



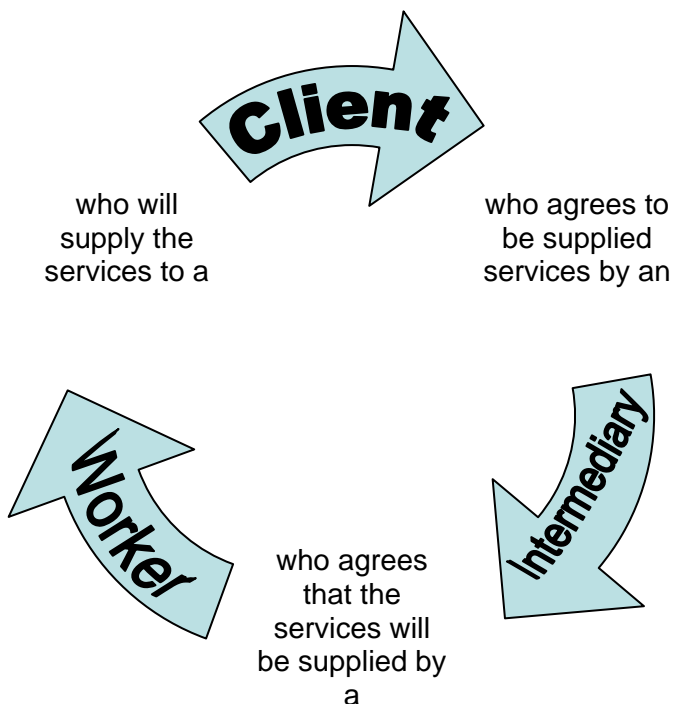
Article 1

IR35 – WORKERS & SUB-CONTRACTORS

IR35 refers to the intermediary legislation which was actually proposed in a Budget press release called “Countering avoidance in the provision of personal services” and numbered IR35 and so has become known by the name IR35. It is actually designed to deal with potential avoidance of both Income Tax and National Insurance Contributions (NIC) where an organisation uses intermediaries (for example a service company) in circumstances where the individual worker would otherwise be regarded as an employee.

APPLIES TO?

The legislation provides that if the relationship between the client and the worker, had it not been for an intermediary, would have been one of employment, then the worker should pay income tax and the NIC on a basis “which is fair in relation to what an employee would pay”. The most common situation is where you have a **client** who agrees to be supplied services by an **intermediary** who agrees that services will be supplied by a **worker** who will supply the services to the **client**.



To make things easier we have used the actual terms which HMRC use. Very often this they are actually referred to as
CONTRACTOR – as the intermediary
SUB-CONTRACTOR – as the worker

The legislation can apply to anyone. HM Revenue and Customs (HMRC) are interested in 2 basic questions to ask individual workers:

- (1) Would you be an employee if you worked for the client (to whom services are provided) directly and not through your company or partnership?
- (2) Does the company or partnership you work through meet certain conditions?

CRITERIA?

For each of the criteria, HMRC guidance reveals further questions regarding

- ✓ Working set hours
- ✓ Supervision and control
- ✓ Sickness and absence payments
- ✓ Working for one or more organisation
- ✓ Any job title
- ✓ Obligations of parties to offer and accept work
- ✓ Provision of equipment (not just tools which employees may provide anyway)
- ✓ Ability for worker to provide substitutions and to hire and fire to perform work the worker has taken on
- ✓ Termination of the arrangement
- ✓ Worker's financial risk
- ✓ Does the worker or his family own more than 5% of company shares or have an entitlement to 60% or more of profits

However there is no definitive checklist to work from.

CONSEQUENCES

The intermediary is responsible for calculating and paying over to HMRC a "deemed payment". Effectively this means operating a PAYE system, deducting certain expenses, allowances and benefits.

If HMRC do make a decision then an Appeal can be made.

For more information please see our article called **AVOIDING THE IR35 TRAP**

Email advice@limeone.co.uk, or phone on 01244 852550, for more information and help with your specific requirements.