

## IR35 Rules: How to determine if your contract passes IR35

Contractors unwittingly signing a contract for a role that is within [IR35](#) could find themselves paying out [significant amounts of extra tax](#) and National Insurance Contributions, either during the contract or subsequently if they get investigated by [HMRC](#).

However, by getting their [contract reviewed for IR35](#) before signature and in good time to enable negotiation with the agent or client over tricky clauses, nearly all [IR35 issues](#) can be resolved before they become a problem.

ContractorCalculator has an [IR35 Calculator](#) that contractors can use to work out exactly how much less take-home pay they will net if their next contract is inside IR35. This demonstrates that taking a little time and expense to determine whether a contract passes IR35 is well worth the investment.

Also, as a contractor, you can evaluate your IR35 status for free by using the online [IR35 test](#) on ContractorCalculator.

### Always seek professional advice

After more than ten years of [IR35 case law](#) and legal precedents, IR35 has become a highly complex area of employment and tax law that only an expert can properly interpret. So contractors should always seek expert opinion.

When choosing a professional adviser or consultant to provide opinion on a contract, contractors should only use those whose specific expertise is in dealing with IR35 issues in the contracting sector. A high street solicitor or accountant is highly unlikely to have sufficient expert knowledge of the sector.

Contractors should not be concerned if the expert they choose is not a solicitor, as long as they have the right background, experience and track record of supporting contractor clients. There are numerous IR35 consultants who are not 'professionals', but may be former tax inspectors or have other experience that has given them considerable relevant IR35 expertise.

### Classic IR35 'bloopers'

Here are ten points contractors should look out for in their contracts to determine whether they pass IR35:

#### Point 1: Background

Contractors should check whether the advertised position is for a genuine contractor, or is really looking for an employee. If the contract is to cover a role previously fulfilled by an employee, then there is a very good chance that the contract, and the client's expectations, will be for a worker with all the characteristics of an employee, and not a genuine contractor outside of IR35 and in [business on their own account](#). Check the background, or the contract could fail IR35.

#### Point 2: Previous status ruling

HMRC may have left its mark on the client's business already, having investigated previous contractors in specific roles and ruled that these are within IR35. The contractors may have left for a new role outside of IR35 and the client may have re-advertised for a contractor, but won't really want to advertise that the role is inside IR35. This type of IR35 trap is difficult to spot, so it's essential the contractor gets a watertight contract, or it will fail IR35.

#### Point 3: Creating the contract

HMRC has a finely tuned nose for sniffing out contracts that have been cobbled together from various sources in an attempt to save money on legal fees – this is often an instant IR35 fail. A contractor might get a contract like this past an agent or client (who don't have to suffer the IR35 consequences) but tax inspectors see thousands of documents like these and will immediately put a contractor in the frame for IR35. When contractors need to [draft the contract themselves](#), they should get a framework or draft from a reputable source and at the very least get an expert to check it before sending to the agent or client. If they don't they should expect the contract to fail IR35.

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#### Point 4: Control

Supervision and [control](#) are classic tests of employment that will put a contractor inside IR35. Control appears in contracts under the guise of:

- o Start and finish times appearing in the contract

- o Specific days the contractor should work in the contract
- o Including lunch break times and duration in the contract.
- o Specific clauses stating that the client has supervision and control over the contractor

All these clauses are classics found in a contract of employment, but should never appear in a contractor's [business-to-business contract for services](#), otherwise it will be likely to fail IR35 tests. True contractors have control over when and how they work, not the client.

#### Point 5: Substitution

Another classic test of employment is whether the contractor can supply a substitute. If they genuinely can and on occasion actually do, then there is little doubt that the contract is outside IR35. But if there is no [right of substitution](#) clause, or the client clearly indicates in correspondence, such as emails or in other records, that the contractor should never even consider sending in a substitute, then the contract could very probably fail IR35.

#### Point 6: Mutuality of obligation - 'MOO'

Does the contract allow the contractor to take on projects from other clients simultaneously, or can the client veto other contracts? If the contract specifies exclusivity, simply states x hours a week at y rate on an ongoing basis and requires the contractor to take whatever work the client throws at them, then this indicates a '[mutuality of obligation](#)' and fails IR35.

#### Point 7: Financial risks

Regular, guaranteed weekly or monthly work specified in a contract looks more like an employee's contract for wages rather than professional fees paid to a contractor's service company. Ideally, a contractor should invoice when project milestones are completed. If the client requires a weekly invoice, then it should detail work completed as well as hours worked and the rate. Any mistakes in the contract must be rectified in the contractor's own time, and the contract should say this. Guaranteed, fixed regular payments that look like a salary could make the contract fail IR35.

#### Point 8: Equipment

Contractors often find that they are required to use the client's equipment, possibly for safety and security reasons. This is generally not an issue that would make a contract fail IR35 if there is a sound business reason why the contractor cannot use their own equipment. However, contractors should buy their own equipment if practical and use it where possible; where relevant, they should include a contract clause that highlights this point.

#### Point 9: Part and parcel

If a contractor becomes so integrated into the client's organisation that they appear on telephone lists, in organisation charts, get volunteered to become fire marshal or even have staff reporting to them, then they are behaving exactly like an employee and the contract fails IR35. The contractor should distance themselves from the client's corporate structure and only take on responsibilities not specified as part of the project in their contract when this is industry norm, such as, for example, safety responsibilities in construction or working offshore. If a contractor appears to be [part and parcel](#) of the client's business, they can be found to be inside IR35, no matter what their contract says.

#### Point 10: Intentions of the parties

The contract should always clarify the intentions of the contract and client, or agency. Not stating in the contract that the intentions of the client and contractor is one of supplier and customer and not employee and employer is not a definite IR35 fail, but it does not help the contractor's case when HMRC are using the contract to prove they are inside of IR35.

These frequent IR35 fail points demonstrate the importance of using an expert in IR35 to review your contracts and renewals and recommend changes before you sign them. HMRC will be looking for evidence that places your contract inside IR35, so [employ an expert](#) and make sure you don't provide the taxman with the IR35 evidence they need to make you pay tax as a 'disguised employee'.

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- [Contractor guide to Mutuality of obligation \(MOO\) and IR35](#)
- [Contractors must not be 'part and parcel' of clients to avoid IR35](#)

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