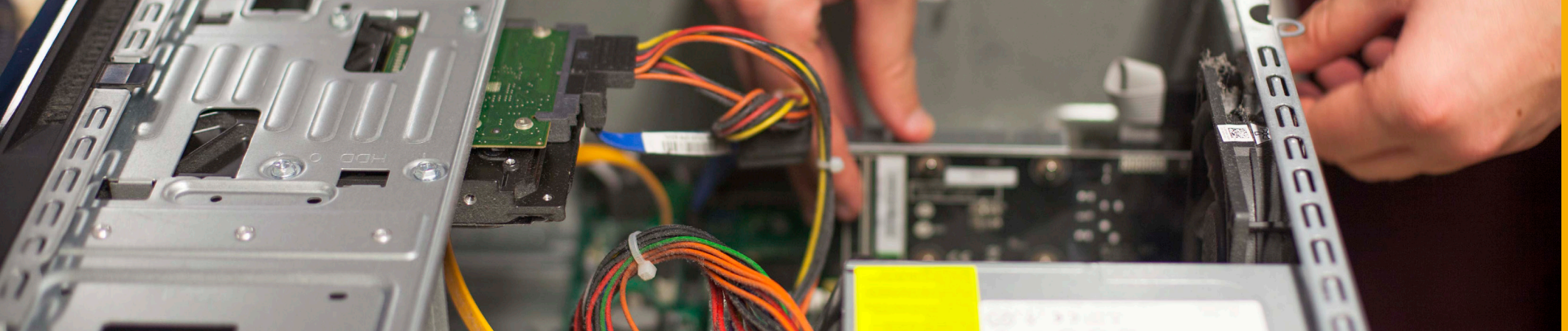
These fundamentals should not feature in a business to business contract where a client employs your services as a limited company.

Substitution:

A good way to ensure you're not caught by IR35 is if your contract allows you to supply a substitute or take on someone else to conduct your services. If the client has explicitly stated that you personally must conduct the contracted services then it may prove more difficult to argue against being caught by IR35.

Financial records:

As a contractor you should receive payment by invoicing your clients. As an employee you will receive payments from your client before you invoice, as a wage!



Level of involvement - 'part & parcel'

HMRC will keep a watchful eye on how involved you are with a client's corporate structure and your responsibilities within its operations. If you have the client's staff reporting to you, or appear on telephone lists, then this won't reflect well on your IR35 liability.

Even little things like obtaining a security pass to your client's business, to avoid having to sign in every time you work, can contribute to being caught within IR35.

Make sure there's a clear dichotomy between your services and the client's business, and that you are not part and parcel to their operations.

Blacklisted:

If anything screams 'consult a specialist', it's your client having past rulings in which contractors previously engaged by them have been caught by IR35. Make sure your contract is watertight, as the responsibility to pay tax correctly will reside with you!

Alternative work:

Does the contract allow you to take on jobs from other clients, or does it stipulate that you must exclusively complete the task at hand over any other work? Are you bound by your contract to complete the work your client is giving you?

Equipment:

You should have your own equipment available to conduct your services. However, IR35 legislation will take into consideration that you're often required to use a client's equipment for safety, security or practicality reasons. If there's a sound business reason that mitigates your use then it's usually accepted.

Liability & Insurance:

If the work you've been contracted to complete is unsatisfactory then you are likely to be liable if you're an independent contractor.

In most scenarios you're going to need your own private insurance as you won't be covered by company insurance as a contractor.

IR35 in the public sector

In 2012 HM Treasury decided to lead by example on IR35 and tightened the regulations towards contractors working off-Payroll in the Public Sector.

Under the new rules, any contractor whose position is the most senior in a department is automatically placed on Payroll.

Any contractor who has been working in a position for more than 6 months and earning in excess of £220 a day will be legally obligated to provide assurance (from a specialist) that they are not caught by IR35 and are paying the correct amount of tax.

The responsibility to request assurance resides with the 'client' or 'employer' and although they're legally obligated to do so, there is no consistency across the Public Sector of departments actually requesting this.

If you refuse, or fail to provide, accepted assurance that you are paying your tax correctly, your contract may be discontinued, or you may be placed on departmental payroll.

Even once you've submitted assurance from a specialist, a client can legally make the decision to reject your provision unless the assurance is supplied from HMRC.

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FAQ

Someone oversees my work, does this mean I'm caught by IR35?

Supervision or quality control is not a strong enough case to force IR35 - there has to be a master to servant work dynamic.

What exactly is meant by 'control'?

Control is usually displayed by the power to delegate over your work.

What happens if I'm on a retained fees contract?

If a client pays a fixed sum to you as a contractor to keep you on stand-by in case your emergency services may be required, you may be caught by IR35 if the client is exercising control over the contractor.

Can I be caught by IR35 if I'm no longer working for that client?

Your IR35 responsibilities can be backdated and even though it may be harder for HMRC to prove you were an employee they can still try.

How Crunch can help

Need help with IR35? Our accredited accountants will review your contract to offer you the best possible advice, with a turnaround as fast as two days.

Get in touch with your Client Manager or email us at support@crunch.co.uk to arrange your review. For more info, check out our [IR35 Review page](#).

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