

Contractor guide to Mutuality of obligation (MOO) and IR35

Mutuality of obligation, or MOO, is one of the [IR35 key tests](#) of employment used by a tax tribunal or court to establish whether a contractor is in fact a disguised employee and therefore subject to the provisions of [IR35](#).

If found inside IR35 during an investigation by [HMRC](#) or in a subsequent court or tribunal enquiry, contractors potentially face steep bills for additional income tax, National Insurance Contributions (NICs), interest and penalties.

Put into context, mutuality of obligation is generally considered by experts to be a less strong IR35 factor compared to [control](#) and [substitution](#), but is still seen as a significant pointer towards employment if found to apply.

What is mutuality of obligation?

There is a mutuality of obligation between an end-user client and contractor if the client is obliged to provide paid work and the contractor is obliged to accept and complete the work.

This situation is typical of most employer-employee relationships, in which the employee is paid by their employer each week or month and, within the bounds of job descriptions, can be asked to undertake tasks across a spectrum of activities that go beyond their core role. This state of affairs continues until the employee decides to take another job, or is made redundant. One worker could have a career within a single organisation that spans many job roles over many decades.

Genuine [limited company contractors](#) outside IR35 should neither expect nor receive such mutuality of obligation. A contractor's limited company should be engaged on [contract for services basis](#), to perform a specific task for a specific project, and once the project is over the contractor moves on, or may be offered a new project by the client.

[Umbrella company contractors](#) are not affected by mutuality of obligation because, as employees of their umbrella company, they are not affected by IR35.

HMRC's definition of MOO

In its Employment Status Manual, [ESM0543 – Guide to Determining Status](#): mutuality of obligation, HMRC says that:

“There must be an irreducible minimum of mutual obligation for there to be a contract of service. That irreducible minimum is

- o that the engager [client] must be obliged to pay a wage or other remuneration, and
- o that the worker [contractor] must be obliged to provide his or her own work or skill.

However, the irreducible minimum could be present in either a contract of service or a contract for services and therefore, by itself, it will not determine the nature of a contract.”

This means HMRC will investigate a contractor using a contractor limited company to assess mutuality of obligation and IR35 status.

Mutuality and contracts

HMRC continues, saying that there does not need to be a contract in place, or a clause in a contract that explicitly says the client must offer work and the contractor must take it. Crucially, mutuality of obligation can exist without a contract.

For example, a contractor may be working on a project specified in the contract and the client then asks the contractor to do something outside of the scope of the original contract. If the contractor completes the task, this is evidence of mutuality of obligation.

“ There must be an irreducible minimum of mutual obligation for there to be a contract of service ”

HMRC Employment Status Manual

Many IR35 experts agree that case law for establishing mutuality of obligation is weak, especially when compared to the case law existing for other employment tests, such as control and substitution. But HMRC includes the [Larkstar Data IR35 case](#) in its Employment Status Manual as an example of where mutuality of obligation may apply, and so limited company contractors should ensure their contracts and working practices clearly indicate that there is no mutuality of obligation.

Employment tests - MOO in context

Mutuality of obligation is only one indicator of employment, and both case law and [HMRC guidance to its own compliance officers](#) say that there is no single simple answer to determining employment status, and therefore whether IR35 applies.

Equally, each case is separate and will be judged on its own merits. So what may be significant in one employment status test or IR35 case may not be so important in another.

This uncertainty means that best practice is for contractors to reduce the risks of MOO and being caught by IR35 by always having their contracts, contract amendments and contract renewals [reviewed by an expert](#).

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