



CHARTERED ACCOUNTANTS



# ***IR35 Guide***



# ***Background & Aim***

IR35 was announced in the March 1999 Budget. The original proposals were substantially revised so that intermediaries and not clients (agencies) will be responsible for operating the legislation.

Before examining the details, we must be clear that the rules only apply to “relevant engagements” – where an individual provides services to a client through an intermediary (your limited company) and, but for the existence of the intermediary, the income would be treated as that of an employee if the individual had contracted directly with the client.

The intention of the legislation is that, apart from specified deductions, all money received by the intermediary in respect of relevant engagements should be treated as paid to the individual in a form subject to

Schedule E and class 1 NIC – in effect dividend payments and many business expenses will not be allowed.



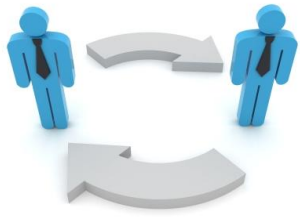
## ***Status Tests***

It is important for the intermediary to decide, for each engagement, whether the contract is in the nature of an employment as far as the individual is concerned. Existing tests which are applied to determine whether an individual is employed or self-employed will be used. The three main tests are:



### ***1. Control***

A worker will not be an employee unless there is a right to exercise control over the worker. This may be a right to control what work is done, where or when it is done or how it is done. Actual control is not paramount; it is the *right* of control that is important.



## ***2. Substitution***

The right to get a substitute or helper to do the job: personal service is an essential element of an employment contract. A person who has the freedom to choose whether to do the job himself or hire somebody else to do it for him, or can hire somebody else to provide substantial help is probably self-employed.



## ***3. Mutuality of Obligation***

Within a contract there are various mutual obligations - the obligation to perform and be paid for performing would form part of any contract - but the mutual obligations needed for a contract of employment to exist consist of more than this, there needs to be obligation to offer and an obligation to accept future work.

***Other considerations would be:***



## ***Provision of Equipment***

A "self-employed" contractor generally provides whatever equipment is needed to do the job. The provision of significant equipment (and/or materials) which are fundamental to the engagement is of particular importance. For example, where an IT consultant is engaged to undertake a specific piece of work and must work exclusively at home using the worker's own computer equipment that will be a strong pointer to self-employment. But where a worker is provided with office space and computer equipment that points to employment. The fact that a worker might occasionally choose to do some work at home using his or her computer does not change that (many employees do just that).



## ***Financial Risk***

An individual who risks his own money by, for example, buying assets needed for the job and bearing their running costs and paying for overheads and large quantities of materials, is almost certainly self-employed. Financial risk could also take the form of quoting a fixed price for a job, with the consequent risk of bearing the additional costs if the job overruns. However, this will not necessarily mean that the worker is self-employed unless there is a real risk of financial loss.

## ***Basis of Payment***

Employees tend to be paid a fixed wage or salary by the week or month and often qualify for additional payments such as overtime, long service bonus or profit share. Independent contractors, on the other hand, tend to be paid a fixed sum for a particular job.





# ***Opportunity to Profit from Sound Management***

A person whose profit or loss depends on his capacity to reduce overheads and organise his work effectively may well be self-employed. People who are paid by the job will often be in this position.

## ***Part and Parcel of the Organisation***

Establishing whether a person becomes 'part and parcel' of a client's organisation can be a useful indicator in some situations. For example, someone taken on to manage a client's staff will normally be seen as part and parcel of the client's organisation and is likely to be an employee.

## ***Right of Dismissal***

A right to terminate an engagement by giving notice of a specified length is a common feature of employment. It is less common in a contract for services, which usually



ends only on completion of the task, or if the terms of the contract are breached.

## ***Employee Benefits***

Employees are often entitled to sick pay, holiday pay, pensions, expenses and so on. However, the absence of those features does not necessarily mean that the worker is self-employed - especially in the case of short-term engagements where such payments would not normally feature.



## ***Length of Engagement***

Long periods working for one engager may be typical of an employment but are not conclusive. It is still necessary to consider all the terms and conditions of each engagement. Regular working for the same engager may indicate that there is a single and continuing contract of employment.





## ***Intention***

It is the reality of the relationship that matters. It is not enough to call a person "self-employed" if all the terms and conditions of the engagement point towards employment. However, if other factors are neutral the intentions of the parties will then be the deciding factor in employment status.

## ***Determining Employment Status***

Given the list of factors mentioned above it is tempting to try to determine a person's employment status by adding up the number of factors pointing towards employment and comparing that result with the number pointing towards self-employment. The Courts have specifically rejected that approach.

When the detailed facts have been established the right approach is to stand back and look at the picture as a



whole, to see if the overall effect is that of a person in business on his own account or a person working as an employee in somebody else's business. If the evidence is evenly balanced the intention of the parties may then decide the issue.

## ***Contract Considerations***

HM Revenue & Customs (HMRC) has looked at a number of standard Agency contracts and has, as expected, suggested that such contracts fail IR35. HMRC will only consider whether specific contracts fail the test and will not give any clearance on standard contracts.

The conclusion of all of the above is that if you sign a standard agency contract you are likely to fail IR35. Even if you get a contract worded differently, HMRC will look at the facts behind the contract. Remember - if confused by all this, call one of our team and they'll be happy to explain it all!





## ***Contact us***

**WEB** [www.planitservices.co.uk](http://www.planitservices.co.uk)

**PHONE** 020 7251 8690

**EMAIL** [sales@planitservices.co.uk](mailto:sales@planitservices.co.uk)