

Review

Employment



A Taxing Tale for Temporary Workers: Overarching Contracts

WHAT IS AN OVERARCHING CONTRACT?

An overarching contract allows temporary workers to link a series of separate assignments into a single ongoing employment with an umbrella company or employment agency. This allows the umbrella company or employment agency to treat each assignment as a temporary place of work (rather than a permanent place of work). The consequence is that, under the temporary workplace rules, the employer can effectively pay the worker for their travel expenses to such temporary workplaces free of income tax and national insurance.

HM REVENUE & CUSTOMS: THE RECEPTION OF OVERARCHING CONTRACTS

Unsurprisingly, the view of HMRC towards overarching contracts has been a sceptical one. However, the publication of nine new pages to HMRC's Employment Status Manual on 5 May 2010 demonstrates the Revenue's keenness to clarify its position on this topic.

THE ESSENCE OF THE NEW ADDITIONS TO HMRC GUIDANCE

The message from HMRC is that the day to day reality must be that of a genuine overarching contract to obtain the desired tax status for the temporary worker.

In order to determine whether a contract is an overarching contract of employment, the new guidance points to the following indicators:

- **Mutual obligation:** there must be a continuous and irreducible minimum of mutual obligation. That irreducible minimum is that the employer must be obliged to pay a wage or other remuneration, and that the worker must be obliged to provide his or her own work or skill. The Guidance lists a number of non-exhaustive instances where this mutuality obligation will be met; these focus on the exclusivity and control elements of the parties' relationship.
- **Guaranteed Minimum Hours:** the Guidance stresses that, by guaranteeing a minimum number of hours in a 12 month period, the relationship between the temporary worker and employer is likely to endure through gaps between assignments and thereby ensure that the mutuality of obligation requirement is preserved. This principle is quantified with a minimum threshold whereby the employer guarantees at least 336 hours of work in any 12 month period; whilst a lower number of hours would not necessarily mean that the contract fails to be an overarching contract of employment, the 336 required hours would satisfy HMRC's requirement in this regard.

THE OVERALL EFFECT OF THE EMPLOYMENT STATUS MANUAL

Whilst some may be concerned that the new additions to the Employment Status Manual will make it more difficult to obtain relief from charges to income tax and NICs, it could be considered that the new provisions provide genuine clarity in place of the previous uncertainty. There is now a clear framework to work from, and the new guidance provides businesses with the ability to draft overarching contracts which will be more likely to withstand scrutiny from HMRC. The prominent emphasis on considering the facts of each particular case should also reassure genuine overarching contract users that the Revenue's framework of acceptable situations is flexible enough to honour the reality of a situation. Of course, the need to ensure documentation is accurately drafted, correctly implemented and the reality of the employment relationship is reflected by the paperwork is paramount.

“...the day to day reality must be that of a genuine overarching contract...”

FURTHER INFORMATION

For further information on this article, or for advice with any of the matters raised, please contact:

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