Independent Review of Employment Practices in the Modern Economy

Employment Tax

01 July 2017

The review, led by Matthew Taylor (Chief Executive of the Royal Society of the Arts), was commissioned by the last government to consider how employment practices need to change in order to keep pace with new forms of work – in particular those driven by online platforms. In their submissions to the review, the CIOT and LITRG both highlight the importance of tax – something not formally within the remit of the review – in the debate.

The ‘Matthew Taylor review’ has six key themes including security, pay and rights, progression and training and the balance of rights and responsibilities. In addition to an evidence ‘roadshow’ visiting locations across the UK, the review team have created an online site where ideas can be submitted and interested parties can debate the issues surrounding the review.

In their submission to the review, the CIOT say that this area cannot be considered properly without taking into account the substantial influence of tax differentials in driving choices of employment and business structures. The CIOT highlight the Chancellor’s statement in the March 2017 Budget that Matthew Taylor had told him ‘differences in tax treatment are a key driver behind the trends we are observing.’

In this respect, one of the biggest issues to be addressed – if the tax system is to keep pace with evolving working practices – is the imbalance between the tax burdens on employment and self-employment. The imbalance is mainly because of the 13.8% cost of employers’ National Insurance (NIC) and, for larger employers, the 0.5% Apprenticeship Levy which came in in April 2017 (see the article on page 16).

The CIOT note that one possible solution to simplify the current position is to ‘level the playing field’; that is to impose so far as possible the same effective tax burden on employment and self-employment.

The CIOT suggest that, as a starting point in the debate as to how the tax system could be reformed, one could consider adapting the present narrow scope of employers' NIC (and the Apprenticeship Levy) to broaden it beyond employed workers, so that businesses pay a new 'business social contribution' instead. They add that consideration should be given to aligning, so far as possible, the income tax regimes for the employed and self-employed, together with a similar alignment of employee Class 1 NICs and Class 4 NICs for the self-employed, and a corresponding move to align, as far as possible, the remaining differences around state welfare benefits.

However, the CIOT note that this levelling the playing field approach would not be without its difficulties. It might mean that there would be no recognition in the tax system (in terms of equity) of the additional risks to which those who choose the path of self-employment might be exposed, and of (in terms of economic benefit) the positive 'externalities' which entrepreneurialism brings to the economy, benefiting the wider population.

To properly address this area the CIOT consider that a wide, open and very public debate is needed on the tax treatment of different kinds of work structures. Such a debate would draw out all of the implications and effects of the tax system and, hopefully, assist in arriving at a consensus opinion (or at least a better understanding) of the issues and how they should be addressed, taxed and rewarded. They warn that if there is not a consultative approach to the fundamental issues raised in their submission, the risk is that a succession of piecemeal changes, driven by anti-avoidance concerns, will bring new complexities and anomalies and less public understanding and acceptance.

The LITRG submission welcomed the review, given the number of low paid people who seem to have problems in 'non-standard work' such as agency work and certain coercive forms of self-employment. In particular LITRG noted that real confusion seems to exist around the concept of 'worker' status – evidenced perhaps from the fact that many agency workers seem to think that they need to pay to use an umbrella company to secure rights like holiday pay (which, in fact, they are already entitled to by virtue of being an agency worker).

However in LITRG's view, the impact modern employment practices have on a worker's security, pay and rights, for example, cannot be understood without considering issues such as their tax and social security status as well. As such, LITRG

also calls for there to be a comprehensive review of tax and related issues around non-standard work.

Giving an example, LITRG point out that Statutory Sick Pay (often thought of as an employment law 'right') is actually dependent on whether there is a 'secondary contributor' (that is someone who pays employer's NICs). As those working in the 'gig economy', such as Uber drivers, are often paid and taxed as self-employed, whether or not they are a 'worker' for employment law purposes (Uber are due to challenge the recent judgment that their drivers are 'workers' later this year), there will not be a secondary contributor. It follows that the worker cannot be entitled to Statutory Sick Pay or indeed any other statutory payments.

Giving another example of why a person's tax status is as important as their employment law status, LITRG write that while tax credits, or their replacement Universal Credit (UC), can offer a lifeline to low paid workers in non-standard forms of work, the rules create a disparity between the employed and self-employed. A person's tax credits or UC status may follow their tax status; so if a person is treated as self-employed for tax purposes, then this means they may be treated as self-employed for tax credits or UC purposes.

LITRG explain that an employed claimant will generally receive working tax credit if they are in 'remunerative work' and normally work for the requisite number of hours per week. By contrast, a self-employed claimant faces a test of whether their self-employed activity is carried on upon a commercial basis with a view to a profit and is organised and regular – this can involve onerous compliance checks. In addition, a self-employed UC claimant's benefit is restricted if they do not earn each month a minimum amount which equates to the national living wage for (usually) 35 hours a week (the 'minimum income floor'), a burden which is not imposed upon employed claimants.

The CIOT response can be read in full on the CIOT website.

The LITRG response can be read in full on the LITRG website.