

Put yourself outside IR35 by bringing in expert help

Contractors have a range of options to demonstrate to HMRC that they are outside of [IR35](#). One of these is to employ a specialist to help them with an aspect of their work on a contract.

Sub-contracting work to an expert colleague can cost quite a lot of money, but the [tax savings resulting from remaining outside IR35](#) would significantly outweigh the day rates charged by a colleague.

IR35 tests

When investigated by HMRC, contractors have to demonstrate that they can satisfy the range of measures proving they are outside of IR35.

The key tests for contractors to stay outside of IR35 include:

- o [Control](#) by the client
- o [Mutuality of obligation](#)
- o [Being in business in their own right](#)
- o [Part and parcel](#).

Another key test, which we are dealing with here, is [right of substitution](#).

Substitution

Contractors are ideally placed to ask for help from other contractors to help on special projects. Using a sub-contractor to work on specific elements of a project is a classic example of substitution, clearly demonstrating that the contractor is in business in their own right.

Substitution clauses appear in many contracts, both when the contract is direct with the client and where contractors are working through agencies. But the option of using a substitute is rarely exercised by contractors, and in this way they might fail one of the classic tests of IR35.

Contractors who work for clients through agencies should also confirm that the contract the agency has with the end user client allows for substitution if the contractor wants or needs to put a colleague in place.

Using an expert - how does it work?

There are two key elements when using an expert to work on a project:

- o How the expert is paid
- o What the expert can work on.

Contractors should ensure they are correctly invoiced by their expert specialist sub-contractor for the time they have spent working on the project.

That is because maintaining a paper trail is vital for contractors to be able to prove that they are outside of IR35. So any work completed by experts should be invoiced correctly and include the expert's:

- o Name, address and company number of the business, if it is incorporated
- o Nature of work completed
- o VAT number, if the sub-contractor is VAT registered.

Some contractors say that it is just not practical for a substitute contractor to take over their day-to-day activities. But just to ensure you are able to complete your side of the contract in case you need to unexpectedly take time off, it is prudent to plan for a substitute to be able to take over.

For example, you might keep clear records of what has been achieved and how, so that your substitute can be up and running as quickly as possible. And naturally, where there are specialist areas as part of your contract, it makes sense to bring in a substitute contractor with the expertise to work on those specialist elements.

Managing the expert

Contractors do not necessarily need to have an expert on-site if the work can be completed remotely. This would not be a workable solution in some contracting scenarios, but if the expert could work off-site as well as on-site it would help the contractor's IR35 status, and their defence if challenged by HMRC.

The expert would need to be seen to genuinely contribute their expertise to a project that is being managed by the contractor. A paper trail of instructions from the contractor to the expert will clearly demonstrate that the contractor is in business in their own right.

Outside of IR35

If a contractor sub-contracts a legitimate part of a project to an expert it is a clear indication that the contractor:

- o Is in business in their own right
- o Has the right of substitution.

These are strong factors to indicate that the contractor is outside of IR35, although contractors would be wise to ensure they have had their contracts checked by a specialist before signing them. Contractors can also use for free the online [IR35 test](#) on ContractorCalculator to give them an initial indication of their status.

Contractors who work with experts on their contracts can add this fact to their IR35 defence if they are investigated by HMRC.

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