

### Act like a business

Always remember that you are a business, which has agreed to provide services to clients. To be outside IR35 you need to avoid, wherever possible, any similarities with the client's employees both contractually and in reality.

### Collect some badges of business

The easiest way to show that you are a genuine business is to invest some time and minimal costs in the typical badges of a business. These include having a business name, a business bank account; your own logo and stationery, a website to showcase your services, creating business plans and marketing strategies, engaging an accountant, purchasing business insurances and keeping evidence of any investment you have made in training, reference materials and/or equipment.

### Review your written contracts

There is no such thing as an 'IR35-proof contract.' Never take an agency's or client's word for a contract being "IR35 friendly". It may contain all the useful outside-IR35 clauses but if it does not reflect the reality then it is **worthless**. Do not sign a contract or start work unless you are satisfied with the terms, both the commercial ones and the IR35 ones.

### Research your sector

There are certain occupations where there are special tax and/or National Insurance Contributions (NIC) rules which can have the effect of putting you inside IR35 automatically, for NIC or tax or both. For example if in the entertainment industry, you should check out HMRC's Employment Status Manuals. Special NIC rules have always applied to **'Office Holders'** but **this now also applies for tax from April 2013**. Remember don't just take your colleagues' word on your IR35 status. Just because the industry you are in runs on contractors, this does not mean they are all outside IR35. Each case is individual and decided on its own merits.

If you are providing services to a **Public Sector** organisation you will be asked to give a **formal Assurance on your IR35 status**. You are at much greater risk of being investigated by HMRC and may be at risk of having your contract terminated.

### Kate Cottrell

Bauer & Cottrell

The status and IR35 experts.

Comprehensive IR35 contract review service, including free contract negotiations with your agency or client.

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## How to Avoid IR35

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### Find out about HMRC's new approach to IR35

HM Revenue & Customs was tasked with improving the operation of IR35 and since May 2012 there are new HMRC IR35 specialist teams and a **large increase in IR35 investigations**. HMRC has improved its helpline service and published on its website **new guidance including some IR35 scenarios and the Business Entity Tests**.

### HMRC IR35 Scenarios and Business Entity Tests (BETS)

The scenarios are simplified snapshots of IR35 situations and the IR35 status conclusions reached. If you are lucky enough to find that your situation fits with an outside-IR35 one then this is good news, and you should make a note but do not rely upon this as your only defence. Equally don't worry if you fit with an inside-IR35 scenario or fit with neither. The scenarios are purely guidance and not law and your case will be decided on its own merits.

The **Business Entity Tests** are also just guidance and most importantly they test your risk level for investigation for IR35 (High, Medium or Low). They are not an IR35 status test. The BETS are part of a pilot exercise and the current score possibilities put most contractors into the High or Medium risk categories. As with the scenarios if you are lucky enough to get a Low risk score then keep all the evidence to support your result. If you get a Medium or High risk score, don't worry, just concentrate on your working practices and contracts because it is these that will decide your **IR35 status**.

### Due Diligence – BE PREPARED!

- Check out HMRC's IR35 guidance and the scenarios and BETS
- Keep notes of any differences of treatment between you and client employees
- Take independent advice on your contract and working practices. This demonstrates that you have taken 'reasonable care' and will protect against HMRC penalties
- Check that your adviser is up-to-date with the law, current HMRC practices and can provide acceptable assurance certificates currently required by the public sector

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# CUK 2-Minute Guide

- Consider seeking the client's views in the form of a written confirmation of the terms of the relationship. This may be enough for HMRC to drop an investigation
- Check to see if your adviser provides free IR35 defence or consider insurance cover for IR35 investigations

Finally, there is lots of **IR35** help, advice and support freely available, so take it and do not listen to those who just say ignore IR35. The risks are too great.

If you are providing services to a public sector organisation... you are at much greater risk of being investigated

**Kate Cottrell** 16 May 2013

## Further information for IT Contractors:

**IR35**  
**Agency workers directive**  
**IT Contract Guides**  
**IT contracting forum**  
**IT contract jobs**

**Guides to S660/Income Shifting**  
**Limited Company Guides**  
**Umbrella Company Guides**  
**Contractor Expenses**  
**First Timers Guides**

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