

Paper for London Society of Accountants 9th November 1999
 Joint Paper with Francesca Lagerberg of the Tax Faculty of the ICAEW

Practical problems with IR 35.

Andy White, Chairman PCG

It is a pleasure and a privilege to be attending this function. Francesca Lagerberg was the first person from any of the Institutions to contact me back in March with respect to this issue and invite me to a Tax committee meeting. She and the Institute of Chartered Accountants have played a leading role in mobilising opinion and providing key information. The Institute is well served by their dedicated tax facility. I was especially encouraged by the release of the discussion document concerning the way we, as a nation...arrange our taxation system. As someone once said "the nation should have a tax system that looks like some-one designed it on purpose" Ours... sadly... looks like it is made up as we go along.

Nine months ago, if someone had told me that I would have addressed a meeting in the House of Commons lobbying against a Government proposal, and had the leader of the opposition quoting my words to Tony Blair during Prime Ministers Question time I would have thought them mad.

Nine months ago if someone had said I would be addressing a room full of Top Accountants and telling them about a complex tax measure called IR 35 then I would have called for the men in white coats.

As I told the meeting at the House of Commons "Nine months ago, I was concerned with running my own businesses which - under the enterprise culture - I had built up during the previous six years. I had, prior to that been employed as a naval architect. That business was funded, not by sharp suited City men, or through inherited wealth, but by contracting my services through my own one man Company.

"From a one-man company, I built a business with a £25 million pound turn-over (paying my fair share of tax), employing directly 30 people and indirectly providing employment opportunities for a further 400 people.

"I thought that qualified me as an entrepreneur.

"Then in March, during the Budget, the Inland Revenue released a press notice - now universally known as IR35. This was targeted at stopping people who were forced to leave a job on a Friday only to start the same job through a limited company on a Monday. Not a problem here, no reasonable thinking person would object to such a proposal.

"Then when the detail came out, it was apparent that the net was being thrown much wider and it was clear that this would be to catch small entrepreneurial businesses.

"I should say at this point that these proposals would not have affected me personally. But, I realised that if these proposals had been in operation six years ago, I would not have been able to start off as a small operation. My concern was that these proposals would prevent our present and future knowledge-based entrepreneurs from enjoying the same opportunities I had benefited from.

"I decided to get on the modern day equivalent of a soap-box and see if there was anyone else out there who shared these concerns. I created a web-site with information about the damaging effects of these proposals

"Within 10 days, the website had had more than 40,000 visitors - within 60 days the Professional Contractors Group had been formed as a non-profit making organisation with 4,000 members to represent their interests on this issue.

"It should be remembered that none of these people are political activists - they are hard-working, entrepreneurs who have given up the security of employment because they saw an opportunity to create their own businesses and control and invest in their own future. **They do nothing illegal. They are not tax dodgers.**

"Let me once and for all **nail the lie** which has caused so much anger among contractors. **We are not criminals who evade tax.** We are legitimate businesses, paying our fair share of tax while trying to grow our businesses in a competitive environment. Our financial affairs are arranged in the same manner as those of our large - usually overseas competitors - and certainly in the same way as any other company. **We make a positive contribution to the UK economy.**

Now this is not a political meeting and I have to earn my supper. I was asked to talk about the practical problems concerning the new rules. There is one main problem. It is fundamental to the issue and every other problem on this issue is derived from this one. If we sort it, the rest will fall into place. It goes to the heart of all human relationships. Our business system is founded on it. Without it we are rudderless. It is TRUST.

Albert Einstein said "Every kind of peaceful cooperation among men is primarily based on mutual trust and only secondarily on institutions such as courts and police.

It is as simple as this. If I give my word that I will do something, you can go to the bank on it.

We are losing that trust in this Government and their civil servants. The majority of our members myself included voted for New Labour. I had reservations, but I decided to give Tony Blair a chance. He is rapidly throwing away that goodwill such that the next millennium will be too short a time to vote New Labour again. In a survey of over 3000 members, only a handful would vote New Labour again if they bought this measure in. They not only will lose the swing voter, but the traditional Labour Voter as well.

The Prime Minister promises at Bournemouth freedom and yet his Government binds us with more regulation. I have heard on several occasions in the last few months eminent Lawyers talking about a challenge under Human rights for the burden small business is facing.

Blair, Brown and Byers talk about the importance of knowledge based economy and yet this measure states that you cannot make profits as an owner-managed knowledge based business.

Michael Trend said in the debate in the House last week: "...the difference between the fee and the consultants salary represents the costs and profits of the Company providing the contractor To equate the fee with the consultants salary is to make a fundamental economic error: it amounts to saying that there can be no profit in providing skills and knowledge, but that is what the knowledge based economy is all about"

Big companies or those who employ someone else to do similar work in similar circumstances can do what they like with the profits. Those under IR 35 who own the business are forced to pay all their fees out as costs. The only difference between the Big and small company is time. The small one has not had the time to become a big one. If IR 35 goes thru this will become unlikely

We have a Paymaster General holding secret meetings with those who have lobbied for the measure and also representatives who have most to gain, on the record stating that Consultation has taken place yet on every criteria of the better Regulation Guide and the Revenue own Guide to Consultation this is not the case. No formal consultation document. No terms of reference, No

invitation to explore alternative solutions. No indication of the time scale of the consultation. No details of who lobbied for this and no publication of the submissions....are just some of the failings to meet set guidelines.

Against this backdrop is it any wonder that we have lost trust in those who we elect and pay to Govern us wisely. It is just unacceptable.

Against this backdrop is it any wonder we have reservations about delegated legislation and I disagree with Francesca here. It can be made to work and is able to react far quicker than statute to changing economic situations. It is my personal experience of delegated legislation that it is only by open, comprehensive and continued consultation can a fair and proportionate regulatory system be achieved. That is not only in the framing of regulation, but also in the implementation and in the continual maintenance of the regulation.

Finally against this backdrop we come to the detail problems. As they say the devil is in the detail. The Government is clearly going to raise the barrier to knowledge based businesses.

Vincent Cable made a telling point during the debate. He said: "Much of our argument has been about general principle, but several interventions have made it clear that the small print is often crucial". What makes the proposal lethally damaging rather than mildly damaging will be the way in which the Government deal in practice with details such as the split between schedules D and E. Many provisions could do a lot of damage if the Inland Revenue treats them unimaginatively.

Against the backdrop I have described are we wrong to have a lack of confidence that the Revenue and this Government will do anything, but treat this unimaginatively.

Let me deal with just two of the detail issues.

The PCG wrote a brief for the Dti. Like the Institute we welcomed the changes to certification, the ability for the small business to be responsible for their tax affairs and the move away from the simplified test. We went on to say

However significant problems remain. We disagree with the Inland Revenue advice on their web site, which states: The existing rules are based on a long history of case law.

Independent Contractors in the knowledge-based sector have been prevented by Government legislation from working within these rules since 1973. As a result a completely new Industry has grown up without reference to these rules.

They have therefore not kept pace with the way we do business.

- ❖ We work more in partnership, often integrated with the client's own organisation and working alongside the clients' own employees, on our client's site.
- ❖ Computer Viruses, unheard of 20 years ago, prevent us from utilising our own tools.
- ❖ Complex projects often can not be procured on a fixed price, but may be cost plus (hourly paid),
- ❖ New methods of working such as DSDM further make fixed price contracts difficult and require close integration with the client.
- ❖ Sometimes our knowledge is so unique it would be difficult to find a substitute.

As these are all indicators of "employment" under the existing outdated tests the Government could so choose to enforce them in a "disguised" attempt to raise taxes.

It was for this reason that in our press release we said the proposals have changed from the "unworkable to the illogical" You cannot take one bit of a proposal, which we welcome, and then from that state, as the Government have done, for both the PCG and the Institute, that we

welcome the proposals. It simply is not true. It has to work in the round, It is like a car with only three out of its four wheels. It looks like a car, but it does not work.

We also believe that taking the tests on a case by case basis will actually change the definition of self employment. The Lorimer case, which is the closest case to a knowledge based business and even then is light years away, rested on his pattern of working. If you looked at each contract maybe he would have failed. The Government wants to take a snapshot rather than a video film. For the Contractor it places him in the stranglehold of having to assess a massive amount of complex legislation on each contract. This may take place daily. The result will be a lack of confidence, a lack of certainty and a serious blow to the enterprise culture of this Country.

I want to conclude by asking you, the accountancy profession to do your bit. Get out and compete with the big bucket shop "book keepers" and win back Contractors as clients. Join up as an associate member of PCG so that you get access to the latest information.

I want advice from an accountant one on one. Not plastered over the press. My accountant has to know me to know what advice to give.

I am confident that if Contractors had still been advised by the local accountant... as I have had the good fortune to be...then you would not have had to sit and listen to me providing payback for all the times he has sent me to sleep.

Thank you

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