

Public sector contractors – 11 ways to commit IR35 suicide



Public sector contractors must take urgent action to ensure they don't become caught by IR35 and a damaging tax hit as the [public sector IR35 reforms](#) loom.

Your public sector body (PSB) will be seeking to assess your IR35 risk prior to the new IR35 reforms that start 6th April 2017. Many are devolving that responsibility to their agencies, and some agencies are devolving that to the contractors' accountant, who is then asking you to assess yourself and pass all that information back up the chain.

You can start by taking our free test to assess your IR35 status. But before you do, please consider the most hazardous mistakes that you could be making, pushing your contract to be caught by IR35 and therefore subjecting you to paying out excessive tax to HMRC.

1. Being told how to do your work

Allowing your client to instruct you in detail on how to carry out your work, implies control and is a huge threat to your IR35 status. Your client should be asking you to complete an objective and then just leave you to get on with it.

2. Being named in your contract as solely providing the services

Being obliged to provide the services personally is the biggest pointer being caught by IR35. Any engagement should be between the client or agency and your company, not you personally. You can be named in the contract as being one of the personnel who will provide the services, but it should not state that only you can provide those services and no-one else.

3. Agreeing to work on anything that comes along

Accepting to take on work which is outside of the original scope of your contract makes you a tail-end Charlie and strongly suggests that there is control. If your contract is role-based perhaps where you have a job title then you are likely to be providing skills and then agreeing to work on whatever assignment the client gives you. This is how employees work, not genuine contractors. Genuine contractors are project based.

4. Allowing your client to change what you are working on

One near guaranteed way to become an IR35 victim is allowing your client to move you around onto different projects or work areas that were not originally in scope when you agreed to work for them. This is a strong indicator that you are under your client's control. You need to be providing an agreed set of skills for a specific project.

5. Having long termination notice clauses

Including a long termination clause in a contract can be a big IR35 risk, because it can imply an obligation to provide work. If the project is cancelled or finished and the client has to provide work after giving notice for say 4 weeks then this demonstrates that mutuality of obligation is present which will hamper your IR35 status. Ideally you want to have zero notice, and no obligation for work to be provided.

6. Minimum hours specified in your contract

Including a minimum number of hours each week is a firm indicator that mutuality of obligation is present. The concept of "core hours" or a set working pattern is something that employees do. Genuine contractors do what is required and have discretion as to their hours. Rather than minimum hours, use "estimated hours per week required to deliver the services", but do not make it a contractual obligation.

7. Appearing to be an employee/becoming 'part and parcel'

Being named on the client's organisation chart, having a badge with your name on the same as employees, or attending meetings that are about employee matters are all signs that you have become part and parcel of your client's organisation and are at risk of IR35. It's a secondary factor, but can swing a judgement. Be careful.

8. Undergoing a performance appraisal

Accepting a performance appraisal by a client will provide HMRC with plenty of ammunition for an IR35 inquiry, as it suggests that you are not in business on your own account. Conducting performance appraisals of your client's personnel will yield the same results.

9. Being paid for time off sick or holidays

Taking on a contract entitling you to holiday pay or sick pay is a very strong indicator that you are firmly inside IR35. Employees get these benefits. Genuine contractors don't.

10. Contracting with a former employer the day after leaving work

Going contracting for a former employer immediately after leaving your job with them is highly risky, placing you firmly on the taxman's radar. HMRC will assume you left your job on Friday to become a contractor on Monday only to benefit from tax savings, and not because you are a genuine contractor.

11. Not assessing your IR35 status

If you are working in the public sector, you now have to assure all parties that you are outside IR35, because the default status is caught. And if the agency does not get the assurance from the client that you are outside IR35 then by law they must deduct tax at source. So, you absolutely cannot sit on your hands.

Testing your IR35 status online is the essential first step in this process. [Use our test for free here.](#)

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