

## BREAKING NEWS: Presenter Lorraine Kelly defeats HMRC in latest IR35 ruling

### IR35 WIN - YET ANOTHER LOSS FOR HMRC



[2019] UKFTT 0195 (TC)

TC07045

Appeal number: TC/2017/01720

FIRST-TIER TRIBUNAL  
TAX CHAMBER

ALBATEL LIMITED

Appellant

- and -

THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE & CUSTOMS Respondents

Television presenter Lorraine Kelly has defeated HMRC at an IR35 tax tribunal. The broadcaster's limited company, Albatel Ltd, successfully appealed a tax bill of £1.2m for engagements with ITV Breakfast Ltd spanning September 2012 to July 2017.

The [judgment](#) marks another setback in court for the taxman, casting further doubts over HMRC's grasp of IR35, following its high profile pursuit of hundreds of freelance presenters.

In a decisive ruling, control was the key factor, with Judge Jennifer Dean concluding: "We are satisfied that control of Ms Kelly's work pursuant to the hypothetical contract lay with Ms Kelly. In our view, the level of control falls far substantially below the sufficient degree required to demonstrate a contract for service."

She elsewhere added: "In looking at the overall picture, we were wholly satisfied from the evidence that contrary to being part of a jigsaw, Ms Kelly was the jigsaw."

#### HMRC's understanding of 'control' called into question

Representing Kelly, tax barrister Keith Gordon contested that HMRC's approach in relying on ITV's editorial control is flawed, drawing comparisons between Kelly's arrangement and that of an actor appearing in a 12 month run of a West End show.

His argument was summarised within the ruling: "The actor is required to follow a script, wear the clothes chosen for the production and move around the stage as directed. In contrast, Ms Kelly has considerably more control over her performance."

HMRC's understanding of ITV's responsibility as a broadcaster was also called into question by Gordon, who argued that the taxman had drawn incorrect comparisons between this and the test of control.

#### Another tribunal defeat: what next for HMRC?

This latest ruling is of a number of recent tribunal cases involving the taxman and high profile television presenters. As ContractorCalculator CEO Dave Chaplin highlights, it also continues HMRC's recent wretched streak when contesting IR35 in court:

"When HMRC began its [probe into the tax affairs of hundreds of high profile presenters](#), it was viewed that the taxman was trying to make a statement. With cases such as this, and the BBC debacle currently being [examined by the Public Accounts Committee](#) (PAC), it's quite evident that it has backfired substantially.

"As HMRC continues to be exposed for its wrongful pursuit of tax under IR35, how Government considers now to be a suitable time to

implement the contentious Off-Payroll rules within the private sector is beyond me.”

“The ruling was a slam dunk for Ms Kelly, and it’s astonishing given the level of ultimate control she exercised that this one ever got to court. Not only would I not expect this to be appealed by HMRC, but there surely must be a case for wasted costs to be claimed.”

Chaplin concludes: “Ms Kelly was able to successfully appeal a significant and unsubstantiated tax bill. Unfortunately, many contractors who may be subject to a similar fate due to the Off-Payroll rules won’t have the finances or resources to do the same.”

Published: 20 March 2019

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