



Neutral Citation: [2025] UKFTT 01607 (TC)

Case Number: TC09736

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

George House
Edinburgh

Appeal reference: TC/2022/11064

NATIONAL INSURANCE – Host Employer Provisions – Whether on the facts Appellant "made available employees" to a foreign employer? - Yes - Whether on the facts the personal service of those employees was "rendered" to that foreign employer? - Yes - Was that for the purposes of the Appellant's business? - Yes - Appeal dismissed

Heard on: 14-16 and 18, 24-25 July 2025

Judgment date: 22 December 2025

Before:

**TRIBUNAL JUDGE CHRISTOPHER MCNALL
TRIBUNAL MEMBER JAMES ROBERTSON**

Between:

WOOD GROUP ENGINEERING (NORTH SEA) LIMITED

Appellant

and

**THE COMMISSIONERS FOR
HIS MAJESTY'S REVENUE AND CUSTOMS**

Respondents

Representation:

For the Appellants: Hui-Ling McCarthy KC and Sarah Black, both of Counsel
(instructed by Ashurst LLP, London)

For the Respondents: Adam Tolley KC and Giles Read, both of Counsel (instructed by
the Office of the Advocate General, HMRC Division, Edinburgh)

DECISION

OUTCOME

1. For the reasons set out more fully below, the appeal is dismissed.

SUMMARY

2. The Appellant, Wood Group Engineering (North Sea) Ltd ('**WGENS**') is a Scottish company. It is part of a group of companies providing services in the oil and gas industry. Its parent company is John Wood Group plc. WGENS role is to provide services to and at installations such as oil rigs operated by third party clients.

3. This appeal challenges HMRC's decision, dated 21 October 2021 ('**the Decision**'), requiring the Appellant to pay secondary Class 1 National Insurance Contributions (NICs) for the period 6 April 2011 to 5 April 2013 (ie, the tax years 2011/12 and 2012/13) ('**the Relevant Period**'). For those years, WGENS had filed tax returns excluding secondary NICs.

4. These NICs (excluding statutory interest) amount to £18,134,036.

5. The Decision was made pursuant to section 8(1)(c) of the *Social Security Contributions (Transfer of Functions, etc) Act 1999*, HMRC having concluded that WGENS was liable to pay NICs by virtue of the application of the "Host Employer Provisions" ('**HEP**') of the *Social Security (Categorisation of Earners) Regulations 1978* (SI 1978/1689) ('**the 1978 Regulations**') as they stood during the Relevant Period (that is to say, before their amendment in 2014).

6. The fundamental basis of the Decision was that, during the Relevant Period, WGENS was a "host employer" within the proper meaning and effect of the HEP.

7. The central issue for us to determine is whether this is right.

8. In broadest terms, WGENS contends that the HEP do not apply to its arrangements, which it characterises as sub-contracting rather than secondment; that the HEP in any event requires direct and immediate operational and personnel control by the host employer and that the requisite level of control is absent in the present case; and that the personal service of the employees in question was made available to WGENS' end clients, rather than WGENS itself; or was made available both to WGENS and its end clients, thereby making the HEP inoperative.

9. In broadest terms, we agree with HMRC. The Decision was right. WGENS was properly treated as the "host employer" within the proper meaning and effect of the HEP and the NICs are therefore payable.

BURDEN AND STANDARD OF PROOF

10. The burden of proof lies on the Appellant to demonstrate that the Decision is wrong. The standard of proof is the civil standard, namely the balance of probabilities. Here, the Tribunal must be satisfied on the balance of probabilities that the statutory conditions are not met; or (if the personal service is found to have been made available both to WGENS and its clients) that the HEP is simply not applicable.

OTHER HEP CASES

11. This is the fourth occasion on which different compositions of this Tribunal have, over the course of the last year or so, been called upon to consider the HEP in the context of arrangements put in place for persons working in the North Sea oil and gas industry and on the UK Continental Shelf ('**UKCS**').

12. In *Bilfinger Salamis UK Ltd v HMRC* [2024] UKFTT 736 (TC), the Tribunal held that the HEP applied where the UK entity exercised direction and control over offshore workers employed by a foreign company. The Tribunal emphasised the substance of arrangements over form.

13. In *Aramark Ltd v HMRC* [2024] UKFTT 832 (TC), the Tribunal found that the UK entity was the host employer where it directed the work of catering staff employed by a foreign company. The Tribunal rejected the argument that the HEP required a secondment.

14. In *Odffell Technology (UK) Ltd v HMRC* [2025] UKFTT 28 (TC), the Tribunal confirmed that the HEP applied where the UK entity benefited from and directed the work of drilling personnel employed by a foreign company.

15. The Tribunal in all three cases dismissed the taxpayer's appeals. Although those decisions do not bind us, the usual principles of judicial comity apply (for which, see the Upper Tribunal's remarks in *Suterwalla*). The Tribunal in all three cases gave permission to appeal to the Upper Tribunal; but, as matters stand, none of those cases have yet reached a published decision.

THE LEGAL FRAMEWORK

16. We adopt the same approach to the legal framework as outlined by the Tribunal (Judge Brown KC and Mr Woodman) in *Odffell* at Para [17] and onwards. That is to say, in view of the similarity of this appeal in terms of identification and interpretation of the relevant law to that in the above cases, we incorporate only a summary of the relevant legislative provisions:

"Statutory context"

"The statutory framework concerning the liability to pay 2ary C1 NICs is provided for under Social Security (Contributions and Benefits) Act 1992 (SSCBA) and Social Security (Categorisation of Earners) Regulations 1978 SI 1978/1689 (SSCER). Pursuant to those provisions primary C1 NICs (those payable by the employee/earner), will usually be payable only in respect of the earnings of an individual, resident/present and gainfully employed in Great Britain and 2ary C1 NICs (those payable by the employer) will only be payable where the individual is so employed by an employer which is also resident/present in Great Britain. For these purposes Great Britain is deemed to include the UKCS. The SSCER extend the net as to (or in some instances simply make clear) who counts as a secondary contributor in relation to specified categories of employment. The HEP is one such provision."

"HEP"

"The HEP as specified in paragraph 9 of Schedule 3 SSCER as inserted by Regulation 4 Social Security (Categorisation of Earners) Amendment Regulations 1994 (SI 1994/726) (Amendment Regs) provides that where a person is employed by a foreign employer (i.e. one not resident or present in the UK) but:

- (a) in pursuance of that employment the personal service of the person employed is made available to a host employer; and
- (b) the personal service is rendered for the purposes of the business of that host employer; and
- (c) that personal service for the host employer begins on or after 6th April 1994.

The host employer to whom the personal service of the person employed is made available shall be the secondary contributor.

The relevant definitions for interpretation of these provisions are set out in Regulation 1 SSCER (as amended by the Amendment Regs)."

THE EVIDENCE

17. The Tribunal considered very extensive documentary evidence, contained in the following bundles:

- (1) Hearing bundle (2523 pages);
- (2) Supplementary hearing bundle (178 pages)

18. We considered contracts between WGENS and its clients, and intercompany agreements with Wood Group Offshore Services Limited (“WGOS”) and Wood Group HR Limited (“WGHR”). We also considered internal correspondence and Human Resources documentation.

19. Although the documentary evidence placed before us was voluminous, there were some significant omissions from it. The issue of control is an important part of this dispute, and, if control (howsoever defined) is relevant, then the identity of the entity exercising control (or sufficient control) over WGOS employees, including consideration of this on a day-to-day basis, is relevant. Against this background, there was a striking absence of documentation as to the day-to-day operation of the contracts between WGENS and its clients, including but not limited to detailed management procedures and the clients' assessment of WGENS' performance of its obligations under the Client contracts. It is extremely likely that such documentation would have existed. At least some of the absences were explained as due to a failure of computer systems some years ago. It is not the task of the Tribunal to conduct a retrospective audit of WGENS' paperwork. We do not draw any adverse inference from these failures per se. However, the absence of such evidence - for whatever reason - weakens the overall strength of the Appellant's case where it bears the burden, and its task is to discharge that burden.

20. We read witness statements and heard oral evidence, tested in cross-examination, from the following witnesses:

- (1) Derick Macleod: during the Relevant Period he acted as Offshore Support Team Leader, Deputy OIM and OIM;
- (2) Matthew Nesbitt: he acted as Operations Superintendent for the Ithaca Contract between December 2010 and October 2011;
- (3) Martin Weir: he acted as Focal Point/Operations Superintendent and Operations Team Leader;
- (4) Alasdair Samways: an employee of WGHR during the Relevant Period who acted mainly as HR Team Lead for the TAQA Contract.

21. We raised with Mr Tolley KC whether extensive cross-examination was likely to prove productive in the overall evaluative exercise, bearing in mind that the Tribunal in the other, recently-decided, cases dealing with the same legislation had placed considerable weight on the documentary record and (it seemed to us) relatively little weight on the oral evidence. Mr Tolley KC's response to this was that HMRC considered it necessary to canvass the evidence in this way lest the matter be reconsidered on appeal. This is the approach identified by the Tribunal in *Bilfinger*, where Judge Blackwell remarked (at [90]):

"Findings of Fact

Given the interpretation of the law we adopt in the decision, the findings of fact are perhaps fuller than they need to be on that interpretation of law. However, given the fact that we have heard a significant amount of evidence we make these findings in case the decision is appealed and we are found to have erred in our interpretation of the relevant law. Those fuller findings would hopefully result in the decision being able to be remade without being remitted, or, if remitted, limiting the need for new evidence to be heard. We consider this to be in line with the overriding objective and especially (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties; and (b) avoiding delay, so far as compatible with proper consideration of the issues. We set this out at the start of our findings simply to avoid any misunderstanding."

22. We endorse those remarks.

23. This is evidence from persons who were, at the relevant time, relatively high-level personnel. But there are limitations to their evidence. None were directors or other statutory officers of the Appellant or any of the other entities involved. None had personal knowledge of "board-room" level discussion which had given rise to the creation of WGOS. Extensive cross-examination served to emphasise the point that none of these witnesses could really speak with authority as to the detail of the organisational or structural steps which Wood Group had taken, or the relationship between WGOS and WGENS. None of them had worked as an Operations Manager or a Contract Manager on any of the Client contracts at any stage during the relevant period.

24. Despite the pleaded position that relevant control was exercised by the clients off-shore in contracts where WGENS was not the Duty Holder, there was no evidence from anyone who had actually worked offshore in a non-Duty Holder contract, and very little evidence at all as to the day-to-day operation of the Client contracts. No evidence at all was led in relation to operation of three of the six client contracts: Talisman (2 contracts) and Premier Oil.

25. There was no direct evidence from anyone at WGOS, so there was no direct evidence of the role WGOS was playing. This was a significant omission in a case where WGENS was seeking to contend that it was not exercising control (or sufficient control) over WGOS employees, but that (either) WGOS and/or the Clients were.

26. We do not draw any adverse inference from the Appellant's failure to call any witnesses who could have spoken with authority as to those matters; but - as already noted - the absence of such evidence weakens the overall strength of the Appellant's case where it bears the burden, and its task is to discharge that burden.

27. Cross-examination exposed significant gaps in knowledge and vagueness in ostensibly detailed witness statements. This is not entirely surprising. Witnesses were being asked about documents and arrangements which pertained (at the very latest) 12 or 13 years ago: that is to say, things done and written comfortably over a decade ago. Regardless of whether the witnesses were trying their best to help the Tribunal (and we think that they were) this passage of time inevitably and materially impacts the cogency and detail with which their evidence can be given; and hence the weight which can properly be placed on it by the Tribunal in determining the issues before it. In our view, this remains the case even where, as here, some of the witnesses remain employed or otherwise actively engaged in the industry (including for Wood entities); and the available evidence is that the basic tenets of the actual practical day-to-day operation of an oil rig remain broadly as they were a decade ago.

28. Consistently with this, and unsurprisingly, witnesses often could not even recall whether they had seen certain documents at the time - let alone were in the position so as to be able to offer any evidentially-useful account of what those documents meant. One example was Mr Nesbitt, who sought to give evidence about the Ithaca contract even though he didn't know about it at the time.

29. None of the witnesses could give any meaningful evidence about the Personnel Contract, because none of them could recall even seeing it at the time.

30. This is why, in our view, this case is of a kind akin to those considered by Leggatt J (as he then was) in *Gestmin SGPS SA* [2013] EWHC 3560 (Comm) at Paras [19]-[20] and [22], where he remarked:

"19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

20. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been "refreshed" by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.

[...]

22. In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of

supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

31. We approach the evidence, and our overall assessment of it, with this guidance and the above observations in mind.

OUTLINE OF THE DISPUTE

32. Wood Group Engineering (North Sea) Limited (“**WGENS**”) is a UK-incorporated company within John Wood Group PLC (**‘Wood Group’/‘Wood’**).

33. WGENS was the main UK entity providing services to third-party clients on offshore platforms on the UK Continental Shelf (“**UKCS**”).

34. Wood Group Offshore Services Limited (“**WGOS**”) is a Guernsey incorporated company, established in 2011, for the purpose of employing offshore personnel.

35. Wood Group HR Limited (“**WGHR**”) is a UK company providing human resources and administrative services to WGOS and WGENS.

36. WGENS submits that the Host Employer Provision applies only to secondment arrangements, not subcontracting. It argues that WGOS retained control over its employees and that WGENS did not exercise sufficient operational or personnel control to be deemed a host employer. It contends that the employees’ personal service was rendered to WGOS or to the clients, not to WGENS.

37. Alternatively, if the conditions of the HEP are met, the Appellant argues they are met by the client or by both WGENS and the client, rendering the provision ineffective due to the absence of any 'apportionment' mechanism.

38. HMRC contends that WGENS is a host employer under the 1978 Regulations. It argues that WGOS (being established in Guernsey) is a "foreign employer" and that the personal service of WGOS' employees was made available to WGENS and rendered for the purposes of WGENS’s business. HMRC submits that, notwithstanding the employer role of WGOS, WGENS directed the work of the employees and benefited from their services in fulfilling its contractual obligations to clients.

39. HMRC's basic position is that the personal service of the employees in question was made available to WGENS by means of placing their obligation of personal service at WGENS' disposal. That personal service was rendered for the purpose of WGENS' business, as it was used for the purpose of fulfilling WGENS' obligations to its end clients. HMRC maintains that the Host Employer Provision is an anti-avoidance measure and applies to the arrangements in question. It rejects the contention that the provision is ineffective in cases involving multiple host employers and asserts that WGENS alone meets the statutory criteria.

ISSUES FOR DETERMINATION

40. The issues for determination are:

- (1) Whether WGENS is a “host employer” within the meaning of paragraph 9 of Schedule 3 to the 1978 Regulations;
- (2) Whether the personal service of WGOS employees was made available to WGENS and rendered for the purposes of WGENS' business;
- (3) Whether, alternatively, the personal service was made available to WGENS’s clients, or to both WGENS and its clients, and, if so, the effect of such a finding, including

whether the Host Employer Provision is ineffective in cases involving multiple host employers.

FINDINGS OF FACT

41. On the basis of the evidence which we have considered, we make the following findings of fact.

The entities

42. We have described the key entities above.

43. Board minutes and internal correspondence show that WGOS was established as part of a re-structuring of Wood Group's offshore employment arrangements in 2010/2011, known as 'Project Bergerac'.

44. Its incorporation in Guernsey was intended to achieve NIC savings. In all fairness, it should be said that Wood Group was far from alone in its ambition to secure these savings: the practice of 'offshoring' employers so as to seek to mitigate NIC liabilities was widespread in the oil and gas industry, and Wood Group was concerned that liability to pay NICs was impairing its ability to compete.

45. There was no other readily apparent commercial or practical purpose behind the incorporation of WGOS and the consequent offshoring of WGENS employees from Scotland to Guernsey. There is no evidence there was some deficiency which had been identified in the rights and protections afforded to employees in Scotland which could be ameliorated by offshoring them to Guernsey.

46. WGOS did not have independent commercial operations beyond its role in employing offshore personnel. WGOS did not own or rent any accommodation in Guernsey, but used the premises of Bachmann Marine Services (Guernsey) Ltd ('**Bachmann**').

47. The directors of WGOS were initially from Bachmann of but were joined by directors from Wood Group. The Bachmann directors did not have any experience of the oil and gas industry, were paid by Bachmann, and did not receive any separate remuneration from WGOS for acting as directors.

Intercompany arrangements

48. WGENS sub-contracted offshore services to WGOS under a service agreement dated 1 April 2011 ('**the Personnel Contract**'). WGOS employed the offshore personnel and provided them to WGENS.

49. The Personnel Contract was one whereby WGOS (as the 'supplier') was to provide personnel to WGENS (as the 'Company') 'in such numbers and with such qualifications and experience as is required for their respective duties and for such duration as is required by the Company, in support of the Company's commitments to its Clients, at such worksites as may be determined by the Company from time to time'. WGOS was to instruct personnel to obey all reasonable orders of the Company and/or the Client, and was to ensure that personnel complied with WGENS and Client policies. WGENS had the right to require personnel to be removed and replaced.

50. We agree with HMRC that the Personnel Contract was not a form of sub-contracting by WGENS of its obligations under the then-existing client contracts to WGOS. The true effect of the Personnel Contract, on an objective reading of its terms, was that WGOS was obliged to provide personnel to WGENS to enable WGENS to perform WGENS' obligations under its then-extant client contracts.

THE TUPE TRANSFER FROM WGENS TO WGOS

51. WGENS transferred its employees to WGOS under the *Transfer of Undertakings (Protection of Employment) Regulations 2006* (“TUPE”).

52. Briefing slides prepared for employees at the time said that there would be 'No change to existing ways of working', and "no change ... in personnel you report to / work with'.

53. None of the slides even hinted that there would be a change in the nature of the services being rendered: on the contrary, the whole tenor of WGENS' own contemporary analysis of the scenario was that nothing, from the employee's point of view, would change.

54. Witnesses described - in our view, accurately - the TUPE transfer as a 'change of coverall', in the sense of (literally) a change in their work-clothes to reflect a change in the identity of their employer, but not a change in the substance of what they were doing, which continued seamlessly. As far as witnesses were concerned, they were working for 'Wood', and were not anxious that their identity of their employer was changing from one company in the Wood Group to another; nor that their employer was no longer a Scottish company (WGENS) but was a Guernsey company (WGOS).

55. There was no evidence that the day-to-day work of the employees materially changed following the TUPE transfer. Indeed, those personnel remained subject to WGENS' then-existing H&S policies, procedures and practices.

56. Mr MacLeod's evidence, which we accept, was that, in his case, there had been no change of duties, no change of working location, continuity of employment (in a technical sense). He was not dismissed, nor made to reapply for the same role. He had the same colleagues, the same direct reports, the same accommodation, the same facilities such as food, the same transport arrangements to and from the rig, and the same working pattern. It was a seamless transition: all that would change was the identity of the party paying his salary.

57. Mr MacLeod's evidence, which we accept, was that he did not recall ever speaking with anyone in Guernsey; or taking instructions from anyone in Guernsey. All that was happening was that WGOS was on his pay-slips and not WGENS.

58. WGHR provided HR and administrative services to WGENS and WGOS. WGOS employees continued to be managed in accordance with Wood Group's standard HR policies, which had also applied to them when they were direct WGENS employees; all overseen by WGHR.

59. WGHR handled recruitment, disciplinaries, appraisals, and promotions, usually in in consultation with offshore managers and WGOS directors.

60. Bachmann provided WGOS with payroll and administration services.

61. In summer 2013, WGOS employees were transferred from WGOS in Guernsey to a Singapore-based entity, Wood Group International Services Pte.

The Client Contracts

62. During the Relevant Period, WGENS had a series of client contracts with various oil and gas companies whereby WGENS was to provide a range of services such as operations and maintenance, engineering, and facilities management. These services were delivered on offshore platforms.

63. In some of these contracts, WGENS provided 'duty holder' services (within the meaning and effect of the relevant legislation), meaning that WGENS provided the client

with individual(s) to perform the duty holder roles on an offshore installation. The key duty holder role is Offshore Installation Manager (“OIM”).

64. The following contracts with clients were entered into by WGENS. In chronological order:

- (1) Talisman Energy (UK) Ltd (1 November 2003): made on the basis of LOGIC form of contract. WGENS to provide personnel, HR, competence, training and development, contract management, and H&S and environmental services;
- (2) Ithaca Energy (UK) Ltd (1 February 2008): made on the basis of LOGIC form of contract. WGENS was to act as the operator of the duty holder facilities, and was to maintain them. WGENS was the duty holder, with authority to manage and control the duty holder facilities;
- (3) TAQA Bratani Ltd (3 March 2008): WGENS was to provide duty holder and facilities management. WGENS was also responsible for maintenance and inspection, engineering, modifications, project works, and engineering support. WGENS was the duty holder, with authority to manage and control the duty holder facilities;
- (4) Hess Ltd (1 July 2010): made on the basis of LOGIC form of contract. Hess was the duty holder (with this role later passing to Dana Petroleum). WGENS provided offshore and onshore support services including operations and maintenance, manpower provision, maintenance and integrity assurance management programmes, management of procurement and logistics, office facilities, design and engineering, construction and subsea support;
- (5) Talisman Energy (UK) Ltd (1 October 2011): made on the basis of LOGIC form of contract. Talisman was the duty holder. WGENS was to provide operations, maintenance and support personnel, associated H&S, HR, training and contract management support;
- (6) Premier Oil UK Ltd (1 May 2012). Premier was the duty holder, but WGENS was to provide all reasonable assistance to ensure that Premier was able to comply with its duties and responsibilities. WGENS was to provide onshore maintenance and support, ad hoc onshore and offshore personnel, aviation, logistics, materials and sea transportation services, management and administration of maintenance and operational sub-contracts.

65. WGENS was the duty holder in the Ithaca and TAQA contracts. WGENS was not the duty holder in Talisman and Hess. An intermediate situation existed in relation to the Premier Oil contract.

66. Services under the contracts beginning before April 2011 were originally provided by WGENS through individuals directly employed by WGENS.

67. Latterly, and after the inception of the Personnel Contract, and the TUPE transfer from WGENS to WGOS, employees were provided by WGOS to WGENS.

68. However, and despite the inception of the Personnel Contract, WGENS continued to be contractually bound, on the terms of the then-existing contracts, to the Clients under the then-existing client contracts: Talisman Energy (UK) Ltd (1 November 2003); Ithaca Energy (UK) Ltd (1 February 2008); TAQA Bratani Ltd (3 March 2008); and Hess Ltd (1 July 2010).

69. Although there were some *ex post facto* amendments to the client contracts in September 2011 to take account of the fact that offshore personnel were now being supplied

via WGOS (namely, removal of the NICs charges and introduction of a fee) there was never any contract between the Clients and WGOS. WGENS continued to use the LOGIC (Leading Oil and Gas Industry Competitiveness) form of contract despite the inception of the Personnel Contract.

70. Letting the Client contracts speak for themselves, WGENS, as one of the contracting parties, was and remained directly contractually bound to its Clients, under the provisions of the contract with that particular client. That is to say, and regardless of the existence of the Personnel Contract, the Clients were and remained entitled to look, and only to look, to WGENS for performance and discharge of WGENS' obligations under the Client contracts. That situation remained the same in relation to the client contracts first entered into after inception of the Personnel Contract.

71. In terms of personnel duties and performance, the personnel (by virtue of the Personnel Contract), as of 1 April 2011, were employed by WGOS, but were still being provided by WGENS to the client.

72. The worker's obligation to WGENS (and, after TUPE-transfer, to WGOS) was to provide personal service in the sense of work of their own hands; that is to say, they had a contract of service (and not a contract for services) because their contractual obligation was non-assignable.

Control

73. WGENS had the contractual right vis-a-vis WGOS to determine the location of work of any individual ('location' in the sense of onshore or offshore, and, if offshore, which facility, rig or vessel) and exercised that contractual right.

74. The offshore hierarchy was led by the OIM who was either a WGOS (whether TUPE-transferred-in from WGENS, or always WGOS) or a client employee, depending on the terms of the particular client contract.

75. The OIM directed the "offshore" team, which included Offshore Team Leaders ("OTLs"), Offshore Services Team Leaders ("OSTLs"), supervisors, and technicians. The offshore team was described by Mr Nesbitt as a 'core crew', which would expect to be deployed together, and not split up - sort of a work-gang.

76. The "onshore" team were employed by WGENS, including WGENS managers. They provided oversight and support to the OIM and offshore team.

77. The ultimate decision maker was always an onshore, and not an offshore, role:

- (1) In the client contracts where WGENS was the duty-holder, managerial control and supervision of the contracted-for services was exercised by the designated Operations Manager and/or a Business Manager and/or a Focal Point and/or an Operations Superintendent (all onshore roles; and all reporting to more senior onshore roles, ultimately up to Board level);
- (2) In the client contracts where WGENS was not the duty-holder, managerial control and supervision of the contracted-for services was exercised by the designated Contract Manager (also an onshore role).

78. That is to say, the works being done offshore under the Client contracts were being managed by a hierarchy in which the senior positions were always onshore employees of WGENS, and not WGOS. The fact that sometimes onshore employees in senior positions travelled to an offshore location is not material to the analysis: they remained onshore employees. Nor is it material that the OIM (offshore) sometimes had an onshore analogue, of

equivalent seniority, such as an Operations Superintendent. The available evidence is that, where such a situation existed (for example, in the Ithaca contract) the two worked in tandem.

79. There was always an 'interface' or nexus between onshore (WGENS employees) and offshore (WGOS employees).

80. There is no evidence that any OIM ever took instructions from anyone at WGOS or in Guernsey.

81. The OIM was the offshore team leader, but was not autonomous in the strict sense, because the OIM him- or her-self was always answerable to someone in the onshore team for the decisions which were taken by the OIM (for example, Mr Macleod regarded the [onshore] Operations Manager as his 'boss' in relation to the Ithaca contract) and was subject to regulatory or disciplinary action in the same way as any other worker. Moreover, although the OIM had authority over offshore operations, including safety decisions, work permits, and personnel deployment, this was always subject to an express contractual requirement to follow all WGENS' reasonable orders.

Personnel Management / HR

82. The witnesses did not recall any contact with WGOS, or with anyone in Guernsey, concerning their employment.

83. WGHR managed recruitment, disciplinary proceedings, appraisals, and promotions for WGOS employees. Decisions were made in consultation with offshore managers and WGOS directors. The HR processes were documented and followed consistent policies and procedures across the Wood group. It did not matter which particular company employed someone; whether WGENS or WGOS. The same essential principles applied to a disciplinary investigations and hearings.

84. WGHR's involvement was substantive and WGOS employees were generally unaware of the corporate distinctions between WGHR and WGOS.

85. The evidence shows that HR decisions were made centrally and that WGOS directors retained final authority.

DISCUSSION AND ANALYSIS

86. This case involves statutory interpretation. This is purposive. The Tribunal must consider the ordinary meaning of the words used, their statutory context, and any relevant external aids. This includes explanatory notes and prior judicial interpretations. The statutory language is the primary source of meaning, and external materials may assist where ambiguity arises.

87. In this case, the relevant provision is paragraph 9 of Schedule 3 to the Social Security (Categorisation of Earners) Regulations 1978. It is not necessary to establish a secondment in the employment law sense; the statutory test is whether personal service is made available to and rendered for the purposes of the host employer's business.

88. Paragraph 9 of Schedule 3 to the 1978 Regulations provides that where:

- (a) in pursuance of employment by a foreign employer, the personal service of the person employed is made available to a host employer; and
- (b) the personal service is rendered for the purposes of the business of that host employer,

then, the host employer is treated as the secondary contributor for NICs purposes.

89. A “foreign employer” is (summarily) defined as one not resident or present in Great Britain. It is not in dispute that WGOS was a “foreign employer”.

90. A “host employer” is defined as a person having a place of business in Great Britain.

91. HMRC contends, and we accept, that the Host Employer Provision operates as a statutory anti-avoidance measure. Other compositions of this Tribunal have concluded (albeit not universally) that the provisions are intended to counter arrangements that would otherwise circumvent NICs liability.

92. We agree. In our view, the purpose of the Host Employer Provision is to prevent avoidance of liability to NICs through the use of offshore employment structures, including the interposition of a foreign employer. The HEP applies where (a) The individual is employed by a foreign employer; (b) The personal service of that individual is made available to a host employer; and (c) That personal service is rendered for the purposes of the host employer’s business.

93. While the HEP does not contain a motive test, its purpose is relevant to interpretation. The Tribunal must construe the provision in a way that gives effect to its intended operation, without rewriting the statutory language.

94. Whether read as an anti-avoidance clause *per se* or not, the HEP ensures that NICs liability attaches to the UK-based entity that actually benefits, in the manner which answers to the statutory definition, from the personal service of the workers, even if the UK-based entity is not their contractual employer.

95. The HEP does not require a direct employment relationship between the host employer and the individual. Nor does it require it to be shown that the individual is, in a ‘broad sense’, working for the host employer and not the foreign employer.

Personal service

96. Given that WGOS is a foreign employer and WGENS has a place of business in Great Britain, then the question is whether the personal service of WGOS employees was made available to WGENS and rendered for the purposes of its business.

97. We consider that it was. WGENS benefitted directly from the work of WGOS employees in that WGOS employees were the means whereby WGENS was able to fulfil its offshore contractual obligations to its clients. As Mr Nesbitt said, the clients were not interested in the employment status of the workers: they were simply interested in the delivery of the contract. And WGENS was the only entity responsible, as far as the client was concerned, for that delivery.

98. Moreover, the Personnel Agreement between WGOS and WGENS gave WGENS the right to determine the location and nature of the work. This contractual right is significant. In this industry, the location and nature of the work are fundamental. WGENS’ overriding commercial interest and imperative was to continue to perform and discharge its contractual duties to its then-existing clients under its then-existing client contracts, as well as doing the same in relation to clients and contracts which first came into existence after 6 April 2011. WGENS’ duties to its clients under the client contracts required WGENS to be able to supply natural persons, of the requisite skills and experience, to work off-shore. After the TUPE transfer, it was doing so only by using WGOS employees.

99. “Personal service” is not the same as “control” (and there is no mention of “control” in the legislation).

100. If WGOS were to tell its employee to obey WGENS' directions (which are, necessarily and/or as a matter of ordinary logic made by WGENS for WGENS business, namely its discharge of its own contractual obligations and/or obviation of the financial consequences of non-performance or defective performance) and WGOS' employee were to do so (or were to be disciplined for refusing to do so, or for doing so badly) then that personal service is being "made available".

101. These factors support our conclusion that personal service of WGOS employees, which personal service was owed to WGOS, was "made available" to WGENS.

102. In our view, the focus on secondment/subcontracting is not really productive. The legislation does not require a secondment, and does not use that expression. It simply requires that personal service be made available and rendered for the host employer's business. That is to say, the nature of the arrangement is not determinative. What matters is how that arrangement, howsoever described (formal) or analysed (substantive), answers to the statutory language.

103. The Appellant relied on principles from employment status case law, including *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497 and *HMRC v Professional Game Match Officials Ltd* [2024] UKSC 29. These cases address the irreducible minimum of mutuality of obligation and control required for a contract of employment.

104. However, we do not consider that these principles are determinative in the present context. The Host Employer Provision does not require the 'host employer' to be the *actual* employer. It is sufficient that the personal service is made available and rendered for its business. The employment status tests do not override the statutory language or tests.

"Rendered" "for the purposes of its business"

105. The test is not simply 'made available'. The HEP also requires, discretely, that the personal service being so made available was "rendered" to WGENS "for the purposes of its business".

106. There is no explicit requirement in this, separate, limb of the HEP that the host employer exercise *any* degree of supervision, management or control; and nor do we consider that such a requirement be implied. There is no obvious or attractive route for implication into what is otherwise clear statutory language. We agree that it cannot be the case that WGOS give up a contractual right of control to WGENS; or that WGENS be given a contractual right of control, because this would, in substance, obviate the Personnel Agreement which is the premise of the operation of the HEP. In that sense, at best, it seems to us that whether or not control is exercised is simply a factor capable of going, as part of a multi-factorial assessment, to whether the requirements of the HEP are met.

107. We find that the personal service is in fact "rendered" and, being rendered, was for the purposes of WGENS' business. We repeat what we have already said above.

108. Insofar as "control" is a requirement, then we agree with HMRC that this control does not need to involve a wide right of intervention, such as to permit the (host) employer to intervene in every aspect of the performance by the employee of their duties.

109. We agree that there can be a more (limited) degree of control. In our view, this degree of control can be seen here in the ability of WGOS to tell its employees to follow WGENS' directions. That is a 'framework' within which control is exercised, so that the HEP engages even where (say) junior WGOS employees are not told directly what to do by WGOS. It is

sufficient, in the present context, if a more senior WGOS employee directing their work is so instructed; or the OIM is so instructed.

110. In the event that control is a relevant part of the assessment, then that assessment of where the (relatively modest) threshold lies is comfortably surpassed by WGENS in this case. The overwhelming weight of the evidence is that WGOS employees were being controlled or directed by WGENS, directly, and on its own account, through its onshore employees; and not as an agent or conduit or surrogate for WGOS.

111. WGENS was, on the facts, directing WGOS' employees in the sense of deployment: that is to say, where the worker's work was to take place; how long it was to last; how the worker was to get there; who the worker was to report to; who the worker was to take reports from; and their overall duties (eg whether someone is an electrician or a plumber). This is both control and direction in a direct sense - through line management and operational oversight - as well as indirect - through policies and procedures.

112. WGENS was also planning work, onshore. For example:

- (1) In relation to the Ithaca contract, the offshore team was producing only a 7-day plan (and perhaps working together with the onshore team on the 14-day plan). All longer plans (28 days, 90 days, 1, 3 and 5 years) were produced onshore.;
- (2) In relation to the Hess contract, the 7 and 14-day plans were produced offshore; but the other plans were produced onshore.

113. As a cross-check, and in terms of the general thrust of the evidence, it is very hard to identify any WGOS employees being controlled or directed to do anything by anyone other than WGENS. The witnesses could not recall any meaningful interaction at all - let alone, interaction in terms of control or direction - being exercised by anyone at WGOS and/or on Guernsey. Indeed, there was some evidence - which we accept - that witnesses did not even know of Guernsey or Bachmann in the Relevant Period.

114. There was considerable focus by the Appellant on the disciplinary role of WGOS, seeking to show that WGOS was involved in the WGHR-led disciplinary process flowing from various incidents involving offshore employees (eg, not arriving at the heliport in sufficient time to catch the helicopter; or directing a helicopter to land on the rig when perhaps it should not have done). But this evidence does not suffice to shift the overall balance of control from WGENS to WGOS. We agree with HMRC that the best that really can be said of WGOS was that care was being taken to make sure that recruitment or disciplinary/grievance decisions were, and were seen to be, taken by WGOS; but even if that was genuine and not colourable, it was not activity which demonstrates that WGOS was directing or controlling its employees' activities as they were being conducted from day-to-day (as opposed to ex post facto investigation and action when things were said to have gone wrong).

Were the Clients the (sole) host employer and not WGENS?

115. No. We repeat our comments and findings above.

116. In our view, this analysis is unsustainable because it seeks to entirely strip-out the role of WGENS. In any event, it does not succeed evidentially because there is no evidence from any of the clients. We limit ourselves to observing that it would be an ambitious undertaking for any of the clients address and overcome the solid weight of evidence that WGENS was the host employer.

More than one host employer?

117. We move on to consider the Appellant's argument is that the HEP provisions are simply inapplicable in a situation - said to be this one - where more than one host employer exists, for example, WGENS and the Client.

118. We do not accept this submission.

119. The provision refers to "a" host employer, and we have found that WGENS meets the statutory criteria. This is a bright-line test, which, as its outcome, definitively segregates arrangements where Class 2 ENICs are payable from those which are not. The provision does not require exclusivity.

120. We also reject the argument that the HEP is ineffective because of the absence of an apportionment mechanism / ability to pro-rate. The Tribunal's task is simply to determine whether the conditions are met in respect of the Appellant, regardless of whether other employers might also qualify. It is certainly possible - as we canvassed in argument with Ms McCarthy KC - that this could occasion situations which appeared unjust as between two entities who each were capable of qualifying, but where only one had been assessed for NICs. But that is not a sufficient reason to read a limit of the kind suggested into the legislation.

121. Finally, we have addressed this appeal on its own facts and merits. But we do not accept that the previous HEP decisions are limited to their facts, or otherwise materially distinguishable from the facts of this appeal. Indeed, even viewed at a modest high-level, there are striking similarities between those cases and this one. In each case, and as here:

- (1) There was a UK operating company (holding the operator facing contract; here WGENS) and an offshore employer (here, WGOS);
- (2) Staff were moved from the UK entity to the offshore employer on TUPE-style terms, with continuity of employment/worksites;
- (3) Witnesses and documents showed offshore crews were integrated into the UK onshore/offshore chain of command and took day-to-day direction from UK management;
- (4) Each structure was adopted to remain competitive by avoiding UK secondary NICs while keeping crew and operations essentially unchanged.

122. It seems to us that the dissimilarities (for example, the type or work, eg catering/housekeeping services) are inconsequential and/or of insufficient materiality to properly distinguish those cases from this one.

OUTCOME

123. We uphold the Decision.

124. In this case, WGOS, as a foreign employer, was not liable to pay NICs due to its lack of residence or presence in Great Britain. The conditions of the Host Employer Provision are met, meaning that WGENS is deemed to be the secondary contributor in respect of earnings paid to or for the benefit of the employed earner.

125. Accordingly, WGENS as a host employer is liable for NICs; and its appeal is therefore dismissed.

Release Date: 22nd DECEMBER 2025

