

EXCLUSIVELY FOR CONTRACTORS

Monthly Guide September 2003 Issue 69



PRESSURE ON CONTRACTORS TO MOVE OVERSEAS?

Shout99 (which should be owned by PCG but isn't!) have carried out another one of their surveys. They claim that more than half of UK IT contractors have either left the UK or were waiting to do so.

We have commented on these claims before and would repeat that this trend is not mirrored by our own client base. Some contractors have moved abroad but mostly only on a short term basis and not in anywhere like the numbers claimed in the survey. Many contractors are fed up with IR35 and Section 660 and have decided to give up the battle and go into employment but most do not go abroad.

However, there is a threat that the market in the UK will become even tighter because it has been reported that the European Commission is planning to go ahead with plans to extend the length of work permits granted to non-UK nationals. If the plans are adopted it will mean that IT experts from outside the European Union will be allowed to work for up to six months on IT contracts providing that the projects are of no more than one year's duration.

PCG are lobbying the Department of Trade and Industry and the Home Office to find out what this will really mean and whether there will suddenly be an influx of cheap labour from overseas and they cite the experience gained from fast-track visas where naturally enough people look for loopholes to extend their stay in the UK.

Unfortunately these negotiations are taking place at the World Trade Organisation summit and it is in the nature of international gatherings that Governments made compromises in one area to gain advantages in another. The computer contractor community has already been hung out to dry by the Government as far as taxation is concerned and let us hope that the position does not deteriorate further.

REVIEW URGED ON IR35

A report has been published by the All Party Parliamentary Small Business Group into IR35. It warns that contractors have been driven overseas because of the tax, that businesses are incurring significant additional costs and that IR35 which was

primarily concerned with "tax-avoidance" has adverse commercial considerations which outweigh any additional tax that the Chancellor may have collected.

The report also discusses the use of "IR35 friendly contracts" and the threat to contractors that they could go to jail if they misrepresent what they do and incorporate this in a contract, but one of their principal points is that although contractors are taxed as if they are full-time employees, they do not receive the benefits enjoyed by permanent staff.

SELF-ASSESSMENT DEADLINE

It is taking taxpayers a long time to get to grips with the system which was recently imposed and which means that taxpayers have to make their payments of tax by the January 31st and July 31st deadlines or face fines and penalties.

It is estimated that approaching 500,000 taxpayers have missed the 31st July deadline which could result in fines of up to £50 million. The total amount collected by the Inland Revenue in total penalties for this year is likely to be similar to last year's figure of around £130 million.

Anybody who has missed the 31st July deadline will have to pay an extra 5% surcharge.

AGE MATTERS

A consultation document has been issued by the DTI dealing with age discrimination at both ends of the scale ie. both young and old employees.

Proposals for new legislation which will come in in three years time include:-

- The introduction of what is called a 'default retirement age'. This will be 70, after which employers can require an employee to retire without justification.
- Changes to provisions relating to unfair dismissal so that employers aged less than 70 can seek redress.
- A change in the calculation of the basic award for redundancy to exclude calculations based on age.

This seems to us to be another example of how Governments only react to events and do not drive them. How long ago was it that the retirement age for men was reducing from 65 to 60 with forecasts

that many people would retire at the age of 50? Well, -- it doesn't seem to be like that any more does it? Governments cannot afford to pay pensions to an aging population and so the answer seems to be to let everybody work until they die!

IR35 – NOW THE REVENUE LOSE

You will remember the Gordon Stutchbury/Synaptek case which the Inland Revenue won in the High Court.

Now, a contractor who was investigated on a routine basis last year has managed to persuade the Inland Revenue that IR35 should not apply in his case even though his circumstances were similar to the unfortunate Gordon Stutchbury.

The reason that he was successful has been put down to the fact that the contractor took professional advice at an early stage and his case was presented in a more 'persuadable' way.

We are pleased for the successful contractor but it is hardly fair on Mr Stutchbury, is it?

TAXATION OF HUSBANDS AND WIVES

We have kept you up to date about the latest Inland Revenue initiative to lighten our pockets. This is commonly referred to as Section 660 and attempts to prevent husbands and wives organising their tax affairs as they wish and spreading income among the family unit. Typically this has meant that computer contractors have shared ownership of their companies with their partners. The Inland Revenue have been clamping down on this but whether they will be successful or not or have to resort to a change in the law is still uncertain. At the moment considerable lobbying is going on and PCG are also expected to make representations on behalf of contractors who are once again in the front line.

We will keep you informed.

REFORM OF INSOLVENCY

A major reform of insolvency is underway.

The intention is to bring our procedures more in line with the generally accepted culture in America where there seems to be much less stigma attached to bankruptcy and business failure on the basis that the imple-

mentation of new ideas carries with it significant risk and if unsuccessful the businessman should not be punished in an unduly draconian way.

The Enterprise Act will be in place from 15 September 2003 and will introduce the following changes:-

- There will be a reform of the actual process which occurs when companies become insolvent with a greater emphasis on keeping the business going.
- Appointing an Administrator is currently an expensive and time intensive task which Directors will now be able to do without going to court.
- Currently, bankrupts cannot start a new business for three years but the new act will allow those who have failed through 'no fault of their own' and who fully cooperate in their bankruptcy to be free of their restrictions after 12 months.

The flip side of this is that those who have been less scrupulous in the way they have conducted themselves may face restrictions for a period of up to 15 years.

- Finally, and this provision has certainly been very popular in the business community, the priority of the Government to be preferred for debts owed to it will be removed.. Debts which will no longer have priority will therefore be income tax, national insurance and VAT.

It is quite common for a business when it gets into difficulties to build up the amount that it owes to the Government in one form or another because it is likely that normal trade creditors will be a lot faster out of the blocks wanting payment of their outstanding accounts. Therefore when a business eventually ceases trading because it can continue no longer Government debts are high and unsecured creditors rarely receive anything from the insolvency process.

There is a potential problem here and that is that because Government debts were preferred then there could sometimes be a certain leniency (or even a commercial approach) taken by the Inland Revenue and the Customs & Excise because they knew that they had priority. Once this has gone then they may start to act like any other creditor!

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
P O Box B30, 35 WESTGATE,
HUDDERSFIELD HD1 1PA
(ASSOCIATED OFFICE)
☎ 01484 423691
FAX: 01484 518803