HM Revenue
& Customs

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Date 21 August 2024
Our Ref WMBC/TAPE/S1759/MW
Your Ref Mark Clarke
Case Ref CFS-1964495

VAT Number: 284 1023 26

Dear Sirs

1. As you are aware HMRC has been reviewing whether the conditions for joint employment are met so that there is no supply of staff from People PAYE Limited (PPL) to the Employment Business (EB) joint employer, when both entities enter into a joint employment contract with the temporary worker (TW) and it is only the EB joint employer who then enters into the contract with the end user client for the supply of the TW.

2. This has involved an extensive review of the contracts issued by PPL, information/contracts received from third parties and detailed discussions with a number of colleagues in order to fully address all of the potential issues from a VAT perspective. The contracts examined (which are taken to be representative of all contracts issued by PPL) were:

   (1) the 'Master Agreement with Agency for Joint Employment of Agency Workers" between PPL and a named EB, signed and dated on 23/05/2022 and provided by the EB to myself on 31st May 2023.

   (2) the representative template 'Joint Contract Of Employment" between PPL and the EB (together, the 'Joint Employers') and the TW provided to myself on 12th July 2024.

3. The examination of these contracts and these discussions have now been concluded and I detail the findings below.

4. Having considered all of the information and documents you have provided, HMRC are content that PPL and the EBs meet the conditions to jointly employ TWs.

5. The legislation and guidance regarding "Joint-Employment" is limited and is contained predominantly within VAT Notice 700/34 – Supply of staff and staff bureaux which states:

    3.2 Joint employment
    Where staff are jointly employed there is no supply for VAT purposes between the joint employers. Staff are jointly employed if their contracts of employment or letters of appointment make it clear that they have more than one employer.

6. Having reviewed the documents you provided, HMRC are content that they show a sufficient difference between the "Joint-Employment" model and the "normal" umbrella model based on the following:

7. Within the contract signed by the joint employers and the TW it clearly states on page 2 of the contract:

    *" **Who is your employer?***

    You will have noticed that two companies are named at the front of this contract. We have called one the "agency" and the other the "employer of record" (People PAYE Limited). Those two companies are, jointly, your employers. In this document those two companies will be referred to jointly and individually as "we" and "us" and "ours" and "your employer" and "joint employers"

    Who should you deal with about issues that arise under your contract?

    We realise this is not a standard approach and that you may wonder which of the two joint employers you should approach with concerns or queries relating to your contract. The answer to this is that you are entitled to approach either of us with concerns or queries and we are each responsible to you for all of the obligations owed to you under this contract.

    Having said that the two companies that are your joint employers will each deal with slightly different aspects of your employment and one rather than the other will usually be better placed to deal with the relevant issue depending on what is involved. As such you will get the best response to various issues if you look at the list at https://portal.peoplegroupservices.com/samples/ghostbusters which sets out which joint employer should be your first line of support for specific issues.

    What are the statutory roles of the respective joint employers, and what statutory rights do you have?

    The agency acts as an employment business and temporary work agency in relation to you. That gives you a range of rights and protections under the Agency Workers Regulations 2010, the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

    The employer of record will also accept responsibility to comply with the obligations of an employment business in relation to you.

    We are, in addition, together your joint employer and will each be jointly and severally liable to you in respect of the obligations owed to you under this contract (including for example the right to be paid) and employment legislation such as the Employment Rights Act 1996."

8. The contract states in unambiguous terms, that PPL and the agency are the joint employers of the temporary worker and that they are jointly and severally liable for all employment obligations to said worker.

9. Additionally, PPL and the EB entered into a 'Master Agreement with Agency for Joint Employment of Agency Workers' which at Sections 3 and 4 identified and specified their respective roles within the arrangement with regards to the temporary worker. Importantly and specifically this agreement sets out that both parties agree at Section 3.2

"In relation to any Assignment the Agency shall for itself and as agent for PPL;

1. contract with the relevant Hirer for the finding and supply of the relevant Jointly-employed Worker, on such terms (consistent with this Agreement) as it thinks fit."

10. At Section 5. Residual liabilities, it explains that where any liabilities relating to a jointly-employed worker are not specifically allocated by the agreement then:

"the parties shall bear the ultimate burden of such liability equally between them"

11. As previously stated, HMRC is content that the various contracts stipulate in a clear and unambiguous way that the temporary worker is being employed on a joint employment basis by the two entities who are jointly and severally responsible as employers, they have identified between themselves what roles and responsibilities they will undertake in the process and that both parties agree that it is the Agency/EB who is to enter into the contract with the end user client for the supply of the TW.

12. The contracts and agreements satisfy HMRC the TWs are jointly employed and there is no supply of staff for VAT purposes between the joint employers and HMRC intend to take no further action.

May I take this opportunity to thank you for your time and collaboration during this enquiry process and attach the factsheet providing details to the "Exit Survey" if you wish to leave any feedback regarding the enquiry process.

Using references and sending us documentation
If you send us any original documents or records, you must tell us that they are originals. You must also tell us, in writing, if you agree that we can securely destroy any documents or records you send us. We securely destroy documents and records 50 working days after we have digitally scanned them. This applies to copies of documents or records as well as originals. If you do not tell us that you agree, we will return everything to you except any files or folders.

If you tell us that you agree, you have the right to change your mind. If you do, you must tell us this in writing within 40 working days of the date that you sent us those documents or records.

Our standard policy is to destroy any memory sticks or other removable digital media you send us. We strongly recommend that you encrypt the data you send us, to make it more secure. Whichever method you choose to contact us, you need to quote the case reference CFS-1964495.

Yours faithfully

Michael Willetts
Officer of Revenue and Customs

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To find out about the service and standard of behaviour you can expect from us, go to www.gov.uk and search 'HMRC Charter'.