

EXCLUSIVELY FOR CONTRACTORS

MONTHLY GUIDE MAY 2003 ISSUE 66

IR35 – The Stutchbury Case

We decided to let the dust settle on this case before commenting. Anybody wanting to read the case will find it described as Synaptek v Young but of course it was poor old Mr Stutchbury who suffered.

Gordon Stutchbury set up his company 13 years ago and was supported in his appeal against the Inland Revenue by Professional Contractors Group. Ultimately he was held to be a ‘disguised employee’ of EDS which was contracted by the Benefits Agency to develop its systems.

The Commissioners of Inland Revenue acknowledged that he was ‘in business on his own account’ but nevertheless the High Court considered that Mr Stutchbury was caught by IR35.

We have commented on a number of occasions about the tests which indicate whether somebody is genuinely self employed or not. In this case Mr Stutchbury had a limited right of substitution and in practice exercised a considerable amount of control over what he did. Unfortunately the areas which counted against him were:-

- Mr Stutchbury worked alongside employees of the client (hardly surprising you may say!) but was sufficiently close to them to have a Line Manager.
- The minimum hours that he was required to work were similar to a normal working week.
- There was very little financial risk.
- In the agreement that Synaptek signed there was a requirement for Mr Stutchbury to comply with instructions given by the client.
- The contract was for a fixed period of six months and not related to completion of a project.

The absurdity of IR35 is highlighted by the fact that Synaptek has had about 20 contracts over the period of the 12 years it has traded and occasionally Stutchbury was working on more than one contract at the same time. Not

to differentiate between somebody like him who quite clearly is running his own business and the normal 9am – 5pm employee is surely ridiculous.

There seems little doubt that any contractor arguing that he or she is outside IR35 will be much better placed to do so if the contract being worked on is on a ‘project basis’. The problem with all this of course is that to achieve certainty as far as the Inland Revenue interpretation is concerned, you will have to seek a clearance as to the IR35 status of each and every contract you are working on. Apart from the impracticality of going through this procedure on a regular basis, we all know that the Inland Revenue are not keen (if we can put it like that) to confirm that any contractor will fall outside the provisions of IR35.

So,— what has this case done? Not much really. IR35 is still as much of a mess now as it was when it was introduced three years ago.

ANTI-SPAM LAW IMMINENT

The Information Commission wants new powers so that they can identify people sending out spam and to be able to enforce the new anti-spam law which comes into effect on 31 October 2003.

The law will bring the UK into line with the European Union Directive on Privacy and Communications which covers unsolicited direct marketing.

The DTI and the Information Commission are inviting representations on the new law but as it comes into force in five months there is not a lot of time left.

The thrust of the new law will require firms to gain the consent of the recipient before they send out marketing material via the internet.

REFORM OF PENSIONS

Just before Christmas last year the Government published its proposals for the future of pensions. The stated intention of these proposals is to encourage more people to save for their old age. It is likely that the Government means this because with people living longer there is no chance that the state can fund the increasing burden of looking after an aging population.

The main proposals as far as taxation is concerned are:-

- From a date yet to be decided (probably 6 April 2004) there will be a single tax regime for pensions.
- Individuals will be able to participate in as many different pension schemes as they wish. The rules will relate to aggregate contributions and funds.

Although the earnings cap will disappear there will be restrictions on total contributions made and if these are exceeded then this excess will be assessed on the individual as a benefit in kind.

The new concept of a 'lifetime limit' is introduced. This is £1.4m which will be increased annually by inflation from 6 April 2004. Any excess over this limit will be taxed at one third.

Benefits can be drawn between age 50 and 75 up to the year 2010 and from age 55 to 75 thereafter and can be taken whether working or not.

These are the bare bones of the proposals and next month we will explain with an example how the new system is intended to work. Representations are being made by 'interested parties' at the moment and no doubt there will be refinements to the proposals before they are introduced.

At the moment we have seen a lot of criticism of the proposals but it does seem to us that the existing system is extremely difficult for anybody who is not a pensions expert to understand.

FIXED INTERNET

File-swapping software companies **Grokster** and **StreamCast** yesterday celebrated a US court ruling that will have far-reaching implications for the record industry's fight against illegal downloading of music. A federal judge ruled the two companies were not liable for copyright infringements caused by individuals using their software. In his ruling, judge Stephen Wilson noted: "Defendants distribute and support software, the users of which can and do choose to employ it for both lawful and unlawful ends. Grokster and StreamCast are not significantly different from companies that sell home video recorders or copy machines, both of which can be and are used to infringe copyrights."

MORE DATA PROTECTION SCAMS

Several months ago we warned people not to be taken in by a number of companies who were writing letters to businesses warning them that they may be liable to register under the Data Protection Act and trying to relieve them of £95.00. These letters have one thing in common which is that they are of a pseudo official nature and carry warnings as to the consequences of non compliance.

The latest one that we have received is from the Data Protection Corporation asking for £95.00 from an address in Guisborough. The actual fee for registration is only £35!

TIP

You are on the telephone and somebody comes into the office and stands in front of you waiting for you to finish your call.

I'm sure this is something that we've all experienced and there is no doubt that it does put you under some pressure. The solution,— quite simple really. Keep a note pad in front of you and push it across the desk to whoever is standing there inviting them to write a note as to what they want to talk to you about.

QUOTE

"Do not fear to be eccentric in opinion, for every opinion now accepted was once eccentric."

Bertrand Russell

WEEKLY NEWSLETTER

We send out an email newsletter each week with news stories on various matters which affect our clients as companies and individuals.

If you want to receive this go to www.wheawill.co.uk/ register .

If you do not have access to the internet but can receive emails, please email Evan Jones evanj@wheawill.co.uk and he will be able to register you.

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
WEB: www.wheawill.co.uk

SARA COSTIGAN
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
(ASSOCIATED OFFICE)
☎ 01484 423691
FAX: 01484 518803