

IR35

Contractor

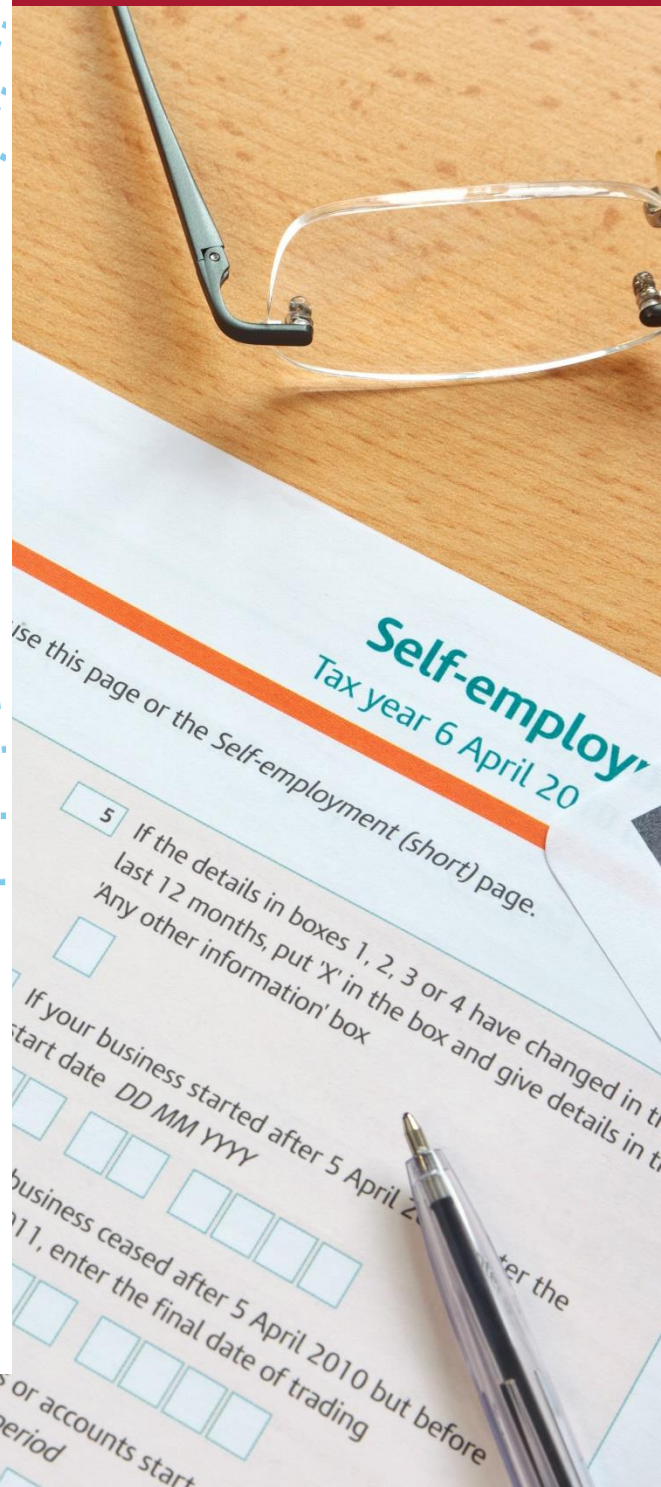
Guidance

Inside

Determining the status of an assignment

Reasonable Care and Status Determination Statements

Methods of working



Summary

The government will reform the off-payroll working rules (known as IR35) in the private sector on 6th April 2021.

Responsibility for determining your IR35 status (as inside or outside) will shift from you under your PSC to the end-client you are providing services to.

The business that is paying you (QCS Staffing in this instance) will take on the PAYE tax & NIC liabilities as the “fee-payer” if an inside determination is made.

This change will only affect medium and large private sector end-clients, so “small companies*” (end clients) are set to be exempt and the old rules will apply.



**a small company is defined as one that does not have annual turnover of more than £10.2 million, a balance sheet total of more than £5.1 million and the number of employees more than 50.*

Determining The Status Of An Assignment

From 6th April 2021, it will be the end client’s responsibility to determine whether the off-payroll working rules will apply (if the assignment will be inside or outside of IR35).

A decision is made about the relationship between you as the contractor and the end-client that you are providing services to, and whether, if you were contracting directly, there would be an employment relationship created.

If you have similar working conditions, responsibilities and control as an employee of the client would have, then you are likely to be classed as “inside IR35”.

There are several key factors that determine a contractor’s IR35 status.

Financial risk - Those who don’t take any financial risk, for example don’t have to rectify poor quality services at their own cost, are more likely to be viewed as employees of the client for tax purposes. You should look to take out Professional Indemnity, Public Liability and Employers Liability insurances to cover this risk, if you have not yet done so.

Mutuality of Obligation - Mutuality of obligation reviews whether there is an obligation for both parties to provide and accept work.



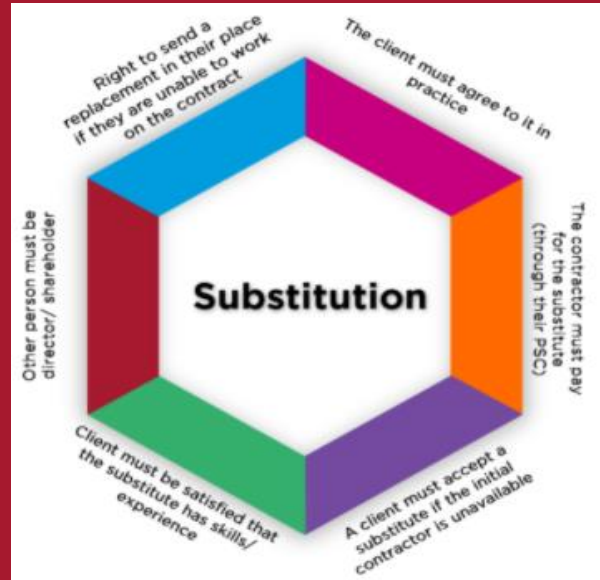
Substitution - Substitution reviews your right to send a replacement in your place if you are unable to work on the contract. For substitution to be considered as genuine, the client must agree to it in practice and you must pay for the substitute (through your PSC).

A client must accept a substitute if you were unavailable, however the client must also be satisfied that the substitute has the skills and experience required.

Control and Direction - You must be able to demonstrate autonomy in the way that you undertake a project.

This means that the client should have no influence over how you perform your service and you must also be responsible for the delivery.

Some examples of control and direction can include: if you are being supervised, receiving any “staff” benefits, break times or discussion of “reporting to line manager for daily tasks” in contracts.



Reasonable Care And Status Determination Statements

When the determination is made, the client must use reasonable care (further guidance to be provided by HMRC in due course). If an inside determination is made QCS Staffing will take on the PAYE tax & NIC liabilities as the “fee-payer”.

The client must provide a Status Determination Statement, which must include the reasons for that decision. If there is any challenge to the decision by the contractor or fee-payer, this must be addressed by the client within 45 days otherwise they are held liable for the PAYE tax & NIC.

Where HMRC disagrees with the determination made, it can investigate and insist on back payment of tax, as well as fines for late payment from the fee-payer.

Therefore, the fee-payer should still do their own due diligence on the client's determination to consider whether it is in line with the likely factual reality of the assignment and that it is not a contrived arrangement (blanket ban).

A blanket ban is where a client determines all contractors as either “inside IR35” or “outside IR35” without completing an individual determination for each contractor.

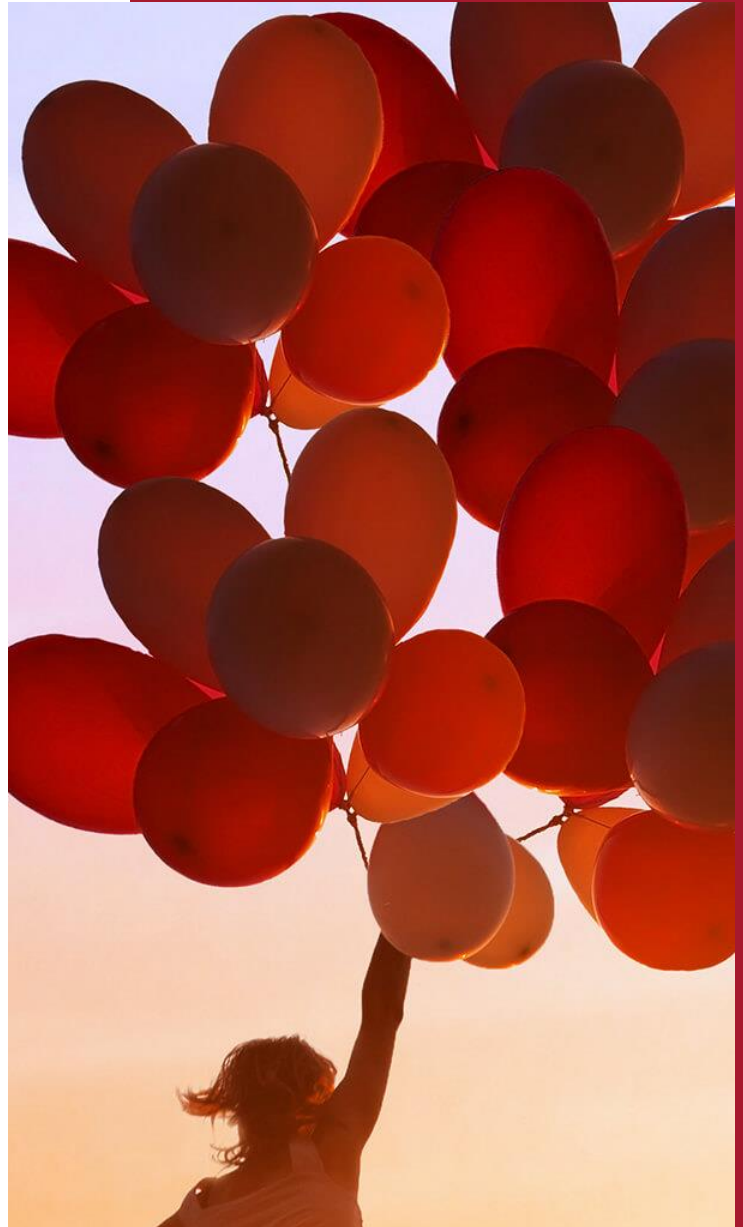


Method Of Working “Outside IR35”

Once an assignment is determined as “outside IR35” by the client, the contract will continue as it currently stands, with QCS Staffing contracting directly with your PSC, paying gross.

You will be required to purchase tax indemnity insurance. Our insurance partner Kingsbridge Contractor Insurance can provide further information on this. A status determination test must be completed for the tax indemnity insurance to be valid.

It is important to note that determinations are done on an assignment by assignment basis therefore, where one assignment could be determined as outside, another could be in and the PAYE tax & NIC liabilities must be deducted.



“Inside-IR35” PSC

QCS Staffing will continue to engage with you if you are deemed “inside IR35” via your PSC, but a “deemed employment payment” will be deducted using a specific payroll system.

The deemed employment pay rate breaks down as the income after deductions, including both employee and employer NICs and the Apprenticeship Levy. You would not receive worker rights.

Method Of Working “Inside IR35”

Once an assignment is determined as “inside IR35”, there are several options available for an off-payroll model where if operated, the off-payroll rules would not apply.

PAYE - Payroll

QCS Staffing would contract directly with you and will operate tax and NICs, providing you with worker benefits.

Umbrella Company

A preferred umbrella company supplier from QCS Staffing’s internal PSL list will employ you directly, taking on the PAYE tax & NIC liabilities.

QCS Staffing’s Stance

For the foreseeable future, the umbrella company model will be the only option if you are deemed as “inside IR35” working via QCS Staffing.

Working With Umbrella Companies

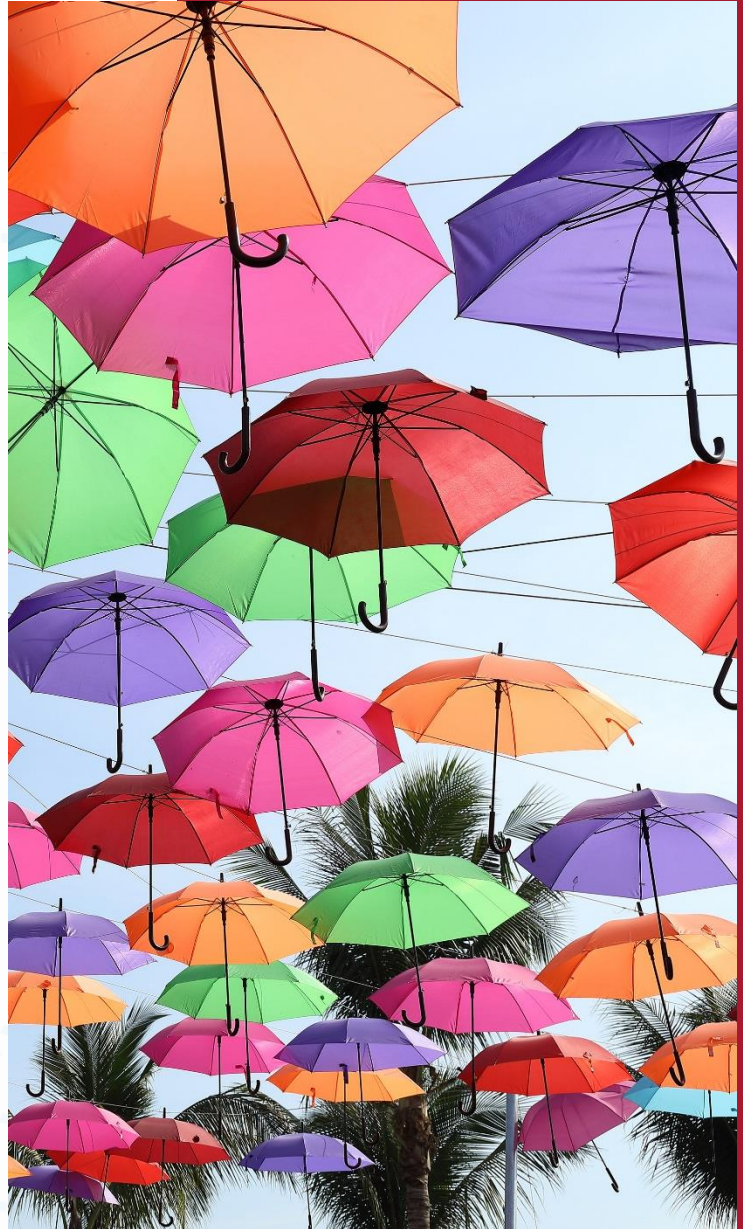
The umbrella will run a payroll service for you, classing you as one of their employees processing all timesheets and invoices, paying you a salary after allowing for deductions.

Business expenses incurred can be claimed, however it does depend on whether or not the contract falls under the 'Supervision, Direction and Control' (SDC) of the client.

Utilising an umbrella company is cost effective and very easy to use.

Umbrella companies offer the perfect solution if you did not want to be classed as an employee.

As IR35 works on an assignment by assignment basis (for the assignment that is determined as inside) there is minimum input required.



Payment Of Taxes And NIC

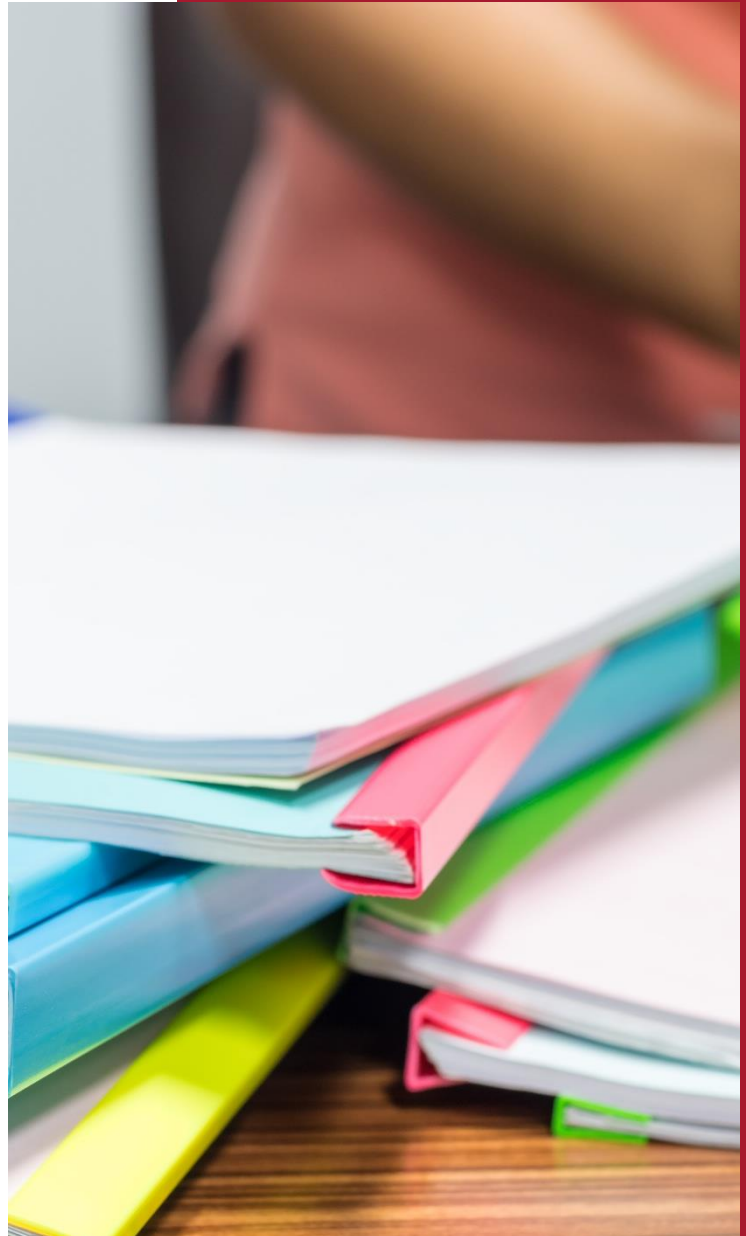
There are several potential outcomes for the payment of taxes and NIC, in the event an assignment is determined as “inside IR35”. It is important to confirm the chosen option with the client to ensure this is discussed before placement:

Option One – The client will bear the cost of employer’s NICs only and QCS Staffing will absorb the cost of the employer’s NICs due. The contractor’s net payment will decrease as there will be deductions of PAYE tax and NICs from the gross pay.

Option Two – QCS Staffing will bear all costs. The net payment you receive will decrease as QCS Staffing will need to account for the employer’s NICs and deduct PAYE tax and NICs from the gross pay.

Option Three – The client will bear all costs. The pay rate is increased to absorb all costs of NICs and PAYE tax. This absorbs any loss due to you and the net payment would remain unaffected.

QCS Staffing will be working with the client to understand the method that they would like to take. QCS Staffing will ensure that conversations are had with you prior to any confirmation being made.



Disputes And Queries

Should you have any queries or would like to dispute the determination, the client is required to have a dispute process.

QCS Staffing will also complete a determination status test for each contract. The determination status test will concentrate on the key IR35 status factors.

This will provide clarity and assurance to ensure that it is not a contrived arrangement.



Stance And Conclusion

Organisations that forward plan and get compliance practices in place will ensure a clear understanding by the contractors, minimising any disruption to work life.

Although, it is in the interest of both QCS Staffing and the client to collaborate for the purposes of making the status determination, it is equally as important to make sure that you understand your position prior to April 2021.

This will help minimise the number of disputes and challenges if all parties in the supply chain are aligned in the approach to the off-payroll working rules.

QCS Staffing have decided to take a progressive stance to the updates, partnering with industry experts, Kingsbridge and Larsen Howie to ensure that you are well advised, supported and working compliantly post April 2021.

We will offer guidance packs, status reviews, role assessments, training, legislative updates, round tables and webinars post and prior to April 2021, should they be required.

Ensuring that communication channels are open and honest should result in harmonious decisions with little disrupt to project or services being provided.



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