

# IR35 – The Principles

This document describes very briefly the principle factors that affect the IR35 status of Freelance Contractors trading through a Limited Company. Some factors are more important than others, depending on your circumstances. For each engagement/contract it is necessary to look at the whole picture, taking into account the written terms and all the facts relating to what happens in practice.

This is a complex area – we recommend that you undertake a review of your contract and working arrangements for each contract renewal / new contract. If you would like to know about the AMS IR35 Review service - please do contact us.

Please note - insurance packages are available to cover all legal costs for defending your IR35 status.

## A Contract for Service / Services

- ✓ If your contract states 'A Contract for Services' it suggests self-employment.
- ✗ If your contract states 'A Contract **of Service**' it suggests employment.

## The Contract

- ✓ If your contract refers to the supply of services and does not name the worker, this suggests a Contract for Services (more like self-employment)
- ✗ If your contract refers to the **supply of a type of worker**, e.g. "temporary worker" or "Engineer" etc., it suggests the supply of labour rather than of services and implies a **Contract of Service** (more like employment)

## Mutuality of Obligation

- ✓ Absence of Mutuality: When in the course of a contract the provider of work (client) has **no ongoing obligation to offer work and** the receiver (contractor) has no ongoing obligation to accept work when offered, then this is more like self employment.
- ✗ Presence of Mutuality: If the provider of work (Client) **has an ongoing obligation to offer work and** the receiver (Contractor) has an ongoing obligation to accept the work offered - this is more like being employee

## Financial Risk

- ✓ If a **contractor takes financial risk**, e.g. has a requirement to correct faults in their own time and at their own expense; or a requirement for Professional Indemnity and / or Public Liability Insurance. (more like self-employment)
- ✗ If **the Client would be liable** to correct faulty work or to pay the worker for time spent correcting faults; or if no requirement for insurance in the contract. (more like employment )

## Control (A key factor)

- ✓ If the **Contractor decides** how the work is to be carried out - i.e. uses own initiative without supervision (more like self-employment)
- ✗ If the **Client decides** how the work is carried out i.e. supervises or directs the work; or sets down defined written procedures. (more like employment)

## Substitution

- ✓ If the Contractor has the right to send in someone else to perform the contract then it is a strong indicator of self-employment.
- ✗ If the Contractor is restricted from sending in someone else to perform the services - this suggests employment.

## Number and Length of Contracts

- ✓ If the Contractor undertakes a succession of short-term contracts, has more than one contract running at the same time or has a history of **contracts with a variety of clients**. (more like self-employment)
- ✗ If the Contractor **undertakes work for one Client** on an ongoing basis with no other contracts running at the same time. (more like employment)

## Effects: Pass and Fail IR35

**Pass IR35:** Dividends can be paid instead of salary - avoiding National Insurance.

**Fail IR35:** Income must be paid as salary - not as dividends - meaning Employer's and Employee's National Insurance will be deducted.