

IR35 - a contractor's best defence starts before signing the contract

The best time to prepare for an **IR35** tax investigation is before you start every contract, says former tax inspector Carl Whittaker of **Qdos Consulting**. Here he details the key steps to preparing an IR35 defence that every contractor should take before starting a new contract.

Step 1 - check the contract

"Although HMRC will consider the notional contract, that is the real relationship between the contractor and the client," explains Whittaker, "it is vital that contractors get their 'real' **contracts reviewed** by a specialist before they sign it. A poorly worded contract will immediately attract HMRC's attention."

A contract review can cost as little as £25, so price shouldn't be a barrier to contractors seeking professional advice. Whittaker also advises contractors working through agencies to ensure the agency's contract with the end user does not impact on them.

Step 2 - manage the client's expectations

"Many clients simply do not know what IR35 means, or choose to ignore it," continues Whittaker. "Contractors should speak to their main contact with the client and explain to them about **substitution** and **control**; in other words, how and when the contractor performs their duties."

Ideally the contractor should establish how they will work in writing, by drafting a **Confirmation of Arrangements** and getting the client to sign it. "Immediately an investigation starts, we would ask a contractor to obtain a signed Confirmation of Arrangements from their client," says Whittaker, "but ideally the contractor should have one in place when the contract starts."

Step 3 - get insured

For a variety of reasons, not least to demonstrate they are outside IR35, contractors should ensure they have the right insurances in place.

Contractor insurances such as Public Liability Insurance (PLI) and **Professional Indemnity insurance** (PI), according to Whittaker, "Demonstrate that a contractor is in business in their own right and has a financial risk. If there is no risk, then why insure?"

PI and PLI are a must for contractors, and they do not have to be too expensive.

Maintaining PLI and PI is another tool to demonstrate financial risk and therefore help a contractor provide their status as being outside of IR35.

Another insurance to consider is **IR35 insurance cover**. This will pay for expert assistance should HMRC decide to start an investigation into a contractor's affairs.

Under certain circumstances, particularly where the contractor has followed each step of Whittaker's advice, Tax Liability Cover can also be taken out.

This covers the costs of back taxes, National Insurance Contributions and penalties, up to a fixed amount, in the event HMRC finds a contractor is, in fact, working within IR35.

Step 4 - keep accurate records

Should the worst happen and HMRC start an investigation, then comprehensive, well organised and accurate business records could make the difference between winning and losing a case.

Whittaker's advice to contractors is: "Keep a record of each separate contract and schedules for each different project going back six years."

HMRC will look for every opportunity to justify its inspection by claiming back-taxes, National Insurance Contributions and penalties, so the taxman will want to go through the contractor's trading history in detail.

Step 5 - put the defence into action

If contacted by HMRC about an inspection, contractors are advised not to speak to HMRC or contact them in any way. If the contractor has **Tax Enquiry Insurance**, they should get in touch with their insurer immediately.

Ideally, all contact with HMRC should be through the contractor's accountant or approved advisor. Personal contact could jeopardise not only the chances of successfully defending the inspection, but also a contractor's insurance cover.

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Carl Whittaker, Qdos Consulting

"If the contractor has followed all the steps we recommend then their advisor will only need to collate all the information and send it to HMRC," concludes Whittaker. "We have successfully defended over 1,000 contractors in IR35 enquiries, largely because we pre-empt HMRC's requirements before they are formally requested."

As for contractors wishing to 'go it alone', Whittaker warns them to be on their guard from the outset. "With an investigation by HMRC, you are presumed to be guilty and have to prove your innocence. Even a chance remark to what sounds like a friendly enquiry from a tax inspector can become the basis of a strong case against you."

"However," reassures Whittaker, "if you follow the steps I've outlined you'll be in a good position to fight your case."

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