



PRISM submission to the Taylor Review

1. PRISM

- 1.1 This submission is made by PRISM, a trade association representing companies that provide services to contract workers including payroll services, umbrella companies and accountancy service providers.
- 1.2 PRISM has been pressing for a wide reaching strategic review into the issues surrounding employment, employment status and workers' rights for over a year. In 2016, we commissioned the Social Market Foundation (SMF) to carry out research into this area.
- 1.3 The SMF report is due for release following the general election and a copy will be provided to the Taylor Review.

2. Executive Summary

- 2.1 Align rights and benefits across all worker categories where the same levels of tax apply.
- 2.2 Support any new rules with robust enforcement.
- 2.3 Review of tax categories to possibly include expansion of categories and alignment of rights and benefits to each.
- 2.4 Review employment practices for directly engaged employees to identify abuse of current rules.
- 2.5 Review Employers' National Insurance Contributions (NICs) and consider amending the threshold levels, reducing the headline rate and introducing a 'Hirer's NI'.
- 2.6 Recognition of the service sector economy and acceptance that the sale of skills and expertise to businesses is now the modern equivalent of selling goods to businesses.
- 2.7 Consider categorisation of contingent workers from vulnerable to professional to enable protection for the vulnerable and freedom for those who sell their skills.
- 2.8 Publish a clear roadmap to allow businesses to plan and prepare fully for any changes.
- 2.9 Consider how more transparency can be brought to the supply chain which will help simplify understanding of workers.
- 2.10 Enforcement efforts should recognise the distinction between those that are doing their best endeavours to comply but perhaps need help and support versus those who show a blatant disregard of the rules.

3. New models of work

- 3.1 It is widely accepted that the UK's flexible working arrangements provide a real advantage to businesses, recognised by the CBI, who have stated that this as a major reason for overseas firms establishing bases within the UK.
- 3.2 It was recognised that the flexible working arrangements helped the UK recover from recession quicker than other countries as it provided a framework for employers to react more quickly to the changing dynamics of the market. Maintaining this flexibility is essential in order to keep the UK being seen by large businesses as a world leading business environment and location for investment. This becomes increasingly important in a post-Brexit world.
- 3.3 The area of temporary workers, and how employers use them, is rightly the focus of many current inquiries and reviews. However, to gain a full and complete picture, a broader understanding of how employers are also changing their direct employment practices could provide an indication into the specific areas that need closer examination.
- 3.4 There are growing reports around how some large employers are now amending their staffing arrangements to provide significant cost savings to their businesses; directly employing workers on employment contracts that provide limited hours of work per week. These workers can have multiple jobs with different employers to increase their earnings. Under these arrangements, all of the employers would achieve significant savings to their businesses.
- 3.5 The current framework surrounding Employers' NICs means that employers have no liability for workers earning below £157 per week - that equates to approximately 21 hours of work per week for a 25-year-old on the National Living Wage. Where that worker was engaged with two separate employers a week, each employer could apply, and benefit from, the threshold. This practice could save an employer around £975 per annum in Employers' NICs. The position is neutral for the employee. Removing this threshold would, we believe, remove the incentive to offer limited hours or zero-hour contracts.
- 3.6 If the Employers' NI threshold was removed there are two significant benefits.
 1. The headline rate could be reduced as more Employers' NI could be collected. Companies with 'traditional' engagement methods would see a drop in their cost of employment. Only those companies seeking to exploit this gap would see a rise.
 2. Where workers had more than one job, the tax collected from businesses would be the same as a single job employee and in turn help achieve the stated objective of people doing the same job paying the same levels of tax. In this way, we are differentiating between the individual costs of tax and the corporate contributions. There is no impact on the individual costs with this proposal.
- 3.7 Under pensions auto-enrolment earnings threshold rules there could be additional cost savings to employers using the system described above. These workers will be jobholders but are likely to fall below the auto-enrolment threshold placing the onus on the worker to 'opt in' rather than, as the name suggests, auto-enrolment. With the cost to employers set to rise to 3% from 06/04/2019, this area of potential savings for employers is likely to come under increased focus and could support a growing framework of employing workers for limited hours per week.

- 3.8 Where a worker fails to 'opt in', this provides further savings of £22.88 per annum, rising to £68.64 from 06/04/2019 onwards. With staff contributions also set to rise over the period to a peak of five percent from 06/04/2019, we would expect the numbers of workers voluntarily 'opting in' to fall significantly.
- 3.9 Amending the Employers' NI threshold as described reduces the overall cost benefit to business in engaging workers on temporary hour contracts and the savings made on auto enrolment on their own would not drive avoidance behaviour.
- 3.10 There are many examples of sectors that historically employed their workers but have moved towards engaging workers on a self-employed basis. Professional drivers are possibly the most obvious. Where a market operates on tight margins, any savings can provide commercial advantages and, once exploitation of the rules starts, it can spread like wild fire.
- 3.11 A further example is Uber which has been in the firing line for engaging drivers as self-employed. This is no different to how every mini cab firm engages workers. It is the technology Uber takes advantage of and the fact the company has scaled to such size in a short space of time that has brought its operations into sharp focus.
- 3.12 PRISM believes that all the Uber situation highlights are shortcomings within the tax system that have been there for years.
- 3.13 One of the challenges faced by successive Governments is how to recognise and encourage entrepreneurs whilst at the same time protecting the tax revenues from exploitation of new emerging models. We do not believe they have got this recognition or balance correct.
- 3.14 There are two aspects to the total tax collected; the amount paid by the individual and, where a worker is 'employed', an amount paid by the company. Recent attempts to balance the tax have failed to recognise this and taken a 'one size fits all' approach which has severely disadvantaged the true entrepreneurs and self-employed.
- 3.15 PRISM recommends that where a worker is akin to an employee, regardless of their operating structure, the company engaging them must pay an equivalent of Employers' NI.
- 3.16 Also, to address the market distortions in sectors where being self-employed is becoming the norm, we would suggest this new measure is payable by any company that engages a worker for a period of more than three months in any tax year. Three months is suggested as it aligns to the Agency Workers Regulations.
- 3.17 Evidence from many recent reports suggests that it is becoming more common for workers to have more than one job. This could be a consequence of Employers' NI thresholds, where a worker has more than one job and the tax system struggles to cope with low paid workers put at a disadvantage.
- 3.18 Currently, a low paid worker with two employments has their personal allowance allocated to their first job. If that job failed to pay a level that fully utilised the allowance they would pay



more tax in their second job, as this would be taxed at the basic rate. Whilst this would balance out at the end of the year, it means that the low paid worker has a cashflow disadvantage.

3.19 PRISM suggests this needs to be considered and aligned with the Digital Tax Strategy.

4. Regulation

4.1 *Employment status*

4.2 The structure of the UK tax system for individuals requires them to be treated as either self-employed or employed, whereas employment law recognises a third category, 'worker'.

4.3 This stands out as one area where we would suggest that alignment between tax status and employment status needs to be considered to provide clarity to those in whichever category they fall. We also suggest that the categories themselves need to be looked at more closely, even to the point where additional categories may be required with specific tax, employment rights and benefits status aligned to them.

4.4 Whilst this may initially appear to be a further complexity, we would suggest that where the category was easily identifiable then the rules would be clear.

4.5 Workers who are currently employed know that their employer pays them and deducts the tax providing them with a payslip that outlines this. They may not understand the exact rules of the tax calculation but the principles are clear and well understood – the money they get is theirs and they will not have, in most cases, any further liabilities. There are a growing number of workers who lack this clarity on their tax position and in many cases, will be unable to understand the complexity of the rules applying to them.

4.6 Previously, the self-employed understood they were self-employed and what that meant regarding their tax obligations; a significant number of these individuals at lower levels of pay, however, were still able to understand and apply the concept. This would suggest that when the framework is clear and easily understood a higher degree of compliance can be achieved.

4.7 The simple fact that so many workers, at all levels of the market, are unable to understand the complexity of the rules or determine their own tax position is further evidence that the framework is no longer fit for purpose. This complexity results in an increased risk in the exploitation of workers.

5. Tax

5.1 Over recent years, increased focus has been given to the tax status of workers resulting in amendments, removal or adjustments of the benefits and the restrictions on reliefs or allowances available to certain individuals within the two categories.

5.2 This seems to be under pinned by several exaggerated perceptions:

- i. that many of the contingent workers are structuring their arrangements solely to reduce their tax



- ii. they are being exploited by unscrupulous employers
- iii. they are no more than disguised employees.

Whilst we would agree there are groups of workers that would fall into each of these groups, there has been little, if any, recognition for those who have proactively made the decision to work as professional independent contractors.

- 5.3 Much of the non-compliance, often referred to by HMRC as reasons for change, has been as a direct result of low levels of compliance enforcement across the market. This inactivity has allowed those with a complete disregard for the rules to develop significant short term businesses at the expense of the responsibly run providers.
- 5.4 Attempting to solve this through a 'one size fits all approach' has resulted in many workers' statuses being incorrectly classified.
- 5.5 PRISM accepts the principle that where a worker is no more than a disguised employee then they should not only be taxed in the same way as the employee but provided access to benefits and rights aligned to those afforded to employees. The challenge is identifying the appropriate rules for this.
- 5.6 PRISM understands that vulnerable workers need to be protected. The challenge here lies in defining this group.
- 5.7 If the underlying principle is to test the status of the relationship between end user and worker, ignoring any parties in between, and use this to determine the workers' status then we believe the operating structure of the worker should be an irrelevance to the outcome of the test.
- 5.8 The current framework has a range of different tests that are not only defined by the operating structure used by the worker but also whether the worker uses a recruitment company or engages directly.
- 5.9 This range of tests, coupled with different responsibilities for carrying out the tests, further complicated by different liability chains, suggests that the current framework is not fit for purpose.
- 5.10 The approach taken over the last few years has, as acknowledged in the Government's own impact assessments, hit the lowest paid workers the hardest. Many of the workers are now paying the same levels of tax as their full time employed counterparts but without any of the employment rights, security, certainty of income or benefits.
- 5.11 PRISM believes that changes should be reviewed holistically and where levels of tax are comparable between employee and contingent worker, wider issues such as benefits and workers' rights need to be more fully considered.
- 5.12 We also believe that, where workers are recognised as developing their own business by marketing their skill sets to businesses requiring those skills, then they should be removed from many of the constraints of legislation and allowed to operate freely in the market, much in the same way every other business can.



6. Enforcement of existing rules

- 6.1 PRISM believes, in short, that rule change and better enforcement would contribute significantly to changing the current landscape for the better.
- 6.2 The sector has suffered from a history of utilising arrangements that push the boundaries of legislation, and in extreme examples, have a complete disregard of the rules. The non-compliant offerings leave the responsibly run, compliant providers at a significant commercial disadvantage. PRISM and its members promote compliance across the sector.
- 6.3 There have been many examples of extreme non-compliance being reported by the sector to HMRC. Even after the sector alerts HMRC to these cases, those arrangements were still present and highly active in the market several years later. In some examples, even when HMRC has declared practices as non-compliant, those who are actively marketing these arrangements continued for many years with no visible consequences to their businesses.
- 6.4 There have also been media programmes and reports of wholesale abuse of the rules; however, once again the businesses are still active with no visible consequences.
- 6.5 Until recently, there was almost no visible compliance activity in the market which created this culture and those exploiting the rules felt almost untouchable.
- 6.6 Where the non-compliance was so widespread, this was addressed by universal rule changes resulting in the historic non-compliant models closing. However, there has appeared to be no consequence for their non-compliance and no recognition for those that have tried to operate legally who are continually commercially disadvantaged in the market.
- 6.7 The recent HMRC compliance activity is having an impact and we hope this continues.
- 6.8 PRISM and many of the commentators across the market have always believed the market distortions would never have been so great or widespread if the enforcement approach had been adopted sooner.
- 6.9 It is also widely accepted by the same groups that many of the rule changes and added complexity could have been avoided if HMRC were effectively enforcing the rules that were already in place at that time.
- 6.10 We strongly advocate a robust enforcement of the rules across the sector, and by sector, we are referring to the whole supply chain.
- 6.11 We agree with the principle that, where non-compliance occurs, there should be clear accountability and liability, including directors' personal liabilities.
- 6.12 With the complexity of the rules and the current lack of clarity on outcomes, there also needs to be a clear distinction in the enforcement policy between those that demonstrate attempted compliance and those that continue to have a disregard for the rules. Firms that have robust processes but perhaps need help and guidance as to how to apply those more effectively are

entirely different from those with systemic failings. The current enforcement regime fails to have any regard to this distinction.

7. Direction

- 7.1 We are sure that some of the potential solutions will need to be delivered through gradual change over several years. Producing a clear 'roadmap' for tax, employment, workers' rights and benefits entitlement is essential as it will allow businesses to plan and prepare more fully for the changes and assist workers in their understanding.
- 7.2 An example of how a market has been transformed because of clear direction is the soft drinks industry. Having been given three years' notice of a new tax on sugary drinks the whole sector has now moved to heavily promoting their sugar free drinks. The result is that the Government now expects to collect less tax than forecast, as confirmed in the last Budget.
- 7.3 Taking a similar approach with new measures such as removal of the Employers NI threshold allows employers the time to move their structures as well as Government to see market reaction and movement, addressing any unintended consequences as they arise.
- 7.4 This is a luxury that the contracting sector has not been afforded; the last rule change relating to off-payroll working in the public sector gave approximately 14 days between final legislation and implementation.
- 7.5 Contracting is now seen by many as the selected career path for those looking to develop their skills and expertise in order to sell this to businesses requiring those skills. Many of these workers accept and understand the risks that come with this way of working and are not seeking greater protections.
- 7.6 The individuals who proactively make this choice also recognise the ongoing investment in training and developing their skills they must make to remain attractive to their target market.
- 7.7 The approach taken by successive governments over the last decade has failed to fully understand this aspect. There seems to be a fundamental failure to grasp the concept that the modern business world needs to buy skills, and views this purchasing in the same way the old world bought 'goods'.
- 7.8 Understanding the crossover point between the unskilled contingent worker and the career contractor we believe will become a critical aspect in finding the right balances.
- 7.9 The approach to resolving budget shortfalls and the economic pressures must not be to remove the incentives for SME business and entrepreneurs to a point where it becomes contradictory to the principle of encouraging entrepreneurship.
- 7.10 We believe that the combined effect of many of the recent changes has now taken this very close to a tipping point.



8. Transparency

- 8.1 PRISM believes that any further developments for the market should consider how to address supply chain transparency to the workers and consider providing workers with information that will help them understand the arrangements they are entering in to.
- 8.2 This transparency will also help a broader understanding of arrangements which would result in a reduction in the number of cases being brought to employment tribunals.
- 8.3 Fully understanding the areas of both current employment trends and contingent worker trends is a critical aspect in coming to considered conclusions aligning to businesses needs whilst at the same time providing the correct levels of protection to workers. A singular focus on one side is likely to result in distortions on the other. This in turn will add to the existing layers of complexity and ever changing rules, a problem that the sector has faced for several years now.

ENDS

Contact

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