



## **IR35 Resolve – The Assessment Process / Frequently Asked Questions**

### **Why has IR35 Resolve been chosen to carry out assessments?**

IR35 Resolve is an online supply chain support portal designed to effectively enable end client organisations (e.g. Exolum to demonstrate reasonable care when making IR35 determinations)

IR35 Resolve has been selected because:

- It is a fully inclusive process which allows for all parties (contractors, Exolum & AGENCY to have their input on the overall IR35 decision.
- Each completed assessment is reviewed by a qualified employment law specialist (please see further below) – 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 made by the contractor.

### **Who are Champion Contractors?**

Champion Contractors have been assisting freelance workers with IR35 status reviews since 2009. They also supported many Public Sector organisations when similar IR35 rules were implemented in 2017.

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

Champion are a fully accredited FCSA company for both Accountancy & Umbrella Services.

### **Who are Thorntons Law LLP?**

Thorntons Law LLP is one of Scotland's top 4 independent law firms with 13 offices across Edinburgh, Glasgow, Dundee, Fife, Perth and Angus.

Thorntons have 57 Partners and employ in excess 500 people, including 17 Law Society Accredited Specialists, 7 dual-qualified solicitors and 3 solicitor advocates. Thorntons provide expert legal advice on a comprehensive range of services - they are a progressive and ambitious firm and pride themselves on delivering high quality, practical advice together with exceptional client care.



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?**

In this instance, Exolum will pay the full IR35 Resolve assessment cost.

#### **When will I be asked to complete my IR35 assessment?**

Contractors will be invited to complete IR35 assessment during WC **15<sup>th</sup> March 2021**.

All assessment requests will be issued to contractors via IR35 Resolve.

#### **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?**

Failure to complete IR35 assessment will result in Exolum determining that your role is 'Inside IR35'.



### **Can I use another assessment tool?**

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

Please contact your Exolum 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 Exolum for agreeing and confirming my IR35 status?**

The overall status will be reviewed and agreed by the Exolum point of contact in conjunction with the Exolum HR department.

### **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?**

Providing you have completed and submitted the responses to review by **19<sup>th</sup> March**, you should receive your SDS no later than **1<sup>st</sup> April 2021**.

### **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 Exolum you will be required to provide your reasons why, along with supporting details. Exolum will then be asked to re-examine all information.

Exolum 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 currently work on assignment via a recruitment agency, they will contact you to provide details about the following payment options:

- Umbrella Company (Champion Contractors)
- Agency PAYE

### **If an Inside IR35 determination is made Exolum will I be offered an increased rate?**

Exolum have made it clear that anyone in scope of IR35 who is to be classed as employed will absorb the costs of the change to PAYE.

### **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.

When IR35 does not apply, 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 Exolum remain compliant with IR35 legislation, you will be asked to complete further assessments on an annual basis.

Please note, you will also be required to undertake an 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 contact Tash Romulus

### **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, Exolum 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.