

Mutuality of obligation - IR35

Mutuality of Obligation is a common phrase when dealing with Employment Status disputes and is particularly relevant in the context of [IR35](#). It is often one of the [main factors for failing ir35](#).

The essence in IR35 disputes is to establish whether there is a "contract of service" (i.e. employed) or a "contract for services" (i.e. self employment).

Under normal employment conditions there exists a Mutuality of Obligation, in that the employer is obliged to provide work for the employee, and the employee is obliged to accept it. For an employee there is an expectation of regular employment until they are made redundant or leave on their own accord.

For most contractors this status does not exist, and is one factor towards arguing that the contractor is outside IR35. After an initial contract, the contractor is not obliged to accept another one and is free to go. Neither is the company obliged to offer one or continue paying the contractor. However, where the Contractor regularly works for the same Client on new or "rolling contracts", this can be a pointer used by the Revenue towards employment.

Contractors who operate more as consultants with a multiple client base will be at less risk to IR35, since they regularly accept or refuse work from different companies. This points towards more financial risk, which is another aspect in the judgement of a IR35 status dispute.

The issue of Mutuality of Obligation appears in two such cases, namely O'Kelly v Trusthouse Forte (1983) and Carmichael v National Power (1999). In both cases the question was asked whether there was obligation to offer and an obligation to accept future work. There was not and therefore there was not sufficient mutuality of obligation to form a "contract of service".

The follow clause is typically used in contracts to ensure there is no contract of employment (contract of service):

"The client is not obliged to offer ongoing contracts or work to the company nor is the company obliged to accept such contracts or work if offered"

However, note that this factor alone will not ensure the contractor is definitely outside IR35. The whole picture needs to be viewed. The Revenue can even argue that the contract does not reflect the working practices of the relevant engagement.

Establishing employment status can be notoriously complex, and contractors are advised to seek professional legal advice to have their [contracts reviewed for IR35](#) before entering into any contractual arrangement. For a small fee contractors can often find themselves on the better side of IR35 avoiding the considerable [financial impact of being caught by IR35](#).

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