



Off-Payroll Working

Guide

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What is Off-Payroll Working?

Off-payroll working is the latest twist on IR35 (The legislation that basically says that if you look like an employee, even though you are a contractor, then you should pay payroll taxes on those monies)

These rules give the end user of contractors two new responsibilities: -

- To assess the IR35 status of contracts
- If caught by IR35 – then to deduct PAYE taxes before making payment

The problem is that the end users do not want those responsibilities – that is one of the prime reasons for using contractors in the first place – no responsibilities.

HMRC would like to eliminate anyone working like an employee but as a contractor i.e in disguised employment - specifically that all new jobs should be advertised and operated as true contractor jobs or true payroll jobs.

Who is subject to Off-payroll Working Rules?

Existing Rules

From April 2017 all contractors working for Government funded organisations have been subject to off-payroll working rules.

New Rules

New rules have been drafted for use from April 2020, They are not yet in law and no detailed guidance has been released on their use.

The new rules extend the scope of off-payroll working and give workers new rights

Extension:-

Off-payroll working is due to extend to all medium and large size organisations,

For companies this is as defined by company law i.e those who pass two of the following three tests

- Over 50 employees (whether this is true employee or included contractors remains to be seen)
- Over £5.1m gross assets
- Over £10.2m turnover

For organisations that are not companies then just the turnover test will be used

New Rights

Contractors must be advised of the IR35 decision made on their contract – by way of a status determination statement (SDS),

The contractor may appeal that determination – with the end client.

HMRC have also extended their own rights to collect that PAYE due from agencies etc in the supply chain if the client or agency above in the chain should have and did not deduct and pay over the relevant PAYE.

How do the rules apply?

Traditional IR35 rules have not gone away, or in fact been changed. So how do they interact with off-payroll working.

If Subject to Off-payroll Working

Your end client determines your IR35 status on each contract.

If adjudged caught, then

- 100% of income is subject to PAYE before receipt by your limited company
- Or you choose an alternative route for working

If adjudged not caught, then you can act as usual.

If Not-Subject to Off-payroll Working

You and your personal service company determine your IR35 status on every contract.

If adjudged caught, then

- 95% of income is subject to PAYE in your limited company
- Or you choose an alternative route for working

If adjudged not caught, then you can act as usual.

Off-payroll Working in Practice

In practice many end users are running scared. Unlike contractors, they do not know about IR35 and they do not want the added responsibility of making IR35 determinations.

Until now there has been no official appeal procedure and HMRC were unlikely to challenge the situation if someone was said to be caught by IR35 when they were not. Hence some organisations have taken the decision to make changes now, before contractors have the right of appeal.

The government had to be seen to follow the new rules so when off-payroll working came in for them, the general rule was no new contracts over 3 months long and default judgment to be caught by IR35. The result was that many contractors left, to work for the private sector. There will be few places to go when the rules are extended

The real danger will be changing half way through a contract – was it always caught by IR35, is a bill for back taxes due?

The aim needs to be to educate end users so that true skills suppliers to projects can operate as in the past. However, in the short term contactors and end users will make their own choices until the systems settles down.



Frequently Asked Questions

What is IR35?

Intermediaries' legislation or 'IR35' as it's commonly known, is a set of anti-avoidance rules that were introduced in April 2000, to prevent disguised employment. It was designed to stop contractors, who worked through their own limited companies, but would otherwise be classified as employees, from gaining the tax benefits associated with working in this way.

Prior to these rules, a worker would resign from his employment on Friday and return on Monday to the same role in the same company but as a contractor. The only difference being he is now employed by a personal service company of which he is a controlling shareholder and director.

By providing services through their own company, the worker could avoid national insurance contributions and minimise his tax liability by paying himself through a combination of salary and dividends. The original employer on the other hand could avoid paying Employer's NI, thus saving 13.8%. IR35 rules were implemented to deter such activities, by removing the tax benefits.

As a contractor it is imperative that you are aware of IR35 legislation, as it affects everyone in the contracting business. In a nutshell, IR35 legislation tries to tax your company income as employment income meaning that almost all of the tax advantages gained will be lost if you fall foul of IR35.

Who is the end User/client?

The contractor is hands on with the end user/client. The end user/client is the one who ultimately benefits from the work of the contractor. A contractor works for a company who supplies their labour on to the next intermediary or agency etc. down the line. The last one in the chain is the end user/client.

What is a PSC?

Many contractors work via their own personal one man service company. This company is known as a personal Service Company – PSC for short.

Who is the fee payer/engager?

In the chain between the contractor and the end user there is one organization that contracts with the personal service company, or umbrella company. This last organisation/agency to pay on invoice is termed the fee payer, or engager. In the absence of the agency, the end client will be the fee-payer.

What is an SDS?

Under the draft new rules, clients will be required to supply to the individual contractors and all intermediaries, a Status Determination Statement (SDS) advising IR35 status and the reasons for coming to that decision.

Can I appeal?

Under current rules there is no right of appeal on IR35 status. Thus, speaking with your client is the best way to understand the reason behind the decision of your client regarding your work status.

However, the draft new rules, include a right of appeal that may be applicable from April 2020 but not before.

Under these new rules the individual contractor can appeal and make representation to the client to assist in determining status. These representations must be considered within 45 days and either a new certificate issued or the old one ratified.

What is CEST?

HMRC have released a Check Employment Status Tool (CEST) for use in determining IR35 status. Unfortunately, like all its predecessors it is flawed. It has been acknowledged that in 15% of cases it cannot make a decision at all. But assessing IR35 status is an art not a science so it would be impossible to do accurately from a question and answer session alone.

HMRC have advised that if you can get it to give you a decision of not caught, with accurate information inputted, then they will stand by that answer – however in a recent court case they tried to throw out such a result as irrelevant.

In all we would not recommend using this tool alone in making status determinations.

However, this does not stop many clients wanting to use this tool to make their decisions.

Who must calculate and pay the PAYE?

If caught by off-payroll working and IR35 then the end client is responsible for calculating your PAYE. They can delegate this down the supply chain to an intermediary, but the PAYE has to be deducted before payment is made to your personal service company.

If not subject to off payroll working, but you have your own limited company, then your company is responsible for calculating and paying over any PAYE taxes due.

If working via an Umbrella company, then they will calculate and deduct all the PAYE taxes necessary.

If you go on the client or agency payroll then the client/agency will calculate and deduct all the PAYE taxes necessary.

Who will be liable for the Tax and NIC if the assessment raised by the client is incorrect?

In the first instance, under off payroll working, the client determines your status. You may challenge this determination after 6th April 2020 at any time.

If you are judged caught when not, then only you are likely to complain, and you have to do this within 45 days, so the taxes may be refunded to you.

If you are judged caught by IR35, now or in the future, then the client is responsible for collecting and paying the tax & NIC. HMRC may collect these taxes from the client or any intermediary/agent down to the fee payer of your PSC.

It is for this reason that clients do not want to continue to pay a PSC. Many private clients are therefore now only offering the options of payroll or an Umbrella solution for future contracts, whereas the public sector have mostly chosen to err on the side of deducting the PAYE taxes today, rather than risk a bill in the future.

How is my income taxed?

If caught by off-payroll working and IR35 then the invoice value, before VAT, is subject to PAYE i.e. deductions of Income Tax & National Insurance, Your end client or an intermediary agency will do this, often including deductions for employers liabilities such as National insurance and the apprenticeship levy.

Please note it is illegal for the agency/end client to deduct Employer's NI and Apprenticeship Levy from the gross pay that has been agreed with you. As per the legislation, the employer costs have to be paid on top of the agreed gross daily/hourly rate.

- There is no scope for any variations such as benefits or expenses – all will be treated as if cash wages.
- Inside your company the only tax that will need to be accounted for is the VAT – although the admin is not so easy.
- Personally, these sums and the deductions count as your personal income etc

If caught by IR35 alone, not off payroll working, but you have your own limited company, then your client pays your invoice as usual, but you then need to calculate your own PAYE liability based on a payroll package cost of 95% of the sums received net of VAT.

- Unlike above, employer's national insurance forms part of the package.
- But because you are in charge of your own payroll package, then there is plenty of scope for employee expenses and benefits in kinds such as pension contributions i.e. it does not have to be just cash.
- Additionally, the 95% can be reduced by your professional liability insurance premiums (but no other business expenses – the 5% allowance is for that).

If you are not caught by IR35, but you have your own limited company, then the invoice value is paid to your company gross and you can choose how and when you take it for personal tax, and in the interim it will pay 19% corporation Tax

If you are working via an umbrella company on the client/agency payroll then standard employment rules apply i.e. you may have been able to choose tax free benefits or had tax free employee expenses, but the rest is taxed as cash wages on receipt

When do the new rules apply?

Under off-payroll, PAYE will be calculated and deducted based on when the services are performed. Hence these new rules affect all services carried on or after 6th April 2020. As per HMRC guidance, any payment made for work carried out prior to 6th April 2020 will not be caught under the off-payroll working rules.

It is therefore recommended that you review all contracts before 5th April 2020.

Am I affected by the reform?

If you are a contractor working for your own PSC or partnership and the end client is large or medium sized then yes you are affected by the reforms. Your end client will need to assess your IR35 status for all services carried out after 6th April 2020.

What is the effect on my income?

If you are caught by IR35 and off payroll working rules, then you will be taxed as if on the payroll at the same fee as at you were receiving as a non IR35 contractor. It is likely that you will then be paying both 13.8% employers and 12% employees' National insurance instead of 7.5% dividend tax. Additionally, you will not have the opportunity to delay/plan payments to yourself, pay other family members, or have benefits in kind etc.

Hence the cost to you will be a minimum of 16% on contracts of value up to £50,000 per annum and 4% to 29% on sums in excess of this, depending on how and when you were taking the money from your company.

Using an umbrella company, you will pay these same extra taxes but they may give you back the opportunity to have benefits in kind e.g. pension payments, for a fee.

Are there any exemptions under the reforms?

The new rules just extend the scope of current rules to new parties.

- If the end client organisation is publicly funded then off-payroll working rules currently apply
- If the end client organisation is medium or large then off-payroll working rules are due to apply from 6th April 2020
- The new rules do not extend to small privately funded end client organisations
- These rules do not extend to the general public as end clients

Can I still contract via my PSC if I am found inside IR35?

Legally yes you can continue to trade via your PSC if caught by IR35. However, if caught by off payroll working rules then your client may not be happy to continue to pay you this way. Therefore, you may have to choose an alternative route to receive your income. Additionally, as under off payroll working, there is no allowance for the cost of running your PSC, no employment rights and little or no scope for benefits then an alternative method of being paid would be more cost effective and tax efficient.

Does the 5% deduction continue to apply if I contract via my Personal Service Company?

If you are caught by IR35 but NOT off payroll working rules, then yes the 5% allowance does still apply, when calculating the deemed wages and associated PAYE due by your PSC. However, if you are caught by IR35 and off payroll working rules then there is no 5% allowance included in the PAYE calculations done by your client or fee payer.

Is there a possibility of retrospective investigation from HMRC if my client now decides I am caught by IR35?

HMRC have said that this law will apply from April 6th 2020, and that it is not retrospective. In their briefing notes however, HMRC has said it will only apply the rules retrospectively in cases of suspected fraud or criminal behaviour. There are lots of reservations regarding this as it still leaves a bit of ambiguity as to what would happen if contractors haven't previously complied with the rules correctly. Therefore you must consider very carefully if you are going to carry on the same contract on a different basis, e.g. previously you assessed the contract as outside IR35 and your client assesses it differently or now puts you on the payroll. This can be a bit of a red flag for HMRC who might open an IR35 investigation and could go back retrospectively up to 6 years. Keeping record of how you arrived at the decision that IR35 didn't apply previously will help justifying your position in case of an enquiry.

I considered I was outside IR35, but my client has determined I am inside. What are my options?

If your current client puts your current contract inside IR35 while so far you've operating as not being caught by the legislation, this can be a red flag for HMRC who might decide to open an IR35 enquiry on your PSC.

You might want to consider one of the following options:

- Appeal the determination – to at least show your disagreement
- Negotiate a new contract, either outside IR35 or with extra cash to cover the extra tax bill
- Move to an umbrella solution
- Move to an employment contract - with new engagement terms
- Terminate the relationship with this client ASAP – before the tax burden is too big

How can I prepare for the changes – what options do I have to mitigate the impact?

As a contractor, you could take the following steps to prepare for the changes:

- Talk to your end-clients and agencies to find out what they are doing to prepare for the changes, i.e. when can you expect to receive your SDS
- Understand the new process, including the SDS (IR35 Status Determination Statement) you will be provided with by the end-client
- Understand what defines your inside or outside IR35 status, i.e. main conditions to be satisfied: Personal Service, Control and MOO (Mutuality of obligation)
- Check your Working Practices against your contract
- Renegotiate your contract
- Consider other models (umbrella, PAYE) if you already know your contract is inside IR35
- Do your research & seek expert advice
- Buy tax investigation cover to protect against enquiry if using limited company.

What do I need to do now?

You need to talk to your clients and agencies etc and find out how they are planning to act. Only when you know if they are going to make dramatic changes will you know the effect on you.

If they did the right thing, then they would review your contract as you have done and deem it outside IR35, and hence you should not have to make any changes. However, as this is very new to them, it is likely that you will have to educate them in IR35, if they are not going to run scared and cancel your contract.

Where can I find more information on the changes?

HMRC are continually updating their details which can be found at

<https://www.gov.uk/government/publications/rules-for-off-payroll-working-from-april-2020>

The Way Forward

If you think Off-payroll working may affect you and your contracts then here are the options:

- Educate your end user that your contract is outside IR35
- Appeal your SDS until you get not caught status
- Lobby for better non IR35 contracts terms
- Change the way you work to be obviously outside IR35
- Look for contracts with smaller organisations
- Go on the payroll for that contract
- Use an Umbrella company
- Take the Off-payroll working PAYE hit for that contract

Conclusion

As a contractor you are in business. All businesses have to adapt to survive, so consider your options and take action now.

If you are truly in business then you should be able to convince everyone accordingly i.e that you are not caught by IR35 so can carry on as normal.

However, if you cannot do so then take a short-term decision option to tide yourself over until they do recognise that you are a true professional, when the panic is over.

If you are not truly in business, then you are a target for the new rules so assess your position carefully, so as not to get a back-tax bill i.e. is payroll a good option or Umbrella safer and better?

Payroll Route

The end user may offer or even insist that you go onto the payroll for the duration of the contract.

Do look carefully at what is on offer as there can be big advantages and disadvantages – and some that your new employer may wish to dodge.

As an employee you are covered by employment rights and should have a contract that advises you of specific terms.

Employers not employees are responsible for supplying insurance, training & equipment etc.

The money is also a big factor to consider – what are you being offered on the payroll?

Advantages of going on the Payroll

- Easy - no admin on your part
- Employment rights e.g Sick pay, maternity pay, holiday pay, redundancy
- Employee benefits – pension contributions etc

Disadvantages of going on the Payroll

- HMRC could consider that you have always been an employee i.e caught by IR35 on previous contracts.
- You are no longer in control of your finances, your time etc.
- Are you allowed to do other work? – for others etc?
- If every contract is a different payroll then you could have lots of disjointed jobs & pensions resulting in an admin nightmare including problems with tax codes, need for a personal tax return etc.

Limited Company Route

A limited company is a type of business structure incorporated at Companies House as a legal person. It is separate from its members and can enter into any contract in its own name. It is responsible for its own actions, finances, and liabilities. It must be registered at Companies House as “Limited by shares” or “Limited by guarantee”.

The money you earn as a contractor goes into the limited company and then you as Director choose when, how and to whom that money is paid out.

Not IR35

If you have contracts that are not caught by IR35 then you have many, many opportunities to save taxes e.g.

- By taking low wages and the rest as dividends
- By paying other family members, as shareholders or staff
- By leaving money in the company for other ventures or a rainy day
- By taking extensive staff benefits such as pension contributions or a company car

IR35 but not Off-Payroll Working

If you are caught by IR35 but not off-payroll working rules, then there are big restrictions as 95% of the contract monies have to come to you as your remuneration package. But, you can choose what forms part of that package, professional indemnity insurance is an allowable cost and you have a 5% allowance to cover the cost of running your company.

IR35 and Off-Payroll Working

If you are caught by IR35 and off-payroll working rules then 100% of the contract monies have to come to your company after deduction of payroll taxes i.e as if paid to you as cash wages. There is little or no opportunity for expenses, payroll benefits, pension contributions or the costs of running your company. VAT still has to be accounted for and all the usual company reporting obligations. Additionally, you get no employment rights that usually accompany PAYE deductions ie. No sick pay or holiday pay rights etc.

Advantages of a Limited Company

- Excellent if your contract is determined to be outside IR35.
- Can come back to it for next contract.
- It can continue to pay ongoing costs, wages, and dividends from reserves.

Disadvantages of a Limited Company

- Clients may not let you continue with this option.
- Not even the costs are covered if you are caught by IR35 and off-payroll working rules.
- If you keep your company any then you have ongoing running costs.
- Possibility of retrospective IR35 enquiry.

Umbrella Company Route

Simply stating using an umbrella company is a simple, risk-free alternative to setting up and managing your own limited company. The Umbrella company acts as an employer for contractors and freelancers who work on fixed term assignments.

The umbrella company engages contractors by way of a contract of employment, offering full employment rights. It then contracts out the services of the contractor to the agency or end client. The umbrella company will then collect the contractor's earnings from the agency or client and pay a salary to the contractor after deducting the umbrella company fee, tax and national insurance.

A contractor who would otherwise be caught by IR35, can easily work via an Umbrella Company. The contractor would neither be a company's director nor have the accountability related to managing a limited company.

A freelancer or contractor will be able to enjoy most of the benefits of permanent employees instead of bearing the cost and difficulty of establishing a limited company. The umbrella company provider would manage all these matters along with tax management. A contractor's job would be to fill the time-sheet and regularly share it with the umbrella company he/she is working for – it is the responsibility of the umbrella company to raise an invoice to the end-clients.

The contractor always remains an employee of the umbrella company for the series of assignments they undertake. Hence there is no administration or paperwork required as everything is dealt by the umbrella company. This structure is also suitable for contractors who are just starting out, expected to contract for a short duration like six months or earning less than £15/hour.

Expenses

In some cases, contractors operating through an umbrella company may be able to claim tax relief on expenses they incur provided they are wholly, exclusively and necessary for fulfilling the duties of employment. The umbrella company will normally assess your eligibility to claim expenses and ask you to keep or submit receipts for each expense claimed.

Following a new legislation by HMRC, post 6th April 2016 no compliant umbrella company will be able to process travel and subsistence expenses as tax free if you are subject to Supervision, Direction and Control (SDC).

There are lot of umbrella companies in the UK, that advertise themselves as compliant when they are not and lure contractors with advertisements like 'approved by HMRC', 'special dispensation with the Inland Revenue' and 'tax-free expenses'. HMRC can always challenge such umbrella companies and you can land up with a huge tax bill.

For the above reasons, it's important to work with a compliant umbrella company. Please contact us to know more about DNS Umbrella, the compliant way to get paid.

Advantages of Joining an Umbrella Company

- Preferred option by many clients under off-payroll working rules.
- Maybe higher income than on the client payroll.
- Better expenses and benefits packages than with own company caught by IR35 under off-payroll working.
- Maybe better expense and benefits packages than on the client payroll.
- Easy to use—just fill in a timesheet and payment details and based on the invoice, the contractor will be paid.

Disadvantages of Joining an Umbrella Company

- Payment subject to pay-as-you-earn (PAYE) tax and National Insurance (NI) contribution whether the contractor is under the purview of IR35 or not.
- The contractor is dependent on the Umbrella Company to collect the money from the client and then make the payment to the contractor.

How to select an Umbrella Company?

Before signing up with an Umbrella Company, it pays to do your own due diligence. Any reputable company should be able to provide you with appropriate documentation to back up their marketing and service claims.

For your peace of mind, here are seven core topics that you should address:

- Is the Umbrella Company UK based, HMRC compliant and properly audited? This will ensure that the company is not part of a tax avoidance scheme.
- Is the employment contract issued by the Umbrella Company HMRC compliant? Does it include the usual benefits – holiday and sick pay, maternity leave, pension provisions and minimum wage?
- Does the company operate an HMRC approved 'expenses dispensation' scheme?
- Do they offer relevant professional insurance cover (Professional Indemnity, Public Liability, and Employers' Liability)?
- How do they charge for the services they offer? Are their charges fixed or a percentage of your earnings? Are they weekly or monthly, gross (before tax) or net (after tax)? Do they charge entry or exit fees related to minimum term commitments? Be sure to establish this to be able to compare like for like.
- How frequently will you get paid? How long is the delay between time sheet submission and payment transfer to your account?
- Finally, what level of service and support does the Umbrella Company provide? After all, you are paying them so you should have easy access and full support for any questions or issues that may arise.

What is my IR35 Status?

Unfortunately, there is no clear definition on what constitutes employment or self-employment, just indicators that should be used to take an overall impression; hence many IR35 cases are referred through the employment cases that developed these indicators. The Ready Mixed Concrete Case (1968) laid the fundamentals for what constitutes employment and it was established that for employment to exist, there must be three conditions:

Personal Service

Is there a requirement for the worker's personal service?

Control

Is there a sufficient degree of control over the worker?

Mutuality of Obligation

Are there mutual obligations of the contract consistent with employment?

Why are these three conditions so important? Because if the answer to any of these questions is 'no', then the contract cannot be of an employment and the worker can be termed as self-employed.

There are various other secondary factors which may be considered when deciding IR35 status but the point to be remembered is if any part of the irreducible minimum is not present, then the relationship simply cannot be one of employer and employee.

IR35 Determination Factors

Here are the factors that should be considered when reviewing IR35 status. IR35 status should never be determined by one criteria alone, it is determined by the overall working relationship between the contractor and the end user. In the case of enquiries your working practices will be examined along with the contract – it is therefore important to ensure your working practices are consistent with those mentioned in the contract and you are running a genuine business.

Personal service & substitution -

There will be no requirement of personal service if a contractor has an unfettered right to substitute or subcontract the services to a third party. This is because unlike employment, where an individual is required to carry out a role; the contractor has the right to send someone else to do the work implying she/he is self-employed.

Control -

Under an employment contract the employee is told what needs to be done, where it needs to be done and how it needs to be done. In a self-employment contract it is reasonable to assume that there will be a job description outlining the services required; where the services need to be performed but if the contractor is told how the services need to be performed then it may indicate employment. So, if the contractor has autonomy over the working methods or how the services are delivered and cannot be moved from task to task as the client's priorities change; then he may be termed as self-employed.

Mutuality of obligation -

Although this is one of the conditions which the Revenue disregards completely, the presence of mutual obligation between the parties is essential for employment to exist. An employee is usually provided with continuous work and is expected to complete the work provided implying MOO exists. If in a contract there is no obligation for the client to offer further work during or after the assignment and the contractor is not obliged to accept further work if offered, it would mean no MOO exists between the client and the contractor indicating self-employment.

In business on own account -

An employee is working for someone else's business, and a self-employed worker is working for his own business. This is a fundamental question for HMRC, but not necessarily so easy to answer for a professional.

In business factors -

So, what indicates that someone is in business? Things that the ordinary employee does not do:-

- Advertising & marketing to get work
- Preparing estimates, quotes, invoices to get paid
- Having a separate business name, phone number, website
- Employing staff to do admin etc.
- Having a separate business premises
- Their own insurance

Financial risk -

Those in business take financial risks e.g. they set costs for their products and services etc. and their profit or loss depends on their capacity to reduce overheads and organize work effectively. An individual who risks his or her own money investing in assets needed for the job and pays their own running costs and overheads is, most probably, self-employed. For a contractor this can be more difficult to demonstrate. 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. A contract may require you to have professional indemnity insurance to cover the consequences of this eventuality.

Basis of payment -

Independent contractors tend to be paid a fixed sum for a job. Employees on the other hand are paid a fixed wage or salary weekly or monthly and often qualify for additional payments such as overtime or a bonus. If you are being paid by the hour or by the day then that is how an employee is paid, according to HMRC. However, it is what you are being paid for that counts. An employee is paid for being there, hence they are paid by the hour. However, a contractor is paid for undertaking a project, and that project could last 10 minutes or 10 years, A contractor could be paid a fixed fee or an hourly/daily rate for their input to that project in that period. Be clear what the project is that is being worked on.

Involvement -

If you are behaving like an employee, for example you regularly attend staff meetings, submit holiday request forms or enjoy staff functions and you are strongly involved in their business on a day to day basis, then this might well indicate IR35 status. In fact, if you are actively involved in the decision-making processes of the company, much like a non-executive director, then this work falls under IR35.

Exclusive service -

If you are working on more than one project simultaneously and they are of equal importance and value, then it might help to establish that you are acting in the capacity of a business. But this is still not conclusive evidence as each contract is assessed separately. However, an exclusive contract that prevents you from doing this, can indicate employment.

Flexible working -

This may be a minor factor but in the overall picture, it helps in determining whether or not you fall outside or inside IR35. Employees are usually expected to work at client premises, at given times and ask for time off for holidays etc. and provide sick notes. A contractor should have the flexibility to determine their own working hours, and if they can choose to work from home then this is a good indicator that IR35 rules do not apply.

Contract terms -

Firstly, contractors negotiate terms, often different for every job. Contracts are often shorter and looser, letting the contractors do the work when, where and how they like. Contractors should be able to do the job how they like, without close supervision. Contractors only get paid for doing the work, achieving or succeeding i.e. no work no pay. There should be no employment terms benefits, or notice period.

Right of dismissal -

In a service contract there is no right to terminate an engagement by giving notice of a specific length, which is a common feature of an employment contract. A service contract usually ends when the task is complete or if the contract is breached.

Equipment -

A self-employed worker is expected to bring his own tools and knowledge to the job. An employee is expected to be provided with all the tools and training required, an IT contractor engaged to undertake a specific project and who works exclusively at home, using his or her own computer equipment will have a strong indicator of self-employment., But a worker who is provided with office space, and computer equipment suggests employment. There are exceptions, for example in the case of health and safety, specialist or expensive equipment, or security, which can make this a minor factor for some contractors.

Intention -

The reality of the relationship matters, it is not enough to call a person "self-employed" if all the terms and conditions of the engagement point towards employment. However, if other factors are neutral, the intention of the parties will then be the deciding factor in employment issues.

Decision Time

Introduction

Matters to consider:-

Who do you work for? – are you or will you be caught by Off-payroll working

What is the attitude of your current or prospective clients? – are they dictating options

What is the position on your current or future contracts? – are they clearly outside IR35 or borderline?

Can you influence IR35 decisions? –made by yourself, friendly bosses or faceless be bureaucrats

Shall you wait it out, make short terms changes or big changes for the long term?

IR35

We recommend that you have an IR35 review before starting any contract or project. That you should update the review of your working practices. Moreover, you should get every new contract reviewed. This will ensure you are compliant with IR35 legislation and provide representations for any appeals.

DNS have a competitive review service – to see terms and book an consultation visit

<https://www.dnsassociates.co.uk/ir35-test>

Limited Company

Do ask for our helpful guide.

Umbrella Company

If choosing an umbrella company then you need to compare what is on the market. Do visit our helpful guide at <https://www.dnsumbrella.co.uk/>

DNS operate an Umbrella Company that we believe offers you all you could want, while being HMRC compliant.

Other Services

DNS Accountants are always here to help. Please ask us about

- Business insurance
- Tax investigation cover
- Tax support
- Self-Assessment Tax returns

About DNS

DNS Accountants is a highly respected, award winning accounting, tax planning and consulting services practice with a national presence across the UK. We have specialist expertise in helping owner managed businesses, freelancers, contractors and construction industry clients.

Since we started in 2005 we have achieved substantial growth with us now servicing thousands of clients across the UK. Our team of highly qualified accountancy professionals are readily available to provide accounting and tax support to our many clients.

Services

Our accountants take full responsibility of all your accounting solutions so that you can easily focus on your core business activities. Our accounting experts have more than 10 years of experience and are experts in resolving all bookkeeping & taxation matters. We are serving many clients on a daily basis and provide them with the best services 24/7. Our services include payroll, filing income tax returns, VAT returns, landlord property tax returns, R&D tax credits, IR35 review etc. Our other services include bank accounts, business insurance, IPSE membership, tax investigation cover, website design & development, offshore services etc. In addition to these services, we also offer cloud accounting software, named "Nomisma" it is a complete solution for all your accounting problems.

Guarantee of Service

We ensure that we provide you a good quality service at an affordable price and guarantee expertise, excellence, responsiveness & confidentiality in our services.

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2017 WINNER

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2018

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SHORTLISTED
2017

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