

## Tribunal decides...

### HMRC cannot let their computers withdraw Gross Payment

#### *Scofield v HM Revenue & Customs*

In this case, HMRC withdrew Mr Scofield's gross payment status. HMRC wrote to Mr Scofield identifying 10 compliance failures but later accepted that 8 of the 10 failures were not in fact compliance failures but failures made by HMRC, in regard to the allocation of payments. They also accepted that a further failure had a reasonable excuse leaving only one valid failure.

At the initial hearing, the Tribunal concluded that this failure did not have a reasonable excuse, but questioned the meaning of Section 66 (1) Finance Act 2004. They pointed out that the legislation appeared to give HMRC a discretion to cancel Mr Scofield's registration for gross payment status- ie) this should not be an automatic process carried out by a faceless computer system.

Initially HMRC contended that they did not have any discretion. The case was adjourned and re-listed to question whether or not HMRC had the discretion to cancel Mr Scofield's gross payment status; and if they did, did HMRC fail to exercise any such discretion.

The Tribunal examined the meaning of Section 66 (1) in great detail, applying the basic rules of statutory interpretation.

Firstly the term 'may' which is used within Section 66 (1) was examined. It was concluded that the context in which it is used imposes a duty upon HMRC.

Section 66 (1) was examined further to establish its intentions. The Tribunal acknowledged that the intentions of Parliament were for some discretion to be applied, before a sub-contractor faced serious consequences. It was concluded that under Section 66 (1) HMRC have a duty to apply their discretion.

HMRC later changed their submissions, clearly contrary to their previous argument (which the Tribunal was quick to pick up on). They argued that their computer systems were programmed in a way which exercised their discretion.

They submitted that the amendment made by the Income Tax (Construction Industry Scheme) (Amendment No 2) Regulations SI 2008/1282 Regulation 2 demonstrated that they exercised their discretion as required by Section 66 (1).

The Tribunal was not satisfied that HMRC applied their discretion in this case. They were aware of HMRC's desire to standardise and computerise processes to efficiently administer the tax system, however, they made clear that they did not agree that such systems enabled HMRC to use their discretion as required. The Tribunal made clear that HMRC could not make a determination without exercising its discretion. It is not permitted for them to apply their discretion once an appeal has been lodged. By accepting an appeal, HMRC is exercising its discretion to accept the appeal but not whether to make the determination in the first place, a very important point.

The Tribunal concluded that HMRC did not apply their discretion in this case. They agreed with Mr Scofield that in cases where HMRC have not used their discretion carrying out the decision process correctly, the decision would be void.

HMRC lost this case on the grounds that they did not apply their discretion. Mr Scofield's gross payment status was re-instated.