

IR35: HMRC's MOO arguments fall flat in Upper Tribunal defeat to PGMOL



HMRC has failed with an appeal to the Upper Tribunal (UT) in its case against the Professional Game Match Officials Limited (PGMOL), following a disastrous ruling for the taxman.

The UT upheld the [decision reached at the 2018 First-tier Tribunal \(FTT\)](#), where it was determined that football referees engaged by PGMOL were not employed by the organisation.

Significantly, the FTT decision hinged largely on the arrangement's failure to satisfy the mutuality of obligation (MOO) test, despite HMRC's contention. These points were reiterated by the UT, which should hopefully put an end to the flawed arguments used by HMRC to justify the omission of MOO from its Check Employment Status for Tax (CEST) tool.

HMRC's MOO argument roundly rejected by UT

"This is a key tax case for all self-employed workers and is particularly relevant for those currently under attack from HMRC under the IR35 reforms," notes ContractorCalculator CEO Dave Chaplin. "HMRC's interpretation of MOO has consistently been torn down by commentators, and has now been roundly rejected by the Upper-Tier Tribunal."

In a decision which also picked fault with HMRC's inclination to interpret expectations as legal obligations to offer and accept work, Mr Justice Zacaroli also dismissed the taxman's argument that the imposition of a contract is enough to satisfy MOO, concluding:

"We do not accept that a contract which provides merely that a worker will be paid for such work as he or she performs contains the necessary mutuality of obligation to render it a contract of service: the worker is not under an obligation to do any work and the counterparty is not under an obligation either to make any work available or to provide any form of valuable consideration in lieu of work being available."

What now for HMRC and CEST?

The UT ruling is particularly problematic for HMRC, as it provides further irrefutable proof that HMRC's Check Employment Status for Tax tool (CEST) does not align with employment status case law, the result of which will be many incorrect status determinations.

"HMRC will need to update CEST, first and foremost," comments Chaplin. "But that is not all. Many firms have responded to the Off-Payroll reforms by adopting CEST. As a result, many contractors will have been incorrectly classified as 'employed for tax purposes' where there was insufficient MOO to justify that determination. Those assessments will now need to be revisited."

Chaplin concludes: "HMRC now needs to concede defeat and that it is game-over for its misrepresentations of the law on MOO. With CEST, the taxman has essentially tried to override the law by the back door. Its brazen attempt to bypass the law has now been roundly exposed."

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