

Cross-government Working Group on Employment Status Minutes

20 July 2016 11.00 – 12.30
1 Horse Guards Road, London SW1 2BQ, G15

Attendees:

- HM Revenue and Customs (HMRC)
- Department for Business, Energy and Industrial Strategy (BEIS)
- Department for Work and Pensions (DWP)
- HM Treasury (HMT)
- Office of Tax Simplification (OTS)

Welcome

1. HMRC welcomed attendees to the group.
2. Colleagues from the Department for Business, Innovation and Skills (BIS) are now part of the Department for Business, Energy and Industrial Strategy (BEIS) due to recent machinery of government changes.

Employment Status in the UK

3. There are some common status principles which apply across the employment rights and tax regimes:
 - There is no statutory definition of employee. An employee is defined by reference to the contract they work under. There is no statutory definition of a contract of employment.
 - The business which takes on and pays an individual decides their employment status for the purposes of deducting tax and granting rights such as holiday pay.
 - Whether someone is employed or self-employed is determined by criteria from case law.
 - Status is determined, based on the facts of a particular situation, rather than any label given to the relationship between the individual and engager.
 - If in a particular engagement, working practices change, employment status may change too.
4. An employee is entitled to the highest level of rights, as well as National Minimum Wage and pensions auto-enrolment.
5. Further work is needed to understand whether a contract of employment (used for employment rights purposes) and a contract of service (used for tax purposes) are synonymous. Contract of Employment appears to have been introduced as a less archaic term, with the same intended meaning.
6. There is little scope for aligning definitions with Universal Credit.
7. In addition to employee and self-employment, for employment rights there is an additional status of 'worker'. There is no equivalent worker status for tax or welfare. There are also various other categories for both tax and rights which apply to specific groups such as apprentices and agency workers.

8. All employees for employment rights are workers – ‘employees’ are ‘workers’ who also have a contract of employment. Because there is a lower threshold for someone to be a worker, some individuals are workers but do not meet the higher threshold of employee. As a result, some people can be workers for employment rights and self-employed for tax.
9. The definition of worker varies across different employment rights. When the UK transposes EU legislation, the UK government decides who falls within worker for the purposes of the specific legislation. For example, whistleblowing has its own definition of workers to capture student nurses. Worker status is therefore fluid rather than a fixed population.
10. The group identified four options to align worker for employment rights and tax purposes:
 - (i) Worker removed for employment rights purposes, with workers losing associated worker rights.
 - (ii) Worker created as a new status for tax.
 - (iii) Workers all considered employees for tax.
 - (iv) Workers all considered self-employed for tax.
11. The group identified some initial risks of these options.
12. Removing worker status would remove rights from existing workers who are entitled to those rights. It could reduce flexibility of business by removing the option of hiring workers, and would increase business burdens of familiarisation with the new system, as well as the financial cost of affording the same rights to workers as employees.
13. Creating a new status for tax, or changing the tax consequences of workers would have fiscal consequences, by increasing or decreasing the number of people who pay tax as employed or self-employed.
14. To further assess impacts, the group need to know:
 - How many people fall into the worker category for employment rights; and
 - Of those, how many would be employed or self-employed for tax purposes.
15. It is difficult to quantify how many individuals fall within ‘worker’ status as this is not determined by the Department for Business, Energy and Industrial Strategy, but on a case by case basis by individuals and the businesses who engage them. Individuals and businesses can then challenge the decision at an Employment Tribunal.
16. The group acknowledged that some individuals may not know themselves whether they are a ‘worker’ or another status for employment rights, because this is not relevant in every day work. BIES, HMRC, the OTS and DWP will do further work to determine whether and how to quantify this.

External Stakeholders and Engagement

17. It would be useful to engage with external stakeholders to test the group’s thinking and options to simplify employment status across regimes.
18. HMRC will work with BEIS to plan who to engage with and timescales and draw on OTS’ previous engagement with stakeholders.

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19. The next meeting will be held on 13 September at 1 Horse Guards Road, London.