

IR35 myths: 10 factors that don't really affect your IR35 contracting status

Contractors taking a keen interest in [IR35](#) and how it impacts on their contracting are right to be cautious. But, according to Seb Maley of IR35 consultants [Qdos Consulting](#), sometimes misinformation can cause contractors undue alarm or make them unduly optimistic.

"Once a rumour starts to circulate that a particular factor jeopardises a contractor's IR35 status, it can be a challenge to set the record straight," explains Maley. "Our concern is that by believing the myths, contractors are missing more important factors and potentially leaving themselves open to challenge by HMRC."

Based on the hundreds of calls taken daily by the Qdos Consulting team, Maley has created a top ten list of contracting myths, and explains below why they don't really affect a contractor's IR35 position.

1. Length of time at a single location

The length of time spent at a single location has no bearing on IR35 status. HMRC may try to use a contractor's extended stay at one location to help build a case for 'part and parcel'. However, if other more significant factors such as [substitution](#) or [control](#) place a contractor outside IR35, genuine contractors need not be concerned. "Don't confuse IR35 with the [24-month rule for expenses](#)," says Maley.

2. Right of substitution has never been exercised

Just because a contractor has not exercised a [right of substitution](#) in a contract does not mean it is not valid. The important factor is that the contractor *can* send a substitute in their place, not whether they ever actually do.

3. No employees to send to exercise right of substitution

Contractors do not need to send an employee in their place. Another contractor engaged on a sub-contracting basis is a perfectly acceptable substitute, as long as the contractor's business is paying the substitute and is still ultimately responsible to the client for fulfilling the contract.

4. Client insists its equipment must be used

Many clients have strict security or health and safety rules that do not allow employees to use their own equipment at work, and the same rules are routinely extended to contractors. For some contractors, such as oil & gas contractors working offshore, providing equipment is simply not practical. "If a contractor does not supply their own equipment for reasons such as security and practicality, this does not put them inside IR35," Maley confirms.

5. Statement of intent in contracts

Most contractor contracts will include a 'statement of intent' clause that confirms the contract should not be considered to imply a contract of employment between the contractor and client. Some contractors wrongly assume the existence of such a clause automatically puts them outside IR35. This is not the case and contractors should apply best practice by considering both their contract and the working relationship, seeking expert assistance if unsure.

6. No opportunity to work from home

Some contractors assume that if their contract does not allow them to work from home, that this places them inside of the legislation. If the contractor must work on site because that is the only way that the contractor can access, for example, the client's computer networks and project team, and thereby deliver the service as contracted, then it is not a factor. But if a contractor can work at home, this can be a factor in favour of the contractor's status as being outside IR35.

7. Confidentiality agreements in the contractor's name

Client confidentiality agreements that specify the contractor by name, or are between the client and the contractor personally, do not affect a contractor's IR35 status as long as the agreements do not conflict with the main contract between the contractor's limited company and the client.

8. The right to work on concurrent contracts

Contractors who do not work on multiple contracts or assignments are not automatically inside IR35. The key factor is that there is nothing in a contractor's contract that prevents them from working on multiple contracts, even if they do not have the time because they are focusing on a single full-time contract. However, having multiple income streams from several clients and projects is a strong indicator that a contractor is outside.

9. Appearing on client lists and organisation charts

Ideally, contractors should not appear on client's internal contact directories and organisation charts. However, if for practical reasons a contractor does

appear on internal directories, their contractor status should be made clear otherwise HMRC could use their inclusion as evidence of being **'part and parcel'**.

10. Reporting to internal management

Contractors concerned that their contract includes a reference to a 'line manager', or the name of an individual that they are 'reporting to' should only be concerned if that manager exerts control over the contractor. Ideally, Maley suggests rewording contracts to say 'client liaison' and 'liaises with' as alternatives, but warns that under no circumstances should contractors allow themselves to be subjected to employee-like controls, such as appraisals.

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