

IR35 LEGISLATION: WHAT IS IT AND HOW DOES IT AFFECT ME?

A GUIDE FOR FREELANCERS AND CONTRACTORS

2017

Making the
numbers
work for you



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Welcome

Hello and welcome. I'm **Nicola O'Sullivan**, the founder and managing director of Effective Accounting.

I launched Effective Accounting in 2008, when I spotted a gap in the market for an accountancy firm that offered exceptional accountancy services to contractors and small business owners who wanted straightforward, jargon-free advice, with a personal approach.

Nearly ten years later, I'm still going strong. These days I'm supported by a small team who share my vision to take the worry and fear out of accounting. However, I'm still very much at the heart of the business, getting to know and supporting our clients.



Nicola O'Sullivan
FCCA MAAT

Haven't used an accountant before?

If you think accountancy is boring, difficult and too expensive, you'll be pleasantly surprised by our service.

We're a friendly, dynamic team with a fresh approach to accountancy.

We'll explain the accounting process and show you how to get the best out of your business.

How we can help you?

We'll get to you know you, understand your goals and help you build a successful, tax-efficient business.

Want to find out more?

Let's talk!

Come for a coffee and a chat at our offices in Milton Keynes, or we can visit you.

Call us today on **01908 563250** or **07743 419596** to book an appointment!

About This Guide

How will this guide help me?

Yes. By claiming all allowable expenses, you can reduce your company profits and this in turn, will reduce the amount of corporation tax you pay. If you're a self-employed contractor or freelancer operating as a limited company, you could be affected by IR35 legislation.

We've written this guide to give you an overview of IR35, how it could affect you and what you can do to minimise the risk of incurring huge financial penalties.

We strongly advise you to familiarise yourself with this legislation, consider the financial implications and plan your defence in the event of being investigated by HMRC.

What is IR35 Legislation?

IR35 legislation was introduced in 2000, with the sole aim of identifying if contractors / freelancers operating as limited companies and providing services under contract to a client should be taxed as employees rather than self-employed service providers.

The law was introduced because HMRC believed that some contractors were deliberately operating as limited companies to avoid paying employee tax and National Insurance contributions, opting instead to pay tax through dividends and corporation tax (considered to be the cheaper option).

How Do I Know If I'm Affected By IR35?

If you're a contractor or freelancer, operating as a limited company and providing services to a client (directly or through a recruitment agency) you may be affected by IR35.

Unfortunately, the legislation is ambiguous and open to interpretation, so it's not as simple as reassuring yourself that you are self-employed because you're the director of a limited company.

HMRC may hold a different view and investigate your company to ascertain if you are really 'self-employed', putting your contracts and working practices under close scrutiny.

If they decide you are an 'employee' you will incur heavy financial penalties.

Until recently, the responsibility for determining IR35 status laid with the contractor. But in April 2017, key changes mean that contractors working in the public sector no longer have that responsibility. Responsibility for public sector workers now lies with their end client.

If their workers are deemed to be 'employees' then the public sector client will be responsible for deducting PAYE and National Insurance Contributions at source.

What Are The Financial Implications Of IR35?

If HMRC decide that you fall under IR35, you could end up receiving a hefty bill for tax and National Insurance Contributions that you haven't anticipated or planned for; with potential devastating effects for your company and personal finances.

You could also lose out on your ability to claim allowable business expenses, reducing your overall profits, and vitally your take home pay, as well as incurring penalties from the HMRC.

What Happens If I Just Ignore IR35?

We strongly advise you not to bury your head in the sand about IR35.

Although it's a controversial and unpopular law, for now it remains in place. If you don't plan for the possibility of being investigated by HMRC, you could be leaving yourself open to financial ruin.

If an investigation goes against you, you could end up with an expensive tax bill, reduced profits and heavy HMRC penalties.

Even worse, HMRC may then decide to investigate your other contracts for further evidence of unpaid taxes.

As you will see in '**IR35: A timeline of events**' many IR35 cases are lost by the company being investigated.

What Do I Need To Do Next?

An IR35 investigation by HMRC is likely to be uncomfortable at least, and potentially unpleasant and costly.

Understanding your position, and covering yourself, means that you're less likely to accept a contract that you later regret.

You need to be absolutely clear on your position, so that you are able to argue your case and provide the evidence in the event of being investigated.

This means having a clear understanding of your written contracts and working practices.

To prove that you are a company director, and not a 'disguised employee', you need to demonstrate that you have the same levels of responsibility, control, risk and liability as any other company director in your industry.

A good defence against IR35 is to have a contract review in place, which can be used to prove your position in the event of an investigation.

You will also need to make sure you've implemented good working practices to strengthen your position.

How We Can Help You

At Effective Accounting, we are contractor specialists.

This means we can:

- Review your written contract and working practices
- Provide a basic or detailed report, depending on your requirements
- Work with you to identify any issues, and make necessary changes to your contract and working practices so that you can improve your IR35 status

Take action now and you can feel reassured that you've done everything you can to defend yourself in the event of being investigated.

Get in touch today to make an appointment.

Telephone: 01908 563250

Mobile: 07743 419596

Email: info@effective-accounting.co.uk

IR35 Legislation: Key Dates And Developments

Overview

It's fair to say that IR35 legislation is controversial and unpopular.

It was widely criticised by the Confederation of British Industry (CBI) and The Institute of Chartered Accountants in England and Wales (ICAEW). A Professional Contractor Group (PCG) was formed to combat the idea, but they failed to win a legal battle to have it overturned.

In more recent years, the Conservative party has hinted at reviewing and abolishing the law.

However, despite opposition, condemnation and political debates, little has changed and IR35 remains law.

There have been various legal cases, but many of these have been lost.

IR35 Timeline

March 1999	Government announces plans to create IR35 legislation
May 1999	Professional Contractor Group (PCG) is formed to fight the proposals
April 2000	IR35 becomes law
April 2001	PCG lose their High Court battle against IR35
August 2001	The first unsuccessful IR35 case (Battersby vs Campbell)
December 2001	PCG lose their appeal against High Court decision. IR35 remains law.
January 2002	PCG drop their legal case, with a new resolve to focus on individual cases and case law.
October 2002	First successful IR35 case
January 2005	Conservative party propose abolishment of IR35
2005-2009	During this period the majority of IR35 cases are lost.
2010	PCG get agreement from the Conservative party to review IR35.
2011	Coalition government's Office of Tax Simplification conduct review of IR35. The Chancellor rejects suspension/abolition but agrees to overhaul the way HMRC deals with it.
2011	Business Entity Tests are published on HMRC website to help contractors to decide if they are at risk. The tests are widely criticised.
2014	Business Entity Tests are abolished.
2015	HMRC release a series of 32 recommendations on how to improve IR35, but this did little to take away the uncertainty felt within the industry.
2016	Government announce in Budget a clampdown on 'off-payroll working' within public sector organisations.
2017	A new IR35 Employment Status test is launched to help contractors, clients and agents determine whether a worker is caught by IR35.
April 2017	A key change to the law is made, affecting public sector workers, with the effect that the public sector end client is now responsible for determining IR35 status.



Disclaimer:

We've written this guide to give you an overview of IR35 legislation.

It's important to do everything you can to reduce the risk of heavy financial penalties if you're investigated by HMRC. We strongly advise you to seek specialist advice before accepting a contract and commencing work.

Don't have an accountant, or thinking of changing your accountant?

We'd love to help you save money and make a success of your business. We have a straightforward, jargon-free approach to accountancy, taking away the worry so you can concentrate on your business.

Let's talk

We can come to you, or you're welcome to come and meet our friendly team in Milton Keynes.

We can talk you through the options and provide you with details of our fixed fee services, with no obligation on your part to take things further.

Get in touch today to make an appointment!

Effective Accounting

3 The Willows
Mill Farm Courtyard
Beachampton
Milton Keynes
MK19 6DS

Telephone: 01908 563250

Mobile: 07743 419596

Email: info@effective-accounting.co.uk