

A photograph of a desk with a computer mouse, keyboard, and tax documents. The mouse is a blue and black wired mouse. The keyboard is black. The documents include a tax form with the heading 'Tax Incentives' and some handwritten notes. A teal vertical bar is on the left side of the image, containing the text 'IR35' in white.

# IR35

**An Overview**  
by Adam Recruitment

## What is IR35?

IR35 is tax legislation that is designed to combat tax avoidance.

It applies to ‘disguised employees’. These are defined by HMRC as

“Workers supplying their services to clients via an intermediary, such as a limited company, but who would be an employee if the intermediary was not used”.

Broadly speaking this covers your contract and temporary workers however this is far from a straight forward ‘one size fits all’ scenario.



### In or Out?

When it comes to deciding who is inside and who is outside, you are obliged to treat each case individually.

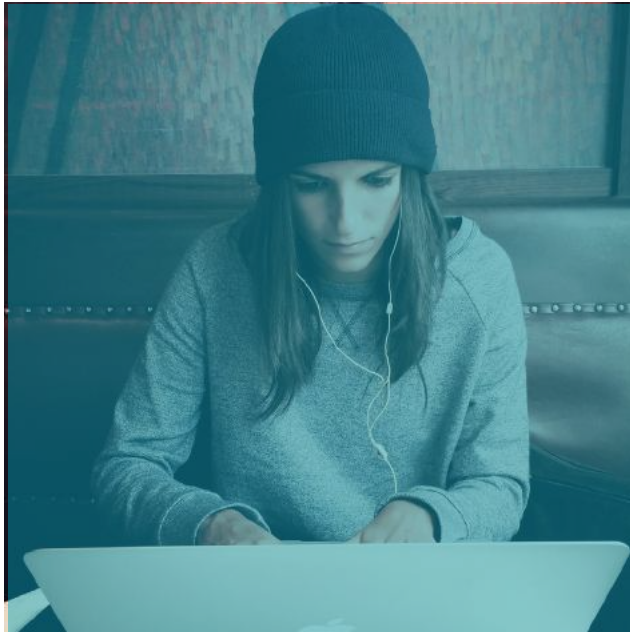
It is ultimately up to you to define whether a worker is in or out, although they do have the right to appeal your decision.

### What does this mean for them?

If you rule a contractor as **inside** IR35 they should be paying the same tax as an employee. They need to pay PAYE and NI to HMRC, the same as your business does now.

If you rule them **outside** IR35 they are able to continue with business as usual, operating through their limited company with no change.

## In Or Out? Three Key Principles to Check Status

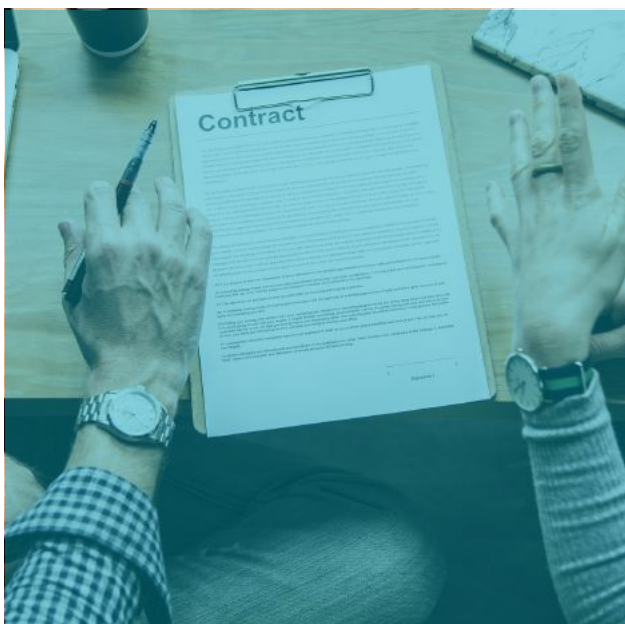
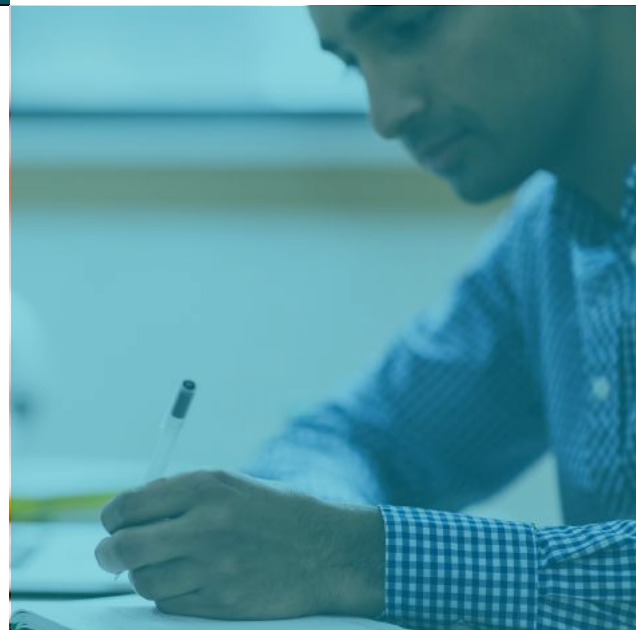


### Control

- How much control do you have?
- Can the contractor come and go?
- Are they able to pick and choose the projects they work on?
- Can they work remotely when it is convenient for them, rather than for you?

### Substitution

- Can the contractor be replaced by a substitute of their choosing?
- Or are they required to provide a personal service to you as part of the agreement?
- If their job cannot be done by a replacement, they are a “disguised employee”.



### Mutuality of Obligation

- Are you obliged to offer them work, contractually or verbally?
- Are they obliged to accept your offer of a contract,?
- Obligation is the key word here; you can offer back to back or repeat contracts as long as it is not pre-agreed.

## In or Out? What are My Options?

**1** If a worker is considered **outside** IR35 then we have great news!

Things can continue business as usual. This worker:

- Will typically come and go as they please provided they fulfil the contract
- Isn't obliged to accept a contract extension or further work from yourself
- Typically has other clients.

They will require written confirmation from you that they are outside for their records should HMRC investigate.

**2** If a worker is considered **inside** IR35 you may want to consider whether you are able to offer this candidate a permanent position with your business as, for all intents and purposes, they already are.



**Permanent employment is NOT your only option, even with the impending IR35 regulation.**

Thankfully there are options available to allow you to continue using contractors within IR35.

**3** Allow them to continue through their PSC (personal service company) and rely on them to deduct their own PAYE and NI. This usually means less take home pay and more paperwork for the contractor so not many take this route.

**4** You can set up an internal payroll process for non-permanent employees (known as “workers”). This is a complex route to take and we would strongly recommend consulting a payroll specialist if you are considering this option.

**5** If a worker is considered inside IR35, the simplest approach is to use what is known as an umbrella company. Umbrella companies operate as the employer, allowing you the flexibility of short term contracts alongside the control as though they are a direct employee. Contractors regularly choose this option as the pesky accountancy admin is all taken care of and they are able to focus on what they do best.

## A Few Things You Should Consider

Although IR35 is a complex piece of legislation, handled correctly, it should not impact too significantly on your business on an operational level. Where we see the biggest changes is in the way the market operates.

### Short term contracts will become the norm.

Working on a project by project basis rather than for a set period of time will become increasingly popular.

### Day rates will increase.

In order to accommodate a lower take home pay, the best talent will negotiate higher rates of pay.

### There will be more demand for part time opportunities.

Part time positions will allow contractors to take on multiple clients simultaneously, keeping them outside the parameters of IR35.

IR35 legislation will only apply to contractors working for large and medium size businesses. Will your contractors be affected?

**Micro = 0-9 employees**  
**Small = 10-49 employees**  
**Medium = 50-249 employees**  
**Large = 250+ employees**

plus those with either turnover or assets of £10 million or more.

Info correct as of 2018



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It's worth noting that changes expected before the deadline could have significant impact on the parameters of IR35.

Brexit could mean IR35 is revoked entirely or that it is amended to include small businesses.

Employment status rules are due a consultation in 2019 which, if amended will directly impact whether or not a worker is considered inside IR35.

A more detailed draft bill is expected Summer 2019.

**Questions about Contract Recruitment?**

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