

# IR35 | SEB MALEY

YOUR QUESTIONS ANSWERED. WE SPEAK WITH  
SEB MALEY - CEO OF RESPECTED CONTRACTOR  
INSURANCE AND TAX ADVISORY BUSINESS, QDOS  
CONTRACTOR.

On the back of October 2018's budget revelations, Seb has kindly agreed to share his and Qdos Contractors IR35 expertise with us; putting to him questions from both our teams internally... and our professional communities.

Caspian One are committed to supporting clients and contractors through IR35. Over the coming weeks and months, we'll be releasing a full spectrum of IR35 articles - from interviews with experts and trusted partners to a guide on IR35 and its potential implications.

Starting from the top, can you please summarise what IR35 actually is?

IR35, or the 'Intermediaries Legislation' as its often referred to, is a tax legislation that was introduced in 2000 with the aim of preventing 'disguised employment'. And by that I mean it was brought in with the intention of stopping contractors working through a personal service company to avoid tax when their working arrangement resembles employment.

The legislation places an obligation on contractors to ensure they are paying the correct amount of tax. It can leave individuals with hefty bills if HMRC finds that they had been incorrectly operating 'outside IR35' and not paying tax at the same rate as an employee.

What happened in October's budget... and what are the implications of this announcement - for both contractors, companies and the UK overall?

The Chancellor announced that IR35 reform will be extended to the private sector in April 2020, and medium and large engagers will be handed the responsibility for deciding the IR35 status of contractors they engage. This move will also see them carry the IR35 liability for incorrect decisions.

Similar changes were introduced in the public sector last year and by all accounts have not improved compliance. Many contractors have been wrongly placed inside IR35 by engagers that are looking to protect their own liability. Needless to say, contractors are concerned incoming changes to the private sector will result in a similar situation. Working inside IR35 leads to a contractor being taxed as though they are an employee, but without receiving employment rights - essentially the worst of both worlds.

Given the UK economy relies on the independent workforce for its flexibility and expertise, it's vital companies are able to continue engaging contractors outside IR35 in a compliant manner, and that recruitment agencies work with their end clients to ensure this happens.

What will be the core differences between 'In and Out' of IR35 in 2020 for the private sector?

# IR35 | SEB MALEY

YOUR QUESTIONS ANSWERED. WE SPEAK WITH  
SEB MALEY - CEO OF RESPECTED CONTRACTOR  
INSURANCE AND TAX ADVISORY BUSINESS, QDOS  
CONTRACTOR.

The legislation itself hasn't changed and the rules around what constitutes as inside or outside IR35 remain the same. But the party tasked with administering IR35 and the liability will shift from the contractor to the engager. When an agency is involved as the fee payer, it's expected to be confirmed they will hold the liability, much like in the public sector.

There are many factors to consider when setting IR35 status. This ranges from the ability for a contractor to provide a substitute if they are unavailable, through to whether they have control over the manner in which they provide their services.

What is the process you would recommend contractors start taking over the next year regarding the changes in IR35?

Despite the fact that the reform to IR35 will mean contractors are no longer able to decide their own tax status, they are not powerless. In the lead up to 2020, we advise them to speak with their client or clients, contribute to the discussion and confirm their IR35 status well in advance of the rollout of reform.

A contractor might also want to obtain a 'confirmation of arrangements' document that's signed by all parties and outlines the details of the working arrangements. This is a key piece of evidence in an IR35 investigation and shows that everyone is in agreement of a contractor's status.

Anything that points towards a contractor being in business on their own and genuinely self-employed will also be useful should a contractor need to fight an IR35 decision. Whilst not determining factors, even simple things like company stationery, a company website or having multiple clients can aid a contractor's position.

We recommend having each contract professionally reviewed by an IR35 expert too, and ensuring that any written terms match the reality of the engagement. Specialists will be able to offer unbiased advice and a well-informed opinion based on IR35 case law.

Looking at the reality of these new tax measures, can you tell us how these changes will be actioned and policed?

We're still waiting for the finer details around the implementation of private sector reform to be published, and expect the Government to shed more light on this in the draft Finance Bill which should be released in summer 2019. After the chaos that ensued upon the arrival of public sector changes last year, the Government is under pressure to properly assist engagers this time around.

HMRC is unpredictable and isn't likely to reveal details about how it plans to police compliance. That said, the taxman has promised not to carry out 'targeted' campaigns into previous years, which means if a contractor starts working inside IR35, HMRC won't necessarily launch an enquiry into earlier years.

# IR35 | SEB MALEY

YOUR QUESTIONS ANSWERED. WE SPEAK WITH  
SEB MALEY - CEO OF RESPECTED CONTRACTOR  
INSURANCE AND TAX ADVISORY BUSINESS, QDOS  
CONTRACTOR.

Will people still be able to continue limited, or is the contractor community going to be forced into umbrella companies?

IR35 reform can be managed, and contractors will be able to continue working outside the rules in the private sector come April 2020. It's in the private sector's best interests to make sure this happens too.

It would be short-sighted for engagers to force contractors into any particular working arrangement. Umbrella companies certainly serve a purpose, but working inside IR35 through an umbrella company can cost contractors up to 30% of their income.

Regardless of incoming IR35 changes, there are ways to accurately assess status while continuing to protect all parties in the supply chain. This is something we are making clear to the private sector companies we are working with.

What common misconceptions are you debunking about IR35?

There is a misconception that IR35 reform cannot be managed and it will spell the beginning of the end for contracting and the flexible labour market. This isn't the case. The onus is now on the private sector to prepare for incoming changes and make sure they have the processes in place to make accurate IR35 decisions well in advance of the 2020 roll-out.

The Government suspects contractors of widespread tax avoidance and believes a significant proportion of contractors who should be working inside IR35 are not doing so. These are damaging claims and in our experience aren't true. The vast majority of the working arrangements we assess belong outside IR35 and contractors, by and large, are genuinely in business on their own. We have supported contractors in over 1,600 IR35 investigations, and in only 3 of these cases were the contractors found to be 'caught' by IR35.

Please tell us about the CEST tool – it's history to date and your predictions for HMRC support in the next 12 months.

It's worrying that CEST has contributed to thousands of IR35 decisions. HMRC's IR35 tool is considered unreliable, given it cannot assess the unique and quite specific aspects of a contractor's working arrangement.

It was only a few weeks ago that a judge overturned a decision the tool gave, while news often emerges that directly challenges CEST's ability to provide an accurate answer. For example, a 14-month investigation into the technology concluded that it comes to the wrong conclusion in almost half of cases.

HMRC has regularly promised to improve the tool in the lead up to private sector reform, but that raises yet another issue. How can an answer the tool gave yesterday stand today if it is being changed on the fly?

# IR35 | SEB MALEY

YOUR QUESTIONS ANSWERED. WE SPEAK WITH  
SEB MALEY - CEO OF RESPECTED CONTRACTOR  
INSURANCE AND TAX ADVISORY BUSINESS, QDOS  
CONTRACTOR.

What will you be recommending clients / medium to large-sized businesses start doing now for IR35 2020 planning?

Qdos is working closely with a number of agencies and end clients to help them prepare for incoming changes well in advance of the 2020 roll-out.

It's vital engagers learn from mistakes made in the public sector, where thousands of contractors were (and continue to be) wrongly placed inside IR35. We're advising these companies against making blanket-inside IR35 determinations, given these are non-compliant and will only deter contractors from working with them.

Even role-based decisions, which are now allowed according to HMRC, are ill-advised. They too overlook the unique aspects of a contractor's working arrangement and therefore risk incorrect IR35 decisions.

It's also important private sector clients do not make risk-averse IR35 decisions in the lead up to reform. Not only will this result in contractors being unfairly and in most cases inaccurately placed inside IR35, but it will also expose the very companies that engage them.

IR35 reform is not a reason for engagers to panic either. The Government has at least awarded the private sector time, but it does need to be used wisely.

What are the likely steps the government will take over the next 1+ years, based off of the public services changes in IR35 2 years ago?

The Government has made a number of promises, and has pledged to offer engagers 'extensive support' as they begin implementing the new rules. After such an unstructured approach to implementing public sector changes in 2017, HMRC needs to provide better guidance in the lead up to and after the arrival of reform. It has also said it will 'build on learnings' from public sector reform, and it's important this actually happens.

As mentioned earlier, the taxman will be expected to dramatically improve CEST. The tool isn't capable of providing accurate answers on a large scale, and this isn't something HMRC can afford to get wrong.

The draft Finance Bill, due to land next summer, will likely reveal further and more specific steps the Government intend to take.