

Contractors can avoid IR35 by using substitutes, subcontractors and helpers

Contractors working through their own [limited companies](#) benefit twofold from using substitutes, subcontractors and helpers. Bringing on board another worker can contribute to fulfilling the requirements of a contract, particularly if the lead contractor falls ill or has to take unplanned time off.

Plus, as [Andy Vessey](#) of [Qdos Consulting](#) explains, the use of a substitute is considered by many [IR35](#) experts to be the closest thing there is to a 'silver bullet' that places a contractor outside IR35. That's because [using substitutes](#) is seen as a strong indicator of contractors being self-employed, rather than 'disguised employees'.

"Contractors who are able to supply substitutes, particularly at short notice and without sanction from clients, are considered firmly outside IR35, even when other evidence points another way," explains Vessey.

Substitutes, subcontractors and helpers

According to Vessey, the distinctions between substitutes and subcontractors/helpers are important in the eyes of a tax tribunal or court, because they demonstrate different aspects of how a contractor might be outside IR35 and not a disguised employee.

He says: "A substitute is usually considered a short-term fix to cover the contractor during periods of holiday, illness or other unexpected absence. An individual with the right skill set replaces the contractor directly on the project for a short period of time, and the client is informed that a substitute is to be supplied by the contractor's limited company."

Helpers or subcontractors generally refers to additional workers that a contractor uses to perform tasks to help cope with periods of intense activity, or to lend specialist skills to one particular aspect of the project.

'RoS' – right of substitution

"A substitution is a very powerful argument against IR35, as this implies that there is no personal service on the part of the contractor," says Vessey. "So assuming all other evidence points towards self-employment, a contractor who has supplied a substitute will almost certainly be found outside IR35 by a tax tribunal or court."

Where the right of substitution is 'unfettered', ie when the client cannot object or does not indicate that they are expecting all the work to be done by the contractor, this is thought by many IR35 experts to be a 'silver bullet' against IR35.

But when a client becomes involved in the process, the impact of substitution is diluted. Vessey warns: "A fettered right of substitution, when the client has some control over or involvement in the substitution process does not completely negate the impact of substitution. But it does indicate an element of [control](#) by the client. It is less predictable how a judge would rule in this scenario."

Subcontractors point away from personal service

Subcontractors who have been engaged on a basis that is intrinsic to the completion of the contract, or where the lead contractor needs additional specialist skills to complete the project, are the most likely to be viewed by HMRC as evidence that the contractor is not a disguised employee.

"There are a host of issues pointing away from personal service and towards self-employment and [being in business on your own account](#) that arise from using subcontractors," explains Vessey. "They all contribute to the overall picture of the contractor's employment status."

Such issues include the contractor hiring the subcontractors on their own terms, and not the client's; delegating specific tasks to the subcontractor; insisting on subcontractors holding [professional indemnity insurance](#); possibly extending insurance cover to include subcontractors or informing the insurer; plus, of course, bearing the financial risk of the contractor's limited company paying any subcontractors directly.

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Andy Vessey, Qdos Consulting

Employ helpers legitimately and demonstrate risk

If a contractor formally employs temporary helpers, then they must do so legitimately – making income tax and National Insurance Contributions (NICs) payments to HMRC, where necessary, plus informing their employee liability insurer that they have non-director/shareholder employees. The latter could impact on premiums and contribute further to the financial risk of the contractor and their limited company, but must still be undertaken to ensure the contractor is covered and fulfilling their obligations to both their employee and the client.



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Andy is a Senior Tax professional at Qdos and has a wealth of experience in IR35 and status matters which he guides the firm on.

Qdos Consulting is a leading expert in status and IR35. The company also consults in taxation and employment law and provides low cost business insurance for contractors. [Read Full Profile...](#)

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“Case law dating back 20 years recognises the importance of being able to provide a substitute and hiring helpers,” says Vessey. “Any contract that contains a genuine right to engage people to undertake work on the contract is likely to leave a contractor home and dry outside IR35, particularly if the contractor actually uses that right during the contract.”

Published: Saturday, May 22, 2010

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