

Intermediaries Legislation (IR35) - Working through an intermediary, such as a Personal Service Company

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1 IR35 Intermediaries Legislation

IR35 legislation applies when people work for a client through an intermediary such as a limited company or partnership. This guide covers what the legislation means, how to work out if it applies to you, and what you need to do.

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Overview

What is IR35?

The Intermediaries legislation (known as IR35) is the tax and National Insurance contributions (NICs) legislation that applies if you're working for a client through an intermediary, such as a limited company or partnership.

Under IR35 legislation you must consider the underlying nature of your working relationship with a client. It applies in situations where you would be regarded as an employee of the client if there were no intermediary. It can also apply if you're working as an office-holder or undertaking office-holder duties for the client.

IR35 ensures that you pay roughly the same amount of tax and NICs as if you had been directly employed by the client. Where IR35 applies, all payments to the intermediary are treated as your employment income and you need to [calculate a deemed employment payment](#). Tax and NICs are then payable on this amount by your intermediary.

If you provide your services to clients through an intermediary you and your intermediary will need to consider whether the IR35 legislation applies to each of your engagements.

Personal service companies and other common terminology

An intermediary is an entity through which you supply your personal services to a client. It can be a partnership or a limited company (sometimes called a service company or a personal service company (PSC)).

If you work through an intermediary, you might be known as:

- self-employed
- freelancer
- consultant
- contractor

Whether IR35 applies is determined by the facts of each engagement and not by any label, description or job title.

The clients that you work for are often known as:

- end-clients
- client businesses
- end-users
- engagers

In these circumstances there might be no contract between you and the client. Usually your intermediary has a contract with the client to supply your services.

Sometimes another party may be involved in supplying your services to a client. This may be a staffing or recruitment agency or an employment business. There can be more than one agency involved in the chain to supply your services to a client.

Who's responsible for ensuring the IR35 legislation is applied

When IR35 applies responsibility for ensuring compliance with the legislation always lies with the intermediary. Clients and other parties involved in the arrangements - like recruitment agencies – are not liable to operate IR35.

The client's responsibilities

Where the contractual relationship is between a client and an intermediary and IR35 applies, the client isn't responsible for applying the IR35 legislation. However, a client must always carefully consider the employment status of anyone they engage to ensure they fulfil any tax and National Insurance contributions responsibilities and liabilities.

The agency's responsibilities

Staffing agencies, recruitment agencies and employment businesses involved in supplying your services to clients aren't responsible for operating IR35 but they may need to comply with the agency legislation. The agency legislation should always be considered first as explained below.

You can find Information on the agency legislation in the [HM Revenue & customs \(HMRC\) Employment Status Manual](#).

How to work out if IR35 affects you

See the section below '[How to work out if IR35 affects you](#)'.

Before considering IR35

Before considering whether IR35 legislation applies to an engagement, intermediaries must first consider if either the agency legislation or [managed services company \(MSC\) legislation](#) applies. If so, that legislation must be applied and IR35 doesn't need to be considered.

IR35 must be applied on a contract-by-contract basis

IR35 applies to each engagement on a contract-by-contract basis, so each new contract must be assessed against the IR35 legislation. If a contract varies or changes, it must be reassessed to see if IR35 then applies.

The guide '[How to work out if IR35 affects you](#)' may help you to decide.

What you must do if IR35 applies

If IR35 does apply your intermediary must:

- calculate the deemed employment payment and pay any tax and NICs due, at the end of the tax year
- account for those payments correctly
- reassess the IR35 position if your contracts vary or change
- take into account the deemed employment payment when paying Corporation Tax or making distributions

You will also need to report information about IR35 on your Self Assessment tax return.

See the section on '[IR35 deemed employment payment: how to calculate and pay](#)' to find out more about the deemed employment payment.

Your intermediary must also operate PAYE on any salary or wages it pays to you during the tax year. For more information see the [guidance for new employers](#).

Guidance for client businesses engaging workers through an intermediary

When IR35 applies, the intermediary will be responsible for any tax and NICs due.

However, a client must always consider the employment status of any worker they engage even when they believe they have contracted with an intermediary to obtain the services of that worker.

If the contract(s) or particular working arrangements show the worker is effectively engaged directly by the client as an office holder or employee, then the client will be responsible for operating PAYE for that worker. There may be penalties if the client doesn't operate PAYE correctly in these circumstances.

When a client contracts directly with a worker, then the client will always be responsible for operating PAYE for that worker, even if payment for the worker's services is made to the worker's intermediary.

Where there is no intermediary

It's the client's responsibility to consider the worker's employment status in order to determine whether they are the employer in this relationship and what actions to take.

If there's no intermediary involved and the client contracts directly with the worker, the client may be liable to operate PAYE and make the appropriate returns, deductions and payments of tax and NICs for the worker.

The HMRC [guidance on employment status for employers](#) gives information on what employment status is and how to assess it.

If a client obtains the services of a worker by using another party - like a recruitment agency or employment business - then that other party may need to consider the [agency legislation](#).

If the agency is based outside the UK the client may be liable to operate PAYE and make the appropriate deductions, returns and payments of tax and NICs instead. [The HMRC draft offshore intermediaries guidance](#) gives more information.

Further information

HMRC manuals

Guidance on employment status can be found in the Employment Status Manual. This contains specific information about IR35 at [ESM3000 - IR35 Intermediaries Legislation](#)

IR35 legislation

The tax legislation for IR35 can be found in [Chapter 8 of the Income Tax \(Earnings and Pensions\) Act 2003](#)

The NICs legislation for IR35 for Great Britain can be found in [The Social Security Contributions \(Intermediaries\) Regulations 2000](#)

The NICs legislation for IR35 for Northern Ireland can be found in [The Social Security Contributions \(Intermediaries\) \(Northern Ireland\) Regulations 2000](#).

IR35 Helpline

HMRC operates a free and confidential IR35 Helpline and Contract Review Service for anyone needing help in understanding and applying IR35. Conversations are confidential and any information received is not shared with HMRC compliance teams.

[Contact the IR35 Helpline](#)

2 How to work out if IR35 affects you

What factors you should consider, assessing your risk of IR35, using the Business Entity Tests, example scenarios and the HMRC IR35 Contract Review Service.

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Overview

If you provide your services to clients via an intermediary such as a limited company or partnership, you'll need to consider whether the IR35 legislation affects you.

IR35 will apply if all the following statements are true:

- you personally perform services for another person or business (the client) or are under an obligation to do so
- the services are provided to the client through an intermediary such as a limited company or partnership which does not meet the definition of a [Managed Service Company](#)
- your services are supplied as either an office-holder of the client or if you had provided the services directly to the client under a contract between you and the client, your employment status would be regarded as being that of an employee or office-holder of the client
- the specific IR35 conditions of liability for your business are met

How to assess your employment status

When your services are supplied via an intermediary, IR35 looks at the underlying relationship between the client and the worker for each contract or engagement. You need to assess what that relationship would be (your employment status) if there were no intermediary involved in the arrangements to supply your services to the client. If you would be regarded as an employee or office-holder if engaged directly by the client then IR35 will apply.

There are various factors you must consider depending on the circumstances of each engagement. The employment status position can't be determined by simply calling yourself employed, self-employed, or by giving yourself another job title.

Case law has laid down crucial factors and indicators of employment status. They are outlined in this guide but more information can be found in the HMRC [Employment Status Manual](#). The text is aimed at those who don't work through their own limited company or partnership but it can still be useful to you in assessing your hypothetical employment status were there not a personal service company or partnership involved.

IR35 applies on a contract-by-contract basis, so you must assess the underlying relationship between you and your client for each of your contracts individually. You must assess them again if they change in any way.

Office-holders

IR35 will usually apply if you're engaged by a client as an office-holder under a contract between the client and the intermediary.

[Guidance on how IR35 applies to office-holders.](#)

IR35 will also apply if the circumstances of the engagement are such that you would be regarded as an office-holder of the client if you had been engaged directly by that client.

Consequences of ignoring IR35

There can be significant consequences of ignoring the IR35 legislation. Interest and penalties may be charged on any late payment of tax and NICs due or as a result of an HMRC enquiry into your situation.

It's your duty, as a director of your limited company or member of a partnership to ensure compliance with all relevant legislation and take responsibility for determining whether IR35 is relevant to your business or not.

Before considering IR35

Before working out if IR35 applies to a contract between your company or partnership and a client, you must first consider [agency legislation](#) and [managed service company \(MSC\) legislation](#) which take precedence over IR35.

If either applies, you must ensure legal compliance with these pieces of legislation rather than IR35. If they don't apply, then you'll need to assess whether IR35 applies.

Find out if your business meets the IR35 conditions of liability

Having checked that the agency legislation and MSC legislation don't apply, you should then consider the IR35 legislation by checking that the intermediary - the company or partnership - you work through meets the IR35 conditions of liability.

If you supply your services through a limited company

You'll need to consider IR35 if your company doesn't meet the definition of a managed service company and one of the following criteria is met:

- you (or an [associate](#), or a member of your family - which can include an unmarried partner) control more than 5% of the ordinary share capital of the company
- you (or an associate, or a member of your family - which can include an unmarried partner) are entitled to receive more than 5% of any dividends from the company
- if your company is a [close company](#) - and you (or an associate, or a member of your family - which can include an unmarried partner) possess, or are entitled to acquire, rights that entitle you to more than 5% of the assets that would be available for distribution if the company is wound up
- you or an associate receive, or could receive, payments or benefits directly or indirectly from the company which aren't employment income, but could reasonably be taken to represent payment for the services you provide to clients

If you supply your services through a partnership

IR35 applies to the partnership you supply your services through if you're a partner of the partnership, your partnership doesn't meet the definition of a managed service company and one of the following three criteria is met:

- you (or your family - which can include an unmarried partner) are entitled to 60% or more of the profits of the partnership
- all or most of the partnership's income comes from providing services to a single client, or to a single client and its associates
- the profit sharing arrangements in the partnership are designed to ensure that you receive an amount based on the payments received for your services to clients

Find out if IR35 could apply to your contract

When you consider IR35 it can be difficult and complicated to achieve certainty. To help you can use the:

- Business Entity Tests and example scenarios
- HMRC Contract Review Service
- IR35 Helpline

More on these below.

Business entity tests and scenarios

HMRC understands that IR35 and the possibility of an [IR35 enquiry](#) can be of great concern.

The [IR35 Forum](#) helped HMRC to draw up a set of business entity tests to provide more certainty to businesses concerned about their overall risk of being in the IR35 legislation.

HMRC uses a risk-based approach to checking customers' compliance with IR35. Customers are assessed as either:

- low risk
- medium risk
- high risk

These tests will help you to work out which risk band you are in.

The [business entity tests and scenarios](#) tell you how to work out which risk band you're in, and what that means you have to do. The tests are supported by example scenarios to illustrate when and why IR35 will apply to a particular engagement and when and why it won't.

They help work out the overall risk that IR35 applies to you and the likelihood of an HMRC enquiry. But they won't tell you whether IR35 actually applies to you. This is because the tests look at how your business works overall in order to gauge the risk that we will check whether IR35 applies to you. For the purposes of deciding if IR35 applies, you need to consider each engagement separately.

Every contract must be considered on its own merits to decide if IR35 applies. Just because you are in the:

- medium or low risk band overall, doesn't automatically mean that you're outside IR35
- high or medium risk band overall, doesn't automatically mean that you're within IR35

You must retake the tests when circumstances change.

Ask HMRC to review your contract

If you'd like advice, you can phone the HMRC confidential [IR35 Helpline](#).

As well as answering one-off queries, the IR35 Helpline provides a Contract Review Service.

Free and confidential help

The helpline and review service are staffed by HMRC specialists in IR35 and are independent of our compliance teams. If you ask them about IR35, they won't pass on what you tell them to other business areas in HMRC, unless you ask that this happens. You're not required to reveal your identity to use the helpline.

How a contract review works

The specialists can review a written contract for you if you want certainty about your position. If you decide to use the Contract Review Service, and HMRC decide that your contract is outside IR35, they'll give you a letter with a unique reference number. This will be valid for 3 years.

If, later on, HMRC open an IR35 review, you can give them this number. They will then suspend the IR35 review while they consider all the information. HMRC will close the IR35 review if:

- the contract reviewed is typical of your engagement terms and conditions
- the information provided is accurate
- evidence shows that circumstances haven't changed

What the Contract Review Service can do

They can give advice on existing contracts only. HMRC won't usually give opinions to companies or partnerships on contracts relating to a particular tax year unless all information sufficient to form an opinion is supplied prior to the 5 April at the end of the particular tax year the contract relates to.

HMRC will review the facts. This will include looking at whether the relationship between a worker and a client would have been one of employment, if there had been no company or partnership. In order to do this, HMRC will review the contract or contracts, which establish the relationship. They may also want to talk to you and to others, including the client.

It's up to you to provide all the information. If you don't or can't do so, it may not be possible for HMRC to form an opinion.

Information the Contract Review Service needs from you

If you want HMRC to give an opinion then they'll need your full co-operation to establish the facts relating to the engagement and will need to see copies of any contracts involved in the relationship.

You should send copies of these contracts when asking for an opinion together with any other information that you consider might be relevant, such as:

- any other documentation relating to the working terms and conditions
- written statements from the worker and the client about their views of the working terms and conditions with particular emphasis on what happens in practice
- details of how the engagement was obtained and the recruitment procedure together with a copy of any adverts for the work in question
- a description of the nature of the services to be performed together with any job or work specifications for the contract
- copies of any tenders made by the intermediary
- details of any additional contractual terms not included within the written contracts, whether oral, written or implied
- details of how and who allocates the work and the role the worker plays in the client's organisation- ie does he or she work alone or as part of a team
- other relevant information from the worker or intermediary - for example this might include:
 - the number of engagements held during the year
 - the number of different engagers
 - expenditure on equipment necessary for the performance of the contract

You should also provide the:

- worker's National Insurance number
- company's HMRC reference number
- company's postcode

Where it isn't possible to get a copy of a written contract, for example a contract between an agency and the client, it's essential that there is some evidence from the client about the terms and conditions of work. Where there's a problem obtaining contracts HMRC are happy to assist you.

In some cases there may not be sufficient information to give an opinion and in others the opinion may have to be heavily qualified. But where an opinion is given, you'll be able to rely on it so long as all the relevant information has been supplied and there is evidence that the terms of the engagement do not change part way through.

[Where to send information to the Contract Review Service](#)

If you disagree with HMRC's opinion

If you dispute an opinion from the IR35 Contract Review Service and the dispute can't be resolved quickly, the papers will be passed to the local IR35 Inspector. This will only be done with your full permission. They'll reconsider the opinion given and, where necessary, seek additional evidence from the worker and/or the client.

If there's sufficient evidence to support an opinion and you disagree with that opinion, you can ask for an appealable decision against which you have a right of appeal.

If you want any advice or guidance regarding this service please contact the [IR35 Helpline](#).

Find detailed HMRC guidance and legislation

The information in the HMRC Employment Status Manual at [ESM3000 - IR35 Intermediaries Legislation](#) and [ESM0001 - Employment Status Manual](#) can help you determine if IR35 affects you and applies to your contract.

The tax legislation for IR35 can be found in Chapter 8 of the [Income Tax \(Earnings and Pensions\) Act 2003](#)

The NICs legislation for IR35 for Great Britain can be found in [The Social Security Contributions \(Intermediaries\) Regulations 2000](#)

The NICs legislation for IR35 for Northern Ireland can be found in [The Social Security Contributions \(Intermediaries\) \(Northern Ireland\) Regulations 2000](#)

What to do if IR35 applies

If IR35 applies to a contract, as the director of your company or member of your partnership, you'll need to:

- calculate the deemed employment payment
- pay and account for any tax and NICs due under IR35 legislation
- apply the special rules to take into account the deemed employment payment when paying distributions and Corporation Tax

The section '[IR35 deemed employment payment: how to calculate and pay](#)' explains how to do this and gives timescales for doing so.

To find out more about how IR35 applies to you and your company, see '[How IR35 applies to you](#)'.

You should also report information about IR35 on your Self Assessment tax return

If IR35 doesn't apply

If IR35 doesn't apply to your contract, you don't need to take any steps to comply with the deemed employment payment part of the IR35 legislation. However, if your contract or working situation changes, you'll need to reassess whether IR35 applies.

3 How IR35 applies to you

Find out how IR35 applies to you in different circumstances and what to do if you should have operated IR35 in the past but didn't.

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Overview

If you supply your services through an intermediary, you must work out which of your contracts and work engagements are affected by IR35.

If IR35 applies, you must:

- calculate the deemed employment payment and your intermediary must pay any tax and National Insurance contributions (NICs) due on it to HMRC at the end of the tax year - read the section '[IR35 deemed employment payment: how to calculate and pay](#)' for more information

- account for those payments correctly
- reassess your IR35 status if your contracts change
- take into account the deemed employment payment when paying Corporation Tax or making distributions
- report information about IR35 on your self-assessment return

IR35 can apply to many different circumstances

IR35 can apply whether you are:

- abroad
- working in the construction industry
- an office-holder
- working with your partner or spouse
- a charitable organisation

The sections below details some situations and how IR35 applies to them.

If you should have applied IR35 in the past

If IR35 has applied to you in the past but you haven't operated IR35, you should make a disclosure to HMRC. If you don't you'll face more severe fines if the situation is discovered by HMRC. You can find out how to make a disclosure by reading '[IR35: HM Revenue and Customs enquiries](#)'.

Worker or business abroad

Foreign nationals

Anyone who provides their services through an intermediary, which isn't a managed service company (MSC), may be affected by the IR35 legislation. This includes foreign nationals.

Limited company or partnership is incorporated or resident abroad

The IR35 rules apply when your intermediary (your limited company or partnership) is incorporated or resident outside the UK. When a worker living in the UK performs work for a client in the UK, the intermediary is treated as having a place of business in the UK whether or not it actually does have one.

If an offshore personal service company (PSC) fails to deduct and account for PAYE tax and NICs due under the IR35 legislation, liability to pay tax and NICs can be transferred to the worker, onshore agencies or end-clients. Action to recover employer's NICs not paid by an offshore PSC could also include action against any assets of that company located in the UK.

HMRC has powers to obtain details of payments to offshore companies from the records of clients and agencies.

Client is non-UK resident

If IR35 applies, the tax and National Insurance position will depend on the tax residence status of the worker, the client and the location in which the duties of the contract are carried out.

You can work out your tax residence status in the HMRC guidance on [residence and how it affects your tax](#).

Relief for double taxation due to international work

If work is carried out overseas then the company may be liable to foreign tax on its profits. A foreign tax authority may also withhold tax in respect of payments made to the company. Relief for any such foreign tax credits is normally given against the company's UK tax liability.

If the company doesn't have sufficient UK tax liability to give full effect any such credit, but the worker does, then the balance may be allowed against the tax liability on the IR35 deemed employment payment.

Tax relief can only be given where it's possible to directly link the work in the overseas country and the deemed employment payment. Relief can't be given against the National Insurance contributions liability.

If it's considered that tax relief should be given in this way a claim should be made to HMRC.

IR35 and office-holders

There's no statutory definition of an office-holder. The position of an 'office' has been established by case law.

According to case law, an 'office' is indicated by:

- an existence independent from the person who fills it; eg it goes on and has been or will be filled in succession by successive holders - it need not be permanent or have a prolonged existence, but it generally lasts longer than the tenure of one holder
- the owing of its existence to a constituent instrument such as a charter, statute, declaration of trust or a contract (other than a contract of personal service)
- an office can also be created by custom - but if there's no written authority there must be a long-standing practice or unwritten constitution which makes the existence of the office clear

Examples of officeholders

A director of a company is an office holder because the Companies Act requires a company to have a board of directors. There's no statutory definition of a 'director' but the term includes executive, non-executive and nominee directors.

A Returning Officer holds an office because the duties and the 'post' is established by law.

Other examples can include a:

- clergyman
- coroner
- chairperson or member of a Rent Tribunal
- VAT Tribunal member

Examples of non-officeholders

While a local authority has a statutory duty to collect refuse, a dustman doesn't hold an office.

The post of manager of a factory or a head of division in an organisation isn't an office because such a post will normally only exist as long as the organisation wishes. It won't have the independent existence or endurance required to establish it as an office.

How IR35 applies to officeholders

IR35 will apply when an individual's services are supplied to a client through an intermediary as:

- an office-holder of the client
- the circumstances are such that they would be regarded as an office-holder of the client if their services had been provided under a contract directly between themselves and the client

The IR35 NICs legislation has always applied to all office-holders. However, before 6 April 2013, the IR35 tax legislation generally only applied to office-holders if they would also have been regarded as an employee if engaged directly by the client.

The IR35 rules don't apply:

- simply because a worker is a director of their own personal service company
- just because their job title refers to them as an 'officer' but they don't actually hold an office
- when a company engages another firm to provide services (such as auditor) and there's no requirement for an individual's personal services

Advice for organisations engaging office-holders

A client should first determine whether they themselves are liable to operate PAYE and pay tax and NICs on the earnings of workers engaged as office-holders.

This will always be the case when the contract is directly between the worker and the client. In these circumstances, simply paying a third party (such as an employment business, recruitment agency, limited company or even a relative) for the worker's services does not necessarily alter the nature of the payment. In such circumstances, the client should operate PAYE and subject the worker's earnings and benefits to tax and NICs in the normal way.

Employing a spouse or a relative

If your company or partnership employs your spouse, civil partner or a relative, tax and NICs should be paid and accounted for by your company or partnership in the normal way.

Spouse or relative also works through your limited company or partnership

If your spouse or relative also works for clients through your company or partnership on contracts that are affected by IR35, then you should work out a deemed employment payment for them too. How to work out deemed employment payments for 2 people is explained in '[IR35 deemed employment payment: how to calculate and pay](#)'.

IR35 and the Construction Industry Scheme

It's possible for a subcontractor working in the construction industry through a limited company or partnership to come within both the IR35 legislation and the [Construction Industry Scheme \(CIS\)](#). This can happen where they would be regarded as an employee of the client if there was no limited company or partnership between them.

Special rules apply to prevent tax and NICs being paid on the same amount of earnings twice within the CIS and IR35 schemes.

IR35 and VAT

IR35 legislation doesn't affect the operation of VAT.

Fees charged by a limited company or partnership for providing personal services remain subject to VAT, even when these services fall squarely within the IR35 rules. This is because it's still the company that is contracting to provide services to its clients and as such the supply remains within the VAT regime. VAT is charged as appropriate on any supplies and input tax recovery is subject to the normal rules.

IR35 applied but you didn't operate it

If IR35 applied to previous contracts that you worked on but your company didn't operate IR35 you should disclose this immediately.

If HMRC find out that IR35 hasn't been correctly applied in respect of a particular engagement, tax and NICs will be due with relevant interest.

Penalties are more severe if it can be proved that you've knowingly ignored the legislation.

Go to '[IR35: enquiries by HM Revenue and Customs](#)' to find out more.

Impact of ignoring IR35

There can be significant impacts to ignoring IR35. Interest and penalties may be charged on any additional tax and NICs due as a result of an HMRC enquiry into your situation.

It's your duty, as a director of your limited company or a member of your partnership, to ensure compliance with all relevant legislation, and take responsibility for determining whether IR35 is relevant to you or not. If you fall within IR35 and don't apply the legislation, there's significant risk that HMRC will discover this during an enquiry.

When IR35 doesn't apply to an engagement

You don't need to take any further steps if IR35 doesn't apply to any of your engagements.

However, you're advised to continue keeping clear and relevant records of the terms and conditions of all your work engagements going back at least 3 years. This makes any future HMRC enquiry easier to answer and complete.

If your contract terms change or you start a new engagement, you must always reassess whether IR35 will apply. You can find guidance on this in ['How to work out if IR35 affects you'](#).

4 IR35 deemed employment payment: how to calculate and pay

How to calculate the IR35 deemed employment payment and pay HM Revenue and Customs any tax and National Insurance contributions due.

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[The deemed employment payment](#)

[How to calculate](#)

[How to pay the tax and National Insurance due](#)

[How to account for the IR35 deemed payment, tax and National Insurance](#)

[More than one worker under the same contract – how you calculate](#)

[Expenses and other allowances to include](#)

The deemed employment payment

When IR35 applies to a work engagement, the earnings of your intermediary (your personal service company, limited company or partnership) for that engagement are deemed to be the income of the worker. This is done by calculating a deemed employment payment.

For National Insurance purposes, this is also known as the 'Worker's Attributable Earnings'. The term 'deemed employment payment' is used to refer to both in this guide.

The deemed employment payment is usually regarded as having been paid on 5 April at the end of the tax year.

The calculation starts with the amount the intermediary receives from client(s) for all relevant engagements. There are various additions and deductions to calculate the deemed employment payment. The intermediary needs to pay Income Tax and Class 1 National Insurance on the deemed employment payment.

How to calculate

Quick calculation:

Step 1. Work out how much your intermediary (your limited company or partnership) received in the tax year from engagements that IR35 applies to (include all payment and benefits)

Step 2. Work out how much your intermediary paid you as employment income (on which Income Tax and NICs was deducted and paid to HMRC)

If the figure from Step 1 is:

- greater than the figure from Step 2 then you need to do a deemed employment payment calculation
- less than the figure from Step 2, then you don't need to complete the deemed employment payment calculation as there's no further Income Tax and NICs to be paid on the worker's deemed employment income

Calculator Tool

You can download the HMRC ['Deemed Employment Payment Calculator'](#) to work out the full calculation.

HMRC doesn't identify who downloads this calculator and can't see whether figures have been input or not.

If you'd prefer to calculate the payment yourself manually you can follow the steps of the manual calculation in the [HMRC Employment Status Manual](#).

How to pay the tax and National Insurance due

Go to the '[Employers further guide to PAYE and National Insurance contributions](#)' (CWG2) to work out how much tax and NICs needs to be paid on the deemed employment payment.

How to account for the IR35 deemed payment, tax and National Insurance

Returns and payments to HMRC

You should [account for salary payments, the deemed employment payment and any tax and NICs due](#) in the normal way.

You should report salary payments made by the company to the worker during the year on a Full Payment submission (FPS) on or before the time of payment. If no payment is made in a period then return an Employer Payment summary (EPS).

HMRC guidance on [payroll summaries you need to report to HMRC](#).

The deemed employment payment should be reported on an FPS on or before 5 April. The normal end of year payment rules apply to PAYE and NICs due on the deemed payment.

You don't have to identify the deemed employment payment and any tax and NICs due on it separately. On the last FPS or EPS of the tax year you should declare that this is the final return of the year and the service company question should be answered. Employers who have operated IR35 should answer this question positively to alert HMRC that the scheme falls in to the special arrangements for IR35.

Also include the deemed employment payment on the P60 form which your limited company or partnership must issue to employees by 31 May after the end of the tax year.

If you can't accurately calculate the deemed employment payment by the end of the tax year, your intermediary will have until the following 31 January to submit final figures and pay any tax and NICs due provided:

- a provisional calculation of the deemed employment payment is reported on an FPS on or before 5 April
- the appropriate payment of tax and NICs is made on that provisional return
- the final return in the tax year clearly shows the IR35 service company legislation applies
- the final figures for the deemed employment payment are reported on an Earlier Year Update (EYU) submitted on or before the 31 January following the end of the tax year
- any balance of tax and NICs based on the final figures is paid on or before 31 January following the end of the tax year

In these circumstances, interest will be due on the balancing payment but no late payment penalty will be due. This concession on penalties will be reviewed annually and notice will be given if it is to be withdrawn.

Self Assessment returns

The deemed employment payment is treated as your employment income from your company or partnership. You should include it with any other employment income on your Self-Assessment tax return. The tax and NICs is treated in exactly the same way as other tax or NICs paid under PAYE.

The form you fill in depends on whether you're a partner or director of your company. For more information, go to the [HMRC guidance on tax returns if you're self-employed or in a partnership](#).

If you receive a salary from your limited company or partnership, your intermediary will need to give you a P60 form. The pay, tax and NICs details on the P60 given to you by your company or partnership should include the deemed employment payment and tax and NICs paid on it - you don't need to enter the figures separately on the employment page. Enter the total P60 pay, tax and NICs figures in the relevant boxes.

If only a provisional amount of tax has been paid when you get your P60, you should receive a revised one when the correct deemed employment payment is calculated and total tax and NICs accounted for. In such a case, you should use the pay, tax and NICs figures on the revised P60.

On [form SA100 Tax Return](#), you should make sure you answer the question asking if you provide your personal services through a services company.

Company or partnership accounts and Corporation Tax

In calculating Corporation Tax liability, your company or partnership may deduct the amount of the deemed employment payment and any Class 1 employer's NICs due on it. This deduction in the accounts is only allowed in calculating the taxable profits for the accounting period in which the deemed payment is treated as paid.

It doesn't affect your company's or partnership's tax computations for other purposes, which should only show any salary payments it has actually paid.

More than one worker under the same contract – how you calculate

A limited company or partnership may supply the services of more than 1 worker to a client under the same contract. As a result of this a deemed employment payment will need to be calculated separately for each worker.

If a client makes a single payment for 2 or more workers to a limited company or partnership the income received must be split proportionally.

Any allocation of income should be made on a just and reasonable basis. This basis will depend on the facts and circumstances.

For example, where each worker has a daily rate it should be straightforward to allocate the income from the contract to each worker.

Where the amount received by the limited company or partnership includes money for other matters, this doesn't need to be allocated to a worker. For example, where a limited company or partnership is reimbursed for expenditure incurred on behalf of the client.

Expenses and other allowances to include

The 5% expenses allowance

The deemed employment calculation allows a flat rate 5% reduction from the total IR35 income received by your limited company or partnership. This allows for the general expense of running a business, such as training costs and the cost of looking for contracts. There's no restriction on the use of this allowance. You're not required to demonstrate expenditure - the 5% deduction will be allowed in all cases.

Other expenses

The deemed employment calculation also allows a deduction for the actual amount of certain expenses paid by your company or partnership in the year.

These are expenses which the worker could have claimed as a deduction under the normal rules if they had been directly employed by the client and the expenses had been met from their earnings. They include expenses met by the worker and reimbursed by your limited company or met by the worker for a partnership in relation to the engagement.

A deduction for the same expenses can only be given in the deemed employment payment calculation once.

Travel expenses

The IR35 rules use the same rules about travel expenses as those that determine the expenses deductions available to employees.

IR35 legislation treats income earned from relevant engagements as if it were earned from a single continuing employment with your limited company or partnership. The rules for travel expenses are applied on this basis when working out whether a particular location is a temporary or permanent workplace.

The limited company or partnership through which the worker works is the employer of that worker. The worker is not the employee of his or her client. The treatment of travel and subsistence for workers affected by IR35 is no different from those of other employees.

You can find guidance on the application of the travel rules for IR35-affected workers and all others in HMRC publication [490: Employee travel - A tax and NICs guide](#). This includes guidance on company cars.

An example of how travel rules work is:

A computer contractor provides their services through their own limited company. They've a series of contracts with different clients around the country and they regularly travel from home to work at the premises of the company's clients. As long as the contractor doesn't expect to spend more than 40% of their working time at any one site they're entitled to a deduction for all journeys from home to the client's premises. If they spend more than 40% of their time at a single site, but the engagement isn't expected to last more than 2 years and it doesn't, a deduction for travel costs will also be available.

Training expenses

The 5% expenses allowance was introduced to cover such expenses as training costs. There is no further deduction for training expenses allowed in the deemed employment calculation.

When a contract straddles the end of a tax year

Relief for the expense should be given by reference to the date when the limited company or partnership meets the liability. This is the date when the bill is paid. Therefore there should be no need to split any expenses over tax years.

Capital allowances

A deduction for capital allowances is only allowed where the plant or machinery bought is necessary for the performance of the relevant work engagement duties

This means that relief will only be given if the duties of the engagement meant that your limited company or partnership had to provide the equipment in question. If the company purchases the equipment out of choice then no deduction will be given.

If during the tax year there is a mixture of qualifying and non-qualifying use, you should allocate any capital allowance claim on a just and reasonable basis. This allocation should normally be by reference to the actual use in the year. Non-qualifying use is where the asset is used for private use on contracts that aren't covered by the IR35 rules or on IR35 contracts where the employment income rules aren't satisfied.

Nothing in the legislation affects the capital expenditure that a limited company or partnership affected by IR35 can make. You're free to make whatever purchases you want but relief will only be given by:

- the 5% expense allowance
- capital allowances where expenses and relief would be given if the worker had been working for the client directly

5 IR35: contracts

How HMRC use contracts to assess whether IR35 applies and how the Contract Review Service can help you.

Section contents

[Overview](#)

[What is a third party contract and why it's important](#)

[HMRC IR35 Contract Review Service](#)

["IR35-proof" contracts](#)

[When contracts change](#)

Overview

IR35 applies where a worker's personal services are supplied to a client through an intermediary. The intermediary can be a limited company (such as a personal service company), a partnership or an individual.

For IR35 purposes, HMRC look at the relationship between the worker and the client and consider what that would be if there were no intermediary involved in the arrangement.

HMRC will review the contract(s) that govern the relationship between the worker and the client. It's important to consider the actual working relationship, rather than just what's written in the contract. There are special rules if you're providing your services to the client as an office-holder or to perform the duties of an office-holder.

Where you have provided your personal services through an intermediary, HMRC will look at the written contract between the intermediary and the client to see if the terms and conditions show whether it falls within IR35. If there is an employment business or agency involved, HMRC will look at the written contract between the agency and the intermediary, and also the written contract between the agency and the client.

HMRC will also look at how the terms and conditions of the contracts are put into practice to see if they accurately reflect the reality of the way in which you're working.

HMRC will examine any evidence you have to support the written contractual terms and conditions. They'll consider all relevant contracts, supporting documents and evidence. This includes any contracts between the client and any agency or employment business involved in the arrangements. For IR35 purposes, these are known as third party contracts.

What is a third party contract and why it's important

A third party contract is a contract that you're not directly a party to, eg if you have a service company to provide your services and that service company uses an agency to find clients, then the contract between the agency and the client will be a third party contract. It's also known as an Upper Level Contract.

The way in which you work for your client determines whether or not a particular engagement falls within IR35. The third party contract is important because it details the client's expectations of you as the worker.

If you're unable to provide third party contracts then you should ask the relevant party to send a copy direct to HMRC, noting on whose behalf it's been sent and why. HMRC won't share this written contract with other HMRC or government business areas unless it's for legal reasons eg in a Tax Tribunal.

The right to substitution

A 'right to substitution' clause in your contract will only be accepted by HMRC if it is genuine.

HMRC doesn't accept that the right exists if the client's permission must be obtained before sending a substitute.

A right of substitution is only likely to exist when you have the right to hire and pay other people to work for you during an engagement. This is dependent on the client not minding who carries out the work, provided they're suitably qualified and experienced.

If the client only needs to be notified of the substitute for security reasons, eg to obtain a security pass, this won't affect the validity of the right of substitution clause.

Where the intermediary's contract is not with the client but with an agency or employment business and there's a claimed right of substitution, HMRC will normally require a copy of the written contract between the agency or employment business and the client. If you're unable to get access to that contract you should ask the agency to send a copy direct to HMRC.

If this isn't possible you may be asked to provide alternative evidence. This can be a letter from the client confirming they have agreed that your company or partnership may provide a substitute worker to carry out the work. They should confirm that it doesn't matter which worker is provided on a day to day basis over the course of the whole contract.

HMRC IR35 Contract Review Service

If you'd like an opinion from HMRC about your current contract and work situation, you can use HMRC's free and confidential [IR35 Contract Review Service](#).

“IR35-proof” contracts

There's no such thing as an “IR35-proof contract”. This is because HMRC won't just look at what's written in the contract. They will look at the effective working relationship between you and the client.

Each written contract will only be accepted as valid evidence if it accurately reflects the individual circumstances of the work engagement.

When contracts change

IR35 applies on a contract-by-contract basis, so the full terms of each engagement must be assessed against the IR35 legislation. If a contract changes or any terms or conditions are varied, you must reassess the position to see if IR35 applies.

To help you decide if IR35 applies to your contract, see '[How to work out if IR35 affects you](#)'.

6 IR35: enquiries by HM Revenue and Customs

What happens in an IR35 enquiry by HMRC and what you need to do.

Section contents

[Overview](#)

[How HMRC decides if they will investigate](#)

[What happens in an IR35 enquiry](#)

[What if IR35 applied but wasn't operated in the past](#)

[Penalties and sanctions](#)

Overview

This guide explains how HMRC decides if they will open an enquiry into IR35, how they will carry out the investigation, what you need to do, and how you can appeal.

How HMRC decides if they will investigate

HMRC uses a risk-based approach at each stage of their enquiries. Customers are assessed as either:

- low risk
- medium risk
- high risk

If you fall into the medium or high risk brackets you're likely to be the subject of an HMRC enquiry.

Where an enquiry is ongoing, HMRC accepts that facts may emerge at any stage to demonstrate that IR35 doesn't apply.

How to assess your risk of an IR35 enquiry

You can self-assess your risk by using the [HMRC business entity tests and scenarios](#).

These were created with support from the [IR35 Forum](#) to provide more certainty to companies and businesses concerned about their risk of being in the IR35 legislation.

If the test places you in the low risk band this result can help resolve an IR35 enquiry. If asked, you should show HMRC your evidence for this test result.

If you demonstrate to HMRC's satisfaction that you're outside IR35 or in the low risk band, then they'll close their IR35 enquiry. HMRC won't check again whether IR35 applies to you for the next 3 years as long as:

- the information you've given HMRC is accurate
- your circumstances - and in particular your working arrangements - don't change in that time

What happens in an IR35 enquiry

Opening letter of enquiry

When an enquiry is opened into your company or business, you'll get a letter from HMRC; sometimes headed 'Check of employer records'.

The letter will usually mention IR35 specifically and will ask you to:

- explain why you've decided IR35 doesn't apply to you
- give a breakdown of your limited company or partnership's income for a particular year
- provide copies of all your written contracts for work during the specified year

If you respond with adequate evidence to show you're not within IR35, HMRC will close the enquiry. If after examining the written contracts HMRC think that IR35 may apply, they'll send another letter asking for a face-to-face meeting with you, as the director of your company or as a member of your partnership.

Face-to-face meeting

By accepting HMRC's invitation for a face-to-face meeting:

- the enquiry can usually be concluded more quickly
- questions from HMRC can be answered immediately in the meeting
- you have the opportunity to talk to HMRC, clarify exactly what IR35 is and means, and ask any questions that you have

Correspondence

If you don't accept HMRC's invitation for a face-to-face meeting, HMRC will carry on with its enquiry by writing to you.

If necessary HMRC will use [Schedule 36 notices](#) to obtain relevant information for their enquiry from you.

Issuing an opinion

Once HMRC has concluded its enquiry, they will issue you with an opinion.

If you disagree with this opinion, you have the right to object and explain why. At all stages of the enquiry, HMRC will consider any evidence you give them. If HMRC doesn't agree with your objection, they'll issue a decision. You have the right to formally appeal against this decision.

You can appeal directly to a Tax Tribunal. Alternatively you can ask for the case to be initially considered by HMRC staff from its reviews and appeals team who won't have been involved in the

case before. If the HMRC reviews and appeals team conclude that IR35 applies, but you don't agree with their decision, you can still then appeal to the Tax Tribunal.

As with other tax appeals, if you don't agree with the Tribunal's decision, then you have the right to ask that the higher Courts consider your appeal.

What if IR35 applied but wasn't operated in the past

If IR35 applied in the past to contracts for the supply of your services but wasn't operated, you should disclose this immediately.

If HMRC find that the IR35 rules haven't been applied when they should have been, HMRC has a duty to ensure that all tax and National Insurance contributions (NICs) and any interest due are paid. They may also apply a penalty - penalties are more severe if it can be proved that you've deliberately ignored the IR35 rules or legislation.

Making a disclosure

If you believe you were within IR35 but haven't applied it correctly in the past, a voluntary disclosure may reduce any penalties you have to pay.

To make a voluntary disclosure contact the IR35 Helpline. Explain your situation and they'll tell you who you should contact to make your disclosure.

[Contact the IR35 Helpline](#)

Penalties and sanctions

If you're found to be within IR35 following an HMRC enquiry, you'll be required to pay HMRC the tax and NICs due, as well as any interest due on these amounts.

If the circumstances of your case show that you didn't exercise reasonable care in completing your tax and NICs returns (including your business/company's final end of year tax and NICs return) you may also have to pay a penalty.

The penalty will be a percentage of the tax and NICs that HMRC would have lost if they hadn't carried out their enquiry. The percentage is decided by looking at your behaviour - including whether or not inaccuracies in information you supplied to HMRC were deliberate or not. The penalties are applied in accordance with [Schedule 24 of the Finance Act 2007](#).