

Can your accountant keep you outside of IR35?

Contractors have been looking over their shoulders for fear of IR35 for 17 years now. Rather than fading away, it looks set to pose even more of a threat to contractors, following the Government's [proposed public sector IR35 reforms](#).

IR35 is only a tax issue, but to provide solid advice on the subject requires a thorough understanding of tax law and the relevant precedents. This is beyond the remit of most accountants. However, specialist contractor accountancy firm [Intouch](#) has been applying its expert knowledge in helping contractors stay outside of IR35 since 2010, and Intouch's director [Duncan Strike](#) has been actively engaged with IR35 since 1999.

"Intouch provides fantastic IR35 support for all of its contractors. Its accountants' knowledge of IR35 is exceptional, and enhanced with IPSE accreditation" says ContractorCalculator CEO [Dave Chaplin](#). "If Intouch can't keep contractors on the right side of [IR35 legislation](#), nobody can."

With IR35 now firmly in HMRC's sights again, Strike explains how contractors can benefit from a specialist accountant, and what they can do to stay IR35 compliant.

The many interpretations of 'IR35 compliance'

"If any company claims to have an IR35 compliant model, it needs to be considered by the contractor with a degree of caution and scepticism," explains Strike, who notes that there are multiple interpretations of the term.

"For example, HMRC uses the phrase to indicate whether someone has chosen to be inside IR35 and pay taxes as if they were employed. Accountants tend to use the phrase to indicate that someone is compliant with the legislation in terms of being outside IR35"

Strike adds that some umbrella companies will market 'IR35 compliant' models, which will often simply mean that the contractor pays tax as if they are inside IR35. He warns contractors to steer clear of umbrella models that market IR35 compliance whilst retaining tax efficiencies, adding:

"The threat to the umbrella business market has driven umbrella providers to look at new models to reclaim the commerciality of the umbrella arrangement. Contractors need to beware of this. You can't manufacture compliance."

IR35 is about "working relationships"

The reason for this, Strike explains, is that IR35 is about the working relationship between the contractor and the client. Because of this, a contract fabricated so that the contractor is outside of IR35 won't prove sufficient evidence for HMRC in an investigation where the contract is inconsistent with the actual intentions or the working practices.

"As a contract is only part of the evidence considered in an IR35 investigation, simply advising a client to put a contract in place that doesn't match typical working practices is not particularly helpful, and gives the contractor a false sense of security," Strike explains.

"IR35 is about what happens on a day-to-day basis," he adds. "If the working relationship is inconsistent with the written contract, and so potentially amending the contractual rights, the working relations will take precedent over what is written."

Specialist contractors offer risk management expertise

It is for this reason – amongst others - that contractors could benefit from a specialist accountant. As Strike explains, the depth of knowledge that specialist accountants hold means they are well placed to apply their knowledge in practice:

"As well as a thorough understanding of the legislation, specialist accountants have a rigorous understanding of the precedents and tribunal decisions that allow them to apply their technical understanding of the legislation in a practical way.

"So rather than assuming a risk based on limited understanding of IR35, we're able to identify genuine risks based on the contractor's individual arrangement, and then help implement strategies to manage the risks."

Whilst accountants obviously can't alter working practices, a specialist can identify and advise on those that are problematic. Strike adds that it is then up to the contractor and client to determine whether or not those working practices can be changed.

Contractors advised to remain diligent

After identifying risk areas and advising on how to mitigate these risks, specialist accountants are also on hand to help the contractor ensure they are retaining appropriate evidence to support their case.

For example, Strike advises that contractors keep a diary to record various occasions where, for instance, they have made decisions regarding how and where they carry out their work. This, he notes, can help overcome the issue of 'control', should the contractor ever be subject to an IR35 investigation several years later.

Due to its subjective nature, a contractor's IR35 status can change at any point during the duration of a contract. This is evidenced by the split test case of [JLJ Services v HMRC](#) in 2011, where IT contractor John Spencer was determined to have been outside IR35 for three years of a seven year contract, and inside IR35 for the remaining four.

"It's imperative that contractors continually monitor their situation, and don't wind up becoming [part and parcel](#) of the company," notes Strike. "This is especially important for contractors who have had contracts renewed. The contract will have remained the same, but the working practices are more likely to have evolved through complacency over the day-to-day relationships.

"That's why we talk to our contractors regularly and explain what they need to be doing to stay the right side of the IR35 legislation."

IR35 risk greater than ever

The recent announcement of a [Government consultation into IR35 reforms](#) in the public sector has thrown the legislation back into the spotlight, with many concerned that a private sector roll-out won't be far behind.

"You have to ask why the Government is considering developing a second tier of IR35, just for the public sector," Strike comments. "There's a distinct possibility that it's a precursor to it being extended to the entire contracting sector. Otherwise, where is the 'levelling of the playing field' if you're then creating a disparity between contractors based on whether they work in the public or private sectors?"

"However, my greatest concern is that HMRC fails to properly engage with stakeholders to design different tests for the broad spectrum of skills and industries in which contractors now operate," he adds.

"A test designed for IT consultants is simply not effective or reliable for medical practitioners, or oil and gas workers. One test does not fit all. If HMRC fail to produce a reliable, fair and credible test then HMRC will find itself embroiled in disputes and appeals, or non-compliance."

On top of this, Strike highlights that the possible reforms are bound to generate uncertainty within the contracting sector, with the likelihood that contractors will have to go to greater lengths to prove to HMRC and risk-averse clients that they are outside IR35.



Duncan Strike

Director

Intouch Accounting

Duncan has successfully developed accountancy businesses for many years. He is an expert in tax law and is passionate about client service and excellence.

Intouch have been championing the cause of Limited Company contractors and freelancers since they were established in 2010. [Read Full Profile...](#)

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"We're going through a period of change," he concludes. "Contractors need to be aware of the risk posed by IR35, and take the necessary steps to ensure they don't get caught."

Contractors concerned about IR35 or their accounting in general can call Intouch on 01202 069 636, or fill in their [contact form](#).

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