

Contractor Doctor: Can I avoid an HMRC investigation if I close my limited company?

Dear Contractor Doctor,

I have been running my own contractor limited company for some years and am concerned that some of my past contracts might have fallen within IR35.

However, I have not had any professional contract reviews of past assignments, nor have I paid income tax and National Insurance Contributions as if I was a deemed employee within IR35.

If I make my contractor limited company dormant, or close it down and start a new contracting limited company, can I avoid an HMRC investigation?

Thanks

Contractor Name

Contractor Doctor says:

Firstly, contractors should always ensure that they commission [professional contract reviews](#) for every contract and renewal, to make sure they can clearly demonstrate that they have fulfilled their duty of care in respect to their tax affairs.

The same contract review, conducted by a reputable contractor contracts specialist, can clearly establish whether the contractor is working risk free outside of [IR35](#) or ought to be making financial provision now.

HMRC's investigation 'window'

[Closing down](#) up or [making a contractor limited company dormant](#) does not completely absolve a [limited company contractor](#) from their responsibilities for contracts they worked on whilst the company was trading.

When a contractor limited company is being closed down, the contractor submits a final tax return to HMRC, which details all of the final activities of the company. HMRC has a window of 12 months to investigate the business if they suspect there is tax still to pay.

Typically, if HMRC suspects there to be tax to reclaim, it could start a Compliance Review into the PAYE records of the contractor's limited company. This would then lead into an [IR35 investigation](#) – not a good place for a contractor to be.

Transfer of debt and IR35

Debt transfer provisions in the [Managed Services Companies legislation](#) mean that contractors who fail to pay the correct amount of tax from when their contractor limited company was trading could be liable to pay back taxes, interest and penalties, even if the company has been made dormant or wound up.

Although HMRC may try to find a contractor liable for payments on past contracts they deem to be outside of IR35, its track record to date suggests it does not enjoy a great deal of success on retrospective tax investigations.

However, this is not a reason for contractors to be blasé about IR35 as they may find their activities subsequent to closing the company under close scrutiny by HMRC.

'Phoenix jobs'

Contractors who show a pattern of starting up contractor limited companies and then winding them up, only to start another, will almost certainly attract HMRC's attention as running a series of 'phoenix jobs'.

HMRC has access to impressive databases of company and individual tax records. It uses powerful data mining techniques to target companies and individuals for investigation.

Contractors won't have past tax liabilities from wound up limited companies being attached to their new businesses, but they may find that HMRC targets them for investigation and debt transfer as individual taxpayers.

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Burying bad news

Contractors who have reason to be concerned that their past tax liabilities may come back to haunt them are best off facing these responsibilities now, and making provision over the medium term.

Remember, HMRC has 12 months from the submission of the final tax return to investigate the limited company. The taxman also has the option of investigating an individual contractor's tax affairs up to six years after they have ceased trading.

So ignoring IR35 and tax liabilities by closing down a contractor limited company is unlikely to be a solution that will have a happy ending for contractors.

Good luck with your contracting!

Contractor Doctor

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