

Control issue dominates in IR35 victories

Contractors, with the help of the London-based [Professional Contractors Group](#), continue to win the vast majority of court cases based around IR35. A similar beating is likely to be administered to the Revenue over the managed service company legislation which is due to take final form shortly.

In fact, new concepts are needed in law to treat contractor taxation. The old methods clearly do not work.

Emerging from the slew of cases is the fact that the issue of management control is the predominant factor in these cases.

Contractor Manages the Business

In the most recent move, Mike Worsley, of the Bolton-based PTFHK Limited is the latest PCG member to be found to be outside IR35 following a two year HMRC investigation. With the help of PCG and its approved group of accountants and lawyers, Worsley showed that the contractor managed the business, and was not disguising an employment relationship as a business.

Says Worsley: "I'm given a great deal of autonomy and total control over project control and task precedence and this was one of many factors that convinced the inspector that a genuine business to business relationship was in place."

Three Factors Are Considered

Comments [David Royden](#), a lawyer specialising in contract law with Layton's Solicitors in Manchester: "Of the three issue judges look at most in determining the existence of an employment relationship, the maintenance of management control by the contractor is increasingly important. If you run your own company and determine your own working conditions, and you can show that, you have a good chance of proving that you are outside IR35. Other factors, like mutuality of obligation and right of substitution, are still important, however."

PCG Wins 1427-Revenue Only 3

According to the PCG, contractors working with the organisation's approved group of accountants and lawyers have won 1427 tax investigation cases in court, while the Revenue has only won three.

Bad Wording

Comments PCG Policy Spokesman John Kell: "This shows that the legislation is badly drafted. The line between a contractor and an employee is simply not clearly demarcated in the wording of the law."

It is of course important that the PCG, with its long experience of the case law in this area, is able to bring very considerable expertise to the handling of a Revenue investigation and an eventual court case.

Poor Chances for the Revenue on Managed Service Company Law

The record of Revenue court losses also spells poor chances to its eventual success with the new managed service company legislation, which penalises contractors whose companies are managed by others as well as the service providers who manage them.

There is little clarity in the managed service company legislation, which has been criticised by the Institute of Chartered Accountants, and the PCG, about what exactly is a managed service company, and who runs them. The language is so generalised that it targets far too wide a group as the law's critics point out.

None of this is the fault of the Revenue itself. The Revenue is obliged to apply the legislation that the Treasury prepares for it, and that the Government passes. The Conservative opposition repeatedly pointed to flaws in the legislation, only to be overridden by voting along the bleakest sort of party line.

New Concepts Needed

But what is really at fault here is the concept of treating contractors like employees. "What is needed is a new idea for taxing flexible workers," says Barry Roback, CEO of the Watford-based accounting firm [JSA](#). "These workers bear the risks of working for different companies at different times, with none of the privileges of employees. So they should not be treated like them."

New legal concepts are required to handle this new kind of working; reverting to the old ones doesn't help anyone.

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“ My autonomy and total control over project control and task precedence impressed the HMRC ”

Mike Worsely-PCG Member

“ The legislation has been badly drafted ”

John Kell-PCG

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