

Could the personal service company be next for contractors?

As thousands of contractors move their businesses into so-called 'personal service companies,' perhaps they should think about what a personal service company really is.

The term 'personal service company' has no basis in law, as John Kell of the London-based Professional Contractors Group points out. "There are only various kinds of [limited companies](#), as far as the law is concerned, but no personal service companies," Kell says. Yet both the Revenue, and lawyers and judges as well, use the term as though it denoted a clear legal concept. One finds it in important legal rulings and in regular use by the Revenue.

No Basis in Law

The term 'personal services company' actually dates back to the original [IR35 legislation](#). At that time, a 'de facto' distinction was made between limited companies and the ones used by contractors who provide services personally, that is, who physically do the work themselves and have their own companies. No such distinction actually exists in law, yet the term is widely used, especially by the revenue.

"But there is a distinct lack of clarity in the definition of the personal services company," Kell points out, and "it could prove worrisome. Contractors have companies which provide services—note the plural. Yet the Treasury likes to talk about managed service—note the singular—or personal services companies—note the singular again. For managed service companies we now have a very specific definition. But it's not clear what the definition is here for personal service companies."

“ The term personal service company has no basis in law ”

John Kell-PCG

Courts Use the Term

Nonetheless, contractors who do a search on Google for IR35 or for limited company will find scores of service providers who propose to set up personal service companies for them. The number of demands to start limited companies has already doubled at Company House, and most of these new companies will be classified as personal service companies, even though the term has no basis in law.

It is ironic that the courts have taken a different tack on the whole question of distinguishing employment from personal service. In the recent decision of the Employment Appeal Tribunal in the landmark case, [Cable & Wireless plc v Muscat](#) - - which makes specific reference to personal service companies - - the Tribunal made it clear that contracts of employment may be implied or deduced from all the circumstances, including "the totality of the triangular arrangements" and the conduct of the parties - ie the form and structure of the written arrangements is not decisive.

“ Contractors have limited companies that provide services not service ”

John Kell-PCG

That means that the reality of what you do is more important to the courts than what is written in your contract. Whether you act like a contractor or you act like an employee is what the courts look at.

But for the courts, the issue of control is perhaps the key issue in determining whether or not a provider of personal services is an employee. Contractors who run personal service companies need to ensure that they can show that they actually run their companies, rather than that someone else runs them as a tax avoidance vehicle. It would be wise for contractors to take advice on this subject, and to be aware that the personal service company in itself is not adequate protection.

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