

LET'S TALK ABOUT IR35



WHAT IS IR35?

The UK's IR35 legislation ensures that individuals providing services to a client through an intermediary (PSC - Personal Service Company) pay the same Tax and National Insurance Contributions as an equivalent employee.

From 6 April 2021, responsibility for determining whether IR35 applies moves from the personal service company (PSC) to the end-client they are working with. It will be the responsibility of the end-client to determine if assignments fall inside or outside IR35.

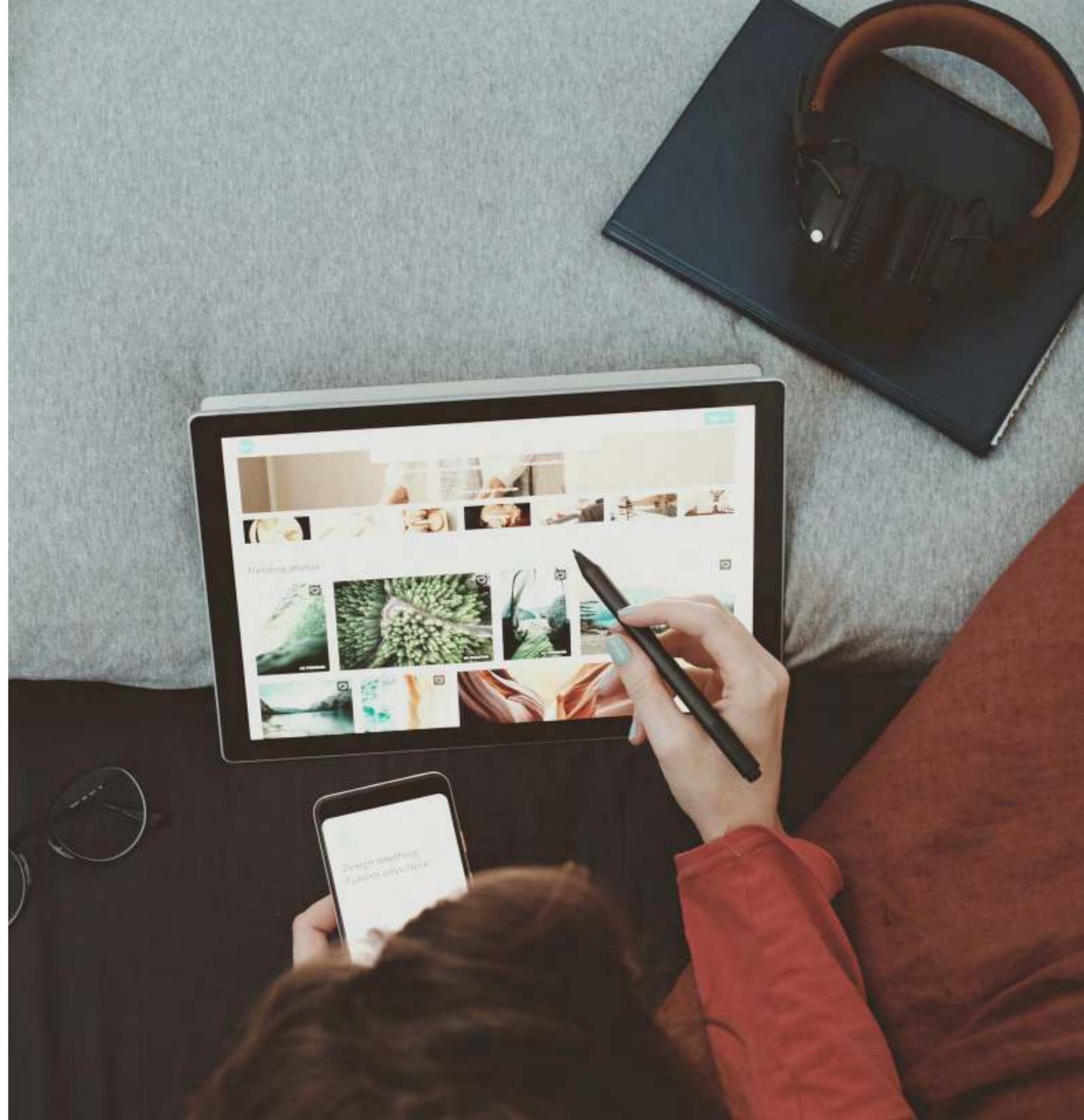
Where IR35 is applicable, the contractor's fees will be subject to PAYE tax and National Insurance contributions.



WHO IS RESPONSIBLE?

Currently, the responsibility lies wholly with the PSC that is providing the services, to ensure the IR35 rules are considered and applied as necessary. From 6th April 2021, it will be the responsibility of the organisation receiving the worker's services (the client) to determine whether the IR35 rules apply.

Where the client determines the worker's assignment falls within the IR35 rules, the responsibility for then applying the correct tax treatment to payments made to the PSC will lie with the organisation paying the PSC, defined as the 'fee payer'.



THE SUPPLY CHAIN

The client is the organisation in the supply chain that is ultimately receiving the worker's services and will be responsible for determining the status of the worker's assignment.

If the client determines the IR35 rules apply, the "fee-payer" is treated as the employer for the purposes of income tax and NIC. The fee-payer is the organisation paying the PSC for the worker's services.

It's important to note the 'client' and the 'fee payer' may not always be the same organisation.

Where the worker is engaged via a recruitment agency, the obligation to deduct PAYE tax and NIC would fall on the agency or organisation in the labour supply chain making the direct payment to the PSC.

Please see an example below, where an individual supplies IT services to a client ("Supply Ltd") through their PSC and via an agency.



"Supply Ltd" is the client and makes payment to the agency. As the end client, "Supply Ltd" is responsible for assessing if the IR35 rules apply and determining the status of the worker's assignment and the agency is responsible for deducting the worker's PAYE tax and NIC at source.

WHAT IS STATUS DETERMINATION?

Organisations can determine if their contractor's assignments are inside IR35 (performing the role of a permanent member of staff) or outside IR35 (self-employed) by looking at a number of criteria.

The criteria includes having little or no supervision, direction or control over the contractor, and the contractor being able to perform the work independently, with the right to use a substitute if required.

The client must use "reasonable care" when making the determination and they must provide reasoning. The person responsible for the decision must be trained, suitably qualified and understand the off-payroll working rules.

HOW CAN I ASSESS THE STATUS OF A WORKER?

HMRC provides an employment status tool, which you can find [here](https://www.gov.uk/guidance/check-employment-status-for-tax), with supporting guidance.

<https://www.gov.uk/guidance/check-employment-status-for-tax>

The CEST (Check Employment Status for Tax) tool was developed to assist with applying the off-payroll rules, allowing organisations to check the employment status of workers and see if HMRC will treat them as employed or self-employed for tax purposes.

WHAT DOES IT MEAN TO BE INSIDE OR OUTSIDE?

INSIDE

Working inside IR35 means the contractor is subject to PAYE (Pay-As-You-Earn) and is expected to pay income tax and national insurance equivalent to their permanent employee counterpart.

OUTSIDE

Working outside of IR35 means the contractor would be operating as a Limited Company and therefore is responsible for determining the correct tax they are required to pay.



WHAT ARE MY OPTIONS IF MY ASSIGNMENT IS DEEMED INSIDE IR35?

Umbrella Companies

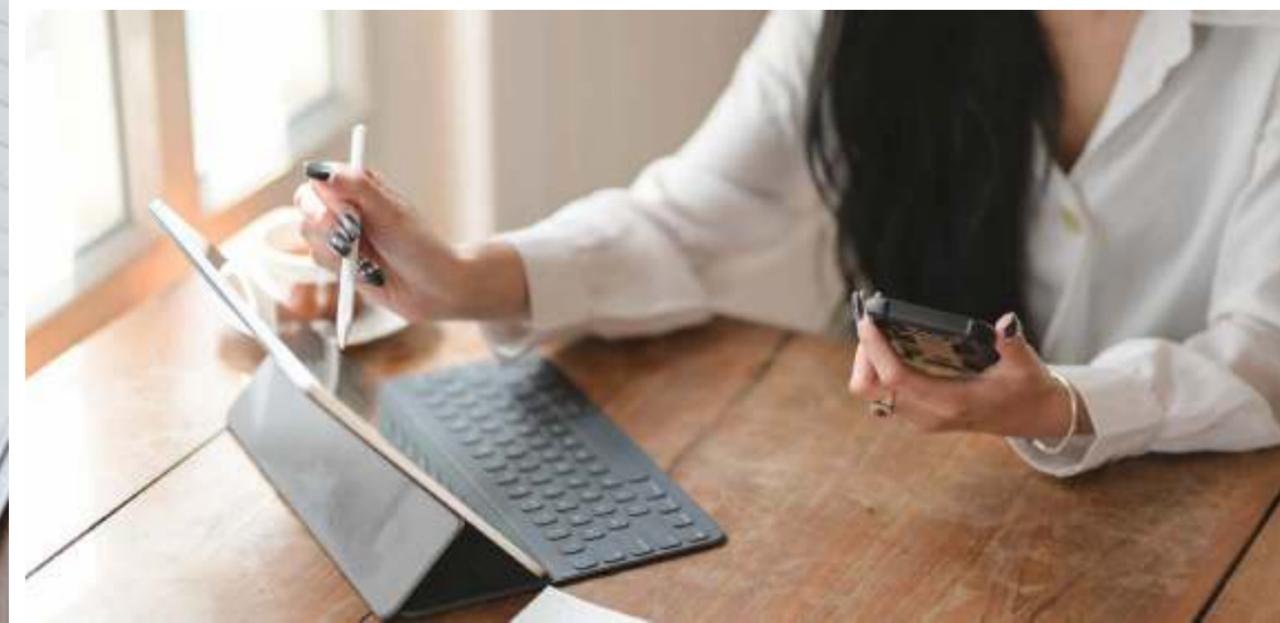
Where an umbrella company employs the worker directly, the off-payroll working rules do not apply. Some umbrella companies do not employ the worker directly and use intermediaries, so ensure that this is checked as you may unwittingly enter into a PSC contract where the off-payroll working rules will apply.

PAYE payroll (agency workers)

Where a recruitment company contracts directly with the worker and operates tax and NICs under agency rules and provides the workers with worker rights, IR35 off-payroll rules do not apply. If you do decide to engage workers directly, AWR (Agency Worker Regulations) apply.

Inside IR35 PSC

You can still run your own Personal Service Company (PSC) or limited company and you can still continue with the assignment inside IR35, you will just need to ensure you are paying the correct tax.



WORKERS FAQ



If I work for multiple clients, does IR35 still apply?

Yes, the rules apply irrespective of number of clients or assignments

Can I appeal my status determination?

Yes you can appeal this. The client must respond within 45 days with either reasoning to support the status or a new status determination statement reaching a different conclusion and withdraw the previous one.

What are the benefits of using an Umbrella solution, instead of my PSC?

By using a compliant umbrella company you would be reducing your risks as you will receive a salary that has already been subject to the correct PAYE Tax and National Insurance deductions.

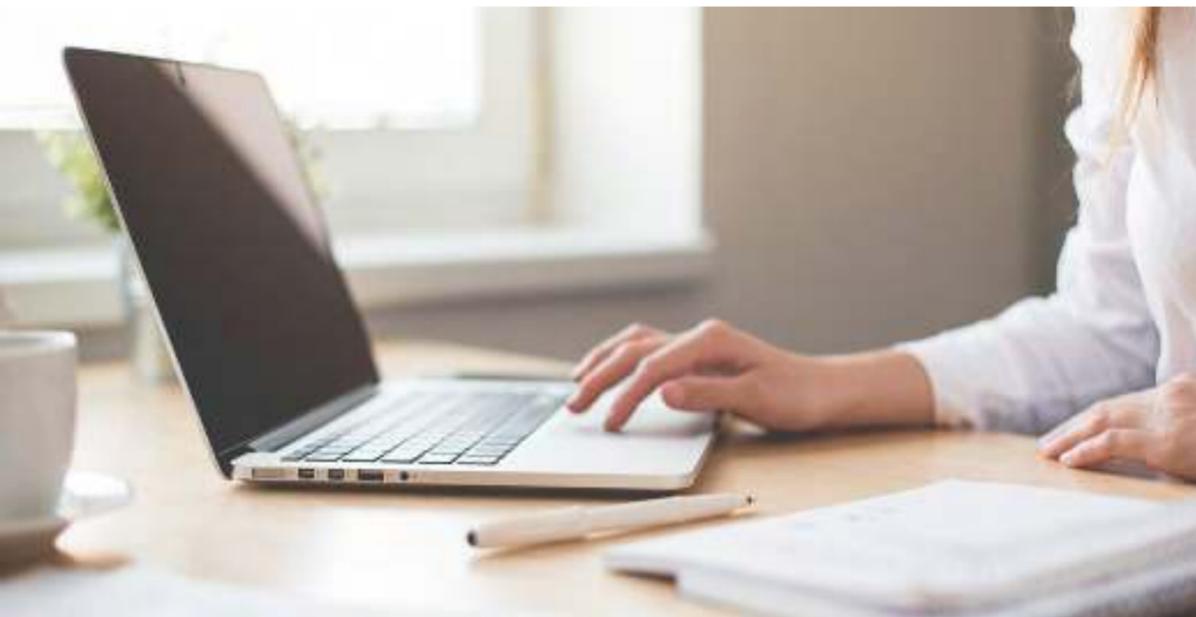
It is therefore unlikely that you would still require the services of an independent accountant because the umbrella company would be making the calculations. You may also save money on business insurances which are often provided by the umbrella company.

Some umbrella companies offer hybrid solutions whereby contractors can swap between their limited company for outside IR35 roles and an umbrella service for inside IR35 roles.

Why do I have to pay Employers NIC as well as PAYE contributions?

You'll need to ensure you pay the correct PAYE tax and National Insurance (NI) for any contract which is inside IR35 because you are, in the eyes of HMRC, an employee.

CLIENT FAQ



Am I responsible for providing status determinations?

If your company meets at least two of the following criteria (an annual turnover of more than £10.2 million, a balance sheet total of more than £5.1 million or more than 50 employees) then yes you will need to decide the employment status of every worker who operates through their own intermediary, even if they are provided through an agency.

How do I determine the status of my workers?

There are some key factors used by HMRC when establishing whether or not an assignment would be deemed to be inside IR35 or not. Some of the key factors are:

- **Control & Direction** - Extent to which a client controls where, when and how an individual performs their work.
- **Right for substitution** - An employee provides his/her personal services to an employer (client), whereas a business would provide its services to a client, rather than the exclusive services of an individual.
- **Mutuality of Obligation** - Who controls the work being undertaken by a contractor and is there an obligation for the employer to offer work and for the worker to accept that work.
- **Financial Risk** - How much financial risk does the individual undertake in their work? If all the risk lies with the client, then this is an indicator of 'employment' rather than 'self-employment'.

Again it's important to remember that the CEST tool (mentioned previously) was developed to assist with applying the off-payroll rules

What happens if I fail to provide status determinations?

If the client either 1) fails to make a status determination, 2) fails to pass the status determination down the supply chain, or 3) fails to take reasonable care when making the status determination; the client will be liable for the tax and NICs as the deemed "fee-payer".

I STILL HAVE QUESTIONS

Every contractor, assignment and organisation is different so it is impossible to give blanket advice on IR35.

As we are not qualified tax specialists, we recommend seeking independent advice from qualified advisor or consultant to help you fully understand where you sit within the new legislation so you can best plan for the future.

If you are a contractor and are keen to discuss your career path, or an organisation and would like to know more about how IR35 will impact your team, do get in touch with us.

Visit us at <https://www.christy-media.com/>
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