

The Domino Effect...IR35 style Primary Path Victory

Barely a week has passed since we reported the success of Marlen Limited yet here we are again with news of another Accountax IR35 victory; on behalf of PCG member Phil Winfield of Primary Path Limited.

The Tribunal's task was to determine whether the services Primary Path Limited supplied to GSK on a specific project, via agencies, were subject to the IR35 legislation. The services were undertaken by Mr Phil Winfield, director of Primary Path Ltd, who was engaged to provide services in respect of the design and build of a specialist interface. It was found as a fact the services were carried out with little involvement of the client, other than being checked for standard and quality requirements. The Judge said it was clear Mr Winfield had responsibility for the delivery of his part of the project.

Applying the facts of this case to the seminal case of Ready Mixed Concrete, the Tribunal said the 'level of control or supervision did not go beyond that which one would expect in the hiring of an independent contractor', there was no obligation beyond paying for work done and that the ability to propose a substitute was inconsistent with employment.

The Judge concluded that the position was even more telling when applying the 'in business on account' test and that it was clear the relationship between Mr Winfield and GSK was one for independent services.

An issue commented on by the Judge in this case, and one which Accountax advises its clients on obtaining assurances on a regular basis, is consistency between the terms of the contract between the agency and the taxpayer and the agency and the client. All too often in IR35 cases where there is an agency in the contractual chain you are faced with inconsistencies between the contracts which can protract HMRC's enquiries.

In the current case the Judge said there was a 'fair degree of consistency' between the various contracts/correspondence in place between the parties, which somewhat eased the road to constructing a hypothetical contract in this case. The Tribunal was left in no doubt that the arrangements in question were not caught by the IR35 legislation. Matt Boddington of Accountax stated: *"this was an excellent victory for all those involved once again highlighting the divergence between HMRC's approach to IR35 and the correct legal approach adopted by Accountax."*

Matt also commented: *"Despite the series of defeats that we have inflicted on HMRC in recent months do not be fooled into thinking that HMRC will change tactics. For every Phil Winfield out there brave enough to take on HMRC because he is represented by Accountax and supported by Abbey Tax Protection and the PCG, there are hundreds of contractors who bow down to HMRC because they did not seek our advice. Our recent triumphs highlight that HMRC can be defeated if the right advice and support is sought."*

This case originally began back in 2004 and demonstrates the need for a thorough and robust defence.

If you would like further information then contact Accountax by calling 08450 660 035 or email mail@accountaxconsulting.com now.

