HMRCSR0021

Written evidence submitted by Jo Minns

Dear Sirs,

Re: Off-payroll IR35 reforms – Failure by HMRC to meet your recommendations

I understand that you are meeting with HMRC on 14 December 2023. I wanted to alert you to problems with the off-payroll legislation and a failure by HMRC to meet the recommendations made by PAC on 11 May 2023 in your report titled *"Lessons from implementing IR35 reforms"* and subsequent misleading representations being made to Ministers by HMRC and the Treasury.

In my experience, the off-payroll reforms have distorted the freelance market considerably, reducing the freedom and flexibility the UK market has previously enjoyed, which will impede UK growth. Whilst everyone agrees with clamping down on tax avoidance, genuine freelancers are not treated fairly, primarily due to the statute not aligning with what HMRC and the Treasury are telling Ministers.

The unfair treatment and distortions centre around your second recommendation:

> ***2: PAC conclusion: We are concerned that it is too difficult for workers to challenge incorrect status determinations.***

> ***2: PAC recommendation: HMRC should ensure there is a fast and independent process for contractors to resolve disputes over status determinations. As part of this, it should assess the extent to which workers are using existing appeals routes, and how well they are working.***

The Government agreed with the Committee's recommendation and targeted an implementation date of December 2023. Nothing has happened to fix the underlying problem.

The government response was untruthful

The Government response misled the Public Accounts Committee when it stated in Section 2.3:

> *"There are established appeal routes for customers who disagree with tax assessments. The legislation creates an additional right for workers to challenge their employment status for tax determination with their client, who is required to respond within 45 days."*

Ministers have been misled

There are no effective statutory appeal routes for reasons outlined in my recent correspondence with MP (and lawyer) Dominic Raab and, at the same time, the MP and Financial Secretary to the Treasury (and lawyer) Victoria Atkins. As I stated in my most recent letter to Mr Raab:

> "[..] *I presented four legislative flaws in the off-payroll legislation:*
>
> 1. *Double taxation, due to no offsets;*
> 2. *No appeal route, because the client is not mandated to provide an SDS;*
> 3. *Agencies picking up the tax bill, despite not being the decision maker; and*
> 4. *HMRC's CEST tool being misaligned with the law.*
>
> *The first of these has been signalled to be fixed in the next Finance Bill. The third now appears to be less of a concern, due to the debt transfer provisions, which make the client decision maker ultimately responsible for the tax. On the final point, HMRC have indicated intent to update the tool, although somewhat disappointingly this is still pending.*
>
> *This leaves the second point outstanding. The response from the FST made some attempt to address this, but unfortunately I do not believe that her proposed solutions will work:*
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> - *The FST has conceded that clients do not have to issue an SDS to the worker, which makes it impossible for the worker to trigger the statutory client-led dispute process that she championed in her letter dated 10 August 2023. Her claims of HMRC providing "best practice" guidance lack the legal authority necessary to ensure that workers are treated fairly.*
>
> *The FST then claims that workers can seek redress via self-assessment and national insurance repayments."*

The FST had been misled by HMRC and Treasury, claiming that a Status Determination Statement (an "SDS") must be given to the worker. This is key. Without a mandatory requirement to provide a worker with an SDS, the worker cannot trigger the appeal route in Section 61T.

There is no "must", as the FST conceded by saying it is "best practice" for firms to issue one. The mere recommendation by HMRC for firms to adopt what HMRC considers "best practice" lacks the legal authority necessary to ensure workers are treated fairly.

After the FST conceded the point, she then tried to claim that another route was available to claim via the self-assessment return.

The PAC has been misled by the Government on this point, too, in Section 2.4:

> *"If a worker still disputes the determination, they can file their Self-Assessment return reflecting their own assessment. HMRC has 12 months from the date the return is received to open an enquiry, during which it may consider whether the employment status is correct. These enquiries can vary in length depending on their nature and complexity. HMRC will ensure this process is clearly set out in its guidance. Where HMRC disagrees with a customer's Self-Assessment, all customers have the right to have the decision reviewed, and to appeal to an independent tribunal.*

Firstly, to entertain this fantasy, the firm has to engage the worker via a limited company as "Inside IR35"– this would not be the case. Even if they were engaged in this manner, the suggestion by the Government in Section 2.4 is akin to saying the worker can climb Mount Everest to get fair tax treatment!

Seeking redress via Self-Assessment and National Insurance repayments does not work for four reasons:

(1) **Absurdity**: it is absurd to suggest contractors enter into arrangements and seek refunds from HMRC because the cost of appealing an HMRC decision will outweigh the tax at stake.

(2) **Delay**: Status resolutions with HMRC typically take years, not weeks, as HMRC has admitted to Parliament. Kaye Adams's case took nine years to resolve.

(3) **Unrealistic**: When clients engage "Inside IR35", they force the contractor onto a payroll, thereby closing off any routes to appeal under section 61T.

(4) **Unworkable**: Even if clients were to still pay the worker's company net of tax, the rate has been recalculated and renegotiated at a lower rate to account for the employer's national insurance contribution. Any appeal by the worker would not result in that money being repaid to the contractor.

For those four reasons, the alternative appeal route suggested by the FST is unworkable nonsense.

What is the solution?

When a worker declares to the firm (or agency in the supply chain) that they are operating via a limited company, the firm *must* (as a matter of law) issue a Status Determination Statement (SDS).

This assessment and issuance of an SDS must be made mandatory if the worker asks for one, and fines must be imposed if firms do not conduct an evaluation.

There needs to be an independent appeal route where HMRC can provide clearance on a status. At the moment, firms and workers are at loggerheads, which results in no engagement taking place, no revenue being generated, and therefore no tax generated.

December 2023