

## Contractor doctor: if the client requests me personally, am I caught by IR35?

Dear Contractor Doctor,

I have spent the last five years becoming an expert in Oracle development within the financial services sector. I've self-funded myself through several training courses and invested heavily in an up-to-date technical library.

So far all my contracts have put me comfortably outside of IR35 but my most recent client has requested me by name to work on their project and I am worried that this might jeopardise my IR35 status.

If I am requested by name by a client who will not accept a substitute, does this mean I am caught by IR35?

Thanks

Peter

Contractor Doctor says:

Specialist contractors may find themselves named by clients in their contracts but this does not automatically mean that a contractor is caught by [IR35](#).

[Control](#) and [substitution](#) are two of the [key tests of IR35](#) and superficially it would appear, if a contractor is named in a contract, that they fail these tests. However, just because the client insists on a contractor personally does not mean they are automatically inside IR35.

### Control

During contract negotiations it is important to manage the client's expectations by saying that, although they have named a contractor in the contract, the contractor can control their own hours and working week. This can be tough sometimes, but it is important to make this clear in order to remain outside of IR35.

Contractors can also demonstrate that they are outside of IR35 by ensuring the client provides them with clear project deliverables rather than simply telling the contractor what to do, and have the paperwork in the form of emails and memos to back this up.

### Substitution

When a client has asked for a contractor by name because they are a leading expert in their field, it may not be possible for the contractor to request a substitution clause in the contract. It would prove especially difficult for the contractor to actually provide a substitute.

What a specialist contractor can do in order to demonstrate they are outside of IR35 and in [business in their own right](#) is to use a subcontractor to work on some of the client's tasks.

In practice, a specialist can identify an element of the project that does not require their expert skills. In the case of an IT contractor this might mean basic coding that would be part of most IT projects, but does not require the expert contractor's input.

The contractor would pay for the days that the sub-contractor works on the basic tasks from their own [limited company](#), and this only need be a few days of the entire project, to demonstrate that they can introduce a substitute for some of the work and that they are in business in their own right.

### Business risk

As the specialist contractor has paid a subcontractor to complete some of the work for the client, the contractor is demonstrating a financial risk to their company, which is a strong indicator that they are [in business on their own account](#).

Contractors working through their own limited company should also ensure they have the correct [insurances](#) in place, such as Public Liability and Professional Indemnity insurance.

It is possible to be a named expert in a given field and be named by a client in the contract yet still remain outside of IR35 as long as the contractor takes steps to ensure they can supply the services of a subcontractor.

Good luck with your contracting!

Published: Tuesday, August 26, 2008

[Tweet](#)

© 2011 All rights reserved. Reproduction in whole or in part without permission is prohibited. Please see our [copyright notice](#). If you want to use any content you have seen on this site then please [request our media pack](#) and ask for details of our Content Licencing Service.

### Readers Comments...



Be the first to comment on this article

### Also of interest...

#### Related Guides:

- [What is IR35?](#)
- [Keeping control keeps IR35 away from contractors](#)
- [Contractors should use right of substitution in contracts](#)
- [Being "in business on your own account" is key for contractors to stay outside IR35](#)
- [Financial impact of IR35 on contractors](#)
- [When should contractors start considering IR35?](#)

#### Related Calculators:

- [IR35 Calculator](#)
- [IR35 Taxes Calculator](#)
- [Deemed Payment Calculator](#)



ABCe verified website - last audit confirmed **130,682 monthly unique visitors**