



## IR35: HR guide

### Description

## Introduction

In this HR guide I discuss **IR35** and the changes to responsibility for compliance.

### What is IR35?

**IR35** legislation is designed to tax disguised employment. This is where an individual receives payments from a client via a limited company and the relationship is such that had the person been paid directly, they would be an employee of the client.

Contractors operating through a limited company generally pay lower income tax, do not have to pay national insurance contributions and can claim certain expenses.

The **IR35** legislation clamps down on contractors operating through the guise of a limited company when in reality they are effectively employees.



## Organisations are responsible for IR35 compliance

In 2017 reforms introduced in the public sector changed responsibility for determining whether a contractor fell within IR35 from the individual to the client organisation.

In April 2021 further reforms switched responsibility for IR35 compliance to client organisations in the private sector, too.



### **Small business exemption**

A business will be exempt if at least two of the following criteria are met:

- Turnover of no more than £10.2 million
- Balance sheet of no more than £5.1 million
- No more than 50 employees

### **Determining status**

In its [guidance](#) HMRC lists a number of factors to be taken into account but stresses that there could be other factors too and it is important to look at the overall picture.

The factors mentioned by HMRC include:

- Control
- Personal service
- Equipment
- Financial risk
- Basis of payment
- Mutuality of obligation
- Holiday pay, sick pay and pension rights
- Part and parcel of the organisation
- Rights to terminate the contract
- Opportunity to profit from sound management
- Personal factors
- Length of engagement
- The intention of the parties

There is also an [online tool](#) to assist with determining whether HMRC will treat a contractor as an employee or self-employed for tax purposes.



### **Umbrella companies**

With many contractors not being able to work through their limited companies there is likely to be an increase in the use of umbrella companies.

A common set up is that the contractor will be employed by the umbrella company and the umbrella company will pay their earnings through payroll. The contractor should have the right to statutory benefits such as statutory holiday pay, statutory sick pay and maternity/paternity pay while at the same time having the flexibility of being able to work for various end clients.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need any advice on **IR35** or other employment law issues please do not hesitate to [contact](#) me on [020 3797 1264](tel:02037971264)

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