

Who pays the self-employed tax?

It is well known that farming and equine businesses are seasonal and have high fluctuations in volumes of work.

Such businesses have therefore relied heavily on genuine self-employed subcontractors.

Recent developments

However, a recent tribunal case *Yetis* has shown the need to check that such workers are genuinely recorded as self-employed and paying over their own tax as otherwise the tax will be payable by the employer.

Yetis

Yetis v Commissioners for HMRC & Style Superior Windows (TC02410) is an example of a worker who was willing to be self-employed until the tax was due.

However once tax was demanded on that self-employed income, he then claimed to have been an employee and was, eventually, found by the First Tier Tribunal to have been employed.

Three years' liability

It is this ability to "claim to be an employee" which is a worry.

Assessments on Mr Yetis for income tax for three old years were discharged because Mr Yetis was found never to have been self-employed, meaning that his 'employer' should have accounted for PAYE and NICs throughout that period.

Documentation

A lack of documentation did not help matters, but Mr Yetis was aware that he, like other salesman engaged by Style, was not treated as an employee and had apparently assured the company that his tax was up to date.

The key factor is for businesses using the services of a subcontractor to obtain copy documentation proving

not just the self-employed status but that the tax has been paid.

Employment status

The tribunal judge (Mr Sinfield) considered all the key principles that have developed in the employment status field over the years.

In particular he followed the approach seen in *Market Investigations Ltd v Minister of Social Security* (1969) 2QB173 of looking at whether the individual was in business on their own account.

Relevant factors

Mr Yetis had no capital invested in the business, he could not make a loss and was paid £200 per week even if he did not generate any sales that led to commission payments.

Lack of substitution

The company confirmed in evidence that the taxpayer was obliged to provide personal service at all times, no substitutes would have been permitted, and he could not reasonably have worked anywhere but at the location specified by the company at the same time.

Control

When discussing the legal principles, Mr Sinfield confirmed that no one test can determine every case and that the 'in business on your own account' test is more relevant than control.

Conflicting cases

Needless to say this does not sit overly well with cases such as:

- *JL Windows and Door Services and Molloy v Commissioners for HMRC* SpC733,
- *Express and Echo Publications Ltd v Ernest Tanton* (1999) IRLR367 and
- *Montgomery v Johnson Underwood Ltd* (2001) IRLR269

All of those were predominately decided on specific "tests" such as control and personal service.

Uncertainty

This case demonstrates that the courts can still be somewhat unpredictable in their approach and the weight they will give to different factors.

Assessing status

Any business taking on such workers should also assess the status of employed or subcontracting. They should understand if the role is really employed or self-employed and embrace their duty in this regard.

Penalties

The "penalty" of having to pay all the relevant PAYE and NIC serves as a very good reminder to fulfil obligations, e.g. ensuring there is a "substitute" clause etc.

Risks of subcontractors

The use of subcontractors can be beneficial for small businesses but it must comply with all the various rules on both sides of the transaction, and nothing must be taken for granted.

The fact that the working arrangement is amicable does not mean the subcontractor is honouring their part of the arrangement. □

Julie Butler F.C.A.

Julie Butler F.C.A. is the author of Tax Planning for Farm and Land Diversification (Bloomsbury Professional), Equine Tax Planning ISBN: 0406966540, and Stanley: Taxation of Farmers and Landowners (LexisNexis). Butler & Co, Bennett House, The Dean, Alresford, Hampshire, SO24 9BH 01962 735544 j.butler@butler-co.uk www.butler-co.uk