

### Employment Status Assessment

The whole issue of IR35 Pass or Fail revolves around Employment Status. In this guide we will explain what Employment Status is all about, and how the directors of your company decide on the Fail or Pass decision.

Unfortunately the question of the employment status is not laid down in statute but is derived from a series of decisions in the courts. This means that it is not possible to arrive at the answer by reducing it to a series of boxes to be ticked, or scores to be added up. This is obviously not perfect, but it has the advantage of flexibility.

The approach taken by the courts has been to identify factors which help to determine if a particular role is a '**contract for service**' (Employment) or a '**contract of services**' (Self-Employment).

Given the list of the factors listed below it is tempting to try to determine a person's employment status by adding up the number of factors pointing towards employment and comparing that result with the number pointing towards self-employment. This has been specifically rejected by the courts and so should only be used as a guide.

The best way to approach Employment Status is to get all the detailed facts and then stand back and look at the situation as a whole. You should then be able to see if you are in business on your own account or working as a *virtual employee* in somebody else's business.

The chart below shows the main Employment Assessment criteria used by HMRC and the courts. It will enable you to think about your current contract, and may assist you to a conclusion as to whether you are caught by the IR35 rules or not.

*The purpose of this chart is to offer clear, concise and accurate guidance on the Employment (E) or Self-Employment (S/E) status of each contract that you undertake. You should consider each central criterion and then decide if your answer steers you towards employed or self-employed status. Tip - be honest!*

Self Employment (S/E)	Criteria	Employment (E)
If no, then by default you are saying that you decide what, when and how you work each day. This is a strong indicator of S/E	<b>Control</b> – Does the client dictate the roles that you perform each day and how and when the work is done?	If yes, this is a strong indicator of E.
If your contract endorses the position detailed above this would indicate S/E.	<b>Contract</b> – Having assessed your role in the previous criteria, now look at your contract as this is likely to be the first thing that HMRC look at in assessing your position.	Regardless of what you actually do, if your contract suggests Control as per the above criteria it is likely that HMRC will regard you as E, with IR35 being applied.
If you are paid an agreed sum, for completing a task of project (even if staged payments and retainers are offered), the indication is for S/E.	<b>Payment</b> – How are you paid?	If you receive a fixed income by the hour / day / week / month, then you are like other employed people, and the indication is that you are E.
If you can reduce your overheads, work more efficiently, complete the contracted task early, with reduced effort then this indicates S/E.	<b>Sound Management</b> – Is there an opportunity for you to profit if your business is run well, or financially lose if run badly?	If you get paid your rate, regardless of what you really do, simply by turning up, this indicates E.
By buying your own equipment to complete the contracted task you can potentially lose	<b>Financial Risk</b> – Do you risk your own money? E.G. Buying your own equipment	If you use the Client's equipment, or receive the anticipated contract rate

money. By quoting a price for a contract that may over-run you could again lose out. These are indicators of S/E.	and using it to carry out your task, or quoting a fixed price to complete a task in a set time frame? Have you incurred significant training costs to undertake the contract?	regardless of completion of the contracted task, you appear like most other employees. The indications are that you are E.
If yes, regardless of whether you substitute or not, this is a strong indicator of S/E.	<b>Substitution</b> – Is there freedom to choose whether to do the job yourself or hire someone else to do it for you?	Some Agency contracts still specify the Limited Company name <u>and</u> the Contractor's name. This removes the facility to substitute and indicates E.
If the answer to all of these questions (and similar related areas) is No, then this is an indicator of S/E.	<b>Your Status</b> – Have you become 'Part & Parcel' of the Client's business? Does the Client produce business cards for you? Do you qualify for employee benefits, sick or holiday pay? Are you in a team?	If the answer to this question is Yes, then you appear to be akin to other employees in that organisation, and therefore the indication is that you are E.
If the contract can only be terminated by a breach in the contract terms the indication is S/E.	<b>Dismissal</b> – Can either side terminate the engagement by giving notice?	Notice periods tend to apply to employees. Such a clause would indicate E.
If short-term then this indicates S/E.	<b>Duration</b> – Have you been at this site for a long time?	If yes, this indicates a career, and therefore E.
If yes, this would indicate S/E.	<b>Personal Factors</b> – Are you a skilled worker, working for a number of clients and operating in a business like way?	If no, then you are probably falling foul of a number of the criteria detailed above. You are probably E.

The above chart should serve as a useful guide as to whether your engagement passes or fails IR35. If you would like to read the technical guidance offered by HMRC please visit:

[www.hmrc.gov.uk/pdfs/ir56.pdf](http://www.hmrc.gov.uk/pdfs/ir56.pdf).

HMRC will consider both the contract and relationship between your Limited Company and its agency/client, and will not take into account things like company name, documents, websites, or advertisements which, although they may indicate that you intend to operate outside of IR35, are discounted as merely "constructions of the vehicle through which the duties are performed".

HMRC have set up a contract testing unit which can (a) assess contracts once they have been signed, and (b) is allowed up to 28 days to make a decision. Should you wish to submit your contract, then this can be done via: -

[www.hmrc.gov.uk/ir35](http://www.hmrc.gov.uk/ir35).

Once you have decided whether you fall under the IR35 rules or not, you should communicate your decision to your Accounts Team so that they can calculate the correct salary and tax provisions. Each contract should be individually assessed on its merits. If in great doubt you may need to take legal advice.