

IR35 issues for project managers working as contractors

Contractors who choose contracts with project management responsibility by definition are there to manage projects, which under certain circumstances could give the impression of disguised employment. If that were the case, they may well be identified by HMRC as being inside **IR35**, with all the resulting additional tax liabilities, drops in net income and possibly fines.

However, according to Kate Cottrell of IR35 experts **Bauer & Cottrell**, in some cases it is possible both to be an effective project manager and **remain outside of IR35**. "If the right documentation is in place, with regular updates made as required, and the contractor clearly has no line management responsibility, they're likely not to be judged as inside IR35," she says.

"If, for example, a contractor is asked to complete staff appraisals, then that will attract the attention of a tax inspector during an HMRC investigation," explains Cottrell. "But Project managers can take some straightforward steps to ensure they do not overstep the boundaries."

Define services at the outset

First, says Cottrell, it is essential to clearly identify the services to be performed, project deliverables and any milestones. This should include creating a **confirmation of arrangements**, so the client also understands the true situation.

Just as importantly, any services that lay outside the contractor's responsibility should also be clearly documented, for avoidance of doubt during a later investigation.

Cottrell clarifies what can be a somewhat complex set of interpretations and rules. "If a contractor is directly managing suppliers, signing off work others complete and managing supplier performance, then those project deliverables must be understood by all parties at the outset," continues Cottrell. "If they are, it won't under most circumstances put a contractor inside IR35."

Cottrell says that during an investigation, HMRC will typically require the original contract advertisement and any resulting proposal from the contractor, which should be consistent with the services arranged. She warns: "If a contractor is found to have applied for a role normally undertaken by the client's employees, as opposed to a set of specific services, this will be used by an inspector as evidence of disguised employment."

Avoid human resources processes

According to Cottrell, getting involved in any kind of human resources processes with the client is a sure-fire way to subsequently get involved with HMRC in IR35 issues.

"HR processes should carry a serious health warning," she says. "Contractors should refuse to be involved in their client's formal HR procedures, whether they involve recruitment, performance appraisals or grievance and disciplinary processes.

"There may be employment law implications for the client if they let a contractor implement HR, as the contractor may be technically not authorised. Also, by implication, if the contractor does perform those duties they are almost certainly caught by IR35."

A contractor should certainly not expect the client's HR policies to apply to them. But sourcing and managing suppliers is perfectly acceptable, if that's what was agreed in the original project.

IR35 – risks for project managers

Other key risks for contractor project managers include:

If the contractor starts contracting for their former employer, many existing staff won't understand the new boundaries in place and can fall into old habits, forgetting the contractor is no longer their boss, colleague or direct report

Where a contractor has specific knowledge of a client organisation because, for example, they had access to privileged information as a former employee, they should refuse if asked to use this specialist knowledge.

"Most contractors are hired by clients precisely because they have specific knowledge of a particular sector or organisation," explains Cottrell. "But there is a line they can cross, which means they will appear to an inspector as being part and parcel of the company. In other words, HMRC would see them as still an employee and tax them accordingly."

Project managers should also apply classic [IR35 avoidance best practices](#). Cottrell says these typically involve things like identifying what benefits employees receive versus contractors, whether contractors can use staff facilities and, if so, under what basis, and whether they have to sign in. It's these small differences in how employees and contractors are treated that can be crucial in keeping contractors outside IR35.

Using client equipment and infrastructure

A common conundrum facing contractors in general, and project managers specifically, is the need to use the client's infrastructure – things like IT hardware and software, networks, email, telecoms, equipment and even vehicles.

"Security and health and safety considerations often drive the need for contractor project managers to superficially become assimilated into the client," continues Cottrell. "Sometimes these issues don't help a contractor's case, but if the rest of the evidence is heavily in their favour, these points become neutral."

Cottrell concludes: "Line management and project management are not the same thing. If a contractor adopts best practice from the outset, they should emerge from an IR35 investigation unscathed."

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Kate Cottrell, Bauer and Cottrell