

maxwellbond

PREPARING YOUR BUSINESS FOR IR35

What IR35 means for you and how you can prepare and protect your business



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Introduction

IR35 was delayed in 2020 but now businesses need to be preparing for April 2021. Here is how you should be preparing to protect your business against the IR35 contractor reforms and how Maxwell Bond can help.

IR35 is a piece of anti-tax-avoidance legislation, that states that contractors who are treated as employees, should be taxed as employees. When it is introduced, private sector businesses and end clients will be responsible for correctly assessing IR35 status, operating PAYE and NIC correctly, and ensuring full supply chain compliance.

This follows the public sector, who have already undergone this reform in April 2017. This meant that from that date, in the public sector, the responsibility for determining the applicability of IR35 transitioned from the contractor, to the client, with the agency (fee payer) taking responsibility of the reduction of tax from payments to the PSC where IR35 applied. Now the Private sector is following suit, so what does that mean?

Contents

PAGE 2
IR35 OVERVIEW

PAGE 3
ASSESSING IR35

PAGE 4
RISK TO BUSINESS

PAGE 5
MAXWELL BOND'S IR35 SOLUTION



IR35 Recap

IR35 stipulates that if a contractor acts and is treated like an employee, then they should be taxed as an employee. That isn't changing. There will however be a shift in responsibility and liability. End clients will be required to:

- Demonstrate reasonable care when assessing individual roles and contractors
- Determine IR35 status' for the whole contractor estate
- Provide SDS reports and pass them down the supply chain
- Ensure full supply chain compliance

This includes the following:

- If a fee payer doesn't pay the tax, liability will be passed up the chain
- Mandatory provision of information to the contractor on how decisions are reached
- Mandatory requirement of client to give the contractor the right to appeal a decision

In summary, current rules stipulate that where a service is provided to an end user through an intermediary (such as their own limited company), it is the intermediary that determines the individual's employment status, and therefore the applicability of IR35. However, this reform means that it will become the medium and large corporate end users who become responsible for ruling on employment status and correctly operating PAYE and NIC.

The Liability Flow

Essentially, determination flows down the contractual chain, but if any agency fails to pass on this determination, responsibility and liability will always end with the end client, because it is now their responsibility to ensure full supply chain compliance for IR35.

The Cost of Getting it Wrong

Average Day Rate for One Contractor	Cost of One Contractor over One Year	Cost of Ten Contractors Over One Year	Cost of Ten Contractors over Seven Years
£400	£6897.09	£68,970.90	£482,796.30
£500	£7,672.14	£76,721.40	£537,049.80
£600	£10,639.92	£106,399.20	£744,794.40

The above demonstrates the cost to businesses, in terms of how much they would have to pay back in NI and tax if they incorrectly determine IR35 status, without considering legal costs and fines.

HMRC have suggested that the fine for non-compliance could be double this.

Assessing IR35

When assessing IR35, there are several criteria that identify contractors as falling inside IR35 (employee for tax purposes) or outside IR35 (contractor for tax purposes). The three main areas are mutuality of obligation, control, and substitution. However, financial risk and distinction are also very important.

Mutuality of Obligation

A feeling of continued obligations between an end-user client and contractor, where the client is obliged to provide paid work and the contractor is obliged to accept and complete the work.

EXAMPLE: A contract engineer turns up to work, but all systems are down, and they are unable to do their job. Permanent employees are given another job such as cleaning or are sent home with pay. Contractors are sent home without pay.

Control

Control in the manner of HOW work is completed. It is perfectly acceptable to have overall deliverables as long as it is operationally required.

EXAMPLE: You hire a website designer. You tell the designer what you want the end product to look like, what should be included, and the deadline, but you do not stipulate how the web designer works and where he works etc. Contractors should not sign employee policies other than those that are business critical or legally required (NDA's / Cyber Security).

Substitution

The contractor should have an unfettered right to offer a substitute in their place. Although they don't have to act upon this, the right to do so should be there. It is also acceptable to have conditions around who the substitute can be as long as it is operationally necessary.

EXAMPLE: A contractor working in a specific programming language wants to offer up a substitute without rejection, further interview or scrutiny. As an end client, you can however specify that they must have experience working in the desired programming language.

Financial Risk

If a contractor's work is incomplete or faulty, they will accept reduced or even no payment for their work, and will rectify it at their own cost. They may have their own insurance to cover events such as this.

Distinction

Contractors and employees should be treated differently. A contractor should be easily identifiable. They should receive no employment benefits such as sick pay, holiday pay, car parking spaces, and pension packages.

Other Indicators to HMRC

Whilst these are less obvious than those described above, the factors below also indicate the status of an employee/contractor:

- Those outside IR35 are more likely to carry their own insurance
- Those outside IR35 are more likely to have business premises
- Those outside IR35 are more likely to have their own website

Risk to Business

You've already seen the financial cost of getting IR35 wrong, but there is also a risk of significant legal and reputational damage if you don't comply with the new IR35 regulatory rules. Risks include:

- Criminal Finance Act: hirers become liable for the actions of off-payroll workers regarding tax evasion, potentially resulting in financial penalties and criminal convictions.
- Intermediaries Legislation: hirers are responsible in ensuring supply chain compliance. Failure to do so can result in fines, penalties, and criminal convictions.
- Transfer of Debt: hirers dealing with sole traders and unincorporated businesses are responsible for determining tax status. Inaccuracy can result in transfer of debt and PAYE liabilities.
- Managed Service Company Legislation: transfer of debt rules applies to hirers who use MSCs.
- Agency Workers Regulation: requirement of understanding contractor rights (reputational risk).



PREPARING YOUR BUSINESS FOR IR35



PAGE 4

Maxwell Bond's IR35 Solution

Remove risk with Maxwell Bond's IR35 solution, backed by legal strategic partners who specialise in IR35. The solution means that Maxwell Bond will take on all accountability, indemnity, liability, and insurance meaning reduced risk and workload for your business.

Hirers needn't refrain from engaging with contractors. Instead, they can offset the risks imposed by the reform of IR35 by partnering with Maxwell Bond. Maxwell Bond are fully prepared for IR35 implementation, with best in class strategic partners and a team of specialist consultants on hand to offer advice and support.

In advance of the new legislation, Maxwell Bond are identifying where, from their candidate and client lists, IR35 will be relevant, and are implementing processes which will determine if IR35 is applicable to future engagements. The team are also building a communications strategy to ensure accurate and useful information is clearly distributed to clients and candidates, to ensure full preparedness ahead of the change.

Fundamentally, full accountability, indemnity, liability and insurance will be taken on by Maxwell Bond which will eliminate risk and exposure to IR35 implications for clients.

What Does Maxwell Bond's IR35 Solution Include?

- Complete contractor estate audit and management
- Provision of complete SDS
- Insure and indemnify each individual
- Ensure full supply chain compliance
- Complete removal of legal and financial risk
- One point of contact
- Guides, events, and market updates
- Plus you can transfer your contractors directly to us for a 40% fee reduction

Companies who approach IR35 responsibly will thrive and can take advantage of the talent lost by companies who don't.

Get prepared and be ready for IR35 contractor reforms in April 2021.

Get in touch today for more information on how Maxwell Bond can protect your business, supply chain, and contractor estate today.



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CONTACT US TODAY

Prepare and protect your business for IR35 Contractor Reform with Maxwell Bond, the consultancy of choice across contractor hire and employment in the UK.



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