

NAVIGATING IR35

FOR CANDIDATES

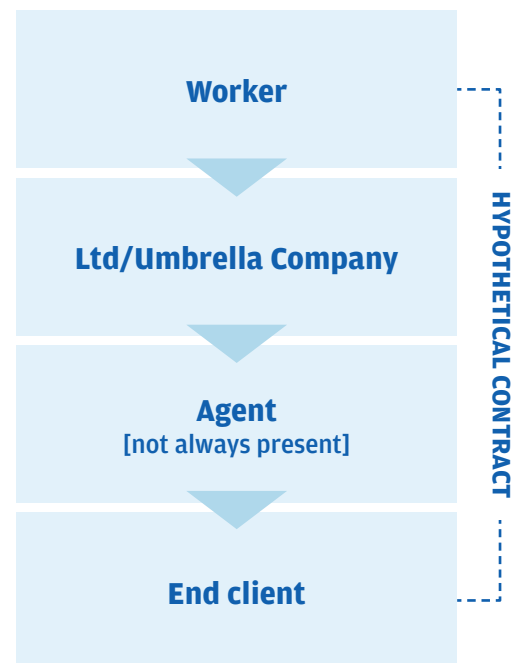
What are the regulations?

IR35 was introduced in 2000 to address concerns relating to Workers who supply their services via an intermediary PSC (Ltd Company) instead of as an employee, and therefore avoid paying employee income tax and national insurance contributions. Whilst many PSCs have operated according to the regulations, some have been found to have been the incorrect tax vehicle for the contract at hand.

Where an assignment is deemed 'inside' IR35, PAYE deductions must be made from the contractor's pay.

Any assignment 'outside' IR35 is classed as a genuine B2B service and is therefore not subject to the same tax treatment as employees.

In their assessment, HMRC look at the 'Hypothetical Contract' between the Worker and the End Client, and how the contract is actually carried out.



Legislation changes

Up until 2017 the legal responsibility for determining whether an engagement is inside or outside IR35 was with the Worker themselves.

With legislation released in April 2017 that responsibility switched to the End Client. This was initially limited to the public sector but will extend to the majority of the private sector from 6th April 2020.

The liability of an incorrect determination, in back taxes and fines, has also been switched from the Worker to the organisation paying the Worker. In many cases this is the Agency unless the Worker is paid directly by the End Client, in which case it sits with them.

Other changes to the legislation in April 2020

Small Company Exemption

The government proposes to exempt small companies from the off-payroll rules. A small company is defined in the Companies Act 2006 as a company which meets two or more of the following criteria:

- A. annual turnover of not more than £10.2 million
- B. balance sheet total of not more than £5.1 million
- C. no more than 50 employees

Right to information on the determination

HMRC have stated that the Worker will have the right to request information on how the End Client has reached their determination on the Worker's status.

How will this affect the Worker?

Going forward all organisations will have a statutory obligation to determine Workers' status through an assessment process. The legislation states that all companies must take 'reasonable care' when assessing, simply classifying every role in a 'blanket approach' will not work. Workers must also ensure all information passed to the agency and End Client is current and accurate.

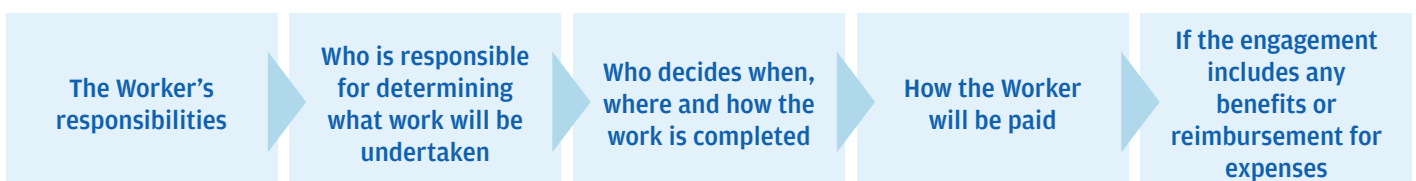
If a non-compliant procedure is followed, the financial penalties can be significant. Therefore, it is important that there is ongoing engagement between all parties throughout the assignment.

We are working with our clients to encourage a meticulous approach and emphasising the importance of these changes and the need to act now.

Check employment status for tax (CEST)

Workers, the End Client and agencies are able to complete the CEST tool to help with the assessment process. HMRC have said that they will stand by CEST outcomes provided the information inputted is accurate. The CEST tool has come under a lot of criticism as it disagrees with some case law and ignores certain factors within IR35 (mutuality of obligation). Importantly it is not mandatory and End Clients may use any assessment method they wish. It's suggested that End Clients should not make blanket decisions such as 'all contractors are inside IR35' or 'all contractors are outside IR35'.

What information does the End Client need to make an assessment?



The best way to deal with IR35 is not to be in a position where you have to prove you are not a 'disguised employee' but to ensure your practices are in line with the criteria for being self-employed.

Am I inside or outside of IR35?

It can be difficult to obtain a clear-cut determination. One reason for this is that the cornerstone of the assessment is based on 'Supervision, Direction and Control' (SDC), which can be relatively subjective.

However, you are able to get an indication of your status by looking at the most commonly tested factors.

If the majority of answers to the following questions about the assignment is 'Yes', the more likely an individual is to fall inside IR35 and therefore be deemed as a 'disguised employee' of the End Client:

- Do I have to do the work myself?
- Do I have to work a set amount of hours?
- Can someone move me from task to task?
- Am I paid by the hour, day, week, or month?
- Can I get overtime pay or bonus payment?
- Can someone tell me at any time what to do, where to carry out the work or when and how to do the work?

If the majority of answers to the following questions about the assignment is 'Yes', the more likely an individual is to fall outside IR35 and be genuinely self-employed:

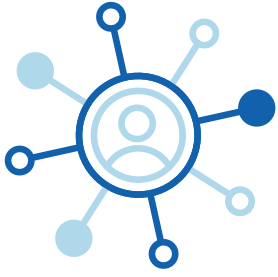
- Can I hire someone to do the work or engage helpers at my own expense?
- Do I risk my own money?
- Do I provide the main items of equipment needed to do my job, not limited to just the small tools that many employees provide for themselves?
- Can I decide what work to do, how and when to do the work and where to provide the services?
- Do I agree to do a job for a fixed price regardless of how long the job may take?
- Do I regularly work for a number of different End Clients?
- Do I have to correct unsatisfactory work in my own time and at my own expense?



What should I do right now?

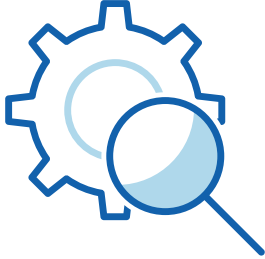
The government is still finalising the detail of the legislation, but it is critical to begin to plan now. This is what we'd recommend...

Your IR35 Journey to Compliance



Engage with Stakeholders

Engage with the End Client and your agency to discuss what you believe your IR35 status to be and provide them with the information to undertake the assessment. Carrington West, along with our supply chain partners, have a huge amount of experience of navigating the legislation changes and can help you and the End Client to further understand IR35 and its implications.



Review your working practices

Understand how your contract and working practices effect your determination.



Obtain a determination

Work with the End Client and your agency to agree upon a determination and clarify or implement appropriate working practices and contractual conditions.



Review

Periodically review your contract and working practices to ensure continued compliance.

What is our experience?

There are few employment agencies who have more experience with IR35 than Carrington West. During 2017 we helped hundreds of contractors and many of our major public sector clients around the UK deal with IR35 changes. If your current agency does not have exposure to the public sector market, you are potentially already at a disadvantage in terms of their knowledge and experience.

How can Carrington West help?

We are currently conducting specific IR35 meetings with our clients across the UK.

The goals of these meetings are:

- To explain the legislation in more detail.
- To work with all parties to understand the current working practices.
- To ensure that thorough assessments are taking place so to reach a fair and personalised determination.

Next steps

Please get in touch with our highly trained and knowledgeable consultants to arrange an initial conversation, request further information or book an IR35 meeting.



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