



### **Should I tick the box yes on the P35?**

Only you can answer this question. To make the decision; Read all you can. Take professional advice. Understand the issues. Make your own decision.

Consider which of the following you are or want to be.

#### **The Mole**

Moles are virtually blind, having spent most of the time under the ground. They have probably not heard of IR35, or do not appreciate that it might apply to them. They do not answer question 6 as they have no idea what it means. They have not taken any professional advice and never read anything their accountant sends them.

Moles may bumble along for years without ever meeting the IR wolf. But when they do they are an easy mouthful.

**Risks:** Investigation, tax, interest and penalties.

#### **The Ostrich**

Ostriches have heard about IR35. They are not sure if IR35 catches them or not but answer question 6 "no" because they think that the IR cannot investigate everyone so they will escape. They decide to ignore it and hope they will not be caught. They may be lucky, but investigations can be back-dated. In a case where a taxpayer has negligently or fraudulently failed to pay the proper tax, there will be penalties.

**Risks:** investigation, tax, interest and penalties.

#### **The Cheetah**

May originate from hot southern climates. They tend not to remain long in any one place. They are aware of IR35 but reckon that they can ignore it for a couple of years, after which time they will disappear so fast the Revenue Wolf will be unable to keep up. Their habits in the past have tended to draw the attention of the Revenue Wolf to this whole area. They may find themselves ambushed by the Revenue wolf, who knows their favourite haunts. If caught they can expect little mercy from the Wolf and may well be tortured before being dispatched!

**Risks:** Investigation, tax, interest and penalties.

#### **The Sheep**

Sheep tend not to seek any professional advice beyond that of their Shepherds (accountants) - who find life easier if they treat all their clients as being an homogenous flock. Sheep are only weakly defended by their Shepherds, who on occasion seem to be herding them on behalf of the Revenue wolf. They often submit contracts to the IR and accept the Revenue's rulings. If their contracts are failed they tick question 6 "yes" and pay up at the end of year.

Without making any effort to negotiate business-like contract terms, little independent professional advice and providing no business background to the IR, sheep risk being assessed as caught by IR35 even when, perhaps with a little effort, they could have improved their position

**Risks:** They have paid the tax so there is no risk of interest or penalties. However, they are developing a history of negative assessments and if they try to make the move to non-IR35 work they may find their tax office is sceptical.

### The Fox

Foxes ensure their accountants are experienced in status matters or take advice from other experts. Nevertheless this advice suggests that, despite all their efforts, many contracts are probably caught by IR35. Foxes decide not to submit contracts to the IR and not to tick “yes” to question 6. However, they may well take a salary equal to the deemed payment on their caught contracts throughout year.

**Risks:** If they have paid a reasonable salary then they have probably paid most of the tax that might be due. They bear little or no risk of additional tax, interest and penalties. If they manage to make the move to IR35-exempt work, they have not drawn IR attention to themselves by ticking the box.

### The Grey Squirrel

They tend not to seek expert advice but think they might have failed IR35. Nevertheless, they choose to squirrel away the tax, reasoning that, if investigated, they will be able to pay up.

**Risks:** If they do not have good reason to believe they are outside IR35, they risk penalties on top of the tax. They may reduce this risk by increasing their salary to a level where they are less easily identifiable and the likely tax is not worth the effort the Revenue wolf has to make to catch the squirrel.

### The Red Squirrel

Red squirrels take professional advice on contracts, which are thought to pass or to be border line. Based on this, and their own view that they are genuine businesses, Red Squirrels consider that they pass IR35 on the 'whole picture'. They do not submit contracts to the Revenue and do not tick the box. But to be safe they squirrel away enough to cover any tax that might become due.

**Risks:** There is a risk of investigation, and that, after all appeals are exhausted, they must pay. But they have good reason to believe they are outside IR35 so penalties are unlikely.

### The Lion

Lions take pride in being in business on their own account and are determined to protect themselves and their business from the Revenue's wolf. They are well organized and know their territory well. They keep careful watch for the first signs of the Wolf's approach and are prepared to defend their territory. For example they:

- Have the trappings of business (website, business cards, home office, employer's liability insurance, PI insurance, send out company profile and not a CV, etc)
- Refuse to take bang-to-rights long-term IR35-caught contracts.
- Take professional advice on all contracts.
- Negotiate strongly.
- Develop new business activities alongside consultancy work and have parallel contracts where possible.
- Take out tax liability insurance to minimize the risks
- Do not submit contracts to IR and do not tick “yes” to question 6.

Whilst brave and strong Lions do not take on fights they know they will lose. They also know



and appreciate the value of strength in numbers, so they join PCG.

**Risks:** If investigated, they are surprisingly secure behind the strength of the evidence they have accumulated. They defend themselves fiercely and may well be left alone as the Revenue wolf seeks easier targets. If the IR finds against them, they will have a very good case at the commissioners and in court. Even if some of their work is IR35-borderline, the 'whole business picture' is likely to prevail. Lions will develop new case law and help the rest of us out of IR35.

### **The Eagle**

Eagles saw the likely impact of IR35 and decided to rise above it all by moving into new business activities that are clearly outside IR35. They do not need to consider question 6. They know they are safe and can look down on the rest with some satisfaction.

**Risk:** Very few but they need to ensure that their superiority is based on strong wings and not just hot air, otherwise they may fall to earth with a bump. Apart from this they should be safe.