

What is IR35?

Summary

IR35 is the name commonly used for legislation that was introduced to tackle the perceived problem of 'disguised employment'. A disguised employee is an individual operating as though they are running a business, when in fact they are actually an employee. This enables them to reduce the amount of tax and national insurance paid by both them and their would be employer.

Whilst this is a reasonable concept, the legislation and the application of that legislation has brought with it some significant issues.

The problems

HM Revenue & Customs have taken the view that everyone operating through a so-called "personal service company" is doing so to avoid tax. The reality is that it is often the engagers who insist on a limited company structure.

In addition, the rules are complex and it is very rare for a personal service company to know for sure which side of the line they fall. This uncertainty means that a taxpayer can spend years worrying about an enquiry from HM Revenue & Customs even if they are not actually a disguised employee.

Does it apply to me?

If you provide services through a limited company, partnership, or LLP then this is a question that you need to ask yourself.

The first step in determining this is to discuss your circumstances with an expert. It may be that your situation falls so far outside of the rules that you won't have any concerns around disguised employment. If necessary, you will need to go onto the next step which is a review of your contract(s).

A contract review will be able to provide a good starting point as to your IR35 position. Wherever possible you should get your contract reviewed before you sign it or start providing services in respect of it. It may be possible for you to negotiate different terms and, as a minimum, you will have a better idea of what your risks are before you commit to anything.

The IR35 story doesn't unfortunately end there as a favourable review of your contract doesn't automatically mean that you're outside of IR35. Your actual working practices, and the viewpoint of your end client will all be considered should you have an enquiry. Until that point, though, provided you are providing services in the private sector, it will be your final decision as to whether you consider yourself caught by IR35.

Public sector working

A recent change to IR35 has taken place for those whose end client is a public sector body. Rather than the IR35 status being determined by the personal service company, it is now the end client who determines the status in those circumstances.

This is a controversial move as the end client cannot know the full circumstances of the personal service company and therefore is not in a position to make that decision. In practice it has meant a lot of contractors being declared as caught by IR35 when they weren't previously. It is possible to appeal a decision that you are caught should you have a good case, but the final decision will still rest with the client.

Contact Sam Dale to discuss further:

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