

EXCLUSIVELY FOR CONTRACTORS

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Dear Client

IR35 and the New Millennium

This month I decided to take a leaf out of the Queen's book. She has her Christmas Message and so I thought that I would follow up with one for the New Year. I can almost hear you groan as you read this,- after all isn't IR35 about to be abolished by the Judicial Review and what's all this about the New Millennium. That was last year wasn't it?

Let me start with the easy one first. Apparently the New Millennium actually started on January 1st 2001 (you can work that one out for yourselves!) and as far as IR35 is concerned I don't like to be a killjoy but realistically I do not see this piece of legislation being killed off by a Judicial Review. I do not say this from any legal standpoint but this Government who appear almost to be pursuing a vendetta against Computer Contractors should they lose the Judicial Review will surely re-introduce the legislation in a form acceptable to Europe and probably throw all the Contractors into prison at the same time!

The message is that IR35 in whatever guise will not go away.

There are a number of points that it is probably appropriate to make and let me start with the subject that I have just referred to.

JUDICIAL REVIEW

Everybody must know by now that the action brought by the Professional Contractors Group (PCG) is due to be heard shortly. Unfortunately the "early February" date has been changed and the hearing will take place on March 13th. This is most unfortunate as the result will be only a few days away from the end of the tax year and after the Budget. It is possible that the Chancellor will make some announcement as to the steps that the Government will take should they lose the Judicial Review. Although temporarily a victory for PCG would throw a big spanner in the Government's works it is likely only to be a temporary one and could cause an extraordinary amount of confusion. The legislation is extremely complex and because it has been tinkered with as the Chancellor has attempted to thread his way through the complaints of the various lobbying groups so has the advice that we have been giving changed to take account of this. Most reputable firms of accountants who have tried to do a good job for their computer contractor clients have found it difficult to get much sense out of the Inland Revenue since the legislation came into effect in April last year because they also have been totally unprepared for the various twists and turns that have occurred.

As an interim measure only, in the hope that PCG are successful what you could do is:-

- 1 Stop your payroll until the decision is announced.
- 2 Not pay income tax and National Insurance, which currently is due on the 19th April 2001, but submit a form P35 based on your salary paid to date. The latest that you can send the "deemed" salary calculation to the Inland Revenue together with the supplementary P35 is the 31st January 2002.
- 3 If no salary has been paid so far in this tax year then a minimum salary of £4385 for the current tax year is appropriate.

I do think that it is worth suspending your payroll for the month of January and February because it is clear that some clients have been paying too much salary. By suspending these payments it will provide a breathing space so that this can be checked and corrected in March if necessary. It is only right that I should point out this course of action to you because it is a scenario that clients have talked to me about but it is not one that I would recommend on the basis that the legislation will be repealed.

The rest of the advice that I am giving to you relates to the impact that your company year-end will have on your tax affairs. It is based on the assumption that the full effect of IR35 stays in place and is particularly important.

YOUR COMPANY'S YEAR END

The most effective date for you to prepare your accounts up to is 6th April. I and my fellow Partners have heard that one firm of accountants is recommending that you choose the 31st March. If you do this then life will suddenly become very expensive for you. The reason is simply this,- any salary that is not paid to you during the year-ended 31st March 2001 is deemed to be paid on 5th April 2001 (we don't make the rules,- this is what the legislation states). You are therefore taxed personally on the salary that has been paid to you but your company does not get Corporation Tax Relief for the payment until the following year i.e. year-ended 31st March 2002.

So, you are caught in a vicious tax trap. It may seem crazy and let's face it any legislation that has this effect is crazy but the fact is that a contractor earning around £70,000 per annum could face an unnecessary tax bill of over £15,000, which would have been avoided by changing the company's year-end by six days!

Action can be taken to improve the situation with other year-ends. The only thing that is preventing us recommending to you **now** that whatever your year-end you change it to the 6th April is because the timing may be inappropriate depending on the outcome of the Judicial Review.

So, if your accounts have a year end falling within the period between 30th September 2000 and 31st March 2001 I suggest that unless you need your accounts for a specific purpose then preparation of them is deferred in case it does become appropriate to change the year end.

Although I have no doubt that both the spirit and the force of the legislation will be implemented, timing is all-important and I will be writing to you immediately the outcome of the Judicial Review is made known. There will not be much time to take the necessary action but you can be sure that all of us here will do our very best for you in bringing you the best possible advice in the most timely way.

You all have your contact Partner who you are used to dealing with and if this letter has sparked off any fears that you may have which cannot wait to be answered then please contact them in the usual way.

My very best wishes for a Happy and Prosperous New Year.

Yours sincerely

Gordon Morrison

PS Our workshops will commence immediately after the result of the Judicial Review is announced and we will give you details in our next Newsletter.

NO EVIDENCE OF SKILLS SHORTAGE CLAIM INLAND REVENUE

Our professional Institute and its own Tax Faculty hosted a discussion meeting on IR35. This was taken seriously enough by the Inland Revenue to send along their Assistant Director of Personal Tax.

She claimed that "there is simply no proof to say that because of IR35 significant numbers of people are leaving this country to work abroad and are thus causing a huge skills shortage".

You will know from our newsletters that although we think that the whole concept of IR35 and particularly the way that it has been introduced is an absolute disgrace we did not have evidence of Contractors leaving the country in droves. A survey that we referred to in an earlier newsletter claimed that over 20% of Contractors were emigrating but this statistic is just not mirrored by our experiences or those of people that we talk to. It is a great pity that exaggerated claims are made and certainly it is not in the Contractors' interest to do so because Government spokesmen look for things like this so that they can ignore the key points of the debate by claiming that those who are against IR35 are just hysterical in their opposition to it.

The approach that the Government seem to be taking now is that they want to see "a fair tax system". This was what Sarah Walker, who attended the meeting on behalf of the Revenue said and it echoes part of a recent speech from Dawn Primarolo.

At the discussion we had the usual nonsense about how the Government are really only here to help the Contractors and that there are "teams of status Inspectors in every region of the UK" to examine contracts to see if they fall within IR35 or not. Well, as we have reported to you these teams cannot be doing very much because the promised one-month response time is overshot all the time.

Whatever the Revenue say, IR35 is extraordinary complicated. Those of you with a 31st March year-end are at a massive disadvantage (any non-clients reading this had better contact us immediately!) but we think that the basic unfairness of the legislation is that most Contractors have exchanged the relative safety of employment to place themselves in the wider skills market which relies on them being able to obtain contracts so that they can earn a living. They are not protected in the same way that employees are. Obviously "fairness" is in the eye of the beholder.

It is interesting, however, that the Government have recognised that there is a skills shortage in the IT sector. They are trying to solve this by reviewing the basis on which work permits are given. The idea is that work permits are given quicker to people wanting to come into the country who are on a "Shortage Occupations List". This list includes various roles within the IT sector, nurses, doctors etc. Although IR35 is not in our view responsible for wholesale emigration some people are going abroad to work and so on the one hand we have legislation which encourages some people to leave the country and on the other legislation that encourages foreigners to immigrate to the UK! How crazy is this?

GORDON MORRISON / RICHARD HAYNES / PAUL CROZIER / IAN ROSS
LONDON OFFICE
MOUNTBARROW HOUSE, 12 ELIZABETH STREET, LONDON SW1W 9RB
☎ 020-7730 8995 FAX: 020-7824 8108
EMAIL: gordonm/richardh/paulc/ianr@wheawill.co.uk
WWW: www.wheawill.co.uk

THAMES VALLEY OFFICE
CAVERSHAM HOUSE,
4 GOSBROOK ROAD,
READING,
BERKSHIRE RG4 8BS
☎ FREEPHONE 0800-590873

MARY HURST
COMPANY SECRETARY
12 ELIZABETH STREET,
LONDON SW1W 9RB
☎ 020-7730 0883
FAX: 020-7823 5953

IAN HEMSWORTH
HUDDERSFIELD OFFICE
PO Box B30,
35 WESTGATE,
HUDDERSFIELD HD1 1PA
☎ 01484-423691
FAX: 01484-518803

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