

IT contractor wins £240k IR35 appeal

HMRC has lost its latest legal challenge on the operation of the off-payroll rules, after a First Tier Tribunal (FTT) found in favour of an IT contractor.

Claims for over £240,000 were disputed in income tax and National Insurance contributions (NICs), on the grounds that the IR35 intermediary legislation did not apply.

The case concerned Richard Alcock, who had a personal services company called RALC Consulting Ltd for the tax years 2010 to 2015. RALC contracted with Accenture and the Department for Work and Pensions (DWP) for work on the development of the universal credit system.

Subsequently, HMRC raised demands from RALC for £164,482 in income tax and £78,842, on the basis that Alcock had been employed during that period as the contracts represented contracts of service, and not contracts for service.

Alcock challenged the demands, arguing that he was self employed during the period. The tribunal examined several issues that were judged to be critical to determining his employment status under IR35, including the mutuality of obligations, the level of control Accenture and DWP could exercise over Alcock's work and his ability to supply a substitute if he was not available.

In its discussions, the tribunal judges noted there was no explicit obligation in the contract between the parties for Accenture to provide Alcock with a minimum amount of work, nor did it specify the number of hours or days in total.

There was also no commitment to offer a renewal of the contract. The FTT noted that 'the lack of contractual right or any express guarantee of any hours or days of work and that he was to complete a specific project is significant.'

The tribunal also found that the fact DWP provided the laptop on which Alcock worked was not a critical determinant in his employment status, as it was a requirement due to security protocols.

As regards the element of control, the tribunal said that while Alcock was required to hit certain milestones in the project work and achieve specific outcomes, he could decide when he worked, as evidenced by the fact he had worked for other clients during the period under discussion.

On the issue of whether RALC met the substitution test under IR35, the tribunal pointed out that the Accenture contract fettered Alcock's ability to do this, but said this was not a crucial factor.

It highlighted the fact that Alcock did not have a notice period and, in one instance, had seen a contract curtailed at short notice because a project was cancelled, although it described the lack of provision of holiday or sickness payments as 'neutral' in determining his status.

The tribunal said it accepted the submission from Chris Leslie from Tax Networks, who represented Alcock, which stated: "There is a very clear distinction here. And Mr Alcock is clearly self-employed, because he fits the latter sequence of events. He agreed the work to be done, and only that work to be done. Then he got to work and worked very hard indeed to meet the outcome goals. And then he billed only for the work done."

“His contract specifically states that he can only charge for work actually completed. And to top it off, in one instance they did cut the project short at a moment’s notice, and he was not paid.

“There is no question at all that he could charge just for making himself available, and neither was the client obliged to give him work or allocate work – the work has already been agreed upfront.

“So, since there was no minimum obligation to provide work and no ability to charge for just making himself available, it is clear that the key elements of mutuality, in the work/wage bargain sense, are missing, and therefore he cannot be considered an employee.”

In its ruling, the FTT found in favour of RALC and dismissed HMRC’s claims for income tax and PAYE. As a result, the tribunal said it did not need to consider a secondary issue raised by HMRC, alleging that RALC’s accountant had been careless in submissions to the tax authority.

An HMRC spokesperson said: “HMRC is disappointed with the decision of the tribunal and intends to appeal.”

The FTT decision in the contractor’s favour runs counter to a recent series of tribunal rulings, including those relating to media presenter Christa Ackroyd and three BBC freelance presenters, who were judged to be employees rather than contractors.