

Contracting top 10: Making sure IR35 won't apply to you

Contractors who provide their services through intermediaries, such as their own limited companies, run the risk of unwittingly being caught by IR35 if they're not careful. This can result in a substantial bill for extra tax from the taxman.

Taking measures to avoid an IR35 investigation is an essential task for any contractor. So, here are ten steps that you can take so that IR35 won't apply to you:

1. Don't attract HMRC's attention in the first place

No late tax returns: Submitting a tax return late - or with errors - will put you on HMRC's radar, and arouse an inspector's suspicions that you may be making further mistakes.

Use an accountant: Taking measures, such as hiring an accountant to submit tax paperwork, can significantly reduce your chance of being targeted for an investigation.

2. Avoid replacing an employee

You should always start a contract on the understanding that the role is for a contractor.

If the contract is to fill a role that previously belonged to an employee, the client's expectations are likely to be for a worker with the characteristics of an employee. This increases your risk of being caught by IR35.

3. Pay for a contract review

There's no such thing as an IR35-proof contract, but paying for a contract review is still essential.

When you get your contract, have it professionally reviewed by an expert who can identify any badly worded clauses that might put you inside IR35 from the outset.

4. Ensure you're not named in the contract

You should always operate under 'contract for services' arrangement, as a business-to-business service provider, through your limited company.

Being named within a contract may compromise this business relationship, and an over-zealous HMRC inspector could interpret the working relationship as an employment 'contract of service'.

5. Secure a 'confirmation of arrangements' from the client

Ideally, your contract will provide clear indication that you are outside IR35, but this may not be the case. Ask for a confirmation of arrangements letter from your client, to confirm that your working relationship is a business-to-business one.

6. Keep a contractor diary

If you do end up on the taxman's radar, HMRC may conduct retrospective investigations of your past contracts.

You should keep records, such as telephone logs and copies of emails, so that you have proof of your day-to-day working arrangements when the taxman comes knocking.

7. Make sure you are not controlled

There are key tests of employment that HMRC uses to determine whether you are a 'disguised employee' and inside IR35. Control is one of these, and you'll be caught by IR35 if you are controlled by your client.

Before agreeing a contract, it is essential for you to confirm with your client that you are in control of where, when, what and how the work is carried out.

8. Secure a right of substitution and exercise it if possible

Substitution is often called IR35's 'silver bullet', and with good reason. If you can send a substitute to provide the same service as you, it proves that you are not delivering a personal service, and therefore you cannot possibly be an employee.

You should ensure that there is a right of substitution clause in every contract you sign.

9. Avoid 'mutuality of obligation'

Mutuality of obligation ('MOO') is another test to determine employment – and therefore IR35 - status. MOO means an employer is obliged to provide work and a worker is obliged to accept it.

Allow freedoms: You must ensure that your contract lets you refuse work and allow freedoms, such as taking on other projects simultaneously.

Keep evidence: Keeping evidence if you have refused work from your client also demonstrates a lack of MOO.

10. Keep the client at arm's length

Don't become part of the company furniture. Avoid being on organisation charts, having business cards, getting any benefits normally given to their staff. Avoid becoming part-and-parcel of the organisation.

Published: Wednesday, November 18, 2015

© 2016 All rights reserved. Reproduction in whole or in part without permission is prohibited. Please see our [copyright notice](#).



ABCe verified website - last audit confirmed 134,482 monthly unique visitors

© Copyright 2016 Byte-Vision Limited UK. All rights reserved [Copyright notice](#)