

IR35 contract reviews for IR35 status - a guide for contractors

Contractors who have successfully won through to [contract negotiation](#) stage by using a [killer CV](#) and an [effective interview technique](#) must ensure that they have an IR35 contract review conducted, before they sign it, to check their [IR35](#) tax status.

Failure to have the contract reviewed could leave the contractor exposed to subsequent claims by HMRC for back taxes, interest and [IR35 penalties](#), should the contractor be investigated. the [financial impact of being caught by IR35](#) is considerable.

Choosing not to check their contract before signing will almost certainly cost a contractor money in the long term, particularly as IR35 contract reviews can be relatively inexpensive. Importantly, such reviews can also be used to demonstrate to HMRC that the contractor is taking 'reasonable care' with their tax affairs.

'Reasonable care' for contractors

HMRC require that all taxpayers, contractors and otherwise, demonstrate 'reasonable care' in the management of their tax affairs. Failure to take reasonable care could result in a range of sanctions from fines to even imprisonment in extreme cases.

True to form, however, HMRC fails to provide a definition of what reasonable care might entail, but having a contract reviewed by an IR35 expert clearly demonstrates that the contractor is taking a high degree of reasonable care to determine their tax status.

Contract review options

Contractors have a range of options when considering what actions to take prior to [signing a new contract](#):

- o Not reviewing the contract, just signing it (which happens with worrying frequency)
- o Reviewing the contract themselves
- o Getting the contract reviewed by an IR35 legal specialist
- o Using [HMRC's contract review service](#).

Contractors who choose not to review their contract and sign it regardless will almost certainly end up spending more money in the long term. The contract may be inside IR35 and the contractor would not know until they were investigated, possibly years down the line.

It is possible for some highly experienced contractors with years in the business and a good knowledge of contract law and employment law to self-evaluate, but this is not recommended, especially as self-review may not satisfy HMRC that the contractor has taken 'reasonable care' over their tax affairs.

Choosing a contract review specialist

Contractors should ensure that they choose a professional adviser with some or most of the following characteristics to review the contract for IR35:

- o Legal expertise in employment law
- o Expertise and a track record in evaluating IR35, preferably with litigation experience
- o Specific sector experience in the contractor sector, with past and existing contractor, agency and end-user client customers
- o Ex-HMRC inspectors can provide expert IR35 contract reviews.

Ideally, contractors should choose a lawyer or legal consultant with specialist knowledge, as IR35 is an employment law issue. High street solicitors are highly unlikely to have the specific expertise a contractor needs to be comfortable with their IR35 status.

There are also very few accountants genuinely qualified to offer IR35 advice, although most will. Accountants are experts at tax and accounting, not employment law – a contractor would not use their lawyer to complete their tax return, so they shouldn't use their accountant for their legal issues!

Contractors should never consider using the [HMRC contract review service](#). It's as if the contractor is waving a flag saying, 'Please come and investigate me!' Plus, if HMRC is asked if there is any doubt about IR35 status, they will almost certainly say, 'There's no doubt – you are inside IR35 and should pay tax and National Insurance Contributions as an employee'.

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Next steps after a contract review

In many cases, the IR35 contract specialist will confirm to the contractor that their new contract is outside of IR35 as it is possible to be before the contract starts, and the contractor can sign the contract and start work.

However, if the review throws up some issues, then the contractor would be wise to address these and possibly enlist the support of the legal specialist to assist with contract negotiations.

If the agency or end-user client will not budge on negotiations over the contract, yet the contract is clearly outside IR35, then there are other strategies the contractor can adopt to demonstrate through working practices that they are indeed outside IR35. One of these is using a [confirmation of arrangements](#) letter.

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