

## Personnel business

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As employers, many of you will have just been through the arduous task of completing and submitting your end of year PAYE and benefit in kind returns. You will not need reminding that your position as an employer is far from straight forward. It is not always easy to balance your desire to be as helpful as possible to your personnel with your need to minimise potential tax liabilities of the club.

If the particular person in question is an employee, he or she will be taxed under the PAYE system and subject to employees' national insurance (NI) contributions. The club, as employer, will also have to incur the not inconsiderable NI cost, to which there is no upper limit. The incentive to employ as few people as possible also comes from your responsibility for paying Statutory Sick Pay and Statutory Maternity Pay. And don't forget, employees also have rights under health and safety and employment laws, such as the right to redundancy payments and not to be unfairly dismissed.

If you work with someone who is self employed, he or she will be taxed under self assessment and will have more scope in claiming expenses. The self employed will also pay a different form of national insurance called Class 2 and Class 4 NI contributions, the combined burden of which is lower than those of an employee, which are called Class 1 NI. Of course, in such cases, the club has no liability to employers' NI as these people are not employees, which saves a cost.

It is not surprising, therefore, that most clubs prefer certain services to be provided by someone who is not an employee. However, in some cases it can be unclear as to whether a relationship is one of employment or of self-employment. HMRC has published a leaflet which is a useful starting point in clarifying the situation:

### Employee

If the person in question can answer "Yes" to all of the following questions, he/she is probably an employee:

- Do you have to do the work yourself?
- Can someone tell you at any time what to do, where to carry out the work or when and how to do it?
- Do you work a set amount of hours?
- Can someone move you from task to task?
- Are you paid by the hour, week, or month?
- Can you get overtime pay or bonus payment?

### Self-employed

If the person in question can answer "Yes" to all of the following questions, it will usually mean that he/she is self-employed:

- Can you hire someone to do the work for you or engage helpers at your own expense?
- Do you risk your own money?
- Do you provide the main items of equipment you need to do your job, not just the small tools many employees provide for themselves?
- Do you agree to do a job for a fixed price regardless of how long the job may take?
- Can you decide what work to do, how and when to do the work and where to provide the services?
- Do you regularly work for a number of different people?
- Do you have to correct unsatisfactory work in your own time and at your own expense?

Certain of these factors invariably carry greater weight as does the existence of contractual terms. HMRC accepts that a comprehensive contract between the club and the employee will determine the status of the individual worker. However, there are areas where written terms might not determine the status e.g. where the terms are incomplete or where they are factually incorrect.

### Areas To Check

Some rugby clubs utilise the services of a payroll bureau for employees such as a bar manager or head coach and would therefore expect to comply with the relevant obligations and liabilities. It would be difficult to have a head coach in the national leagues, for example, who could do his job as and when he wanted and send someone else when he was busy. In such a case it would seem likely that the coach was an employee. If he is paid for doing his job, his pay should be subject to PAYE and NI. Paying amounts as expenses will not be seen by HMRC as complying.

### Recent Changes

As of 6th April 2008 HMRC introduced changes to the PAYE regulations to provide relief from the effects of one of the most controversial and wide-ranging judgments in the area of employment status, Demibourne.

Well-organised clubs structure their paperwork in an effort to provide back up that the person is self-employed and paying his own taxes. However, the Demibourne case confirmed that where an employment relationship exists, the employer is responsible for deducting tax from payments made to the employee in accordance with the PAYE Regulations. HMRC, according to Demibourne, did not have the discretion to choose whether to collect tax from the employer or the employee. This means that the HMRC is obliged to seek recovery of PAYE and NIC in relation to income from the employer even if it relates to tax which has previously been paid by (or on behalf of) the employee under Self Assessment

The new regulations introduce a power to enable HMRC to make a direction to transfer a PAYE liability from an employer to an employee which will apply to prevent tax being charged on the same income twice. Typically (but not always) the power is likely to become exercisable in cases where a worker's status has been re-categorised from self-employment to employment following a status review by HMRC.

The new provisions will be a welcome relief for all businesses, particularly rugby clubs, involved in employment status disputes. The amount of any potential liability will now be based on actual tax loss rather than the maximum possible amount due under PAYE.

### Benefits in kind – Possible changes

I doubt that many readers are also avid readers of HMRC consultation documents. However, one consultation document appeared at the end of last year on benefits in kind and expense payments. In order to simplify the process, it proposed doing away with the P11D form. The difficulty with P11D's falls mainly into three categories; firstly identifying what expenditure gives rise to a benefit, secondly calculating the benefit and thirdly, reporting, even those that will not give rise to a benefit. Under the proposal it seems that the Government is most interested in collecting the tax in the month following that in which

the benefit is provided. An employee's net pay is presently pretty much the same month by month. With the proposed changes, the net salary of employees will vary. For rugby clubs with relatively small numbers of employees this would mean that information given to a payroll bureau will vary when there are benefits and that the net salary of employees will also vary. This will undoubtedly increase costs.

If tax relating to areas of personnel is an issue at your club, it is important to take professional advice.

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