

Examples of questions to determining IR35 status:-

1 What is the background for obtaining the work?

Did the job advertisement want a self-employed contractor or an employee? Are you replacing an employee? When replacing an employee it is likely you will be expected to be an 'employee' also

2 Has there been a previous ruling by HMRC?

HMRC may have previously decided the work is that of an employee and not a self-employed contractor

3 Is the written contract a "genuine contract"?

A genuine contract is based on the individual conditions to which you will work. If you have been given a contract by an agency or copied a contract from elsewhere you may be in danger of a HMRC review

Revenue auditors will try to discredit contracts if they feel it is not genuine. This can be done by selecting a clause and asking for evidence that it has been invoked. If not HMRC may argue that the contract is not a genuine contract

4 Can you work multiple contracts during a specific contract?

You should consider what would happen if you were offered an additional contract with another client. Would the current client object to multiple contracts? If so this is a positive step towards being outside IR35

5 Does the client control your working conditions?

If the client controls your working conditions it is likely you will be classed as an employee. Thus, the contract should not demonstrate control

Avoid clauses such as:

- daily start and end time
- expected work days
- permitted lunch hours

Any contractor who is outside IR35 will need to ensure they can manage their time to complete the project rather than adopt expressed working conditions

6 Can you provide a Substitute?

You must contractually ensure that the contract allows you to replace an employee of your PSC with a suitably qualified substitute if you are unable or unwilling to work at any time. This must be a realistic clause. Failure to provide a substitute may allow HMRC to assume you are "a disguised employee"

7 Can you show an element of financial risk?

If your contract allows you to be paid the same amount per month from the same client then it can create the impression that you are a disguised employee. A self-employed contractor is more likely to be paid on an irregular basis on production of an invoice after

agreed stages of the project are completed. Regular monthly payments may be misconstrued as employment

8 Do you provide your own equipment?

If the contract stipulates that all the equipment is to be provided by the client HMRC often argue that the contractor is a disguised employee. This is not one of the main criteria in arguments with HMRC

There are many Tax cases which disprove this point but try to ensure that there is a c equipment clause which states what equipment you will provide

9 Are you “Part and Parcel” of the organisation?

Are you integrated into the client’s business? You will need to ensure that you - are not considered part of the client’s business:

- do not be shown in the client’s telephone directory
- not be part of the management team
- distance yourself from the client

By adopting the above you will not appear to be integrated into the client business

10 What are the intentions of the Parties?

It should be clear in any contract that the agreement is one of client and contractor and not of employer and employee