

Contractor guide to IR35 case law

Contractor employment status under [IR35 legislation](#) depends on the interpretation of both employment and IR35 case law. It's an important issue, because contractors judged to be inside IR35 can [face significant bills](#) from [HMRC](#) for additional taxes, interest and penalties.

Case law is a moving feast and as new cases are heard in tax tribunals and the courts, the law changes. Often the changes are subtle but on occasion a case will have a profound impact on an area of law, completely changing the rules.

But what is case law and why is it so important to the UK tax tribunal and court system? What should contractors know about IR35 case law, and how can previous judgements affect the employment status of contractors targeted by HMRC?

Case law defined

The definition of case law from the online legal resource [Duhaine](#) is as follows:

"If a rule of law cannot be found in written laws, lawyers will often say that it is a rule to be found in 'case law'. In other words, the rule is not in the statute books but can be found as a principle of law established by a judge in some recorded case.

"A basic principle of the law applies whereby, once a decision (a precedent) on a certain set of facts has been made, the courts will apply that decision in cases which subsequently come before it embodying the same set of facts. A precedent is binding and must be followed."

This means that if one contractor with a particular set of circumstances is found by a tax tribunal or court to be inside IR35, another contractor with very similar circumstances will almost certainly be found inside IR35, as the lessons from the first contractor's case will be applied to the second contractor's.

Case law and HMRC

When investigating a contractor, HMRC relies heavily on existing case law, and might even choose to investigate and push certain cases to tribunals and the courts so that new case law can be tested.

In its leaflet [ES/FS1 \(formerly IR56\)](#), which is designed to help employees and the self-employed determine employment status, HMRC states that it considers case law to be the principles guiding employment status. ES/FS1 says:

"The law for tax, NICs [National Insurance Contributions] and VAT doesn't define employment or self-employment. Generally, when we look at employment status, we apply the principles established by the courts. These principles are generally referred to as case law."

HMRC's regularly updated Employment Status Manual includes a [comprehensive list of relevant cases](#) and case law. The organisation's [Litigation and Settlement Strategy](#) clearly states that HMRC will pursue some cases, regardless of the tax yield, where an important point of tax law is at test.

Case law evolves - generally not to contractors' advantage

Clearly, therefore, contractors who wish to remain outside IR35 need to keep on top of changing IR35 case law.

Case law is not static and changes over time as different interpretations of laws are made. Since the introduction in 2000 of IR35, many cases have been heard in tax tribunals and the courts, generally resulting in rulings that have gradually refined the case law.

HMRC naturally interprets existing case law in favour of finding contractors to be disguised employees who are therefore inside IR35. Often tribunals and courts have been sympathetic to this view, which means that the general evolution of IR35 case law has been against contractors' interests.

This is because where there were previously grey areas, commissioners and judges have ruled one way or the other to settle any ambiguity, thereby creating more case law.

Employment tests and case law

Most IR35 case law is significant, but some is defining. For example, case law from the [Ready Mix Concrete case of 1969](#) is still used as the basis to determine 90% of employment status cases. That case established that for an employment contract to be in place, all three of the following conditions must be satisfied:

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- o There must be evidence of [personal service](#) and [mutuality of obligation](#) (MOO)
- o Sufficient [control](#) must exist to create a master-servant relationship
- o There must be no other terms inconsistent with a contract of employment.

There is further case law to then determine whether there is personal service, mutuality of obligation, control and a range of other factors, plus case law that places a relative weighting on each of the factors under different circumstances.

Don't try this at home

Needless to say, it takes an expert to work it all out, although some contractors still try to square up to the might of HMRC. But this can be likened to contractors' clients buying in expensive and highly skilled contractors and then attempting to complete a project themselves. It makes little sense and the clients would have little chance of success.

Similarly, IR35 is a specialised area of employment law and tax legislation that requires an employment law expert who has a specific track record in the contracting sector and on IR35 cases. That expert will understand how to use case law in legal arguments to influence a ruling in favour of the contractor and will have access to the latest legal information and resources to help build the contractor's case – something few, if any contractors will be able to source.

The results of previous cases where contractors have chosen to go it alone against HMRC have not been encouraging, and in some cases have helped create case law that now negatively impacts on other contractors.

Contractors who are keen to learn about the fundamentals of IR35 case law should consult the [Contractors' Handbook](#). And for the latest news and case law on IR35, they can sign up for the free [ContractorCalculator newsletter](#).

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