



---

**Intermediaries Legislation (IR35)**  
**Business entity tests**  
**Example scenarios**

---



## Table of Contents

---

<b>Chapter</b>		<b>Page</b>
1	Introduction	7
	What this guidance does	7
	What this guidance does not do	7
2	Our approach to IR35	9
	Brief overview of IR35	9
	Does IR35 apply to you?	9
	We can help you with IR35	9
	Our risk-based approach	10
	IR35 applies, specifically, to individual engagements	11
	The tests and scenarios are not set in stone	11
3	What the risk bands mean	13
	High or medium risk	13
	Low risk	14
4	The business entity tests	15
	The tests	15
	Test scores and risk bands	15
	Evidence to support your answers	16
	Taking the tests again	16
	The Business Premises test	17
	The PII test	17
	The Efficiency test	18
	The Assistance test	19

<b>Chapter</b>	<b>Page</b>
	19
	20
	20
	21
	21
	22
	22
	23
5	25
6	27
	28
	30
7	31
	32
	33
8	35
	35
	36
9	37
	37
	38
10	39
	40

<b>Chapter</b>		<b>Page</b>
	'Costas' – reasons why Costas was outside IR35 at first but within IR35 later on	41
11	'Praveen' – main contract within IR35	43
	'Praveen' – the facts	43
	'Praveen' – reasons why main contract is within IR35	44
12	Glossary	45



## Chapter 1: Introduction

---

### **What this guidance does**

This guidance tells you about our risk-based approach to checking customers' compliance with the intermediaries legislation commonly known as 'IR35'.

It tells you how to work out which risk band you are in. And it tells you what the risk bands mean you have to do.

It gives you example scenarios to illustrate when and why IR35 will apply to an engagement and when and why it will not.

There is a glossary of IR35 terms at the end.

### **What this guidance does not do**

This guidance is not a comprehensive guide to IR35.

It does, however, tell you where you can find out more about IR35. And it tells you how to obtain help from us with IR35.





## Chapter 2: Our approach to IR35

---

### Brief overview of IR35

Do you provide your own services without being paid as an employee? If so, do you use a limited company or a partnership as an intermediary to provide services to clients?

If you do, then the intermediaries legislation – commonly known as ‘IR35’ – may apply to you. IR35 is tax and National Insurance contributions (NIC) legislation which prevents people who use intermediaries from being better off than they would have been if their end clients had employed them directly.

If you use an intermediary, but work for an end client on terms which would have made you an employee if the end client had engaged you directly, then IR35 will apply. If IR35 applies, it affects the amount of income tax under Pay As You Earn (PAYE) and NIC your intermediary will have to account for.

IR35 can apply in any business sector. And it makes no difference whether the end client is carrying on a business.

You can find out more detail about IR35 [on our website](#).

### Does IR35 apply to you?

#### *We can help you with IR35*

As a small business, you need to have certainty about IR35. You need to know whether IR35 applies to you.

If you would like advice, you can phone our confidential IR35 helpline on **0845 303 3535**.

As well as answering one-off queries, the IR35 helpline provides a review service.

The helpline and review service are staffed by HMRC specialists in IR35. Both are independent of our compliance teams – if you ask them about IR35, they will not pass on what you tell them to other people in HMRC.

The specialists can review a contract for you if you want certainty about your position. If you decide to use the contract review service, and we conclude that your contract is outside IR35, we will give you a certificate with a unique number. This certificate will be valid for three years.

If, later on, we open an IR35 review, you can give us this number. We will then suspend our IR35 review while we consider all the information. We will close our IR35 review if:

- the contract we reviewed is typical of your engagement terms and conditions
- the information provided is accurate.

You can find out more about the review service (including its full contact details) [on our website](#).

### ***Our risk-based approach***

We will consider how likely it is that we need to check whether IR35 applies to you. To gauge how likely it is that we need to check whether IR35 applies to you, we will look at how your business works.

We will use three risk bands:

- low risk
- medium risk
- high risk.

'Low risk' means that there is a low risk that we will check whether IR35 applies to you.

'Medium risk' means there is a medium risk that we will check whether IR35 applies to you. There are some pointers that IR35 applies, but there are some pointers that it does not.

'High risk' means that you are more likely to have an IR35 review than those in the 'medium risk' band. There are likely to be several pointers that IR35 applies to you.

These risk bands are bands on a spectrum, not pigeonholes.

If we think that IR35 may apply to you, we will write to you and ask you whether you have thought about IR35.

If you tell us that you think you are outside IR35, we will ask you for evidence.

The IR35 Forum has helped us to draw up a set of 'business entity' tests. These tests will help you to work out which risk band you are in. You will find them in Chapter 4.

If you prove to our satisfaction that you are outside IR35 or in the 'low risk' band, then we will close our IR35 review. And we will undertake not to check again whether IR35 applies to you for the next three years, provided that:

- the information you have given us is accurate
- your circumstances – and, in particular, your working arrangements – do not change in that time.

If you do not prove to our satisfaction that you are outside IR35 or in the 'low risk' band, we will continue our IR35 review and seek further evidence so that we can make a judgement on whether IR35 applies to you.

## **IR35 applies, specifically, to individual engagements**

The business entity tests and the risk bands will help you work out the risk that we will check whether IR35 applies to you. But they will not tell you for sure whether IR35 applies to you. There are two reasons for this.

First, every case depends on its own facts. Just because you are in the 'medium risk' band or the 'low risk' band, that does not automatically mean that you are outside IR35. And, just because you are in the 'high risk' band or 'medium risk' band, that does not automatically mean that you are within IR35. We explain in Chapter 3 what the risk bands mean you need to do.

Second, the business entity tests look at how your business works overall in order to gauge the risk that we will check whether IR35 applies to you. But, for the purposes of calculating PAYE and NIC under IR35, you need to consider each engagement separately.

- Some businesses have all their engagements outside IR35.
- Some businesses have all their engagements within IR35.
- Some businesses have not only engagements outside IR35 but also engagements within IR35.
- Some businesses have engagements which start outside IR35 but, because the working arrangements change, later on come within it.
- Some businesses have engagements which start within IR35 but, because the working arrangements change, later on come outside it.

The IR35 Forum has also helped us to develop some example scenarios to illustrate when and why IR35 will apply to an engagement and when and why it will not. See Chapters 5 to 11.

## **The tests and scenarios are not set in stone**

We are piloting these tests and scenarios. We want them to remain relevant and helpful. So, we may update them in response to feedback and business changes.



## Chapter 3: What the risk bands mean

---

We will use the risk bands to gauge how likely it is that we need to check whether IR35 applies to you.

You can use the business entity tests in Chapter 4 to work out which risk band you are in.

This Chapter explains what the risk bands mean you have to do.

### High or medium risk

If you are in either the 'high risk' band or the 'medium risk' band, there is a risk that we will check whether IR35 applies to you. And this risk is not low.

So you need to decide whether IR35 applies to any of your engagements – especially if you are in the 'high risk' band. We can help you here: see Chapter 2 under *Does IR35 apply to you? – We can help you with IR35.*

Suppose IR35 applies to you. Then IR35 may treat your intermediary as if it had made a payment triggering PAYE and NIC – that is, your intermediary may have to account for **actual** PAYE and NIC on a **deemed** payment.

Your intermediary can reduce this deemed payment if it pays employment income under PAYE and NIC before the end of the tax year (5 April). If it accounts for enough PAYE and NIC under the normal rules, it will reduce the deemed payment to nil.

If the deemed payment is not reduced to nil, then your intermediary will have to account for actual PAYE and NIC on a deemed payment.

So, if you want to reduce the deemed payment to nil, you need to work out how much employment income your intermediary needs to pay under the normal PAYE and NIC rules.

This means you need to know:

- the IR35 income for the tax year
- the allowable deductions for IR35 purposes.

For IR35 purposes, you work out the income on a cash received basis and the allowable deductions on a cash paid basis – not an accruals basis.

And employment income paid under PAYE and NIC will only reduce the deemed payment if it is paid **before the end of the tax year**. So, you need to arrange this before it is too late.

Our 'Employment Status Manual' explains in detail how to work out the deemed payment in [ESM3140](#) onwards.

If we check whether IR35 applies to you, and you have decided that it does not, you will have to tell us why you think it does not.

## **Low risk**

If you have taken the 'business entity' tests, and you are in the 'low risk' band, you need to keep evidence to support your answers.

If we check whether IR35 applies to you, please show us your evidence that you are in the 'low risk' band.

If your evidence proves to our satisfaction that IR35 does not apply to you or that you are in the 'low risk' band, we will close our IR35 review. And we will undertake not to check again whether IR35 applies to you for the next three years, provided that:

- the information you have given us is accurate
- your circumstances – and, in particular, your working arrangements – do not change in that time.

The business entity tests look at how your business works overall. But, for the purposes of calculating PAYE and NIC under IR35, you need to consider each engagement separately.

So, if you are in the 'low risk' band, you must still keep an eye on your engagements.

If you are in the 'low risk' band, you may happen to enter into an engagement which is within IR35. If so, your intermediary must apply the IR35 rules to the income from that engagement. See under 'High or medium risk' on page 7. Such cases are likely to be rare.

## Chapter 4: The business entity tests

---

### The tests

We have drawn up the business entity tests to help you find out which risk band you are in.

The tests are completely voluntary – we will not make you take them. If you do take them, you do not have to tell us which risk band you are in.

The business entity tests need to build up a good picture of how your business works and, in particular, how you provide your services.

There are twelve of them.

- Business premises
- PII
- Efficiency
- Assistance
- Advertising
- Previous PAYE
- Business plan
- Repair at own expense
- Client risk
- Billing
- Right of substitution
- Actual substitution

Each test asks at least one question. A Yes answer scores points. Different tests give different scores. You add up the points at the end.

The business entity tests look at a business as a whole to gauge how likely it is that the business has entered into an engagement to which IR35 applies. But they do not focus on individual engagements. Therefore, the example scenarios in Chapters 5 to 11 have no bearing on the business entity tests.

### Test scores and risk bands

This table tells you which risk band you are in.

<b>Total score from the tests</b>	<b>Risk band</b>
Less than 10	High risk
10 to 20	Medium risk
More than 20	Low risk

## Evidence to support your answers

You will be able to answer the test questions from your knowledge of your own business.

If you find that you are in the 'low risk' band, you need to gather and retain enough relevant and reliable evidence about your business as a whole to prove to our satisfaction that you are in the 'low risk' band.

You need to do this when you take the tests. You may find it harder to gather the evidence when some time has passed.

We will not open an IR35 review until after the tax year has ended. You can take the tests looking back over a period if you wish. But, if you do not take the tests for a tax year until – some time afterwards – we open an IR35 review into that year, you may find it harder to gather the evidence to support your answers.

What counts as enough relevant and reliable evidence will of course depend on the facts of the case.

With each test, we have given examples of the kind of evidence you could use to show that you have passed it.

But these are examples, not requirements. We will be willing to accept other evidence if it is satisfactory.

## Taking the tests again

Suppose your circumstances change, with the result that you may have moved **out of** the 'low risk' band.

Then you need to take the business entity tests again and, if necessary, gather and retain new evidence.

Otherwise, you may find it harder to prove to our satisfaction that you are still in the 'low risk' band.

Or suppose your circumstances change, with the result that you may have moved **into** the 'low risk' band.

Then you need to take the business entity tests again and, if necessary, gather and retain new evidence.

Otherwise, you may be in the 'low risk' band without knowing it or being able to prove it.



## **The Business Premises test**

### ***Test***

Does your business own or rent business premises which are separate both from your home and from the end client's premises?

For the purposes of this test, it makes no difference which of you owns or rents the business premises – you yourself or your intermediary.

### ***Evidence***

- Address of business premises
- Lease or contract for business premises
- Utility bills for business premises
- Home address
- Client's address

### ***Score***

Score **10** points if your answer is Yes.

## **The PII test**

### ***Test***

Do you need professional indemnity insurance?

### ***Evidence***

- PII policy document
- PII premium note
- Explanation why you need PII

### ***Score***

Score **2** points if your answer is Yes.

## **The Efficiency test**

### ***Test***

Has your business had the opportunity in the last 24 months to increase your business income by working more efficiently?

One way of doing this is finishing a fixed-price contract early.

Say you agreed with the end client that the work would take three months and the fee would be £10,000. And say you finished in two months and received the full £10,000 at that point. You would have freed up a month to take on new business. So the answer to this question would be Yes.

### ***Evidence***

Clauses in the contract. Here are some examples.

- You receive a fixed payment on completion.
- You crystallise the profit when you make the supply of services to the end client.
- You can provide extra workers to complete the job more quickly.

Copies of:

- Costings for proposals
- Tenders submitted
- Letters from clients accepting offers.

These would show the proposal options and related costs that you submitted for clients to approve and accept.

### ***Score***

Score **10** points if your answer is Yes.

## **The Assistance test**

### ***Test***

Does your business engage any workers who bring in at least 25% of your yearly turnover?

If your intermediary is a company, these workers need to be people **other than** directors or shareholders of the company.

If your intermediary is a partnership, these workers need to be people **other than** partners in the partnership.

### ***Evidence***

- Accounting records
- Details of tasks carried out
- Names and payment details of workers who carried them out

### ***Score***

Score **35** points if your answer is Yes.

## **The Advertising test**

### ***Test***

Has your business spent over £1,200 on advertising in the last 12 months?

Entertainment does not count as advertising.

### ***Evidence***

- Copy of advertisement(s) placed
- Copy of invoice(s)

### ***Score***

Score **2** points if your answer is Yes.

## The Previous PAYE test

### **Test**

Has the current end client engaged you:

- on PAYE employment terms
- within the 12 months which ended on the last 31 March
- with no major changes to your working arrangements?

If you are doing the same work, the answer to this question is Yes.

Working at a different location does not count as a major change.

If you were working for a company that is connected to the current end client, that counts as working for the current end client. For example, if the two companies are part of the same group.

### **Evidence**

We will be able to check your employment history on our systems.

### **Score**

Score **Minus 15** points if your answer is Yes.

## The Business Plan test

### **Test**

This test has two parts.

Does your business have a business plan with a cash flow forecast which you update regularly?

Does your business have a business bank account, identified as such by the bank, which is separate from your personal account?

### **Evidence**

- Copy of business plan
- Copies of updates
- Statements of business bank account

### **Score**

Score **1** point if your answer to **both** questions is Yes.

## **The Repair At Own Expense test**

### ***Test***

Would your business have to bear the cost of having to put right any mistakes?

### ***Evidence***

- Clause in contract
- Details of what could go wrong
- Details of how you would put it right
- Details of the cost to your business of putting mistakes right

### ***Score***

Score **4** points if your answer is Yes.

## **The Client Risk test**

### ***Test***

Has your business been unable to recover payment:

- for work done in the last 24 months
- more than 10% of yearly turnover?

### ***Evidence***

- Accounting records showing write-offs
- Copies of letters and emails between intermediary and end client
- Copies of letters and emails about legal action for recovery

### ***Score***

Score **10** points if your answer is Yes.

## **The Billing test**

### ***Test***

Do you invoice for work carried out before being paid and negotiate payment terms?

### ***Evidence***

- Copies of invoices
- Copies of letters and emails about billing

### ***Score***

Score **2** points if your answer is Yes.

## **The Right of Substitution test**

### ***Test***

Does your business have the right to send a substitute?

### ***Evidence***

- Clause in contract
- Details of who would supply the substitute
- Details of who would be responsible for the substitute's performance
- Details of who would pay the substitute
- Details of what level of veto the end client has

### ***Score***

Score **2** points if your answer is Yes.

## **The Actual Substitution test**

### ***Test***

Have you hired anyone in the last 24 months to do the work you have taken on?

You could do this by sending someone to do the work in your place. You could also do this by sub-contracting.

But your business has to remain responsible for the work and for paying the person who does the work you have taken on.

You can still pass this test if you had to tell your end client the name of the person who would be doing the work you took on.

### ***Evidence***

- Details of end client
- Details of who was hired
- Details of why the substitute was hired
- Details of who was responsible for finding the substitute
- Details of who was responsible for paying the substitute
- Payment terms
- Audit trail of payment from end client to intermediary and from intermediary to substitute

### ***Score***

Score **20** points if your answer is Yes.





## Chapter 5: The example scenarios

---

In broad summary, to work out whether IR35 applies to an engagement one looks at the working arrangement and decides whether, if the worker had contracted directly with the end client, the worker would have been employed or self-employed.

We have developed some scenarios to illustrate when and why IR35 will apply to an engagement and when and why it will not.

We hope that they will help you to work out whether IR35 applies to any of your engagements and thus whether it affects the amount of PAYE and NIC which your intermediary has to account for.

Remember that every case is different. And, in each case, one has to consider all the important facts, see how they fit together, and stand back and look at the picture as a whole.

Each of these scenarios has three parts:

- An overall summary
- The facts of the case
- The reasons for our conclusion about IR35.

<b>Chapter</b>	<b>Name</b>	<b>IR35 position</b>
5	'Emma'	Outside IR35
6	'Juanita'	Borderline
7	'Hamish'	Outside IR35
8	'Barbara'	Within IR35
9	'Costas'	Outside IR35 at first, then within IR35
10	'Praveen'	Main contract within IR35

The example scenarios do not attempt to explain IR35 in detail. Nor do they seek to bring out all the factors which could be relevant.

The glossary in Chapter 12 briefly explains some of the terms used in these scenarios.

Our 'Employment Status Manual' explains in detail the principles which determine whether IR35 applies.

- On IR35 itself, see [ESM3320](#) onwards.
- On employment and self-employment generally, see [ESM0501](#) onwards.

To work out whether IR35 affects the amount of PAYE and NIC your intermediary has to account for, you need to look at each engagement separately. Therefore, the example scenarios focus on the contracts. You do not use the business entity tests to work out whether an engagement comes within IR35. And you do not use the example scenarios to find out which risk band you are in.

## Chapter 6: 'Emma' – outside IR35

---

If the end client had contracted directly with Emma, she would have been self-employed. So she is outside IR35.

There are two clinching arguments.

- The end client does not have the necessary level of control.
- The intermediary incurs financial risk.

## **‘Emma’ – the facts**

### ***Intermediary details***

Emma is the sole director, shareholder and worker of E Ltd.

### ***Contractual chain***

E Ltd contracts with an agency, which in turn contracts with the end client.

### ***Length of engagement with end client***

18 months: three six-month contracts.

Throughout this time, E Ltd has neither contracted with any other client nor worked for any other client.

### ***Payment terms***

The end client makes progress payments, but only when Emma has completed stages of the fixed-price contract. E Ltd invoices for Emma’s work.

The contract makes no provision for any overtime to be paid. If Emma takes on work at unsociable hours or at short notice, the end client makes special payments – usually at premium rates. Emma and the end client negotiate the rates of special pay as and when necessary.

### ***Personal service***

The contract between the agency and the end client names Emma as the worker expected to carry out the services. Before taking Emma, the end client checks background information about Emma and interviews her – this can take as little as a day.

The contract between the agency and the end client forbids substitution. Despite this, the contract between the agency and E Ltd gives E Ltd the right to send a substitute acceptable to the end client.

### ***Engagement details***

Emma is highly skilled and the end client gives her a completely free hand over how she works. She decides when and where she works.

Under the contract, E Ltd has to make good any mistakes at its own expense.

E Ltd has an ISO certificate. It carries professional indemnity insurance. It has invested in training. It has had to pay for professional advice and accounting.

The end client would not give notice if it wanted to end the engagement.

Under the contract, E Ltd has to supply equipment, material or data necessary for providing the services. But this has not happened in practice. The end client has supplied all the equipment.

Emma reports to a manager of the end client, meeting every Friday afternoon to discuss project progress and achievements. The end client's employees report to their manager in a different way.

Emma tells the end client out of courtesy if she cannot attend for any reason.

## **‘Emma’ – reasons why IR35 does not apply**

### ***Control***

Emma decides when and where she works. These are strong pointers that IR35 does not apply.

Emma tells the end client out of courtesy if she cannot attend. She is telling the end client, not asking permission. The client cannot make her attend. This is a pointer that IR35 does not apply.

The end client tells Emma what to do. This is not unusual – depending on the nature of the services. So, on its own, it is not a clinching argument that IR35 applies.

The end client does not tell Emma how to work. But Emma is highly skilled, so this factor is neutral.

Emma has weekly progress meetings with the end client. But it would be reasonable for the client to expect this. So this factor is neutral.

### ***Substitution***

The end client will not accept a substitute. Emma’s personal service is required. This is a pointer that IR35 applies.

### ***Other factors***

E Ltd incurs financial risk and can profit from sound management. The end client makes progress payments when Emma has completed stages of the fixed-price contract. So, if Emma fulfils the contract more quickly, she can increase her availability to take on other work. But, if she fulfils the contract more slowly, she will reduce it. So E Ltd has incurred financial risk. This is a pointer that IR35 does not apply.

Professional indemnity insurance and paying for training are weak pointers that IR35 does not apply. Employees do not usually have to carry insurance or pay for their own training.

## Chapter 7: 'Juanita' – borderline

---

Juanita's intermediary, J Ltd, would need to decide whether IR35 applied in order to work out how much PAYE and NIC it would have to account for.

In Juanita's scenario, there are some pointers that IR35 applies. But there are also some pointers that it does not.

With no more to go on, we would not be able to agree with Juanita whether IR35 applied.

But with more facts – especially about the extent of control – we would be able to make a decision whether IR35 applied.

In a case like this, we would have to find out all the relevant facts about the engagement and weigh them up before making a decision.

## **‘Juanita’ – the facts**

### ***Intermediary details***

Juanita is the sole director, shareholder and worker of J Ltd.

### ***Contractual chain***

J Ltd contracts with an agency, which in turn contracts with the end client.

### ***Length of engagement with end client***

Eight years. The end client has entered into a series of contracts with J Ltd for similar services on a variety of projects. Each contract has lasted six to twelve months.

J Ltd has neither contracted with any other client nor worked for any other client.

Juanita has turned down contracts for work from this end client.

### ***Payment terms***

J Ltd charges out Juanita by the hour and invoices for her work monthly.

### ***Personal service***

The contract between J Ltd and the agency says that J Ltd can offer a substitute.

But Juanita has never used a substitute on this engagement. And the end client says that it will probably not accept a substitute for Juanita because her services are so highly specialised.

### ***Engagement details***

Juanita is highly skilled. The end client has little control over how she works. It merely directs the scope of the project, what Juanita is to deliver and by when.

To perform her services, Juanita needs highly specialised and expensive equipment. So the end client provides all her equipment.

Juanita has no right to the kind of benefits an employee would receive from the end client.

Juanita has a room at home set aside as an office. She spends one or two hours a week working on the project at home.

Juanita works as part of a team. She sometimes mentors employees when carrying out a particularly difficult piece of work.



Under the contract, J Ltd has to make good any mistakes at its own expense.

J Ltd has an ISO certificate. It carries professional indemnity insurance and has invested in training. It has paid for professional advice and accounting.

The end client would have to give notice if it wanted to end the engagement.

## **‘Juanita’ – reasons why the scenario is borderline**

### ***Personal service***

Juanita has to provide her personal service. The end client would probably not accept a substitute; although the written contract is of central importance, it does not tell the whole story. This is a pointer that IR35 applies.

### ***Control***

The end client tells Juanita what to do.

But it is not clear whether the end client can tell Juanita when to do it. We would need more facts about this.

Juanita can use a home office and does not always work from the end client's premises. But it is not clear what work Juanita does at home. Many employees can work from home. So it is not clear whether the end client can control where Juanita works. We would need more facts about this.

### ***Other factors***

The end client provides Juanita with specialist equipment. This is often usual practice. But it is a weak pointer that IR35 applies.

Juanita mentors the end client's employees. A client's employees often learn from a self-employed contractor. But this does point to Juanita being part and parcel of the organisation. So it is a weak pointer that IR35 applies.

Juanita has no right to the kind of benefits an employee would receive from the end client. This is a weak pointer that IR35 does not apply.

J Ltd invoices for work carried out. Employees do not usually invoice for work carried out. So this is a weak pointer that IR35 does not apply. However, we would need to know how much (if any) financial risk J Ltd ran.



## Chapter 8: 'Hamish' – outside IR35

---

If the end client had contracted directly with Hamish, he would have been self-employed. So he is outside IR35.

There are two strong arguments.

- There is no need for Hamish's personal service.
- The intermediary incurs financial risk.

### **'Hamish' – the facts**

#### ***Intermediary details***

Hamish is the sole director, shareholder and worker of H Ltd.

#### ***Contractual chain***

H Ltd contracts with an agency, which in turn contracts with the end client.

#### ***Length of engagement with end client***

A series of contracts lasting a total of four years.

Throughout this time, H Ltd has neither contracted with any other client nor worked for any other client.

#### ***Payment terms***

H Ltd charges out Hamish by the hour and invoices monthly.

#### ***Personal service***

The contract between H Ltd and the agency has a substitution clause. So does the contract between the agency and the end client.

The end client accepts that H Ltd is free to send someone to take Hamish's place.

H Ltd has not sent a substitute. But H Ltd has named two suitable substitutes should the need arise.

#### ***Engagement details***

Hamish cannot carry out the work without essential equipment. H Ltd provides this equipment.

H Ltd incurs heavy costs on buying, maintaining and providing the equipment.

## **‘Hamish’ – reasons why IR35 does not apply**

### ***Personal service***

Even though H Ltd has not sent a substitute, it is clear that there is no need for Hamish to provide personal service. The end client will accept a substitute, and H Ltd has named two suitable substitutes.

IR35 cannot apply unless the end client needs the worker’s personal service. That is clearly not the case here. This is a clinching argument that IR35 does not apply.

### ***Other factors***

H Ltd spends a lot of money on providing and maintaining the equipment needed for the work. H Ltd thus incurs financial risk. This is a strong pointer that IR35 does not apply.

## Chapter 9: 'Barbara' – within IR35

---

There are many signs that the end client has significant control over Barbara.

And Barbara has to provide personal service.

Taken together, these are strong pointers that IR35 applies.

Some other factors also suggest that the engagement is akin to employment.

### **'Barbara' – the facts**

#### ***Intermediary details***

Barbara is the sole director, shareholder and worker of B Ltd.

Barbara specifically set up B Ltd to win the engagement.

#### ***Contractual chain***

B Ltd contracts with an agency, which in turn contracts with the end client.

#### ***Payment terms***

B Ltd charges out Barbara by the hour and invoices monthly.

#### ***Personal service***

Barbara is highly skilled and an expert in her specialist field. So it is unlikely that anyone else could do the work.

#### ***Engagement details***

The end client has not engaged Barbara for a specific task, and can move her to a variety of tasks.

Barbara works as part of a team of employees of the end client. A manager of the end client manages Barbara's project.

The end client's employees have to work from 9am to 5:30pm. The end client requires Barbara to work those hours too.

The end client decides which parts of the project Barbara will carry out.

There has been no downtime on the project. But the end client would expect Barbara to 'busy herself' with other aspects of the project if she ran out of work.

The end client insists on Barbara doing the work at the end client's premises.

The end client provides all the equipment Barbara needs to do the job, including a laptop and a calculator.

Barbara has to ask the end client if she wants to take time off. But leave is unpaid.

## **'Barbara' – reasons why IR35 applies**

### ***Control***

The end client has control over what Barbara does and where, when and how she does it. So the end client has extensive control over Barbara. This is a strong pointer that IR35 applies.

The end client has not engaged Barbara for a specific task, and can move her to a variety of tasks. This suggests that the end client has control over what Barbara does. It is a pointer that IR35 applies.

Barbara has to ask the end client if she wants to take time off. So the end client has control over when Barbara works. This is a pointer that IR35 applies.

### ***Personal service***

The contract says nothing about substitution. Because Barbara is a specialist, it is unlikely that she could find a substitute with the right skills. Taken together, these facts suggest that the end client requires Barbara's personal service. This is a pointer that IR35 applies.

### ***Other factors***

The end client provides all the equipment which Barbara needs. This often happens. But it is a weak pointer that IR35 applies – depending on the nature of the services.

Barbara works as part of a team. Many self-employed contractors are part of a team in some way. But Barbara is part and parcel of the team, just like the end client's employees. This is a pointer that IR35 applies.

## Chapter 10: 'Costas' – outside IR35 at first, then within IR35

---

Whether IR35 applies will depend entirely on the facts of the working arrangement. Costas's scenario illustrates this.

The parties to Costas's engagement stayed the same. But the working arrangement did not. As a result, Costas was outside IR35 at first but came within IR35 later on.

## **‘Costas’ – the facts**

### ***Intermediary details***

Costas is the sole director, shareholder and worker of C Ltd.

### ***Contractual chain***

C Ltd contracts with the agency, which in turn contracts with the end client.

### ***Length of engagement with end client***

Seven years in total.

For the first three years, contracts were for six months and for specific projects.

After three years, Costas’s working arrangements changed.

For the next four years, the contracts were for 12 months. But none of these contracts was for a specific project. Instead, Costas was to have a roving brief, carrying out tasks as directed by the end client.

Costas thus became a resource which the end client was free to use wherever it saw fit.

### ***Personal service***

Under the contracts, C Ltd could send someone to do Costas’s work.

But this right was limited. If C Ltd sent someone instead of Costas, the end client would check whether it thought the substitute was suitable. If the end client was not satisfied, it could turn down the substitute.

There were people who had the skills they needed to do the same work as Costas.

### ***Engagement details***

Costas was one of the early specialists in his industry. Because of his skills, the end client had little control over how he worked.

The contracts laid down a standard hours week. But the hours which Costas worked sometimes varied.

Costas gave the end client progress reports, especially if the project was overrunning. For security reasons, Costas carried out all the work at the end client’s premises.



Costas did not get holiday pay, sick pay or other benefits. Costas did not have to ask permission to take holidays. But, out of courtesy, he would tell the end client his holiday plans. And he did not take holidays during busy periods.

## **‘Costas’ – reasons why Costas was outside IR35 at first but within IR35 later on**

### ***Personal service***

The contracts included a substitution clause. But this right was limited, because the end client could choose to turn down Costas’s substitute. This is a weak pointer that IR35 applies.

### ***Control – the first three years***

The end client controlled what Costas did. But this was because the end client engaged Costas to work on specific projects. So this factor is neutral.

The end client had control over where Costas worked. But this was because of the nature of Costas’s services. So this factor is neutral too.

Costas could choose when he worked. So the end client did not have control over when Costas worked. And, because of Costas’s skills, the end client did not control how Costas worked.

So the end client did not have the necessary level of control, and so IR35 did not apply.

### ***Control – the next four years***

After three years, the contracts changed – and so did Costas’s working arrangement.

Costas became a resource which the end client was free to use wherever it saw fit. So, the end client had control over him. This level of control is a pointer that IR35 applied.

### ***Financial risk***

C Ltd incurred no financial risk. Nor did it give C Ltd a chance to profit from sound management. This is a pointer that IR35 applied.



## Chapter 11: 'Praveen' – main contract within IR35

---

The main contract is within IR35 because:

- The end client has the necessary level of control
- The end client requires Praveen's personal service
- There are factors suggesting that the engagement is akin to employment.

Praveen does carry out work for other clients outside the main contract. Those contracts do not amount to disguised employment, and so they are outside IR35.

But one has to look at **each contract separately** to see whether it comes within IR35. And Praveen's working arrangement with the end client brings the main contract within IR35.

### **'Praveen' – the facts**

#### ***Intermediary details***

Praveen is the sole director and worker of P Ltd. He and his wife are the shareholders in P Ltd. Praveen set up P Ltd because this is the normal practice in his industry sector.

#### ***Contractual chain***

P Ltd enters directly into (a) the main contract with the end client (a blue chip company) and (b) some small contracts with other clients.

#### ***Length of engagement with end client***

Four years.

#### ***Payment terms***

Contracts last for 12 months. The end client pays monthly.

#### ***Personal service***

Praveen is well known in the field and would not be able to send someone to do his work. There are others with the skills to do the job, but the end client requires Praveen's personal service.

## ***Engagement details***

Praveen is part of a team. Under the contract, the end client decides the times at which he has to provide the services. He has to ask permission to take time off.

The end client supervises Praveen, and tells him what to do. Every day, before he starts work, Praveen has a meeting with the end client and the rest of the team to discuss the day's work. Praveen can only do the work at the end client's premises.

The client provides all equipment and materials.

P Ltd also has some small contracts with other clients. Praveen obtains these contracts because the main contract makes him well known. These small contracts are outside IR35 because Praveen is able to decide what he does and how.

## **'Praveen' – reasons why main contract is within IR35**

### ***Control***

Praveen has to ask permission to take a holiday, and is not able to decide when he does the work. This is a strong pointer that IR35 applies.

The end client tells Praveen what to do. And he has daily meetings about how to do it. This is a strong pointer that IR35 applies.

### ***Personal service***

Praveen has to provide his services personally. The end client would not accept a substitute. This is a pointer that IR35 applies.

### ***Financial risk***

The end client makes monthly payments, as is usual for many employees. The only financial risk that P Ltd incurs is the risk that the end client will not pay – which is remote, as the end client is a blue chip company. This is a weak pointer that IR35 does not apply.

## Chapter 12: Glossary

---

This Chapter explains some of the commonly used IR35 terms.

Some of these terms cannot be fully defined here. We have given you brief explanations of these terms, with cross-references to the discussions in our 'Employment Status Manual'. You will need to read these discussions in order to get the full picture.

<b>Term</b>	<b>Explanation</b>
Agency	<p>Some workers, including workers who use intermediaries, use agencies to find them end clients.</p> <p>As an unconnected third party, an agency is not an intermediary for the purposes of IR35.</p>
Business entity tests	See Chapter 4.
Contract review	Contractors can ask us to review their contracts and say whether their contracts come within IR35. In this guidance, such a review is called a 'contract review'.
Control	<p>Control is a necessary consideration in determining whether a contract of employment exists.</p> <p>For this purpose, what matters is whether there is a right to control:</p> <ul style="list-style-type: none"><li>• <b>What</b> the worker has to do</li><li>• <b>Where</b> it has to be done</li><li>• <b>When</b> it has to be done</li><li>• <b>How</b> it has to be done.</li></ul> <p>See <a href="#">ESM0516</a> onwards.</p>
Deemed payment	IR35 treats the intermediary as paying the worker an amount which is chargeable to income tax as employment income and subject to Class 1 NIC. This guidance refers to this amount as the 'deemed payment'.
End client	The person for whom the worker provides the services. This could be any third party in the contractual chain. See <a href="#">ESM3050</a> for more detail.

<b>Term</b>	<b>Explanation</b>
Financial risk	<p>Generally speaking, the greater the financial risk which the worker runs in doing the job, the stronger the pointer towards self-employment. Employees are usually not obliged to risk their own capital. See <a href="#">ESM0541</a> and ESM0542.</p> <p>Taking financial risk and being able to profit from sound management are closely linked. See <a href="#">ESM0547</a>.</p>
Intermediary	<p>The third party through which the worker provides his or her services.</p> <p>In the example scenarios, the intermediaries are all limited companies. Partnerships, unincorporated associations and individuals can also be intermediaries.</p>
IR35	<p>The shorthand label for the tax and NIC legislation which prevents people who use intermediaries from being better off than they would have been if their end clients had employed them directly.</p> <p>The tax legislation is Chapter 8 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003.</p> <p>The NIC legislation is the Social Securities (Intermediaries) Regulations 2000 (SI 2000/727) and its Northern Ireland equivalent, which were made under (respectively) sections 75 and 76 of the Welfare Reform and Pensions Act 1999.</p> <p>The label is taken from the number (IR35) of the 1999 Budget Press Release which announced this legislation.</p>
IR35 review	<p>Every year, we choose some businesses and check whether they have operated IR35 correctly. In this guidance, such a check is called an 'IR35 review'.</p>
NIC	<p>National Insurance contributions</p>
Part and parcel of the organisation	<p>When considering whether a skilled worker is employed or self-employed, it may well not be sensible to ask whether there is a 'master-servant' relationship. It may be sensible to ask, instead, whether the worker is part and parcel of the organisation. See <a href="#">ESM0545</a>.</p>
PAYE	<p>Income tax under Pay As You Earn</p>

<b>Term</b>	<b>Explanation</b>
Personal service	<p>An essential element of an employment is that the worker provides personal service – that is, that the worker has to provide the service personally and nobody else will do.</p> <p>See under ‘Substitution’ below.</p> <p>See <a href="#">ESM0530</a> onwards.</p>
Risk band	See Chapters 2 and 3.
Status	Short for ‘employment status’ – whether a worker is employed or self-employed.
Substitution	<p>If a worker undertakes to perform a task and is free to hire someone else to do it or to give substantial help, the worker is probably not an employee.</p> <p>See under ‘Personal service’ above.</p> <p>See <a href="#">ESM0530</a> onwards.</p>