

HMRC pursuit of broadcasters suffers another blow with latest IR35 tribunal defeat

HMRC LOSE YET ANOTHER IR35 CASE



TC07230

Appeal number: TC/2017/02499

*INCOME TAX AND NATIONAL INSURANCE – intermediaries legislation
- IR35 - Regulation 6 NIC Regulations - personal service company -whether
contract of employment would exist if services supplied directly to client - no
- appeal allowed*

FIRST-TIER TRIBUNAL
TAX CHAMBER

KICKABOUT PRODUCTIONS LIMITED

Appellant

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS Respondents

HMRC has lost another high profile IR35 tribunal case after radio presenter and comedy writer Paul Hawksbee successfully challenged a deemed tax bill of roughly £140,000.

The [tribunal reached its decision](#) by the casting vote of Judge Thomas Scott, having considered an engagement between Hawksbee's limited company Kickabout Productions Limited (KPL) and broadcaster Talksport from 2012-2015.

Hawksbee won his appeal despite having been a co-presenter of 'The Hawksbee and Jacobs Show' on Talksport since 2000, a factor which HMRC had placed considerable emphasis on. However, in the broader context, this bore limited weight in the eyes of the tribunal.

"While this case wasn't a landslide by any means, it again raises questions over HMRC's ability to interpret and police IR35, as well as the [Check Employment Status for Tax \(CEST\) tool](#)," comments ContractorCalculator CEO Dave Chaplin. "This tribunal granted significant weight to a multitude of factors that aren't even considered by CEST, while the ruling means that HMRC has now only fully won one of the last 14 cases to go to tribunal."

Taxman's arguments fall flat at tribunal

Hawksbee appealed an IR35 status determination spanning KPL's engagement with Talksport spanning 2012-2015. Over this period, KPL entered into two separate contracts. Although they differed somewhat, they each required that Hawksbee provide his on-air services for a minimum number of days per year from 1-4pm.

Hawksbee was paid a fee per programme, and each contract stipulated that, prior to the end of the term, the parties would enter into good faith negotiations regarding an extension. KPL had been engaged by Talksport on a similar basis since Hawksbee began presenting in 2000 what is now the longest running show on the station.

HMRC contested that Hawksbee's stint as co-presenter was an indicator of employment in that it suggested a significant degree of stability, while also arguing that Hawksbee's continued on-air presence made him 'part and parcel' of the Talksport organisation.

However, the tribunal dismissed the taxman's claims concerning part and parcel, acknowledging, amongst other factors, that he was not subject to appraisals nor disciplinary processes. Limited weight was also granted to Hawksbee's tenure as presenter, as the tribunal agreed that contract renewals were dependent on the continued success of the programme.

KPL v HMRC: the key employment status factors

Limited weight was granted to the key employment status tests, with factors such as financial risk – ignored by HMRC's Check Employment

Status for Tax (CEST) tool – coming to the fore.

During the three years in question, the Talksport contracts constituted 90% of Hawksbee's total income, which the tribunal agreed displayed a high degree of economic dependency. HMRC argued that this indicated that Hawksbee wasn't in business on his own account.

However, the tribunal noted that, for Hawksbee, opportunity cost resulted in financial risk, acknowledging the fact that he had to turn down the opportunity to work as a writer on 'Taskmaster' as it would have clashed with his presenting responsibilities.

Mutuality of obligation (MOO) was deemed of relatively little importance. However, the tribunal again reaffirmed HMRC's flawed interpretation of the employment test by acknowledging that, while there was the 'irreducible minimum', a sufficient degree of MOO wasn't present to indicate employment.

Though it was agreed that Talksport held control over the "where" and "when" concerning the work, this wasn't considered strongly indicative of employment due to the nature of the work. Hawksbee was "afforded an extremely high degree of autonomy by Talksport", with the Judge concluding: "editorial and artistic control of the content and format lay almost entirely with Hawksbee".

While neither arrangement afforded Hawksbee the right to provide a substitute, this was rendered a neutral factor, given that "Talksport were contracting for the unique expertise and work product of Mr Hawksbee".

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