

Brookson: More focussed HMRC is targeting contractor services sector compliance

Contractors can expect to face an increasingly confident [HMRC](#) this year, with the taxman buoyed by recent successes in tackling the contracting sector – most notably in the [Dragonfly Consulting](#) and [Larkstar Data](#) cases. So says Martin Hesketh, managing director of contractor accountant [Brookson](#).

“To protect our contractor clients, we’ve been working very closely with HMRC since 2006, and before, to ensure that all our processes and procedures can provide full assurance of compliance,” explains Hesketh. “We even go so far as to offer all our contractors independent vetting for [IR35 status](#) by employment law specialists.”

Hesketh firmly believes this thorough approach has not only helped protect many of Brookson’s contractor clients from falling into [costly IR35](#) traps, but has also resulted in the firm having developed a deep understanding of HMRC changing tactics with the contracting sector. But this has come at something of a cost, with some Brookson clients who have been found to be within IR35 opting to leave the firm rather than accept the inevitable.

“Whether or not a contractor is caught by IR35 is a matter of fact,” adds Hesketh. “Moving to another advisor does not change those facts nor the likely outcome of any [HMRC investigation](#) which might be launched. In Brookson’s view, a contractor is better off understanding their position and using the advice and education we provide on IR35 to make sure they negotiate a better position for themselves on any future contracts.”

Contractors must have specialist advice

“All our contractors benefit from our in-house employment law team, who give advice assessing each new contractor assignment,” continues Hesketh. “We use legal employment law specialists and not accountants to [assess IR35 status](#), and we conduct the assessments within a framework agreed by HMRC.”

According to Hesketh, not all contractors will accept the IR35 verdict of Brookson’s in-house legal experts and opt to go elsewhere, usually to a high-street accountant, which, he says, leaves them even more vulnerable to an HMRC inspection.

“The Larkstar case proved that contractors must have expert help when determining their employment status,” says Hesketh. “and they won’t get that from a high-street accountant. We’ve spent years working closely with HMRC to develop our assessment criteria and contractors who are found to be genuinely self-employed and [in business on their own account](#) can be confident that HMRC will accept their status.”

The decision by HMRC to appeal the ruling of the General Commissioners in the Larkstar Data case and subsequent re-hearing ordered by the appeals court judge in favour of HMRC, is both unique and symptomatic of a new confidence building at HMRC after their previous success with Dragonfly Consulting.

HMRC - more confident and relentless

Hesketh predicts 2009 is likely to see HMRC in a new light: “Contractors would have found 2008 an annus horribilis following the Dragonfly and Larkstar rulings, without any further challenges to worry about. However, we have seen signs that HMRC have also set their sights on ensuring that the companies providing services to contractors are fully compliant, as well as the contractors themselves.

“Brookson, and by association our nearly 10,000 contractor clients, are well positioned in relation to the increased HMRC compliance activity likely to be seen later in 2009,” continues Hesketh. But, he believes, many contractor services sector firms may not be so fortunate, particularly if HMRC seeks to extend the debt transfer regulations.

“Our contacts with HMRC at the policy and enforcement level are all about understanding what HMRC are trying to achieve from a compliance enforcement perspective and advising our customers accordingly. HMRC appears determined to drive up compliance standards both for contractors and the companies that provide services to them. This drive is likely to see more activity in relation to contractor compliance with IR35 and action taken against non-compliant service providers under the MSC legislation” explains Hesketh.

“It is also worth recognising that the existing legislation certainly provides a framework for HMRC to extend the debt transfer regulations more broadly to professional advisers. Potentially all accountancy practices that provide contractor services are at risk of the implications of the regulations. And most of them are unaware of this risk. This creates a potential problem both for the accountancy practices themselves and their contractor clients.”

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Martin Hesketh

Risk assessment post the MSC regulations

For contractors, the [MSC legislation](#) has proved to be a double-edged sword. Whilst the MSC regulations have resulted in higher levels of compliance in some respects, without the management provided by old-style composite companies, some contractors are flirting with breaking the rules.

This, says Hesketh, leaves a lot of contractors very exposed: "A composite in the old days could insist that all its contractor clients and shareholders were professionally assessed for IR35. But there is a whole slice of the contractor market that left that MSC space and is now largely working unregulated."

As Hesketh notes, the sledgehammer tactics employed by HMRC to catch the rule-breakers results in inevitable fall-out for those contractors who trade compliantly, yet still find themselves facing costly, unwelcome and ultimately unnecessary investigations.

HMRC engagement

"Brookson continues to work closely with HMRC, because that is in the best interests of our clients," says Hesketh, reinforcing his message that firms and contractors that proactively comply and cooperate with HMRC will still be able to make use of the legitimate tax planning opportunities that are available to contractors without needing to avoid or bend the rules.

Contractors do have access to certain tax benefits. Providing the contractors themselves, and the companies that provide professional services to them, are operating compliantly, and are clearly demonstrating their compliance to HMRC, there is no reason why contractors cannot gain the benefits they are genuinely entitled to.

"With the current economic climate, HMRC are under even greater pressure to find additional sources of revenue," concludes Hesketh. "Contractors are a target and our task is to make sure they don't find that revenue from our clients."

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