ELE 12th March 2021 CS

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***the* EMPLOYMENT LAW EXCHANGE.**

**12th March 2021 Case Studies for Discussion**

The aim here is to explore in a practical way the issues that may arise from the application of HMRC’s IR 35 rules from April 2021. Please have a look at the case studies-I suggest if you have not done so you have a look at the HMRC CEST on their website. It is fortunately shorter and less complex than before.

**Case Study 1**

PG Ltd manufacture agricultural machinery. To assist with its Business Development Strategy, it recruited in January 2021 a product Development specialist who had to be familiar with the Portuguese market, along with a Portuguese language trainer. Rory was appointed to the first post, initially for 6 months but renewable. ‘Speak to Success and Associates’ was appointed to the second post, headed up by Sylvia. She is appointed for a year’s contract and then she was told, ‘Let us see how its goes’.

Rory is required to visit Portugal and told he must ‘closely liaise’ with PG’s senior management team. As the market is highly competitive, he is told he must not talk’ to others about his role. He should also consider, in principle, his role to be a full time one. The financial arrangements for Rory are that PG will pay Rory’s ‘day rate’ for the six months, though he can,’ bring in other specialists as needed, though they would be paid by Rory as part of his day rate’ unless Rory argues otherwise. (PG are very mindful of the need to control costs).Rory is required to report fully and on a monthly basis to PG’s senior management on the progress of the project.

Sylvia has asked PG whether she can bring in colleagues to assist with the work, but she is told;’ We are building an integrated team here and would like all members to be fully committed, so would strongly prefer consistency of personnel’.

**What more information would you need to determine correct status?**

**What is your assessment on the facts as already provided as to the IR 35 status of Rory and Sylvia?**

**Case Study 2.**

Taylor and Co ltd is a major firm of accountants employing 255 staff. Their headquarters are in West London. They have been upgrading it. They have employed Janet, a freelance garden designer to upgrade the land around the building. She will undertake a 3-month project and upon its competition she will attend one day a week for maintenance. She operates through her own PSC (Merry Plants) and charges a basic rate of £600 a day, which includes her expenses but not the materials for the gardens themselves. Taylor has a contract with Happy Garden plc, as their other premises also have gardening requirements. Janet works for other clients, though Taylor is her main client currently. Although Janet liaises with the senior partners at Taylor and Co, she decides on the design but does aim to reflect her client’s preferences. She has a sign in the new garden stating ’Garden designed by Merry Plants’.

**What would be her correct tax status?**

**Why?**

**Case Study 3.**

Fix Sick Ltd is a private medical practice and specializes in on-line medical advice and support. It uses several hundred medically qualified staff under ‘consultancy contracts. The company uses standard form contracts which are both complex and lengthy. The consultants are treated as self-employed and responsible for their own tax, though many are based outside the UK. Potential patients visit Fix sick’s website, pay them an agreed fee for ‘professional services and Fix sick assures them that Fix sick’s procedures closely check out both the medical staffs’ qualifications and experience and monitors professional standards. The website contains references of former patients and commitments, such as *’Your health is so important to us that we would never recommend to you anyone who put your health at risk-we are the preferred provider of health care to major UK and other businesses’.*

Every month Fix sick awards a Golden Scalpel bonus to the medic with the best feedback. Three poor reviews and the contract to work is ended.

Some of the medical professionals work solely for Fix Sick, other work for other organisations.

**These types of arrangements are growing in popularity.**

**What do you think will be HMRC’s decision(s)?**

**Is this ‘Uber in a White Coat?’**

Bill’s business card describes him as ‘a home makers and sustainer extraordinaire’. In fact, he is house maintenance worker who works part-time through a PSC. He has worked for Keeley, who runs a consultancy from home, for over twenty years. When Keeley goes on holiday he stays in her house and checks it over. He works for a few other people, but if Keeley contacts him for urgent work, he gives her priority. She pays him cash for any materials, though as he gets a trade discount Bill does the purchasing.

**A nice simple case. What do you think?**