



Candidate Zone

In the following section we will help to offer advice and try and demystify contractor terminology with some of our input:

FAQ - What is meant by IR35?

Essentially, IR35 affects all contractors who do not meet the Inland Revenue's definition of 'self employment'. The IR35 rules will result in an increased tax and N.I. liability and will prevent contractor companies from retaining profits to grow their business in the future.

Those contractors who fall under the IR35 rules will be liable to Schedule E taxation and National Insurance (N.I.), following deductions for expenses. Income will be in the form of a 'deemed payment', following these deductions. Contractor Companies may have a mixture of IR35 and non-IR35 turnover, in which case income and reward associated with unregulated contracts will escape these rules.

Normal Section 198 expenses may still be claimed. In addition, there is a provision for other intermediary expenses of 5% of a contractor's turnover.

The following expenses can therefore be claimed in addition to the 5% allowance:

- Pension payments - either personal or executive schemes
- Business travel - incurred in the course of business duties
- Subsistence - accommodation, meals when away from home
- Professional Indemnity cover
- Benefits in kind - e.g. private medical insurance

It should be noted that training expenses will not form part of this allowance. We would advise contractors to seek legal advice to determine their position under the IR35 rules. If you are caught by IR35, you may be able to change the way you work (working practices) and use an IR35 'friendly' contract to help bypass the legislation.

FAQ - What are the Agency Workers Regulations?

The Agency Workers Regulations, "AWR", came into force on 1 October 2011.

The legislation will give temporary agency workers the same basic rights, after 12 weeks in the same assignment, as those on permanent contracts of employment in a comparable role. Equal treatment after the initial qualifying period will cover pay and working conditions, including overtime, breaks, rest periods and public holidays.

The definition of "agency worker" is broad; articles in this section discuss which IT contractors are likely to be within the scope of this incoming legislation and the history of the Directive to date.



Candidate Zone

FAQ – What is meant by ‘opting out’ of the Regulations?

The ‘Conduct of Employment Agencies & Employment Businesses Regulations 2003’ were introduced to protect vulnerable workers from exploitation, ensuring they are paid a living wage and have a clear understanding of the services that the staffing company provides. Realising however that the provisions of the regulations may be detrimental to professional contractors the government allowed such contractors to ‘opt out’ of the regulations, subject to safeguards.

The vast majority of the Contractors, Consultants and Interim Managers that work through GBV however are highly skilled and well paid professionals who enter into ‘business to business’ or ‘service’ arrangements rather than contracts of employment.

Who Can ‘Opt Out’

Any contractor can ‘opt out’ of the regulations unless they work with children or vulnerable people.

Advantages of ‘Opting Out’

Tax advantages – the regulations make reference to the e worker being under the ‘control’ of the client. If a Ltd Company Contractor is operating outside of IR35 legislation choosing to ‘opt out’ may help your tax position as this will allow a contract to be written with ‘business to business’ type clauses being used indicating a commercial relationship with the client. These clauses are prohibited when ‘opting in’ under the regulations.

Reduced administration – the administrative requirements of the regulations are burdensome. A contractor that chooses to ‘opt out’ of the regulations may avoid the requirement to provide documentary evidence as to their experience, training, qualifications and professional authorisations automatically required under the regulations.

Client preference – some clients may specify that they only want contractors who have ‘opted out’ of the regulations because in simple terms, it allows them to reduce their administration, protect themselves against expensive employment rights claims and protect their legitimate confidential business interests.

It is important to note however, that we do not make our provision of work-finding services conditional upon an ‘opt out’ being exercised and if you are uncertain as to the effect of ‘opting out’, you should obtain independent, professional advice from an accountant or solicitor.



Candidate Zone

FAQ – Why should a LTD Company Contractor consider “opting out” of the Regulations?

Some limited company contractors take the view that operating under the Agency Regulations may place them at a disadvantage in securing a contract assignment with a particular client. In particular, the additional procedural requirements imposed upon the employment business and the client may delay the evaluation of that limited company contractor relative to a contractor who has opted-out of the Agency Regulations.

In addition, some clients appear to be concerned about the employment risk of limited company contractors seeking to opt in to the Agency Regulations, and becoming treated in law as permanent staff. There have been a number of recent court cases where contractors attempted to claim redundancy payments for example. Consequently, some clients, fearing that a limited company contractor could be considered more akin to a temporary employee rather than an independent contractor, may select only those contractors who have opted out of the Agency Regulations.

The Recruitment and Employment Confederation (REC) www.rec.uk.com provide information for limited company contractors regarding opting out of the regulations. The Professional Contractors Group, www.pcg.org.uk, have suggested that those limited company contractors seeking to legitimately challenge the application of IR35 to their services could be more likely to be assessed within IR35 if the limited company contractor is subject to the Agency Regulations. This is because some view the Agency Regulations as principally applying to protect the supply of individual workers who are similar to temporary employees, which would undermine any arguments of a limited company contractor seeking to challenge IR35.

IR35 Concerns

The problem with contractors 'opting in' is the IR35 concerns.

If your agency must pay you under any conditions, then you could be removing business risk as a defence to operating as a genuine business.

It is also unlikely that IR35 insurance will be provided to those that have not opted out of the regulations.

Although this is not a categorical position, that you are caught if you don't opt out, it is certainly a strong factor you may lose.

Contractors declaring for IR35 or working through Umbrella Companies may of course have little interest in opting out, and instead prefer the benefits of staying in.

FAQ – What % of LTD Company Contractors “opt out” of the Regulations?

According to a survey of more than 3,500 of its contractors by giant group plc, the contractor specialist, 97% have opted-out of the Employment Agency Regulations.

The Employment Agencies Act sets out agencies' responsibilities and obligations to contractors. These include providing details of the work contractors are required to do prior to engagement and ensuring suitable accommodation is available when contractors are required to work away from home.



Candidate Zone

FAQ - LTD v Umbrella - making the right choice for you

If you're about to cast off from the shores of the permanently employed into the potentially stormy but nonetheless lucrative waters of IT contracting or freelancing then stop for a moment and consider before launching yourself into the deep. In particular, you need to set up your new business in the best way so that you minimise your long term tax liabilities, while maximising your income and making it easy for your customers to deal with you. This is a hot topic and one that is close to the hearts of many first timers.

In essence, your choice is between setting up a limited company or operating under what is called an umbrella service company, of which more in a moment. Setting up and running a limited company, where you become a director and shareholder, is the most tax efficient way of working and has a number of advantages.

For example, you can claim back a wider range of expenses, including accountancy fees, equipment and software costs; you can also access a VAT scheme known as the flat rate scheme, which allows you keep some of the VAT you receive, for example, with a contract worth £100,000 you would make an extra £3,400 in your first year of trading. Perhaps as importantly, you have complete control over your financial affairs.

Contrary to general belief, running your own company is not extremely difficult and, with the assistance of a good accountant, is no more challenging than any other form of trading. Despite this, there are contractors who still prefer not to get involved in any paperwork, beyond producing weekly or monthly timesheets. Other only intend to contract for short periods between longer phases of permanent employment.

The alternative for these people are to use the services of umbrella companies, where they enter into a contract with the umbrella company and effectively becoming PAYE employees again, with the company then contracting with their customers and taking responsibility for invoicing, paperwork, collection of money due and payments to each contractor, less tax and National Insurance deductions.

Although this system is generally fairly simple to use it offers little benefit for individual contractors in terms of reducing tax liabilities, and may actually increase their costs as service fees levied by umbrella companies may reach as much as 9% of the value of the contract. It is also worth noting that many umbrella companies insist on either a minimum level of charging or a minimum time for which you must pay for their services. By comparison, accountancy fees for running a limited company are around £1,000 per year, irrespective of turnover.

If you are planning to use an umbrella company then you need to ask three key questions: What exactly will they charge; is there a minimum charge; and what tax or accountancy qualifications does their firm possess?

In terms of your ability to maximise your income, forming a limited company is the most attractive option, allowing you typically to take home over 80% of what you earn; this compares favourably with umbrella services where you will expect to take home approximately 65% of your earnings.

One final point to remember is that, whatever you may hear to the contrary, you can only claim expenses for items that you have actually purchased; this is true regardless of the type of company structure used. Note that many umbrella companies refer to 'special dispensations' in their marketing materials, implying that you can claim more expenses by using their services. Any good accountant will, however, tell you that these claims are nonsense and that expenses are either allowed or disallowed by reference to Tax Law and not by reference to the company that you use to calculate your payroll.

Ultimately, the choice of company will be determined by the needs of each individual. Before making a decision, however, it's important that you consult suppliers and contractor accountants who specialise in the sector.

This will ensure you have a fuller understanding of the options, are confident that the person with whom you will be working is fully qualified to manage your tax affairs and, as importantly, that you are aware of the exact costs involved.