

## **Cross-government Working Group on Employment Status Minutes**

18 May 2016 14.00 – 16.00  
1 Horse Guards Road, London SW1 2BQ

### **Attendees:**

- HM Revenue and Customs (HMRC)
- Department for Business, Innovation and Skills (BIS)
- Department for Work and Pensions (DWP)
- HM Treasury (HMT)
- Office of Tax Simplification (OTS)

### **Welcome and Introduction**

1. HM Revenue and Customs welcomed attendees to the Cross-government Working Group on Employment Status (hereafter 'the Group').
2. The Financial Secretary to the Treasury requested the establishment of a cross-government working group to examine the benefits of and barriers to an agreed set of employment status principles and a statutory employment status test. He also intended the Group to consider any relevant findings of the reviews by BIS and DWP and whether any further work needs to be carried out in this area.
3. The OTS March 2015 report concluded the current position results in lack of certainty and confusion for individuals and businesses. Two other reviews have also looked at the issue:
  - Julie Deane OBE, BIS review of support for the self-employed; and
  - Michelle Mone OBE, DWP review of start-ups and entrepreneurship in disadvantaged communities.

### **Group Aims, Outcomes and Terms of Reference**

4. The Group agreed the Terms of Reference with minor amendments. These will be published on GOV.UK after Purdah.

### **Status for Tax, Employment Rights and Welfare and Social Security**

5. HMRC, BIS and DWP gave overviews of employment status in their respective departments and some basic information on how to determine status.
6. HMRC use employment status to determine tax (sections 4-5 Income Tax (Earnings and Pensions) (ITEPA) Act 2003), National Insurance contributions (Social Security Contributions and Benefits Act 1992), entitlement to Statutory Payments (Social Security Contributions and Benefits Act 1992) and eligibility for tax related expenses and deductions (Part 2 Chapter 1 ITEPA 2003). They use two main categories of employment status: employee or self-employed. Whether a person is an employee or self-employed depends on various criteria arising from Court judgements.
7. BIS use employment status to determine whether someone is entitled to employment rights or an engager has employment law responsibilities (section 230 Employment

Rights Act 1996). They use three main categories of employment status (as well as other minor statuses): employees, workers and employee shareholders. Which category a person falls into again depends on various factors.

8. Unlike HMRC, BIS do not have a category of status for self-employed workers as they are not entitled to general employment rights. Many employment rights conferred on workers arise out of European Directives.
9. Determining the relationship for both employment rights and tax and NICs is based on the reality of the relationship rather than just the terms and conditions of a contract.
10. DWP use employment status to determine whether a person qualifies for Universal Credit (UC), Employment Status Allowance (ESA), Jobseeker's Allowance (JSA) and Income Support (IS). DWP has responsibility for determining employment status for UC, ESA, JSA and IS.
11. None of the departments has a statutory definition of employment status and how it is determined ultimately lies with the tribunals and courts.
12. There is a large degree of overlap in the principles that the employment tribunals and tax tribunals use when determining status. There is a level of commonality of definition for a large number of customers, as the precedent for determining a contract of service (for tax) or a contract of employment (for employment rights) is similar. This includes, for example, the right to substitution and degree of control the engager has over work undertaken.
13. However, there are areas where a common definition is not so clear. In particular, there is no obvious alignment in the case of limb (b) workers. Limb (b) workers are defined in section 230(3) Employment Rights Act 1996 and have more entitlements than self-employed persons (e.g. they are entitled to National Minimum Wage), but less than employees (e.g. they are not entitled to maternity pay). This concept does not exist for tax and further work is needed to understand how much wider than the tax definition this is and how many individuals fall exclusively within it.
14. More generally, the Group agreed we need to identify where real problems exist and be very clear about evidence that the differences are creating problems. Resolving any problems must outweigh the cost of any change.

## **External Stakeholders and Engagement**

15. HMRC agreed to circulate minutes to Members within two weeks of each meeting. The minutes will be published on GOV.UK within four weeks of each meeting.
16. BIS and HMRC agreed to discuss stakeholder engagement.

## **Forward Look**

17. The Group agreed HMRC will explore overlaps and differences across the definitions and uses of employment status across departments. This will include looking at the OTS Report and implications for particular sectors with difficulties and will involve other Members of the Group. This will enable a more detailed discussion at the next meeting.

**AOB**

18. The next meeting will be held on 20 July 2016 at 1 Horse Guards Road, London.