

## Businesses beware – the Uber decision’s impact on IR35



The recent landmark Supreme Court ruling in *Uber v Aslam and others* confirmed the trend that those labelled self-employed were workers. This conferred rights for those gig economy workers and costs for Uber. It also has wider implications about control and dependency which are relevant to the application of IR35. As IR35 rules are extended to the private sector this April, this decision could affect who must be treated as an employee for tax purposes and increase the costs for businesses.

### Reality matters

The Uber decision confirmed that the reality of the working relationship is what matters, not the label people use or the description in the contractual documents. The Court said any contractual provision which does not represent the actual way people work is irrelevant.

The Court clarified the extent to which contractual clauses can be relied upon. Whilst a good contract is still an important factor to support the intended status of a contractor, it is not sufficient on its own to determine status. It is important businesses have the right contract in place to reflect the actual working arrangements with individuals, rather than the other way round.

### What does this mean for your use of contractors?

The Uber decision confirmed the direction of travel in finding that the drivers were workers and entitled to minimum wage, holiday pay and protection from discrimination. It re-emphasised that where an organisation



exerts “control”, then the person is not truly self-employed. Uber set the fare, set the terms between the drivers and passengers and restricted the contact with the passengers. That was seen as “significant control”. It also decided that the drivers were dependent by Uber.

Control, providing services personally and having to work are the same three tests used to determine a contractor’s status for IR35 purposes. If your business decides that an individual is ‘inside’ IR35, they must be treated as an employee for tax purposes, with deductions made from the contractor’s fee and employer’s NIC paid by the hiring business.

The impact of the Uber decision is an expansion of what constitutes control and an increased number of contractors who will be seen as ‘inside’ IR35 and liable to employment-like taxes.

## What does this mean for businesses?

Businesses who engage contractors need to reassess those arrangements before April. Making the status determinations is the perfect time to consider the risk that they are not genuinely self-employed. If their self-employment status is in doubt, these individuals may be entitled to the same protections as the Uber drivers. If there is a risk that they may not be genuinely self-employed, then the tax position will need to change which may prompt a re-negotiation.

Contractual clauses which deny the right for a contractor to assert they are an employee or worker will have no legal effect. This means it is impossible to prevent claims.



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