

# EXCLUSIVELY FOR CONTRACTORS

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## Bloody Nose for the Inland Revenue

An IR35 case won by the tax payer on 2 October looks like having repercussions throughout the contracting industry.

In what will now go down in history as the Lime-IT case. The facts were as follows:-

Lime-IT was formed in April 2000 by Miss Lisa Fernley who was the sole shareholder and Director. Shortly after, her agency secured a contract with Marconi and the issue was that if Lime-IT and the agency had not existed would Miss Fernley have been regarded as an employee of Marconi.

So,— we have a typical IR35 scenario and typically the Inland Revenue immediately gave the opinion that the contract fell within IR35 without bothering unduly to look at the facts.

The work was for a number of specific projects i.e. organising and managing a computer support function, introducing a new email system, organising remote access and also changing to Windows 2000. It was estimated that this would take one year to complete, that Miss Fernley would be the only employee and that she would work an estimated 37 hours at an hourly rate each week. The contract would end once the projects were completed.

However, Miss Fernley negotiated a 'Right of Substitution' clause and the contract provided that in the event that this clause came into effect, an overlap period of up to 10 working days would be provided so that the substitute fully understood the requirements of Marconi. During this overlap period Marconi would not be invoiced additionally for the substitute.

The Special Commissioners who heard the case did not seem too bothered by the terms of the contract between the agency and Marconi which was only seen by Miss Fernley at a later date but were clearly impressed with the substitution clause which also gave Marconi the right to refuse to accept the substitute on 'reasonable grounds'.

Miss Fernley worked partly from an office that she had set up at her home and partly at Marconi's offices and Lime-IT paid for the travelling expenses. She reported progress on an informal basis to the IT Manager but did not work alongside Marconi employees and none of them had her

specific expertise. She was not controlled by Marconi and her work pattern varied from nothing in one week to more than 50 hours in another with considerable fluctuations. The Special Commissioners accepted that she did what was required to get the job done.

Other points of importance were that she had a security pass which had 'Contractor' on it and it was a different colour from those of the employees. She did not benefit from Marconi's employee benefits but she was listed in the internal telephone directory and did have an email address there. She purchased a laptop computer especially for the job and invoiced Marconi on a monthly basis. In fact at the end of the contract there were two overdue invoices and she threatened to sue Marconi for payment of them.

The Special Commissioners then looked at the usual tests which determine whether a person is self employed or not and they quoted several leading cases on the subject. They related to control, the financial risk and ability to profit, provision of equipment, right of substitution, basis of payment, intention of the parties,— in fact all the tried and tested criteria which have been applied for many years.

It was all summed up at the end with the comment "looking at all the factors there is very little to suggest an employment relationship. In essence Marconi was contracting for a particular IT job from a small business in the way one would expect an IT Consultant to be engaged. In my view on the hypothesis that Miss Fernley had contracted directly with Marconi she would not have been employed under a contract of service, she would have been in business on her own account".

Lime-IT was represented by Accountax who are probably still celebrating this notable victory.

So,— what will the Inland Revenue do now?!

Steve Wright

## PCG,— MORE GOOD NEWS!

Jane Akshar, Chairman of PCG, is continuing to shake up the organisation and in the process is attracting us to her fan club!

With effect from 1 November PCG's ties with Andy White which we have criticized extensively in the past have now been severed and all support services for the organisation, to quote PCG "will be satisfied by a mix of in-house resources and selected specialist suppliers, retained on short-term contracts".

PCG has also moved away from its Southampton base to Stockley Park in Middlesex.

Well done Jane,— keep it up!

## CHelsea Go Top!

Chelsea have cruised to the top of the Premiership with an almost unassailable lead over Blackburn and Newcastle with Bolton in fourth position.

Sounds familiar? Perhaps not on the football pitch but Chelsea are well ahead of all its rivals in the time that it takes to access its website. With an average time of only 0.23 seconds it is well ahead of Blackburn on 0.75, with Manchester United third from bottom on 4.92 and its rivals across the City in bottom place on 6.7.

If only!

Written by a Chelsea Supporter

## WHO WANTS A PAY RISE?

With effect from next April National Insurance contributions will increase by 1%. We won't get into the argument as to whether this increase which is to be targeted at improving the National Health Service will actually achieve its objective,— that is not the purpose of this article. However, as we are coming round to the season of salary increases, most of which take place on 1 January rather than 6 April it may be worth telling your employer (in the case of computer contractors it will mean telling yourself!) that you do not want a pay rise but you would like any increase to go into a pension scheme for your benefit.

This applies with both company pension schemes and also personal pension schemes as long as the employer provides the contributions directly into the scheme.

Not only is this good for you, as the employee, but it's also good for the company because no employer's National Insurance contributions will be paid either. You may in fact be able to negotiate a slightly better 'rise' than you have been offered because of the saving that the employer makes.

There are some down sides and these are that your ability to borrow for mortgage purposes will be reduced, death in service cover which is geared to your salary will be reduced and permanent health insurance would also be based on your salary. Incidentally, any contributions to your pension scheme in excess of £5,000 must be notified to the Inland Revenue.

It has proved a fairly simple job for Gordon Brown to increase National Insurance rather than income tax because, as a measure of whether the overall tax burden is increasing, everybody tends to look at income tax rates and so the chances are that future increases in taxation will continue to be directed towards National Insurance. That means that the pension scheme strategy will probably be even more effective in the future.

## UMBRELLA COLLAPSES

Yet another umbrella company,— Contractor Financial Planning Ltd, which previous traded under the name of Dignatio Ltd has gone bust.

It looks as though 250 contractors will be affected and it looks as if the collapse has been caused by tax problems. These problems may not have been directly related to IR35 but by another 'clever' device called an Employee Benefit Trust. EBT's are often used to delay the taxability of profits/bonuses but are frequently attacked by the Inland Revenue and it looks as though that is what has happened here.

We have consistently urged contractors not to use umbrella companies. The financial advantages are, in our opinion, illusory and for contractors to hand over complete control of their financial affairs to a third party has always seemed crazy to us.

## BANKING ARRANGEMENTS

Cater Allen, in the past offered a good deal to computer contractors and, according to PCG, had a market share considerably in excess of 50%. By any standards this is amazing. Also amazing is the fact that they have now taken a decision which sounds like strategic planning at its very worst by deciding that from 1 December 2002 no credit interest will be paid on balances below £5,000. From 1 February 2003 a minimum balance of £5,000 will be required on **all** accounts and any accounts not maintaining this minimum operating level will suffer a monthly administration fee of £10.

Presumably all of our clients who have balances with Cater Allen will be voting with their pockets as well as their feet.

## MERRY CHRISTMAS!

As most of you probably know, we do not publish a newsletter in December. We would therefore like to take this opportunity of wishing you all a very Happy Christmas from everyone at Wheawill & Sudworth and we look forward to seeing you in 2003.

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