



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

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Dear Teresa & John

UPDATE ON TAX SIMPLIFICATION MEASURES

Autumn Statement 2015 made a number of announcements relating to the work of the Office of Tax Simplification (OTS). I am writing to explain these announcements and provide an update on recent progress.

Future of the OTS

I am delighted to confirm that the OTS will shortly be put on a permanent, statutory basis. Draft legislation will be published on 9 December. The OTS did excellent work in the last Parliament and I am sure you will continue to drive progress in simplifying the tax system.

Employment Status

When I wrote to you after the March Budget, I welcomed your review of employment status and promised to consider the recommendations



carefully when shaping the Government's programme of tax reform and administration for the next Parliament. I am now pleased to report that the Government has agreed to 17 of your recommendations and will further consider another 6. A table is attached to this letter detailing the Government's response to each recommendation from your report. As you will see, work is already underway in many of the areas you highlighted in your review. In some cases, action has already been taken and completed.

Cross-Government Working Group for Employment Status

As your review found, the dividing line between employment and self-employment can differ depending on whether status is being decided for the purposes of employment law or tax. This is a complicated situation which can cause confusion for both workers and employers. To help to address this, I have asked officials to establish a Cross-Government Working Group for Employment Status. The intention is for this group to include representatives from HM Revenue and Customs (HMRC), HM Treasury, the Department for Work and Pensions (DWP) and the Department for Business, Innovation and Skills (BIS). The Working Group will consider the benefits of and barriers to an agreed set of employment status principles and a statutory employment status test.

Since the publication of your report, BIS have asked Julie Deane OBE to carry out a review of self-employment in the UK. DWP have also launched a review of business start-ups and entrepreneurship in



disadvantaged communities, which will be led by Baroness Mone. I believe it would be premature to establish a separate review of employment status while these two reviews are taking place, though I expect that the Working Group will consider any relevant findings. I have written to DWP and BIS ministers and intend for the group's first meeting to take place in early 2016.

Employment Status Indicator

I welcome your finding that the Employment Status Indicator is a valuable tool. HMRC are currently reviewing it to increase its use and provide greater certainty. Improvements are expected to be delivered by April 2016 with further work to be carried out through 2016/17. HMRC will look at how to best use current case law to provide certainty and will consider the possibility of producing versions of the tool for specific industries. They will also consider whether they could stand by the tool's results if it has been properly and reasonably completed. This would mean that, where a business has acted reasonably, there is little risk of HMRC challenging the status of its workers.

Other Announcements Building on OTS Work


The Government is simplifying the tax system in other ways. To simplify National Insurance contributions (NICs) for the self-employed, the Government intends to abolish Class 2 NICs and reform Class 4 NICs. The Government will soon publish a consultation on introducing a new contributory benefit entitlement test into Class 4 NICs.



The Government continues the review of the tax rules for travel and subsistence expenses with a view to modernising these rules to reflect current practices. It is mindful of the link between this review and the expenses of the self-employed and the intention is that self-employed expenses are considered alongside as the work progresses. A discussion paper setting out some of the Government's initial thinking was published for public consultation in September 2015.

As well as this review, following your 2014 report on simplifying the employee benefits and expenses system, a consultation was recently held on how the tax and NICs treatment of termination payments could be made simpler and fairer. The Government is now considering the responses to this consultation. The Autumn Statement also announced a call for evidence on the current tax treatment of employer-provided living accommodation.

To conclude, I would like to thank you and your team for helping to simplify the tax system. Your work supports improvements to the benefit of all taxpayers. I look forward to receiving your next reports on the closer alignment of Income Tax and NICs and the taxation of small companies.

Yours ever,


David Gauke MP



ANNEX: GOVERNMENT'S RESPONSE TO THE OFFICE OF TAX SIMPLIFICATION'S REVIEW OF EMPLOYMENT STATUS

	Office of Tax Simplification Recommendation	Government Response
1.	A joint review of the possibility of agreed employment status principles between HM Revenue & Customs, HM Treasury, the Department for Work and Pensions and the Department for Business, Innovation and Skills.	Accept
2.	Ensure GPs and related professions are considered in the review of administrative practice in EIM 03002.	Accept
3.	ESC A37 and the related NIC Regulation 27 should be put into legislation.	Consider
4.	Update guidance on the status rules for the film, TV and production industry.	Accept
5.	Easements and concessions for particular occupations should be formalised in HMRC Statements of Practice and given publicity.	Accept
6.	Launch a review of categorisation regulations with a view to their abolition and replacement with a single set of rules.	Consider
7.	Abolish any distinction between the term 'office holder' and 'employment' in tax and NICs legislation.	Reject – The term 'office holder' is a legislative term supported by case law, which HMRC believe underpins important distinctions for tax and NICs.
8.	There are lessons from a number of other countries that can be drawn on.	N/A
9.	The idea of a set de minimis level for payments to an individual who carries out some activities for a business, which would definitely not be employment, should be explored.	Reject – HMRC consider that the introduction of de minimis payments would increase the risk of avoidance.
10.	Create an employment status portal with all the government's guidance on employment status, including both employment rights and tax.	Accept
11.	HMRC should issue 'best practice' guidance for business on what to do when engaging a self-employed individual.	Accept



12.	Carry out further work to explore how the idea of a safe harbour might be developed. The main aim would be that an HMRC employment status ruling could apply from the date of the ruling but could not apply retrospectively.	Consider
13.	Set up an employment status helpline where businesses are able to discuss specific queries with an HMRC officer with specialist knowledge of the subject.	Accept
14.	Add more examples of common real life situation to HMRC employment status guidance.	Accept
15.	Consider allocating more resources to employment status and/or ensure that more HMRC compliance staff receiving training in this area.	Accept
16.	Explore synergy between IR35 and the OTS employment status review recommendations.	Reject – although IR35 was out of the scope of this review, the government will consider the recommendations as part of the dialogue with business on improving the effectiveness of the intermediaries legislation.
17.	Review and update case law underpinning the Employment Status Indicator tool (ESI).	Accept
18.	The ESI needs to be maintained and improved. Upgrade work should include: <ul style="list-style-type: none"> - More 'real-life' business examples. - More industry specific examples, which could appear depending on previous answers. - Some of the supporting guidance and help functions need to give clearer answers. - Improve software to prevent freezing. 	Accept
19.	As part of the upgrade work, consider developing more than one version for different major industry sectors and who the main target of the tool should be (individuals, businesses or agents).	Accept
20.	Explore the possibility of making the ESI results definitive where the tool had been properly and reasonably completed.	Accept
21.	Explore the idea of a statutory employment test.	Consider



22.	Expand the HMT review of travel expenses to look at the position of the self-employed as well.	Accept
23.	Conduct a full study into the alignment of tax and NICs payments and benefits across the employed and self-employed.	Accept
24.	Merge tax and National Insurance in order to remove many of the anomalies within the tax system, and contribute significantly to simplifying issues around employment status by reducing the differentials.	Consider
25.	Increase transparency around employer's NICs to improve the understanding of the average individual.	Reject – Including employer's NICs on payslips will decrease simplicity for individuals. BIS announced earlier in the year that they intend to consult on transparency where including employer's NICs on payslips has created confusion for taxpayers, particularly in relation to umbrella companies.
26.	Explore widening the system of withholding tax payments for the self-employed. This would not be a simple expansion of the Construction Industry Scheme, but a new system that takes advantage of digitisation.	Consider
27.	Do not pursue proposals for a third way at this stage as other routes have more potential.	Accept
28.	Conduct a full review of taxation for small businesses, including limited companies, partnerships/limited liability partnerships and sole traders. This should have regard to employee taxation.	Accept

