



## IR35

IR35 is to stop disguised employees taking advantage of tax advantages by working under their Personal Services Company (PSC).

From 6<sup>th</sup> April 2021 the liability of tax moves from the contractor to the client.

IR35 applies if:

- A) There is a supply of labour to a public or medium / larger company
- B) There is a supply of labour involving a contractor working under a PSC
- C) There is a supply of labour which falls under IR35

- A) Public sector is inside - includes BBC, Channel 4, TfL, Network Rail, Universities

Private sector IR35 exempt if 2 of the 3 are relevant:

If a client has: Less than 50 employees  
Turnover of less than £10.2m  
Balance sheet of less than £5.1m

- B) IR35 exempt if:

If you are working under PAYE

If you are working under a **trusted** Umbrella under PAYE

If you are a sole trader (however sole traders fall foul of other tax liabilities for the agent)

- C) IR35 exempt if you: (not limited to the following – for guide only)

Avoid:

Control or management of the contractor (start/ finish times or how the work is done)

Integration into the business

Work deemed business as usual

Staff perks (car parking / canteen / xmas parties)

Utilising company kit

Fulfil:

Right to substitution

If the project is Business as Usual it is probably inside IR35

## Process

Client must produce a SDS - Status Determination Statement for each contractor they have working to determine if inside or outside IR35.

Client is responsible for producing a SDS

Client must communicate the SDS to agency & worker with reasons for outcome.



## Liability

The fee payer is liable (previously the contractor was liable)

The agent is liable unless:

Client has failed to communicate a Status Determination Statement SDS to agency or worker

Client has issued an outside SDS and in doing so has failed to take reasonable care

Client has issued an outside SDS and has not given reasons for this decision (within 45 days of asking)

Client directly engages

Client is liable if HMRC considers there is no reasonable prospect to recover tax from the agency in a reasonable time.

If the worker disagrees with the SDS

No right to appeal but has a right to explanation (within 45 days)

## Result

Options            Significant reduction in take home pay by either moving to employed or Umbrella company PAYE (Qualified)

Blanket ban on PSCs by clients

Risks:    Losing contractors  
          Increased costs

## Overview

If a project is deemed to be outside IR35 then the contractor can continue under their Personal Limited Company.

If a project is deemed to be inside IR35 then the contractor will need to work under an umbrella company and pay tax at source.

Result: Increase cost of approx. 25%



## The CEST tool

How can a project be deemed to be outside IR35

### 3 Main elements

Control & Direction	The extent to which a client controls where, when and how the contractor performs their work. Control could include start or finish times, supervision, staff perks associated with permanent employees
Substitution	The right to provide a substitute
Mutuality of Obligation	The client must hire for a specific piece of work, a specific project. There can be no expectation of further work being provided after the initial task expires.

### Other elements

Provision of Equipment	The contractor should use their own equipment for the project
Financial Risk	If the risk lies with the client then this is an indicator of 'employment'
Basis of Payment	The regularity of payment may have influence on IR35 status
Part & Parcel	Does the contractor have access to employee facilities – eg staff social events or receive staff benefits.
Exclusive Service	Does the contractor work for just one client and have the contract renewed many times.

CEST tool: <https://www.tax.service.gov.uk/check-employment-status-for-tax/disclaimer>

## Brookson Legal Solution / Portal

Full Remote IR35 Audit per role

Upload information to produce a SDS via an online portal

Each role will be audited by Brookson Legal with discussion on reasonable changes to working practices to see if border line cases can be moved outside IR35.

SDS outcomes can be downloaded in PDF format

Cost £150 per contractor (per role)

Conspicuous are partnering with Brookson Legal to help all clients produce SDSs and work to best practice when working with contractors within their organisations.

By working with Brookson Legal, you are meeting the HMRC criteria of 'reasonable care' to determine the SDS.

For an introduction and a demo of the Brookson Legal offering, please contact Conspicuous.

<https://www.brooksonlegal.co.uk/>