

Business Update>

March 2009

IR35 STRIKES AGAIN

I am still advising on matters whereby so called "freelancers" status is being called into question. The practical problem is that the "employer" will be hammered by the Revenue if they are found not to operating the procedures correctly. Even if steps have been taken to use service companies – where the underlying business relationship does not support the fact that there is a bona fide non IR35 situation – penalties will still be incurred.

In a recent case – Dragonfly Consulting Limited – even though there was the key clause allowing substitution – it was in fact found to be "bogus" and did not have any commercial bearing – as such the contractor was found to operating an IR35 company.

The advice must be for the engager – to ensure that the freelancer is a proper freelancer or else insist they have a service company. Although this imposes additional costs for all parties in the short term – in the long term it will be seen to be best practice – even if it flies in the face of historical custom and practice.

From the freelancer's point of view – unless the commercial reality is one of genuine freelance status – then the costs incurred in trying to prove that their service company is not a PSC will outweigh any short term advantage.

(The case of Castle Construction should also be considered – as it reflects the strength of having a considered and commercial arrangement with sub contractors and in this case the tax payer substantially won against the revenue)

My feeling is that both sides of the relationship have viewed the Revenues change of procedures over the last few years with a King Canute disdain but they will not be able to change the direction of the tide – and so all had better face reality or in the extreme case face the fact that settlements can bankrupt a business – at the very least – where a potential exposure is discerned – take steps to protect assets as described in earlier Updates.

I would also remind you that the Employment Status Indicator is available at:
<https://esi2calculator.hmrc.gov.uk/esi/app/index.html>.

Employment Pitfalls

The answer to surviving for many firms is cutting jobs. Unfortunately this is not as easy as it seems and is full of potential pitfalls. With a large number of litigious minded lawyers operating – who are keen to start unfair dismissal claims or the like, caution is required and in view of the complexity of the law, specialist advice is always required before any action (no matter how informal) is taken

All Hilton clients are covered by our Professional Fees Insurance Scheme which includes access to a free helpline including Employment Law.

Key factors to consider with redundancy are:

- Is an employee covered by the redundancy rules?
- Have procedures for selecting redundant employees been followed?
- Is a job role really redundant?

PTO

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All matters relating to employment – Maternity pay, Sickness pay, Disciplinary procedures, discrimination etc – all require specialist legal advice and employers should remember that no matter how “friendly” they have been with staff or how difficult a circumstance is – employment tribunals are deemed to favour the employee and as claims can be expensive to defend and pay (and in the extreme payable by the director or owner) – extreme caution is urged in dealing with any situation.

Tax year end

It is that time of the year again when the annual round of year end reminders appears in the financial pages. I would like to highlight just 3 matters:

1. For employers (Limited companies and Sole Proprietors / Partnerships) P11d's are going to have to be completed. The emphasis must be on accuracy as the taxman is finding from their compliance visits that there are huge returns as invariably there are errors in preparing these forms (assuming that they are actually prepared and not ignored.) Such errors can result in aggravation, penalties and interest.

Chestnut errors are:

- Incorrect identification of benefits in kind and expenses and so incorrect payments of Class 1 and Class 1A National Insurance.
 - Incorrect treatment of overdrawn directors' loan accounts.
 - Entertaining reimbursed for all expenditure and not just in relation to the business.
 - Motor expense logs not being kept.
 - Inappropriate claims for travel and subsistence – especially between home and work.
2. For clients who are beneficiaries under trusts – especially foreign trusts – changes in the rules require certain actions to be taken before April 5th this year.
 3. Non-domiciled but UK tax residents need to consider their position in relation to remittances or face the annual tax charge.

In respect of these ad hoc items – and if advice is required on any other matters relating to year end tax planning then please call my office to make a convenient appointment.

Employees PAYE coding notice – have they paid too much tax

I am aware that there are a significant number of employees who do not retain the services of accountants and have incorrect code numbers – the Revenue seem to have a policy of reducing code numbers (which increase their tax take) on the assumption that the average employee on PAYE will be unaware of any overpayment of tax. I have therefore advised my clients to have all their employees check and if they have anything other than a basic 603L code number and that they are not aware of the reason for any differences they should either call their tax office and check it out or wait until they receive their P60 and use one of the many on line tax calculators.

From the employer's point of view – if staff are incorrectly paying too much tax then it means that they be more inclined to query their gross wages thus adding pressure to costs (likewise any taxpayers on self assessment should check that any tax refunds are being paid – HMRC can be slow to give money back).

PS It also good practice to advise employees as to other benefits available – ones to check out are: Child tax Credits / Childcare Vouchers / Early learning classes / Summer schools and activity clubs / Medical check ups

Ben Warren