



# ICAEW REPRESENTATION 199/16

## TAX REPRESENTATION

### BEIS Inquiry Future world of work and rights of workers

ICAEW welcomes the opportunity to submit evidence to the inquiry into the [Future world of work and rights of workers](#) launched by The Business, Energy and Industrial Strategy Committee on 26 October 2016.

This response of 23 December 2016 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

### Contents

	Paragraphs
General comments	1-11
Answers to the terms of reference	12-24
Ten Tenets for a Better Tax System	Appendix 1

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## GENERAL COMMENTS

1. Employment law imposes different obligations on hirers and gives different rights to workers depending on their employment status. This is a major factor for hirers in determining the best way to hire labour and to the extent that they are able to understand the consequences, is very important for workers where they have a choice. However, tax and National Insurance costs, which depend on the employment status of the workers as determined by tax law and National Insurance Contributions (NIC) law, which are not necessarily consistent with employment law, are arguably even more important to all parties because they affect profitability and take home pay.
2. We cover in this section:
  - The extent to which hiring practices are driven by tax and NIC costs
  - State pension and benefits entitlement for the low paid, even those with multiple jobs
  - 'NIC: hard choices'.

### **The extent to which hiring practices are driven by tax and NIC costs**

3. We welcome the inclusion of tax within your terms of reference. While the cost and administration of tax are not the only factors for a business to consider when deciding how to engage its workforce, employer NIC are a significant additional cost.
4. Employer NIC are a 13.8% charge on labour costs where there is employment (either under general principles or where the tax and/or NIC legislation treats or deems income as being from an employment), but is not applicable where there is self-employment. While many hirers of workers engage people on a self-employed basis, or via companies, for genuine commercial reasons such as flexibility in the workforce, there is at least a perception that a number do so to save the employer NIC cost, as well as perhaps to avoid creating employment rights for the workers.
5. Labour intensive industries predominate in today's services economy. In these industries, employer NIC is a heavy cost and there is considerable pressure to reduce it. Businesses are also concerned with reducing their exposure to tax risk. If it is possible to engage workers through an intermediary, such as an agency or a personal service company (PSC), the engager can protect itself from employer NIC being charged at a later date following a successful challenge by HMRC regarding the nature of its relationship with the worker.
6. In some cases, the presence of intermediaries in the sector can lead to the liability for paying employer NIC being (in economic terms) passed on to the worker, as a result of the way that NIC law works when there are intermediaries and the relationship between worker and engager is held to be similar to one of employment. Equally, some workers consider that they will pay less tax and NIC if they are treated as self-employed, or provide their services via a company.
7. The hirers of workers and the workers themselves in these cases may well not opt for the self-employment or company route if there were no perceived advantages under tax/NIC law, or employment law.
8. We appreciate that these economic incentives relate to only a part of your inquiry but we think that it is important to take into account the extent to which the tax/NIC cost tail is wagging the working dog.

### **Benefit entitlement for the low paid, even those with multiple jobs**

9. On the other side of the NIC coin is entitlement to contributory benefits including the state pension. As increasing numbers of individuals work for multiple employers in the 'gig' economy, it becomes increasingly likely that they will remain below the NIC threshold for each of their jobs. The NIC lower earnings limit is presently £112 per week and it is not aggregated over multiple jobs. This means that the employees will not pay, and so not be credited with,

the NIC which would have counted towards the worker's state pension and contributory social security benefit entitlement in due course. It also seems probable that this will have a greater impact on certain groups within society, including those who are unable to afford to, or even be aware that they can, pay voluntary Class 3 NIC (presently £14.10 per week). We believe that aggregation could be achieved for such individuals without having to make NIC run in the same way as PAYE income tax, by using the data already being submitted by employers to HMRC.

10. We would note here that the government's proposals for self-employed NIC (ie to make Class 4 NIC contributory, abolish Class 2 NIC and restructure contributory Class 4 to replicate employee Class 1) will mean that the genuinely self-employed with low profits or losses will face the same problem.

#### **NIC: hard choices**

11. ICAEW's thought leadership work addresses a number of other issues that we believe are relevant to the inquiry's focus on the future of work. A key challenge to the government in addressing the issues that arise from changing trends in employment status is that the national insurance system is predicated on employment being the predominant way in which individuals engage in the economy. 97% of NIC receipts derive from employment. Consequently, in considering the future of work we believe that government must also consider the future of national insurance. Our recent papers [Hard Choices for National Insurance](#) outline the options we believe the government has in this area. Our most recent report responds to Office for Tax Simplification proposals for reform. These findings are directly relevant to Question 4.

## **ANSWERS TO THE TERMS OF REFERENCE**

**Q1. Is the term 'worker' defined sufficiently clearly in law at present? If not, how should it be defined?**

- What should be the status and rights of agency workers, casual workers, and the self-employed (including those working in the 'gig economy'), for the purposes of tax, benefits and employment law?
12. Defining 'worker' for employment law and for tax is not always clear and there are tensions between the two. Often there are conflicts even between employers and their employees/workers.
  13. The tax definitions are ill defined which has resulted in classification problems and litigation which has been a feature of the tax system for many years. The rules are slightly different between income tax and NIC. For both tax and NIC there are rules deeming some workers who are self-employed to be employees.
  14. At the bottom of this is the considerably higher cost of employing somebody as against them being self-employed. As a result we believe that the advent of the PSC and the tax advantages of incorporation have driven many workers and engagers towards self-employment and PSCs.
  15. It seems wrong that workers might be made to be employed for tax and NIC, but then be treated differently for other purposes – ideally there should be one consistent and coherent rule.
  16. The world of work has changed and continues to do so, yet most of the existing tax rules are framed in terms of strict employee/self-employed relationships. Given the significance of the economic incentives to influence behaviour in this area we suggest that the inquiry might consider whether this is still the best way of looking at this, and whether other models might be more appropriate. The Office of Tax Simplification has published a number of papers recently and its view, which we share, is that the current system is poorly understood.

**Q2. For those casual and agency workers working in the 'gig economy', is the balance of benefits between worker and employer appropriate?**

17. This is difficult to answer. Under employment law, workers have some rights but may be taxed and liable to NIC as employees or self employed depending on the circumstances. The current system is predicated on a consistent record of NICs being maintained. Where this is not the case, entitlements to the state pension and other contributory benefits are curtailed. This does not seem equitable where an individual's employment pattern precludes or makes it more difficult to maintain a full contribution record.

**Q3. What specific provision should there be for the protection and support of agency workers and those who are not employees? Who should be responsible for such provision – the Government, the beneficiary of the work, a mutual, the individual themselves?**

18. This is a policy question for Government; for example the employee shareholder scheme rules (withdrawn in Autumn Statement 2016) were intended to allow an employee to swap employment rights for tax benefits. Consideration might be given to circumstances where it could be reasonable to 'trade' employment rights. As regards possible reform of the NIC system, our thought leadership papers National Insurance Hard Choices make a number of suggestions that we believe are relevant to the inquiry.

**Q4. What differences should there be between levels of Government support for the self-employed and for employees, for example over statutory sick pay, holiday pay, employee pensions, maternity pay?**

- How should those rights be changed, to ensure fair protection for workers at work?
  - What help should be offered in preparing those people who become self-employed (with, for example, financial, educational and legal advice), and who should be offering such help?
19. This is a policy matter for government.
20. We would mention that we recently invited Dr Malcolm Torry, Director of the Citizen's Income Trust, to prepare a report [How might we implement a citizen's income?](#) outlining his suggestions for how a 'citizen's income' might be implemented in the UK. Although these suggestions are not ICAEW policy and we do not make any recommendations to the government regarding reform of the benefits system, we believe the paper is relevant to this question. As the government considers how the support it offers to the employed and self-employed might need to evolve in response to the changing nature of work, we believe our paper provides a different way of thinking about some of the challenges in this area.

**Q5. Is there evidence that businesses are treating agency workers unfairly, compared with employees?**

21. We do not have the evidence to answer this question.

**Q6. Should there be steps taken to constrain the use by businesses of agency workers?**

22. Agencies perform a valuable role in flexibly matching supply to demand, so we see little merit in constraining businesses from using agency workers. Equally, demand might reduce if employment and tax law did not make it more expensive to employ people than to use self-employed labour. Clearly workers should be protected from exploitation and there is a balance to be struck. However, the inquiry should be mindful that employers are currently incentivised by the tax and NIC system and employment laws not to take on employees owing to the tax/NIC costs and employment law obligations.

**Q7. What are the issues surrounding terms and conditions of employees, including the use of zero-hour contracts, definitions of flexible contracts, the role of the Low Pay Commission, and minimum wage enforcement?**

23. We do not have the evidence to answer this question.

**Q8. What is the role of trade unions in representing the self-employed and those not working in traditional employee roles?**

24. Traditionally trades unions have represented employees. The self-employed may be members of bodies such as the FSB, NFU, etc which may provide some benefits.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <http://www.icaew.com/-/media/corporate/files/technical/tax/tax-news/taxguides/taxguide-0499.ashx>).