



# EXPERT IR35 GUIDANCE

A photograph of Portland Bill Lighthouse on the Isle of Portland, Dorset, England. The lighthouse is a prominent red and white striped tower with a white lantern room and a small walkway. It sits atop a large, layered limestone cliff. In the foreground, the dark, rocky shore meets the calm, blue-green waters of the English Channel. The sky is a clear, pale blue with a few wispy clouds.

**YOUR GUIDE TO IR35 NOW,  
TO APRIL 2020 AND BEYOND**

**CONTRACTOR GUIDE**

## UNDERSTANDING IR35

IR35 affects everyone, and is a term that every Limited Company contractor needs to be familiar with. With big changes on the horizon, what does this legislation mean for Limited Company contractors and how can they prepare now?

In this guide, we look at what IR35 actually is, what it means to be found 'inside' and 'outside', the tax implications your status has on your take-home pay and what changes are coming in April 2020.



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## WHAT IS IR35?



IR35 is tax legislation introduced to combat tax avoidance by workers supplying their services to clients/hirers via an intermediary, such as a limited company, or in contracting terms a 'Personal Services Company' (PSC), who would otherwise be an employee. HMRC refers to these individuals as "disguised employees".

If 'inside' IR35, you're considered a permanent employee and will be taxed as such, either via payroll or an Umbrella Company. If 'outside' IR35, you're considered to be self-employed and will be entitled to structure your remuneration so as to benefit from the lower rates of tax that apply to dividend income.

### WHY IS IR35 IMPORTANT TO CONTRACTORS?

Trading as a Limited Company and working outside of IR35 can result in higher take-home pay than PAYE or an Umbrella Company agreement, which is why so many contractors prefer to work this way.

Essentially, outside of IR35 you are able to split your income between salary and dividends in order to keep your Tax and National Insurance contributions to a minimum. You can thereby achieve higher take-home pay than a full-time employee earning the same base pay.

As a 'deemed employee' working on a contract inside IR35, you are expected to pay the same amount of Tax and National Insurance contributions as a full-time employee whether that's via your Limited Company, through your client's payroll or via an Umbrella Company. Your take-home pay would therefore be lower than if your contract was outside IR35.

Most contractors are at pains to avoid working inside IR35 for these reasons.

## HOW IS YOUR IR35 POSITION DETERMINED?



HMRC have a set of rules to determine if you are working inside or outside of the IR35 legislation. The rules relate to the way you work as well as the actual contract details, so you will need to consider IR35 for every new contract you undertake and regularly review your working practices. The rules aim to identify whether you are actually working and behaving as you would if you were permanently employed doing the same job:

### 1 Personal service/substitution

If your Limited Company has the right to provide someone other than yourself to deliver the services that it is contracted to provide, then this would strongly indicate that you are operating outside of IR35.

### 2 Control

The level of control that your client has a right to exercise over your working practices impacts on whether you will be inside or outside of IR35. If you are in charge of *when* and *where* but most importantly *how* you work, you are less likely to fall inside IR35.

### 3 Mutuality of obligation

As an employee you are obliged to go to work at certain times and days of the week and there is an obligation to pay you even if the work dries up. If this describes you, then you could be 'deemed employed'. A higher level of obligation implies that IR35 might apply.

These basic rules are easy to understand, yet applying those rules and determining employment status can be far more complex. A specialist contractor accountant such as Intouch will be able to review your contracts and working practices on a case-by-case basis and advise on your IR35 status.



### Intouch IR35 support – all part of the service

- Unlimited IR35 reviews
- Contract and working practices covered
- Practical end-hirer ready output

## WHO DECIDES WHETHER YOUR CONTRACT IS WITHIN IR35?



It's all very well having these rules and tests, but whose responsibility is it to apply them on a day-to-day basis in order to determine the IR35 status of your contracts? Well, that depends... and there are changes afoot, too.

## IR35 in the Public Sector

When working in the Public Sector, hirers will have to determine the employment status of the contractors they engage. Having determined the contractor's status, Public Sector hirers will then have to inform the "fee payer" (often the supplying agency) whether the contractor should be paid net or gross of tax.

IR35 decisions should be carried out on a case-by-case basis (as mandated by HMRC). However, decisions on IR35 are still more likely to be risk averse and some contractors remain wary of Public Sector assignments for this reason.

So it's important to remember that although some contractors remain wary of Public Sector assignments, they don't mean you'll automatically be working inside IR35.

## IR35 in the Private Sector

If your contract is with a Private Sector client, currently it is your responsibility to determine your status under IR35 and you bear the tax risk if you get it wrong.

HMRC do carry out IR35 investigations, and if you have determined that your contract is outside of IR35 but the authorities decide that you are 'deemed employed', there will be more tax to pay and HMRC could apply tax retrospectively.

This is why it is useful for you to take professional advice to determine your status. Working with a specialist contractor accountant offering unlimited IR35 reviews included in their fee really pays off.

## Changes to IR35 in the Private Sector from April 2020

HMRC have decided to bring the rules around IR35 in the Private Sector in line with the Public Sector from April 2020.

The main change will be that your IR35 status will be determined by the hirer (i.e. your client) and not you, with the associated tax risk also moving to the hirer. The rules used to determine IR35 are not changing so if you're genuinely outside of IR35 now, you should remain outside post April 2020.

However, lack of preparation and knowledge among hirers leading up to this reform could be problematic. Learnings from the Public Sector suggest that some hirers may be overly risk-averse in their assessments and deem more contracts to be inside of IR35 as a result. This proved counter-productive in the Public Sector as contractors were left feeling frustrated, with little option but to stop working on Public Sector projects. The result was a major talent drain and projects put at risk. It's essential that Private Sector hirers learn from these mistakes and seek expert advice so as to retain their valuable contractor resources.

Accountants like Intouch, who are dedicated to supporting contractors, will be actively engaging with agencies and end hirers to ensure that the rules are applied properly and the impact upon contractors is mitigated.



### IR35 specialist law firm support

- IR35 specialist law firm support
- Actively advising end hirers to mitigate 2020 impact
- Keeping you up to date with legislation

## SHOULD I REFUSE IR35 CONTRACTS?

There's no getting away from the fact that contracts inside IR35 could impact on your take-home pay compared with one on the same day rate that is outside IR35. There's always the option to negotiate a higher day rate to counter this, and there's more to life than money, right? So if the project looks great, the timing works for you, the experience is going to look cracking on your CV, and there's no negotiating over terms or the IR35 status, then ask yourself if the money really is a deal-breaker.

Before turning down a contract based purely on IR35 status, take the time to consider what the project means for you and whether the other benefits make it worth proceeding.

## IF MY CONTRACT IS INSIDE IR35, SHOULD I USE AN UMBRELLA COMPANY?



If you find yourself temporarily needing to work on a PAYE basis, one of the ways of doing so is through an Umbrella Company – or ‘Professional Employer Organisation’ as they are also known (especially in the US). An Umbrella Company effectively creates an overarching contract between you and the hirer and deals with your admin, tax and payroll. The hirer pays your Umbrella Company who deducts their fee, National Insurance and income tax and passes what’s left on to you. You’re effectively taxed as an employee.

That said, IR35 is really nothing more than a different basis used to calculate tax when certain conditions apply. Unquestionably, the tax liabilities inside IR35 are higher than those outside IR35 but they are also less than the tax liabilities incurred as an Umbrella Company. So if you are ‘deemed employed’, and therefore inside IR35, you will still be better off trading through a Limited Company than an Umbrella (and it’s worth pushing back with any agency or client trying to push you down the Umbrella route for their own convenience). You will pay the Tax and National Insurance contributions required based on your ‘deemed salary’ (your accountant can help you with this).

Rightly or wrongly, there will always be clients who insist that they will only engage with you via an Umbrella Company, so if you do find yourself having to make the switch for a contract, it’s worth ensuring that you’re with an accountant like Intouch who makes that easy for you.



**Intouch IR35 support – all part of the service**

- Switch between Limited and Umbrella
- Minimum disruption - just one call
- Finances kept up to date and in one place

## WHAT IS MY TAKE HOME PAY INSIDE IR35?

If you are involved in a contract that falls inside of IR35 then a calculation is made each year to determine the 'deemed salary'. Your contractor accountant can do this for you. An IR35 deemed salary is simply a calculation of the Income Tax and National Insurance due. You do not have to actually pay yourself the deemed salary, but you do have to pay the calculated PAYE and National Insurance contributions to HMRC.

If a public sector body has confirmed that you are inside IR35, then the fee payer (usually the agency) will deduct the NI and tax, and pay the Ltd Company the net income after tax. This can be taken straight out of the company, with no additional tax implications.

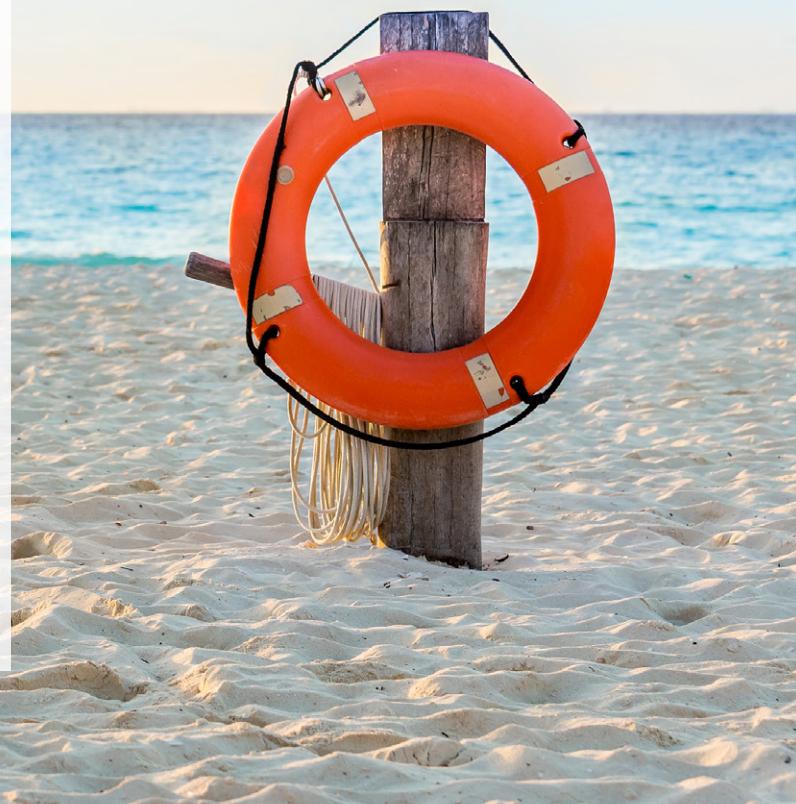
IR35 deemed salary calculations follow the tax year (6th April to 5th April) rather than your company year. Contractors with contracts inside IR35 may choose to pay a small salary throughout the year or request their contractor accountant to estimate what their deemed salary will be and pay a monthly salary in line with that. The benefit is that deemed taxes due will be spread evenly throughout the year, and you will have a smaller balancing payment each April.

## HOW DO I STAY IR35 SAFE?

An IR35 investigation by the HMRC can be stressful, time-consuming and costly, so where the responsibility is on you to make the assessment, it's important to get it right.

However, we'll soon see the public sector application applied to the private sector, taking the decision on IR35 out of the contractor's hands. The main issues with this will remain a lack of understanding and experience of those making the assessments.

IR35 is a contractor-specific piece of legislation and with these changes coming, it will pay to be with a specialist contractor accountant such as Intouch. You need to know that your accountant has got your back on IR35 and will offer you all the guidance you need as part of their package.



## INTOUCH IR35 SUPPORT – ALL PART OF THE SERVICE

With IR35 2020 just around the corner, we're here to help ensure that you and your hirer continue to work together compliantly and in a way that supports your working arrangements. All of our IR35 support services are free to all of our clients.



### Unlimited IR35 contract and working practices reviews

We understand that IR35 status is a big concern for contractors, with the decision-making power being shifted in April 2020 to the hirer. A move to PAYE or Umbrella could see a drop of 20-25% in your take-home pay. So, at Intouch, we offer unlimited IR35 Contract and Working Practices reviews with practical reports and advice to help you take control.

Although the final decision is out of your hands, you'll get advice on your contract and working practices in a format that you can easily use for discussion with your hirer. We can even offer legal support to hirers who are struggling to apply the 'reasonable care' that's expected of them by HMRC.



### Switch between Limited and Umbrella with Freeflex

With some IR35 turbulence expected in the run up to the April 2020 legislation changes, contractors may find themselves needing the flexibility to switch between their Limited Company and an Umbrella Company and back again at short notice.

Our Freeflex service gives you the safety net to switch between your Limited Company and an Umbrella Company (if required) with minimum disruption. Freeflex will keep the daily tasks of your Limited Company active while you use Intouch Umbrella (powered by Brookson). You'll still have visibility of your finances in the Intouch portal and a direct line to your Personal Accountant. When it's time to switch back to your company, just let us know – everything will be up to date and waiting for you.



### IR35 specialist law firm support

We're supported by our group company Brookson Legal – the only SRA-regulated law firm that focuses on IR35 for agencies and end hirers. They have been advising on IR35 since its introduction in April 2000 and members of their team have sat on HMRC's IR35 Forum.

Having advised Public Sector clients on the IR35 changes introduced in 2017, Brookson Legal are ahead of the game when it comes to the April 2020 changes and have an extensive list of existing relationships across the Private Sector supply chain. With their support, we're actively engaging with agencies and end hirers to ensure that the rules are applied properly and the impact upon contractors is mitigated.



## INTOUCH ACCOUNTING – 360 DEGREE IR35 EXPERTISE

Get in touch today for more information



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