



### Background

First introduced in 2000, IR35 regulations are designed to prevent the use of Limited Companies (PSCs) to “disguise employment” for tax purposes. These regulations are changing significantly across the private sector from April 6<sup>th</sup> 2021. This follows the change implemented across the public sector in 2017.

If you hire contractors, or are a contractor who currently engages with clients and agencies through a limited company, you will need to be aware of these changes.

Small businesses are, for now, exempt from these changes

### What's changing?

Going forward, it will no longer be the contractor themselves who is responsible for deciding if an assignment should be treated as employment (“Inside IR35”) or not (“Outside IR35”).

This responsibility will now fall to the client, and they are required to ensure that a well reasoned assessment is made of each project or assignment.

If engaged directly, the client, will also be liable for ensuring the correct employment tax deductions are made. This means that contractors working on assignments that are deemed by the client to be “Inside IR35” will have income tax and national insurance deducted at source, in the same way as an employee.

If engaged through an agency, the agency assumes this liability, and must process payments to the contractor in accordance with the determination given by the client.

### Who and what

	<b>Client</b>	<b>Agency</b>	<b>Contractor</b>
Inside	The engagement is considered a temporary period of employment for tax purposes. The client will incur employment costs	Must make all PAYE tax deductions before paying the contractor (e.g income tax, national insurance)	Contractor is paid net of PAYE deductions
Outside	The engagement does not resemble temporary employment. The client is procuring a service.	Pays the contractor's Limited Company (PSC) a gross sum.	Contractor manages the affairs of their limited company, and is responsible for paying themselves accordingly.

# IR35 Factsheet:

## Useful Information

### How a determination is made

Making an accurate determination does not need to be an overly complicated process, and clients should discuss making a determination with either the agency or the contractor they intend to work with at the outset.

Clients should also decide if they have a preference as to how the engagement should be treated. This may require the client to change the nature of the engagement in order to comply with the desired determination.

There is no mandated process for making a determination, however HMRC do provide an assessment tool, the results of which they have said they will stand by if evaluating/auditing contractor engagements. This tool is not perfect, and delivers an inconclusive result in a high proportion of cases.

### Key criteria within the HMRC determination are:

#### Mutuality of obligation

- Does the contractor have to do the work the client gives them, or only what has been agreed?
  - Does the client have to accept the contractors work, or can they require them to put it right?
- High levels of mutual obligation are usually indicative of an employer/employee relationship

#### Substitution

- Does the contractor have the ability to send someone else in their place to do the work?
  - Must the work explicitly be carried out by a named individual?
- The absence of any ability to supplement or substitute the work of a named individual may suggest an employer/employee relationship

#### Direction, supervision and control

- Does the contractor have the freedom to determine how they execute their work?
  - Will they be working under the close supervision of a manager, or providing specialist services with a high degree of autonomy?
- High levels of direction, supervision and control are often indicative of employer/employee relationships

#### Financial risk

- Is the contractor incurring any significant financial risk, beyond their fee earning capacity?
  - Might they have to correct poor work at their own time and expense, or refund a client who was not happy with the work?
- An absence of meaningful financial risk may be indicative of an employer/employee relationship

Freshminds provides support and guidance to clients needing assistance through the determination process, and have a range of compliant contractual options to ensure you are always able to engage interim expertise in the way you need.

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### What to do next

#### Clients:

- Ensure HR and Operational management understand the implications of IR35
- Identify your contractor population, and identify those currently engaged as Limited Company Contractors
- If engaged via an agency, open discussions about the roles that they are fulfilling
- Don't resort to blanket determinations – assess key roles individually
- Engage proactively with your contractors and agencies

#### Contractors:

- Speak to your client (or agency) about the assignment you are currently working on if due to run beyond the end of March 2021
- Weigh up your current Limited Company day rate, and the PAYE day rate you would be prepared to work at.
- Take independent advice on this from a variety of sources. Only take tax and legal advice from qualified professionals
- Don't automatically rule out projects that are "Inside" IR35 – be aware of the benefits
- Engage proactively with your clients and agencies

# Contractor FAQs

Working with hundreds of contractors across a huge range of assignments, we have been able to gather answers to some of the most commonly recurring questions:

## 1. Who decides if an assignment is "Inside" or "Outside" IR35?

It is always the client (the hiring entity) that decides. Neither the individual contractor or the agency decide. This is the main fundamental shift in the regulations

## 2. How does the client decide?

Before engaging a contractor, a client must make an employment status determination. They may choose to use a dedicated tool (such as the [HMRC CEST tool](#)), or take specialist advice. They should document why they have reached the determination they have

## 3. Can I challenge the decision a client makes?

In theory yes. In practice, unless you are already engaged on the project, or have a longstanding relationship with the client, your options to influence the decision may be limited. Remember, this determination is about the job/assignment, not your individual situation.

## 4. Will the day rate I am offered vary for projects "inside" or "outside"?

You should spend some time thinking through your own personal situation, and deciding the likely implications of IR35 to your "take home" pay. [Online salary calculators](#) can be a helpful guide. Be prepared to negotiate your day rate with your client or agency.

## 5. Should I close my Limited Company?

This depends on whether you are happy to contract purely on an "Inside IR35" basis and have payroll taxes deducted at source. Some contractors who perhaps don't contract very much, or work predominantly with public sector clients, have decided to do this, while many still prefer to have the option to contract "Outside IR35".

## 6. Can I be paid through an Umbrella Company?

Yes, you can. Umbrella companies act as the employer and ensure that the correct tax is deducted. An umbrella company is typically not required when engaging with Freshminds, as we run a large weekly contractor payroll ourselves

## 7. Some agencies or umbrellas are telling me I can avoid PAYE deductions, even if an assignment is deemed "Inside IR35". Is this true?

There will be many products and services designed to enable contractors to structure their finances in the most advantageous way. Many will be entirely legitimate, while some may be less so. Always seek qualified independent advice, and recommendations of people you know and trust.

## 8. Is any work "exempt" from these rules

IR35 regulations only apply to work carried out for UK registered companies or public bodies.

Small businesses in the UK (<£10m turnover, <50 employees) are also exempt



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# Contact

If you have further questions about how IR35 affects your or your business, then get in touch. Freshminds is the network for consulting expertise, from Analyst to expert – so if you're also looking for on demand resource then request further information today.

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The Impact of IR35 on Professional Services Contracting

Logos: Freshminds, hcr|law, BBC, BDO

- Oliver Weiss**  
Partner, Employment & Immigration at **Harrison Clark Rickerbys**
- Bhavna Bhatt**  
Head of Resourcing, Contingent Workforce at **BBC**
- Rob Woodward**  
Associate Director, Global Employer Services / Employment Tax at **BDO**
- Thom Cunningham-Burley**  
Director of Consulting at **Freshminds**

Access our on demand panel webinar with tax and employment experts on practical implications and what it means for you.

[Access the recording](#)