



UNDERSTANDING IR35 FOR BUSINESSES





WELCOME TO LINX'S UNDERSTANDING IR35 FOR BUSINESSES

This guide has been created to ensure organisations understand the fundamentals of IR35 and its impact on your business.



IR35 BACKGROUND

What is it and when did it come about?



UNDERSTANDING THE LINGO

Key terms you should be familiar with



TALKING TAX

HMRC's IR35 agenda



UNRAVELLING IR35

The basics you need to know



COMPLIANT WORKING PRACTICES

Understanding how IR35 is determined



YOUR RESPONSIBILITY

Actions your business should be taking





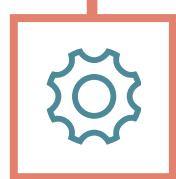
IR35 BACKGROUND

Initially only implemented in the Public Sector back in 2017 as a means for HMRC to more accurately determine off-payroll working, in 2021 IR35 was also rolled out into the Private Sector.



APRIL 2017

Public Sector reform shifts responsibility for determining status from the worker's PSC to the authority engaging them, as well as making them responsible to account for and pay income tax & NICs on behalf of the worker.



AUTUMN 2017

The Government announces plans to tackle non-compliance in the Private and Third sectors.



2018

The Government announces during the Autumn Budget that it will extend its Public Sector reform to all engagements with medium and large sized organisations by April 2020.



2020

The Government announces it will postpone its IR35 Private Sector reform until April 2021



2021

In April 2021 IR35 comes to effect in the Private Sector.



THOUGHTS FROM LINX

“Whether you’re new to IR35 or are familiar with its history, it’s a key topic that should be woven into your organisation’s recruitment processes. Whether that’s ensuring you remain compliant as a minimum, or using the off-payroll working guidance to transform how you engage your contingent workforce. IR35 provides both challenges and opportunities for businesses when it comes to managing their workforce.”



Richard Hanson, Client Services Director, Linx





UNDERSTANDING THE LINGO

There are several key terms you need to know when IR35 is discussed, and you'll find the main terms below.



DISGUISED EMPLOYEE

A Disguised Employee is a contingent worker who fills a position in a company and works under terms that would make them an employee but doesn't pay the corresponding income tax and National Insurance contributions (NIC) that an employee would.



FEES PAYER

The Fee Payer is defined as the business, agency or third party that pays the Personal Services Company (PSC)/ Limited Company.



INSIDE IR35

Inside IR35 means that HMRC deems a contingent worker as an employee and is therefore liable for income tax and National Insurance deductions at source. This is also referred to as In Scope.



PERSONAL SERVICES COMPANY (PSC)

A Personal Services Company is defined as a Limited Company with one Director who is the contingent worker.



END CLIENT

The End Client is the party the contingent worker is engaged to deliver a service to. For the Public Sector HMRC gave a defined list for the End Client, for the Private Sector the definition of the End Client is the engaging business.*

*The client for whom the work is being completed



LIMITED COMPANY CONTRACTOR

A contractor, who is usually the Director of the Limited Company, who operates on a contract basis through a private business.



OUTSIDE IR35

Outside IR35 means that a contingent worker is not classed as an employee and does not have the burden of income tax and National Insurance deductions. This is also referred to as Out of Scope.



STATUS DETERMINATION STATEMENT

An assessment provided by the End Client which declares the employment status of an assignment with the justification for reaching the deemed status determination.



TALKING TAX

HOW DOES HMRC PERCEIVE PSC CONTINGENT WORKERS?

It's vital to understand that HMRC have strict regulations on how they perceive contingent workers with regards to their UK tax obligations.

In the past some workers have moved to a contingent worker role to benefit from the tax breaks of not working directly for an employer – whilst continuing to work for the company and receive similar benefits to the company's directly employed personnel. To combat this kind of behaviour (known as Disguised Employment) the IR35 legislation was launched, giving clear guidelines on how a contingent worker should operate to show they are not effectively working for a company.

IR35 looks at the way in which a contingent worker is engaged for each individual assignment, fundamentally asking one simple question – “If the Personal Service Company did not exist, would the



contingent worker be a company employee?” Where evidence indicates that there is no real difference to how they operate, IR35 would apply and the contingent worker will be subject to tax and National Insurance Contributions deducted at source.

DOES IR35 MEAN MY BUSINESS SHOULD STOP ENGAGING PSC CONTINGENT WORKERS AND MOVE TO AN UMBRELLA COMPANY OR PERMANENT EMPLOYMENT?

No, not at all. IR35 needs to be assessed for each individual assignment a contingent worker undertakes, so not all assignments may be in scope. Contingent workers have also had many years to comprehend IR35, so it is not necessarily as a big a hurdle for them now that they had initially thought.





UNRAVELLING IR35

QUICK GUIDE TO IR35

IR35 WILL APPLY TO BUSINESSES ENGAGING PSC CONTINGENT WORKERS, KNOWN AS OFF-PAYROLL WORKERS

A SMALL BUSINESS EXEMPTION IS AVAILABLE TO ORGANISATIONS THAT MEET TWO OR MORE OF THE FOLLOWING CRITERIA FOR TWO CONSECUTIVE FINANCIAL YEARS:

- Annual turnover not exceeding £15 million
- Balance sheet total not exceeding £7.5m
- Not more than 50 employees

YOUR BUSINESS, AS THE END CLIENT, WILL BE RESPONSIBLE FOR DETERMINING THE IR35 STATUS FOR EACH CONTINGENT WORKER ASSIGNMENT. YOU MUST:

- Use reasonable care when making each determination
- Pass the Status Determination Statement to the contingent worker and any other parties involved in the engagement of the contingent worker, for example the recruitment agency - in their role as the fee payer

WHERE IR35 APPLIES THE FEE PAYER, OFTEN THE RECRUITMENT AGENCY, WILL BE RESPONSIBLE FOR DEDUCTING THE CONTINGENT WORKER'S TAX AND NATIONAL INSURANCE CONTRIBUTIONS

AN END CLIENT LED STATUS DISAGREEMENT PROCESS WILL BE REQUIRED, SHOULD A CONTINGENT WORKER WISH TO DISPUTE THEIR IR35 DETERMINATION. END CLIENTS WILL HAVE 45 DAYS TO DISCLOSE THEIR INVESTIGATION OUTCOME TO THE CONTINGENT WORKER



ASSESSING IR35 STATUS

THERE ARE SEVERAL KEY TERMS YOU NEED TO KNOW WHEN IR35 IS DISCUSSED, AND YOU'LL FIND THE MAIN TERMS BELOW.

For the End Client, HMRC provides an online evaluation tool, CEST - Check Employment Status for Tax. They recommend this tool is used to make an IR35 Status Determination Statement for each contingent worker assignment.

A series of questions are asked to understand the PSC contingent worker's working practices and determine whether HMRC believe this constitutes Disguised Employment. Where it determines the assignment is too similar to a directly employed permanent member of staff, the contingent worker will be In Scope of IR35 - meaning tax and National Insurance Contributions will need to be deducted throughout the assignment.

If challenged however, End Clients must be able to demonstrate a fully auditable trail showing reasonable care has been taken to determine a contingent worker's IR35 status. It's for this reason that we urge our clients to work with us to determine IR35 status, demonstrating that they have utilised independent and experienced consultants to fairly make their determinations.



GOV.UK Check employment status for tax

BETA This is a new service - your [feedback](#) will help us to improve it.

 HM Revenue & Customs

[◀ Back](#)

Substitutes and helpers

Has the worker ever sent a substitute to do this work?

A substitute is someone the worker sends in their place to do their role.

Yes, you accepted them

Yes, but you did not accept them

No, it has not happened

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COMPLIANT WORKING PRACTICES

IR35 means that it is more important than ever to ensure that businesses have clear operational and HR processes for how they engage contingent workers - ensuring that these are different to permanent employees of the business.

Contingent workers should be engaged strictly on a single assignment basis, with set deliverables and timescales. A new IR35 status determination is required if their assignment changes, or if they are engaged again on a different project. If their contract is longer than 1 year it is also best practice to reassess their IR35 status. Opting to use Statement of Works instead of engaging contingent workers for a specific job role can also help provide clarity for all parties, and set the expectations for the assignment.

There are several factors that HMRC expects End Clients to assess when making Status Determination Statements, but it's important to remember that there are no right or wrong answers - instead each of the areas below are used together to build a profile of how each contingent worker is engaged.

Take a look at the below and identify any areas where your current contingent worker assignments may need reviewing, or may be subject to various interpretations.

RIGHT OF SUBSTITUTION

Do you allow the contingent worker to send an alternative to fulfil the services?

The Personal Services Company (Limited Company) is providing a service to you, but this should not necessarily mean they need to provide this service in person. HMRC's CEST tool will ask whether you would accept a substitute with the same skills and security clearance.



SUPERVISION, DIRECTION AND CONTROL

Does the contingent worker have complete control throughout their assignment, or will you be giving direction?

A PSC is often engaged to deliver a niche skill or expertise, not available within your permanent workforce. The contingent worker should therefore be able to deliver that service with little direction and control to stipulate how that work should have been completed.

FINANCIAL RISK

Does the contingent worker carry any cost implications if a project overruns or remedial work is required at a later date?

Do they supply any technical equipment needed to complete the works (excluding everyday items such as laptops and mobile phones)?

What sets contingent workers apart from employees, is the financial risk they carry - where terms of engagement stipulate that they will incur additional costs should work need to be rectified. Other factors, such as whether they incur the cost of specialist equipment hire provides a picture to HMRC on how that contingent worker operates.





MUTUALITY OF OBLIGATION

Is the arrangement with the Personal Services Company (Limited Company) to complete only the assignment you have commissioned them for, with no expectation from either party that additional work will be available once complete?

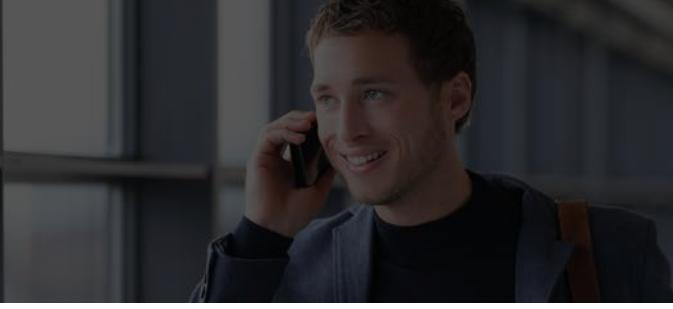
You have engaged the contingent worker solely to deliver a specific service - there should be no anticipation that you will provide them with further work, nor any obligation for them to accept future work.

PART AND PARCEL

Do you consider the contingent worker to be part of the business - i.e. they have a staff building pass, staff parking, attend business social events, use subsidised restaurants, staff gyms or other employee benefits?

A contingent worker should operate independently from your business, and not benefit from the same perks your directly employed personnel receive.





PROACTIVELY MANAGING YOUR IR35 COMMITMENTS



When it comes to managing IR35 within your contractor workforce, as well as within your own operations you'll also need to consider working practices across your recruitment supply chain if you engage agencies.

It's important to understand the off-payroll workforce that's supporting your business, as well as each of your supplier's knowledge of IR35 to ensure all processes are compliant.

Here are a few initial actions to consider.



1 REVIEW YOUR EXISTING IR35 STRATEGY

What processes are already in place to manage IR35? What tools are you using to make Status Determination Statements? Are your employees making the Status Determination Statements adequately trained? What does your contractor workforce look like across your recruitment supply chain?

2 REVIEW YOUR CURRENT CONTRACTS AND WORKING PRACTICES

Look at the current contracts you have with off-payroll workers and what restrictions may be written into them that may affect an IR35 determination.

Review your working practices, and those of your recruitment suppliers, to identify any areas of concern and potential non compliance.

3 SPEAK TO LINX

We would always recommend an independent supply chain audit, which we can provide to ensure an in-depth review of working practices, employment contracts and Status Determination Statements takes place.

Our experts can also help you to understand IR35 best practice and ensure your employees have the right training to make accurate Status Determination Statements.