Off-payroll working: House of Lords inquiry

Employment Tax

27 January 2022

Representatives of the CIOT and LITRG have given evidence to the House of Lords as part of their follow-up inquiry on the implementation of the off-payroll working rules in the private sector.

In December, CIOT and LITRG representatives gave evidence to the House of Lords Economic Affairs Finance Bill Sub-Committee as part of their follow-up inquiry on the implementation of the off-payroll working rules in the private sector, and how these rules are working in practice (tinyurl.com/4fk2u9er).

The sub-committee asked how the implementation of the new off-payroll working rules has gone for businesses overall. Colin Ben-Nathan, chair of the CIOT's Employment Taxes Committee, commented that HMRC are much better prepared (such as with a better Check Employment Status for Tax (CEST) tool and better communications) than the rollout to the public sector in 2017, 'which was very rushed'. Meredith McCammond, LITRG Technical Officer, added that a lot of businesses were supported by agents who have already been through the 2017 changes.

The sub-committee then asked whether the CEST tool is fit for purpose. McCammond commented that non-experts need a tool like CEST and that there are lots of cases that are not on the borderline and are not complex. In a follow-up question on how to resolve confusion with CEST, Ben-Nathan replied that the government said that they would look at employment taxes and employment law and see whether they could be aligned, but until there is some sort of codification for employment tax purposes 'we are trying to nail blancmange to a wall, in many ways'. As a comparison, he noted that the codification of how to define tax residence after 2013 was better than the system beforehand.

McCammond added that it is high time for a clearer and simpler employment status landscape for both businesses and workers to navigate and, to that end, it is very disappointing that we have not seen any response yet from HMRC on the employment status consultation. (This is discussed further in the article about employment status below.)

Following a question about umbrella companies, McCammond commented that LITRG has not seen any particular spikes in queries from workers about umbrella companies, which could mean that workers seemed to have managed to navigate themselves successfully into ‘an umbrella safe harbour’, though she also cautioned that problems with non-compliant umbrellas often take a while to surface. Both McCammond and Ben-Nathan stressed the importance of effective publicity. Asked if bad companies could drive out the good, McCammond said: ‘There are a lot of workers out there who are a bit disgruntled about their reduction in net pay as a consequence of the changes, and some umbrellas will have entered the marketplace with their eye firmly on that gap in the market. As a consequence of that, disguised remuneration schemes have proliferated.’ That said, Ben-Nathan was less sure that the new rules would increase avoidance, commenting that he ‘would be surprised if there should somehow be some deterministic link between off-payroll working and an increase in avoidance’.

In a subsequent evidence session, the Financial Secretary to the Treasury (FST) and HMRC gave evidence to the sub-committee. Asked if the new off-payroll working rules have achieved their objective, the FST said yes, because people are being treated equally. While accepting that the 2017 public sector changes were ‘a little rushed’, the FST commented that HMRC learnt the lessons for the roll-out to the private sector in 2021 when it comes to education and making the system simpler.

Evidence was given at previous sessions that the rules mean some people are either not being offered work or are being offered work only if they accept PAYE status. In response, HMRC’s Pete Downing stated: ‘There is a defined process for dispute by the contractor with the engager who is making a determination of status for a PSC. You have heard evidence from IPSE that that is having an effect and changing people’s status in some cases, which is encouraging to hear.’

In regard to the CEST tool, the FST said HMRC have decided that in order for it to be easy to use, not be expensive and not take up too much of people’s time, HMRC will deal with the fact that only 80% of cases get a clear determination from CEST (‘the

20% can have some telephone support to come to their determination’).

Fuller reports on the sessions, including the impact of the *HMRC* v *Professional Game Match Officials Ltd* case on mutuality of obligation and CEST, can be read at www.tax.org.uk/employment_tax_codification and www.tax.org.uk/2017_off_payroll_changes.