

## Contractor IR35 investigation for first time sparked by P35 service company question

Contractors concerned about answering 'yes' to the ['Are You a Service Company?' question in Part 3 of their P35s](#) might have been justified in their fears, because it appears they may well become targets of an HMRC [IR35](#) enforcement campaign. So warns Seb Maley of [Qdos Consulting](#), which specialises in the [IR35 tax legislation](#).

"We've had a recent case of a contractor being asked searching questions by an [HMRC](#) inspector about status," explains Maley, Qdos' freelancer services manager. "What began as a straightforward status enquiry has evolved into something potentially much more sinister."

The controversial Question 6, first introduced in 2008, requires contractors to answer the question 'Are you a Service Company?'. But the [guidance from HMRC](#) as to what exactly constitutes a service company has always been vague, although it has become slightly clearer of late.

### P35 Question 6 - how to get on HMRC's radar

According to Maley, it is possible that HMRC used the P35 Question 6 to target the contractor initially with a straightforward Employer's Compliance Review, but, having got a foot in the door, the inspector then focused the questions on IR35.

"We are still in the early stages of the investigation, but this is the first case we have seen where the P35 Question 6 was used to identify a potential IR35 case," continues Maley. "The questions have gone way beyond those simply required to check employer compliance."

"HMRC wants to know why the contractor ticked 'yes' to Question 6 on the P35. The inspector has asked to see the contractor's current contract and to find out who reviewed it to establish whether the contractor demonstrated [reasonable care](#). The inspector also wants to know about working arrangements with the contractor's client. All of this is pointing pretty clearly towards a status investigation."

### IR35 is still in force, and being enforced

Maley warns contractors to remain on their guard against IR35. He highlights that, despite all the recent media coverage generated by the [government's promise of an IR35 review](#), IR35 is still a very real threat to contractors. "Many [limited company contractors](#) incorrectly think that IR35 has gone away, but it clearly hasn't. The investigation we are currently handling was started only a few weeks ago, after the announcement and media coverage of the review of IR35."

In addition to [IR35 contract reviews](#), Maley recommends that contractors urgently review their [investigation insurance](#) coverage. "The best IR35 defence is to nip an investigation in the bud before it develops into a full-blown IR35 investigation, and that takes expert assistance right from the start, which can be costly if you are not insured."

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Seb Maley, Qdos Consulting

### HMRC under pressure to maintain tax 'yield'

It's still early days, both for the contractor's investigation being handled by Qdos Consulting and following this year's round of P35 submissions by contractor limited companies, so there are no indications as to whether this is the first example of many IR35 investigations based on a 'yes' answer to Question 6.

However, Maley says that IR35 remains on the statute book and is likely to be there for some time to come, although perhaps not in its present form, with contractors remaining at risk. "HMRC is under pressure to secure strong tax yields and contractors remain an attractive target, especially as the back taxes, interest and penalties arising from a successful IR35 case are so significant."

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