



Briefing

Revenue cave-in on New CIS...

Under heavy pressure from the Industry HMCR have conceded that full implementation of the new CIS should be delayed until April 2007

...but partial implementation is still going ahead

70 new advisors, and 2 new tools to "help" with status determination

...and additional staff are being tasked to Status Review.

180 new (350 Total) CIS Compliance officers are to concentrate exclusively on Status Review



Holiday blues

Contractor faces
£1M Holiday Pay
claim from Subbies

Minimum Wage

Reminder –
this increased again
in October

Pension developments

Another Stealth Tax on
Employment looming?

HMCR bow to industry

The biggest news of the last month was the surprise announcement on 19th Oct, slipped quietly into a parliamentary answer by John Healey (Financial Secretary to the Treasury) that "New CIS" would be delayed until 2007. After stating how "closely the Industry was working with HMCR" he went on to say "the Government have also agreed with the industry to extend from April 2006 to April 2007 the period for implementation of the final elements of the new CIS". What was not generally reported was that this concession was not willingly given - nor the reason for the apparent u-turn.

Despite the spin, this was not a harmonious agreement between the parties, but rather a concession grudgingly given as the result of formidable pressure from construction industries Joint Taxation Committee (JTC).

On 12 Oct HMCR announced "the programme would continue to get priority and attention" to ensure implementation from April 2006. Immediately on 13 Oct JTC responded by announcing it had withdrawn from negotiations because of HMCR's refusal to delay.

Liz Bridge (Director of Tax at the Construction Confederation) explained saying "the industry has pulled out of the negotiations because the Revenue is simply not listening to us. We need to impress upon the minister and civil servants just how serious the situation is.

Be in no doubt, we are heading for crisis. If the Revenue insists on going down this road towards an unworkable date, then they travel alone. There is no way we are agreeing to statements

being put out that the arrangements for the scheme have been agreed with industry "stakeholders". We are no longer "stakeholders", "clients", "customers" or any other buzzwords they want to attach to us. We are all "taxpayers" – and very angry taxpayers at that!" Clear words that thankfully achieved a clear result!

...partial implementation is still going ahead

It was not however all good news. While the onerous requirement for monthly reporting has receded the Revenue's has not just dropped the project for 18 months. Their "employment status tool" (ESI) and "tax treatment qualification tool" (TTQT) are still being rolled out, and that an additional 70 "telephone advisors" have started work this month to "provide help with employment status".

Accordingly, for companies not using EBS, we would advise that "best practice" is to use these tools, or an equivalent, to show they have indeed given proper consideration to status. Failure to demonstrate this consideration could lay the contractor open to attack (with potentially ruinous consequences).

pressure on CIS



...and the additional staff recruited for "New CIS" are being re-tasked

The sting in the tale is that Mr Healey (for the Treasury) also went on to state that the Revenue intend to use this period of delay to *"step up its*

level of advice and compliance activity within the industry".

This "step-up" is, in addition to the hard-line approach, taken over the last 12 months and the

thousands of letters already written to Contractors and Sub-contractors questioning the legitimacy of their Self-Employment arrangements. We have since learnt that...



...having recruited an extra 180 CIS Compliance Officers to deal with new CIS (up to 350 from 170), and needing to find work for them during the delay, the Revenue has confirmed they have now been arranged into 45 targeted teams (up from 11) and will focus exclusively on sub-contractor employment status for the next 18 months.

Accordingly any Contractors who have not had a professional review of their sub-contractor arrangements is urged to do so immediately.

No appeal allowed on Holiday Pay case

More worrying news for Contractors (not using EBS) is the case of *Cochrane v AD Bly Limited*. In this case (first heard in Dec 2004) *Cochrane*, a self-employed labourer, while losing his claim for "unfair dismissal", was still awarded £4,500 in backdated holiday pay as he was held to be a "worker" within the meaning of the

Working Time Regulations 1998. Appealing, A D Bly alleged this decision was wrong in law, however Mr Justice Silber has refused even to hear an appeal stating that - *"the tribunal was entitled to conclude that Cochrane worked under a contract where the individual undertakes to do or personally perform any work or service and the appeal*

therefore had no reasonable prospect of success".

His decision is based on the precedents set by *Byrne Bros v Baird*, and *Redrow Homes v Wright* (copies available on request).

It is estimated this may lead to additional "workers" claims against A D Bly for up to £1 million in unpaid holiday pay.

Employer's pension contributions to become mandatory!

In his first year as Chancellor Mr Brown announced a £5 billion annual tax on pensions. While this caused no immediate pain it has clearly added to the country's "pension black hole" currently estimated to be between £60 billion and £200 billion.

EBS has long cautioned that Stakeholder Pensions made no sense unless as Trojan Horse for another stealth tax on employers. There could be little reason for making availability compulsory

unless the Government's real intention was to make "employers contributions" also compulsory in the future. We have always estimated 8% by the end of the decade.

It therefore comes as little surprise that the "Pension Review Commission" report, leaked last week, suggests just such a tax (starting at 3%) to fill the funding gap. We will undoubtedly be writing more on this in future issues; watch this space!

Minimum Wage increased from Oct

All clients should be aware that from 1 Oct 2005 the minimum wage for adults (22 and over) rose to £5.05 per hour, and that the development rate (18-21 inclusive) rose to £4.25 (NB: No minimum wage restrictions apply to any staff supplied by EBS).



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