Money Matters

Associateship contracts

If a self-employed associate turns out to be employed, the situation can have tax and NI implications for the principal. In the second article in the series, Tim Lee asks how this situation arises, and what the exact implications are for the principal.

A self-employed associateship contract may contain a notice period of termination, typically, of three months, sometimes less. In the current worsening economic environment, associateships are becoming more difficult to find, with increasing pressure on associates to retain their contracts.

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Times are changing
The concept of a ‘proprietary interest’ in work, led to significant changes in employment legislation in the early 1970s. This concept – derived from the recommendation of the International Labour Organisation – that an employee should enjoy rights going beyond mere contractual rights, first entered the law in the enactment of the Industrial Relations Act 1971.

This provided that, in addition to the ordinary contractual right not to be dismissed without notice, contractual notice usually being fairly brief – often a month or less), once an employee had been employed for longer than a ‘threshold’ period, the employee should have the right not to be dismissed, unless such dismissal fell within certain limited categories (e.g. dismissal for serious misconduct, redundancy etc). Such right, usually known as the right not to be ‘unfairly dismissed’, contrasts with the right not to be dismissed without contractual notice, the breach of which is usually referred to as ‘wrongful dismissal’.

A lack of protection
A self-employed person has no such statutory protection – this right is only enjoyed by employees.

The relationship of principal and self-employed associate has material advantages. From the point of view of the self-employed associate, there is usually favourable tax treatment. From the point of view of the principal, such a relationship frees the principal from some (but not all) onerous statutory requirements – including the legal obligation not to unfairly dismiss the associate.

We can therefore see that if an associate has their contract terminated, in circumstances, which the associate perceives as being unfair, then that associate may wish to claim that they were actually an employee, not self-employed.

Further pressure may be added if, the ‘dismissed’ associate finds it difficult to find an equivalent post with equivalent remuneration. The associate may then look to the Employment Tribunal for compensation.

Relationship confusion
In a future article, we will explore the criteria by which tri-
bunals, courts, and Her Majesty’s Revenue and Customs, judge whether a particular principal–associate relationship is one of principal/independent contractor (self-employed associate) or actually one of employer/employee.

However some of the Employment Tribunal claims that we are beginning to see emerge in the situations described above include:

1. Claims for unfair dismissal. If the ‘dismissed’ Associate is unable to find a suitable (and suitably rewarded!) replacement post fairly soon after ‘dismissal’, then their claim for compensatory loss may be significant. There are statutory limits, which ‘cap’ claims for compensatory losses in unfair dismissal claims. The upper limits for such losses in unfair dismissal was increased to £66,200 on February 1 2009.

2. Without trying to tackle the complexities of the formulation of compensation in unfair dismissal claims, there may be other (lesser) amounts making up the total compensation claim including a ‘basic award’ of up to £550 for each full year worked by the Associate. Such sums are in addition to the compensatory losses.

3. Claims for holiday pay. If it turns out that an associate was actually an employee, then the associate will also be a ‘worker’, and may be entitled to the minimum leave requirements set out in the Working Time Regulations 1998.

4. There may be claims for compensation for contractual breaches of the ‘employment’ contract if such breaches arose from, or were outstanding, at the termination. Such claims often arise if the Principal fails to honour contractual requirements as to notice, but are limited to a cap of £25,000 in the Employment Tribunal (but with a possible alternative claim in the Civil Courts, without such cap).

5. Sex and/or other discrimination claims. An Associate who proves that their ‘employment’ contract was terminated for one of the reasons prohibited by discrimination legislation may seek to bring claims for compensation for which there is no statutory cap!

It is also important to bear in mind that much discrimination legislation applies, not only to employees, but may also apply to a wider constituency of workers including, potentially, those who are self-employed.

For example, ‘Employment’ for the purposes of both the Sex Discrimination Act, and the Race Relations Act, can include ‘employment under a... contract personally to execute any work or labour’.

Beware that such a definition may include even a self-employed associate dentist!

The first part of this series can be found in Volume 2, issue 27.

DENTAL TRIBUNE United Kingdom Edition · April 20–26, 2009

Money Matters 15

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