

Only 'reasonable care' will help contractors avoid IR35 penalties

The latest [guidance from HMRC](#) means contractors will have to take even greater care when negotiating contracts with their agents and clients.

In future, every contractor will incur a penalty if they include a 'careless inaccuracy' in any documentation. So they will have to ensure all contracts have been prepared with what HMRC calls 'reasonable care' to avoid the contractor being found to be within [IR35](#).

The new guidance applies to tax returns and documents filed on or after 1 April 2009, where the return covers a period beginning on or after 1 April 2008; that basically means everything in the April 2008 - to March 2009 financial year and going forward.

No straight answer

The advice from HMRC about the issue appears to be deliberately vague, stating, for example, that "'reasonable care' cannot be identified without consideration of the particular person's abilities and circumstances". It would seem unlikely that anyone will know for sure what this means, until it is clarified in a test case brought by a contractor.

And HMRC expects contractors unfamiliar with a particular event or transaction to fork out for expensive specialist advice to ensure they don't get fined, HMRC's view being that this is a reasonable expectation on their part.

HMRC goes on to say in their guidance that, "Failure to take reasonable care can be likened to the long standing concept in general law of 'negligence'."

“ Reasonable care cannot be identified without consideration of the particular person's abilities and circumstances. ”

HMRC Guidance

Caught by IR35 - failing to take reasonable care?

The implications of the new guidance could be considerable, but at this stage are unclear. For example, will it now be expected that if a contractor does not get their [contract reviewed for IR35](#) by an expert, they have not "taken the care and attention that could be expected from a reasonable person taking reasonable care in similar circumstances."?

The added complication is that, as the [recent Dragonfly Consulting ruling](#) demonstrated, most contractors have no control over the upper level contract between their agency and the end-user client, nor do they get sight of the contract until it is usually too late.

Steps to take to avoid penalties

[IR35 contract reviews](#) are increasingly cost effective and provided by a range of specialist organisations in the contracting sector. Perhaps the time has now come when contractors should insist on a legal expert to pronounce on their IR35 status, rather than relying on their accountant.

HMRC can check whether a contractor has taken reasonable steps to ensure that their accountant has made an accurate return, and if one contract during a year is inside IR35 and comes to light when the paperwork has been submitted, the contractor will be the one who pays.

'People do make mistakes. We do not expect perfection.'

Fortunately, HMRC acknowledges that mistakes will happen and, as long as reasonable care was taken and there was no intent to deceive on the part of the contractor, there will be a degree of understanding.

Contractors who create sensible record-keeping systems of invoices and expenses and supply that information in a timely fashion to their accountant will go a long way to demonstrating reasonable care over their tax affairs.

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