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Sealand Systems Ltd and IR35

A note to clients from the directors

Definitions

Sealand, we or our refers to Sealand Systems Ltd. **Client and you** refers to the end-user of our services and not any agency or intermediary through whom the services may have been procured or negotiated. **Contract** means any agreement, whether verbal or written, under which Sealand provides services to Client.

Background

At the turn of the century an abuse was identified in which some employers had persuaded employees to cease regular employment but continue in the same job, working through “services companies”. The incentive was the taxation advantage of working through a limited company. The employer was liberated from responsibility for tax, National Insurance, sickness benefit etc. The worker no longer benefited from employment rights, not the least being security of tenure and entitlement to redundancy pay.

To address this abuse, the IR35 measures were put into place providing that, in these cases which were described as, “disguised employment”, company income can be taxed as if it is personal income, and liable to tax at the personal rate.

Implementation

To police the regulations HMRC must identify services companies that are not genuine. HMRC intimated that in assessing whether work done by an employee of a services company is subject to the IR35 rules (HMRC actually uses the pejorative phrase “caught by”), it will rely on existing definitions and case law that identify whether a worker is “self-employed”.

How this affects Sealand Systems Ltd

This obliges us to protect Sealand and Client by keeping documentation that disproves any allegation that our consultant, who is employed by Sealand, is in fact a “disguised employee” of Client. To this end, several factors are important, and we are very grateful for our clients' help with clarifying the proper nature of our contracts in all respects. Some of the points below amplify items found in our Terms of Business, published separately, which provide the default basis for all our contracts.

Sealand only accepts contracts to supply services to clients. We would request that clients remind their HR departments that our employee is not their employee.

Privileges

Our staff are not entitled to any of the rights of Clients' employees. For example, we offer our clients flexibility by not insisting on security of tenure or long notice periods; we are normally willing to accept changes (including termination of the contract) at short notice if it is in Client's interest. Our staff do not expect access to any privileges made available to Clients' employees; for example if invited to use any catering or recreation facilities, they may accept as guests but not as of right.

Relationships

Where a contract involves attendance at Client's offices we are very pleased to adhere to the client's practices and office hours; but this is a practical and courteous part of our service and not the responsibility of an employee. By being responsive to our clients' requirements in this way, we maintain good relationships and have a good record of repeat business.

We take “instructions” from clients in the same way as a solicitor or any other professional, and in following Clients' instructions our consultant is not under the “control” of the client; that is, the client stipulates the required outcome, and relies on our consultant to carry out the work according to his specialist knowledge and skill. It is for this knowledge and skill that Sealand's services are engaged, and this is reflected in our fee, which is usually more than would be paid to a supervised employee.

Responsibility and contract management

Our consultant is contractually responsible first to his employer, Sealand, and Sealand is responsible to the client. The consultant therefore has a professional responsibility to Client as our employee, not Client's.

One of our core values is to fit in with our client's needs. For example, we discuss and inform the client in good time when the consultant might not be available for business or personal reasons. Such negotiations between our businesses should not be construed as the consultant, as an individual, asking an employer's permission. But since our business depends on building relationships of availability and trust with our clients, the service that we offer tends to be more flexible than that of an employee who can assert rights.

Equipment

We use our own equipment whenever possible. We support a reasonable investment in equipment and tools and this includes a portable PC, well specified for standard office and network support use, and also equipment in our office which is sometimes used to support contract activities for clients. We provide the consultant with the software necessary to support the contract, and within reasonable limits we absorb the cost of this provision.

We recognise that some companies' security policies do not permit connection of foreign equipment to their networks. In these cases we are happy to use client's equipment.

Representation

We appreciate clients' needs to present a consistent corporate face to their customers. Therefore, if Sealand acts to represent a client to its customers, for example while implementing an installation project on a customer's site, we permit our consultant to present business cards in the name of the client, providing that the relationship must be described as “External Consultant” or an equivalent term. Representing our clients is a service we provide to them, and not an acceptance of an implied contract of employment, in any disguise.