

## IR35 - the appeal process

### Introduction

If you are unfortunate enough to be investigated by HMRC who reach a decision that you are a 'disguised employee' you can appeal to the commissioners.

### The appeal process

1. HMRC investigate.
2. They give a Notice of Decision – which says whether you are [IR35](#) free or not.
3. The Contractor has 30 days to appeal the Notice of Decision from when it is issued.
4. The IR is then required to look at the situation again.
5. If the contractor still disagrees they can appeal to the Tax Appeal Commissioners.
6. There are two types, both are independent of HMRC.
  - o General Commissioners - three laypersons assisted by a clerk who is usually a solicitor. This is usually an informal tribunal held in private.
  - o Special Commissioners - three full-time commissioners appointed by the Lord Chancellor. This is a more formal tribunal and can be held in public unless a request is upheld not to.

The contractor can elect for either.

7. The contractor will need to be represented unless they really feel confident about conducting their own case. Ideally a good lawyer should represent you, or someone who knows exactly what they are talking about.
8. You can make an application of postponement to pay until after you've had a ruling from the Tax appeal commission. This appeal could be refused though.
9. If you are not happy with the decision of the Commissioners you can then appeal to a court of law. At this point, however, you will have to pay the amount asked for. It will be returned if you win.
10. The appeals are held in the High Court. The appeal, however, can only be heard on a point of law. This is very complex to explain in a brief point. See the site later for further details.
11. The tribunal is the fact-finding body and the appeal court cannot interfere with a decision made based on the facts. Unless the decision was so unreasonable that it points to an error of law.
12. The contractor has 30 days to appeal to the High Court. The clerk of the court then has 56 days to draft the case. Then there are 56 days to make representations based on the draft. There are then a further 28 days for further representations to be made.
13. When the Commissioner has signed the case in its final form the contractor then has 30 days to appeal to the High Court.
14. So, roughly speaking this will take about six months.
15. The decisions in the court are based on 'the balance of probabilities'.
16. To go through this entire process you will need good [case law](#), very good representation, personal strength and conviction, and cash. Good Luck!

If you win the case then all costs are paid for by HMRC.

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