

## Important information for all self-employed people

The principle is that a high-risk earning environment gains a higher reward and converse for low-risk environment. Self-employment is seen as higher risk and employment as lower risk by HMRC. IR35 was enacted year 2000 and became law in January 2003. The key factors within the Legislation principles:

1. Being on longer term engagements with a single hirer: note it does NOT have to be a Contract, simply by working every day on a non-contract basis does create a contract by implication (Implied Contract).
2. Any individual who is deemed to be claiming a higher risk position but, in the view of HMRC is not, will be in breach of IR35 and re-defined a Disguised Employee.
3. Disguised Employee will be taxed the same as an employee.
4. HMRC do not give any clarity on numerical thresholds to be in breach or not, it is their viewpoint only.
5. Their main criteria are to determine as to whether the 'self-employed' person is in any way beholden to a single source of work and income: that means they are de facto 'employed'.

After many Court judgments, a set of 15 criteria are set out as a basis for assessment:

### Criteria for Assessment of Breach

There are 6 items including pay for pensions, sickness, holidays etc which clearly determine an employment status leaving another 9 criteria:

1. Mutuality of Obligation: based on the Employment Acts 1974 the Master/Servant relationship
2. Substitution: can the hired person substitute another for themselves
3. Risk: is the self-employed person at financial risk
4. Tools: does the self-employed person provide their own tools
5. Attendance: obligation to attend a place of work on a regular basis
6. Directing: who is doing the directing or being directed
7. Milestones and Deliverables: does the work constitute a deliverable or is it based on attendance
8. Intention: did the parties involved in the engagement intend to lower a tax liability
9. Part and Parcel: is the self-employed person, to all intents and purposes, behaving like an employed person. Use their desk, phone, swipe-card, canteen, email (non-exclusive list here)

### How do we deal with this?

- a. Have multiple clients in each year and not 'beholden to any one'
- b. Have contracts based on deliverables and milestones not hours
- c. Seek contracts that can be delivered over 'broken time' not attendance

### But what if I am an Interim Manager or an IT Contractor?

- a. Pay more tax in line with reasonable work-based salaries, this means lowering the Dividend level and increasing the salary level
- b. Accept the benefits of a longer-term engagement and pay what is due
- c. Use an Umbrella Company to manage expenses (dispensations) in line with HMRC agreements. This means that you are slightly better off than an employee but not as a self-employed person

The key message is to recognise where IR35 is likely to apply and set up an arrangement that is in compliance.

### **What is happening now**

In 2020 and 2021 the burden for evidence and proof as to a person's employment status has been switched from HMRC to the Hirer. The Hirer must insist on compliance with the Government on-line Check Employment Status for Tax (CEST) test: last updated May 2021.

In 2019 it was all Government departments and similar alignments, in 2021 it is now all larger private enterprises. The outcome is that most have insisted that suppliers become employees to avoid investigation and risk. This may change again with any new Government initiatives and requirements

### **What are Umbrella Companies and how do they work?**

They are accepted by HMRC as legitimate agents for the self-employed person to submit tax information. Please note at this stage you would use an Umbrella Company or an Accountant NOT both. You agree a deal with your client and say that you will be using an Umbrella Company (UC):

1. You send timesheets to the UC
2. UC invoices your client as per the deal (this excludes any exceptional travel or other expenses such as a business trip to Berlin)
3. Client pays the UC
4. UC deducts the legitimate expenses and any HMRC agreed dispensations
5. UC taxes the lower sum as per the standard employee tax thresholds
6. You get the Net pay plus the tax free expenses and dispensations
7. UC does all of your tax returns to HMRC
8. Legal, safe and registered with HMRC

Umbrella Companies are suitable for longer term engagements where a breach of IR35 is highly likely. An example would be an IT Contractor in one location for say 2 years.

There are many discussions and disputes concerning contractors and HMRC on IR35: for current information and support: [www.contractoruk.com](http://www.contractoruk.com)

**Professional advice is essential when considering setting in a self-employed or Limited arrangement.**



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