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# IR35 off-payroll working legislation- primary factors

IR35 off-payroll working legislation: a reminder of the primary IR35 factors

Off-payroll working legislation was introduced into the private sector in April 2021. Here we remind ourselves of the primary factors to consider when evaluating whether contractors are inside or outside IR35.

what are the primary IR35 factors?

Off-payroll working was introduced for contractors who engage their services via their own limited company typically known as a Personal Service Company (PSC). It used to be the responsibility of the contractor to determine their own employment status by assessing their contract and working practices against what is known as the IR35 intermediaries' legislation - an 'outside IR35' decision means the contractor pays significantly less tax.

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But HMRC believed that the contractors were making the wrong 'outside IR35' decision nine times out of ten costing HMRC millions in unpaid taxes.

Since the legislation has been implemented you, the hirer, are responsible for determining the employment status of your contractors and, using reasonable care, ensuring that the decisions are accurate. There are significant financial and reputational risks if HMRC successfully challenge you're outside IR35 decisions.

#### **supervision, direction, or control**

Assessing working practices of a contractor is a great way to determine whether they are an independent contractor (outside IR35) or a 'deemed' employee (inside IR35) of your company.

This factor relates to the scope of the contractors supervision, direction or control over the services being provided to you. When you have a relatively greater level of control over the services provided by the contractor, it implies that the contractor is most likely to fall inside IR35 and vice versa.

This part of the assessment usually answers the 'how' and 'when' questions. For instance, an independent contractor would be able to decide themselves what was needed for each task, how those needs could be met, and also set their own timeline to complete tasks.

#### **mutuality of obligation**

Mutuality of obligation refers to the relationship that exists between a worker and their employer. The employer is obligated to deliver continuous work to its workers on a daily basis. An independent contractor, however, does not expect any further assignments from the hirer after the completion of the assigned work.





mutuality of obligation therefore looks at the following:

- how the work is offered and accepted
- how often work has been refused
- whether work is offered in the future
- continuity of work

#### **right of substitution**

The 'right of substitution' allows a contractor to send in a substitute at any time to help or complete work on the assignment.

Clearly there are risks for you with such a clause as you do not know who the substitute is although it should be someone with similar skills. Typically, such clauses are either unfettered, where you the hirer cannot decline such a request, or fettered where you can reasonably decline the request.

Having a substitution clause, especially an unfettered one, would help to indicate that your contractor is independent and outside IR35.

#### **part and parcel of the organisation**

This refers to the ongoing working practices that are often overlooked when determining the IR35 status of a contractor. Is the contractor 'part and parcel' of your organisation. If they are they will be deemed to be an employee not an independent contractor.

These practices include being part of your phonebook, having a job title similar to employees, having access to stationery and equipment, work desk, computer, cafeteria, and the place where the work is going to take place and so on. For example, an independent worker can choose to perform work from any location as long as the work gets done. An employee, however, is obliged to show up at his/her designated workplace no matter what. These practices are important in determining the IR35 status.







### conclusion

The IR35 status decision is not an easy one, having many factors that contribute to it. However, since the introduction of the Off payroll working legislation, it is clear that hirers have been risk averse and decided that the vast majority of the contractors are deemed employees and therefore caught by IR35. In some instances, hirers increased pay rates to compensate the critical contractors for their additional tax burden but in the end supply and demand as always re-adjusts and dictates pay rates.

### about **giant precision**

Our flexible proprietary software and managed services platform, **giant precision**, can manage contractors throughout their life cycle, from candidate attraction, screening and on boarding to timesheet management, billing, employer of record, payroll and payments. In the UK and internationally.

Unlike most MSP's, our **giant precision** platform allows organisations with any number of contractors to benefit from a speedy implementation at no cost. So, if you have 5 or more contractors, we can help.

We take compliance with the complex regulations governing contractors very seriously. To underline our compliance commitment to you, we contractually indemnify you against any tax and employment risk when we manage your contractors.

And we are independent. Unlike others we do not provide agency recruiting services and we have no affiliated companies that do either. Our neutrality ensures we advise you only, on what's best for you and your contractors.

