

## ARE YOU IN BUSINESS ON YOUR OWN ACCOUNT?

Being in business on your own account has become a term that we are all familiar with but as far as the case law is concerned it is no longer a reliable status test. This is because there are many self-employed people for example actors who have no business organisation at all. A typical personal service business is unlikely to have the usual trappings associated with being in business like stock, premises or staff, as these things are unnecessary in a skills-based service.

Having a genuine business organisation will not prevent you from being found to be a “disguised employee” of your client and subject to IR35 but it will show you as having factors that are inconsistent with employee status. The Inland Revenue’s own example of “Charlotte”, shows clearly that her existing business and overall business organisation were considered by the Revenue as strong indicators of self-employment. In our considerable experience of fighting IR35 investigation cases we have won many on this factor alone.

Factors that show a genuine business organisation, clearly overlap with other status tests, the most obvious being financial risk. These factors can also give considerable support to your contractual terms. An example is the purchase of insurances. We have seen many times where the contract requires these but the contractor did not get around to taking them out. Clearly this lack of action is unhelpful to the whole case in an investigation situation.

So what do you need? You should note that the following list is not exhaustive and you should always keep evidence where appropriate e.g. advertising.

**Business stationery (letterheads – ideally with your own logo, business cards, invoices), VAT registration, copies of all insurances, office facilities (could include computers, fax machine, answering machine, furniture and consumables), website, business bank account, mobile telephone, Accountant, full details of any marketing or advertising undertaken, details of any tenders made, client details, details of any equipment or reference manuals purchased, details of any training undertaken, details of any bad debts and late payments, details of any business loans, details of any trade associations of which you are a member and details of any staff you have employed.**

You should include anything that you know an employee would not be required or expected to provide. Remember that having a business attitude together with the evidence to support it could be enough to win your case.

Finally a word of comfort for those just starting out. You may be working through an agency that operates a self-billing system so not even have your own invoices or actually need anything else. As stated above the case law shows that you do not need to have a business organisation to be self-employed but we recommend that you at least have the basics like business stationery. Many of the items listed above cost very little but our experience shows can count for much when dealing with a Revenue Inspector.