

Negotiating your contract for IR35 compliance

Introduction

Whether it is a new contract or a contract renewal it is in your interest to get yourself outside [IR35](#) and avoid the [financial impact of IR35](#).

Being caught by IR35 results in a significant reduction in your net pay. Find out how much using the [IR35 Calculator](#).

This article assumes that you have had your [contract reviewed for IR35](#) and that it has failed. It then explains effective ways to approach negotiations to get it to pass.

Focus on the contract

Whilst there are changes you can, and should make, to your working practices your contract is the first point of call for an Inland Revenue Inspector.

It is therefore best focusing on getting your contract terms changed to ensure you are contractually outside IR35.

Strength of negotiating position

The strength of your negotiation position will depend on the following factors:

- o Market conditions: Booming or depressed
- o New contract or renewal contract.
- o Whether you have already signed the contract.

Effect of market conditions on IR35

The state of the market will affect the balance of bargaining strength in any IR35 negotiations between agents, contractors and clients.

Let's examine the conditions for both booming and depressed markets:

IR35 in booming markets

When the market is booming for certain skills (like the late 1990's when all skills were in demand) agents find it difficult to source contractors and it is not unusual for them to advertise contracts that are IR35 compliant as a selling point.

In booming markets it is in the interest of the agency to ensure contracts pass IR35 otherwise they lose out to the competition. It is not unusual for them to actively engage in changing non compliant contracts of their existing contractors to ensure compliance. This protects them from the risk of contractors leaving for compliant contracts.

In booming markets the stronger negotiation position in terms of IR35 is certainly held by the contractor. If your skills are in high demand you can expect to get more co-operation from the agency on IR35 issues.

IR35 is depressed markets

When there is a surplus of contractors the IR35 bargaining position is very different. Agents will not have to use IR35 compliance as a selling point and can pick and choose between many contractors for a position.

In depressed markets the agent is king and there is little, if any, room for manoeuvre on IR35 issues. But not all hope is lost as we shall examine in the next section.

Timing IR35 discussions

Every contractor wants to have an 'IR35 compliant' contract. Some firms have them and others don't. As we have discussed the market condition is one factor dictating the strength of the bargaining position. So, when is the optimum time to discuss IR35 issues?

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Again this depends on both the market conditions and also whether it is a new contract or a renewal. Both affect the strength of your bargaining position.

Let's look at the situation for both new contracts and renewals:

Timing IR35 discussions - new contracts

Booming markets:

- o If you have agents chasing you down for roles then you can filter them out at first contact by stating in your application email 'No non IR35 compliant' contracts. You might as well avoid wasting your time on contracts that you are unlikely to take. Sometimes an agent might contact you saying they could get you a higher rate even though it is inside IR35. This is 99.9% unlikely and not worth pursuing.

Depressed markets:

- o With many contractors going for positions it is unwise to raise a red flag with the agent by discussing IR35 at any time before receiving and reviewing a new contract. Doing so will only reduce your chances as the agent won't consider you as a safe bet. Wait until you have a contract offer and your bargaining position is as strong as possible given the circumstances. The agent might then budge because they will have invested time in securing this deal and they are on the verge of signing it.

Timing IR35 discussions - contract renewals

Booming markets:

- o If you are currently in a non compliant contract and could easily get another offer elsewhere it is worth approaching both your agent and client to try and get the contract changed.

Depressed markets:

- o If you are currently in a non compliant contract and about to renew you are in a strong bargaining position. The client wants you to stay rather than incur the cost and hassle of you leaving, and the agent wants you to renew to keep his commission coming. Start by discussing the topic with your agent and client one month before renewal as it could take a while to arrange.

Negotiation preparation - expert help

IR35 is a complex legal subject. Thus, it is strongly advisable to take proper legal advice from a specialist law firm who understands the IR35 issues. They can [review your contract for compliance](#) and also negotiate on your behalf with agencies and clients to achieve compliance.

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Negotiating IR35 issues after signing the initial contract

Unless it is a significantly booming market it is a waste of effort trying to get the agent to re-negotiate your contract for IR35 compliance after it has been signed. Agents have more pressing things to attend to rather than support previous deals.

Even in a booming market it would not be advisable to sign a contract that is non compliant. You are setting yourself up for a battle. In this case the best option would be to keep stalling the agent until a few days before the start date. The agent will probably agree with your request to 'address the issue after signing the contract' once you have started. This is just a ploy to get you to sign. But, you can then use this to state a few days before the start date that you will only sign for one month whilst they are helping you resolve the IR35 issues as they agreed. You then have a month to sort it out and will also have the client on your side once you start making a good impression at their organisation.

Negotiating IR35 compliance during contract renewals

The case can arise where you are caught by IR35 and your contract is due for renewal and the client wants you to renew. You then have a stronger bargaining position to get some changes made.

Here's a suggested course of action:

1. Get legal help and compile a list of the changes that need to be made.
2. Speak to the agent first and request the changes for the renewal. After they refuse them (most likely) ask to speak to the person who deals with the legal aspects of the contracts. Trying to negotiate contractual issues with an agent can prove unproductive as they just want you to sign again and have other more pressing things to attend to.
3. Get a lawyer to the agency's legal person on your behalf. This is much more effective than trying to do it yourself.
4. Speak to your client directly if you are not getting results. Tell them you desperately want to stay though. You can give the impression that you might have to consider your renewal position if they cannot get it sorted out. They might then put pressure on the agency to sort it out.
5. You can also use the same 'I'm not sure I want to renew' unless you sort out the contract tactic with the agent. They don't want to appear bad in front of their client by not treating the contractors well. Be careful with this though. You don't want to give them a month to find someone else to replace you!

You could spend a tidy sum in legal fees being given the run around. Try and establish early if the agency is paying lip service and

trying to stall you until closer to renewal time.

At some point it could become clear that you are going to be unsuccessful with the changes. There are a few options:

- o Grin and bear it. You tried.
- o Threaten to not take the contract (or renew). This might make things happen. Beware of burning bridges though.
- o Ask for a rate rise. Unlikely to cover the whole gap, but you might get something.

If a month before renewal you feel you are getting nowhere and could get a better contract elsewhere then it might be worth looking for one. Having a back up plan is always useful.

Getting changes made is hard

Bear in mind that getting individual contracts changed for contractors at a site where the agency has many other contractors is hard.

They will tend to have one contract with the client themselves which reflects the contract you will have with the agency. Changing yours means either opening up a risk to them if they don't change their contract with the client, or spending money changing it.

Many agencies don't have separate legal departments and lawyers are expensive. Hence agents will try and prevent any changes getting made. In these cases going for a 'letter of intent' is much better.

Confirmation of Arrangements

This is an additional letter signed by both parties which states the intended arrangement between the parties.

It expands more on your responsibilities as a contractor with the firm and highlights that you are outside IR35.

Your lawyer will be able to advise more on this area.

Closing comments

Turning around situations where a contract is caught by IR35 is hard and almost impossible after it has been signed. The results of efforts are affected heavily by the strength of your bargaining position which is dictated by the market.

Published: Monday, April 24, 2006

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