

**BEIS Labour Market Inquiry
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We are a group of experienced tax professionals with specialist interest in the labour market issues facing the low paid. We welcome the opportunity to make a submission to this inquiry. Our response focuses on the question ‘What can the Government do to improve protection for people in low-paid work and the gig economy?’.
- 1.2 From our considerable involvement with voluntary organisations such as the charity TaxAid¹, and via feedback from members of the public to our website, we strongly believe that there is a significant problem with the ‘false’ self-employment of low-paid workers in the UK labour market. In particular, there seems to be widespread false self-employment in the construction industry² and care sector but we do not believe it is limited to these sectors³.
- 1.3 False self-employment (treating a worker as self-employed when the true nature of his/her engagement is that of employment) is of great concern to us. Engagers incorrectly treat workers as self-employed as this can reduce or eliminate their tax related obligations and costs as an employer (for example operating PAYE and paying employer’s National Insurance). Whether it be down to deliberate behaviour, casual indifference or a misunderstanding (which is then compounded by worker ignorance), this can often lead to other problems for workers, as the ‘self-employed’ status for tax, acts as a gateway to incorrect treatment and potential abuses in other areas.
- 1.4 At the same time, we think HMRC, as the body tasked with administering the tax system and enforcing the PAYE regulations, could do more to protect workers from false self-employment. There is currently a huge education piece missing, which could help prevent accidental non-compliance by engagers and help workers to protect themselves from the problem in the first place.

¹ www.taxaid.org.uk

² <https://www.ier.org.uk/comments/the-original-gig-workers-the-fight-against-bogus-self-employment-in-the-construction-industry/>

³ <https://www.unitetheunion.org/news-events/news/2020/march/mccluskeys-call-to-chancellor-end-bogus-self-employment-to-make-your-support-scheme-work/>

But when false self-employment has already occurred, we have had reports from workers (through our website) of HMRC providing no advice or support when the worker sought their help. This is the incorrect response.

- 1.5 Instead, HMRC should ensure that any workers who present with false self-employment are handed to a specially trained team, perhaps the Employment Status team or the Extra Support team who then do a full fact find and send a report (if appropriate) about the engager to the Employer Compliance team. The Employer Compliance team then need to investigate the engager for potential PAYE non-compliance. Where non-compliance is found, the PAYE Regulations say that HMRC should usually collect tax underpayments from the employer under Regulation 80¹ – this is effectively a means of enforcing the payment of PAYE and says that the employer will remain liable for the tax that should previously have been accounted for to HMRC but for whatever reason was not paid. By implementing these changes, HMRC could start to change the whole narrative, which in turn could exponentially bolster future education, guidance and deterrence efforts.
- 1.6 Therefore, in answer to the question ‘What can the Government do to improve protection for people in low-paid work and the gig economy?’, the one single thing that we think could improve protection for workers is for HMRC to revamp their response to engagers’ non-compliance with the PAYE rules. This is particularly important given the tight labour market, as engagers may feel they need to pay more to attract workers, which could then leave them looking for devices such as false self-employment to help displace their costs.
- 1.7 More broadly, we feel HMRC have a key role to play in ensuring a happy and healthy labour market. We would like to see this role more widely factored into HMRC’s decision making. Indeed there are so many connections between HMRC’s tax work and wider worker welfare issues, that we have recently said² that we would like to see the Director of Labour Market Enforcement’s statutory role in relation to non-compliance in the labour market expanded to include tax.
- 1.8 In the gig economy, there are employment status issues too. Most workers are treated as self-employed for tax purposes by default. This is despite the fact that courts have found that some gig economy workers really don’t have much autonomy at all and can’t really be said to be in business on their own account, so have ‘worker’ status for employment law purposes. While we recognise the gig economy can provide many people with the opportunity to earn an income who might otherwise struggle to find work, behind the innovative technology and new language of ‘tasks’ and ‘rides’ etc., it seems there may actually remain the age-old problem – the workers are not genuinely self-employed but are being forced down this route by some businesses looking to minimise their costs and obligations.
- 1.9 It would be very helpful to obtain clarification as to whether such workers are genuinely self-employed for tax purposes. Therefore we would encourage HMRC to take a case through the courts

¹ <https://www.gov.uk/hmrc-internal-manuals/payee-manual/payee54005>

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<https://www.litrg.org.uk/sites/default/files/220527%20Labour%20Market%20Enforcement%20Strategy%202023-2024%20CFE.pdf>

to test the status of gig workers for tax purposes as soon as possible. If gig economy workers are not genuinely self-employed it means the entire success of the sector has potentially been based on the platforms' non-compliance with PAYE.

- 1.10 In terms of employment law rights and protections, 'worker' status is extremely valuable for those in the gig economy as it ensures that people in non-standard work have access to a basic suite of employment rights. We know that some gig workers have had success enforcing their 'worker' status in the employment tribunal, however there will be many others that do not have the understanding or wherewithal to do this. It is not clear to what extent the enforcement bodies are engaged with the issues. There will almost certainly be more they can do in this area.
- 1.11 Given many 'workers' seem to have extremely limited or indeed no real understanding of the current framework and may be misled into thinking that their self-employed status (for tax purposes) applies across the board, we would like the Government to try and understand workers' experiences and to think about what intervention or changes might be appropriate to improve things for gig economy workers (over and above testing the tax position). Better guidance to make it easier for gig workers to understand worker status and which rights and protections apply to them (and how to enforce them) would be a good starting point. The GOV.UK page on worker status¹ could be significantly improved in this regard.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

¹ <https://www.gov.uk/employment-status/worker>

3 Introduction

3.1 Employment status is a hot topic because of the IR35/off payroll reforms. However, employment status is much wider than IR35/off payroll reforms and is relevant when someone is engaging someone directly, not just through an intermediary.

3.2 In this submission, we have commented to the extent we feel it is relevant to LITRG's audience, which is taxpayers who are unable to afford professional advice. We generally refer to these taxpayers as 'unrepresented taxpayers' throughout this document.

3.3 Generally speaking, the views contained within this document have been formed from our collective experience, by which we mean:

- Dealing with queries that are received from the general public via our website.
- The experiences of LITRG staff and panel members from working in practice either before or alongside their work with LITRG.
- The experiences of LITRG staff and panel members in a volunteering capacity for the tax charities.
- Anecdotal evidence fed into us by the tax charities directly.

3.4 Based on our collective experience, as well as our understanding and insight into how HMRC operate, we feel there is a worrying problem with false self-employment of low paid workers in the UK labour market, as this query helps demonstrate:

3.5 *'I was initially PAYE, by my employer has informed me that I am now self employed. I have undiagnosed learning disabilities and require step by step help with what to do in order to pay tax and National Insurance that is due. My family member is trying to help me, but we really do not know where to start. We have a number of queries. e.g. I do not have a business, but my employer says that I am now self employed. Am I a business? What form should I be filling out to work out my tax and NI? Can I claim expenses...Also, work clothing, in particular footwear.'*

3.6 As we also have a good understanding of why false self-employment is happening in the UK labour market, we feel able to usefully input to the question 'What can the Government do to improve protection for people in low-paid work and the gig economy?'

3.7 Our concerns are longstanding and have been raised on many occasions (along with some recommendations). We were gratified when, following the Matthew Taylor 'Good Work' Report, the Government issued a consultation in February 2018¹ looking at questions around whether to legislate to improve the clarity of the employment status tests and whether to align the employment status regimes for both tax and employment law purposes². Over three years later, unfortunately – the consultation is still labelled with 'feedback being analysed'.

¹ <https://www.gov.uk/government/consultations/employment-status>

² LITRG's response can be found [here](#).

- 3.8 From a general perspective, we think it is vital that the Government respond to the employment status consultation and deal with the main issues around the current employment status regime, namely, it is open to interpretation, it is complex and there are difficulties in resolving disputes. Beyond this, the one single thing that we think could improve protection for workers is for the HMRC to revamp their response to engagers' non-compliance with the PAYE rules. This includes potentially testing the situation in the gig economy.
- 3.9 We sympathise with HMRC's PAYE enforcement team that false self-employment cases are time consuming and difficult to investigate – particularly as there will not usually be any official 'employer' data to scrutinise as a starting point¹. But this does not mean that they should not be undertaken where appropriate. Indeed, for the sake of the workers, the health of the labour market and people's trust in the tax system, it seems to us vital that HMRC do undertake this work – and urgently.
- 3.10 We appreciate that HMRC have had constrained resources to tackle the issue. However they have now largely abdicated their status policing responsibilities to end users in public and private sector IR35/off payroll cases, hopefully increasing their capacity. Given all the 'shocks' to the economy such as Brexit, Covid and the Ukraine war that seem to have impacted on the labour market, now would seem an appropriate time for HMRC to refocus their efforts on PAYE compliance and enforcement and clamping down on false self-employment. In any case, our view is that much false self-employment is so obviously false that it could be easily challenged.
- 3.11 The fiscal losses arising from false self-employment must not be forgotten, so there are incentives for HMRC to prioritise their work in this area.

4 What can the Government do to improve protection for people in low-paid work and the gig economy?

- 4.1 As explained above, in answer to the question 'What can the Government do to improve protection for people in low-paid work and the gig economy?', the one single thing that we think could improve protection for workers is for HMRC to revamp their response to engagers' non-compliance with the PAYE rules. This includes potentially testing the situation in the gig economy. We explain our thoughts further and illustrate our points using queries we have received, under the subheadings below.
- 4.2 *What does the law say?*
- 4.3 The law says that employees should be taxed under PAYE operated by their employers². The problem is that this law isn't always followed – sometimes because it is too confusing or unclear, but often because people simply choose to ignore it. Indeed, the Director of Labour Market Enforcement

¹ Saying that, in the Construction Industry, there should be CIS pay and tax data that would help HMRC identify where people are being paid under CIS by a particular engager on an enduring or regular basis, which might indicate that they weren't, in fact, self employed.

² See <http://www.legislation.gov.uk/ukxi/2003/2682/regulation/80/made>

noted in a past strategy that exploitation exists in the form of ‘employers and agencies incorrectly treating workers as self-employed with the intention of evading National Insurance, PAYE and other financial obligations.’

- 4.4 The PAYE Regulations then say that HMRC should collect tax underpayments from the employer in certain circumstances under Regulation 80 – this is effectively a means of enforcing the payment of PAYE and says that the employer will remain liable for the tax that should previously have been accounted for to HMRC but for whatever reason was not paid¹. (Regulation 80 only applies to the recovery of tax, however there are similar powers for NIC under section 8 of the Social Security Contributions (Transfer of Functions) Act 1999.) There are both principled and practical reasons for this approach. Unfortunately, in our experience, this legislation is not always followed.
- 4.5 *What are the consequences for workers if engagers don't follow the law?*
- 4.6 If someone is being treated as self-employed for tax purposes, it means they are not enjoying the certainty of having their taxes deducted under PAYE. Some may try to enter the complex Self Assessment system themselves in an attempt to report their income as self-employed. As they are not genuinely self-employed, this pathway can trigger all sorts of other knock on effects, as this query helps demonstrate:
- 4.7 *‘Dear Sir/Madam....my enquiry is on behalf of my family member who is a full time student. She has received a demand for payment from HMRC who that she is libel (sic) for a tax bill and a penalty for non payment for 17/18, 18/19. Their assertion is that she was self employed during this time. This was not the case and by using your table of definitions it is clear that she was employed during this period, working part time in a shop. She has not kept payslips and has no evidence that the shop made contributions on her behalf. She had a contract but only for the latter part of her employment. Can you offer any advice about how best to address this issue with HMRC. They have advised her that she should pay the bill for almost £3000 and then appeal. She is financially in no position to do this. Any guidance would be much appreciated best regards’*
- 4.8 Another problem with an employer who treats someone as self-employed in order to avoid certain tax related costs and obligations, is that this self-employed label can act as a gateway to other problems for workers. For instance, we have recently heard of a live in carer (or PA – personal assistant) who was introduced to a disabled care seeker, on a self-employed basis. The paperwork provided by the introductory agency to the disabled care seeker stated ‘The PA is working self-employed and receives their remuneration gross from the Client.’ From the information given to us about the resulting working arrangements, it sounded very likely to be an employee/employer relationship and so by treating the PA as self employed, the engager was almost certainly being non-

¹ There are two situations in which the individual can be directed to pay the PAYE that should have been deducted from their earnings. The first is if the employer took reasonable care to comply with the PAYE regulations, and the failure to deduct was due to an error made in good faith. The second is if HMRC are of the opinion that the employee has received relevant payments knowing that the employer wilfully failed to deduct the amount of tax which should have been deducted from those payments. Additionally, HMRC will also credit any tax and NIC paid by the worker through their tax return. Where HMRC recover underpayments from an employer, it is our understanding that the employer may then have a right of action against the employee.

compliant from a range of perspectives including tax, minimum wage (the carer was working around the clock for a flat rate each week), employment law and health and safety (as she was working around the clock, it sounded like there were serious working time/rest break issues). All of these issues followed on from the incorrect initial self-employed assumption.

- 4.9 In false self-employment cases, as there will be no secondary contributor for NIC purposes, they will not be entitled to paid sick leave and other statutory leave/entitlements (more on this later). In addition, they may not have 'right to work' checks, meaning people may be working illegally (and are therefore vulnerable to exploitation). The engager may also decide they don't need to have Employer's Liability Insurance.
- 4.10 The case study below, based on a case dealt with by one of the tax charities, is about a very ill man who cannot prove his income in order to claim from an income protection plan (now that he can't work anymore), and it underscores the wide and unforeseen consequences that can flow from an initial decision by an engager to ignore their tax obligations.
- 4.11 *Mr A was made redundant in 2013 after he developed health problems. He was eventually diagnosed with a potentially life limiting disabling condition. Mr A approached someone he knew locally for a job in 2015 when he was in remission. He was offered a job and gave his new employer his P45. He was paid monthly but never received a salary slip or P60. He worked over 60 hours a week. Mr A would not have accepted the job if it was self-employed. He has a basic level of literacy, but struggles to process complex information and to complete forms. He is supported by a family member with all finances. Recently, his health deteriorated so he could no longer work. He claimed universal credit. He has tried to make a claim on an income protection policy that he has taken out, but they told him they will only pay if he can demonstrate his income. Mr A approached his employer to ask for his payslips/P60s and was advised these were not available as he was self-employed. This situation has impacted Mr A's health and wellbeing. A charity adviser completed the employment assessment tool which says Mr A was an employee. HMRC said they could not help with pay and tax details as there is no record of Mr A since 2015. There is also a different issue with Mr A's NIC and state pension.*
- 4.12 False self-employment can also have other knock on effects which feed into the question of worker well-being. For instance, the fact that the worker is being treated as self-employed for tax purposes means that they are likely to declare themselves as self-employed for benefit purposes. In Universal Credit (UC) this tends to be a more burdensome and less generous route than for an employee¹ – a double whammy for the worker.
- 4.13 *Where is there a problem?*

¹ The rules in UC for the self-employed tend to be less generous/more burdensome than for employees. For example, the Minimum Income Floor (MIF) rules (which treat people as earning a certain amount when calculating their monthly UC, even if they haven't) penalise those who have fluctuating incomes and those who have big business expenses that fall in one month rather than spread over the year. For more information and some examples see here:

<https://www.litrg.org.uk/sites/default/files/Self%20Employment%20report%20FINAL%20for%20release.pdf>

- 4.14 There seems to be widespread false self-employment in the construction industry¹ and care sector (see below) but we do not believe it is limited to these sectors². This query helps demonstrate that false self-employment exists in some domestic situations, which is worrying both in terms of the household (if the usual 'employee' type recruitment checks aren't done) and the worker - the isolated nature of work in private houses places these workers at a distinct disadvantage:
- 4.15 *'Hi, I moved to UK on January and I start to work as Nanny in March of this year. In signed a contract saying that I will work just for than as a self employee. But the other Nanny told us that I couldn't be a self employee if I work for just one family. The family promised to change the contract and everything, but thy never did. I just left the job and I would like to know how I can pay for my taxes. I don't have any idea how to start the process but I want pay the taxes. I had work around £1000.00 in March and April and £750.00 in May (but they just payed (sic) me £ 500). Could you help me with this? Thanks a lot! (I am from an overseas country and I was working legally)'*
- 4.16 In the construction industry, where at one point there was thought to be 47% 'self-employment'³, people may be told that because they have a Unique Taxpayer Reference (UTR), or because they provide their own small tools, they are self-employed. Worryingly, there are probably many people who are falsely self-employed in the construction industry who do not even realise that they are being treated as self-employed - until something goes wrong (for example, they need to claim welfare benefits and can't because they have paid no NIC or needed to claim a Covid support but couldn't as they didn't qualify for the Job Retention Scheme⁴ and weren't able to access the self employed SEISS grant⁵ as they had reported their income on the Employment pages of their tax return). Certain factors in the construction industry - self-billing invoices and the Construction Industry Scheme (CIS) (being given 'payslips' and having a percentage of their income deducted at source) - mean engagers can easily disguise false self-employment.
- 4.17 In terms of the care sector, there has been a substantial rise in the numbers of people being given Government funding via personal budgets to engage the services of a PA⁶. There are also self-

¹ <https://www.ier.org.uk/comments/the-original-gig-workers-the-fight-against-bogus-self-employment-in-the-construction-industry/>

² <https://www.unitetheunion.org/news-events/news/2020/march/mccluskeys-call-to-chancellor-end-bogus-self-employment-to-make-your-support-scheme-work/>

³ <https://www.unitetheunion.org/news-events/news/2018/july/construction-bogus-self-employment-rises-again/>

⁴ <https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme>

⁵ <https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme>

⁶ PAs or personal assistants are those who are engaged directly by the disabled or elderly person who need support or their family – see more here: <https://www.skillsforcare.org.uk/adult-social-care-workforce-data-old/Workforce-intelligence/documents/Individual-employers-and-the-PA-workforce/Individual-employersand-the-PA-workforce.pdf>. See also here for statistics on personal health budgets: <https://digital.nhs.uk/data-and-information/publications/statistical/personal-health-budget>

funders. At the same time there seems to have been an increase in the numbers of 'introductory' agencies that purport to introduce self-employed carers (sometimes live-in carers) to people who need support.

- 4.18 This self-employed 'model' is obviously very attractive as it can mean people's money goes further. But it is also very likely to be non-compliant from a range of perspectives and carries risks for both the worker and engager (who may often be vulnerable).
- 4.19 Some introductory agencies seem to be marketing carer arrangements which they are labelling as being on a self-employed basis very openly. This makes it appear that they have found some kind of loophole or that there has been some kind of workaround agreed between the care sector and the authorities. However, having spoken to both the Employment Agency Standards Inspectorate (EAS) and HMRC, we understand that this is not the case.
- 4.20 The insight that the recently published worker account¹ gives us about the ongoing role of introductory agencies in PA/client matches is also important. For example, at least one of the accounts seems to suggest that the client was paying the introductory agency on an ongoing basis and the introductory agency (after taking their cut) was paying the worker. The agencies call themselves introductory agencies, rather than managed agencies. However, we have been told about many practices that suggest they may be providing a more ongoing managed service, (for example, that the families continue to pay them an ongoing weekly fee, the agencies try to move workers around assignments even after the initial 'match', they provide cover when the carer is off, and sometimes they collect the client's money and pay the worker). This obviously has implications in terms of whether they are employment agencies or employment businesses (and are meeting the appropriate obligations) under EAS' remit. But in managed agency situations, there is also a PAYE obligation under HMRC's agency legislation², which currently seems to be being ignored by some agencies and is not (as far as we are aware) being investigated by HMRC or subsequently enforced.
- 4.21 In our view, costs and obligations of employment that only ever rise are likely to be significantly driving the problem of false self-employment in the care sector, as this query helps demonstrate:
- 4.22 *'A family member has taken on a job as a carer for an elderly client. The family holding the LPA are refusing to employ my family member and insist that they are self employed. The HMRC tool says they are employed. Family member is desperate and needs this money. What penalties can be imposed on them if they register as self employed and pays tax and NI. I have shown the attorneys the results from HMRC and they agree the questions have been answered correctly, but they say they can't afford to employ my family member as it will cost too much, and they see no reason why they*

¹ See 'Worker voices in the social care sector' research report commissioned for the Director of Labour Market Enforcement: 'The use of self-employment and introductory platforms in the care sector without adequate safeguards and regulation is concerning. While some of the care workers we interviewed are genuinely self-employed now (e.g., Kimberley, Angelica), their previous experiences (Kimberley) and the account of other participants suggest that bogus self-employment might be a significant problem in the sector, particularly in live-in care, facilitated by online platforms and introductory agencies.'

² <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2034>

can't be self employed, and that they didn't need to fill in the tool questionnaire. My main concern is, yes, the "employer" may be at risk, but is my family member. They are in such a stressful situation at the moment, and feels like they are being bullied into doing something dishonest.'

- 4.23 In a tight labour market, engagers may feel they need to pay more to attract workers, which could then leave them looking for devices such as false self-employment to help displace yet more costs. We are also concerned that as construction worker and care worker availability tightens, people will increasingly turn to 'self-employed' workers to help plug gaps. This is because there is likely to be a wider pool of such workers available, as it may include people without a proper right to work in the UK for example. This then feeds the worker vulnerability/risk issue.
- 4.24 *Why is there a false self-employment problem?*
- 4.25 Some false self-employment exists because some workers and engagers think that self-employment is a choice rather than something decided by fact. Engagers may be genuinely confused about how the rules apply to their workers' situation and often, workers just trust that their engager must be correct in their choice of status. These things perhaps demonstrate the need for a more certain and simpler system – for both individuals and businesses to navigate. They most definitely raise legitimate and worrying questions about the current state of guidance on employment status. However, to be clear - these are not the issues behind false self-employment – where employee status may be quite clear but self-employed status is foisted upon the person anyway.
- 4.26 The low paid, who will not usually challenge engagers even if they have an inkling something may be wrong for fear of losing the work, have limited access to recourse through the courts, and so they must rely on effective state enforcement by HMRC to help protect them from false self-employment. However, in our experience, some engagers who take part in this practice consider it unlikely they will ever be challenged by HMRC, particularly in the construction industry, as there is at least some amounts being paid over to HMRC via CIS.
- 4.27 We understand that HMRC's response to workers trying to report false self-employment is usually to tell them to check on GOV.UK, talk to their engager, or fill out the self-employed pages of a tax return anyway. This is the incorrect response and is unhelpful.
- 4.28 *What should be done?*
- 4.29 HMRC need to improve education and awareness around employment status. Many workers (and engagers) simply do not understand that self-employment is not a 'choice' but rather one that depends on the true underlying nature of the relationship between the parties. We think HMRC should try and get to the bottom of what the main pitfalls are in terms of people being misinformed or misled around status, and design tailored guidance to address them.
- 4.30 Alongside such an approach, HMRC should also ensure that their helpline advisers and other frontline staff, including on the Extra Support team (EST)¹, are well-versed in false self-employment – both in terms of identifying/recognising it (even if the taxpayer doesn't) and knowing what to do

¹ <https://www.litrg.org.uk/getting-help/what-hmrc-extra-support-service>

when presented with it. HMRC need to develop and publicise a central gateway through which workers can report false self-employment. There is no obvious route for workers to report false self-employment currently. HMRC should put clear protocols in place for dealing with those who call the helplines presenting false self-employment. For example, HMRC could ensure that they are handed to a specially trained team, perhaps the Employment Status team or the EST, who do a full fact find and then (if appropriate) send a report about the engager to the Employer Compliance team.

- 4.31 HMRC need to put in place a dedicated PAYE non-compliance taskforce to tackle false self-employment at engager level. They need to undertake visible, fast, strong investigations and prosecutions that really send a message out to engagers who may be thinking about false self-employment. Where non-compliance is found the PAYE Regulations say that HMRC should usually collect tax underpayments from the employer under Regulation 80¹ – this is effectively a means of enforcing the payment of PAYE and says that the employer will remain liable for the tax that should previously have been accounted for to HMRC but for whatever reason was not paid.
- 4.32 If HMRC brought engagers to account for the PAYE failures sat behind false self-employment, then this would help check poor hiring practices – safeguarding both workers and compliant businesses that are currently being undercut. By implementing these changes, HMRC could start to change the whole narrative, which in turn could exponentially bolster future education, guidance and deterrence efforts.
- 4.33 More broadly, we feel HMRC have a key role to play in ensuring a happy and healthy labour market. We would like to see this role more widely factored into HMRC's decision making. Indeed there are so many connections between HMRC's tax work and wider worker welfare issues, that we have recently said² that we would like to see the Director of Labour Market Enforcement's statutory role in relation to non-compliance in the labour market expanded to include tax. One way of achieving this would be to add non-compliance with PAYE regulations to Section 3 Immigration Act 2016³. This would give the DLME an opportunity to assess HMRC's tax compliance and enforcement function efforts in this area as part of her assessment of the scale and nature of non-compliance in the labour market. It would also allow her to include proposals for tackling any non-compliance issues identified, in her labour market enforcement strategy. In addition, there may be some merit in considering whether HMRC's legal obligations should be amended to require consideration of social protection issues.
- 4.34 *What about the gig economy?*

¹ <https://www.gov.uk/hmrc-internal-manuals/payee-manual/payee54005>

²

<https://www.litrg.org.uk/sites/default/files/220527%20Labour%20Market%20Enforcement%20Strategy%2023-2024%20CfE.pdf>

³ <https://www.legislation.gov.uk/ukpga/2016/19/part/1/chapter/1/crossheading/director-of-labour-market-enforcement>

- 4.35 We are also concerned about those working in the gig economy from an employment status perspective – particularly the ones doing lower paid manual work like driving, couriership and food delivery. Because their work has some characteristics of self-employment (for example, they decide when they work and sometimes use their own tools), they are typically treated as self-employed for tax purposes.
- 4.36 This, of itself, can be problematic. Some find it difficult to navigate the Self Assessment tax system and file their annual tax return. This can be for a number of reasons including lower levels of literacy and numeracy skills, limited English (English is not their first language) or a general lack of experience of the tax system. Many cannot afford to engage an accountant or tax adviser. There is also a lack of support from official sources. These factors can often result in non-compliance or underreporting due to ignorance and misunderstanding. Penalties and even bankruptcy can result – which can have devastating consequences for them and their life chances. Changes due to come in around basis period reform and the Making Tax Digital programme mean those just about managing in Self Assessment will need to become versed in a completely new system, creating more confusion and queries.
- 4.37 However, at the same time these workers can often have less autonomy than genuinely self-employed people and may derive all or most of their income from the business that they work for (so can't really be said to be in business on their own account). There is therefore a longstanding question as to whether workers in the gig economy are truly self-employed or whether they are the employees of the platforms they work for. This question has been thrown into even sharper focus by the recent decision that some gig economy workers were 'workers' and not self-employed for employment law purposes. Although this does not copy across to the tax regime directly it suggests that their 'self-employment' status for tax may not be clear cut.
- 4.38 As things stand, there is a tangled mix of gig workers, some of whom should be PAYE but are being treated as self-employed and some of whom are genuinely self-employed.
- 4.39 If they are not genuinely self-employed it means the entire success of the sector has potentially been based on the platforms' non-compliance with PAYE. It may be that once you look at platforms' business models and apply the law to the facts, many of these workers are actually self-employed for tax purposes. However, the lack of certainty and constant speculation is a problem. In the absence of the legal tests being clarified to provide certainty, HMRC taking a selected tax test case to the courts may help provide some clarification.
- 4.40 *'Worker status'*
- 4.41 In the meantime, some urgent work is required around 'worker' status. This status is an extremely valuable status for those in the gig economy as it recognises that some people may be subordinate and may not be able to decide how much to charge, or afford to give themselves time off etc. It provides them with some basic protection from their engager. We know that some workers have had success enforcing their worker status in the employment tribunal, however there will be many others that do not have the understanding or wherewithal to do this and it is not clear to what extent the enforcement bodies are engaged with the issues.

- 4.42 As online platforms in the gig economy move from aggressive growth to something more stable and become household names in the UK, it is foreseeable that there may be some reflection on the sheer imbalance of power. This may result in some concessions and compromises to workers, for example payment of NMW, holiday pay, sick coverage – even where it hasn't been provoked by a court case. We hope there might be some organic change coming as organisations create plans to help them retain workers and future proof their businesses.
- 4.43 However, in the meantime, we would invite the Government to try and understand workers' experiences and to think about what intervention or changes might be appropriate to improve things for gig economy workers. It is clear to us that 'worker' status is not a well understood concept. In particular, confusion is created by virtue of there being three different statuses – employee, worker and self-employed – for employment law, as against the two more distinct categories of employed or self-employed for tax purposes.
- 4.44 People may not understand that if they are treated as self-employed for tax purposes, then this doesn't necessarily mean that they are self-employed for employment law purpose depending on the facts and circumstances. Given that workers seeking to understand their employment law status are often signposted to HMRC's CEST tool (which only deals with tax status and doesn't cover 'worker' status), this is really regrettable.
- 4.45 We suggest that rewriting the confusing official information and guidance on GOV.UK on 'worker' status, particularly to bring greater clarity for the 'dependent' self-employed, including gig workers would be a good start. In particular it should contain some real-world examples of where the dividing line between employees, workers and the self-employed sits. Auto enrolment should be added to the list of rights and protections as it is currently missing. The situation regarding Statutory Sick Pay etc. should also be clarified as many mistakenly think it is a 'worker' right¹.
- 4.46 Indeed, if gig economy workers are to remain paying taxes on a self-employed basis for the time being, it is vital that statutory payments such as sick pay or maternity pay are untangled from the PAYE net. Often these are thought of as employment law 'rights', but they are actually dependent on whether there is a 'secondary contributor' (i.e., someone that is liable to pay Employers' National Insurance)². Sick pay and parental pay are a vital part of the safety net for the lowest paid workers and we think they should be made expressly 'worker' rights, potentially funded and administered

¹ Currently, most self-employed gig workers are self-employed for tax purposes and so are paid gross. Not being paid via PAYE means that there is no secondary contributor (someone who is liable to pay Class 1 secondary National Insurance Contributions). Secondary contributors are responsible for administering and part-financing statutory payments. If there is no secondary contributor, then our understanding is that the worker cannot be entitled to Statutory Sick Pay, Maternity Pay etc. (as compared to agency workers (who are also 'workers') for example, who can be, due to being paid via PAYE). For a self-employed person, Maternity Allowance or Employment and Support Allowance may be available instead from the Department for Work and Pensions (DWP).

directly by the Government (although we recognise that there are no easy answers as to where the money for this would come from), and not reliant on there being a secondary contributor.

LITRG

8 July 2022