A greater tax enforcement role for the Gangmasters Labour Abuse Authority (GLAA)?

General Features

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LITRG recently responded to a consultation by the Director of Labour Market Enforcement which moots a possible extension of the GLAA licensing system.

The GLAA is a Non-Departmental Public Body working to protect vulnerable and exploited workers. Its predecessor – the Gangmasters Licensing Authority (GLA), was set up after the Morecambe Bay cockle picking tragedy. Since then, their licensing scheme has set out requirements for businesses supplying labour into the agricultural, horticultural, shellfish-gathering and associated processing and packing industries. The licensing scheme covers areas like health and safety, accommodation, pay, transport – and tax, with the requirements for tax set out below:

The Director of Labour Market Enforcement, whose role was created under the Immigration Act 2016 to bring better focus and co-ordination to the enforcement of labour market legislation (which includes having overarching responsibility for setting the strategic direction of the three labour market enforcement bodies – HMRC National Minimum Wage/National Living Wage, Employment Agency Standards Inspectorate and the GLAA), suggested there might be a case for extending the GLAA's licensing system into sectors such as social care, car washing and construction.

As a labour provider must have a licence to work in the regulated sectors, and it is a criminal offence to supply workers without a licence or use an unlicensed labour provider, the LITRG support this idea, as it could provide many more workers with an extra layer of protection from tax and NIC geared exploitation and help cut down on

things like false self-employment and illegal travel and subsistence schemes.

However, in their submission to the Director, LITRG cautioned against complex areas of tax law being decided as part of a GLAA licence application or appeal. This happened as part of the *FS Commercial* case, in which the then GLA took action against a Pay Day by Pay Day (PDPD) umbrella scheme, assisted by technical input from HMRC. While the tax and NIC issues were considered and declared non-compliant by the Judge in that case it did not set a precedent in pure tax terms with the consequence that questions lingered over the authority of the judge's decision.

LITRG therefore advised, should the plan for the GLAA go ahead, that where there is a dispute as to whether something a labour provider is doing is compliant or not in the context of a GLAA licence application or appeal, the GLAA should pass the case to HMRC to test the legality in the independent tax tribunal. It would then be for the GLAA to take action around the licensing standards based on the outcome.

Nevertheless, extending the GLAA's licensing system will mean more overlap between the GLAA and HMRC's roles and is something that employment tax advisers with labour provider, employment agency or gangmaster clients in other sectors characterised by vulnerable employment will want to watch closely.

You can read more about the Director's strategy and find LITRG's response on the LITRG website.