

Employment Status Project – Terms of Reference

Background

The boundary between employment and self-employment has not kept pace with changing work patterns, especially in recent years. Many people work for more than one business and can be classed as employed for one job and self-employed for other work. The growth of freelancing as a way of conducting business had led some to suggest this is a ‘third way’ between employment and self employment.

There are significant tax and NIC differences between employed and self employed status. Getting the status wrong in a working arrangement can be very costly for the business in particular and often for the individual. These potential tax and NIC benefits and risks drive business behaviour, exemplified by many of the personal service companies that are in use (though many are simply sensible vehicles for the taxpayer’s operations).

Previous OTS work

The distinction between the employed and self-employed was highlighted as a major fault line and source of complexity in the OTS reliefs review and the small business review. The first stage of the latter review reported specifically on IR 35 with recommendations for improving its operation.

The OTS noted that it is important for the tax system to fit with the real world but in many instances case law is complex and difficult to apply, for large and small businesses alike. Offering more certainty to individuals and businesses would be a useful simplification.

The OTS employment status project

The Government has therefore commissioned the Office of Tax Simplification to examine the dividing line between employment and self-employment and whether it is drawn in the right place and in the right way. In carrying out their work the OTS will consider:

- Whether the UK's current employment status tests result in real uncertainty and if so, for what sections of the workforce and in which areas.
- Sectors and types of engagement with the labour market where difficulties in administering the tax rules are relatively common for any or all of those involved with the tax system.
- How well current rules and guidelines fit with situations where individuals have multiple roles; whether the key distinction is between working and not working.
- Trends in employment law.
- HMRC guidance and advice.
- The special cases regulations, primarily as evidence of existing difficulties with the main tax rules.
- The scope for simplification through the increased use of digitisation.
- International comparisons to the UK approach to dealing with employment status and the experience of other countries in managing their approach.

The review will **not** consider:

- IR 35: previous OTS work has made recommendations in this area and the government decided how to take the issues forward. The recent report of the House of Lords Economic Affairs sub-committee has also examined the area.
- The Construction Industry Scheme: CIS has overtones of employed/self employed issues but is not directly relevant the OTS project; HMRC are also currently consulting on proposals for improving CIS.
- The expenses rules for employed and self employed people.

The review should have regard to:

- The impact on employers and employees of any changes;
- The cost/benefit to the Exchequer;
- HMRC operational impacts;
- Interaction with employment law, including EU aspects;

- The on-going project on PAYE/NIC operational integration;
- Fairness and consistency of treatment of taxpayers; and
- The need for anti avoidance measures.

The Office has been asked to produce a report in time for Budget 2015. The intention is that this report will contain any appropriate 'quick wins' that it may be possible to take forward quickly. However, it is likely that if the report points the way to significant reforms, these would be for the next government to consider.

The Office's work will be informed by consultation with interested parties, including forming and working with a consultative committee.