

SAS Consultants: A Sheep in Wolf's Clothing

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Abstract:

Thinking of hanging out your shingle and going it alone? Look before you leap and make sure you know both the risks as well as the rewards of being a SAS Consultant. Although employees and consultants may write identical code; their behavior, responsibilities, risks and rewards can be very different. This article will explore the fundamental differences between SAS Consultants (independent contractors or 1099's) and SAS Programmers (employees or W2's), and address the most common questions dealing with self employment and the transition process.

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A Sheep in Wolf's Clothing

Working as a SAS Consultant carries certain risks as well as rewards. Anyone contemplating such a career should carefully and objectively consider all of his or her options. If he or she is determined to make the transition, it is extremely important that they understand and carefully plan the process.

What is the difference between an Employee (W2) and an Independent Consultant (1099)?

The IRS subsets all workers into two categories: Employees for whom Form W2 must be filed by their employer and Independent Contractors (consultants) for whom Form 1099 must be filed by their client(s). Employers withhold and pay taxes on behalf of W2 employees, but 1099 Independent Consultants are required to make their own tax payments. The IRS lists twenty criteria that are used to make this determination (Appendix A), but it boils down to this: an Employee may be directed and controlled by the employer while a Consultant is self-directed and under his or her own control.

Because the Consultant is under his or her own control, they are directly responsible for their own success or failure. This may give them additional flexibility, but it also is the source of additional risks and expenses. In addition to their SAS coding, they are also responsible for tasks normally associated with the running of a firm such as training, marketing, accounting and financial planning.

Why Would I Want to Become a Consultant?

The most common reasons for transitioning from Employee to Consultant can be organized into three categories: Money, Power and Warm Fuzzies. Anyone contemplating independent consultant status should consider and weigh every item in each category to determine what is best for them. They should then reconsider and reweigh every item in a best and worst case scenario for various time periods into the future.

Money represents anything associated with net income. The most obvious benefit is that consultants charge more per hour/job, so there is the **potential** that they can achieve a higher net income. Less obvious benefits are that contracts may be negotiated more frequently than companies provide promotions, so the **potential** for advancement (per hour increases) is greater. Compensating for some of the additional expenses incurred, Independent Contractors may

also write off work-related expenses while employees are limited to write off of only 2%*. The most common negative factors to effect one's income are business expenses and a lack of billable hours.

Business expenses include fees for accountants and lawyers, licenses, software, hardware, insurance, etc. Billable hours may be reduced for several reasons. In some instances you may be unable to find work for which you can bill, and at other times you may actually perform work for which you can not bill. Non-billable hours may be the result of difficulties with a project, but more likely they will be spent performing business-related activities such as accounting, marketing, training, etc.

Power describes the ability to make and act upon your own decisions as well as being responsible for your own success or failure. As his or her own boss, a consultant can more easily act in his or her own best interest. However, if they ignore the interests of their clients, they are very likely to do more harm than good. A perfect example is in the selection of jobs. The consultant has significantly more control over which jobs they will accept and often can pick between multiple assignments. However, if the consultant chooses unwisely or alienates a client, they may limit the availability of future jobs.

Warm Fuzzies encompass everything that is left over. This includes more time with the family, more leisure time, the ability to work from home, reduced stress, and more personal recognition. Although Money is a primary motivator, a Warm Fuzzy is often the catalyst for the transformation from Employee to Consultant. The unfortunate few are able to realize the benefits they originally sought and many actually sacrifice what little they already had. Employees often turn consultant so that they can spend more time at home with their families. But in order to start, maintain and grow their business, they may spend significantly more of their precious personal time on business related tasks.

The most significant downside of consulting is the uncertainty. Another is that instead of receiving Warm Fuzzies, consultants may be given the Cold Shoulder. Employees may look down upon them or consider them to be outsiders.

Please keep in mind that the factors listed below are very general and dependent upon additional factors often out of the control of the individual.

Comparison of Pro's and Con's for Employee (W2) and Consultant (1099)		
	Pro	Con
W2	Job Security	Lower Income
	Steady Income	Limited Write Offs
	Less Responsibility	Less Flexibility
	Structured Environment	Routine Tasks
	Employer Benefits	Lower Income
	Corporate Support	Corporate Hierarchy
	Limited Failure	Limited Advancement
1099	Higher Wage	Less Job Security
	Higher Wage	Business Expenses
	Can Write Off Expenses	Uncertain Income
	Greater Flexibility	Higher Responsibility
	Challenging Activities	Greater Uncertainty
	No Corporate Hierarchy	No Corporate Support
	Unlimited Advancement	Unlimited Failure

Another Warm Fuzzy is social acceptance. "Half of your co-workers will hate you before you start. If the other half don't hate you before you leave, consider the job a success." While this is somewhat exaggerated, you should expect some of your co-workers to dislike working with a consultant. From my perspective, most of the dislike is due to either jealousy or fear. W2 employees may resent working next to a "better paid" consultant, especially if the work is similar. When budgets are tight, consultants are often blamed for inflating expenses. Consequently, consultants are often the first budget line to be cut when short-term savings are mandated.

Others may fear that one of the consultant's tasks is to judge their own work and to document their shortcomings to management. This fear may be well founded because consultants often act out of the normal hierarchy and social norms of an office, are trying to be as productive as possible in order to justify their compensation, and bring a wider variety of experience to the endeavor. Upper management is likely to request an "outsider's" option, especially if the consultant has work for other firms within the same industry or worked on similar tasks in other industries. My preferred method of dealing with this issue is to always provide my best service and advice to the client. If this causes issues with my co-workers, I reassure myself that I will only be there until the job is completed, and my true co-workers are my fellow consultants.

* See Disclaimer

What are Non-Billable Hours and How Do They Effect the Bottom Line?

Billable Hours are time periods for which you receive compensation. Non-billable hours are time periods, which you work or are willing to work, but do not receive compensation. As mentioned earlier, a consultant is responsible for the performance of tasks normally associated with a firm such as accounting, marketing and training. Firms employ other employees to manage the books and file tax forms, seek out jobs and negotiate contracts. When employees need to learn additional skills, they can do so on company time and at the companies' expense. The consultant must either perform administrative tasks themselves on their own time, or hire someone to act on their behalf. Even if they hire someone else, an independent consultant should take an active role in the management of their own business, even though it will reduce their billable hours.

How Much Money Will I Make?

An informed, realistic and objective perspective is essential to making an accurate estimation. Before striking out on your own, you should do as much research as possible to determine what you will probably make and spend as well as best and worst case scenarios. Sources of salary information include Charles Partridge's www.sconsig.org website, trade groups such as the ICCA, your own job experience, co-workers, recruiters and job postings. There are a number of public and private firms that supply small business information and volumes of books written on the subject. You should also consult a CPA and possibly a lawyer to determine and discuss your precise situation.

Before starting out, each individual should estimate (guess) how much they can earn, how much they will spend and how it will change their lives. A married individual may find it easier to make the transition if their spouse provides an alternative source of income and health insurance. Others may find it more difficult if transitioning consumes leisure time normally spent with family or friends. The easiest decision may be that of someone who has already retired and wishes to remain active. Perks and benefits offered by most companies will not apply, and the ability to travel or take short term assignments may be an ideal lifestyle.

The following illustration contrasts an employee with three consultants. Although the consultants earn fifteen dollars (\$15) more per hour, they may or may not be better off financially. After calculating the financial gain or loss, you should also consider the non-monetary gains and losses discussed earlier. The amounts given are only rough estimates used to illustrate the need to plan ahead and to perform your own research.

Description	W2	1099		
		A	B	C
a Hourly Rate \$	25	40	40	40
b Max Hours	2,080	2,080	2,080	2,080
c Holiday's	Paid	(80)	(80)	(80)
d Vacations	Paid	(80)	(80)	(120)
e Company Functions	Paid	-	(8)	(32)
f Training	Paid	-	(24)	(40)
g Accounting Billing	N/A	-	(52)	(104)
h Marketing	N/A	-	(24)	(40)
l Other	Paid	-	(120)	(500)
j Total Billable Hours (b-(sum(of c-l)))	2,080	1,920	1,692	1,164
k Total Receivable (a*j)	52,000	76,800	67,680	46,560
l Accounting	N/A	500	2,000	5,000
m Legal	N/A	500	2,000	5,000
n Health Care	N/A	2,000	5,000	10,000
o Marketing	N/A	-	2,000	5,000
p Business Insurance	N/A	-	500	4,000
q Training	N/A	-	2,000	4,000
r Office Supplies	N/A	-	4,000	10,000
s Expenses (sum(of l-r))	-	3,000	17,500	43,000
t Write Off Savings (s * .66)	-	990	5,775	14,190
u Total Expenses (s-t)	-	2,010	11,725	28,810
v Income (k-u) \$	52,000	73,800	50,180	3,560

A common mistake is to overestimate income (v) by overestimating billable hours (j) while underestimating expenses (l to s) and non-billable time (c to i). While you may be willing to work a "regular" workweek, you may not be able to find someone willing to pay you to work that many hours. Another problem is that you must somehow find the time to manage your accounts, find new work and negotiate new contracts. Time must also be set aside for training, personal development, the possibility of sickness and personal time. Since you can not bill clients for the time you spend working for your company, you must increase your bill rate to compensate for the non-billable hours.

A common way in which consultants increase their income is to increase their billable hours by performing business related tasks (marketing, accounting, etc.) at night or over weekends and/or by reducing their personal leave. One such consultant postponed his honeymoon several months so that it could be taken during a regional SAS conference (SSU in New Orleans). Fortunately, his wife was very understanding. This may seem to be a workable solution, but in the long run postponing or canceling personal leave for work commitments is counter productive. It is better to plan for such activities in advance.

How much you are able to take home can depend as much on what you spend as it does on what you make. A major benefit of being an independent contractor is the ability to "write off" business expenses. This means that **legitimate** business expenses, the cost of doing business is deducted from their income BEFORE taxes are calculated. This is a roughly equivalent to one-third (your tax rate) saving on those items. One method of determining if you should seriously consider moving from employee to independent contractor status is to track your business expenses. If business expenses were less than 2%, switching would probably be counter productive. Even if business expenses are slightly above 2%, switching may not be prudent. However, it may be prudent if business expenses are well above 2% and the savings from write-offs at least match the additional cost of maintaining your own business. An accountant / CPA can outline exactly how write-offs and self-employment effect taxes and assist with an estimation of how much this will effect your bottom line. An accountant / CPA can also inform you of the penalties the IRS charges for small infractions such as late payments, the personal and financial cost of participating in an IRS audit and the punishment for more serious actions like fraud.

If you do decide to go independent, not spending/investing can be far more costly than trying to cut corners. Typical expenses include the services of an accountant/CPA, a lawyer, and a bookkeeper, healthcare and insurance. A consultant may eliminate or reduce some of these expenses by performing some of the work him or herself. Likewise software such as QuickBooks, Intuit, and information packets from organizations such as the ICCA can be very

helpful. But the services of an accountant and a lawyer should not be overlooked. It is especially important to receive proper tax and legal advice BEFORE venturing out and during the first year.

Once you are on your own, you are responsible for your own healthcare, insurance and retirement. In addition to your health insurance, you should carry some form of Business Liability Insurance and/or Worker's Compensation. Depending upon your work and your clients needs, you may need to carry additional type of business insurance such as Professional Liability and Errors and Omissions. Although insurance can be very expensive, not having the insurance when it is needed is far more costly. The same can be said of saving for retirement. It may seem expensive while setting it aside, but trying to live after retirement without it would be very difficult. Once again, it is best to consult an accountant/CPA who is current on the most recent rules when determining what is and is not allowed.

What Type of Consulting Work Can I do?

What you may do depends as much upon your personality and interests as it depends upon your SAS skills and institutional knowledge. SAS consultants can be broken down into three general categories: Benchwarmers, Fire Fighters and Builders.

Benchwarmers are hired to fill a seat and to work on whatever task they are given. The consultant's degree of autonomy is normally limited and the task is described in terms of time served rather than projects to be completed. It is not unusual for benchwarmers to work at a firm for several years. Besides their non-employee status, there may be no obvious difference between the consultant and the employee working in the next cube. The IRS may also fail to make the distinction, which will result in a revocation of the independent consultant status and a loss of any business write-offs.

Fire Fighters perform short-term projects where the company lacks the time and/or expertise to complete the task. The task is more often to complete a specific project rather than to serve for a given period of time. Often the company has already attempted to complete the task and failed. The level of SAS expertise, stress, travel, autonomy and compensation are normally higher than for Benchwarming. Fire Fighters seldom

have trouble confirming their independent status with the IRS due to the short nature of their tasks, their ability to serve multiple clients and their work autonomy.

Builders create products and/or applications. A builder may create an application for a client, or build an application at their own expense to sell to multiple clients. The work is often performed off site, so it is ideal for those wishing to telecommute. The IRS seldom refuses to accept a Builder's independent status due to the nature of the work and their relationship with their clients.

Should I Incorporate? (From *The Contract Employee's Handbook*)

Typically, the client's payroll department on a 1099 basis pays the independent contractor who operates as a sole proprietorship. If the independent contractor is represented by a partnership, limited liability company, or corporation, the independent contractor is paid as any other vendor on an accounts payable basis. Consider the following employment options. As a contract worker you are either:

1. Employed by someone else, or
2. Self-employed, in which case you are in business as one of the following:
 - a. Sole Proprietorship,
 - b. Partnership,
 - c. Limited Liability Company, or
 - d. Corporation, in which case you are probably either a:
 - i. C Corporation, or an
 - ii. S Corporation.

Sole Proprietorship

Many independent contractors choose to operate as a sole proprietorship. In fact, sole proprietorship is the default status of all self-employed workers. There is no special form or application to fill out, and it doesn't cost a cent to become a sole proprietor, although local jurisdictions may require that you file a fictitious name statement (if your business has a name other than your own) and take out a business license. And, like all businesses, sole proprietorships are required to withhold their own taxes. Additionally, sole proprietors must pay both the employer's *and* the employee's regular contributions to FICA/Medicare. This is the so-called self-employment tax. Independent contractors operating as a sole proprietorship are paid on a 1099 basis. Sole proprietor status provides no personal protection to the

independent contractor against law suits and other adverse legal actions directed toward the business.

A principle advantage of being self-employed is being able to deduct business expenses when calculating one's personal income taxes. The business expenses of a sole proprietorship are itemized on Schedule C, and filed with the owner's annual tax returns.

Partnership

There is no rational reason why an independent contractor would choose to operate in a formal partnership with one or more business partners. In a partnership each partner is personally liable financially for the actions of the other partner(s). A partnership can be your worst nightmare. Case in point: Marriage is the legal equivalent of a business partnership. (Ouch!)

Limited Liability Company

The limited liability company, or LLC, is a relatively recent form of business in the United States, although it is quite common in other countries. The LLC allows partners to pay their taxes as a partnership, with earnings and expenses passed through the business to the individual partners who then file separate tax returns. The advantage of the LLC is that it protects each partner against financial liability for the actions of another partner. Because the LLC is a new form of business, it has yet to gain popularity, or receive uniform legal treatment from state to state. And, some states do not yet recognize the LLC as a legal form of business. Consequently, operating as an LLC may not be practical if your consulting business has earnings in more than one state.

Corporation

Incorporation provides the greatest personal protection from liability arising from the actions of the corporation itself, or from its officers and employees. Incorporation also provides the greatest *potential* leverage against taxes. Those are the advantages. The disadvantages are the costs associated with setting up and maintaining the corporation.

The C corporation is the default form of corporation. In this type of corporation earnings are taxed twice; first at the corporate level, and then again when they are distributed as salaries and dividends. The S corporation avoids this double taxation by passing all income through to the shareholders without incurring taxes at the corporate level. For this reason, most incorporated independent contractors are S corporations. S corporations are limited compared with C corporations in the types of

business deductions they can claim. Still, S corporations allow significantly more deductions than do sole proprietorships.

If you are considering incorporation, you will definitely want to consult with an accountant, and possibly an attorney, to make sure you do it right. You will need an accurate accounting system, and good advice on what records you should keep. It is essential that you get advice from professionals who have worked extensively with independent contractors, preferably in your area of expertise. Ask your fellow contractors for referrals, and interview several professionals before you make a selection. The price of a good accounting professional will be repaid many times over by the taxes you save and the penalties you avoid.

Yes, many independent contractors are incorporated. But don't incorporate simply because you want to become an independent contractor. In fact, unless your clients require that you be incorporated, or you already have a thriving consulting business, it is probably unnecessary, even unwise, to incorporate at all. Many clients are just as happy working with a sole proprietor as with a corporation.

Should I Use Recruiters?

Working with recruiting firms may be necessary because large companies and most governmental agencies use "Preferred Vendor Lists". Any procurement, which includes the hiring of consultants, must be done through a company on the list. This is normally not an issue at smaller firms, or if you possess niche skills not offered elsewhere.

While consulting -- providing services for profit -- may be the oldest profession, recruiting -- the marketing of consultants to third parties for profit -- could not have been far behind. Recruiters typically take a percentage of the wages charged to the client in return for arranging contact between the client and the consultant. The advantage of using a recruiter is that it may be easier to obtain work and some of the administrative overhead may be covered. The disadvantage is that there is an additional layer between yourself and the client. Other difficulties may arise if the recruiter will only place W2 Employees (*Remember that if you are paid as a W2, you lose your independent contractor status*), require you to sign a prohibitive contract, or does not reveal important facts about the engagement. One item seldom

mentioned by recruiters is that companies may hire consultants on a trial basis. After a given number of months, the consultant must become a full-time employee or be dismissed.

What is a "Normal" or "Standard" Contract?

First of all, there is no such thing as a "normal" or "standard" contract. Any contract can be modified by both parties or rejected by either. That said, any contract should include the following items: a description of all parties to the contract, a description of the work to be performed (type, place, personnel, etc.), any constraints upon the work (time, place, personnel, privacy, intellectual property rights, etc.), reporting requirements, compensation (amount, frequency, etc.), restrictions (non competes, overtime, etc.) and signatures of a representative from each party.

Care must be taken to avoid contracts with overly binding clauses or conditions. If the clause is too restrictive, ask to have it removed or find another job. While a non-compete clause **MAY** be unenforceable on employees in most states, they are almost always binding on independent contractors. Be very weary of any firm that asks you to list your clients or to limit your marketing beyond where you are placed. I once was offered a contract that would have made it illegal for me to market my services to any company that the recruiter had already marketed themselves to, including every attendee of SUGI. I refused to agree to the contract until it was re-written to pertain only to the company (company and location) where they actually placed me.

Depending upon your relationship with the client, you may want to include a penalty for late payments. This may be difficult to discuss when you are trying to woo a client, but late payments are a fairly common occurrence. In these instances, you should use your best judgment. Beware of any clause that would allow the client to withhold or reclaim compensation under some circumstance.

What Else Do I Need to Know?

Most of all, you will need to know yourself. The decision to operate as an independent contractor is an important and difficult step. Besides financial and market considerations, you must consider your personal traits, desires and goals.

Planning ahead will help, but nothing can fully prepare you for what comes next.

Important Resources

The Contract Employee's Handbook

<http://www.cehandbook.com/>

Internal Revenue Service

<http://www.irs.gov>

SAS Consultants Special Interest Group

<http://www.sconsig.com>

Appendix A: IRS Factors to Determine Employee or Independent Contractor Status

Adapted from *IRS Revenue Ruling 87-41*

IRS Factor #1: Instructions. An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.

IRS Factor #2: Training. An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.

IRS Factor #3: Integration. An employee's services are integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.

IRS Factor #4: Services rendered personally. An employee renders services personally. This shows that the employer is interested in the methods as well as the results.

IRS Factor #5: Hiring assistants. An employee works for an employer who hires, supervises, and pays assistants. An independent contractor hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.

IRS Factor #6: Continuing relationship. An employee normally has a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.

IRS Factor #7: Set hours of work. An employee has set hours of work established by an employer. An independent contractor is the master of his or her own time.

IRS Factor #8: Full-time work. An employee normally works full time for an employer. An independent contractor can work when and for whom he or she chooses.

IRS Factor #9: Work done on premises. An employee works on the premises of an employer, or works on a route or at a location designated by an employer.

IRS Factor #10: Order or sequence set. An employee must perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control.

IRS Factor #11: Reports. An employee submits reports to an employer. This shows that the employer must account to the employer for his or her actions.

IRS Factor #12: Payments. An employee is paid by the hour, week, or month. An independent contractor is paid by the job or on a straight commission.

IRS Factor #13: Expenses. An employee's business expenses and travel expenses are paid by an employer. This shows that the employee is subject to regulation and control.

IRS Factor #14: Tools and materials. An employee is furnished significant tools, materials, and other equipment by an employer.

IRS Factor #15: Investment. An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else.

IRS Factor #16: Profit or loss. An independent contractor can make a profit or suffer a loss.

IRS Factor #17: Works for more than one person or firm. An independent contractor gives his or her services to two or more unrelated persons or firms at the same time.

IRS Factor #18: Offers services to general public. An independent contractor makes his or her services available to the general public.

IRS Factor #19: Right to fire. An employee can be fired by an employer. An independent contractor cannot be fired so long as he or she produces a result that meets the specifications of the contract.

IRS Factor #20: Right to quit. An employee can quit his or her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.

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