

A formal Tribunal ruling has been released concerning a long-running dispute between 12 companies in the Reed group and HMRC over expenses payments to its workers.

Over the period between 6 January 2001 and 5 April 2006, Reed operated two systems for the payment of tax-free allowances to its workers (known as the 'Reed Travel Allowance', and latterly the 'Reed Travel Benefit' schemes).

In essence the scheme worked in a fashion that will be familiar to our umbrella company clients, in that payments to the workers were made on the basis of a reduction in pay, topped up with allowable expenses, thus reducing the overall tax and NIC liability. However, in order to achieve the reduction in pay Reed sought to implement a 'salary sacrifice' arrangement with its agency workers. Reed also approached HMRC for clearance of the scheme and negotiated a series of dispensations relating to the expenses payments.

So where did it all go wrong? According to the First-tier Tribunal, nearly every aspect of the scheme failed. The salary sacrifice was ineffective as it was incomprehensible to the workers. Incredibly, the contract agreed between the workers and Reed was not sufficiently 'over-arching' to allow for the temporary workplace rules, which is a fundamental aspect of any such arrangement. We can only presume that those who drafted the contract were primarily focussed on minimising Reed's employment obligations and did not pay sufficient attention to the tax legislation.

Although it is hard to believe (or maybe it is not), when granting the dispensations nobody from HMRC even bothered to look at the contracts in place. In an internal memo obtained by Reed, HMRC's head office described this as a 'cock-up' – an understatement to say the least.

It is interesting to note that when the contractual problem came to light, Reed changed its contracts to comply with HMRC's published '336-hour minimum' contract guidance. However, HMRC are still arguing that even the new contract is not compliant, meaning that this dispute may be the first battle in a war that is far from over!

Insofar as Reed's policy of appeasement with HMRC goes, this has back-fired tremendously. Not only does this case demonstrate the pitfalls of shaking hands with the Devil by trying to get HMRC to sign off such a scheme, it also proves the utter worthlessness of a dispensation when it comes to the crunch. The Tribunal found that because the expenses payments were taxable the dispensation was invalid, and because Reed did not volunteer *everything* to HMRC, including the contract (even though it was not asked for) the dispensation was not binding. If that were not enough, the dispensation could have been withdrawn retrospectively at any time by HMRC in any case.

It is estimated that half a million workers participated in these schemes over the period, and the total duty and interest amounts to around £158 million.

The moral of the story here – as well as demonstrating how little value can be attached to an HMRC dispensation – is to underline the value of well-drafted contracts and procedures being put in place. A grand scheme with too little attention to detail is bound to fail.

It is understood that Reed intends to appeal this decision, and there are also Judicial Review proceedings underway.

If you would like further information on this judgment or to speak to a member of the Accountax team about how this ruling might impact your business please contact us on 08450 660 035 or email mail@accountaxconsulting.com