

Being "in business on your own account" is key for contractors to stay outside IR35

Being able to prove that you are "in business on your own account" is essential to staying outside of [IR35](#).

The underpinning principle of IR35 is that, were it not for their [limited company \(also referred to as a "Personal Service Company" or PSC\)](#) and an agency in between, the contractor would in fact be an employee of the end-user client and pay tax accordingly. The [financial impact of IR35](#) due to being classed as a 'disguised employee' is significant.

In addition to issues like [control](#) and [substitution](#), a contributing factor to demonstrating that a contractor could not be an employee and therefore not within IR35 is if they can be proved to be in business in their own right.

As ex tax inspector Carl Whittaker from [Qdos Consulting](#) explains: "HMRC will contend that the provision of work by a contractor is the same as that of an employee and that the contractor is [part and parcel](#) of the end user client's business." In other words, the taxman will see that contractor as an employee, with all the tax implications that brings with it.

Part and parcel

"To prove to HMRC that a contractor is not within IR35, you need to look at both angles," continues Whittaker. "The first task is to draw up a list of the differences between the contractor and the client's employees."

As the contractor is not an employee, there should be some fairly obvious differences, such as set hours, benefits, pension arrangements, access to social clubs, parking, expenses arrangements, [use of a subsidised staff canteen](#) and so on.

The contractor will also be able to demonstrate that they are not part and parcel by referring to correspondence with the end user client that shows clearly they are not under the control of the client's project manager.

Contractor marketing

"Having established there is a clear difference in working conditions and benefits between the contractor and the client's employees," says Whittaker, "the next stage is to demonstrate that the contractor is in business for themselves."

According to Whittaker, this can take the form of marketing materials, such as:

- o A website, business cards and company stationery
- o Listings in business directories like Yellow Pages
- o Advertising in trade publications.

Whittaker suggests that when naming their limited companies, contractors avoid using their own names as this implies they are only providing their own services, which falls right into HMRC's definition of a personal service company (PSC).

"If you have Carl Whittaker Ltd on your business card, the implication it is that Carl Whittaker will be completing the work, so the business is a PSC," says Whittaker. "If you call the company ABC Computing, you are simply providing computing services, which could be supplied by a colleague."

And, warns Whittaker, whatever you do never have a business card with the client's logo or details. This will close the case on any contractor as being part and parcel.

Business costs - office equipment, training and subscriptions

Contractors who can show they have bought their own computer and office equipment, software licences, business insurances and have also kitted out an office, even if it's at home, will also be demonstrating they are running a business.

Whittaker recalls: "One client under investigation by HMRC brought to a meeting photos of an elaborately equipped home office with shelves full of reference books and with some shots including his wife hard at work on the company's accounts"

The same client, in addition to purchasing a comprehensive library of technical manuals, had invested in membership of a professional body, training courses and subscriptions to trade magazines. All of which added to the picture that he was in business on his own account.

“ One client under investigation by HMRC brought to a meeting photos of an elaborately equipped home office with shelves full of reference books and with some shots including his wife

Some contractors, particularly in the engineering field, are required to invest in personal continued professional development (CPD) in order to retain their chartered status, and payment for CPD by the contractor can be used as another indication of being in business.

hard at work on the company's accounts

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Carl Whittaker, Qdos Consulting

Concurrent clients

By the very nature of contracting it is frequently not possible to run concurrent clients. However, Whittaker says this evidence is very much taken on a case by case basis:

“If a contractor is earning £75,000 a year doing high end development work for a corporate client, and maybe £5,000 per year producing websites for family and friends, then HMRC would not take this as evidence by itself that the contractor is in business for themselves.”

Although if the contractor works two days on one contract for £35,000 per year and three days for £40,000 on another contract for a separate client, then this is strong evidence of genuine concurrent clients.

In conclusion, Whittaker says: “During an investigation HMRC will look at all the evidence on a case by case basis taking into account all aspects of the business but the major factors when [deciding if a contractor is inside or outside IR35](#) still remain the issues of [control](#) and [substitution](#).”

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