

## PCG: supporting and protecting freelancers, contractors and consultants

### What is IR35?

The so-called "IR35" legislation, announced in 1999 and in force since April 2000, seeks to tax freelance workers as if they were employees. Its stated aim was to prevent employees setting up a company and performing their usual job through that company with the resulting tax advantage, and also to prevent companies from forcing their staff to do so.

IR35 allows HMRC to "look through" the freelancer's limited company and treat the fees paid to it as the freelancer's salary, on which PAYE income tax and NICs are then payable. Only a 5% allowance for expenses is made and no allowance for the cost of the freelance contractor's training, holiday pay, sick pay etc. is made at all, even though IR35 does not oblige the contractor's "employer" to provide these benefits.

An IR35 investigation will usually begin as a PAYE Audit. These are routine checks made on any business with a payroll to ensure that it is operating PAYE correctly. Experience has shown that, for freelance contractors and consultants, they often turn into full-blown IR35 investigations. Once this happens, the freelancer's contracts will be closely examined to determine whether or not they create a relationship that amounts to "disguised employment"; this will depend on whether or not the contracts meet certain legal criteria.

### PCG protection against IR35

The Professional Expenses Insurance that comes as standard with PCG membership covers the professional fees of leading experts throughout any IR35 dispute.

PCGPlus membership includes

all the benefits of standard membership plus PAYE Audit Cover. PAYE Audit Cover includes support in preparing all the responses and letters required by HMRC, saving you considerable time and effort and offering excellent chance of an early conclusion. It covers advice, support and representation costs up to and including a hearing at the Commissioners. PAYE Audit Cover also provides cover for the Contract Review process that the IR may instigate to look at the IR35 status of a company.

PCG's Guide to IR35, available to members only, includes full background information, details of the current legal position of IR35, tips on how to minimise your exposure and details of the key factors that determine whether or not IR35 applies.

Membership also gives you access to free tax and legal helplines, standard contract templates, discounted professional indemnity insurance and access to legal advice and support from other freelancers via the members forums.

### PCG and IR35: the fight goes on

PCG initially challenged IR35 with a judicial review. Although sympathetic, Mr Justice Burton ultimately found for the Government. Subsequently PCG adopted a case law strategy, supporting significant cases through the courts in order to achieve greater clarity over what factors place a freelancer inside IR35. While it remains uncertain, complex and confusing, thanks to these efforts the situation is currently somewhat clearer than it was five years ago.

PCG and its affiliates maintain a superb record in fighting IR35. As of June 2008 PCG's approved

suppliers have won 1,462 cases and lost only 6. This astonishing failure rate of IR35 investigations raises serious questions about the cost of IR35 to the taxpayer as well as its workability for both contractors and the tax authorities. The continued prevalence of contracts offering terms that amount to what IR35 deems "disguised employment" also suggest that far from stamping out this form of abuse, IR35 may actually have entrenched and formalised it.

PCG remains the only organisation putting the views of freelance contractors and consultants to Government and continues to lobby for the reform or abolition of IR35, to meet its original stated aims of preventing abuse of workers and of the tax system.



### For further information:

PCG

Heathrow Boulevard  
280 Bath Road  
West Drayton  
UB7 0DQ

**T** +44 (0)208 897 9970

**F** +44 (0)208 759 19 46

**E** [policy@pcg.org.uk](mailto:policy@pcg.org.uk)

[www.pcg.org.uk](http://www.pcg.org.uk)

© Professional Contractors Group Ltd 2009



The voice of freelancing