



1R35 Q & A Test

IR35 looks at the underlying relationship between you (the worker) and the client for each contract or engagement. The facts of each engagement determine whether IR35 applies, and you need to assess what your employment status would be if there were no intermediary involved. You must assess the underlying relationship between you and your client for each of your contracts individually. Key to whether IR35 applies is whether your contract/s with your client/s allows 'the right to substitution' – in other words, the contract is not with you and the work can be undertaken by anyone with the appropriate skills.

If you're a contractor or freelancer, and you're uncertain of your employment status, there's an easy way to check. Simply complete this IR35 Q & A test. If you have answered 'Yes' or 'Unsure' to any of the questions please get in touch and we'll let you know if:

a) you need to take action to stay on the right side of HMRC – and advise what steps you should take, or: b) you have nothing to worry about!

| Question | Your Answer | Notes/ Guidance |
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| 1. Do you personally perform services for another person or business (your client) or are under an obligation to do so? | | If Yes IR35 will apply |
| 2. Are your services provided to your client through an intermediary such as a limited company or partnership? | | If Yes IR35 will apply |
| 3. Are your services supplied as either an office holder of the client or have you provided the services directly under a contract between you and the client? | | If Yes your employment status would be regarded as being that of an employee or office holder – IR35 will apply |
| 4. Background: Was the job advertisement for an employee as opposed to a self – employed contractor? | | If the advertisement was for an employee IR35 will apply |
| 5. Background: Were you replacing an employee? | | If yes it's likely that you will also be expected to be an employee. |
| 6. Previous Status: Was the work previously ruled by HMRC as the work of an employee and not a self-employed contractor? | | This may be tricky to ascertain as the client may be unwilling to tell you due to confidentiality. However if there was a previous ruling your contract may not pass a challenge from HRMC |
| 7. Contract: Did you fail to seek professional advice in preparing the contract? | | If Yes you could be a risk from IR35. |



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| 8. Contract: Was the contract a 'standard' contract i.e. not compiled for you personally? | | A genuine contract is based on the individual conditions that you will work to. If you have been given a contract by an agency or copied a contract from someone else then you could be in danger from a Revenue review. |
| 9. Contract: Does your contract prohibit you from working elsewhere at the same time? | | If your contract allows you to work elsewhere at the same time then this is a pointer towards self-employment. If the client refuses to let you work elsewhere then this points towards an employee. If there is no clause in the contract than you should include one as a matter of urgency. |
| 10. Contract: Does your client have control over your working conditions i.e. Start and finish times, lunch time etc. | | If the client has control over your working conditions it's more likely you will be classed as an employee. If there are clauses controlling your working hours then this is a pointer towards employment. |
| 8. Contract: Clause to allow you to send a substitute if you are unable to work. Is this absent from your contract? | | If there is no clause the HMRC will assume you are a disguised employee. |
| 9. Contract: Does your contract state you will be paid the same amount each month? | | A self-employed contractor is more likely to be paid on an irregular basis on production of an invoice when certain stages of the work are completed. Regular monthly payments often indicate employment. |
| 10. Contract: Does the wording in your contract lean towards Employer and employee? | | The wording should be clear in the contract, The terms Client and Contractor should be used <u>not</u> Employer and Employee. |
| 11. Equipment: Does the contract stipulate that all equipment will be provided by the client? | | If the contract stipulates that all the equipment is to be provided by the client then HMRC often argue that the contractor is a disguised employee. It is a good idea to ensure that there is clause regarding equipment and confirming what equipment you will provide. |
| 12. Are you listed in any contact directories for the organisation? Are your business cards provided by the organisation? Do you report on any staff? | | You need to ensure that you are not considered part of the clients business if you have spent so long with them that you have become integrated into their business. You should have your own business cards and not be part of the management team with any of the businesses staff reporting to you. In essence you need to distance yourself to a degree from the client. |



If you have answered 'Yes' or 'Unsure' to any of these questions please get in touch with me, Graham at: gcarson@incauk.biz

