

Are Joint Contracts of Employment VAT Efficient?

Background

It is quite common for businesses or other organisations to loan staff to a third party company, which may be connected or unconnected. This is particularly the case in the charity and not-for-profit sector where trading subsidiaries are common.

In principle, the supply of staff is a business activity and so normally the recharged costs are subject to VAT at the standard rate (20% with effect from 4 January 2011), which can make these types of arrangement expensive.

By concession, HM Revenue & Customs ('HMRC') do not seek to tax the supply of staff between charities where the staff are engaged only in non-business activities. However, this concession does not cover the secondment of staff to trading companies.

Joint contracts of employment have historically been viewed as a solution to this problem. Where staff are jointly employed, any recharged salary costs are not deemed to be a supply between the entities and therefore no VAT is due. However, a recent tribunal case has highlighted the limitations of this arrangement.

The Case

In CGI Group (Europe) Limited the Tribunal held that, despite the existence of joint contracts of employment, CGI was receiving payment for a supply of something other than staff (in this case IT services). The fact that the payment was based on the staff costs had no bearing on its VAT liability. As such, the supply was subject to VAT at the standard rate.

This case suggests that joint contracts of employment will not avoid a VAT charge if there is in fact no supply of staff from one employer to another but in reality there is a supply of something else.

If you would like to discuss this or any other tax matter, please contact us.

Elysian Associates
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