

6 February 2013

**Response of the Institute of Interim Management  
to the Consultation concerning the  
Draft Clauses & Explanatory Notes for Finance Bill 2013**

**1 Introduction**

- 1.1 This response is from the [Institute of Interim Management](#) (“ the Institute” or “the IIM”) and addresses solely the part of the above consultation dealing with proposed changes to section 49 Income Tax Earnings and Pensions Act 2003 (“ITEPA”) to extend the application of the intermediaries legislation (known as “IR35”) to office-holders.
- 1.2 It is the understanding of the Institute that HM Revenue & Customs (“HMRC”) regards these changes as a minor technical tidying up which it does not expect will have a significant impact on the way in which IR35 affects individuals operating through intermediaries. The Institute however believes that the proposals as drafted may have unintended consequences, and we therefore welcome the opportunity to comment on this draft legislation.
- 1.3 This response comprises the following:
1. Introduction
  2. Key Points
  3. Review of the Proposals
  4. Potential Impact of the Proposals
  5. Recommendations

Appendix 1: Background to the Institute of Interim Management

Appendix 2: About Interim Management

Appendix 3: Data from the IIM’s 2012 survey

**2 Key Points**

- 2.1 If ‘office-holder’ is added as proposed to section 49 ITEPA, the meaning of ‘office’ will be governed by the wording of section 5(3) ITEPA. This section in effect defines an office as any job in an organisation which is not specifically and exclusively for a named holder, and which can be filled by successive holders.

- 2.2 This definition is unnecessarily wide, and may unintentionally bring many workers into the scope of IR35. The definition should be amended to make it narrower in application, applying only to senior officials in an organisation, and should be further clarified by guidance notes if necessary.
- 2.3 Senior professional Interim managers and executives (“IMs”) frequently are obliged to accept appointment as a director and/or company secretary to give them the appropriate tools to enable them to carry out the project required of them. However, such projects are outside ‘business as usual’, and therefore should also be outside the scope of the ‘office’ which goes with the title of director and/or company secretary. This should be made clear in the proposed legislation, and should be further clarified by guidance notes if necessary.
- 2.4 If not amended and clarified, the proposals have the potential to inflict a significant impact on the business model of IMs. The effect will be to damage materially a truly world-leading sector of British industry (and potentially favour foreign-based competition in our home market).
- 2.5 The Institute believes there is a serious risk that senior IMs will, for all practical purposes, withdraw from the top end of the UK IM market, thus depriving all sectors of the economy – public, private, and not-for-profit – of their considerable skills and experience at a time when the Government should be seeking growth and recovery.

### **3 Review of the proposals**

- 3.1 The intention of the proposal is to amend section 49(1)(c) ITEPA such that, if a person providing personal services to a client through an intermediary would be deemed an office-holder of that client, or the person is actually an office-holder of the client and the services provided by the intermediary relate to that office, then the IR35 rules will apply.
- 3.2 The question therefore arises as to what ‘office-holder’ means for the purposes of section 49 ITEPA.
- 3.3 Section 49 ITEPA falls within Part 2 of that Act, which is headed ‘Employment Income: charge to tax’. Section 5(3) ITEPA says ‘In the employment income Parts “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders’.
- 3.4 As a result of the cross-reference to ‘employment income’ in both wordings, the introduction of the term ‘office-holder’ into section 49 ITEPA means therefore that the definition in section 5(3) must apply to it, rather than any other definition provided by other statute or case law.
- 3.5 In particular, the leading case in this area as to what ‘office’ means is *Edwards v Clinch* 1981, and the judgements of both Buckley LJ and Lord Wilberforce at their separate hearings contain comments which provide a flavour of their understanding of what an ‘office’ is – for example, that it should “in some degree possess a public character”, “owe its existence to some constituent instrument”, and be distinguishable from “employment”, “profession”, “trade” or “vocation”.
- 3.6 Despite the fact that this case predates ITEPA, the Parliamentary draftsman chose not to reflect those thoughts in section 5(3). It is questionable therefore whether

Edwards v Clinch provides even a persuasive precedent as to the interpretation of 'office' for section 5(3).

- 3.7 As no further definitions are provided in ITEPA to clarify its wording, the words in section 5(3) must therefore carry their usual dictionary definition. In this context therefore, based on the Oxford English Dictionary 'position' means any job or paid employment, and would appear to cover any role in an organisation, from the most junior employee up to the chief executive.
- 3.8 Section 5(3) goes on to qualify this broad definition of "position" as one "which has an existence independent of the person who holds it and may be filled by successive holders". However, this wording also is not clarified by further definition in ITEPA, and on a normal reading, does not appear to help to restrict the breadth of application.
- 3.9 Except for a role created for a named person, it is difficult to imagine any job in an organisation which is not independent of the person holding it and which is not capable of being filled by successive holders – neither the most junior workers nor the chief executive are excluded by this wording, and thus both would appear to be office-holders within the meaning of section 5(3).
- 3.10 The definition therefore appears excessively broad, and does not represent what is normally understood as an 'office'.
- 3.11 On a separate issue, the explanatory notes accompanying the draft wording for section 49 ITEPA state:

"The extension applies both where the worker is named as an office holder of the client but paid through an intermediary and where the intermediary (third party) is named as the office holder of the client."

- 3.12 This does not appear to be borne out by the proposed wording introduced into section 49(1)(c). Subsections (i) and (ii) both refer to the worker being an office-holder, and there is no mention of the intermediary being the office-holder.

#### **4 Potential Impact of the Proposals**

- 4.1 The Institute is concerned that, because of the way Interim executives work, they will automatically be considered to be office-holders by virtue of section 5(3) and therefore within the scope of IR35.
- 4.2 You will be aware that the Institute wrote to you on 16 August 2012 in response to the consultation on the Taxation of Controlling Persons. That letter included a detailed description of the nature of Interim management, and this has been included in this letter as Appendix B.
- 4.3 As is explained in Appendix B, IMs operate through commercial contracts and are not employees of their clients. This latter point is reinforced because, in serving their clients, they:
- are engaged on project-based activities
  - operate in circumstances which are not 'business-as-usual'. The objective may include achieving major transformational change, turnaround, or simply keeping a business afloat in a crisis situation so that an orderly sale can be achieved and jobs protected

- provide specialist skills and knowledge on an outsourced basis as part of temporary, but high impact, interventions
  - frequently advise and decide what needs to be done and take responsibility for implementing those decisions
  - are at financial risk for the cost of rectification of errors arising from that advice or implementation, and carry professional indemnity insurance to ensure they have the funds to do so
  - do not enjoy the usual benefits and protections of employment
  - stand apart from the client's staff, and are perceived by the staff as 'different'
  - deliver outcomes which result in their own 'redundancy', requiring them to bear the sales and marketing costs of finding their next assignment, and face the real financial risk that this may take some time
  - operate through their own intermediary personal company so as to protect the client from taxation risks associated with a challenge to their self-employment status.
- 4.4 By acting on this basis, professional IMs are a key part of the UK's flexible economy, particularly adding value to organisations in both public and private sectors. The application of this kind of specialised skill set is, by definition, a temporary requirement of the client organisation and not relevant to a permanent role.
- 4.5 Depending on the circumstances of the client and the assignment, IMs may have to accept formal appointment as director for the duration of the assignment. However, the purpose of such appointment is to provide the IM with the necessary authority to achieve the required outcome – arguably, whilst the title of director may be conferred by the appointment, the fact that circumstances surrounding the appointment are not business-as-usual suggests that the role undertaken is not one of an office-holder.
- 4.6 The Institute's letter dated 16 August 2012 took the opportunity to report an extract from the results of the IIM 2012 survey, which had asked inter alia whether the IMs who responded thought that they could be affected by the consultation proposals on the taxation of controlling persons.
- 4.7 For the individuals who could have been affected, the impact in taxation terms of the controlling persons proposals were broadly similar to the current proposals on office-holders, in that under both proposals the taxation effect would be to tax them as employees.
- 4.8 The IIM has not rerun the survey to gauge the IM community's reaction to the current proposals, but given that the taxation effect is broadly the same under both proposals, it believes that the data obtained from the 2012 survey is probably a fair reflection of the likely outcome if the survey were to be rerun now with the revised question.
- 4.9 The respondents to the 2012 survey (see Appendix 3) fell into two camps:
- 39% would accept the proposals with varying degrees of reluctance, but 97% of this group would seek to increase their day rate charges to compensate for the reduction in net of tax income. It will be appreciated that senior IMs are leaders in their field and may therefore be able to achieve this goal, but it will increase costs for engaging organisations, and reduce the Corporation Tax take from the private sector
  - 61% would take steps to mitigate the consequences of the proposals, with

64% of this group opting to leave Interim Management or seek assignments abroad.

- 4.10 The skills of this later group to deliver high impact interventions will be lost to the British economy at a time when such skills should be at a premium to bring growth in GDP and improved efficiency in the public sector.
- 4.11 Overseas working is common amongst IMs – UK qualifications and the 'British' Interim manager 'brand' is prized highly abroad, and demand for UK Interims overseas is strong because international firms need specialist skills on a temporary basis when they can't resource projects locally.

## **5 Recommendations**

- 5.1 These proposals introduce unnecessary complications into what is already a difficult area, and the Institute does not believe that there is a need for section 49 to be amended in line with these proposals.
- 5.2 However, if intention is to continue with the proposals, the Institute is of the view that the definition in section 5(3) ITEPA is unnecessarily wide, and may unintentionally bring many workers into the scope of IR35. The definition should be amended to make it narrower in application, applying only to senior officials in an organisation performing routine 'business as usual' tasks associated with their 'office'. The definition should be further clarified by guidance notes if necessary.
- 5.3 The wording of the two subsections of the proposed paragraph (c) needs to be reviewed if the intention is that IR35 is to be extended to situations where the intermediary is the office-holder.
- 5.4 **Where IMs are obliged to accept appointment as a director to give them the appropriate authority to enable them to carry out project-based work, such projects should be recognised as being outside the scope of the routine 'business as usual' tasks associated with the 'office' which goes with the title of director. If the IM's work is outside the scope of his 'office' as director, they should be outside the scope of IR35.**
- 5.5 This could perhaps be done so that 'office' is defined in section 5(3) as an established permanent position in such a way that IMs are excluded, or by defining the term 'office-holder' for the purposes of section 49 to exclude those on finite project-based assignments where there is no mutuality of obligation between IM and client.
- 5.6 This should be made clear in the proposed legislation, and should be further clarified by guidance notes if necessary.
- 5.7 The Institute would be pleased to assist in the development and/or review of the guidance notes referred to above, if this would be helpful to HMRC.

If you have any queries on the foregoing, please do not hesitate to contact me. I would be very pleased to meet with you further as necessary

I should also be pleased if you would add my contact details to your mailing list for future consultations concerning IR35. If I am already in your records, please note the amended email address.

I should be grateful if you would please acknowledge this reply.

Yours sincerely

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## **BACKGROUND TO THE INSTITUTE OF INTERIM MANAGEMENT**

- 1.1 The Institute is a membership organisation for IMs. It was established in 2001, with the principal aims of establishing quality standards and best practice for its members. All members undergo an assessment process on joining, are expected to continue their professional development throughout their membership, and are required to abide by a Code of Conduct regulating the way in which they source and fulfil assignments on behalf of their clients.
- 1.2 The membership is drawn mainly from IMs resident in the UK, although their assignments can take them world-wide. There are also overseas members drawn principally from other EU Member States, and a growing number in Canada and the Far East.
- 1.3 In addition to its website ([www.iim.org.uk](http://www.iim.org.uk)), the Institute has a significant web presence through its on-line LinkedIn group, [Interim Management IIM](#). The group is open to all-comers with an involvement or interest in Interim management, and therefore comprises a cross-section of all participants in the industry.
- 1.4 The on-line group currently has just over 7,600 members, made up primarily of IMs (76%) and niche Employment Businesses (“Providers”) specialising in placing IMs with clients (11%). The remaining 13% consist of clients, management consultants and others, including people considering joining the IM profession. The on-line group is currently the largest group globally dedicated to the Interim management industry.
- 1.5 The IIM has for many years maintained relationships with sister organisations in The Netherlands and Germany. It has recently been approached by similar newly formed bodies in several eastern European countries, to provide knowledge transfer and capacity building, and is actively engaged in this role in Poland.
- 1.6 The Institute conducts annual surveys of the Interim industry, and its 2012 survey conducted over June and July closed with 2,553 replies overall, of which 2,013 replies were from IMs. The conduct of the survey is overseen by independent external scrutineers.

## **ABOUT INTERIM MANAGEMENT**

### **Background**

- 2.1 Interim management is a proven and highly effective way for organisations to utilise the skills of independent senior and experienced professionals. There are estimated to be up to 10,000 IMs in the UK providing their services on a freelance basis across virtually every sector and business function at businesses and organisations in the private, public and not-for-profit sectors. They typically manage, direct, or control, a project, or a part (or all) of an organisation for a finite period, taking decisions and ensuring the implementation and management of those decisions.
- 2.2 It is difficult to get an accurate view of the size of the UK Interim management market. The fragmented nature of the industry (the absence of any dominant suppliers, intermediaries, brands, or customers) makes it difficult to plot statistically. In addition, some IMs never seek/obtain assignments through recognised Providers, and their activities may therefore go unrecorded in any statistical compilation.
- 2.3 However, currently the market is estimated to be in the order of £1.5 billion (source: the Interim Management Association's Ipsos MORI quarterly survey). (The Interim Management Association (IMA) is a trade association for Providers and is affiliated to the Recruitment and Employment Confederation.)
- 2.4 The UK is the undoubted leader in the use of IMs in Europe – at one time, the market in the other EU Member States was estimated to be in aggregate the same as the UK on its own. Interim management has long been an established feature in The Netherlands and Belgium. Recently, given changes in employment legislation across the EU, the Interim management market in other EU countries is considered to be growing rapidly, particularly in Germany, Poland and France.

### **What are IMs?**

- 2.5 IMs come from a variety of backgrounds but are mainly experienced business executives, frequently with a professional qualification, who deliberately choose to work as independent freelance suppliers of their specific management skills, knowledge and experience to fee paying clients, either for a period of time or for defined scopes of work. IMs are not temporary employees, but are professionals in business on their own account, accepting the associated risks (see later) and rewards which being in business implies.
- 2.6 IMs are different from management consultants, who limit themselves to gathering information, giving advice and guidance, and recommending action. Whilst IMs can and usually do provide advice and develop solutions, and, indeed, often play a key role in mentoring and coaching the client's staff, their strength and benefit lies in their independent decision making freed from office politics, and skill in delivering results-driven implementation.
- 2.7 Traditionally, IMs were taken on as a 'distress purchase', to cover a sudden and unexpected senior level departure of a member of staff and to buy time to recruit a permanent replacement. Whilst IMs are still used to manage business functions to fill a short term skills gap, increasingly user organisations have come to understand the skills and experience that IMs bring and are now making much more use of IMs on a planned basis to cover strategic and/or tactical needs. Examples include:

- Managing the organisation through a major structural change – for example, a merger, restructuring or company disposal
- Transforming an organisation's culture
- Guiding businesses during a start-up or a phase of rapid growth through development or diversification
- Leading special projects
- Improving profitability and efficiency by implementing cost and staff reductions
- Turning around businesses and organisations in crisis.

### **Why are IMs used?**

#### **2.8 *Skills and Experience***

The project-based assignment types listed above are complex and outside the 'business-as-usual' environment. IMs are usually appropriately overqualified for the task involved, and because of their experiences at a variety of clients, often have a broader view and capability than the client's permanent staff.

#### **2.9 *Immediate Impact***

Because of their skills and experience, IMs 'hit the ground running'. This is a hackneyed phrase, but it describes very well that the typical IM spends no more than the first week of a new assignment acclimatising to the client, building relationships, and verifying that their terms of reference actually reflect what needs to be done; and from the start of the second week, the IM should be making a difference. This contrasts with permanent employees, who are said to enjoy a 'first 100 days' honeymoon period to settle in.

#### **2.10 *Availability***

IMs are usually available to start at short notice, within a few days of the original request. A permanent employee, particularly at a senior level, can take several months to get in post, not only because of the recruitment process itself, but also because the employee may have to serve out a period of notice or 'gardening leave'.

#### **2.11 *Ease of Disengagement***

Because IMs operate under a contract for services (company law) rather than a contract of employment (employment law), assignments can be terminated quickly and cleanly, without a claim for wrongful dismissal and a lengthy and expensive hearing at an Employment Tribunal. Moreover, the IM is not tied to any one client by long notice periods, suiting the independent 'rapid response' nature of the IM's work.

#### **2.12 *Value for Money***

For an engaging organisation, the cost of taking on a senior executive as a permanent employee is more than just the 'headline' salary. All other indirect costs of employment must be added in - bonuses, holiday pay, sick pay, parental pay/leave, employer National Insurance Contributions ("NICS"), pension, health insurance and a company car – which may add as much as 70% on top.

2.13 These costs are already taken into account within the IM's day rate, along with the other costs of running their business.

#### **2.14 *Independence***

IMs offer independent advice and voice controversial opinions about existing operational structures or management practices that a normal staff member would

not be able to, because office politics, or potential damage to career or salary prospects, get in the way. The IIM's Code of Conduct reinforces the need for independence and objectivity.

### **How do IMs operate, and why?**

- 2.15 IMs find their assignments in a variety of ways. There are no hard and fast figures, but it is thought that, as a rule of thumb, about 60% of assignments are found by the IMs themselves through contacts in their own personal networks. The remaining 40% of assignments are sourced through Providers, and through other intermediaries such as banks, venture capitalists, law firms, and accountants.

However, there is anecdotal evidence to suggest that corporate governance requirements dictate that assignments at the most senior levels are more likely to be placed through Providers. This is likely to be true particularly in the public sector, where procurement procedures are more constrained than in either of the other sectors.

2.16 *Contractual Basis*

IMs operate through contracts for services (commercial contracts), rather than contracts of service (employment). IMs form part of (or possibly even lead) the client's management team, and expect to have delegated and to exercise the appropriate line authority required to fulfil their role (including at 'C' level in the public sector). Depending on the circumstances of the client and the assignment, this can include becoming an officer of the company through formal appointment as director and/or company secretary for the duration of the assignment.

- 2.17 It is nevertheless important to understand that IMs are not employees of the client. As mentioned earlier, IMs are typically operating in circumstances which are not 'business-as-usual'. They are usually providing specialist skills and knowledge on an outsourced basis. It is essential that they stand apart from the client's staff, and are perceived by the staff as 'different'. If this is not possible, their ability to provide independent advice and voice controversial opinions is jeopardised, and the growth and development of the organisation will be hindered.

- 2.18 Where the IM finds his/her assignment through their own network or through an intermediary which is not a Provider, the IM will negotiate the contract for services direct with the client. Where a Provider acts as the intermediary, there are two models:

- Usually there will be an 'upper' contract between client and Provider, and a 'lower' contract between Provider and the IM's legal entity. The terms of the two contracts should mirror one another in all material respects (save as to the day-rate fee level) but do not necessarily do so.
- Less frequently but becoming more common, there will be no contract of any sort between the Provider and the IM's personal service company ("PSC") or other legal entity. The client will contract direct with the IM's PSC or other legal entity and will pay the IM's day-rate fees direct; the client will have a separate contract with the Provider for its 'introducer's' fees.

2.19 *Business and Financial Risks*

From a legal standpoint, IMs operate through a variety of legal structures. The Institute's 2012 survey data suggest that the vast majority (90%) of IMs work

through their own PSCs. About 5% of IMs operate as sole traders or in partnership, including limited liability partnership (“LLP”), but these tend to be IMs drawn from the accounting and similar professions, where such legal structures are commonplace for all practitioners, not just IMs. A further 5% operate through umbrella companies.

- 2.20 IMs are not employees of the organisations to which they provide their services. If an employee makes an error which causes loss to their employer, the employer bears the loss and any cost of rectification. By contrast, if an IM makes an error, the loss and cost of rectification is their responsibility, increasing their financial risk compared with an employee.
- 2.21 Typically IMs have to determine what needs to be done, in the same way and with the same risks as a management consultancy firm if they get the advice wrong to the detriment of the organisation. Having decided what needs to be done, they are responsible for implementation with further financial risks involved, both as to negligence and breach of contract.
- 2.22 IMs therefore understandably protect themselves by operating through the corporate structures mentioned above. In addition, they usually seek further protection through professional indemnity insurance (“PII”). Most clients in both the public, private and not-for-profit sectors insist on such cover as a term of the contract for services, but senior IMs carry it anyway, even if not contractually required.
- 2.23 IMs are also not employees because they do not approach work in the same way. IMs are paid by day rate to their PSC, reflecting the fact that they do not enjoy the benefits and protections of employment. Furthermore, they have no interest in becoming permanent employees – indeed, their business model requires the delivery of outcomes, so that, in effect, an IM’s *raison d’être* is to achieve their own ‘redundancy’ – not the behaviour of a typical employee seeking permanency of employment.
- 2.24 In addition, having made themselves ‘redundant’, the IM must then bear the sales and marketing costs of finding their next assignment, and face the real financial risk that this may take some time.
- 2.25 The Institute’s 2012 survey shows that the average assignment lasts 7.3 months, 69% of assignments are completed in less than 12 months, and 93% in less than 24 months. In the last 12 months, the IMs who responded averaged only 155 billable days out of approximately 230 workable days (after allowing for bank and other holidays), and the average time between one assignment ending and the next starting was between two and three months.
- 2.26 In other words, the typical IM’s life is one of relatively short term assignments, interspersed with significant periods of ‘down time’.
- 2.27 The use of PSCs enables IMs to manage the financial risk of these periods of ‘down time’. The receipts from its invoiced sales will be used by the PSC to meet the expenses of running the IM’s business, which will normally include payment of a salary to the IM on which PAYE and NI is accounted for. The level of salary will be such that reserves are built up, so that, should a period of down time occur, the expenses of the business, including the sales and marketing cost of obtaining the next assignment, can continue to be met. The retention of profits in this way

enables the IM to continue in business and means that they do not claim state benefits.

2.28 *Taxation Risk*

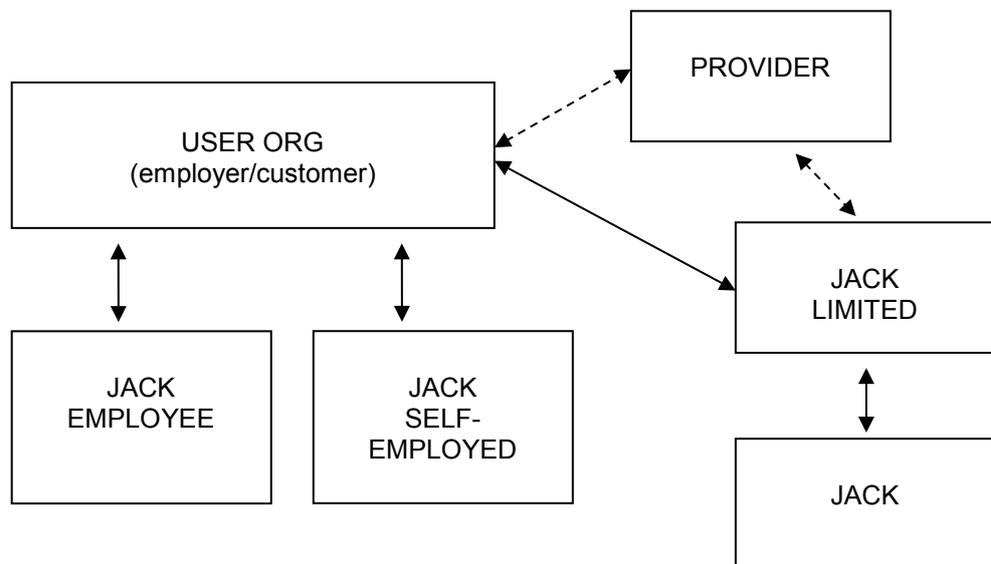
Both the consultation and the Alexander review to a greater or lesser extent paint all 'off-payroll' workers as tax avoiders because of their use of PSCs. The consultation suggests at paragraph 2.9 that a main 'driver' for engaging people who operate through a PSC is the cost savings generated for the engaging business because it is not required to pay employer NICs, or other benefits such as holiday/sick pay, pension etc.

2.29 But this is not the true tax 'driver' encouraging IMs to use PSCs as an intermediary to contract with their clients. The correct reason is to do with managing risk to the client, and as a practice, the use of a PSC has built up and become embedded in the years since Interim management began in earnest in the 1980s. The practice is reinforced by the Provider community, who will almost always insist that the IMs they place at clients operate through PSCs.

2.30 As you will appreciate, an organisation can contract with an individual to utilise their skill and experience in a variety of ways, depending on the nature of the task and how the individual chooses to make their talents available:

- Employment (contract of service)
- Self-employment (contract for services)
- Through a legal entity (contract for services) – typically a limited company PSC.

2.31 These alternatives may be illustrated graphically as follows:



2.32 As mentioned, IMs operate on a freelance basis, and regard themselves as self-employed. If Jack contracts with User Org on a self-employed basis, he must pay the fixed element of NICs on a monthly basis, but a significant proportion of his tax and profits-linked NICs are paid in arrears. There is greater flexibility in the expenses which may be deducted compared with being an employee, and (within

set rules) losses can be carried forward and back to offset the profits of other years. However, as with employment, the full amount of income is subject to personal taxation at the appropriate rates.

- 2.33 The self-employment tax regime is more favourable to Jack as a taxpayer than employment, and HMRC may challenge Jack's status as self-employed. If the challenge is successful in establishing that the relationship between Jack and User Org is that of employee/employer rather than self-employed/customer, it will retrospectively claim PAYE and NICs from User Org, treating the amounts invoiced to, and paid by User Org as Jack's salary.
- 2.34 Because any decision on Jack's employment status is likely to be determined some considerable time after the invoices were paid to him gross by User Org, he may already have accounted for tax and NICs on the income as a self-employed taxpayer. Following the decision in *Demibourne Ltd v HMRC (2006)*, HMRC could not offset any tax/NICs paid by Jack to reduce the claim on User Org for the PAYE and NICs, and HMRC was obliged to refund to Jack any tax/NICs already paid by him. This would leave User Org out of pocket, and with the unenviable task of asking Jack (if it could still contact him) to hand over his refund to compensate.
- 2.35 This unsatisfactory situation has now been rectified by the Income Tax (PAYE)(Amendment) Regulations 2008 (with corresponding National Insurance regulations). These allow HMRC now to have discretion to deduct sums already paid for tax/NICs by Jack from a claim for retrospective payments from User Org as "employer".
- 2.36 Whilst the regulations have restored common sense, the fact that Jack's self-employment status may be challenged retrospectively introduces an element of risk into his business relationship with User Org. Most Interims remove the risk of retrospective claims against their client by using a PSC through which to provide their services – any challenge to the IM's self-employed status would be under the IR35 rules, and any liability falls on the PSC.

**DATA FROM THE IIM'S 2012 SURVEY**

3.1 All IMs responding to the Institute's 2012 survey were asked whether or not they thought they could be affected by the consultation proposals on the taxation of controlling persons. Of the 2,013 IMs who responded, some 45% said they could be thought of as 'controlling persons'.

3.2 This smaller group was then asked a further question:

***How do you react to being taxed as an 'employee'?***

61% would not accept assignments on that basis. 12% would be happy to do so, and the remaining 27% would do so reluctantly.

3.3 Depending on the answer to the first question, there was then a further question:

Either

***If you accept being taxed as an 'employee', what else will you do?***

97% would seek to increase their day rate charges to compensate for the reduction in net of tax income. It will be appreciated that senior IMs are leaders in their field and may therefore be able to achieve this goal, but this will increase costs for engaging organisations, and reduce the Corporation Tax take from the private sector.

Or

***If you do not accept being taxed as an 'employee', what else will you do?***

- 34% would leave Interim management and move to management consultancy
- 32% would move abroad and practise Interim management there
- 21% would remain in Interim management, but only accept non-controlling person roles
- 13% said they would leave Interim management and return to permanent employment.