

# Flawed business entity tests leading HMRC to waste resources on contractor IR35 investigations it cannot win

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HMRC's IR35 risk assessment tool, the business entity tests, are leading the taxman to target contractors for investigations that have little chance of showing a return for the taxpayer. The results of a ContractorCalculator (<http://www.contractorcalculator.co.uk>) survey of over 10,000 contractors show that a third of those classed as high risk according to HMRC's tests would be found outside IR35 when the actual legislation is applied. This demonstrates that HMRC's own IR35 risk assessment tool bears little relevance to reality.

"The business entity tests are flawed and directing HMRC to open status enquiries that have little chance of succeeding. Taking on cases it cannot win is a shocking waste of HMRC's limited resources and causes untold stress and hardship to innocent taxpaying contractors," said ContractorCalculator.co.uk CEO Dave Chaplin.

"We asked 10,961 contractors via ContractorCalculator's Free Online IR35 Status Test whether they had taken the business entity tests; only 19% said yes. That reveals that few contractors are bothering to use HMRC's risk assessment tool," explained Chaplin. "Of those that did take the tests, 35% found they were high risk according to HMRC's criteria, 41% medium risk and 24% low risk."

Chaplin continued: "What makes a mockery of HMRC's processes is that 31% of those contractors classed as at high risk of being inside IR35 according to the business entity tests were then found to be outside IR35 according to our highly accurate online test. And unlike the business entity tests, our detailed questionnaires are underpinned by algorithms based on the source IR35 legislation, case law and the results of thousands of actual IR35 reviews. IR35 experts Qdos Consulting assisted with the development of our test, helping ensure their accuracy."

HMRC introduced the business entity tests in May 2012 as part of a raft of measures supposedly designed to improve the administration of IR35. Contractors found to be low risk according to the tests would enjoy three years without any further HMRC investigations. Yet some inspectors are blatantly renege on the taxman's commitment to drop IR35 reviews in the early stages if presented with compelling evidence that the contractor is outside IR35.

Qdos Consulting's Andy Vessey, who was part of the team behind the development of the ContractorCalculator Free Online IR35 Status Test, has had first-hand experience. He explained: "Some investigating officers are disregarding compelling evidence that should halt reviews right at the start.

"With one contractor's case, I presented evidence that he was clearly in business and suffering financial risk, but HMRC has insisted on contacting the contractor's client. This approach harks back to the old-style enquiries when HMRC used to contact clients in each and every IR35 case."

Chaplin said: "Considering the current climate of public sector austerity alongside the keen focus on the tax avoidance industry, why does HMRC persist in applying IR35 risk assessment tools that are so blatantly misleading its own inspectors?"

“HMRC was criticised from the outset by tax experts who identified that the business entity tests were unworkable. The evidence from our survey, alongside data we hope to secure from HMRC via freedom of information requests, proves that HMRC’s risk-based approach introduced last year is simply not working.”

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Note to editors:

ContractorCalculator’s IR35 Test: Free Online Status Test for Contractors

- The IR35 Test is based on algorithms that incorporate IR35 source legislation, actual IR35 review outcomes and IR35 case law. IR35 experts Qdos Consulting assisted with its development
- The survey size was 10,961
- 81% of contractors taking the test responded when asked that they did not take HMRC’s Business Entity Tests (BETS)
- Of the 19% who took the BETS, 35% are high risk, 41% medium risk & 24% low risk
- 31% of those in the high risk category according to the BETS pass our rigorous online IR35 Test and are not inside IR35.

The test can be taken at [www.contractorcalculator.co.uk/IR35\\_Test.aspx](http://www.contractorcalculator.co.uk/IR35_Test.aspx)

ContractorCalculator.co.uk is a leading independent website for the UK contracting industry. Most contractors are highly skilled knowledge workers in information technology, engineering, energy, oil & gas, interim management and construction.

There are 1.56 million such workers in the UK today who prefer to run their own businesses and work under contract rather than become employees of specific companies. Their contribution to the economy is crucial to keeping UK businesses competitive.

ContractorCalculator, which is independently audited by ABC, has over 100,000 unique visitors per month. Its last audit showed the site was visited by 135,817 unique users/browsers in September 2012 viewing

429,053 pages.