



What is IR35?



Introduction to IR35

IR35 is one of the most important issues for all contractors and freelancers. It determines a contractor's status as a genuine independent business or a disguised employee and as such how you're taxed.

It's certainly worthwhile spending some time to understand a little more about the legislation, what it means and how to keep you from falling within the rules.

There are many issues and complications around IR35 and keeping you the right side of the legislation. We have detailed below some of the key features of IR35 below however should you wish to discuss this further, please contact us with details of your exact circumstances and working arrangements.

To give added assurance, we can also provide you with a contract review services as well as a fee protection product which guarantees to cover any liabilities as a result of an enquiry.

How can I be sure by Contract is Outside IR35?

We offer protection from IR35 and its fallout through our product Dynamo35, this covers you for any professional fees and tax liabilities that arise as a result of an IR35 enquiry.

As part of the process, we review your contract to ensure it complies with the legislation and forward a report together with any suggested amendments.

Further details are available on our website www.dynamoaccounts.co.uk

What determines my IR35 status?

An IR35 enquiry looks at two main areas, firstly being your working practices and second your contract. Your working practices must mirror those as laid out in the contract. So what would HMRC be looking for within the contract? Below is a checklist that would help determine your status.

Test	Point	Detail and Basis
Right of Substitution	Could you provide a substitute to carry out work in your stead?	You should have the right to use a substitute and that it will not be unreasonably withheld.
Mutuality of Obligation (MOO)	You should not be obliged to accept work and the client obliged to offer you work at the end of the contract.	There should not be a clause which requires you to accept work beyond the end of your contract.
Control	Is your client telling you how to do your work and where?	As a genuine business, your client should not dictate how

		you carry out your work.
Financial Risk	As part of running your own business, is there an element of financial risk on your part?	If things were to go wrong, employees in general are protected however a limited company would bear the risk. You should therefore be able to show that you are managing that risk.
Contract for Services	Who has been hired, you or the company?	The contract should always be between your company and the client/agency. You can be a named consultant in the supporting documents but the company should be the main party.
Providing Equipment	Who is providing the equipment to carry out the work?	It is better that you are using your own tools and equipment to carry out the work. However, there could be genuine reasons for using a clients equipment (e.g. security).
Acting like a Genuine Business	Do you have the essentials of a genuine business?	E.g. website, business cards, directory listings, branded clothing, etc.
Are you a Fixture and Fitting?	Are you treated like a permanent employee?	Does your client list you in the internal directory, used on branded material, supply you with business cards or branded clothing?

The above is a selection from some of the criteria but contains perhaps some of the most important pointers (i.e. Right of Substitution, MOO and Control).

It is important to remember that IR35 is assessed on a contract by contract basis so when you move onto a new contract, be sure to have it reviewed.

IR35 is a legal matter as opposed to an accounting issue. It does have accounts and tax consequences but the decision as to whether the legislation applies is a legal one. It is therefore imperative that you seek specialist advice before starting a contract in case steps need to be taken prior to signing up.

We can assist with contract reviews and providing assurance through our Dynamo35 product as shown on www.dynamoaccounts.co.uk.

What are the chances of an enquiry?

The specialist team within HMRC that looks at IR35 enquiries is fairly limited, with many cases being dealt with before they get to court.

There are no statistics available to determine at what stage these are either abandoned or settled, but from experience many initial enquiries are dealt with quite early on in the process. This is likely due to contractors and freelancers being more aware than ever about their obligations and protecting themselves from IR35 exposure.

It is difficult to estimate the risk of an enquiry but just like your car insurance, you never know when you'll need it and always best to protect yourself just in case as the downside can be far reaching.

We would recommend that you keep up to date with the latest news on any cases or development. One such site that is free to use, full of useful information and has a dedicated page to IR35 news is www.contractoruk.com.

What if I'm caught and deemed inside IR35?

If at the end of an enquiry, you're deemed to be inside IR35, a deemed employment calculation will be carried out to assess all your contract income as though you were a traditional permanent employee.

From the income, you'll be permitted a deduction of 5% to allow for general administration costs (e.g. accountancy, insurances, stationery, etc). In addition, a further deduction for other costs such as pensions, equipment and some travel costs. An example of a typical calculation would be:-

	£
Income (Based on daily rate of £300)	£66,000
Less:	
Expenses (5%)	3,300
Other Expenses	5,000
Taxable Profit	<u>£57,700</u>
Employers NI	<u>6,987</u>
Deemed Payment	£50,713
Additional NI	4,231
Additional PAYE	13,285
Total Tax & NI	<u>£24,502</u>
Take Home	<u>£41,498</u>

In the above example, an inside IR35 assessment would therefore result in the above tax and national insurance being assessed. Any tax that was paid would be deducted from the above, however HMRC would then raise interest and penalties on the balance due.

Potentially this could become a very large sum, especially if further assessments are carried out for additional years and you have professional fees on top of the above.

As shown, the effects of an enquiry can be quite far reaching for the sake of ensuring you're properly advised at the outset.

How can Dynamo help me?

At the commencement of your contract, we can provide help and guidance to make sure your contract is outside IR35. Through our Dynamo35 product, we can review your contract and provide a report so that appropriate amendments can be made to ensure you're outside the legislation. The product also protects from any subsequent professional fees and other costs in the event of an enquiry.

We are regulated Chartered Accountants with many years experience dealing with contractor matters and well placed to advise you of the most appropriate solution for your circumstances.