

## Keeping control keeps IR35 away from contractors

Who runs your company? Who makes the decisions?

The issue is crucial to deciding whether you have a right to the privileges that come with a [limited company](#)--i.e., earning [dividends](#) instead of salary--or whether you are caught by [IR35](#) and related legislation like the [managed service company](#) rules, and are taxed like employee.

The issue of control is one of the key determinants the courts use to decide on whether or not you are an employee," says [David Royden](#), a lawyer specialising in contract affairs with Layton's Solicitors in Manchester.

It's easy for contractors to respond that they have control of the limited companies they have created to run their businesses. But it's not really that simple. After all, contractors probably have accountants who handle the administration for their companies. Contractors work with agencies who find work for them, and who often decide the terms used in the contracts.

### Are you an Employee?

So contractors may own their own companies, but how much decision-making do they actually exercise? Is the client, through the agency, telling you when to work, how to work, where to work? "Should it become obvious that you are simply behaving like a regular employee for a given company, but are being paid like a contractor, the Revenue will not accept your status," Royden points out.

The definition of who is an employee and who is not depends heavily on [case law](#). The courts are usually being asked to provide a worker with benefits under the [Employment Rights Act of 1996](#). The courts will refer to a series of landmark decisions, including James v Redcat Brands Ltd. in 2006; to Brook Street Bureau v Dacas in 2004; and to [Cable & Wireless v Muscat](#) (which supported the decision in Dacas).

“ The issue of control is one of the key determinants the courts use to decide on whether or not you are an employee ”

David Royden - Laytons Solicitors

### Contract for A Service, Not for Work

All of this case law shows that who controls whom is a crucial factor in making the determination.

"Your contract should show that your company, not you yourself, are providing services," Royden explains. "You should have a [right of substitution clause](#) and be able to substitute another person at your own expense who can provide the services instead, and the client should not have the right to refuse your substitute."

### Client Does Not Approve or Disapprove

"Your contract should state the terms for the services that your company provides, but should avoid any mention of personal service. It is not you yourself the client wants. The client wants an action performed. Your company decides all the rest," Royden continues.

Nothing in the contract should suggest that the client can approve or disapprove of your actions, your means of performing the action the client requires, as the client might for an employee. "Unless the means of performing the action is directly related to the outcome, the client should have nothing to do with it," Royden says.

“ The client wants an action performed. Your company decides all the rest ”

David Royden-Laytons Solicitors

Finally, you should show that you have the right to refuse further work from the client. "You are not obliged to turn up at the client's office every day and just work at what is assigned," Royden explains. "You pick and choose your assignments: you accept one, perform it, and then choose whether or not to accept another."

These are, of course, basic principles on which contractor contracts should be written. The details are very important, and you should take professional advice to ensure that your contracts show that you are in control of your own company. The courts will look hard at the wording, and a professional can ensure that you have the right language.

But neglecting this issue could prove costly. The [financial impact of being caught by IR35](#) is significant. If the Revenue attacks you, and the courts support them, you could wind up with a very heavy bill in back taxes.

Published: Monday, April 02, 2007

[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?](#)
- [Financial Impact of IR35 on Contractors](#)
- [When Should Contractors Start Considering IR35?](#)
- [How to Determine if Your Contract Passes IR35](#)
- [Getting Your Contract Reviewed For IR35](#)
- [How contractors should word contracts to keep outside IR35](#)

#### Related Calculators:

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

#### Related Internet Links:

- [David Royden](#)



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

© Copyright 2011 Byte-Vision Limited UK. All rights reserved [Copyright notice](#)