
Talk to the UK Borland User Group

IR35 – the provision of services through an intermediary

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IR35 – the provision of services through an intermediary

Application of IR35

- IR35 rules apply where:
 - An individual (the **worker**) provides services to another person (the **client**)
 - Under arrangements involving an intermediary (**service company**)
 - In circumstances that, if contract had been made directly, worker would have been employee of the client.

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Application of IR35

- Concept of “deemed” employment – service company becomes liable for tax that should have been paid had worker been treated as an employee originally

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Can you avoid IR35?

- Every situation depends on its individual facts
- No “bomb proof” contract
- Revenue look at factual basis of working arrangements before contractual basis
- Contractual arrangements should follow factual arrangements

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Can you avoid IR35?

- Onus on individual workers to clarify situation
- Revenue opinions on signed contracts only
- IT industry – engagements of 1 month or more assumed to fall within IR35

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Contractual provisions to avoid effect of IR35

- “Badges of trade” to define self-employment (but these are indicators only):
 - contract for services, not contract of services
 - right to sub-contract
 - non-exclusivity
 - minimum control and supervision
 - worker’s own tools and equipment

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- flexibility on hours and place of work
- payment terms
- financial risk
- length of contract
- no mutuality of obligations

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Recent cases

- ***Battersby –v- Campbell (Inspector of Taxes)*** [2001] – shows tests used by Commissioners
- ***FS Consulting Limited –v- McCaul (Inspector of Taxes)*** [2002] – puts to rest technical argument that legislation covers situation where working arrangements involve an intermediary and a non-intermediary
- ***O’Murphy –v- Hewlett-Packard*** [2001] – EAT decision – IR35 is purely a “tax fiction” and does not affect genuine employment status

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Summary

- IR35 legislation is lawful –

Professional Contractor's Group –v- Inland Revenue [2001],
C.A.

- Employment status involves looking at both factual circumstances of employment and contractual arrangements
- Contractual arrangements should be consistent with factual arrangements