

Taking the
stress out
of running
your
business

Orange Genie
Accountancy
Contractor and Small Business Specialists

Guide to Opening and Running Your Limited Company

INVESTORS IN PEOPLE®
We invest in people Gold



01296 468 483

orangeenie.com

info@orangeenie.com

Setting up a Limited company

Setting up your Limited company can be very exciting, and it's relatively easy to establish a company at Companies House. But there is a bit more to know when it comes to the ongoing running of the business. **This guide covers everything you need to know before you start..**

Contents of this guide

Short guide to company formation - 2	24 month rules - 13
Deciding on share structure - 3	R35 - 14
Limited company bank account - 4	Remuneration strategy - 17
Insurance requirements - 4	Company cars - 18
Officeholders and directors responsibilities - 6	Pensions and tax planning -20
Statutory filing requirements / deadlines - 6	Understanding your company accounts - 21
Record keeping - statutory requirements - 8	Closing your company down - 22
Expenses guide - 8	

Short guide to company formation

Before setting up your limited company, the main areas to consider are:

Company name - consider more than one option as your first choice may not be possible if it already exists on the company register or it is too similar to another company's name. Companies House publishes guidance on Company names and you can use their Webcheck service to see if your choice is available.

Company directors - legally a company must have at least one director. Further directors can be added at a later date.

Company Secretary - small companies no longer need to appoint a Company Secretary, although you can if you wish.

Registered Office - Your registered office address is the company's official address. It must be a physical location where notices, letters and reminders can be delivered to the company. Ensure that the address you use is one that allows a business to be run from it.

A director must provide two addresses:

- a correspondence address for the public register - known as a "service address".

- their home address - known as the "usual residential address".

A correspondence address is one you can use to receive communications about the company. This can be the same as the registered office address of the company, or it can be somewhere different.

A residential address is a director's usual home address. You must tell Companies House your home address, but it will not be available on the public register for everyone to see as it's kept on a private register.

Shares - the allocation of shares is normally done when the company is formed, check that the shareholder(s) are as you want and that the company is owned in the proportion you requested.

Remember, dividends are paid to shareholders in proportion to their share holdings. Further shares can be issued and allocated at future dates if your circumstances change. When deciding on your share structure, read the section on share structure in this guide.

Company formation is very quick, usually within hours of your request. Once Companies House confirm that your company has been formed we'll send you your:

Certificate of Incorporation and Memorandum & Articles - these documents govern the running of the company and the company's relationship with its directors and shareholders share certificates

With these documents you can open your Business Bank Account and begin to trade!



Deciding on share structure

The Share capital of a company represents the ownership structure and investment in the company. The majority of contractors choose to own 100% of their company, through the issue of just one share.

Shareholders invest in companies in the expectation that they will make a return on their investment. This return is paid in the form of dividends. When a dividend is declared all shareholders are entitled to receive their income in the same ratio as the shares are owned.

Further shares in a company can be allotted, to anyone over the age of 18, so it is possible to give shares to your spouse or to a business partner. When allotting shares in your company careful consideration should be given as to the reason for the allotment and if necessary a shareholders' agreement should be drawn up to protect the rights of all parties in all eventualities. Even at the onset of a business relationship and the allotment of shares you should consider future events such as one party wishing to leave and/or company closure.

What are the implications for "husband and wife" companies?

Dividends, the return on a shareholder's investment, are a tax efficient method of withdrawing funds from your company. As such, many contractors have sought to maximise their tax planning by allotting shares in the company to their spouse.

In order to prevent an individual from gaining a tax advantage by making arrangements to divert their income (or part of it) onto a third party who is liable to pay tax at a lower marginal rate, the Settlements Legislation known as Section 660 has been applied.

Put simply the legislation looks to see if a transfer of shares from one person to another has been carried out to "share" the tax burden on income drawn from the Limited company. If the transfer is deemed to be at below market value, for instance a gift and the original shareholder still retains interest in the income generating asset, i.e. the company, HMRC may seek to catch the transfer under the Settlements Legislation. The transferor would then be assessed on the value of the income given away generated by the asset that they still retain the interest in

Arctic Systems is the most famous test of the Settlements Legislation in relation to a personal service company. The House of Lords found in favour of the taxpayer based on the facts and set the precedent that a transfer between husband and wife was a Settlement but one that fell under a spousal gift exemption.

If you're thinking of allotting shares to a spouse consider:

- Consider the % allocation in line with their role in the business. Will they generate income for the business? Do they undertake vital back office tasks? If so you have a strong commercial reason for rewarding them with a share of the business and therefore dividend income.
- If you decide to change shareholdings between you and your spouse more than once, HMRC may seek to say the spousal gift exemption does not apply.
- If you make a dividend payment shortly after a share transfer, HMRC may try to argue that the transfer has been made "wholly or substantially" for a right to the income as there was an expectation that the dividend payment was about to be made.

Limited company bank account

One of the first actions you will need to take once your company has been opened is to establish a Limited company bank account. There are numerous high street banks keen to offer you a business bank account and the choice is yours.

We would advise all companies to open both a current and deposit account in the Company name. The company deposit account represents a great opportunity to plan effectively for future tax liabilities.

If you have previously held a business bank account with a particular bank you might like to approach them, or indeed your personal bank. Alternatively, Orange Genie Accountancy have established relationships with the following bank who are able to assist.

The Mettle business account

Mettle is the free business account by NatWest that helps small businesses start, run and grow. It's built for small businesses, start-ups, limited companies and sole traders.

Customers can apply for an account in minutes, create and send customised invoices and connect to accounting software to help keep track of their books. The account comes with a UK account number and sort code and an in-app chat feature so that customers can speak to real people when they need help.

Mettle has partnered with FreeAgent which means customers can now sign up for the accounting software through the Mettle app and seamlessly sync all their business transactions.



- Mettle is free - seriously, it's 100% free
- Apply in minutes from the app
- Send and receive UK payments
- UK account number and sort code
- Support from real people when you need it

Applying through us will guarantee that you are tracked as one of our clients, which will ensure that your application and later accounting data integration are processed as smoothly as possible.

Insurance Requirements

Once you have completed your limited company formation, as the Director of your own company you will need to consider whether you need, or are indeed required by your contract, to take out any business insurance.

Orange Genie Accountancy recommend and work closely with [Kingsbridge Contractor Insurance](#), an A-rated insurer who have been advising freelancers and contractors on insurance for several years. Kingsbridge offer advice on a complete range of insurance products that can be transacted online in a matter of minutes - all types of policies, designed especially for contractors and freelance professionals, including professional indemnity insurance for contractors working in the UK and throughout the world, can be bought online.

Professional Indemnity

Professional indemnity insurance provides cover for the financial consequences of professional negligence. If a client alleges you've made a mistake, or if you've made an error whilst working, then your legal defence costs, as well as any damages awarded to the claimant, will be covered, allowing you to get on with the important business of running your company, safe in the knowledge that you're protected.

Employers' liability

We know what you're thinking here: why do I need employers' liability when I don't have any employees? One word: compliance. Employers' liability insurance is a compulsory insurance for all employers with limited exceptions in law. For some contractors, holding insurance is a legal requirement. The employers' liability legislation requires all employers to provide legal liability cover for their employees in case they suffer injury as a result of their activities. Clients and agencies will often insist on proof of your cover arrangements, and usually request employers' liability, public liability and professional indemnity. We know it can be frustrating, but this is included to make sure you're fully covered, that you tick every box, and that you can work for anybody you like.

Directors' and officers' liability

As a self-employed professional contractor and director of your own company you can be held personally liable for any number of reasons. If someone thinks you've not been playing by the rules then they can take legal action against you. Directors' and officers' liability cover will provide for legal defence costs and will protect your financial assets. If your business is accused of financial mismanagement, of a legislative breach, of a health and safety failure, or of breaching company law, then your policy steps in.

Occupational personal accident cover

If you're injured as a result of an occupational accident and are unable to work, then the chances are you'll be looking at a significant financial loss. With personal accident cover, you'll be paid a weekly benefit whilst you recuperate, no..

matter who's to blame for the injury. On top of that, should your accident leave you with a permanent disability, or cause your death, a lump sum will also be paid out



KINGSBRIDGE CONTRACTOR INSURANCE

Kingsbridge offer a 10% discount for all Orange Genie clients, find out more [here](#). Alternatively, for further information get in touch with our dedicated contractor accountants, call on: 01296 468 185 or email accountancy@orange genie.com



Office holders' and directors' responsibilities

As a director of a limited company you must:

- Try to make the company a success, using your skills, experience and judgement
- Follow the company's rules, shown in its articles of association
- Make decisions for the benefit of the company, not yourself
- Tell other shareholders, if there are any, if you might personally benefit from a transaction the company makes
- Make sure the company's accounts are a "true and fair view" of the business' finances and are filed annually on time with Companies House and HMRC
- Register for Self-Assessment and send a personal Self-Assessment tax return every year

You can engage professional advisors, such as Orange Genie Accountancy, to undertake some of the tasks for you. For instance, we can prepare your Statutory accounts, but you retain legal responsibility for them. This means we will seek your approval of the accounts and confirmation that they can be filed before we submit them to Companies House and HMRC.

Professional advisors like Orange Genie Accountancy can offer advice in relation to the running of your company, but the decision to act or not lies with you as director. Any advice given will be based on information provided by you as a company director and it's your responsibility to ensure the information you provide is an accurate reflection of the given situation.

Companies House provides further guidance on Directors' responsibilities as does the Institute of Directors.



Statutory filing requirements and deadlines

As a director of a Limited company you have a responsibility to ensure your Company meets its Statutory Filing deadlines.

Statutory accounts

Micro-entity accounts to be filed at Companies House within 9 months of the year end. (Earlier dates apply to the first year) Late filing penalties apply for accounts submitted after the due date.

Full Annual Accounts & Corporation Tax Return (CT600) to be filed online with HMRC within 12 months of the year end. (Earlier dates may apply to the first year). Penalties apply for returns submitted late.

Corporation Tax

Payment of Corporation Tax is due 9 months after the year end. (Earlier dates apply to the first year. Interest will be charged on late tax payments.

Companies House Confirmation Statement

Prepared at the anniversary of the company's incorporation, it is then due 28 days after this date and records the details of all officers and shareholders of the company along with details of the registered office and shareholdings.

VAT

If VAT registered, VAT returns and payments are due to be filed and submitted electronically at the end of the month following each quarter.

For Example

Quarter ending 31st March	Due by 7th May
Quarter ending 30th June	Due by 7th August
Quarter ending 30th September	Due by 7th November
Quarter ending 31st December	Due by 7th February

Assuming that the company is eligible for quarterly payments they will be due by:

Quarter ending 5th April	Payment due by 22nd April
Quarter ending 5th July	Payment due by 22nd July
Quarter ending 5th October	Payment due by 22nd October
Quarter ending 5th January	Payment due by 22nd January

P11d and P11d(b) are due after the end of each tax year. They should reach HMRC by 6th July after the end of the tax year.

Class 1A NIC relates to national insurance on certain benefits in kind such as company cars. If this applies the payment is due by 22nd July following the end of the tax year

Record keeping - statutory requirements

If your company is registered at Companies House, you must keep and retain certain accounting records showing your company's transactions and its financial position. You have to do this even if your company is not currently trading or no longer trading.

Required company records include:

- A record of your company's assets, for example a record of 'capital expenditure' such as the purchase and sale or disposal of company assets, equipment, office furniture and vehicles
- A record of your company's liabilities
- A record of your company's income and expenditure
- Details of any stock on hand at the end of your financial year

Generally, if your company keeps these records, you will not need to keep any more for Corporation Tax.



P11d and P11d(b) are due after the end of each tax year. They should reach HMRC by 6th July after the end of the tax year.

Class 1A NIC relates to national insurance on certain benefits in kind such as company cars. If this applies the payment is due by 22nd July following the end of the tax year

Record keeping - statutory requirements

If your company is registered at Companies House, you must keep and retain certain accounting records showing your company's transactions and its financial position. You have to do this even if your company is not currently trading or no longer trading.

Required company records include

- A record of your company's assets, for example a record of 'capital expenditure' such as the purchase and sale or disposal of company assets, equipment, office furniture and vehicles
- A record of your company's liabilities
- A record of your company's income and expenditure
- Details of any stock on hand at the end of your financial year

Generally, if your company keeps these records, you will not need to keep any more for Corporation Tax.

You should retain certain business records, for example:

- Annual accounts, including your profit and loss statement and balance sheet
- Bank statements and paying-in slips
- Timesheets, invoices and credit notes
- Purchase invoices and cash expenses receipts
- Other relevant business correspondence

The business records that your company keeps for Corporation Tax purposes must:

- Be complete and up to date
- Allow you to work out correctly the amount of Corporation Tax you owe to HMRC, or can reclaim from HMRC.
- Allow you to file an accurate Company Tax Return
- Be easily accessible if HMRC asks to see them during an enquiry into your Corporation Tax affairs

Download a guide to keeping company records from Companies House Website or further guidance at [GOV.UK](https://www.gov.uk)

Expenses Guide

One of the most common questions we're asked by our clients is "what can I claim through my company?". Ensuring that your company gets the correct tax relief and you get back what you've paid out is important, although working out what you can and can't legitimately claim can be difficult.

What is a legitimate business expense?

Business expenses are the costs you incurred whilst performing your business duties. They must be reasonable and must have been incurred "wholly, exclusively and necessarily" in the performance of your work duties for business purposes. There should always be a reasonable expectation that the expenditure will contribute towards future revenue generation.



A business expense is NOT:

1. A private/personal expense
2. Ordinary commuting
3. An expense that has not been incurred

A Word of Warning

HMRC can and do check what's been claimed and will ask you to provide evidence that the expense that has been incurred was reasonable (i.e. supported with a receipt) and was a genuine business expense.

Each time you claim business expenses you are asked to ensure that you only claim allowable expenses and that you retain the receipts. We will try to ensure that all claims are valid but we will not accept responsibility should any tax or NI charges be levied on you now, or in the future, for expenses disallowed by HMRC.

Any underpayment of tax and NI as a result of erroneous claims will therefore result in you being personally responsible for the liability.

How to claim business expenses

Expenses will be reported within your online bookkeeping record and you will need to ensure that you regularly arrange to reimburse yourself the expenses that you have claimed.

To make the reimbursement all you need to do is transfer the funds from the business bank account to your personal account and explain the transaction within the system.

You must keep copies of your receipts for your own records for 6 years.

Some basic rules:

- You must enter your out of pocket expenses frequently, at least on a monthly basis.
- All expenses claims must be for reasonable expenses that you have incurred wholly, exclusively and necessarily in performing your business duties.
- You may be able to claim for expenses incurred prior to incorporation, but you will need to talk to us.
- Travel to work and subsistence expenses cannot be claimed when you have worked, or when you know you will work, more than 24 months at one location. See the section on travel expenses.

Chargeable expenses

These are expenses that you incur on behalf of your end client and which the end client has agreed to reimburse. The expenses should be recorded as usual within your records but they can be added to your invoice when you create it to ensure that the expenses are recharged to your client.



Business travel

Providing you travel to your end client's sites in order to carry out your engagement, the costs of doing so may be claimed from your company. You should be travelling to a temporary workplace, where you perform a task of limited duration or purpose (known as the 24 month rule). Please note: Travel and subsistence costs are not allowed if you're inside IR35.

The most commonly claimed travel expenses are for public transport tickets and mileage in personal cars.

If you use your own vehicle for business travel, a mileage allowance can be claimed from your company to cover the cost of fuel, depreciation, insurance and other running costs associated with the business travel. A record of your business mileage should be retained.

The mileage rates for a car or van are £0.45/mile for the first 10,000 miles in the tax year, and £0.25/mile after 10,000 miles.

You must retain original VAT receipts for fuel. Please ensure that you ask for a VAT receipt from the retailer.

You need to provide sufficient fuel receipts to cover the mileage you claim. We accept that it's difficult to exactly match your fuel receipts to the amount claimed. Receipts can cover multiple claims. You must be adequately insured for the business use of your vehicle.

The 24-Month Rule

Claiming travel expenses to a temporary workplace is allowable provided you expect to visit the workplace for less than 24 months. You'll find more detail later in this guide.

Travel costs that are not allowable:

- Ordinary commuting and private mileage
- Parking fines, clamping charges and traffic offence fines
- The direct cost of your own vehicle (e.g. fuel, maintenance, repair, car tax, insurance, depreciation), because these costs are deemed to be included in the HMRC approved mileage rates.

Subsistence

When working at a temporary workplace lunch can be claimed. Lunch must be in the form of a purchased meal or pre-packed sandwich and cannot merely be a reimbursement of ingredient costs where you have prepared your own lunch.

For each assignment you may claim the actual cost of food and drink purchased. You must retain original VAT receipts.

If you are required to stay away overnight for business purposes you may also claim for a breakfast and evening meal.

In addition you may claim a nightly allowance of £5 in the UK and £10 abroad to cover the costs of "personal incidental expenses" such as laundry, private telephone calls and newspapers. Receipts are not required. You can only claim these expenses when you claim overnight accommodation.

Subsistence

If you are required to stay away overnight for business purposes any costs incurred can be claimed from your company and will be allowable against Corporation tax. The accommodation claimed must not relate to your permanent residence in any way for it to be allowable and you should not be accompanied by your family.

As with all claims, the expense incurred should be “wholly and exclusively” for business purposes and there should be no benefit to you. The standard of the accommodation should therefore not exceed that of your primary residence. The price and distance of your accommodation from your home are your decisions but should be reasonable for the circumstances. Claims considered to be too close to your home may be rejected. You must retain original VAT receipts.

Friends and family

You can stay with friends or family and claim up to a maximum of £25 per night. The claim must be supported with a covering letter confirming the address and dates on which you stayed. Please ensure the letter is signed by your friend or family member.

Use of Home as Office

Your home is designated as your permanent place of work and as you will be carrying out your administrative duties from home, you are allowed to claim an allowance for its use. You may claim an allowance of £6 per week for each week you work. Receipts are not required. This is intended solely for use of the actual space, and does not include such other items as stationery etc. which may be claimed separately.

You may claim for general office consumables and stationery costs incurred while performing your work duties. Items such as stamps, envelopes, pens, pencils, writing pads and ink cartridges can be claimed. You must retain original VAT receipts.

Insurance

When you are operating your own business, you will need to consider whether you need, or are indeed required by your contract, to take out any business insurances such as professional indemnity, public liability, employer liability or business equipment cover. These are all allowable business expenses.

Accountancy fees

Corporation tax relief is given for all accountancy fees in relation to the preparation of the company's

statutory returns and financial statements, including the original Company Formation Fee.

Fees incurred in the preparation of your Self-Assessment Tax Return are not a “wholly and exclusive” business expenses and therefore should be paid personally.

At Orange Genie Accountancy we prepare a basic tax return for all our clients free of charge, where we receive all the necessary data before 31 October following the end of the tax year (subject to which tax year you become a client).

Mobile phones

No benefit in kind will be incurred if one mobile phone per employee is provided by your company and the cost of such a phone is an allowable business expense.

To ensure that no benefit in kind is generated, the contract for the mobile phone must be between the Limited company and the mobile phone provider.

The payment for the phone should go directly from the company bank account.

Home phone and internet

You may claim the full cost of telephone calls for any business calls you make using your home or personal mobile phone. You need to retain your original itemised telephone bill highlighting the calls made and showing the amount, including VAT, and totalled.

It is possible to claim for an internet connection at your home if the contract is made with your company and payment is made directly from the company bank account. Private use must be insignificant and there should be no separate billing record between you and your business.



Business entertaining

If you incur costs entertaining a potential new client or existing client, the costs incurred can be claimed through your company although these expenses are not allowable for Corporation Tax purposes.

Any entertaining should be commercially reasonable and proportionate to the future potential business being sought.

Even though there is no corporation tax relief it is still worth claiming the expense through the company as the alternative would be for you to pay for this personally out of taxed income. You must retain original VAT receipts.

Annual event

An annual event is an allowable expense for your company and will not incur a benefit in kind for employees providing the following criteria are met:

- The total cost must not exceed £150 (inc VAT) per employee. If the cost does exceed this amount the whole amount falls to be treated as a benefit in kind.
- The event has to be open to all staff.
- Partners may be invited, but if they are all staff must be entitled to invite a partner. Invited partners are also given the £150 per head allowance.
- If multiple events are held the total cost across all events must not exceed the £150 per head.
- You must retain original VAT receipts.

Subscriptions

You may claim for subscriptions to professional bodies where the membership is necessary for the performance of your duties and the professional body is included on the HMRC approved list. <http://www.hmrc.gov.uk/list3>

Pension contributions

Pension contributions made to your pension plan by your company are allowable for Corporation tax purposes. The contribution has to be for the purpose of the trade and not the benefit of you. Guidance on this is ambiguous but in general if your overall salary and pension does not cause your company to generate a tax loss then the contributions should qualify for tax relief.

There is an annual allowance of £40,000 for 2018/19 which covers both yours and your company's contributions. Whilst Orange Genie Accountancy are not registered to provide investment advice, we can provide you with the details of an Independent Financial Advisor should you wish to discuss this further.

Eyesight test

You may claim the cost of an eyesight test where this is necessary for the use of visual display equipment in your work. If spectacles or contact lenses are prescribed you may also claim the full cost. A qualified optician must carry out the eyesight test and the original VAT receipt for the test must be supplied.

Claims for contact lenses and/or spectacles must be supplied with proof from the optician that the expense has been incurred for VDU use whilst working. You must retain original VAT receipts.

The 24-Month Rule

Permanent employees who work at a fixed workplace are unable to claim the cost of travel between home and their permanent place of work - this is known as ordinary commuting.

Temporary employees that work at a temporary workplace are able to claim travel and subsistence provided that they satisfy certain conditions.

A temporary workplace is one where you go to perform your tasks for a limited duration or a temporary purpose. Whether you can treat the workplace as temporary will depend upon how long you are based at a particular site, how long you expect to be based at the particular site and how much time you spend there.

The 24-Month Rule

A temporary workplace ceases to be temporary when, or if it is expected that you will spend 40% or more of your time on a "continuous" basis for 24 months or more at that location. At this point the workplace becomes permanent and the travel to that place, ordinary commuting.

It is important to understand that the expenses cease to be allowable at the time you expect to be at the temporary site for 24 months or more and not when you reach 24 months.

For example:-

Robert begins a new 12 month contract on a site that he has never worked at before.

His contract start date is 1 March 2014. During December 2014, Robert is offered a contract extension for a further 12 months to February 2016.

At the point Robert accepts the extension in December 2014, his expectation is that he will be traveling to the same site for 24 months or more and so he is no longer able to claim his travel and subsistence expenses.

Change of workplace

You may be a contractor who expects all of his contracts to be undertaken in the same area, for example all within the city of London. If this is the case you need to consider the time spent as a whole in that location, rather than each individual site.

Whilst the legislation does not clearly define "location" or site there is case law evidence and precedent that indicates there needs to be a significant change in the journey time or costs to qualify as a change of location.

For example:-

Emma is an IT specialist engaged on a contract by a City of London merchant bank.

She spends 15 months working at the head quarters of a bank in Liverpool Street and then moves to a 12 month contract for another bank in Canary Wharf.

No relief is available for Emma's travel between home and these locations as she "expects" to work in the City of London and her travel from home to client sites, all be it different ones, will broadly be the same every day, year in, year out.

Working at more than one site

Contractors working on more than one site will need to consider the amount of time spent at each location. Provided you spend less than 40% of your overall total working time at each site, over a period of at least 24 months, there is no restriction on claiming travel and related costs.

Each site needs to be considered individually, so if you spend 35% of your time at one site and 65% at another, you can only claim travel and subsistence in relation to the site where you spend 35%, assuming it is a temporary workplace and the duties are of a temporary nature.

IR35

Introduction - the scope of IR35

IR35 Legislation was introduced in 2000 by HMRC in order to tackle what they saw as “disguised employment”, with an aim to increase tax collected from those individuals who set up a business in their own account.

The Legislation applies to all individuals providing their services through an intermediary (i.e. their own Limited Company) where the income received for performing the services would have been treated as employment income had the contractor been directly contracted by the end client on a personal basis.

When reviewing IR35 status cases it is necessary to construct a hypothetical contract between the worker and the end client. Where an agency is involved there is often no contractual relationship between the worker and the end client and in some cases there can be multiple parties involved and all the terms and conditions between all of the parties need to be considered

Does IR35 apply to you?

IR35 is complex and often contentious; status cases are determined through case law interpretation, there is no statutory definition. The emphasis of the courts has over the years changed, as has HMRC's interpretation of the findings.

When determining IR35 status it is vital the written terms of the contract, the actual relationships between all parties are considered as well as the working practices.

Essentially there are three requirements for IR35 legislation to apply and all three have to be satisfied before the contractor can be deemed to be an employee and fall into the IR35 rules.

Substitution

As an employee, you would be obliged to perform the services of your end client personally. A contractor should have the freedom to choose whether to undertake the task himself or hire somebody else to do it.

The right of substitution is a fundamental status test and if it is genuinely possible to send a substitute, you cannot be deemed to be employed. The 1968 Ready Mix Concrete case recognised that the “freedom to do a job by one's own hands or another's is inconsistent with a Contract of Service (employment).”

Any contract should not unreasonably “fetter” the right to send a substitute. In the Express and Echo case of 1999, the courts agreed that it was acceptable for the end client to expect the substitute to be “suitable” and equally qualified and skilled.

A contract has to contain a genuine right of substitution clause, any clause that says substitution is “allowable” cannot be relied upon as the end client can revoke this



Direction and control

Direction and control concern how, when, where or what is to be done. The more of these elements that the end client controls the more likely the contractor will be found to be an employee.

If your client can determine your priorities, control when you undertake the work and dictate the location and time of your work you may be deemed to be an employee. There may be commercial reasons why you can only attend premises at certain times – eg security etc. and the direction over location can be neutral.

How the project is to be completed is a strong indicator of the IR35 status. If the end client prescribes how the task is to be undertaken and the work to be carried out, employment may exist. Regular updates are expected and are not deemed as control or direction. Ideally your contract should clearly state that the client has no right to control or supervise and that whilst they can make reasonable requests, you have no obligation to follow them

Mutuality of Obligation (MOO)

MOO is complex and the internal guides for HMRC suggest that until 2001, inspectors were advised not to raise the issue because of its complexity.

Case law highlights that for a mutuality to exist, and therefore employment, there needs to be a continuing obligation on the employee to provide his own services, and on the

clause, any clause that says substitution is “allowable” cannot be relied upon as the end client can revoke this employer to provide work – or if there is no work, to at least pay the employee.

Clearly therefore, if there is no expectation of continuous work, no payment is made for period when work is not offered, there is no obligation to find or accept work either during the contract period or afterwards, MOO cannot exist. Notice periods in contracts are inconsistent with MOO. “Rolling contracts”, or indeed contracts

that are continually renewed could fail this test.

Other factors to be considered

There are numerous pertinent factors that may be considered in individual IR35 status cases. They can include:-

Financial Risk

A contractor who risks their own money by buying assets, bearing the running costs of the business and paying for overheads is more likely to be viewed as being business on his own account. They are costs and risks that are not borne by employees. The risk of not being paid for an invoice, quoting a fixed price for a job that then over or under runs are also not indicators of employment. Correcting faulty work at your own cost and purchasing Professional Indemnity insurance are signs of being in business not employment.



Provision of Equipment

The provision of equipment by the contractor may be an indicator of being in business but if the contract is for a skills only assignment it may be of limited value. An end client's provision of specialist equipment is acceptable

Basis of payment

Employees tend to be paid a fixed rate, weekly or monthly, and are also paid overtime. HMRC contend that contractors paid on a fixed hourly or daily rate are therefore employees. Case law does not support this.

Freedom to offer services to others

The contractor, whilst engaged on a project, should be free to undertake other services for others and to use his skills as he sees fit. Having other business streams is most helpful in showing that a contractor is in business on his own account. Part and parcel of the Organisation

The contractor should not be seen to be an integral part of the end client's organisation. Recent case law has shown that where an individual is integrated into the workforce and is undertaking the usual work of a business, as opposed to being brought in to undertake a project or for specialist skills, IR35 is likely to apply. To this end the contractor should not use any benefits provided to employees such as a subsidised canteen, gyms, attend Christmas parties.

Highlight...

Contractual indicators alone are not enough to determine IR35 status and alongside these any review should also examine the working practices and relationships between all parties. It is therefore important that each assignment review be carried out by independent professionals who know and understand not only the IR35 legislation but can also interpret relevant case law precedent correctly and be fully up to date with HMRC's process and procedures. A good record of defending IR35 investigations is helpful too.

We recommend our partners, Bauer & Cottrell, led by Kate Cottrell, a member of the IR35 forum and advisor to HMRC. We work closely with them to assist our contractors.

Responsibility for IR35 determinations

Unless your end client is classed as a small private company, they will be responsible for determining your IR35 status on any contracts you complete for them. If they find that you're inside IR35, the "fee payer" (usually either the client themselves or the agency who pay your limited company) will have to deduct PAYE tax and NI contributions before paying your limited company. They will also have to pay employers' National Insurance contributions.

If deemed to be inside IR35, you'll also lose the 5% deduction for company running costs, in addition to paying PAYE tax and NICs on your contract rate. Being deemed to be inside can have a profound effect on the proportion of your contract rate that you take home.





Remuneration strategy

Withdrawing funds from your limited company

It is important to realise from the start that the Limited Company is a separate legal entity to the directors who form it. The monies within the company bank account do not belong to you until they have been withdrawn as salary, dividends or expenses.

Expenses

Any expenses incurred by yourself on behalf of the company should be reclaimed from your company. You will have no tax liability on these reimbursed expenses if they were allowable business expenses.

Salary

If you are outside IR35 then generally the most tax efficient method of withdrawing funds is via a combination of salary and dividends. If you are inside IR35 then you will need to withdraw your funds as deemed salary.

Deciding how much salary to pay if outside IR35

As the owner of the company the level of salary you choose to pay is your decision.

As an office holder of the company you are not bound by the National Minimum Wage so you should make your salary decision based on:

Your personal requirements and commitments

Your need to ensure you have enough National Insurance Contributions credits to qualify for future access to state pensions and benefits

Your view of risk; some commentators believe drawing low salaries may increase your risk of an HMRC investigation.

Dividend

A dividend is a distribution of a company's profits after tax and is paid to all company shareholders. Company directors must decide how much of a dividend to distribute, ensuring that they can demonstrate that at the time the company had sufficient retained earnings to pay the dividend.

Salary

If you are outside IR35 then generally the most tax efficient method of withdrawing funds is via a combination of salary and dividends. If you are inside IR35 then you will need to withdraw your funds as deemed salary.

Taxation of dividends

Dividends are paid out of Company profits after Corporation tax has been paid. They do not, therefore, affect the Corporation tax liability.

The first £2,000 of dividends will be tax free, with the next tranche taxed at 7.5%. This rate will apply to all dividends in the basic rate tax band.

Any additional dividends paid will fall into the higher rate band and will attract the 32.5% higher rate of tax. Any dividends in excess of £150,000 are subject to a rate of 38.1%.

All dividend payments should be kept separate from payments made for wages or expenses so they are clearly and separately identifiable to HMRC.

Company cars

If your company buys or leases a car, which you then use for both business and personal journeys, there are tax implications for both you and your company.

Implications for your company

If your company purchases the car, they become the registered owner and keeper of the car. The car will need to be insured in the name of the company, with you as a named driver. Your company will meet all costs of insurance, road tax and maintenance – all of which are tax deductible and will reduce Corporation Tax Liabilities.

When purchasing a new car, VAT is not reclaimable. If you purchase a second hand car then VAT is not normally charged, however if it is, the VAT is reclaimable.

If a car is obtained under a lease contract, then VAT is normally chargeable on the monthly cost. If you are on the Flat Rate VAT scheme then none of this can be reclaimed. If you are on the standard VAT scheme then only 50% of the VAT can be claimed.

Corporation Tax relief is available when a car is provided to an employee, although the rate of relief differs depending on whether the car is purchased or leased. Fuel can also be provided at the Company's expense but a further benefit in kind for the employee is then created. The company will have to pay 13.8% Employers National Insurance on any benefit in kind value

Implications for you as the director/employee

The use of the car for personal journeys is deemed to be a benefit by way of your office and employment and hence a benefit in kind charge is incurred. In effect the benefit is treated as additional salary and taxed as such. The benefit in kind would be reported on a form P11d.

The benefit in kind will use up part of your basic rate tax band and will affect the level of dividends that be taken, effectively tax free.

Calculating the benefit in kind

The taxable value of the benefit in kind is calculated using the list price and the BiK (benefit in kind) rate, which is based on CO2 emissions. The list price for tax purposes includes extras, delivery costs and VAT but not the first-year registration fee and vehicle tax.

List price X BiK rate = taxable value.

You will pay tax on this value at your marginal rate, which is usually 20% or 40%.

For example:-

Imagine your company car has a list price of £30,000 and CO2 emissions of 106g/KM.

List Price = £30,000 BiK Rate = 20% Taxable Value = £6,000

- Income tax for 20% tax payer: £1,200/year
- Income tax for 40% tax payer: £2,400/year
- Class 1A NICs Paid by company: £828/year



If your company pays for fuel

If your company pays for fuel costs as well, this attracts a further taxable benefit in kind. The standard value set by HMRC is £24,100 (2019/20) and it's multiplied by the BiK rate in the same way as the car's list price..

To continue with the same example., if your company pays for fuel the additional annual costs would be:

Value of benefit= £25,300 BiK Rate = 20% Taxable value = £5,060

- Income tax for 20% tax payer: £1,012/year
- Income tax for 40% tax payer: £2,024/year
- Class 1A NICs Paid by company: £698/year

If you're a 40% tax payer and your company pays for fuel, the total tax cost is £5,950. It's also worth noting that these are not one-off costs but must be paid every year for as long as your company provides the car to you.

Assuming no increases in tax or changes to BiK rates, in this example a higher rate tax payer would pay £17,850 in tax over just three years.

The taxable value for benefit in kind is taken as a standard value of £3,600 (2022/23) rather than varying by the list price and CO2 emissions, and if fuel is provided the flat rate benefit in kind is an additional £688.

A van is defined by HMRC as "A vehicle of a construction primarily suited for the conveyance of goods or burden (excludes people)". The important detail is how the vehicle was constructed, not how it's used, so even if you take the seats out of your people carrier and use it to carry goods, it still doesn't count as a van.

A benefit in kind will not be incurred if the van is used solely for business purposes. In practice, if the van is parked at your home overnight it would be quite hard to prove there is no personal usage.

Any benefit in kind on the van would be assessed on your Self-Assessment tax return each year or through your PAYE coding notice. Your company will have to declare the company van on your P11d each year and would have to pay employer's NI at a rate of 13.8%.

Low CO2 emission cars

Lower emissions give you a lower BiK rate, which will reduce the amount of tax you pay on your company car. Again, do you need the big powerful engine, or can you manage with something smaller and more economical?

It might also be worth considering an ultra-low emissions car. Cars with the lowest CO2 emissions, including those using hydrogen fuel cells, electric cars and plug-in hybrids, attract the lowest BiK rates..

Company vans

If you're buying a company van rather than a car, the rules are slightly different. Your company can still offset the cost of buying and running the van to reduce Corporation Tax. If your company is VAT registered it can also reclaim the VAT on the purchase of the van.



Pensions and tax planning

Who can have a pension?

Any individual who is a UK resident and under the age of 75 can make personal contributions to a pension scheme. You will only qualify for tax relief on personal annual contributions up to a maximum of either:

- 100% of your UK earnings
- £3,600 if you're unemployed
- Annual allowance (£40,000 in 2018/19) regardless of earnings

Can your company pay into your personal pension?

Yes, employers (including your own Limited company) can also contribute to an individual pension. However, if the total contributions (personal and company contributions combined) exceeds the annual allowance, tax will be charged on the excess at 40%.

How are payments made into your pension?

Payments from an individual are made net of basic rate income tax (20%). Higher rate tax payers can claim an additional 20% through their tax return.

Employer contributions are paid gross and the employer can claim the payment as an expense against profits to save on corporation tax.

When and how can you take your benefits?

Benefits can normally be taken from the age of 55. 25% of your pension fund can be taken tax free. The remainder can be taken as a taxed lump sum or used to buy an annuity.

What type of pension should you have?

Personal pensions are normally run by financial organisations such as banks and insurance companies. They are available to almost everyone.



Self invested personal pension, are subject to the same rules as personal pensions schemes, however they allow a wider range of investments. Investments include: stocks, commercial property and insurance funds.

What happens to the plan if you die before taking the benefits?

The value of the plan will be paid out as a cash lump sum. This lump sum death benefit will be checked against the lifetime allowance (£1.8m). Any amount over the allowance will be taxed at 55%.

If the death benefits are paid as a pension, they will be taxable as income under PAYE & not checked against the lifetime allowance. These benefits can be paid to spouse, civil partner or dependents.

Who should you contact with questions?

Contact Orange Genie Accountancy on 01296 468185 for further advice.

Orange Genie Accountancy is an introducer appointed representative of Contractor Wealth which is authorised and regulated by the Financial Services Authority.

Understanding your company accounts

Every company registered at Companies House has to file Statutory Accounts on an annual basis. Similar documents have to be sent to HMRC, along with the Company's Corporation tax return.

Annual accounts are a summary of the company's financial transactions in a given accounting period (usually 12 months). These accounts are prepared from the books and records of the company (invoices, expenses, bank statements, payroll etc.).

Annual accounts can be prepared in two formats. Full and Abbreviated Annual Accounts are due for filing with Companies House within 9 months of the year end. These Abbreviated Accounts include only a balance sheet and no detailed information on trading activity.

HMRC require a full set of Annual Accounts, including a Profit and Loss Account within 12 months of the year end. This has to be accompanied by the Companies Tax Return CT600

To be included in the accounts:

Directors report - this standard report details the period that the accounts are being prepared for and that they have been prepared in line with the relevant acts of law. The report also provides details on the principle activity of the company and the directors who were in the office during the period.

Accountants report - this report states that the Directors requested for the accounts to be completed by the accountant and that they have been prepared on the basis of the information provided by you the director.

Profit and loss account - this report provides the detailed figures on how the company has traded. This will show the resulting profit or loss and how it has been generated. Turnover will be recorded and will cover the whole period. It will include all invoices for work done in the period and will be shown net of VAT. There will be a separate line to indicate any Flat Rate VAT savings that have been made in the period. Administration Expenses will list the major costs of

the company throughout the period. These will be taken from both what has been spent through the company bank account and incurred as expenses.

Salaries will also be included in these costs. Any bank charges incurred will be shown separately. The Corporation tax charge will be shown in the accounts. This is tax payable on the profits at 20%.

Balance Sheet - this is a snapshot of the company's assets and liabilities as at the balance sheet date. Included in the balance sheet will be

Fixed Assets - any assets purchased and still held by the company for ongoing use eg a computer. The assets are shown at their book value.

Current Assets - this will usually include amounts owed to the Company eg outstanding invoices and the bank balance.

Creditors - amounts falling due within one year - an additional note will break down this figure but normally is consists of Corporation tax liability, any VAT or PAYE unpaid at the year end and any monies owed to the Director.

Called Up Share Capital - this is the value of the shares owned in the Company

Profit and loss reserve - this is the retained profit or loss for the year and previous periods.

Notes to the Accounts - Various figures from the Profit and Loss account and Balance sheet are further explained in Notes to the Accounts. These notes will include disclosure of transactions with Directors. Any monies owed to a director or from a Director by way of a loan at the year end will need to be disclosed

Closing your company down

If your circumstances change and you decide to close your Company certain formalities need to be followed and any assets and funds within the company at closure need to be distributed according to the appropriate set of rules.

Depending on the value of assets and cash to be distributed there are different rules to follow.

Informal liquidation

If the total value of assets and funds to be distributed is less than £25,000 it is possible to close the company by way of an informal liquidation. Any amounts distributed are treated as a capital distribution for tax purposes and therefore are subject to Capital Gains Tax (CGT rather than income tax (applicable to dividend distributions).

This method of extracting funds can be advantageous to you as a shareholder of the company as it allows you to claim entrepreneur's relief and any gains in excess of the annual capital gains tax exemption are taxed at 10%.

If this route is followed, Orange Genie Accountancy will prepare Cessation accounts for your company and will ensure that you complete all final returns and deregister for all relevant taxes. We will report the distribution of assets and funds on your self-assessment tax return and sure that the Company is struck off from the companies House register.



Formal liquidation

If your company has assets and funds in excess of £25,000 to distribute, you will need to follow a more formal liquidation process and this will need to be overseen by an Insolvency Practitioner.

Orange Genie Accountancy are not registered Insolvency Practitioners but established a relationship with Opus, who are registered to oversee such liquidations.

We can calculate whether the tax saving obtained from formally liquidating your company will exceed fees associated with the appointment of an Insolvency practitioner. Assuming your income in the year has already o will exceed the higher rate threshold, we calculate that for any distributions in excess of £36,000 the appointment of a liquidator is likely to yield the highest return, after having paid all taxes and professional fees. This assumes that Entrepreneur's Relief is available on the Capital gain.



Contact Orange
Genie today:

01296 468 483

info@orangeenie.com

Orange Genie
Accountancy
Contractor and Small Business Specialists



Limited
Company
Accredited
Member

INVESTORS IN PEOPLE®
We invest in people Gold



REC

Business
Partner

01296 468 483

orangeenie.com

info@orangeenie.com