



# Briefing

## Manchester Office

EBS are proud to announce that, in January, we opened our new Northern office.

Any Clients in the Midlands or North of England can now call Clive Brooks on 0845 257 3327 or 07881 902995 for a local visit or explanation of our service.

---

## Pension Report - (told you so!)

Exactly as predicted in our last newsletter the Pension Review Commission has recommended all Employers pay an additional 3% into a compulsory scheme. Not to be found in this budget, but expect it in the next.

## Composite Companies



# A TICKING TIME BOMB?

*See inside*

---

## Courts Reports

A round up of recent cases. The contentious field of "employment status" continues to throw up contradictory and confusing new law.

*See back page*

---

# Composite Companies

## - a good idea or a risky choice?

**What are they?** Composite and Umbrella companies are schemes whereby each sub-contractor or freelancer becomes a shareholding employee, each owning their own class of shares.

**T**hey became popular after April 2000 as a response to IR35. The company is usually set up and managed by a specialist financial services company or accountant who, in return for a fee, handles the day to day management of the company including the accounting records, invoicing and payroll.

The management and accounts are structured so that there is a separate profit and loss account for each freelancer, which records that freelancer's fees and their own salary and expenses. This, it is claimed, results in a profit for that individual freelancer, which is then paid out to the freelancer as a dividend, avoiding National Insurance Contributions (NICs).

### **Why is this an issue?**

**Having been largely discredited in the IT freelancing market as a IR35 solution these service providers are now targeting the Construction Industry claiming instead that they have a solution to the employment status problem. Most experts warn subcontractors against this for the following reasons.**

### **IR35**

While Service Providers claim Composites get around IR35, the Revenue does not agree. Their publication (IR175) is clear that if "you receive, or could receive, payments or benefits from the company that are not salary, but could reasonably be taken to represent payment for the services you provide to clients" IR35 rules apply and NICs are due.

### **Weekly dividends**

Even if they can get past IR35, these schemes are only effective if money is taken out as dividends. These by definition should reflect company performance not freelancers efforts, and require the directors should meet, vote on and minute each individual payment.

The payment of thousands of properly approved "weekly dividends" is clearly nonsense and a sham and is easily reclassified by the Revenue.

### **Associated companies**

Some of the larger Composite providers have hundreds of Composites. The Revenue is currently arguing these are associated companies and accordingly should not have been paying small company corporation tax rates.

*If this argument wins all will face massive bills. Given few hold more than one weeks billing this could lead to mass failures.*



has to face the disgruntled men. It is the contractor not the service provider who will have to deal with the resultant damage to morale, productivity and sub-contractor relations.

More worrying perhaps, any disgruntled subcontractor who does not want to stump up his tax could claim he was forced to join, or that the whole arrangement was a sham.

### Sham

It is very hard to argue that a Composite itself is genuinely a business set up for the purpose of providing services to its Clients. In reality it just provides tax savings to its members. As such it is possible for the Revenue to invoke the "Ramsey Principle" on shams and going from

A (the Contractor) to C (the Sub-contractor) directly, disregarding intermediary B (the Composite) entirely.

Where they win this argument the Revenue can assess Tax and NI on the Contractor (you) as if the Subcontractor had been paid net; this can be as much again as the wages already paid.

**Composite and Umbrella companies are A TICKING TIME BOMB of liabilities for most members, and a massive risk to the business morale (and finances) of Contractors.**

### Security

Composite providers collect vast amounts of money both in tax to be paid and deferred dividends. If however the company goes into administration (as a number have, and many will, if the previous argument is won) they bear no liability. In this circumstance sub-contractors would lose any dividends not yet paid and could be liable for any new assessment or tax not paid over.

### An easy target

All shareholders name address and payment details must be registered at Companies House. By doing so the Composite itself provides the Revenue with a simple, single and immediate source of information on "abusers" from which to collect

tax. The Revenue has two specialist offices dealing exclusively with composites and is expanding this force. It can claim tax back up to six years.

**Why is this a problem to me? While the general consensus is that Composites are safe for the Contractors they do provide two areas of concern.**

### Unhappy sub-contractors

Most experts agree that it is not a question of "if" the Revenue will catch up with Composite members, only "when"; and when it does it will be the Contractor who allowed or promoted the scheme, not the provider, who



---

# Courts Reports - It has been a turbulent few months for decisions regarding both employment status and holiday pay - some helpful - some not.

## A D Bly

A previously successful holiday pay claim by a labourer overturned at Employment Appeal Tribunal.  
(UKEAT/0243/05/MAA)

**Younis v Trans Global** On appeal, despite there being no obligation to provide work and a manifestly false contract being submitted by the "business consultant" claimant, he was still judged to be an employee.  
(UKEAT/0504/05)

## Wilson v Circular Distributors

"Holiday relief" manager wins unfair dismissal case despite the lack of obligation by "the employer" to provide work.  
(EAT2006 IRLR38)

## Bacica v Muir

A tribunal decision overturned on Appeal, despite personal service, a painter was in business on his own account and not an employee  
(EAT2006 IRLR 35)

## "Rolled up Holiday Pay"

Another baffling decision by the European Courts! Rolling up holiday pay within the hourly rate, found illegal in Scotland but legal in England was found to be illegal by the ECJ. They then however went on to make a nonsense of the situation by saying that any such illegal "rolled up" enhancement could be offset against any holiday pay awarded by a tribunal!  
(ECJ C131/04 & C257/04)

---

### None of above cases or the issues addressed in this newsletter affect EBS clients.

EBS is a revenue approved, CIS6 holding, labour only subcontractor. EBS sub-contractors are contracted directly to EBS, are fully taxed under the appropriate government sanctioned scheme, and their contracts expressly preclude the formation of any employment relationship with our clients.

# STOP PRESS

Budget Report  
22 March 2006

**The Chancellor has issued a specific warning to those who "incorporate to avoid tax". He has stated his intention to "consult on action to tackle disguised employment through managed service companies".**

Anyone considering using Composite companies should read the Budget report paragraphs 5.84 to 5.86

---

### Favourite quote

*"No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shove into his stores"*

Law Lord President Lord Clyde (1929)



**CONSTRUCTIVE LABOUR SOLUTIONS**

tel: 0845 257 3327  
fax: 01245 359 500  
email: [info@ebs.co.uk](mailto:info@ebs.co.uk)

---

NB: It must be noted that while our literature has been prepared with the advice of solicitors and accountants it does not, in itself, constitute legal advice. You are advised to seek professional legal advice before pursuing any course of action.