

Employment v Self Employment

We regularly report on cases where the courts have made findings of employment status despite workers having entered into arrangements labelled as self employment. A recent case upheld the opposite conclusion, namely that the arrangement between a director of a company engaged to provide services to a client was properly designated as self employed. HMRC had levied demands for PAYE tax and national insurance contributions on the basis that the individual supplied by his company to the client would have been an employee had he been directly engaged.

However the court found that had there been a contract between the individual and the client to whom his company provided his services the terms would have included payment at a specified hourly rate with no payment for holiday, sickness or other absence, that the individual was not entitled to any pension contribution, benefits in kind or other incentive arrangements that might be provided to employees and that he was entitled to undertake assignments for other clients as long as there was no conflict of interest. Further if the individual was not available for any reason he was able to propose a substitute with comparable skills, there was no provision for training or appraisal, any grievance or similar employee rights procedures and the individual had to provide his own insurance cover and was only paid the hours he worked.

In all these circumstances the court inferred a contract for services and not an employment contract. It found that the individual had been hired for his expertise to be part of a team and that the level of control and supervision afforded by the employer did not go beyond what would be expected for an independent contractor. Further the court found that the individual was in business on his own account and took financial risk in the course of that business.

The case provides a useful checklist of the factors that will be taken into account to determine employment status. However cases are fact sensitive and if there is any doubt about legal status, advice should be sought.

Primary Path Ltd v Revenue & Customs Commissioners (TC01306) (2011)

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