

NEWSLETTER SPONSOR



I-PAYE offers contractors and interims an excellent umbrella product with professional, efficient service and competitive fees starting from as little as £12.00 (gross) per week.

At I-PAYE we understand you want your umbrella company to offer quality advice and have an in depth knowledge of the UK contracting market, as well as providing accurate, fast and reliable payroll. Our robust system offers security and compliance whilst being flexible enough to adapt quickly to changing circumstances. I-PAYE 's friendly account managers are available to talk you through any aspect of our service.

I-PAYE is proud to have taken seventh place in the Sunday Times Fastrack 100. We are also ISO9001 accredited and are members of the Energy Industry Council.

Please call on 0151 449 3500 or visit our website www.i-paye.com.

Clarity and Certainty on IR35 Phase 1 Achieved!

In our recent Contractors' Opinion Poll [COP] we asked a number of questions in relation to IR35.

Your responses provided us with an interesting insight in to your views on IR35. From these responses it is clear that many contractors feel passionately that IR35 is unclear and unfairly discriminates against contractors; with specific comments like:-

IR35 legislation ... just let us work and pay the tax - we are not 'staff'

Recognition that Professional Contractors are not disguised employees.

Confidence that we can operate outside of IR35 without the risk of a large tax bill in the future.

IR35 status. current rules are completely unfair as they look at each contract individually, where as I also have to support myself when not in contract.

Total clarity of the IR35 issue - there is too much space for interpretation so everyone is an "expert".

IR35 and the lack of clarity from Inland Revenue.

Whilst some advocated the abolition of IR35, the general consensus we gained from the comments centred on one main issue:

Achieving clarity on IR35 status

Clarity on IR35 - most of the comments expressed a high degree of frustration with it being almost impossible for contractors to assess their true IR35 status with any degree of certainty. This led to fears of unexpected future tax bills and costs associated with investigations.

Professional Passport has always taken the position that IR35 is unfair on contractors for two main reasons:

1. Contractors are rarely provided, at outset, with all the information they require to make an accurate assessment of their IR35 status.
2. It is always, and only, the contractor who holds any liabilities where HMRC successfully challenge status.

This was reported in our September 2009 Newsletter V2 I4.

We are pleased to announce that we now have a process that can deliver clarity and certainty to contractors on their IR35 status.

We believed that after 10 years it must be possible to find an answer to this problem.

We have been working in the background for the last 2 years to develop a process that allows us to work with end clients to construct a true representation of the working arrangements across their contractor communities.

We have discussed this in detail with HMRC who, contrary to most perceptions, have been extremely positive and supportive of the initiative.

continued on page 2 >

Support our Work

Become a member of Professional Passport

Membership starts at just £25.00 (+VAT) per annum and provides a wide range of benefits.

Membership fees support our work with government and future developments of our services and website.

Got an issue and need to talk to a real person?

Our members helpline provides one to one support covering a wide range of issues. This service is available to our Professional Members

Umbrella or Limited?

Our assessment reports will help you decide on the most appropriate route for you; providing a bespoke report based on your circumstances.

< continued from page 1

Our new process ensures we align with existing services offered by HMRC allowing us to achieve a confirmed status, directly from HMRC, on contractors assignments.

We believe that this new development delivers certainty to contractors as well as removing all the fears associated with IR35 assessments.

It will save contractors significant amounts of money as, once completed by end clients and recruitment companies, they will no longer need to pay for independent contract reviews and assessments or insurance policies to protect them from future risks.

This new service not only brings direct benefits to contractors; it also brings significant benefits to both recruitment companies and end clients.

End clients are always looking to obtain the best contractors to fulfill their assignments; we believe that confirming the status of an assignment at outset will attract the best contractors as they can be certain of the true value of that assignment.

Recruitment companies also want the best contractors on their books; offering confirmed status assignments will achieve this and put the forward thinking recruitment company at a significant advantage.

Crawford Temple COO of Professional Passport said at the launch;

"This has not been easy, but then we never expected it to be, or someone would have already solved the issue. Millions of pounds have been spent over the last 10 years on lobbying for change and fighting IR35, we never believed that IR35 would be removed; in fact our fear was that if the lobbying was successful we could end

up with something worse.

Contractors and recruitment companies also spend millions each year on contract re-writes, contract assessments and insurances; all of which seemed to be a waste of money if the issue could be resolved. We decided to put our energy in to finding a positive solution that would save everyone money and deliver the certainty that was desired."

We are currently working with recruitment companies and end clients to start putting these arrangements in place.

Crawford Temple went on to say; *"Knowing the IR35 status of an assignment is the only way that a contractor can truly assess the value of that assignment, as this status drives how they take their income. This new service will allow contractors to compare a range of assignments on offer and decide on the best one based on the facts."*

Our vision is that one day all assignments will be offered with a confirmation of their IR35 status; allowing contractors the certainty they have been seeking for the last 10 years.

We recognise that this is just the start. We are currently working to agree a recognised and accepted definition of a Professional Contractor. We believe that achieving this will deliver significant benefits to all those contractors that meet the definition.

continued on page 3>

Are you paying too much for your PI insurance?

Our members scheme will save you money. You only pay whilst you are on active contracts.

IR35 Concerns?

Have all your contracts reviewed for a fixed fee; providing a conclusions report to protect you from IR35 penalties.

Can't decide on umbrella or limited?

Our Beginners Guide to Operating Structures will help you understand your options.

Join our Network on LinkedIn.com

Join our network on LinkedIn to keep up to date with the latest news, topical issues and discussions.

< continued from page 2

Our ultimate objective is to have Professional Contractors removed from much of the red tape and bureaucratic legislation; including IR35. This will provide a real commercial advantage to the Professional Contractor; which we also believe they should deserve.

We are seeking feedback on this and would ask as many of you as possible to spare two minutes of your time to complete our feedback form. We do not collect any personally identifiable data.

We would also ask you to encourage your colleagues to get involved and provide feedback.

This will significantly assist us in achieving a positive outcome.

What To Be Aware Of When Using Offshore Arrangements

Following the recent ruling on the BN66 case which confirms that HMRC are within their rights to legislate retrospectively on tax laws; contractors need to take extra care when assessing schemes offered by providers.

In the pre budget statement of December 2006 the Government put all taxpayers on notice that where they considered schemes where technically legal but outside the spirit of the law they would apply

retrospective laws effectively making them non compliant.

At the time of the statement there was universal condemnation of the proposal by all professional bodies pointing out that applying retrospective legislation would make it impossible for any tax payer to accurately assess their position at the point of making their return.

In the case of BN66 the introduction of the retrospective legislation in March 2008, backdating the rules to 1987 was the first evidence of the Government's willingness to pursue this route. What surprised everyone was just how far they were prepared to go; taking it back to 1987 - a full 21 years.

With the courts confirming the legitimacy of the rules this could leave the gate wide open for other similar action.

There are currently a wide range of schemes being marketed to contractors; this ruling is evidence that contractors need to carefully consider these before accepting the headline claims at face value.

Whilst it is entirely possible to run many schemes compliantly this ruling demonstrates that they do hold a higher degree of risk and this needs to be considered by contractors.

Barristers Opinions

Many promoters of schemes use barristers opinions to confirm compliance to legislation; two key points that must be considered:

What was the question asked of the barrister that resulted in the opinion?

What are the potential risks of retrospective legislation being applied to this type of arrangement?

continued on page 4 >

Have your say in defining a Professional Contractor

Give us your thoughts and feedback on defining a Professional Contractor.

We do not collect any personally identifiable data on the feedback form.

Trying to understand IR35?

Our Beginners Guide will help you understand the key points. It's written in plain english with clear guidance and links to many support tools available on the site.

Free access to the site

Your recruitment company can give you free access to the Professional Passport website; why not ask them!

< continued from page 3

A barristers opinion is just that; an opinion. It is not a guarantee of compliance and does not provide an automatic route for recompense should the scheme be found non compliant at some point in the future.

The most common reason companies obtain barristers opinions is to protect the directors from legal action as they can demonstrate they sought the highest level of advice available and therefore they are able to demonstrate that appropriate due diligence was taken.

Use of barristers opinions in any marketing material should be taken as a clear sign that the offering probably holds a higher risk of investigation.

You should only consider such offerings where you are prepared to accept this higher degree of risk.

Registered Tax Avoidance Scheme

In October 2004 it became a requirement for a wide range of tax avoidance schemes marketed in the UK to register the scheme with HMRC. Where a scheme is promoted by a company outside the UK the requirement for registration falls on the individual using the scheme. Failure to do so can result in significant penalties being applied.

Providers that confirm their scheme has been registered is not a confirmation of compliance or acceptance of compliance by HMRC. It merely confirms registration under the requirements. HMRC has made it clear that they will investigate all registered schemes to ensure compliance.

Risk of being caught

This is impossible to accurately assess although there are some clear pointers:

Where the scheme is registered as a tax avoidance scheme HMRC has all the details and so it is likely to be when, not if, the scheme is investigated.

Most arrangements have an element of PAYE income. Where PAYE is being deducted a company provides a return each year to HMRC of all the taxpayers in that year that were paid under PAYE. If HMRC at some point in the future found an arrangement to be non compliant they have the lists of every tax payer that operated through the arrangement. Tying these records to current details is not a major job as your National Insurance number is a common factor in the disclosure.

Tax Avoidance or Tax Deferred?

A number of schemes operate with an element of loans being made to employees by a trust. Employee Benefit Trusts are used by many organisations for their employees and it is entirely possible for these to be operated compliantly.

There are some differences in the contracting market and these need to be considered by contractors looking at these style of arrangements.

continued on page 5 >

Looking for a compliant provider?

All ours have passed the Professional Passport audit; the toughest assessment of compliance in the market.

Want to read more articles?

Our newsletter archive gives you access to our past editions covering a wide range of topics.

What returns can you expect?

Use our earnings calculators to get a true comparison across the operating options available to you.

Useful Links

www.hmrc.gov.uk

www.icaew.co.uk

www.lawsociety.org.uk

www.shout99.com

www.contracteye.co.uk

< continued from page 4

Where HMRC considered the arrangement to be manufactured; designed solely as a tax avoidance vehicle, the risk of challenge increases. Of course being challenged does not automatically result in an assessment of non compliance but it does mean they are more closely scrutinised and therefore can hold a higher degree of risk.

Contractors we have spoken to are often unaware of the technical aspects of the arrangements; these must also be considered carefully;

The terms typically contained within the trust do not provide any guarantees that monies will be paid to the employees. Whilst it allows for loans to be made, when you have to repay these loans at some point in the future there is no requirement for them to pass the money back; it could be retained.

Where the company decides to write off the loan, and advises you this has happened, this must be declared as income in that tax year. Failure to do so becomes tax evasion which holds significant penalties including the potential of a custodial sentence. Where a loan is written off this could happen in a year where the additional income is subject to a higher rate of tax than would have applied originally.

If any of the companies offering these arrangements went in to administration or receivership it would be the duty of the official receiver to recover the monies. As there are no requirements for these to be repaid to employees the money is likely to be used to reduce any outstanding debts of the company.

Retaining tax monies on your behalf

We are aware that a number of schemes, typically utilising Partnership arrangements, offer to retain tax monies on behalf of the contractors. You should be aware that any tax liability is a

personal liability and if the company failed to make these payments on your behalf you would still be liable for the full amount. HMRC are unlikely to become involved and you would have to take personal action to recover any of these monies from the relevant parties.

Contractors must consider the facts before accepting headline claims of high returns. In our experience there are only a limited number of contractors that are prepared to accept the risks associated with many of these arrangements; when they understand them.

Our telephone helpline is available if you have questions you need clarified. Whilst we are unable to discuss the details of any specific offering we can help you understand the risk profile more clearly. The telephone helpline is available to our professional members and membership costs just £40 +vat per annum. You can join and gain access to this service **here**.

We also have a range of approved providers that have all been audited by Professional Passport and provide compliant low risk solutions for contractors; these include umbrella providers and accountants supporting contractors who operate through their own limited companies. Registered users can view the list of approved providers **here**.

If you need to register this is free and we respect your privacy as we do not supply your details to third parties; you can register **here**.

We also recently produced an article highlighting the differences between onshore and offshore umbrella providers. This is available through our newsletter archive and you can access this **here**.