

**CLAUSE BY CLAUSE EXPLANATION OF THE MARKELTAX
'OUTSIDE IR35' CONTRACT FOR SERVICES**

INTRODUCTION

The Markel tax IR35 contract lays down over forty clauses many of which have legal precedents to show that they are "self-employed" clauses. Your service companies will retain independent status if they implement this contract. It is very important that the contract is understood as the HMRC may attack your clients if they feel that they have signed a contract that they don't fully understand. Over the years there have been many court cases which have clearly stated that a contract is a binding contract whether or not all of the clauses are fully understood but clearly it would be much easier to defend your position if both parties understand what these clauses mean.

Secondly it is no good signing this contract and then forgetting about it. The clauses in this contract must be implemented and although if the odd clause is not fully implemented this does not necessarily mean you cannot defend self-employed status it does weaken your position.

Our message is therefore a simple one. This contract should be signed and dated and properly filled in by both parties, each party should have a copy, and each party should understand the contract and make sure it is implemented in practice.

Finally, we would ask you to note that Markel Tax do not claim to be experts in health and safety or other issues such as client confidentiality.

A word of warning. These clauses have all been put in to help establish self-employed tax status and to avoid IR35. Your case will be weakened every time you take one of these clauses out.

Should you end up with a dispute with the HMRC it is important that you fully understand the legal background to why these clauses are in. This information gives you the relevant background but there is no substitute for proper detailed advice and expertise. If you have a problem with the HMRC Markel Tax will be able to give you consultancy advice to suit your individual situation.

EXPLANATION OF CLAUSES

Enter Date this will be the date which the contract is issued by you to your client, but not necessarily the date the contract commences.

Between

The Agreement should be filled in with the first Party being the recruitment agency or where there is no Agency, the end client which will be referenced throughout the contract as "the Client". The second Party is the intermediary, that is the individual's own service company referenced throughout as "the Company".

Recitals

You should insert in the Recitals the nature of the services to be provided for example computer programming or whatever is appropriate. You can go into some detail here. Do not name individuals. This is a contract for services not a contract to supply people.

Operative Provisions

Clauses 1-12 set out the basic framework, but include the following key paragraphs:

Clause 5 which denies the client a right of control over the manner in which your Company provides the services.

Clause 7 reinforces clause 5; i.e. "The Company will use its own initiative in how the services are to be completed", but acknowledges that as the supplier your company will make best efforts to work within the framework of the operational requirements.

Clauses 8 & 9 establish that your company determines who does the work and your right to send a substitute

Financial Risk

Clauses 13-19 demonstrate in-business factors such as agreeing rates (13); rectifying defective work at no further cost to the client (14); having appropriate insurances (20); and denying the right to employment benefits (e.g. 15 & 23).

Clause 19: This is the key clause is regarding **mutuality of obligations** is very important. Along with the tests of personal service/substitution and control, it represents one of the three main indicators of employment status as set out in *Ready Mixed Concrete v The Minister of Pensions & National Insurance* in 1968 – case which is still quoted by both sides in every IR35 Tribunal case.

Freedom of the Company to undertake other works

Clauses 24 & 25 emphasis your Company's independence.

Confidentiality

Clauses 26-29 offer a general framework, but may need to be amended to suit a particular client's requirements. These should have no effect on your tax status.

Taxation and National Insurance/Business Organisation/ Intention of the parties

Clauses 30-34 which further underline your status as an independent contractor.

Legal Advice and Other Matters

Again, general clauses that you would expect to see in any contract for services

Schedule A

Sections A & B: Please ensure these basic details are completed.

Company Registration number: This merely ensures that a genuine registered limited company exists!

Nature of the Services to be undertaken: You should provide more detail than in the Recitals, such as milestones and deliverables. However, too much detail and it could look like you are undertaking task-based work; i.e. it may appear that the client can prioritise your work.

IMPORTANT

IF YOU WANT TO RELY ON THIS CONTRACT TO SAFEGUARD YOUR IR35 POSITION YOU MUST ENSURE THAT THE CONTRACT IS IMPLEMENTED IN PRACTICE. THE WORKING PRACTICES MUST SUPPORT THE CONTRACTUAL TERMS AND VICE VERSA.

NOTICE

If you make changes to the contract – other than those sections which you are required to complete – you may change the intention of the contract and invalidate the terms.

IPSE provides a contract review service which enables you to have a review of an engagement which will consider both contractual terms and working practices. Please access the service via this [link](#).