

Contractors must not be 'part and parcel' of clients to avoid IR35

Want to use the company canteen when you're working on assignment? Want to share car rides with other employees when you go home? Want to get a security pass to avoid the bother of signing in each time you have to get in to the office you're working at?

You Can't Even Get The Small Things

Well, don't! Even these small things can help to put you inside [IR35](#).

[Determining whether a contractor is inside IR35](#) or not is a matter of very complex judgement on the part of the courts. There are [many factors](#), and nearly all of them are abstract. All of the issues involved are the product of [case law](#), and there is a lot of contradictory case law involved.

The Tax Inspector Decides

The problem is that you won't be dealing with erudite and learned judges at first. The first step in assessing you will be taken by the local tax inspector, and these honest bureaucrats will simply apply the list of criteria that they've been told are relevant.

One of the 'tests' they will use is: are you 'part and parcel' of the client's organisation or not?

'Part and Parcel' Means What?

There are no clear criteria about what being 'part and parcel' means. The expression dates back to a 1952 case which first suggested that, when you get really involved with an organisation, for example, if you start managing clients, you must be 'part and parcel' of it, and so, an employee.

But, as the Felixstowe-based tax consultant [Simon Sweetman](#) points out, later case law just goes all over the place in defining 'part and parcel.'

"In case law there are no clear determinations of what 'part and parcel' means. In fact, most judges don't consider this test a very useful one in determining employment status," Sweetman says.

For example, in a judgement rendered in April 2006 by the Magistrates Court, the judges felt that a contractor who was clearly part of a corporate team was still an independent contractor. The Revenue made the 'part and parcel' argument, but the judges said, okay, he works on the team, but he's still just doing a project on an independent basis. He doesn't have to work by himself to be a contractor.

This should give you an idea of just how complex these legal decisions are.

Avoid Going To Court

That's all well and good if you wind up in court. But the best course is to avoid ever having to go to court at all. Bear in mind that the Revenue can seek you out six years after the contract is over and accuse you of owing back taxes and interest on it. And the tax inspectors making this judgement aren't going to examine all the case law: they will just follow their instructions and if they decide you are within IR35, you'll have to fight them.

How To Stay As Safe As Possible

To make certain that you don't get the tax inspectors thinking you might be 'part and parcel,' avoid looking like an employee. That seems ridiculous, but it's one of the things they consider, as Sweetman points out.

So don't accept any of the little perquisites that employees take for granted. Don't accept a pass that lets you into the building through the employee gate; sign in every day.

Don't let them list you in the company telephone directory, and don't get your business cards from the company. Accept [no sick pay or holiday pay](#) from the client.

[Don't eat at the company canteen](#). In so far as possible, see that you're not listed on company materials as part of the organisation.

If you have a management role, make it clear in written form that this is strictly related to the project you have contracted for. In

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general, it is best to avoid written materials that put you in the light of being an employee in any way; this is just the sort of thing the Revenue will find six years later.

It's Worth The Trouble

If you think it's not worth the trouble, think again. Imagine when you get a tax audit six years later and you have to spend hours of time and lots of money fighting a review from the local tax inspector. Sure, your chances in court are very good, as the Revenue nearly always loses. But the time and anxiety you will waste over it are far greater than what you will endure by avoiding the company canteen.

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“ If they terminate me I have every intention of claiming employment rights. ”

Anonymous Contractor

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