

Contractor doctor: can I change contract terms to be outside IR35 during a contract?

[This answer has kindly been provided by Kate Cottrell of Bauer and Cottrell who specialise in IR35 Contract Reviews.]

Dear Contractor Doctor

I'm currently in a contract and am using an umbrella company structure however am considering changing to a limited company structure.

What I want to know is whether there is an issue with changing structure whilst still in a contract, as I will be getting the current contract altered for it to fall outside of IR35 but the contract end date will remain unchanged. The contract will essentially be identical except for 2 small sections that will be removed, however would HMRC view both contracts and see this as avoidance of IR35?

Kind regards

[Name supplied]

Dear Contractor

Thank you for your question.

Firstly I am assuming that you are treated as an employee (subject to PAYE and NIC) of your current umbrella.

Secondly, much depends on the terms and conditions and contractual obligations contained in the contract between the umbrella and the client or agency. Many contracts of this kind contain clauses that prohibit you from operating in any other way than as an employee of the umbrella. There may be a clause that calls for immediate termination in these circumstances. In any event if you do change structure a new contract will have to be entered into and again this could be grounds for breach of contract. You will need to check to see if you can give notice etc.

Again I have assumed that you will be seeking advice regarding getting the contract altered for it to fall outside IR35. In my experience the removal of 2 small sections is unlikely to enable you to achieve your objective. You should be aware that the agency or client is unlikely to use the same contract for both situations. If HMRC investigated your case the first contract would fall under the umbrella and the second under your limited company. There is of course nothing to stop you from organizing your business affairs as you wish.

In summary I recommend the following:

Carefully review the contractual conditions in the contract

If you are free to go down the limited company route ask if the agency or client has a different contract for such suppliers or confirm that it will be the same contract.

Carefully review the contract to ensure that it falls outside the IR35 legislation assuming that this is in fact the reality of the working relationship.

Consider using an accountant to advise you on start-up costs, expenses that you can claim and all the other issues associated with being in business.

Kind regards

Kate Cottrell
Bauer and Cottrell

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