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The Salaried Members Rules and the 'Significant Influence' Test – Does the *BlueCrest* Case Affect Me (As a Partner) or My Firm?

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Salaried Members Rules

Limited liability partnerships or "LLPs" are common corporate vehicles utilised by the financial services sector to establish UK investment management operations and other financial businesses and, more recently, implement carried interest structures or act as fund investment/feeder vehicles. The most contentious aspect, and the subject of this client alert, has been the use of LLPs as business operating vehicles. As well as being more flexible than limited companies, in that it is easy to admit members and for them to leave the LLP, they are also commercially competitive since members (colloquially referred to as "partners") of LLPs benefit from self-employed tax status.

When the Limited Liability Partnership Act 2000 introduced LLPs, it was relatively straightforward to become a member and benefit from self-employment status for tax purposes. The principal tax benefit was that partnership profit drawings are not subject to the employer's national insurance contributions (NICs), currently 13.8 percent and rising to 15 percent on 6 April 2025, which applies to employee and director remuneration.

The Salaried Members Rules (Rules) were introduced in 2014 to tackle what HM Revenue and Customs (HMRC) perceived as widespread avoidance of employer NICs via "disguised employment" through LLPs. The Rules are intended to ensure that members of LLPs who provide services on terms more like those employees rather than self-employed partners are treated as employees for tax purposes.

Under the Rules, LLP members are deemed to be "disguised employees" of an LLP if an individual meets all three of the following conditions:

- **Condition A** – 80 percent of the member's profit share is "disguised salary," i.e., remuneration that is fixed, or variable without relation to the overall profits of the LLP, or not in practice affected by those profits;
- **Condition B** – the member does not have significant influence over the affairs of the LLP; and
- **Condition C** – the member's capital contribution to the LLP is less than 25 percent of their "disguised salary."

If all the conditions are met, the member will be treated as a disguised employee or "salaried partner," subject to the normal income tax and NICs deductions under Pay As You Earn (PAYE). Critically, the LLP itself will be obliged to pay the employer's NICs with respect to that "disguised employee" or salaried partner.

On the other hand, if an individual fails any one or more of the above conditions, they will be treated as a partner (i.e., as self-employed) for tax purposes, and no employer's NICs will be payable by the LLP, so somewhat counter-intuitively, it is a "good thing" to fail a condition if the aim is to be taxed as self-employed.

HMRC v BlueCrest Capital Management (UK) LLP

The interpretation of the Rules has been the subject of ongoing disagreement between industry and HMRC. One principal area of contention related to Condition B which relates to the "significant influence" over the affairs of the partnership. Given that the LLP legislation does not define the meaning of "significant," HMRC has been issuing fairly extensive guidance setting out its view of the concept mainly via practical examples. However, on several occasions, HMRC has subsequently amended its guidance, which has generally created a disadvantage for the taxpayer.

The first time that the interpretation of Condition B came before the English courts was in the case of *HMRC v BlueCrest Capital Management (UK) LLP*. *BlueCrest* sought to claim that a number of its members should not be taxed as employees, while HMRC sought to invoke the "salaried member" legislation to claim that they should be. It is fair to say that in both tax tribunals, the taxpayer prevailed in its challenge of HMRC's guidance on Condition B, including that influence over the LLP's affairs did not mean the LLP as a whole.

The case was most recently heard by the Court of Appeal (CoA), which considered the scope of Condition B. The CoA focused on whether an individual member has "significant influence" over the affairs of the LLP and whether Condition B could be failed if the member only had influence over a part of the affairs of the LLP (as opposed to the whole affairs of the LLP). The CoA stated that significant influence over the whole affairs of the LLP is likely to be had in cases where the individual is part of the strategic decision-making function of the LLP. By contrast, if the individual only has influence over the financial matters of the LLP, for example, then this is likely to be controlled only over part of the LLP, and therefore, Condition B would not be failed.

The CoA judgment stated that Condition B would only be failed if (i) a member has significant influence over the whole affairs of the LLP; and — critically — (ii) that authority must be rooted explicitly in the LLP agreement itself.

This decision overturned that of the lower courts by confirming that the scope for failing Condition B is much narrower than previously thought. Notably, the CoA rejected the parties' agreed interpretation of Condition B, which was that significant influence could include *de facto* influence outside the provisions of the LLP agreement. In other words, the CoA ignored the position which — notwithstanding disagreements as to certain aspects — both industry and HMRC had been labouring under via the HMRC guidance since the legislation came into force. The case has now been remitted to the First Tier Tribunal for another review of the facts in light of the CofA's construction of Condition B, and BlueCrest has requested leave to appeal to the Supreme Court. As a result, this issue likely has a long way to go before it is finally resolved.

What Should LLPs Do In the Meantime?

This case will be particularly important for those LLPs who have relied on failing Condition B in their assessment of whether the LLP's members are true members.

In our experience, professional services firms have tended to rely predominantly on failing Condition A or C, so this decision may not require you to revisit your assessment of the Rules. However, if failure of Condition B has been central to your analysis (as is often the case of larger investment management firms), we recommend the following next steps:

1. Review your LLP agreement to understand how significant influence is articulated in the agreement;
2. Consider whether it is possible or necessary to rely on either Condition A or C being failed instead of Condition B; and/or.
3. Consider whether any shares or partnership interests have been issued to LLP members in any investment vehicles because "salaried member" treatment could turn these into employment-related securities (which may have different tax treatment).

CONTACTS

If you have any concerns about which conditions are being relied upon and how this recent case impacts you as an individual member of your LLP, please contact your Katten lawyer or any of the following lawyers.

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