

# IR35 Checklist

## 1. Does your contract provides right of substitution

Right of substitution should be unconditional. If your contract does Provide right of substitution but subject to approval by your client then It will not suggest that contract is outside IR35. Right of substitution is one of the important criteria for determining IR35 Status but not the 100% conclusive evidence. IR35 Status is determined by overall working relationship between a contractor and a client.

## 2. What is the degree of control over the contractor/Are you being controlled

over how to work, what to work on and when to work and which project. If you are working under the direct supervision of manager or a supervisor and they are checking your work regularly or appraising your work in team meetings then it might determine that you are working like an employee. In highly skilled jobs degree of control will be very less therefore it will seem like that they are not IR35 on this basis. However if contractor is working as a part of team and being directed on projects then it might inclined towards IR35.

## 3. What is the degree of your involvement in the company

If you are behaving like an employee for example you regularly attend staff team meetings, you go to staff canteens for meals, you go to staff functions, you are working strongly involved in client business on day to day basis then this all will indicate IR35 status. If you are involved in decision making process like non executive directors then it might fall under IR35 status as well.

## 4. Are you taking any financial risk

If you are not taking any financial risk then contract will be IR35 contract. What is meant by financial risk is that you may be required to correct your mistakes and for that you will not be paid any money. If you are being paid on hourly rate or daily rate basis and there is no such risk then your contract is within IR35. If any provision is mentioned in the contract but actually circumstances suggest that you are not taking any financial risk then you will be IR35.

## 5. Do you have more than one source of income? Do you work for more than one client at a time

If you are working on more than one projects simultaneously and they are equally of important value then it might help to establish that you are acting in the capacity of business and providing services only through intermediary. Though this is not conclusive evidence. It may happen that one contract can be classed as IR35 and other outside IR35. I will continue to insist that IR35 status is never determined by one criteria. It is determined by overall working relationship between a contractor and a client.

## 6. Do you use your own tool and equipment

This is not very significant area but in the bigger picture and determining overall relation this might help in determining IR35 status

## **7. How flexible is your working**

Once again this is not very important criteria but in the overall picture it helps in determining. If you can work from home or your office and not required to work from client premises this will suggest that you are acting as independent business as a contractor.

## **8. Is there any obligation on client or contractor**

This means contractor have full right to refuse the contract and client does not have any obligation to provide you regular work. This is important area and if there is no mutual obligation then it will suggest that contract is not of employment. Though it is not conclusive evidence.

## **9. Are you required to give notice period before terminating the contract**

If you have right to terminate the contract by giving notice period then it will indicate the contract of employment. Your right to terminate the contract should only be for the reasons of breach of contract or trust. Though employer/client can have the right to terminate the contract by giving notice period.

## **10. Have you replaced permanent employee position**

If you have replaced a position which was occupied by permanent employee then it will be nearly impossible to explain to court why it does not fall within IR35. So make sure that when taking any new contract find out if you are replacing any permanent employee

## **11. Are you receiving payments on regular intervals and same amount**

IF you receive payments on regular intervals and of same amounts then it might suggest that you are working like an employee. Though this factor alone cannot decide whether you are IR35 or not.

