

BBC personality wins appeal on IR35 status

15 December 2023  Alex O'Donoghue

The First-tier Tax Tribunal (FTT) has applied the guidance recently given by the Court of Appeal as to what questions should be answered to decide whether or not IR35 applies to a contractor engaged via their own personal service company (PSC). The case concerned the TV presenter Kay Adams who was engaged via her PSC by the BBC and was remitted back to the FTT following a successful appeal to the Court of Appeal in 2022.

In reaching its decision, the FTT asked itself:

1. What were the terms and relevant circumstances of the actual contract between the PSC and the BBC?
2. If Ms Adams had been engaged by the BBC directly, what would the terms of that hypothetical contract be? and
3. Would that hypothetical contract amount to a contract of employment? If it would have done, Ms Adams would have been due to pay tax as an employee of the BBC.

In a finely balanced decision, the FTT concluded that Ms Adams was a self-employed contractor and so was not liable to pay tax as an employee because of:

- the BBC's precedent for treating presenters like Ms Adams as self-employed independent contractors;
- the power of Ms Adams's personal 'brand'; and
- the absence of any employee benefits such as holiday pay, sick pay or pension entitlement.

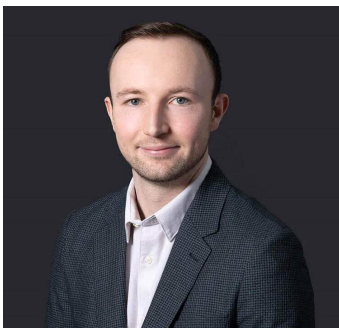
Consequently, Ms Adams was not liable for PAYE income tax or NICs in respect of her earnings from the BBC.

Clients who are concerned about the application of IR35 to their circumstances should ask themselves:

"Would the worker supplying their services be regarded as an employee or office holder of the end-client, had the services been provided directly to the end-client, rather than via an intermediary?"

If you would like to discuss the implications of this decision or IR35 more generally please contact a member of the team.

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