

HM Treasury and HMRC consultation document – Offshore Employment Intermediaries

Response from the Low Incomes Tax Reform Group ('LITRG')

1 Executive Summary

- 1.1 We agree with the principle that no one should fall short of meeting their obligations to society. In the case of offshore employment arrangements, we understand that, by and large, the employees of such organisations do so, by paying their income tax and National Insurance contributions (NIC).
- 1.2 Existing legislation does not seem effective though, in ensuring that offshore employers pay their secondary NIC contributions and so we support changes from Government to address this. To the extent that such changes lead to a better situation for employees in wider welfare areas, e.g. with regards to Statutory Sick Pay, Statutory Maternity Pay, it is to be welcomed.
- 1.3 We are concerned that some offshore employers may instead take advantage of the complexity in the law surrounding temporary workers to invent imaginative avoidance 'solutions' (as proliferate onshore). It also seems to us that the provisions relating to pursuing an offshore employer with regards to unpaid SSP and SMP are extremely difficult for the employee to enforce in practice.
- 1.4 An alternative to introducing further, potentially confusing legislation to try to combat employment business 'schemes', would be to try and educate the general public with the requisite knowledge and information so as to *inform* their choices about the entities they are

engaging with in the temporary labour market (be they workers or end clients). In the long term this may lead to a much better 'leveling of the playing field'.

- 1.5 In the meantime, we would suggest that the Government's priorities should lie in addressing the **overall** abuse of the temporary worker PAYE/NIC rules and subsequent exploitation that can happen to workers caught up with some unscrupulous employers. This inspection of offshore employers highlights many wider practices that exist within the temporary worker industry and which still need addressing in order to achieve the desired outcome.

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.

3 Our approach to this consultation and general comments

- 3.1 We welcome the opportunity to respond to this consultation on offshore employment intermediaries as, in general, we share concerns about those engaged in avoidance behaviour.
- 3.2 While some operators in this area maintain that they are not engaging in 'aggressive tax avoidance' and that they are providing 'fully compliant tax planning which delivers small savings' (ISS), it is our understanding that these 'savings' are not necessarily to the benefit of employees.
- 3.3 Whilst recognising the challenges that Government faces in terms of minimising loss of revenue, our interest lies primarily in preventing the exploitation of the low paid worker caught up with such employers. As such there are four primary areas on which we would like to comment. These are:

- i) Workers' rights (Section 4)
- ii) Provision of information (Section 5)
- iii) Likely employer reaction (Section 6)
- iv) Joined up review (Section 7)

- 3.4 We are responding to this consultation on behalf of low paid workers; we therefore have no comments to make in respect of the majority of the consultation questions as they are outside the scope of our work. However taken together we hope that the points raised in this response will be useful as input for question 6.
- 3.5 Our response supplements that of our CIOT colleagues, which we are very happy to fully endorse.

4 Workers' rights

- 4.1 We welcome the fact that these proposals are aimed at protecting workers.
- 4.2 The potential loss of benefits to workers caught up in these arrangements is clearly of major concern. Whilst the vast majority of contributory benefits are based on primary rather than secondary Class 1 NIC (and it is our understanding that in most 'offshore' instances, primary NIC along with PAYE is deducted from employees' pay and remitted to HMRC on their behalf by the employer as standard), entitlement to Statutory Sick Pay (SSP) or Statutory Maternity Pay (SMP) is reliant on there being a secondary contributor. Accessibility to SSP or SMP could be of the utmost importance to a low income worker during a period where they may be vulnerable or struggling financially.
- 4.3 We recognise that alternatives such as Maternity Allowance or Employment Support Allowance might be available to effectively restore the benefit position of the individual in cases of refusal of SSP and SMP. Indeed there may already be some offshore employers who have made contractual provision over and above the statutory minimum so as to not leave their workers exposed. However for certainty and completeness, we agree with the principle of there being an unequivocal secondary contributor.
- 4.4 As suggested by our CIOT colleagues, it may be more sensible to strengthen the existing NIC rules, with responsibility for collection and payment remaining with the end user. This will provide certainty for UK end users, and importantly for workers in knowing where responsibility for NIC collection and payment lies.
- 4.5 Further to this, we note with interest the detail of the proposals, which seems to transfer *historic* underpayments of tax/NICs down the chain of entities, but does not remedy the position of the individual with regards to historic statutory payments. In this case the consultation makes it clear that remedy would remain with the offshore employer. The suggestion that 'the employee will still be able to pursue the employer for statutory payments in the usual way' (page 14 of the consultation document) makes it sound like it will be a simple case of retrieving their funds via a quick phone call or letter. Yet, as the

employer is outside of UK (and EU) territory, we suspect the reality for the employees, in calling on their rights, will be much more complex and costly and very likely almost impossible. If, as suggested above in paragraph 4.4, responsibility for NIC were to sit with the UK end user from the outset, then it will be clearer and easier for the employee to access statutory payments and would make the situation easier for the employee with regards historic debt.

5 Improving public information

- 5.1 We are concerned to ensure that taxpayers have the actual *capability* to go after an organisation with regards to SSP and SMP and that they are armed with the requisite **knowledge** to do so.
- 5.2 HMRC will clearly have some work to do as regards communicating with those in the supply chain on the changes these proposals will bring about. In particular we advocate that as much advice, assistance and guidance is made available, as will be required for a taxpayer to confidently approach the necessary party to regularise their historic SSP and SMP position. A one size fits all approach will not work as not everybody has the same capacity. Clear, user-friendly, targeted consumer messages will be required at the less sophisticated end of the taxpayer spectrum. HMRC must also ensure that guidance is available through more than one channel.
- 5.3 A basic understanding of the risks of engaging through offshore entities (and onshore entities for that matter) and the consequences of such avoidance behaviour for the overall system, will hopefully mean that taxpayers (and end clients) with better possession of the facts, will be able to exercise some choice over which entities to accept work from and which not.

6 Employer Reaction

- 6.1 One of our main objectives is to investigate new proposals to see what impact they may have in terms of employer response and to what extent low-income workers will bear the brunt of any fallout.
- 6.2 The proposals outlined in the consultation document (through the operation of various forces) no doubt have the aim of ensuring that the majority of offshore employers will start accounting for secondary NIC themselves.
- 6.3 As noted above, we have doubts about the ability of HMRC to enforce compliance from offshore employers. On the assumption, however, that things work so that offshore employers *do* start to account for secondary NIC, we cannot imagine that an increase in offshore employer costs will be absorbed by the employer; therefore the costs are likely to be borne to a significant degree by the low-income worker themselves in the form of lower hourly rates or spurious fees/charges. At the far end of the spectrum, it is possible the whole

charge could be passed onto the employee in the form of an after tax deduction (as we commonly see happening in some onshore 'schemes'...).

- 6.4 Whilst there is benefit in collecting more employers NIC from such companies, it is possible that employees will be worse off and in the current climate may feel they have to accept any changes. Our understanding is that Universal Credit will be based on an employed earner's net earnings as reported through RTI. We would be interested to understand how the Government sees the lowering of net pay in this manner interacting with Universal Credit? It follows perhaps (although this may be extreme) that the effect of gathering more revenue from some of the lowest earnings workers in society means that some may conclude reverting to state benefits will give them a better standard of living.
- 6.5 One of the other probable scenarios, on the basis that these offshore business models have been dependent upon supplying the labour of their employees at a smaller mark-up than their competitors, is that the commercial advantage will be lost and employers will revert to standard onshore agency arrangements. Many onshore low paid workers are already caught up in PAYE umbrellas, self-employed umbrellas, false- self-employment, pay day-by-pay day arrangements, pay-between-assignment arrangements, zero-hours contracts, personal service companies, holiday pay disputes and so on.
- 6.6 There are many existing matters in the wider temporary worker picture that still need to be addressed and which will dictate to a large extent, the success or otherwise of these proposals. For example, has consideration been given to the fact that some offshore agencies operate umbrella schemes – i.e. even if these measures do succeed in making the offshore employer the secondary contributor, the Exchequer may still be left wanting for the employers NIC depending on how much of an employee's pay is made up of reimbursed travel and subsistence expenses?

7 Joined up review

- 7.1 We have previously raised some of the issues in this consultation and these, along with many other related issues need addressing. However, it would be unwise to look at offshore employer intermediaries without looking in the context of the whole spectrum of arrangements which constitute the avoidance of PAYE and NIC.
- 7.2 It is a significant area of concern for us that there seems to be an *increasing* use of avoidance-type arrangements. Low to moderate income taxpayers are usually impacted disproportionately by these arrangements, as they tend to be 'forced' into the temporary work industry. Such employees will very likely lack skills and confidence and so are limited in terms of opportunities. They may intuitively know that something is not right with their terms and conditions but are effectively trapped when it comes to using these 'schemes' to obtain work because if they reject a job offer there could almost certainly be knock on effects on their entitlement to benefits.

7.3 From our regular contact with a tax charity (Tax Aid) and an understanding of the queries that come in to them, we believe that the various onshore agency/temporary worker company structures should be a priority area of concern for HMRC. The fact that workers continue to participate in such schemes, highlights the fact that many of the 'causes' (as per our prior consultation responses 'Lifting the Lid on Tax Avoidance Schemes' and 'National Minimum Wage Workers – Travel and Subsistence Expense Schemes') remain to be dealt with:

- Lack of education and information from HMRC with many workers still being unaware of the risks associated with 'schemes' or even how they operate on a basic level.
- Overly complex and constantly changing laws which breed endless planning opportunities – simplification/consolidation is needed.
- The inherent unfairness that exists due to the non-alignment of tax and NIC rules, which means that some workers can take advantage of certain rules, while others, in essentially the same circumstances, cannot.
- Our arcane travel expense laws – the ability to offset ordinary travel and subsistence expenses is vital to the low paid, but ever more mobile, workforce.
- Ineffectual HMRC employer compliance activity - with the outcome that often it seems to be the individual left facing investigation by HMRC.
- Interactions with the benefits system that can lead to complexity and confusion.

8 Conclusion

8.1 Although we understand the aims behind the proposals in the consultation document, we are concerned the proposed changes may lead to employers using different methods to lower their secondary class 1 contributions. The only way to truly challenge the companies and organisations involved and give the best possible protection to low income workers is to undertake a comprehensive review of the whole temporary worker area, both onshore and offshore.

8.2 Although we broadly welcome the aim of the proposals as a very good start, we strongly recommend that the current proposals be combined with a more radical analysis and evaluation of the key issues. This should include a full and detailed consideration of the interaction of HMRC proposals with the benefits system in particular Universal Credit, together with an alignment of employment law.

LITRG

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