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IR35 What Does It Mean?

IR35 is one of the most important considerations for any contractor. The legislation was introduced with the intention of properly taxing "disguised" employees and has led to the need for all contractors to consider their status when entering into a relationship to provide services.

There can be no substitution for seeking an experienced opinion from your accountant but the following basic questions should help you decide whether your contract falls inside or outside IR35.

Has HMRC judged that a previous contractor performing the same work has fallen inside IR35?
Whilst this may not be directly related to your contract it is a vital starting point.

Is there a mutuality of obligation?
Is the client obliged to offer you work, as an employer would an employee? Are you obliged to take on the work after the expiration of your contract?

Will the client provide equipment?
From an IR35 viewpoint it is better that you provide your own equipment although sometimes the commercial reality is that for security reasons you have to access the clients systems through their hardware.

Does the contract stipulate a set monthly fee?
The contract should stipulate a day rate to be IR35 friendly, rather than a set monthly fee rather like a salary.

Does the contract stipulate that you will be paid through a payroll system?
To be outside IR35 you should be raising invoices based perhaps on timesheets and not being paid through payroll

Will the client deduct your tax payments?
Payment of all taxes should be the responsibility of your company and you as a director

Is it specifically you who must complete the work?
Your contract should allow for you to substitute an equally qualified person to perform the services in the event that you cannot attend

Does the contract state specific hours that you will work?
You should have control over the hours you work, when and where you work.

Are you entitled to employee benefits?
This does not need to be as significant as a pension scheme but may include the use of a company canteen or the inclusion on an internal phone list

If you have answered "yes" to one or more of these questions your contract may be subject to IR35. This can be expensive from a tax perspective as you will be deemed to have taken 95% of the company's turnover as salary and will need to pay the associated tax and NI on this.

Whilst we can provide you with some guidance to assist you with determining your status, we are unable to make the decision for you. This has to be the decision of the director. Since IR35 is complex we have teamed up with experts, Bauer & Cottrell who are able to provide opinions on your contracts. They have many years experience in dealing with HMRC on IR35 issues and will stand by any opinion they give should your contract and circumstances ever be investigated. We can put you in touch if you wish to have a professional review.