



MODERN WORKING PRACTICES AND OFF PAYROLL WORKING

Issued 5 April 2018

GOVERNMENT'S RESPONSE TO THE TAYLOR REVIEW OF MODERN WORKING PRACTICES AND OFF PAYROLL WORKING IN PUBLIC AND PRIVATE SECTORS

TEXT OF LETTER SENT ON 5 APRIL 2018 TO THE FINANCIAL SECRETARY TO THE TREASURY BY ICAEW TAX FACULTY

Internationally recognised as a source of expertise, ICAEW Tax Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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Text of letter sent on 5 April 2018 to the Financial Secretary to the Treasury by ICAEW Tax Faculty

We very much welcome the government's response to the reports from Matthew Taylor on 'Good Work' and also from the joint Work & Pensions and BEIS select committee, together with the four accompanying consultations.

We understand and appreciate the political sensitivities underlying the decision not to address the differences between the rates of national insurance contributions paid by and in respect of employees and those paid by the self-employed. We also recognise that the Government may as a matter of policy wish to provide some degree of recognition in the tax system for those in self-employment. Nevertheless, we urge the Government to reconsider this recommendation from Matthew Taylor's report.

Our reason for suggesting that this decision is reconsidered is that we believe that the current position is unsustainable in the longer term. It is continuing to distort how workers are hired and causes considerable complexity for the tax system. We believe that, instead, the Government should look to work with stakeholders and business to try and identify a suitable and sustainable solution. The Taylor review provides an opportunity to host an informed public debate to explore not only employment rights but also the principles that should underpin the tax and NIC treatment faced by businesses and the workers they engage, and to identify and explain why changes are needed.

Turning to IR35, the changes made with effect from 6 April 2017 to the off payrolling regime for the public sector have identified a number of problems which we believe need to be resolved before any similar change can be considered for the private sector. These include:

- how to account for fees in workers' personal service companies in a way that complies with both the Companies Acts and with financial reporting standards;
- the absence of a means for those who have to include 'deemed employees' in their payrolls to distinguish them from true employees in their payroll submissions to HMRC; and
- that HMRC's check employment status tool (CEST) is not suitable for use in the private sector. HMRC has stated that CEST does not cover all scenarios, including the mutuality of obligations master and servant test, and that the tool was designed based on public sector contracts. Further, there are also no rights of appeal for individual workers who disagree with the CEST status decision.

We should welcome the opportunity to discuss these issues with you and how we might stimulate a public debate about the income tax and NIC treatments of the employed/self-employed.

APPENDIX 1

ICAEW Tax Faculty's ten tenets for a better tax system

The tax system should be:

- **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
- **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
- **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
- **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
- **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
- **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
- **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
- **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
- **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
- **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).