

## IR35 AT A GLANCE

### WHAT IS IR35?

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

At its most basic, it means that if you provide your services to a third party (the client) through a limited company (an intermediary) then you have to consider IR35 for **each** and **every** contract you undertake.

IR35 is concerned with your relationship as an individual with the end client. This includes the contents of any written contracts and the actual working practices. To be **inside IR35** means that this relationship is effectively one of disguised employment and you will have to pay employed levels of tax and NIC on your income. If the relationship is not disguised employment and is **outside IR35**, you are free to account for your own tax and NIC on your income through your own company.

**The net result is that being inside IR35 usually costs you a lot more!**

Ask your accountant for a calculation.

### WHY SHOULD I BE BOTHERED WITH IR35?

Ignoring IR35 puts you at **risk**. HMRC may come along several years later and if you have got it wrong they will charge you for all the underpaid tax, National Insurance Contributions (employees and employers) and can charge penalties which start at 100% of the debt. If you can demonstrate that you have bothered with IR35 and taken “reasonable care” the penalties can be reduced to zero. There are other good reasons to consider your IR35 status but the main one has to be **peace of mind**. Recent HMRC figures show the average amount recovered in recent IR35 cases was £17,000. In one case it was almost £100,000.

### WHY IS IR35 SO COMPLEX?

IR35 is complex because it is really concerned with the terms of an imaginary or hypothetical contract. Because there is no legal definition of employment or self-employment you have to try to understand case law precedent and how this has been interpreted by the courts and HMRC. If you work via an agency it gets even more complicated, as you are unlikely to have seen the contract that the end client has with the agent. Sometimes there are several contracts between you and the end client.

### WHAT FACTORS ARE CONSIDERED WHEN DECIDING IR35?

The main factors considered when deciding IR35 status are: the extent and degree of **control** exercised by the client over the worker, the worker’s right to engage helpers or **substitutes**, **mutuality of obligations** between the worker and the client, **financial risk** of the worker, provision of **equipment**, basis of **payment** of the worker, personal factors, the existence of **employee rights**, termination of the contract, whether the worker is **part and parcel** of the client’s organisation, exclusive services and mutual **intention**.

This list is not exhaustive and case law shows **not to treat this as a checklist** to run through mechanically. Instead they are the factors that go towards painting the picture whose overall effect must be evaluated.

## **WHAT DOES IR35 MEAN FOR ME?**

It is necessary to consider IR35 **each time** you enter into a new arrangement or contract including extensions and renewals. This is because IR35 concerns relevant engagements so for example you could undertake five different contracts in a year and three could be found to be inside IR35 and two outside. It is even possible to provide services to the same end client for two different projects and come up with one inside IR35 and one outside IR35 as the terms and conditions and the working arrangements could be different.

## **WHAT DO I HAVE TO DO?**

Do not bury your head in the sand. With the large increases in HMRC IR35 investigations and the focus from Government and the public on “disguised employment” and tax avoidance it is only sensible to act now to make sure you know your IR35 status.

Some people are happy to spend their spare time deciphering court cases, arguing technical cases with HMRC and reading contracts. **If this is you**, then read no further as you now know the basics of IR35 and what it entails for you.

If you do not want to get so deeply involved in this complex subject but do want to relax and have peace of mind then you may wish to seek advice from your accountant or engage an IR35 specialist firm to help you to decide your IR35 status.

**You can call Bauer & Cottrell today on 01525 406622 to discuss your situation or visit their web site at [www.bauerandcottrell.co.uk](http://www.bauerandcottrell.co.uk) You will need to download and complete a status questionnaire and send this to Bauer & Cottrell together with your contract.**

Bauer & Cottrell will:

- Review all contractual documents and your working practices.
- Advise you verbally and in writing whether you are inside or outside IR35.
- Work on a maximum 5 working day turnaround - less in urgent cases.

## **Why Bauer & Cottrell?**

- Bauer & Cottrell are leading independent UK specialists dealing in all aspects of employment status and IR35. They were the IR35 experts at the Office of Tax Simplification (OTS) producing the report on IR35 for the Chancellor and they currently serve on the HMRC IR35 Forum.
- Bauer & Cottrell have never lost an IR35 investigation case.
- Bauer & Cottrell’s IR35 contract review services are comprehensive and all fees are fixed with no hourly rates or surprises.

**And finally with the advent of new Agency Legislation and the new Onshore Intermediaries Legislation this is no time to simply keep your head down. If you work via an agency the agency will, from April 2015 be sending reports to HMRC on all payments it has made to you.**