

IR35 case law

Introduction

Case law is used to determine the IR35 status of a contractor as either employed (inside IR35) or self-employed (outside IR35).

This article explains what case law is, and provides some guidance for finding further more detail information about specific cases.

What is Case Law?

Definitions from [Duhaime](#):

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.

HMRC, IR35 and case law

From the HMRC leaflet IR56:

"The law for tax and social security legislation does not define 'employment' and 'self-employment'. But, over the years, the Courts have considered this issue and their guidance on whether an individual is an employee or self-employed is known as case law."

How should a contractor use case law?

A contractor would not be wise to try and learn all the IR35 case law, and employment law, with a view to 'doing it on their own'.

Firstly, this would be a huge task costing a great deal of time and is best left in the hands of professional lawyers.

Secondly, as a novice 'lawyer', trying to combat status disputes with HMRC significantly reduces your chance of success.

However, what is useful is for a contractor to have a good overview of the process of mitigating the IR35 risk, and knowing when to get professional help.

The following articles are recommended reading:

- o [When should contractors start considering IR35](#)
- o [How to Determine if Your Contract Passes IR35](#)
- o [Negotiating Your Contract for IR35 Compliance](#)
- o [IR35 insurance – cover yourself with contractors' tax investigation cover](#)

Case law applicable to IR35

This section is more applicable for those wishing to dive into the detail of the case law.

HMRC:

They have published the case law section of their employment status manual on their site.

[ESM7000 – Case Law](#)

Bear in mind that not all these cases are directly applicable to IR35.

Lawspeed:

Overview of background case law, including:

- o Express & Echo Publications v Tanton [1999]
- o Carmichael v National Power Plc [1999]
- o Smith & Chanton Group v Costain Ltd [1999]
- o Chen Yuen v Royal Hong Kong Golf Club [1998]

- o McManus v Griffiths [1997]
- o Hall (Inspector of Taxes) v Lorimer [1994]
- o McMenamin v Diggles [1991]
- o O'Kelly v Trusthouse Forte Plc. [1983]
- o Swan Hellenic Ltd v Secretary of State [1983]
- o Massey v Crown Life Insurance Co. [1978]
- o Ready Mixed Concrete Ltd v. Minister of Pensions & NI [1968]
- o Market Investigations Ltd v Minister of Social Security [1968]

Detail for IR35 Cases, including:

- o Synaptek v Young (2003)
- o LIME IT v Justin (2002)
- o FS Consulting v McCaul (2001)
- o Battersby v Campbell (2001)

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- o [How to Determine if Your Contract Passes IR35](#)
- o [Getting Your Contract Reviewed For IR35](#)
- o [IR35 History](#)
- o [Contractor guide to Mutuality of obligation \(MOO\) and IR35](#)

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