

Contractors taking dangerous risks with IR35 status, says our survey

ContractorCalculator's latest survey reveals that many contractors are choosing to avoid confronting serious [IR35](#) issues, despite the fact that IR35 legislation has been in force for over eight years, with many high profile [IR35 cases](#) making national headlines.

Working whilst disregarding IR35 status cuts across the board: people in all sectors are risking the threat of being pursued by HMRC for significant back-taxes and penalties. And proving that age doesn't necessarily bring wisdom, even the length of contracting career does not seem to change contractors' behaviour – both experienced contractors and those relatively new to the sector are equally at risk through their seemingly cavalier attitude to IR35.

The ContractorCalculator survey highlights that:

- o 52% of respondents work in IT, 21% in engineering and the remaining 27% work in construction and other sectors
- o 63% of those surveyed have been in contracting for two years or less, with 17% between two and five years and 20% for more than five years
- o 93% believe they are not caught by IR35, but only 24% have had their current contract professionally reviewed to verify this.

The last statistic is particularly worrying, especially when combined with the fact that 56% of contractors say they never get their contracts reviewed for IR35 issues, and only 20% do seek professional advice on their IR35 status.

Professional contract reviews

The high number of contractors who never seek professional expert advice on their IR35 status is alarming, and raises some serious questions about general awareness of the issues, especially as contractor reviews are now so relatively inexpensive.

But it is not clear whether education about the issues around IR35 is the problem, because 62% of respondents claim to keep up-to-date with changes in IR35 legislation and 64% actively try to win contracts that are outside of IR35. This suggests a reasonable degree of knowledge on the part of most contractors. However, when asked if they knew what IR35 is and how it affects contractors, only 40% answered 'yes'.

IR35 tests

The anonymous survey also reveals that many contractors may be failing key tests of IR35 and are unaware that they would come under considerable scrutiny from HMRC if investigated. For example:

- o 57% of respondents worked solely on their clients' sites
- o Only 13% had an unfettered right of substitution,
- o 64% say they can substitute, but only with their client's agreement,
- o Leaving 23% who are not allowed to substitute.

Considering 93% of those questioned claim to be working outside of IR35, there are clearly mixed messages being sent by some contractors about their IR35 status.

A further 84% of contractors claim that they have never had a contract that falls within IR35 and only 5% have actually exercised the right of substitution. A total of 5% actually admit they would be unlikely to successfully defend their IR35 status if challenged.

Umbrella company option may be best for some

Not surprisingly, 80% of the contractors who participated in the survey work through their own [limited companies](#), with 12% currently working through [contractor umbrella companies](#) and 8% paid by the agency payroll or using another trading solution.

IR35 is not an issue for contractors who work through umbrella companies, through which they pay tax and National Insurance Contributions (NICs) via PAYE. Working through an umbrella of course reduces net take-home pay, but removes any concerns a contractor may have regarding their IR35 status.

So given the low levels of awareness of IR35 issues for the vast majority working through limited companies, opting for an umbrella company may prove to be a safe, and wise decision for many.

This is reinforced by the fact that only 30% of those surveyed have [tax investigation insurance](#) and only 35% put away extra cash in

case they are later caught by IR35.

Taking action

The survey highlights the fact that there are a great many contractors who may be playing Russian roulette with their tax affairs. The reason so few contractors are caught, could be that HMRC simply does not have the resources to affectively police IR35.

“ There are a great many contractors who may be playing Russian roulette with their tax affairs ”

With a [professional contract review](#) now costing only a few tens of pounds, it seems like a small investment to make for peace of mind. And the figure is tiny compared to HMRC’s bills for unpaid tax and NICs; the [latest IR35 case lost](#) by a contractor, Dragonfly Consulting Ltd, saw John Bessell facing a bill for back taxes of almost £100,000.

There are also a huge range of resources available for contractors who want to find out more about IR35, and the ContractorCalculator website is packed with up-to-date, comprehensive and free guides to the crucial [IR35 tax legislation](#).

Given that the state of the economy means that the Treasury is going to be seeking tax revenue from every conceivable source, it is likely HMRC will be redoubling its efforts to catch contractors.


Those who think IR35 won’t affect them would be wise to think again and start preparing for the worst to happen.

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