

IR35 Resolve – The Assessment Process / Frequently Asked Questions

What is IR35 Resolve?

IR35 Resolve is an online supply chain support portal designed to help businesses demonstrate reasonable care when making IR35 determinations.

Why has IR35 Resolve been chosen to carry out assessments?

Arriva has chosen IR35 Resolve because:

- It is a fully inclusive process which allows for all parties (contractors & Arriva) to have input on the overall IR35 decision.
- Each completed assessment is reviewed by a qualified employment law specialist (see further below). In other words, it is not a wholly Artificial Intelligence based system.
- The assessment criteria/questions enable all important IR35 considerations to be made before a status determination is confirmed.
- It is fully audited to satisfy HMRC requirements.
- It produces and delivers the required Status Determination Summary (SDS) document.
- It includes and manages any appeals, should any be made by the contractor.

Who are Champion Contractors?

Champion are a fully accredited FCSA company for both Accountancy & Umbrella Services. They have been assisting freelance workers with IR35 status reviews since 2009 and have supported many Public Sector organisations when similar IR35 rules were implemented in 2017.

Champion have used their knowledge and experience to develop the IR35 Resolve assessment tool. Using this, they will manage all administration activities on behalf of Arriva and will liaise directly with contractors throughout the process.

Who are Thorntons Law LLP?

Thorntons provide expert legal advice on a comprehensive range of services and is one of Scotland's top 4 independent law firms. The specialist employment law team within Thorntons consists of 3 partners (all of whom are accredited as specialists in employment law by the Law Society of Scotland), 2 associates, a senior solicitor and 2 solicitors. The team is able to advise clients on all aspects of employment law and is currently providing a significant amount of advice to individuals, agencies and businesses in relation to determining employment status and management of the new IR35 rules due to come into force in 2020.

The full-service offering delivered by Thorntons means they can offer wider advice, including the negotiation and tailoring of contracts to reflect the inevitable changes to the engagement of contractors in the Private Sector.

What is the cost of IR35 assessment?

The cost of assessment via IR35 Resolve is **£150.00 plus VAT**, per IR35 assessment.

Who pays for the IR35 assessment?

The contractor will pay for the assessment to be completed. The fees will be taken via a secure transaction after completion of the employment status questionnaire

When will I be asked to complete my IR35 assessment?

You will be contacted by your hiring manager to arrange a date/time for you both to complete the questionnaire. The contractor will be issued with a link (from IR35 Resolve) ahead of the meeting which will allow you to create your IR35 account. Please do not attempt to take the assessment ahead of the meeting with your line manager.

What areas will be assessed?

The IR35 Resolve assessment will ask you to consider and answer questions in relation to the following criteria:

- [Mutuality of Obligation \(MOO\)](#),
- [Supervision, Direction or Control \(SDC\)](#),
- [Substitution/Personal Service](#)
- [Financial Risk](#)
- [Integration](#)

See notes on all criteria via this [LINK](#)

Will I need a copy of my Contract for Services when completing my IR35 assessment?

Yes. You will be asked to upload a copy of your most recent contract via IR35 Resolve. The contract will be assessed in conjunction with your responses to the IR35 questions.

What happens if I refuse to complete an IR35 assessment?

Arriva must have a status determination for every role which is undertaken by a limited company/Personal Service Company; the tool is the best way to determine accurately your likely status. Failure to have a status determination will mean Arriva will need to terminate your engagement.

Can I use another assessment tool?

In this case Arriva has confirmed that you can only complete your assessment via IR35 Resolve.

Please contact your Arriva hiring manager if you disagree with their instructions and wish to enquire about using a different IR35 compliance tool.

Will I be updated on the progress of the assessment?

Yes. You will be able to track the progress of your assessment by logging into your personal dashboard within IR35 Resolve.

Who is responsible at Arriva for agreeing and confirming my IR35 status?

Once Thornton's has read the information given by the contractor and suggested their recommendation (inside or outside IR35 regs), the hiring manager has the chance to either accept or reject the recommendation and then an Arriva 'super user' will review the final outcome to determine whether it is accurate for this circumstance

What are the IR35 status meanings?

Indicative of Employment – this means that the answers given in the assessment to the particular area under examination point towards an employment relationship between the contractor and the client.

Indicative of Self Employment – this means that the answers given in the assessment to the particular area under examination point towards a self-employment relationship between the contractor and the client.

Indeterminate – this means that from the answers given in the assessment to the particular area under examination it is unclear what type of relationship exists between the contractor and the client. You may be required to provide further information before a clear status result can be confirmed.

Neutral – this status may be used where the answers given in the assessment to the particular area under examination do not point towards either an employment relationship or self-employment relationship between the contractor and the client.

Red – This factor is strongly indicative of employment status

Amber – This factor is finely balanced and may require consideration

Green – This factor is strongly indicative of independent contractor status

Neutral – This factor is neither indicative of employment status or independent contractor status

Next Steps

When will I receive the Status Determination Summary (SDS) Statement for my company?

Arriva will aim to provide the result within 2 weeks of the assessment.

Will I be able to appeal the overall decision?

Yes. IR35 Resolve will provide you with a Status Determination Summary (SDS) document that you must review. Once you have considered the SDS feedback, you will be asked to either accept or appeal the decision.

If you choose to appeal the determination made by Arriva you will be required to provide your reasons why, along with supporting details. Arriva will then be asked to re-examine all information.

Arriva have 45 days to respond to an appeal and, within this timescale, will confirm whether they have upheld the appeal or verify that their original decision will stand.

What are my options if my company's services are deemed to be INSIDE of IR35?

If you are a direct hire (no agency involved), you will need to speak to your hiring manager in the first instance to discuss contractual options, this may include the option of a Fixed Term contract or they will refer you to Morson who are Arriva's Master Agency.

Below are options Morson offer all "Inside" IR35 contractors (Link to further information [here](#))

- Morson PAYE Direct
- PAYE via Morson FSCA approved PSL Umbrella company
- In-Scope LTD via Morson

If you have come to Arriva via an agency, you will need to speak to the agency about your options.

If an inside IR35 determination is made will I be at risk of retrospective action from HMRC?

It is our understanding that HMRC will be focusing their attention on ensuring compliance with the new rules (from 6th April) rather than investigating past arrangement. HMRC will not open a new compliance enquiry into a contractor's return for tax years before 6 April 2021 in circumstances where:

- a client decides that a contract is within the off-payroll working rules (IR35)
- a contractor changes the way they work from providing and invoicing services through an intermediary entity to now being paid via a client or end user's payroll
- a contractor ends a contract because they disagree with a client decision on status

This includes any decisions that clients may have already made to prepare for the April 2020 changes, which have now been delayed. Further guidance can be found by clicking [HERE](#).

What are my options if my company's services are deemed to be OUTSIDE of IR35?

There is no change to your current circumstances if IR35 does not apply to your assignment, however there may be changes to the contract you are currently on, so please speak to your Hiring Manager or agency if you have not been made aware of any contract changes.

When your company's services are deemed to be outside of IR35, you will still be able to receive gross payments (no PAYE deductions) into your business bank account.

Will I need to complete further IR35 assessments?

Yes. To ensure that you and Arriva remain compliant with IR35 legislation, you will be asked to complete further assessments on an annual basis as a minimum.

Please note, you will also be required to undertake assessment anytime there are significant changes to your current working practices, OR, anytime you undertake a new assignment.

Who can I contact if I have any further questions?

Please email IR35contact@arriva.co.uk

IR35 Resolve – Terminology Index

Please click on the link below to view the IR35 terminology index

<https://www.champion-contractors.co.uk/pdfs/ir35-resolve-terminology-index-generic.pdf>

Criteria – Understanding IR35

What is IR35 / Off Payroll Working?

IR35 is a colloquial reference to legislation that was introduced in the 2000 Finance Act. The aim of the legislation is to identify individuals who would, but for the imposition of an intermediary, such as a Personal Service Company (PSC), have been regarded as an employee of the client to whom their services are provided.

When IR35 applies, individuals are required to broadly pay the same PAYE and NIC's as if they had been employed directly.

From its inception, the responsibility for determining IR35 status has been the contractor's. If captured as Inside IR35 by the legislation, then the burden for deducting and accounting for PAYE and NIC's under IR35 rules has fallen upon the PSC, through which the services of the contractor are provided. However, the change to the legislation proposed to come into force in April 2020, will shift that responsibility to the end client (in this case, Arriva and the fee payer (e.g. the agency) would be responsible for deducting and accounting for PAYE and NIC's.

Mutuality of Obligation (MOO)

Mutuality of Obligation (MOO) focuses on whether there is an obligation from the client to provide consistent and paid work, along with an obligation from the PSC contractor to personally carry out this work.

A true PSC contractor will work on a project-to-project basis, with no obligation to carry on working for the client after the project is complete and there is no obligation on the client to provide any further work. Further, the client cannot ask a true PSC contractor to undertake tasks which do not form part of the original assignment. Both parties will also have the right to terminate a contract part-way through. An employee on the other hand, can only work for one company and has an obligation to carry out any reasonable duties requested of them as well as an obligation to accept further work. The employer also has an obligation to provide the employee with work.

If a client requires a PSC contractor to undertake any/all tasks that the client gives them and/or the contractor is paid even when not working, then this would suggest that MOO does exist and the working relationship is Inside IR35.

Supervision, Direction or Control (SDC)

For a contract to fall Outside of IR35, PSC contractors must have freedom over how they complete their work and where and when they do it. A contract that specifies exclusivity, what time they must start and finish work, or states the days they are required to work, is one that points towards employment. Further, if the client instructs the contractor as to how the work should be carried out, this could suggest SDC and, therefore, a relationship more akin to employment.

A PSC contractor must also have sufficient qualifications and experience to carry out project duties without the client overseeing their work excessively or providing guidance on how to complete it.

Written contracts may not indicate SDC conditions so it is therefore essential that PSC contractors and client organisations agree how the project/work will be carried out prior to commencement.

Substitution/Personal Service?

A genuinely self-employment PSC contractor must enter into a contract to provide a service rather than personal skills and should be able, if required, to provide a substitute or engage a helper to provide the service. An employee would provide his/her services personally.

A genuine right of substitution is deemed to be a very important factor when demonstrating that a PSC contractor's assignment falls Outside IR35. For substitution to be considered valid, the right to supply a substitute must be a genuine one. This means that the client organisation must agree to it in practice, the PSC contractor must pay for the substitute, and it should be an unfettered right.

An unfettered right of substitution means that a client must accept a substitute if the initial PSC contractor is unavailable, subject to a client organisation maintaining the right to reasonably reject a substitute if they have insufficient skills and experience and have passed the appropriate internal site security processes.

It should be noted that if a substitute cannot be or is not provided in practice i.e. there is no right to substitute in reality, this could indicate a requirement for personal service (an indicator of employment) even if the contract states otherwise and HMRC may scrutinise this.

Financial Risk?

PSC contractors will experience a higher level of financial risk than an employee would as they have invested their own money into the everyday running of their business.

Also, if their client deems any work carried out to be faulty or substandard, the PSC contractor will be required to put things right in their own time and at their own expense. Genuinely self-employment contractors would also be expected to provide their own insurance, issue invoices, have a business bank account, only be paid when they are working and not entitled to any "employee" benefits, e.g. holiday or sick pay, bonuses, fuel cards etc. Ordinarily, self-employed contractors would also provide their own equipment and tools.

Exposure to financial risk is a simple way for PSC contractors to demonstrate that they are genuinely in business on their own account and it indicates an Outside IR35 status.

Integration?

If a PSC contractor was to become so integrated (part and parcel) of their end client organisation that they, for example, appear in organisation charts, or have staff reporting to them, then they may be deemed to be behaving exactly like an employee and subsequently assessed as Inside IR35.

A PSC contractor must distance themselves from the client's corporate structure and must only undertake responsibilities that will allow them to complete agreed project work.

PSC contractors must also ensure that they pay for their own personal development training, refuse invitations to client functions and unnecessary training provided by the client and should not use client subsidised facilities. A failure to adhere to these conditions could indicate integration.