

Accountax win shows importance of IR35 fundamentals when contracting

The Revenue has dropped an [IR35](#) case against the Tyne and Wear based contractor AC Compliance Services Ltd. thanks to a spirited defence from the Milton Keynes-based [Accountax](#).

Control, Right of Substitution Are Key

Says Accountax senior tax consultant Sarah Thomson: "The case demonstrated the importance of careful attention to IR35 fundamentals like [control](#), and [right of substitution](#). But client testimony also played an important role in showing that the contractor was not a disguised employee."

AC Compliance Services is involved in testing for safety procedures for a major corporate client. [HMRC](#) questioned the employment status of the contractor who had worked at the client site for several years. The Revenue trotted out the usual arguments, but also did interviews with the client to try to find support for its case. As always, the Revenue maintained that the contractor was not actually doing specific, project-based work.

"The contractor fortunately, had been attentive to IR35 issues," Thomson explains. "The contract clearly indicated that the contractor had control of his own work. It also indicated a clear right of substitution. The contractor had even exercised this right during the contract period, albeit for a very short time."

Solid Support from the Client

But Thomson points out that solid support for the contractor's position was provided by the client. "The client gave very clear testimony about the contractor's ability to control his own work, and that there was no [mutuality of obligation](#)-- that the contractor wasn't dependent on this client for work. All of this made for a very strong case that the Revenue was obliged to acknowledge." The Revenue dropped the case when it became clear that there was simply too much firm support for the contractor's position.

In recent [IR35 cases](#), the judges have looked closely at the actual day-to-day conduct of work on the site, to see if the contractor really behaves like an employee or if the contractor is truly in control. The judges look at the process of work: where does the decision-making process take place? Is there an active right of substitution, or is it merely something mentioned in the contract.

"It's important for contractors to pay close attention to IR35 issues, and to be prepared to show that the real work is under their control. Paying attention to fundamentals is clearly a key to ensuring that you can prove being outside IR35," Thomson adds.

While the terms of IR35 rules remain complex, and the [case law involved in IR35](#) decisions remains very complex, some clear trends are emerging from the past year's IR35 judgements. One of these is the certainty that the judges will take a very hard look at what actually happens in the workplace. Contractors should be advised to keep as much documented proof of this as is possible.

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