

Contractor strategies for long term IR35 defence

Contractors who are confident that they are working outside of **IR35** in their current contract may find that, as time passes, memories fade, clients move on and paperwork is lost. The danger of this is that they would have difficulty defending themselves against **HMRC investigations** that may arise up to six years in the future.

However, as **Duncan Strike** of **Intouch Accounting** explains, it is possible for contractors to capture the right kind of evidence today that will form the basis of an effective defence strategy; one that will clearly establish their IR35 status should they come under investigation by HMRC in the future.

"Contractors can implement some simple strategies, which include recording basic information like the exact nature of their working relationship with their client in their current contract," says Strike. "These facts can remain on record and be produced as conclusive evidence during an investigation."

The real working relationship

According to Strike, many contractors place too much emphasis and reliance on their written contract with the client or agent. As he explains, when the contractor starts work on site, mutual and **verbal agreements** on variations between the end client and contractor mean the written contract with the agency is rapidly outdated.

"HMRC can conduct a review of a contractor's circumstances at any time in the next six years," continues Strike. "We consider each contractor's circumstances in the round, and examine both what's written down and their day-to-day activities."

Included in Quay Accounting's regular monthly service, each contractor client is offered an assessment that examines their circumstances in three areas:

The written contract between the contractor and agent, or client; areas within the contract that are useful for defining IR35 status, and those less useful or actually harmful

The business as a whole; the history of the **contractor limited company**, how it is operated, whether it has 'business substance'

The actual on site, day to day working relationship between the client and the contractor; whether the actual relationship is one of employment or self-employment.

"If there are issues with the working relationship that are a cause for concern," explains Strike, "then they are better resolved face-to-face between the contractor and client whilst the contract is current, rather than some years on during the course of an investigation."

Irrefutable IR35 evidence for HMRC

Tax authorities can draw their own conclusions, often based on little substantive evidence, warns Strike: "When HMRC investigates a contract that is not current, they will request a copy of the contract and write to the end-user client with a list of questions phrased to extract the desired response.

"The letter to the client often lands on the desk of someone totally unrelated to the original contract, and although provided in good faith, their answers are frequently misleading – HMRC will draw their own conclusions based on this limited evidence."

In Strike's experience, answers by clients many years on from the original contract are often based on what is thought to be the 'typical' client-contractor relationship, and this all too often bears little resemblance to the facts.

He says that **Quay Accounting** keep every contractor assessment on file, so that it can be presented as evidence during an investigation, or if the case is referred to the tax chamber or the courts.

And, as under the tax code the contractor is guilty until they prove themselves innocent, this can mean the difference between winning, or having to pay out substantial sums in back taxes, interest and penalties.

"Our approach is not unique, but we do go into much more detail than many contractors will be used to," says Strike, "and our clients receive in-depth **IR35 reviews** as part of their ongoing service, and without additional cost."

What contractors should record, day by day

A crucial element of an ongoing IR35 defence strategy is for the contractor to ensure they maintain an accurate record of key events during the contract. Strike says contractors should:

Retain copies of emails where the contract and client discuss key elements of a contract

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Duncan Strike, Quay Accounting

Maintain a diary of how they, not the client, made fundamental decisions about how they should do the work on the project, note general issues of **control**, independence and the application of special skills

Record important conversations and events where contractual issues have been discussed, and, whenever possible, get the client to sign the notes.

Strike admits that it is not easy for busy contractors to adopt the discipline necessary to keep such records. But, as he points out, when the alternative could mean parting with a serious amount of cash to defend their positions in future (and much more if they lose their case), then many contractors see the wisdom of this strategy.

Key dates in the contractor diary

Strike says IR35 reviews can be undertaken throughout the year, and typically at key points in the financial year:

During every new **contract negotiation**, or **contract renewal**; if a contractor has four contracts in a year, they can and should request four reviews

When end of year P35 and PAYE submissions are made, which is also a crucial opportunity for a contractor to declare they are working within IR35, if that is the case,

Between the end of the tax year and the following 31 January, but it is recommended that a review is always completed before self-assessment personal tax returns are submitted.

Although there are many contractors who consider that HMRC's provision for IR35 investigations is under-resourced and ignore the threat of an investigation because they feel the odds of being investigated are so low, Strike warns that this approach could backfire, and HMRC's penalty regime dramatically increases financial exposure.

"HMRC is becoming increasingly targeted in their methods for finding contractors working for personal service companies and earning substantial incomes," he says. "Quite often it is an unrelated investigation of the client that ultimately leads to the contractor."

It is also the case that contractors are not difficult for HMRC to find, often showing up as obviously as flashing beacons in the 'books' of end-user clients and agents and declarations made on the P35 and personal tax returns.

IR35 high on HMRC's agenda

According to Strike, the real effect of IR35 has been to drive those contractors who meet employment tests into PAYE schemes, such as **umbrella companies**. "Contractors who have stayed working through **limited companies** are more likely to fulfil self-employment tests," he says, "so it's no surprise that HMRC lose most IR35 cases as a result. Contractors should not get complacent, though, and this should not prevent contractors from building a strong defence strategy."

But the real travesty is that many contractors have been frightened into adopting the PAYE and umbrella route who may well, if they were to seek expert advice on their contract status, satisfy self-employment tests.

In other words, they could perfectly legally be **running their own limited companies** and keeping a lot more of their income for themselves, rather than being scared into handing it over to a heavy-handed HMRC.



Duncan Strike

Director

Intouch Accounting

Duncan has successfully developed accountancy businesses for many years. He is an expert in tax law and is passionate about client service and excellence.

Intouch have been championing the cause of Limited Company contractors and freelancers since they were established in 2010. [Read Full Profile...](#)

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Contractors can adopt simple yet effective strategies to future-proof themselves against the unforeseen effects of any IR35 investigation. Maintaining a record of basic facts, for example, can result in contractors closing down an HMRC investigation before it really begins.

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