



Talent Point

IR35:
**Deciphering what
it means for you.**

As changes to IR35 are announced, UK organisations are changing how they engage and interact with Service Providers (contractors).

We've written this eBook to reduce some of the uncertainty and allay any of your concerns. We'll outline the IR35 changes being introduced, explain how they will affect organisations like yours, and offer guidance on what you can do to prepare.

Questions Talent Point is helping to answer:

"Is it still safe for us to hire contractors?"

"What does this mean for us in the long term?"

"Do the roles we have mean contractors will fall under IR35?"

"Do we need to pay more for contractors?"

"Do we need to stop using contractors?"

"Is our tax liability going to increase?"

What is IR35?

IR35, or off-payroll working rules, is a piece of government legislation intended for Service Providers/Personal Service Companies (PSCs). It was established to reduce “disguised employment” and prevent tax avoidance. A true Service Provider sits “outside” IR35 and is a business responsible for the tax and employment arrangements of its employees (which may be just a single person).

Disguised employment occurs when an organisation engages a Service Provider and that Service Provider completes the engagement in a manner considered to be equivalent to an employee. This individual would be deemed “inside” IR35.

What are the changes?

The decision of determining whether an engagement between a PSC and an organisation falls inside or outside IR35 is moving from the PSC to the organisation itself. At present, a PSC self-determines its IR35 status.

If the organisation deems the engagement inside IR35, its payment to the PSC is to be treated as employment income. This means your organisation – or any agency you engage to produce services on your behalf – will be responsible for deducting PAYE tax and National Insurance, and paying this to HMRC. The new regulations will apply to any payments made on or after the 6th of April 2020.

How does HMRC determine if disguised employment is occurring?

The end-company will need to assess both the contract and working practices of each individual PSC to decide if these are, by nature, akin to those of an employee. This decision is documented in a Status Determination Statement (SDS).

Multiple factors must be taken into account when deciding if a business providing services is in fact an individual who should be regarded as an employee. These factors are weighed against each other to ensure an individual, subjective decision. HMRC won't ask to see this SDS unless they open an investigation into a company.

What are the tests?



01.

Mutuality of obligation:

- 01 Is there a feeling of obligation between you and the Service Provider?
- 02 Are you obligated to keep offering the Service Provider work?
- 03 Is the Service Provider obligated to do anything in the workplace beyond the terms of their project/work order?

Control:

- 01 Do you decide on how the Service Provider carries out their work?
- 02 Are there set work hours for the Service Provider?
- 03 Is the Service Provider obligated to send staff to the office to do the work?



02.



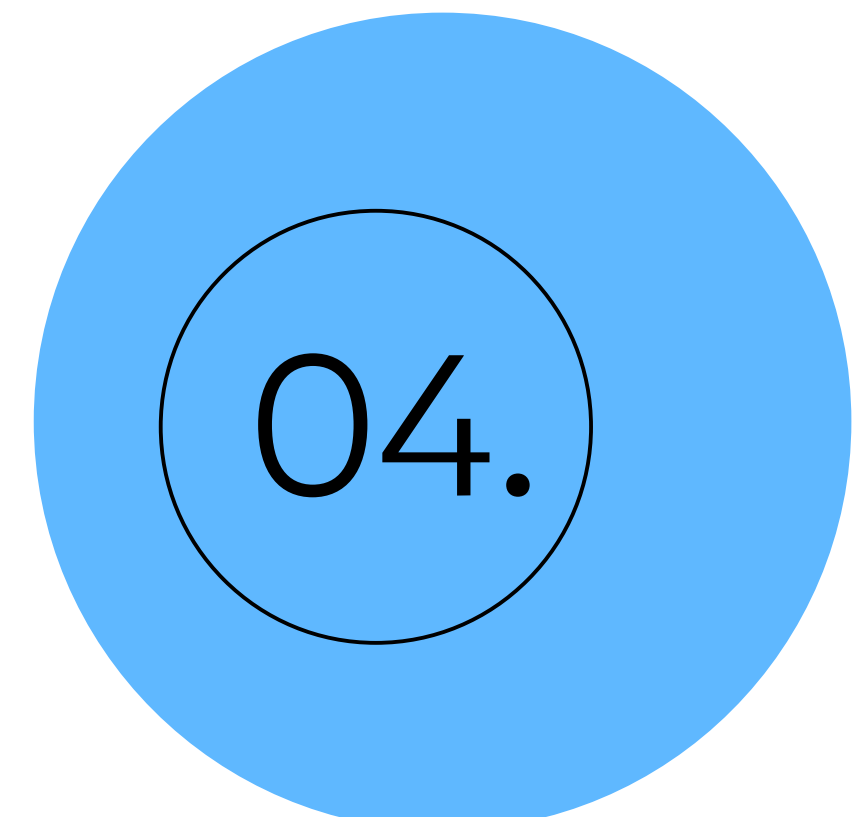
03.

Distinction:

- 01 Can an individual working for the Service Provider be easily identified as independent from one of your employees?
- 02 Does that individual have access to staff perks and benefits, or employee-only parking and discounts?
- 03 Do employees of the Service Provider get invited to your organisation's events and staff meetings?

Unfettered substitution:

- 01 Is the Service Provider allowed to subcontract to others at their own discretion?
- 02 Can the Service Provider recruit others to help them carry out the project?
- 03 Do you expect the Service Provider to submit their aides to you for "acceptance"?



04.



05.

Financial risk:

- 01 Does the contractual agreement place financial risk on the Service Provider, or are they guaranteed payment regardless of the outcome?

How will this affect organisations?

If they haven't already, organisations need to review all their engagements with Service Providers and non-employed workers to ensure they are correctly identified as inside or outside IR35 restrictions.

The onus will now be on organisations to decide on and declare an assignment's status, and to establish a process to pull together the resulting Status Determination Statement.

When contracts fall within IR35, the 'fee-payer' will need to deduct National Insurance and PAYE contributions from the Service Provider.

If the organisation employs the Service Provider directly, they are deemed the 'fee-payer'; if the engagement involves an intermediary (such as a recruitment agency or umbrella company) then the organisation is not the 'fee-payer' and won't have to worry about deducting tax.

On top of tax fees, the organisation may also sustain an added administrative burden by having to process and report these additional payments.

Inside vs Outside – what's the difference?

If working practices are considered to be outside of IR35, nothing will change for the Service Provider or for the organisation that has engaged their services. The Service Provider will continue to pay Corporation and Dividend Tax from their Personal Service Company (PSC).

If an individual working for a Service Provider is deemed to be inside IR35, then their status has changed and our language needs to change with it. They are no longer providing services but, in fact, are performing a job performed for the fee-payer. The fee-payer will then deduct Employee's National Insurance Contributions and PAYE from the individual's pay and will pass it on to HMRC on their behalf.



Tax & NIC Obligations

The fee-payer deducts tax and NIC before paying an individual. The Employer's National Insurance will also be due.

Reporting

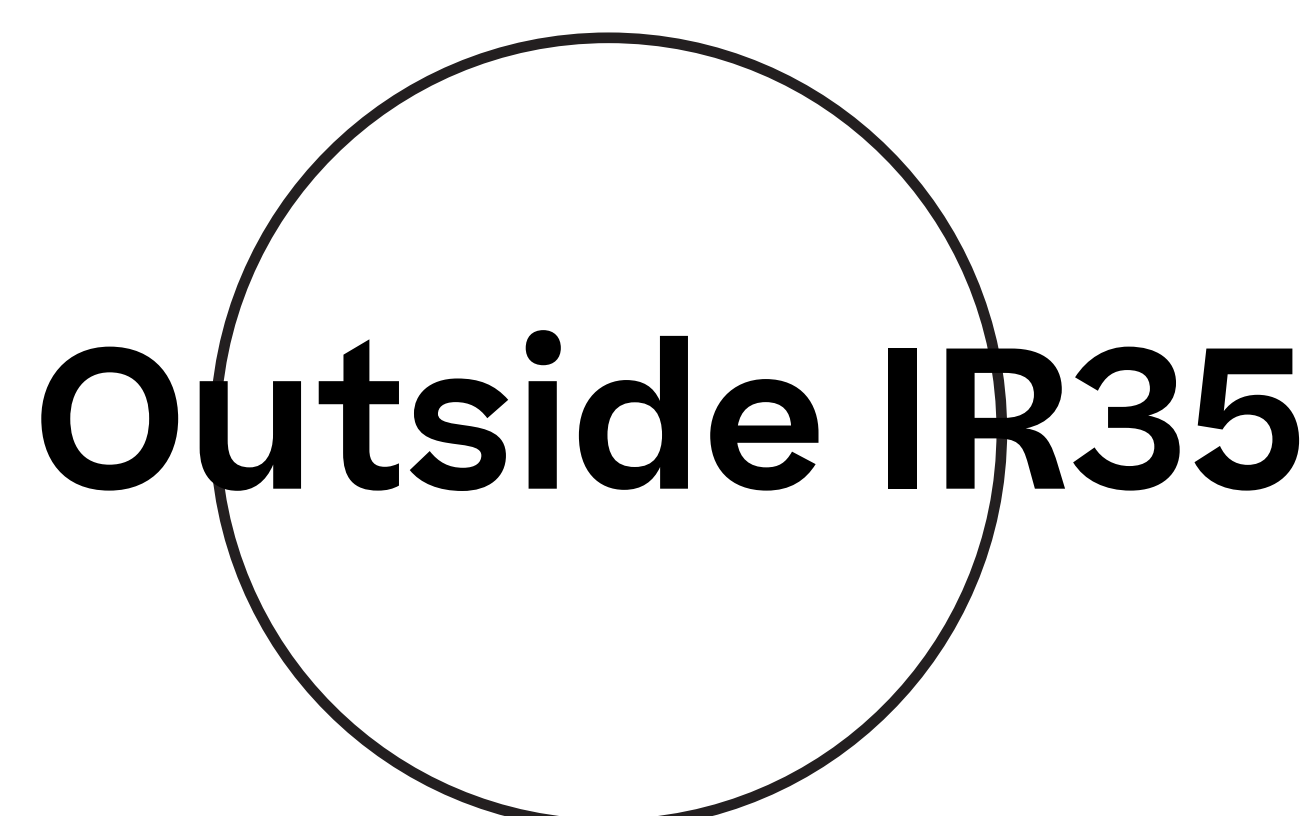
The Company or Agency must report this via Real Time Information.

Tax & NIC Obligations

The fee-payer pays another business a gross amount. Individuals working for this business are then responsible for their own tax affairs.

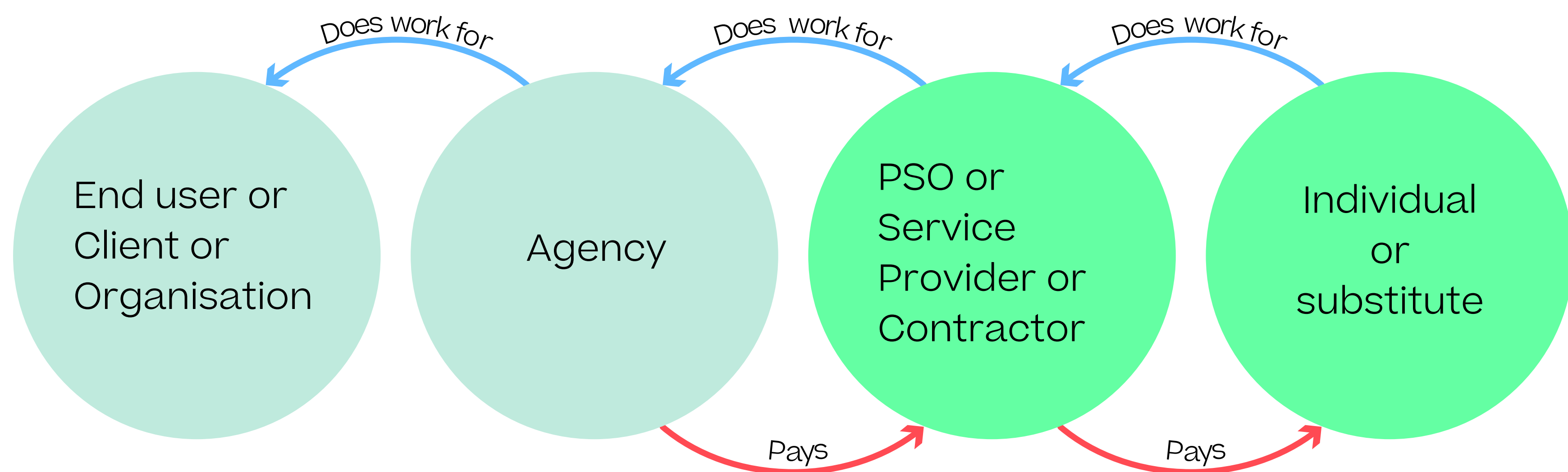
Reporting

The fee-payer reports the gross payment via the quarterly ITEPA reports.



The Service Provider process for many organisations:

● Fee payer ● Service provider



Examples of Working Practices

Inside IR35

- 01 The organisation/fee-payer is obliged to provide work
- 02 The Service Provider has no definitive list of responsibilities, or their deliverables are constantly evolving
- 03 The Service Provider performs tasks not on their job specification
- 04 The organisation/fee-payer determines how the work is done
- 05 There is no substitution allowed, or the organisation/fee-payer determines validity of substitution
- 06 All risk falls to the organisation/fee-payer
- 07 The Service Provider has set working hours

Outside IR35

- 01 No mutual obligation to be provided with work
- 02 The Service Provider is given a document with set targets and deliverables, often called a Work Order or Statement of Work
- 03 The Service Provider only performs the work documented in the Work Order The Service
- 04 Provider decides how the work is done
- 05 The Service Provider can arrange substitution and pays the substitute
- 06 The Service Provider is in business on their own account, accepting the associated risks
- 07 The Service Provider does not work set hours

What do you need to do?

If your organisation, like many others, has historically used phrases that imply ‘employing’ a contractor to complete work, this language now needs to change. It must be altered to reflect the true relationship, which is that of a Service Provider completing a clear project or set of deliverables. In this paper we have used language that reflects the true contractual status of an outside IR35 assignment. The “contractor”, as you have probably referred to the individual you wish to engage, is no longer a contractual part of the equation – they work for the business you are contracting with.

- 01 Review all engagements to determine whether current and upcoming engagements fall inside or outside IR35.
- 02 If your service providers are outside IR35, continue to operate as you are.
- 03 If an individual providing a service falls within IR35, decide whether to keep them on with the current arrangement. If not, redetermine the terms of the engagement or move them to a permanent role - this can be on a fixed or ongoing basis.
- 04 When engaging a new Service Provider, ensure they can demonstrate that they are a company in business of their own accord: for example, by having a website, providing their own equipment, having multiple clients, insurance, subcontractors, etc.
- 05 Ensure you provide all Service Providers with a well-documented project schedule including background, goals, required tasks, selection process, and timelines/deliverables.
- 06 Establish a process to create a Status Determination Statement for any service providers that your organisation is engaging, even for contract renewals.
- 07 Review the terms your organisation uses when engaging a Service Provider to ensure there are no clauses that indicate an inside IR35 status, such as limitations around substitution.
- 08 Likewise, ensure the organisation-Service Provider relationship is always referred to and treated as between businesses.

What is a Work Order, and why would you need one?

Work Orders are detailed documents that clearly set out the terms of the engagement to contracted Service Providers, including the production of a unique Status Determination Statement in each case.

By using a Work Order, you will establish language that reflects the reality of an outside IR35 assignment and embed this in teams currently talking about "contractors" as if they are employees, when in fact, contractually, they are absolutely not.

It lays out the terms for the business relationship that your organisation has with the Service Provider, giving both you and the engaged contractor a clear document to refer to at any point of the engagement.

Having a set Work Order can also make it easier for both your organisation and HMRC to define the IR35 status of the contractor.

If your organisation regularly engages contractors, then you would benefit culturally and legally from preparing Work Orders for your Service Providers.



How can Talent Point help with IR35?

We can review your engagements and provide guidance on how to shape them so they fall outside of IR35. Doing this means less change in the contractual relationships you are used to establishing. It may mean that some Service Providers need to move into the contractual relationship of a fixed-term employee, something we can also support you in facilitating.

This includes:

- Consultancy on existing contracts
- Preparation and design of Work Orders for new engagements

Talent Point can also provide guidance on the creation of a Status Determination Statement for your company*.

* Talent Point and its affiliates do not provide tax, legal or accounting advice. This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for, tax, legal or accounting advice.

You should consult your own tax, legal and accounting advisors before engaging in any transaction or acting on any of the guidance provided in this note.



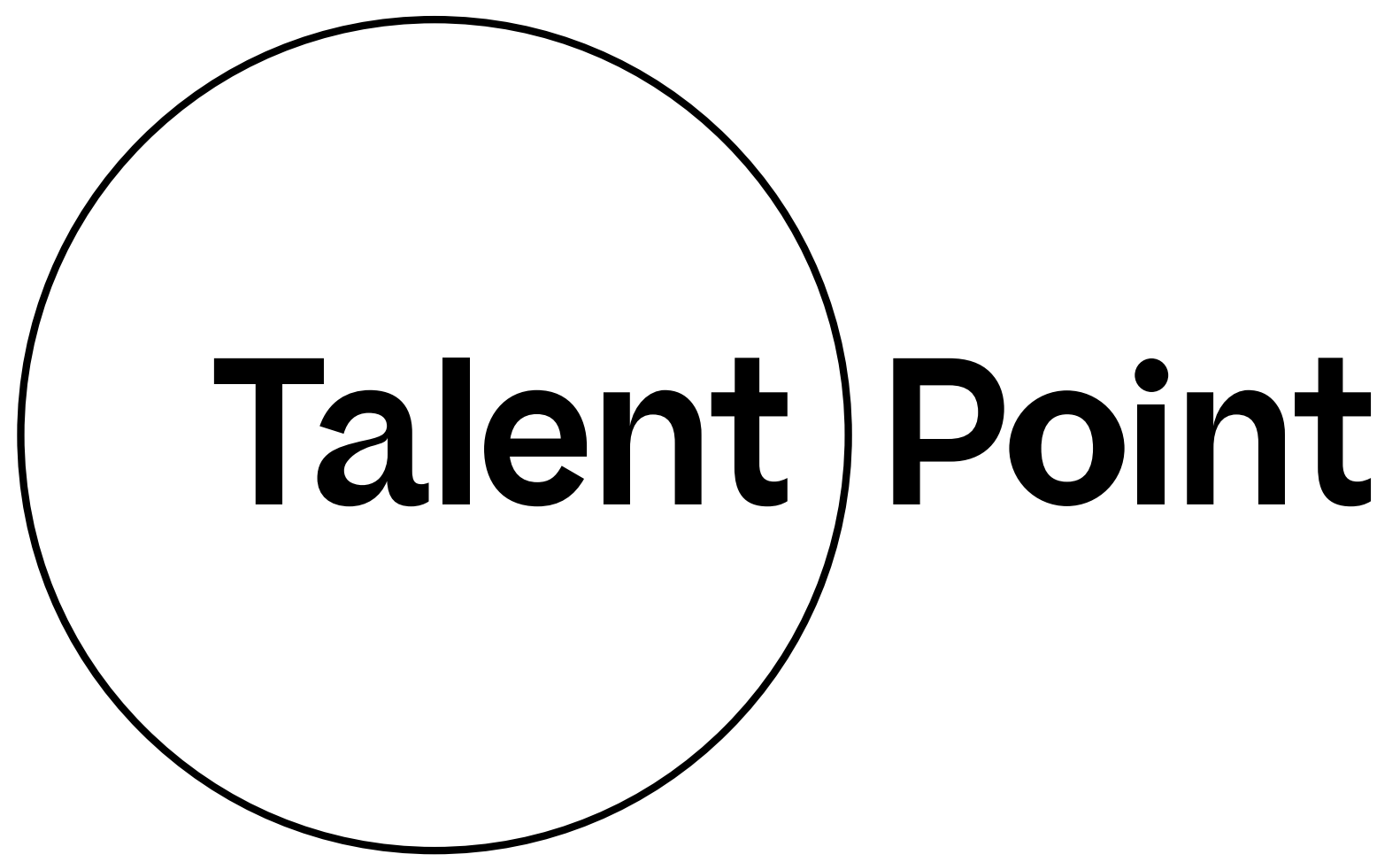
Want help unscrambling what IR35 means for you?

It couldn't be easier.

Give Anthony a call today to find out how we can help you either get ready for IR35, or simplify the processes that you already have in place.

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