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Nasa Consulting Industry Update June 2008

Contractor notice periods come under HMRC scrutiny

In this month's legal update we warn our agency clients that following an adverse IR35 tax ruling for a contractor, it is likely that they will face requests for the removal of notice periods from their agency contracts. We also raise an alert about MSC inspections as two umbrella companies assisting in arranging tax free loans in the Isle of Man are reported to HMRC and ask the question 'Can their unpaid taxes be passed back to their agency?'

New boundaries

At the back end of last month, HMRC won an IR35 case against a contractor working through his own limited company called Alternative Book Company Limited. The case has set new boundaries for the method of inspection of IR35 as the Judge set out to create realistic terms and conditions between the end client and the contractor.

The judge ignored the actual terms of agreement with the agency and client and instead he constructed contract terms reflecting the reality of the agreement. One of the principle weak points for the contract was that the freelancer was required to give four weeks notice before the contract could terminate. This was picked on by the judge as being an important characteristic of an employment relationship and resulted in an extra 20% tax charge for the contractor in question.

Notice period removal

Agencies are now likely to be asked by their freelancers to remove notice periods from the contract terms governing their work. This is likely to come on top of the often asked question for a 'right of substitution' term to be inserted in the contract.

Nasa Consulting has canvassed the opinion of several agencies over this issue and, on the face of it this may not affect the working relationship too much. The reality of contract work is that a client can pull the plug at almost any

moment without recourse from the agency or freelancer. Generally this is because without a signed timesheet there cannot be any billing for fees. Additionally, if a contractor does not want to work out a contract, there is little an agency can do and it is certainly not able to withhold fees under the Conduct of Agency Legislation 2003.

Whilst we await further developments or appeals on this IR35 case we are forewarning agencies as to the reasons behind any such contractor requests.

Offshore schemes under investigation

On a separate topic, following on from dialogue with HMRC, we are aware of two umbrella companies that have been reported under the Managed Service Company legislation for paying their contractors via offshore loan schemes. Under these scenarios, which are generally routed through the Isle of Man, the contractor is paid a small onshore salary or equivalent and paid the remainder of their earnings via an offshore loan. This is avoiding payroll taxes for UK based workers and, as of January 2008, the unpaid tax liabilities can be passed back to the agency referring the Umbrella Company. It is likely that the contractors will also lose considerable amounts of their earnings.

Agencies must carry out compliance checks on recommended Umbrella Companies to ensure they are not making offshore payments of any type to UK based workers.



Nasa Consulting is a specialist accountancy provider to the Recruitment & Freelance sectors. We also provide a low cost, high speed umbrella service where agencies and contractors require. The benefits of which include;

- Only £9.99 per week (that's just £7.79 per week with tax relief)
- Free CHAPS payment each week
- No joining or leaving fee

You as the agency can also be safe in the knowledge that your contractors are operating compliantly for all current legislation as well as for expenses. Not only this, but we'll fit around your invoicing & payment schedule to create a process as streamlined as possible.

If you would like to discuss any of the topics covered in this article please don't hesitate to contact Nasa directly, we'll be happy to help.

