

The Agency Contract

Now that we have a good idea of how the Inland Revenue will assess contractors in deciding whether IR35 will apply, we can consider the way in which Agency Contracts are prepared.

Remember that it is the actual relationship between the End-Client and the Contractor which is being assessed. The agency contract merely qualifies this relationship. However, it is likely to be one of the main indicators that HMRC will look for. The following chart looks at typical main agency terms and shows how they might be amended to make them more likely to help Pass an IR35 assessment.

Typical Contract Terms	IR35 'Friendly' Version	Explanation
Specifies the name of the service company AND the name of the contractor.	Will specify the name of the service company only.	This will enable the service company to substitute one person for another. For protection, each new person would need to be approved by the client.
Weak or no compensation clause.	Include/strengthen the compensation clause.	This indicates that the contractor can suffer a financial loss if the contract terms are not met.
Professional Indemnity Insurance (PI) is optional.	Insist on PI Cover.	This again indicates the contractor could suffer a financial loss.
The contractor is paid a fixed hourly/daily rate, and the number of hours/days is set. For a 6 month contract, 40 hours per week, at £25 per hour, the total is £26,000.	The contractor is contracted to complete a task over a set period (say 6 months). A budget will be set for the completion at £26,000. Various monthly 'achievable' benchmarks will be set. For example, each month, if benchmarks are met, make a payment of £4,000. If the contract is met inside 6 months the final payment of £6000 is made.	Some typical contract terms indicate a relationship of 'control' by the client, over the contractor. Future contracts should put the onus on the contractor to complete tasks. The larger final payment upon completion indicates that the contractor has the facility to make a financial gain if he/she delivers. This also avoids the contractor being paid a set, regular amount.
The contractor must work his/her 40 hours regardless of workload.	If the contractor meets the contract terms early the payment can be made early. Using the above example, if the project is completed at month 5, the final payment of £10,000 is made in month 5.	This indicates ability for the contractor to financially benefit from the contract terms. Incidentally, this will be a better result for the clients who set budgets for a task. If it's completed early, so much the better.
The contractor is obliged to work the 40 hours on client site, using client equipment.	The contractor can work whenever and wherever he/she pleases, so long as they get the job done.	This again removes some of the issues around 'control'. It also specifically removes two key Revenue tests relating to the 'supply of tools' and the 'location of the worker'.

It is clear that for lower-level roles that these amendments will not be appropriate. We believe that many lower-level roles, and many average-paid roles will, by their very nature, fail IR35.

As accountants we are unable to comment on specific contract terms. If you need specific help, you will need to contact a lawyer. Check www.1st-option.co.uk for links.