Mutuality of Obligation and Check Employment Status for Tax

Employment Tax

01 August 2019

The CIOT has written to HMRC regarding the meaning of mutuality of obligation (MOO) and its application to HMRC's Check Employment Status for Tax tool (CEST) following various discussions at the IR35 Forum and HMRC papers on MOO.

The IR35 Forum has been discussing the application of mutuality of obligation (MOO) to HMRC's Check Employment Status for Tax tool (CEST). This follows discussions last year concerning the accuracy of CEST and disputed views on the meaning of MOO.

In July 2018, HMRC published their views on the meaning of MOO, explaining why CEST does not explicitly look at MOO (https://tinyurl.com/y2ttva6e). There were then some extensive discussions at the forum (as well as many other comments on HMRC's position, including from the CIOT), culminating in a further HMRC paper being presented to the forum in February 2019 and an invitation to members of the forum to comment. The CIOT responded in April 2019 but can only now report on our submission.

While HMRC's view is that MOO establishes the existence of a contract, not whether it is one of employment or self-employment, we think MOO is not simply to be seen as a prerequisite of any contract involving a business and an individual with the question of employment/self-employment status to be subsequently determined with reference solely to other factors. Rather, we think that MOO is intrinsically a factor in itself – albeit not necessarily determinative – as regards whether an engagement is employment or self-employment.

Consequently, we think that consideration of MOO, in terms of the ongoing relationship between the worker and engager, deserves much more emphasis in HMRC's papers on MOO, within CEST and in HMRC's Employment Status Manual

(ESM). In particular, we think the issue of whether the individual is paid for periods of inactivity requires more emphasis.

The discussion at the IR35 Forum is ongoing and updates on this topic will follow.