



What is IR35?

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IR35, or the Intermediaries Legislation as it is also known, is concerned with employment status (employed or self employed?) for the purposes of Tax and National Insurance.

IR35 considers your relationship as an individual with your end client. Any review of your IR35 status has to cover both the terms of your written contract and the actual working practices. IR35 has to be considered on a contract by contract basis either at commencement or renewal.

The net result of an IR35 review will be that you are deemed to be “**inside**” or “**outside**” of IR35.

INSIDE IR35

- The relationship between the Contractor and end client is effectively one of disguised employment.
- Tax and NI paid in line with employment levels
- Travel and subsistence expenses are not allowed

OUTSIDE IR35

- You are deemed to be in business on your own account and not to be acting as an Employee.
- Free to account for own Tax and NI on your income through your own company
- Travel and subsistence can be claimed

Why should I be concerned by IR35?

IR35 determines the method by which you are taxed on the income that you draw from your company. Ignoring IR35 comes with risk. Making a mistake as to your IR35 status can be costly. HMRC can open investigations several years later and if you have got your status wrong they will charge for underpaid Tax and National Insurance Contributions. Up to 100% of the debt can be added as a penalty charge. If you can demonstrate that you have taken all “reasonable care” to consider your IR35 status the penalties may be reduced.

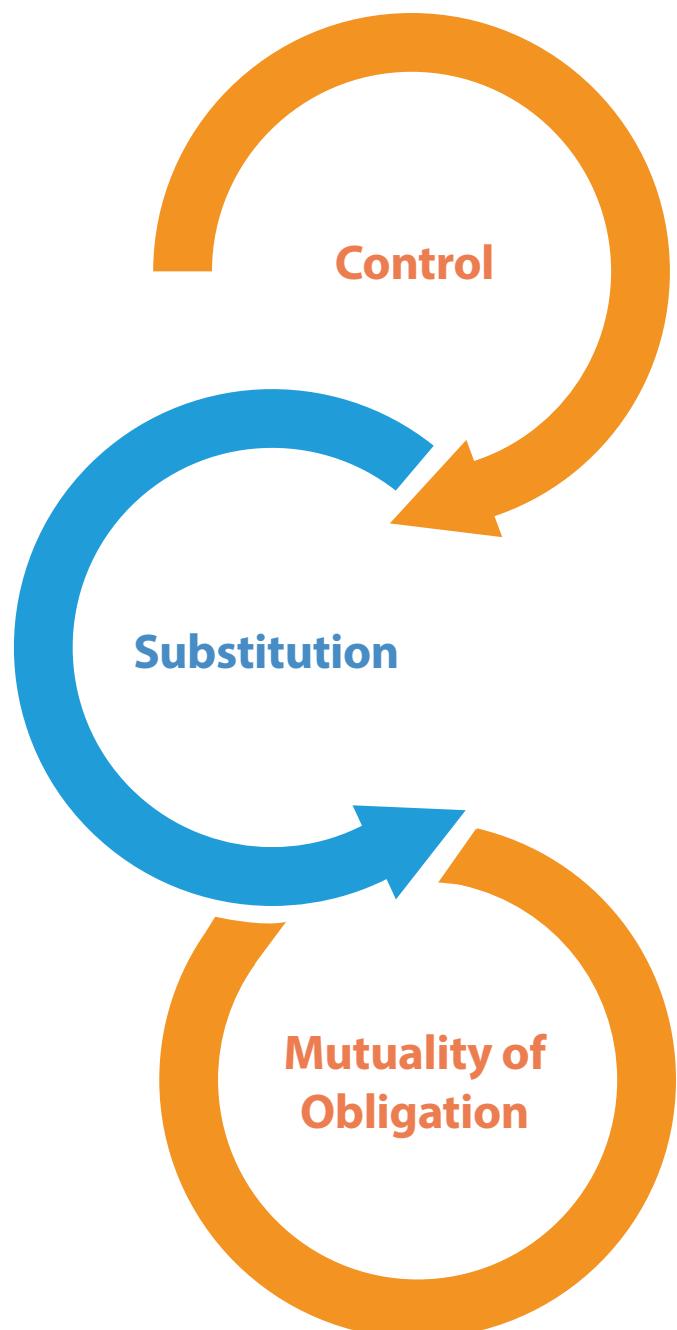
With increasing reporting requirements for Recruitment Agencies and the Digitalisation of Tax, HMRC have more and more transparency into your business and are able to target investigations more effectively.



IR35 is complex employment law

To determine your IR35 status you need to imagine a hypothetical contract between yourself and your end client. There is no statutory, legal definition of employed or self employed so you need to try to review your status against the backdrop of case law and precedent.

The three main factors to be considered when deciding IR35 status are:-



WHAT HELPS WITH IR35?

VS

WHAT HINDERS IR35?

CONTROL

- The contractor is more likely to be able to decide when and where they undertake the work.
Most importantly they will have the autonomy to decide how they undertake the work.
- The contractor will be regularly assigned tasks and often be told to follow set processes.

RIGHT OF SUBSTITUTION

- The contractor has the right to substitute their services for someone suitably qualified and skilled.
- The contractor is expected to carry out the work personally.

MUTUALITY OF OBLIGATION

- The end client has no obligation to offer additional work during or at the end of the contract. The contractor has no obligation to accept any such work offered.
- The client is obliged to continually offer work to the contractor and the contractor is obliged to accept and fulfil work offered.

Other factors to be considered

There are numerous pertinent factors that may also be considered in individual IR35 status cases.

They can include:-

Financial Risk

A contractor who risks his own money by buying assets, bearing the running costs of the business and paying for overheads is more likely to be viewed as being business on his own account. The risk of not being paid for an invoice, quoting a fixed price for a job that then over or under runs are also not indicators of employment. Correcting faulty work at your own cost and purchasing Professional Indemnity insurance are signs of being in business not employment.

Provision of Equipment

The provision of equipment by the contractor may be an indicator of being in business but if the contract is for a skills only assignment it may be of limited value. An end client's provision of specialist equipment is acceptable.

Basis of payment

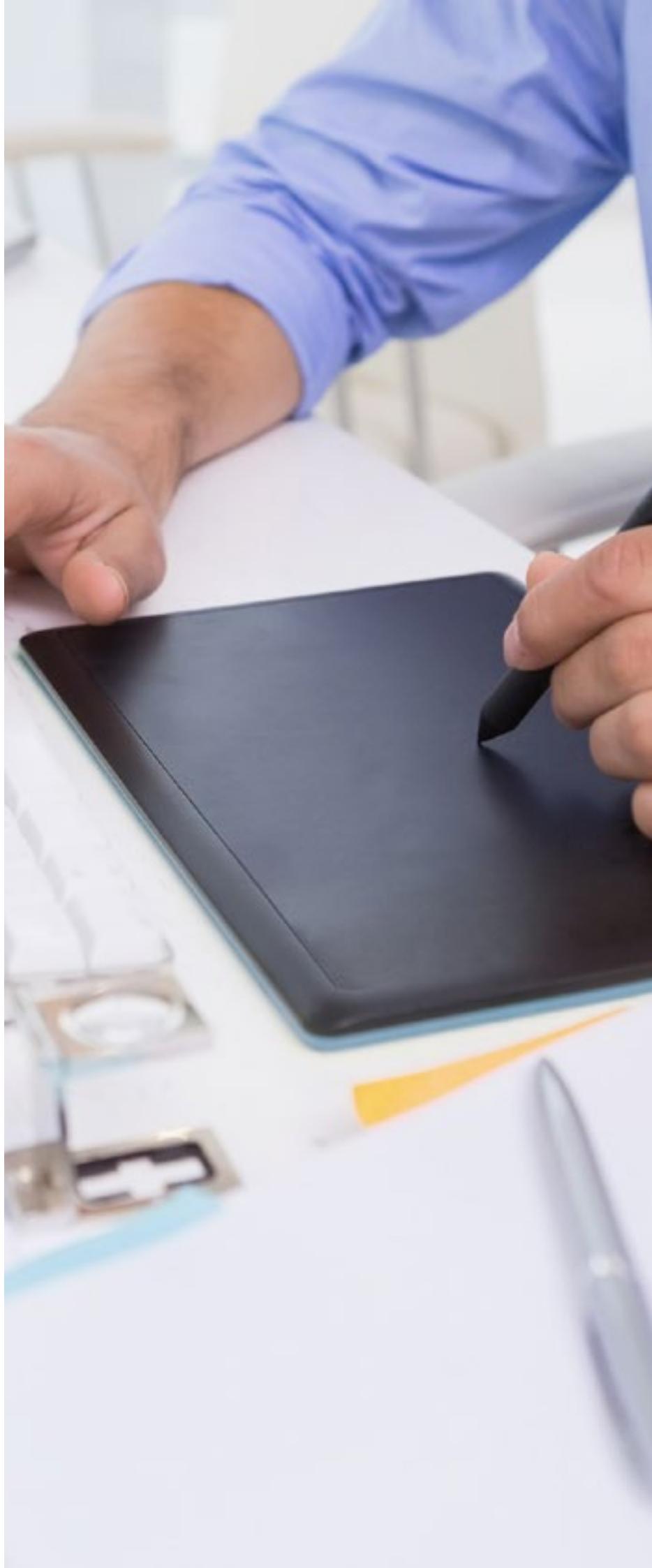
Employees tend to be paid a fixed rate, weekly or monthly and are also being paid overtime. HMRC contend that contractors paid on a fixed hourly or daily rate are therefore employees. Case law does not support this.

Freedom to offer services to others

The contractor, whilst engaged on a project, should be free to undertake other services for others and to use his skills as he sees fit. Having other business streams is most helpful in showing that a contractor is in business on his own account.

Part and parcel of the Organisation

The contractor should not be seen to be an integral part of the end client's organisation. Recent case law has shown that where an individual is integrated into the workforce and is undertaking the usual work of a business, as opposed to being brought in to undertake a project or for specialist skills, IR35 is likely to apply. To this end the contractor should not use any benefits provided to employees such as a subsidised canteen, gyms, attend Christmas parties.



What do I have to do?

IR35 should not be ignored. HMRC and the Government are focusing on “disguised employment” and tax avoidance so you cannot afford not to know your IR35 status.

IR35 is a complex matter of law, one that you may not feel is an area that you are able to excel in. The best way to achieve peace of mind and reduce your risk is to be proactive when setting out your relationship and contract terms with end clients and to seek specialist advice from an IR35 status expert.

Set out below are some ideas on **how to protect yourself from IR35** and your accountant will be more than happy to discuss your status with you.

Genie Accountancy recognises the importance on IR35 and its complexity and so we have associated with IR35 specialists, Bauer & Cottrell. We recommend that you speak to them in order to have your contract and working practices reviewed.





How to protect yourself from IR35

Research your sector

Certain occupations are automatically inside IR35 due to the special tax and/or National Insurance Contributions rules which apply to them, for example in the entertainment industry you should review HMRC's Employment Status Manuals and "Office Holders" are deemed inside IR35.

If you operate in the Public Sector you will be asked to provide formal Assurance on your IR35 status.

Don't take your colleagues word for your IR35 status, just because they have been operating outside IR35.

Review your written contracts

Despite what you are told there are no such things as "IR35-proof contracts". Read your contact, unless the reality of your situation reflects the terms of the contract it will be worthless. Remember to read all associated documents too such as schedules and amendments.

Take independent advice on your contract and working practices. Ensure your advisor is up-to date with the current legislation

Written Confirmation of Arrangements

Consider seeking your end clients views on your relationship, in the form of a Confirmation of Arrangements. This document can confirm the precise nature of the services provided and can outline the nature of the relationship.

Be Prepared

Collect evidence throughout your engagement with the client to highlight the nature of your relationship and your autonomy. This could be in the form of emails, recorded calls and formal communications.

Act like a business

Avoid wherever possible any similarities with the end clients employees, contractually or in reality.

Collect Badges of Trade

Ensure you have a business name, bank account, your own log and stationary. It would also be a good idea to have a website, business plan, engage with an accountant like Genie Accountancy and to have business insurances. Ensure you retain evidence of any investments in training, reference materials and equipment. It is also a good idea to gather testimonials from your customers

IR35 is complex; there is a multitude of information on IR35, not all correct; getting IR35 wrong is expensive. You cannot afford to think IR35 does not effect you.

If you feel you need more advice or are still unsure as to how this may effect you call Genie Accountancy today. One of our many friendly and experienced accountants would love to help you.

**REQUEST A
CALL BACK**

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