

# EXCLUSIVELY FOR CONTRACTORS

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## IR35 UPDATE

Well,- it's nice to know that people do read the newsletter. I'm afraid that last month we said that PCG were seeking permission to appeal against IR35 but this is not correct. They did receive permission and the appeal is going ahead. We have made it very clear as to what we think about this and about the role that PCG should have in the future.

For those of you who are still seduced by the idea that IR35 will eventually be thrown out, the Inland Revenue are turning the screws on contractors who are trying to avoid it. Letters have already been written to agencies for details of contractors on their books and agencies have also been asked about artificial schemes which attempt to circumvent the legislation. A lot of attention has been given over the last 18 months or so to "IR35 Friendly" contracts and we have regularly pointed out to you that although good contract wording is helpful, it is the way that the contract itself is performed that is the key. You can have the best contract in the world (in theory) but if it is a sham and you use it to try to keep outside IR35 then all it will do is get you into trouble.

On a happier note we do think that there is a very real chance that training costs will be allowed as a deduction in your accounts. It is plainly unfair that they are not currently allowed and perhaps the next budget could signal this change. Let's hope so.

## IR35 MEETS THE EMPLOYMENT TRIBUNAL

Most computer contractors will have read the case about Martin O'Murphy, his personal service company and Hewlett Packard. The circumstances are that O'Murphy through his personal service company had been working for HP for 6 years. In the recent downturn his contract was not renewed and so he took them to the Employment Tribunal to claim unfair dismissal on the basis that he had, all the time, effectively been an employee of HP.

Initially, he won the case but HP successfully appealed on the grounds that as his services had been provided through a company he had never been an employee himself and could not therefore be unfairly dismissed.

We are now of course back to the argument that says that the Government cannot have it both ways,- they cannot "see through" a limited company from a taxation point of view and refuse to do so from an employment point of view.

Unfortunately, this is exactly what has happened. The whole basis of the IR35 legislation was that it completely ignored

transactions which had been made by a company and imposed its own tax regime on the income of the company. Although it may be a nonsense it seems to us that if the Government want one law for tax and another law for employment then they are probably in a position to force this on everybody although the most likely scenario seems to be that the Courts will be obliged to grant employment rights to computer contractors. This will probably come through specific legislation rather than evolving through case law.

## TAX HAVENS

Several months ago the OECD threatened economic sanctions against 35 offshore tax havens. Included on this list were the Channel Islands, Gibraltar and the Isle of Man. Excluded were Bermuda, The Cayman Islands, San Marino and several other countries which had us reaching for a world atlas to locate. Switzerland did not appear on the list which was something of a surprise but it was quite clear that some serious action was being planned to combat money laundering.

In the aftermath of the September 11<sup>th</sup> bombings America has said that it intends to organise a concerted campaign against money laundering. This will inevitably mean that tax havens will come under pressure. Whether this pressure will be restricted to demands to supply information about various individuals or groups when it is requested or whether it will be the start of a campaign to outlaw tax havens entirely we will have to wait and see. For years now the UK has had an uneasy relationship with the tax havens which are principally used (often legitimately) by UK tax payers. These traditionally have been The Channel Islands, Isle of Man and Gibraltar although the British Virgins Islands have featured on the list over the last few years and a significant financial services industry has been built up there. From time to time we do come across clients who have accumulated money in tax havens. Typically an account will have been opened when a contractor has worked abroad but we have found that not everybody rushes to declare the income arising on this account when they return to the UK.

Broadly speaking, if you are resident in the UK, unless you are domiciled somewhere else then you are subject to tax on income arising from any investment wherever it is located.

We have tax treaties with most countries which provide for an exchange of information. In the past it has been the case that no country has been particularly keen to supply information about one of its own residents to another country. It just takes too much trouble but there are indications now that greater use will be made of the power contained in tax treaties to fight money laundering.

It is also clear that with the introduction of the Euro on 1<sup>st</sup> January 2002 the next few months will see a considerable amount of previously 'unwashed' money come into the European economies. Anybody who has bought a property in France or Spain will know that the contract is only half the story! Considerable sums of money will be appearing from everywhere which has to be spent on something before 30<sup>th</sup> June next year and probably earlier than that. The banks have said that they will only exchange old currency into Euros up until the end of June 2002. It is unlikely that most Europeans will want to leave it until then particularly as most currencies will cease to be legal tender after February next year.

Where will this money go? Ironically it could be exchanged for the most important European currency not going into the Euro ie. Sterling! It is estimated that huge sums have to be "cleansed" in a very short period of time which could strengthen Sterling over the next few months but it is also likely that it will raise a good number of questions as to where the money came from in the first place.

An interesting and tricky area but please be careful about those foreign bank accounts.

## SELF-ASSESSMENT TAX RETURNS

There is often confusion as to the extent of the powers of the Inland Revenue to carry out an investigation into an individual tax payer's affairs.

As long as your Tax Return is filed on time, - that means that as long as your Tax Return for the year ending 5<sup>th</sup> April is filed by the 31<sup>st</sup> January of the next year, then the Inspector has 12 months to inform you that he intends to commence an enquiry into your Tax Return.

In broad terms as long as fraud is not involved if you have not been notified by the Inspector that he intends to investigate you by the following 31<sup>st</sup> January then you are safe!

If having submitted your return you find that you have omitted something from it which will affect your tax liability (usually this will be some interest received that you forgot about) then you have 12 months from the filing date to amend your return. You cannot do this without penalty once an investigation has started. This obviously makes sense, as it is possible that the item of income that you omitted from your return is something that the Inspector has picked up and is the reason for the investigation.

If you do notify the Inspector of a change to your tax return then he has a further 12 months from the date of your notification to start an investigation if he chooses to do so.

The Inland Revenue themselves acknowledge how expensive an investigation can be for a tax payer in both terms of professional fees and time spent and recommend that a professional adviser is instructed when an investigation takes place.

We have advised you before of the special scheme that we have arranged for our clients which pays for professional fees when an investigation takes place. If we do not deal with your personal affairs you cannot take advantage of these arrangements and we suggest that you complete the enclosed response form for more information.

## NOT SO BIG NOW!

We have never referred in an adverse way by name to any other 'competitor' who deals with computer contractors. It's about time that we did but let us start by saying that nobody's perfect and everybody makes mistakes from time to time.

All of us have been affected by the recession in the telecoms and financial services market which, combined with the effects of IR35, has led to a significant drop in the numbers of active computer contractors. It seems to us that Giant has been affected more than most. We have found that contractors who have become fed up with Giant and who have come to us have not been at all pleased with the service that they have received from Giant. While excepting that relationships are not necessarily forever, what we think is quite disgraceful is that when Giant lose a client they will supply only the barest minimum of information to whoever takes over. This is restricted to supplying information relating to the last set of completed accounts. They will not hand over any information relating to the current year and apparently have taken legal advice on this and are determined to supply as little as they can get away with.

It seems pretty shabby to us that a firm that has made its living from computer contractors should make it so difficult for one of their clients to exercise his or her freedom of choice and go somewhere else.

Typically, taking over a contractor's affairs from Giant involved more work than taking one over from another firm and continual changes of personnel at Giant do not help matters much either.

## QUOTE

An eye for an eye leaves everyone blind.

Mahatma Ghandi

In view of what happened in New York and Washington this quote from Mahatma Ghandi is quite thought provoking isn't it?

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