

Contractor guide to HMRC's IR35 contract review service

Contractors unsure about their [IR35 status](#) and whether their contract is 'IR35 friendly' can call HMRC's [IR35 Helpline](#) and ask for a contract review by the taxman's Contract Review Service.

If HMRC concludes that the contract is outside IR35, then the contractor will receive a unique reference number that will remain valid for three years that could help close down any future enquiry quickly.

However, if a contractor's contract is not IR35 friendly, and HMRC considers the contractor to be at high risk of being inside of IR35, it could trigger an IR35 enquiry. An IR35 enquiry could last years and end up costing the contractor substantial amounts of money in professional fees, back taxes, interest and penalties.

Furthermore, HMRC will only consider current contracts, and not a contract that a contractor is considering. This means that if HMRC believes that there is any risk of IR35 applying to the contract it is too late for the contractor to do anything about it.

For these reasons, it may be more beneficial for contractors to seek a contract review from an independent IR35 specialist before they accept and start the contract. The specialist may also be able to advise on the contractor's IR35 status and suggest strategies to adopt if the contractor is considered to be at high risk of being inside IR35.

HMRC's guidance on how the process works

HMRC's [most recent intermediaries legislation \(IR35\) guidance](#) that was issued in June 2014 instructs contractors to start off by calling the IR35 Helpline and asking for a contract review.

Contractors are then asked to submit a quite frightening amount of detailed information, and HMRC says: "It's up to you to provide all the information. If you don't or can't do so, it may not be possible for HMRC to form an opinion." The information requested includes:

Copies of the contracts

Any documents relating to working terms and conditions

Any written statements by the client or contractor about working practices

Details of how the contractor found the contract, the recruitment process and a copy of the contract advert

A description of the services the contractor will supply, plus details of any specific contractual requirements and obligations

If the contractor had to tender for the work, a copy of the tender

Any contractual details not actually written into the contract

An explanation of how the work is allocated on the contract, the role of the contractor, and whether the contractor is part of a team

Other relevant information, such as the number of contracts completed during the year and the clients' details, plus

The contractor's National Insurance (NI) number, HMRC reference number and the contractor limited company's postcode.

If contractors considered the above to be a massive fishing expedition by HMRC, they would not be far wrong, especially as HMRC says it may wish to talk to the contractor's client. However, HMRC warns that it may not be able to provide an opinion if it does not have sufficient information.

What happens if the contract is outside IR35

Should HMRC find the contract outside IR35, then the contractor is given a unique reference number that lasts for three years.

If the contractor is subsequently investigated for IR35 by HMRC, the contractor can produce the reference number and in theory HMRC will suspend the enquiry while they look into the facts again.

HMRC will then close the enquiry if it can confirm that the original contract review is typical of the contractor's terms and conditions, the information provided by the contract is accurate and "the evidence shows that circumstances haven't changed".

The process when HMRC believes IR35 applies

HMRC's guidance does not actually say what happens if it finds that the contractor's contract it is reviewing is inside IR35. However, it does include a

section about what happens if the contractor disagrees with HMRC's opinion.

Rather ominously, the guidance states that if a contractor disputes HMRC's findings, then the case will be passed to "the local IR35 Inspector". In theory this will only be done with the contractor's full permission.

Even more worrying is the fact that that IR35 Inspector may go back to a contractor's client to gain more evidence. The final line of defence for a contractor is to appeal the decision of the IR35 Inspector if the taxman believes that IR35 applies, which adds more time and expense.

Requesting an HMRC review could be unwise

Because of the risks of getting on HMRC's radar and being found to be at high risk of IR35 applying, seeking a contract review from HMRC could be considered to be an unwise move.

Ideally, contractors should seek an [independent IR35 review](#) from an IR35 specialist, which typically costs less than £100 and many contractor accountants include contract reviews as part of their service.

However, there is an attraction to having a three-year amnesty if the contract is found to be outside of IR35, although there is still the risk that HMRC may still find the contract is inside IR35, leaving the contractor to spend time and money proving that it is not.

HMRC has an extensive section on its IR35 contract review service and the [process used by inspectors and the IR35 team in its Employment Status Manual ESM3000](#) publication. The relevant section aimed at practitioners, such as accountants and HMRC's own compliance officers, can be found under 'Opinions on Contracts.'

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