

INSIDE VS. OUTSIDE IR35 CONTRACTS

WE ANSWER THE FOLLOWING QUESTIONS:

1. WHAT ARE THE TAX RISKS OF GOING FROM AN OUTSIDE IR35
CONTRACT TO AN INSIDE IR35 CONTRACT?

&

2. DOES OPTING OUT OF THE EAA REGULATIONS (CONDUCT
REGULATIONS) HAVE ANY IMPACT ON MY IR35 STATUS AND SHOULD I
OPT OUT IF I AM INSIDE IR35?



What are the tax risks of going from an outside IR35 contract to an inside IR35 contract?

A concern that has surfaced for contractors is whether moving from an outside IR35 engagement to an inside IR35 or PAYE position will have an impact on their tax position for previous tax years and whether they would expect HMRC to investigate such years. Before 6 April 2021, the assessment of the IR35 status was the sole responsibility of the contractor and therefore any subsequent HMRC investigation would also be their responsibility for those years.

The act of being paid via PAYE should not trigger anything as far as HMRC are concerned and each engagement should be assessed on their own merit.

However, if HMRC should investigate previous years, contractors would need to show that they were operating on a genuine B2B basis; this is demonstrable by the contract and the working practices based on factors that have been developed through case law (including the pillars of working outside IR35)

With respect to HMRC's view on the matter we have repeatedly heard that they are supposedly not interested in opening up enquiries into historic behaviour, unless they suspect fraud. However, HMRC may later decide to use their powers to gather information and approach clients for information relating to contractors. Although this would be very time consuming and expensive for HMRC, it is a possibility.

Does opting out of the EAA Regulations (Conduct Regulations) have any impact on my IR35 status and should I opt out if I am inside IR35?

Although the Conduct Regulations offers protection for workers, if the worker chooses, they can opt-out of the regulations. This may occur where worker is self-employed or operates a business through their PSC and considers that it does not require the protection of the legislation. Opting out of the Conduct Regulations may support that the worker is outside IR35, as it demonstrates that the worker is taking financial risk and is a business in its own right, but it is not a determinative factor. It should also be noted that for contractors who are operating on an inside IR35 basis there is very little, if any, advantage for opting out.

Consideration should be taken when choosing to opt-out of the Conduct Regulations and it is entirely the decision of the contractor- they must not be forced to do so. If the contractor does choose to opt-out then none of the protections offered in the legislation will be available to them. In some cases the opt-out may be implemented into the contract with the agency/employment business however an opt-out is only valid if the following has occurred:

- The contractor is not forced to sign the opt-out
- Before a contractor is introduced to the client the agency must receive a signed EAA opt-out form From the contractor
- The opt-out form must be signed by the agency, the worker and the worker's PSC
- The opt-out must be signed and returned to the client before the commencement of the relevant assignment

All of these requirements must be met in order for the opt-out to be valid.