

For any employer the ramifications of the Upper Tier of the Tax and Chancery Chamber upholding the decision of the First Tier in *Reed Employment PLC –v– HMRC* are worth consideration. You will remember that Reed provided daily travel and subsistence for 500,000 of its temporary workers under a salary sacrifice arrangement over the period 1998-2006. *HMRC* were claiming £158million of unpaid PAYE and NICs over this period on those allowances.

The Tribunal concluded that the salary sacrifice was not effective because in reality no salary was actually sacrificed and no benefit was actually received by the worker (this was all a result of a complex scheme used by *Reed* to deliver the ultimate benefit to themselves). Additionally the Tribunal found that that in reality the temps worked at a series of job-by-job locations and not under an “overarching contract” of employment with the result that the travel expenses were to a permanent workplace and were therefore not deductible and so were in fact part of the worker’s wages which nullified the effect of prior dispensations granted by *HMRC* on the arrangements.

There have been murmurings that this case spells the end for salary sacrifice arrangements.

This is surely not the case and therefore worth a quick blog post! What *Reed* does of course prompt is a sanitation check of any existing salary sacrifice arrangements, ensuring that they are valid as well as a review of any prior PAYE dispensations paying particular attention to the level of disclosure given when the dispensation was originally applied for and approved by *HMRC*. You can imagine the scrutiny that all the paperwork came under before the Tribunal in this case. If anything less than full disclosure of the relevant arrangements was made at the time, *HMRC* may well be able to use this to invalidate its original consent, as in *Reed*.

If a salary sacrifice arrangement is to be effective for tax purposes an employee must actually (contractually) agree to work in the future for the reduced salary (and understand the arrangements which are communicated in a clear manner) and additionally the employer must provide some other identified benefit to the employee in a form that is not readily convertible into cash. As in *Reed* it will not be effective if there is any opportunity for the employee to opt out of the arrangement at will. It is vital that any documentation is robust and that all employees fully understand the implications of the salary sacrifice.

Reed Employment have already expressed disquiet about this decision, accusing *HMRC* of going back on a previous concession, so no doubt we will see an appeal on this £158m question before the end of the summer.

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