

## Why contractors cannot trade as sole traders

First time contractors often ask why they cannot simply trade as a sole trader, rather than setting up a limited company or using an umbrella.

This article explains the issues.

### Agencies and tax law

The vast majority of contractors work via an agency.

Agencies are required by law to deduct PAYE and NIC from payments they make to "workers", unless those "workers" are employees of their own limited companies or work within umbrella limited companies.

### Direct contracts & the risk of employment status

For direct contracts there's a possibility of agreeing a self employed basis, but in practice most large organisations will refuse.

This is because either

- o they have a "preferred status" agency through which they wish to place all contracts; or
- o their accountants have advised them to refuse self employed type contracts in order to avoid the potential risk of a HMRC ruling, which may question the Schedule D/Schedule E status of the contractor.



Even if you are an established self employed person, with a HMRC Schedule D reference number, paying self employed National Insurance Contributions and filing self employed accounts, you will still find that agencies will refuse to pay you as a self employed person, since the very nature of their standard contract implies that you will be in receipt of regular payment from one "employer", i.e. the agency. In those circumstances, you will be forced into an employment arrangement with your own umbrella or limited company in addition to your existing self employment.

### Risk of using self employment

In the event that you are offered a self employed type arrangement for regular contractual payments through a direct contract, you should be aware that there will be a risk of a significant tax liability arising if HMRC should inspect either your affairs or that of the employer.

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