

How to deal with an IR35 enquiry

Despite your best endeavours you may be extremely unlucky and face an IR35 enquiry.

Most IR35 enquiries start as random and routine enquiries (aspect enquiries) and questions about IR35 status usually arise as part of the enquiry relating to the operation of PAYE within your business. You should treat all questions very seriously, no matter how mundane they appear. We would advise that you have your accountant present and divert all such lines of enquiry to him/her.

You will be asked whether or not you have considered the application of IR35 to your contracts. If you reply that you have considered IR35 and concluded that it doesn't apply (if that is the case), then you will be asked for evidence to support your conclusion. This is where having had an IR35 review from independent experts, such as Bauer and Cottrell, is extremely powerful. However, you should expect that HMRC will want to see the contracts you have entered into and take copies away for their own review process. Remember, it is in the interests of HMRC to find that IR35 applies to your situation because they have a need to raise additional tax revenues, so expect an argument.

When it comes to determining whether or not a particular contract is 'inside' or 'outside' IR35 it becomes a debate to argue the merits of different factors in the contractual arrangement. Some aspects may indicate self-employment (outside IR35) and others may indicate more of an employment relationship between you and your client (inside IR35 or 'IR35 caught'). Then a balance has to be drawn weighing up the picture presented overall.

We have linked three pdf files here to show you an example from a few years ago where we took on a typical limited company contractor from a general accountants who had been advised that, as a result of the letter in pdf1, he should concede that IR35 applies pay over the additional tax and NI levied in excess of £10,000. The contractor sought our advice and we advised that, upon reviewing the contract ourselves, we write a polite response setting out some of our views in pdf2. Consequently, HMRC reviewed their findings and wrote again in pdf3 stating that, on balance, they considered that our client was in fact not caught under IR35. This was an easy win for our client, because we knew how to present the facts.

It may be the case that if handled badly at the early stages, or if HMRC see a weak link in the contract early on, as they did so obviously in the Dragonfly case, then a full-scale IR35 investigation

will be initiated. This is bad news. These investigations are rare, but where they occur they tend to be long, protracted affairs that cost thousands of pounds to defend. You should be certain that you have Professional Expenses Insurance to cover you for such a scenario (FREE as part of Orange & Gold's accountancy services).

We took on a new client in 2009 who is still undergoing an IR35 investigation which commenced in 2006. At stake is about £100,000 in additional tax, NI and penalties if he is found to be IR35 caught. The contractor considers himself to be very safe from IR35 but he has weaknesses in his defence. Notably he has been working at the same client site for more than 5 years and may look to HMRC to have become part and parcel of the client's organisation.

As part of the enquiries, HMRC have presented the contractor with a 78 point questionnaire addressing the relationship between him and his end client as shown in pdf4. You should be prepared to answer such detailed investigations if you get to this stage. Let me stress again though, that this is very rare. Orange & Gold has never had a client of ours get so exposed but we can help you get through this.