

## **IR35 SURVIVAL KIT**

At Qdos, we have been defending contractors against IR35 since the legislation was introduced in 2000. A notoriously complex legislation due to its subjective nature, managing your compliance can seem daunting. Please find a range of helpful resources and guidance in this kit to help you get started.

Can't find what you're looking for? We have a range of guides and information on our site, or simply get in touch and a member of the team will assist.

## YOUR SURVIVAL KIT INCLUDES:

---



**KEY FACTS TO REMEMBER**



**HANDLING A HMRC LETTER**



**EVIDENCE CHECKLIST**



**IR35 ENQUIRY WALKTHROUGH**



**DIY CONTRACT REVIEW**



**SURVIVING IR35 REFORM**



**COMMON MYTHS TO AVOID**



**HOW QDOS CAN HELP**



**GLOSSARY OF TERMS**

---

# KEY FACTS TO REMEMBER

1

IR35 is the common term for the Intermediaries Legislation announced in Inland Revenue press release issue number 35 - for which it owes its name.

2

The legislation was introduced to identify and lessen the number of 'disguised employees'. A disguised employee is any individual who performs the role of an employee, but through using an intermediary (i.e. a limited company) pays the lower levels of tax and national insurance contributions that would be expected of a self-employed person.

3

Contractors working via limited companies are not liable to pay National Insurance (NICs) on income taken as dividends. This results in the Treasury receiving less tax each year. IR35 was implemented to ensure each worker pays the appropriate amount of tax.

4

In an enquiry, HMRC can go back up to six years. This means that even after a contract has finished there is still a risk that it could be subject to an enquiry. To be caught following an enquiry can result in paying back tax and NICs on income originally paid as dividends, along with interest and penalties.

5

As of April 6th 2021, it is no longer the contractor's responsibility to either determine their IR35 status or to make the relevant tax and National Insurance deductions for any engagements with medium or large client businesses. IR35 reform will change how IR35 is administered, but not the factors which determine status.

---

---

# EVIDENCE CHECKLIST

To ensure you are paying the correct taxes, you will need to determine your IR35 status.

Take a look at our checklist of what you can do to determine and further support evidencing your position. Even with IR35 reform well on its way, you still need to be able to evidence IR35 status for services provided before 6th April 2021.

EVIDENCE	DESCRIPTION
EXPERT CONTRACT AND WORKING PRACTICES REVIEW	You should be able to demonstrate that you have taken due diligence in confirming your IR35 position. A contract and working practices review from a specialist is the best way to do this.
CONFIRMATION OF ARRANGEMENTS	One of the best forms of evidence in an IR35 enquiry is confirmation of your working practices directly from the end user. Unfortunately many organisations are reluctant to sign documents like this, but it's hugely beneficial where possible.
BUSINESS INSURANCE	As a business, you should carry any necessary insurance policies such as Professional Indemnity and Public Liability, especially if this is required within your contractual agreement. Any written agreements should reflect reality.
COMPANY STATIONERY	Letterheads, business cards and a company website can all help to demonstrate that you are operating like a true business on your own account.
SUPPORTING DOCUMENTATION	ID badges or email lists where you are clearly defined as a contractor, evidence of using a substitute, or any other documentation which may support your position should be kept safe for use in the event of an enquiry.

---

---

# DIY CONTRACT REVIEW

The written contract of any engagement is always one of the first things that HMRC will look at in an enquiry. It is important that you ensure it is as strong as possible from an IR35 perspective. You should always get your contract reviewed by an IR35 expert, but it is also beneficial to ensure you understand the basics of what both HMRC and your IR35 expert will be looking for.

**Remember; the terms of your contract must be a true reflection of your working practices (i.e. the true reality of the arrangement)**

## KEY STATUS INDICATORS

---

### RIGHT OF SUBSTITUTION

There should be a clause in your contract which states that your company can send a replacement contractor should the need ever arise.

You have entered into a business agreement and not one of personal service. Because of this, your company should be able to provide the services using whichever representatives it sees fit.

#### Important points:

- Your company must remain responsible for paying any substitute and for the successful completion of services
  - The agency or end user should only be able to reject a substitute on reasonable grounds i.e. skills, qualification or experience, and this should ideally be set out in the clause
  - Avoid phrases like 'prior written approval' in terms of the end user's acceptance of a substitute
  - If you are named personally in the contract schedule, it would be better if the word 'or agreed replacement' were added afterwards
-

---

## CONTROL

Contracts are often silent on the issue of control. Ideally there will be a clause stating that your company has autonomy over how the services are carried out, but it's also important to look for any negative wording which suggest the opposite.

### Important points:

- Look for any clauses which state that you would be 'supervised' or similarly referenced by the client
- Hours of work and location should be 'agreed upon' between the parties, not dictated by the client
- You should not have set hours like an employee. You should be able to come and go as you see fit to deliver the services contracted
- Avoid any reference to you having a 'line manager' within the client's organisation
- There should not be any clauses which state that you are required to obtain approval for taking time off

## MUTUALITY OF OBLIGATIONS

As an independent contractor there should not be any obligation for either party to offer or provide ongoing work. The project should be clearly defined and any additional services should be agreed in a separate contract or extension.

### Important points:

- Ideally the contract should have a clear end date. If the project turns out to run for longer, the contract should be formally extended with a new schedule and signed by both parties
  - The two parties should have equal notice periods for early termination
  - Any notice period should ideally not exceed 30 days
-

---

## OTHER INDICATORS TO LOOK OUT FOR

---

### FINANCIAL RISK

You should rectify any faults or work deemed unsatisfactory on your own time and at your own cost. You should seek to find that this is reflected by a clause in your contract. You often find this phrased as 'remedial work'.

### INSURANCE

As an independent business you should carry your own business insurances (Professional Indemnity, Public Liability). These are commonly stipulated if you are working through an agency and it's important to ensure that you hold the required levels of cover.

### NON-EXCLUSIVITY

At no point in your contract should you be prevented from providing services to other clients. It is helpful if there is a clause in your contract stating that you are able to carry out concurrent work. Having multiple contracts can be a positive indicator towards being outside IR35.

### EQUIPMENT

You should find in your contract that it specifies provision of your own equipment necessary for the provision of the services. For certain projects however, this may not be possible. Despite this, having this kind of clause included within your contract would be beneficial where allowed.

### Always double check the final contract

Often an agency will send a template or blank contract with the terms and conditions. Always check the final contract once all the details have been finalised. Some project specific information could negatively impact IR35 status.

---

---

# COMMON MYTHS

## **Q: I have been working on the same engagement for over two years, does that mean I'm caught by IR35?**

A: This is one of the most widespread IR35 misconceptions. The truth is that there is no specific time period after which a contractor automatically becomes inside IR35; indeed, many contractors have won IR35 cases where they have been with the same client for far longer than two years. Naturally, the longer an engagement is with one client, the higher the potential IR35 liability would be. HMRC would also look to argue that you had become 'part and parcel' of the organisation. However, you are not automatically inside IR35.

## **Q: My agency said the contract is IR35 friendly. Does this mean I am safely outside IR35?**

A: While your agency may or may not have taken care to ensure the written contract is carefully worded, they might not know what the actual working practices of the engagement will be. Until 6th April 2021, you are responsible for determining your own IR35 status. This means you must demonstrate due diligence and refrain from relying solely on the words of your agent who may only wish to speed up the onboarding process.

## **Q: I have more than one client. Does this mean I am automatically outside of IR35?**

A: While multiple or concurrent contracts are certainly a positive indication that you are a 'genuine' business, each engagement will still be considered individually. In theory, you could be working on two separate contracts at the same time and one could be inside IR35 and the other outside.

If you do have multiple contracts with different clients, you must still ensure that both the contracts and working practices are compliant. Remember, IR35 status is not established by any one factor. Instead think of it as a multitude of factors working together to indicate IR35 status .

---

---

# HANDLING A HMRC LETTER

So, what happens if you receive an IR35 enquiry letter from HMRC? Below is an example of HMRC's standard opening letter, with the specific paragraph relating to IR35. It is important that any response to this is carefully considered and crafted as HMRC will pick up on anything that suggests you are 'inside' IR35.

## What I am asking for

To help me with my check please send me the following documents and information:

- A breakdown of the income of [REDACTED] over the last tax year; that is, the year to [REDACTED]
- Copies of all documentation relevant to the contracts that gave rise to that income.

I will also need to know the nature of the services provided; would you please give a brief description of the work undertaken within each contract.

If the company has dealt with an agency of any kind I realise that you may only have documentation of the arrangements between the company and the agency. In those circumstances I will need to know the names and contact details of all the "end clients"; that is, the clients of the agency for whom work was actually undertaken and from whom the company's payments originated.

Have you considered the possibility of the company being subject to what is commonly referred to as the IR35 legislation? If you have, and have concluded that the company is not subject to that legislation, then please explain to me the basis upon which you arrived at that conclusion. I am asking this to help me be fully aware of and understand any view you may hold on the application of the IR35 legislation.

## What should you do now?

The most valuable piece of advice we can give you here is that you seek professional advice immediately.

In an ideal world, you would provide detailed evidence at this stage of an enquiry in the hope of warding HMRC off as quickly as possible.

---

---

# IR35 ENQUIRY WALKTHROUGH

An IR35 enquiry usually consists of the following four main steps (applies until 6th April 2021):

- The opening letter
- The initial response
- HMRC correspondence and meetings
- The conclusion and appeal

Below we take you through each of these steps in more detail.

Following the 6th April 2021, we expect compliance activity to focus on the end user and its supply chains - particularly in relation to the application of the new rules. HMRC are likely to take sample data and if found incorrect, apply the status across similar roles.

Contractors will, however, not be liable for incorrectly paid tax.

Many contractors have expressed concerns about their status changing due to their client's determination differing from their own and this giving rise to an enquiry into previous tax years. HMRC have confirmed that they will not open enquiries on this basis, however we suggest that contractors still remain cautious.

---

---

**1**

All IR35 enquiries begin with an opening letter from HMRC like the example shown previously. This will usually focus on your company's accounting period. What you should be aware of is that, as referenced earlier, HMRC can go back as far as six years into a limited company's history. We tend to see, however, that in their opening letters HMRC initially concentrate on one or two tax years.

**2**

The second step of any IR35 enquiry is for you, the contractor, to respond to that initial enquiry letter from HMRC. This stage, if mishandled, could prove detrimental to the outcome of your case. We strongly advise that any response to HMRC is only tackled with the guidance of an IR35 professional.

**3**

If a contractor's response fails to satisfy HMRC, then a meeting may be requested. This meeting is usually between two compliance officers and the contractor and aims to establish the working practices. It's important to note that the contractor can politely refuse and request that the enquiry continue by correspondence. HMRC cannot insist on a meeting. If not satisfied by this meeting, they are likely to contact the end client to test the evidence provided.

**4**

HMRC will then make a decision as to whether the contract(s) fall inside or outside of IR35. Should HMRC conclude that a contract is caught by IR35, the contractor has a right of appeal against that decision. The appeal can be progressed to Tax Tribunal. This should be seen as a last resort due to the costs involved. Before considering taking an appeal to tribunal, request an independent review and/or make use of HMRC's Alternative Dispute Resolution (ADR) service.

---

---

# SURVIVING IR35 REFORM

Under the new off-payroll working rules to take effect from 6th April 2021, medium-large end clients will take on the responsibility of determining the IR35 status of their contractors. The fee-payer in each engagement will then be responsible for deducting the relevant tax and National Insurance at source. Depending on the structure of the contractual chain, this responsibility usually sits with either the end client or the recruitment agency in the engagement.

## What you can do

**Open up a Dialogue with Your Agency/End-Client** – Understanding their intentions is the first step. Your tax status won't be your decision anymore, so speaking with your end user/agency is the best way of determining what will happen and how.

**Encourage Your End-Client/Agency to Speak with Qdos** – Whilst it may no longer be your responsibility to assess your status, you can still encourage fair and compliant assessments from your client. We have worked with over 2,200 clients and agencies with this process so far, providing training, consultancy and fair assessment processes.

**Check Your Status** – Whilst we don't recommend using the CEST tool in general, it is likely to be the first port of call for many end clients. Using this tool will give you a heads up of what your result may be (remember that you might have differing opinions on how some of the questions are answered). For the same reasons, you may prefer to have a independent IR35 contract review completed. Doing so will ensure a higher level of accuracy and provide you with evidence should you require.

---

---

# DISPUTING AN SDS RESULT

---

A 'Status Determination Statement' (SDS) is a document that states the IR35 status of a certain engagement based upon the results of an IR35 assessment including the IR35 status result and the reasoning for the conclusion.

It will be the end client's responsibility to produce an SDS under the off-payroll rules following their assessment of your status. The SDS must also be shared directly with the contractor.

If, after receipt of the SDS, any party of the contractual chain disagrees with the outcome, they have the right to appeal. This includes you as a contractor.

This is a client-led process and so you should refer to your client for how to dispute your result. However this will usually be in writing and should include detailed reasoning as to your objection.

The end client who issued the SDS must respond to your dispute within 45 days. Failure to do so may result in the end client becoming liable in the event of compliance activity.

If you do choose to appeal the SDS outcome and after reviewing the appeal, your end client decides that the original SDS still stands then they must provide you with their reasoning for such an outcome.

If, however, the initial SDS is proven to be incorrect, then your end client must provide a new SDS. This new SDS must also take into account the changed result.

---

---

# HOW QDOS CAN HELP



## **IR35 CONTRACT AND WORKING PRACTICE REVIEWS**

Having reviewed over 150,000 contracts and working practices over the past 20+ years, Qdos provide one of the most trusted opinions on IR35 status.



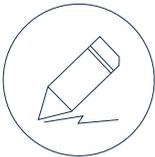
## **IR35 INSURANCE COVER**

From representation to your IR35 liabilities, protect your business against the legislation with award-winning IR35 and contractor insurance experts.



## **ENQUIRY DEFENCE AND CONSULTANCY**

No insurance? No problem. Qdos started out as a tax consultancy and we still provide our services on this basis. From enquiry defence to advice, we are here to support you.



## **STATUS REVIEWS ON BEHALF OF YOUR CLIENT OR AGENCY**

We provide a fair and compliant service for end clients to manage their obligations under the new rules which puts the contractor at the forefront of decisions.

Put your client in touch with Qdos for robust status assessments after April 2021.

---

---

# GLOSSARY OF IR35 TERMS

**Case Law** – refers to law and legislation based and developed using real life scenarios (cases)

**Disguised employee** – a limited company contractor whereby IR35 applies A.K.A being inside IR35

**Dividends** – the payment received by the director(s) and/or shareholder(s) from the company's profits

**End client/user** – the company/organisation for which the contract is ultimately fulfilled

**Inside IR35** – term coined to describe a limited company contractor whereby IR35 applies A.K.A a disguised employee

**Intermediary** – an entity which exists as a means of operation between the worker and engager

**Liabilities** – the amounts of backdated taxes due if caught by the legislation

**Limited company** – a private business where the owners' debt responsibility is restricted to the amount invested

**Outside IR35** – term coined to describe a limited company contractor whereby IR35 does not apply A.K.A a genuine contractor

**Status tests** – the indicators for employment or self-employment

**Working practices** – the ways in which a contractor operates their business in relation to the IR35 status tests/ the day-to-day working relationship between the contractor and end client

---



[www.qdoscontractor.com](http://www.qdoscontractor.com)