TAXREP 36/13

(ICAEW REP 104/13)

ICAEW TAX REPRESENTATION

OFFSHORE EMPLOYMENT INTERMEDIARIES

Comments submitted on 12 August 2013 by ICAEW Tax Faculty in response to HM Revenue & Customs consultation document *Offshore Employment Intermediaries* published on 30 May 2013

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation document *Offshore Employment Intermediaries* published by HM Revenue & Customs (HMRC) on 30 May 2013 and the fact that the deadline for responding was extended to 12 August.

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

3. On 16 July 2013 we attended a meeting with HMRC in which we were able to put forward some key comments and concerns and discuss aspects of the consultation document.

4. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

5. ICAEW is a professional membership organisation, supporting over 140,000 chartered accountants around the world. Through our technical knowledge, skills and expertise, we provide insight and leadership to the global accountancy and finance profession.

6. Our members provide financial knowledge and guidance based on the highest professional, technical and ethical standards. We develop and support individuals, organisations and communities to help them achieve long-term, sustainable economic value.

7. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

KEY POINT SUMMARY

8. We consider that:

- The time has come to have a major policy rethink on what the government wants to achieve with PAYE and NI where intermediaries are involved and to consolidate all the legislation, both income tax and NIC. It is common knowledge that IR35 is unenforceable, let alone obligations on entities outside the UK jurisdiction. Tinkering round the edges will not resolve the problem.
- Ascertaining and transferring the liability and outstanding debts of an offshore entity to Intermediary 1 or the end user will involve a lot of work and compliance costs for the onshore recruitment sector. They will be unable to ascertain the information that HMRC requires, and will not have access to HMRC records to ascertain whether, and if so how much, PAYE has been paid. They will find it impossible to define how they should protect their position. Attempts to renegotiate contracts will fail as those with whom they will be negotiating will be those most likely to default.
- The proposed rules may not comply with EU, EEA and international treaty obligations.
- The effect on Intermediaries and end users is understated in the Summary of Impacts as they will need to account for potential PAYE debts arising from unconnected and unknown entities elsewhere in the employment chain; and
- By way of alternative solutions, if the existing NIC legislation covered all supplies of labour rather than personal services only, and was enforced, then this would meet the NIC concerns which the condoc is addressing, and consideration should be given to making the end user primarily responsible for the PAYE ab initio and obliging UK residents with

earnings from an offshore employment to complete a return showing details of the offshore employer and of the entity for which the work was performed.

MAJOR POINTS

9. Whilst we welcome attempts to create a level playing field to eliminate the evasion of tax and NIC liabilities, the proposals in the condoc will add another complicated layer to what has become an incomprehensible and complex situation. They will create expense owing to the information gathering requirements, and uncertainty owing to the fact that even if businesses do gather the information it will be difficult for them to know what they need to do to protect themselves from unexpected liabilities. The deliberate creation of unquantifiable contingent liabilities is inappropriate and disproportionate.

10. The whole area of tax, NIC and employment law including IR35 and the managed service company rules is becoming increasingly complex and unintegrated which is making it difficult to identify where liabilities lie and to quantify such liabilities. We suggest that this area should be subject to a major review incorporating a rethink of what the government wants to achieve. We suggest that the topic should be considered by the Office of Tax Simplification.

11. The proposals require every UK to UK contract for services which includes the provision of labour to be tested, just in case there is an offshore employer somewhere in the chain and PAYE and NIC have not been operated by that employer. This will impose an impossible burden on all UK business and on HMRC's compliance teams. This effort will dwarf any problems with IR35 contracts.

12. We also question whether the proposed rules will comply with the UK's EU, EEA and international treaty obligations. The proposed rules will not apply to EU-based businesses, because of the existing mutual assistance arrangements. However, that could put enterprises of non-EU treaty states at a disadvantage by comparison, and result in objections under non-discrimination provisions in bilateral agreements.

13. HMRC's proposal is designed for a simplistic chain of intermediaries between the offshore employer and the UK end user and presumes that the relevant parties have full knowledge of the structures in place. Whilst this might be cover Sark-based nursing and teaching employers whose supply chain is probably similar to how the consultation document represents it to be, this is unrealistic and over-simplistic for complex international business such as oil & gas. Existing legislation is apparently unenforceable in this context because of a lack of cooperation from the offshore entities; we should therefore welcome clarification of how new legislation which will also be unenforceable will change that position.

14. UK end users and intermediaries are as likely as HMRC to be unable to see through chains, especially since each contract is usually with single entities rather than chains. Privity of contract means that, in UK law at least – and not all offshore supply contracts are made under UK law – entities can only enforce contractual terms against the party with which they contract, not against that party's own suppliers and agents. HMRC has the power to require information by law from those within its jurisdiction, with the sanction of penalties to help enforce compliance. Employers have no such power. With suitable notice, employers can negotiate contractual information provision with their direct suppliers and customers, but they cannot enforce anything further up or down a chain, especially where contracts are made under foreign law.

15. HMRC's proposal presumes that information will be available to the businesses in the chain.

16. Intermediaries may not even know that they are in a chain, or where they are in that chain. They can ask, but will have no way of checking the veracity of the answers, even assuming

that answers are forthcoming. We appreciate that HMRC faces difficulties in dealing with offshore supply chains, but HMRC should not assume that an intermediary can obtain the necessary information. The intermediary may not know or be able to obtain all the facts, given the complex nature of contracts and supply chains. This applies especially in the oil and gas sector, where the licence-holder might not be the operator of an offshore installation. Indeed, there may be multiple licence-holders behind any one offshore installation, supplied by multiple intermediaries acting independently or in concert, and some or all of those licence-holders may have no UK presence themselves. Furthermore, some of the intermediaries may have no UK presence, and none of them may know the identity of the ultimate licence-holder. In such a case, it is not clear who would be the liable entity under the new proposals. HMRC states that it is currently 'problematic and time-consuming to establish the facts' (Section 2, page 9). The proposals simply transfer the problems and the time-consumption to the businesses concerned.

17. Experience suggests that even companies within the same group are sometimes unwilling to release detailed information to each other because of confidentiality laws, commercial sensitivity and/or budgetary pressure. If the exchange of information needed to meet the proposed obligations is between two or more non-UK entities, HMRC and any relevant UK entities will have no power to enforce anything in that regard. HMRC will be in no better position than it is now.

18. We note HMRC's intention to introduce new legislation in addition to the existing legislation which it is not proposing to repeal. This will mean that the statute book will contain two sets of tax and NIC rules, the old versions of which will be in effect otiose. We suggest that if the existing legislation, eg in s.689 Income Tax (Earnings and Pensions) Act 2003 and paras 2 and 9 of Sch 3 to the NIC Categorisation of Earners Regulations 1978, is not catching those who currently are causing concern, then the answer is either to change the legislation so that it does, and apply it, or, if the existing legislation is so unfit for purpose that only replacing it will suffice, then it should be repealed.

19. We should welcome clarification of why the primary responsibility is being placed on the offshore employer which by reason of its location outside the UK is likely to make both compliance and enforcement technically impossible and at best time consuming for businesses and HMRC.

20. HMRC envisages that where the overseas employer does not meet its newly to be imposed secondary NIC liabilities, then the debt will, after a time, be transferred to Intermediary 1, failing which to the end user.

21. The duties placed on employment agencies (normally Intermediary 1's) will be disproportionate and onerous. In particular, checking that appropriate tax is actually paid will be all but impossible; agencies and end-users may be misinformed by others in the chain that tax and NIC are being paid when in fact it is not. Where intermediaries or end users find themselves with tax liabilities that they had no means of knowing about, and that threaten to bankrupt them, we anticipate that the courts will not be keen to enforce this. .

22. We consider that the legislation should make it clear how the Intermediary is expected to obtain the necessary information, including:

- determining how the liability arises in the first place, and
- quantifying the liability.

23. We should welcome clarification of how HMRC envisages that Intermediary or end users – or even HMRC – should obtain the relevant data where the offshore employer simply refuses to supply it. We should welcome confirmation that HMRC will accept reasonable excuses for inability to obtain accurate data. It is also not clear what will happen where the offshore entity supplies information about what is owing to HMRC but doesn't pay it.

24. Intermediary 1s and end users will need to assess their potential liability to PAYE in the event that an entity higher up in the employment chain, which is likely to be completely unconnected and therefore an unknown quantity, does not meet their PAYE obligations. This potential liability is likely to be unquantifiable on an individual end user or Intermediate 1 entity basis save by way of a guesstimate based on the amount that the entity is paying for the supply of labour.

25. In the impact assessment, we do not accept that there will be no impact on 'businesses and civil society organisations'. On the contrary, the information gathering obligations and the potentially unquantifiable PAYE liability that HMRC may direct is payable will have a considerable impact on intermediaries and end users.

26. The proposals envisage the overseas employer being the first recourse for PAYE, with in the event of default responsibility transferring to Intermediary 1 and then to the end client/user of the labour. We would have thought that a simpler outcome would be for the liability to be that of the end user ab initio, and if the existing legislation does not apply owing to people arguing that the employment is a composite arrangement rather than a personal service, then change the definition so that the employment does not have to be a personal service. eg by widening it to cover any supply of labour rather than limiting it to personal service (thereby countering claims that the employment is a composite arrangement rather than a personal service and therefore outwith the rules).

27. Alternatively, or in addition, if anyone resident in the UK was obliged to submit a return of earnings from an offshore employment, with details of the offshore employer and of the entity for which the work was performed, HMRC would then be able to check whether the offshore employer had paid all amounts due, and assess the worker for personal liabilities (PAYE, NIC and student loan repayments) and the UK end user, or at least the UK business (if one exists) to which the services were supplied, in the event that there had been no payment of secondary NICs by the offshore employer. The worker is likely to be the only person independent of the chain who knows whether he is employed by a foreign employer. The worker will also know whether PAYE and NIC are being deducted.

RESPONSES TO CONSULTATION QUESTIONS

Chapter 4: The proposal

Intermediary 1

Question 1: Would these proposals defining intermediary 1 cause any practical difficulties e.g. to genuine commercial arrangements? Please provide details and examples.

28. It is proposed that Intermediary 1 will record where the workers provided to the end user come from and how they are ultimately paid. Contracts will need to be changed or the law appropriately worded to enable the relevant information to be obtained from the offshore employer.

29. It is envisaged that the offshore employer is to be responsible for RTI and statutory payments in the first instance. We should welcome clarification as to how this will be enforced and how Intermediary 1 will be able to find out the information in the event of a default. Will HMRC provide the information?

30. The proposals in the condoc pre-suppose that Intermediary 1 knows:
(a) that it is Intermediary 1,
(b) whether it is contracting directly with the end user, and
(c) who is the end user.

The legislation will need to make the definition of both 'Intermediary' and 'end user' (See Q. 2 below) clear if this proposal is to have any chance of being effective.

31. If a business outside the UK supplies a 'composite service' using workers via an intermediary, as far as that intermediary is concerned, the composite service provider (CSP) is an end user, since the workers are supplied to its business, not to its customers' business. The CSP in turn needs to know the status of the business receiving the service, ie whether it is in fact the end user, or an intermediary. In some cases, in respect of certain services, the CSP itself may be the end user (eg catering staff who feed the CSP's own workers but nobody else's) and in relation to other services (such as the people who are working 'for' the rig operator but as employees of the CSP) the CSP may be an intermediary. We should welcome clarification of how to deal with this situation.

32. It is not clear how Intermediary 1, if it can identify itself as such, will know how much PAYE and NICs are due in respect of workers that it does not employ, especially if Intermediary 1 is below after a CSP in the chain. The statement in the condoc in the context of record keeping that 'it is a reasonable expectation that they should know where that labour comes from and how these workers are ultimately paid.' is simply not true in many cases, especially in the oil and gas industry, although it might be valid for the simple one-to-one relationships in Sark-based umbrella companies selling to schools or hospitals.

33. Contracts will need to be changed and the law appropriately worded to enable the relevant information to be obtained from the offshore employer(s) involved in the chain. Entities outside the UK jurisdiction cannot be made to comply.

34. It is also envisaged that the offshore employer is to be responsible for real time information (RTI) and statutory payments in the first instance. We should welcome clarification as to how this will be monitored and how Intermediary 1 will be able to find out the information in the event of a default. Will HMRC provide the information? Will HMRC correctly register offshore employers with no UK presence? If the offshore employer is willing to pay the relevant PAYE and NIC liabilities but not willing to comply with the RTI rules, how will this be resolved, since compliance with the reporting regime will not be enforceable outside the UK? Does HMRC propose to switch the RTI reporting obligation to an onshore entity?

The end client

Question 2: Are there likely to be any commercial difficulties with the proposed definition of end user, above? If so please say what they are likely to be and provide examples.

35. Contracts will need to be changed or the law appropriately worded to enable the relevant information to be obtained from others in the employment chain. See also other points under Q1.

36. The proposed law could make Intermediary 1 responsible for 'deducting' employee NICs, but Intermediary 1 will not be handling their wages and may not even know how much or when they are paid, or by whom, or whether they are within UK NIC liability. The same problem arises with the end user.

37. The worker may well remain taxable and subject to social security contributions in his home state while working temporarily via Intermediary 1 for a UK end user. The law will need to make allowance for the fact that such deductions may already have been made before imposing a liability on Intermediate 1 or the end user. By HMRC's own definition, Intermediary 1 and the end user will have no involvement in the making of these deductions.

38. In a non-oil and gas context, if a worker is supplied by an offshore intermediary to a UK entity, the definition of end user will need to define very carefully what 'ultimate user' means. If a

nurse is employed by a Sark-based umbrella company and supplied to work for a UK nurse bank, and the bank supplies the nurse to a GP practice, which is supplying a composite service under a contract with a local trust or commissioning body, how is the 'ultimate user' defined? The trust is actually supplying a composite service to patients, who could also be seen as end users, but it is paid by the Department of Health (DoH) to provide that service, so the DoH could be the 'ultimate user' if the definition encompasses the entity that ultimately pays for the worker's services as part of the composite supply it receives. The purchasing or commissioning of education services is different, but a similar question applies.

39. In oil and gas, the 'licensee' of the oil field could be any number of different entities, sometimes linked to the operator and sometimes not. If the licensee has, or joint licensees have, contracted with a non-UK business, HMRC and businesses in the supply chain face challenges in identifying the liable body or person. Each company in the chain will not necessarily know, or be entitled to know, who the ultimate licensee is (or indeed where they are in the chain and who the other intermediaries are), so some of them will not know or be entitled to know or be able to find out whether they are 'Intermediary 1'.

Calculating the payment

Question 3: Are calculating the payments in this way likely to cause any problems? If so what are they? Please provide examples.

40. If they are based on payments to others in the employment chain, then we foresee major difficulties because the amounts of PAYE income tax and NIC are likely to be based on larger figures than the worker is being paid if they are based on payments to others in the employment chain.

41. Furthermore, some contracts will set out in detail how much is being paid 'for' the worker, rather than 'to' the worker, but others will charge a day rate for the whole crew, with no indication of how much each worker 'costs' (which the seller of the day rate crew may himself not know, if the worker has come via an intermediary who charges wages plus confidential mark-up, or as part of a crew package that is itself at a day rate). There is potential for serious conflict caused by the need for, and right to, commercial confidentiality.

42. The worker's net pay might also be paid in a foreign currency to a foreign bank account, while the day rate might be payable in, say, US dollars, so the cost fluctuates each time payment is made and, indeed, payment to the supplier might not coincide with payment of emoluments to the worker, which might also be in another currency, paid by another entity.

43. We should welcome clarification of whether in the absence of appropriate wording in the contact it is envisaged that the tax and NIC on the amounts that are being paid are to be based on the grossed up amounts or deducted from the amounts payable. If Intermediary 1 or the end user has to gross up the amounts then that will leave the entity that has to account for PAYE out of pocket or if the amounts are accounted for out of the amounts payable for the labour then the recipient will be out of pocket. Contracts or the wording of the law will need to make the position clear.

Chapter 5: Specific sectors

Internationally mobile workers

Question 4: Is there any reason why this proposal might disrupt existing arrangements? Please provide reasons.

44. We should welcome clarification of how the following will interact with/fit into the new regime:

- Contracts – will need to be reviewed

- Internationally mobile workers;
- The NIC 52 week rule – social security authorities issuing certificates of coverage are unlikely to liaise with entities other than the actual employing entity. HMRC would not automatically disclose information to, for example, a Kuwait-based employment agency in respect of a US specialist supplied by his Delaware LLC personal service company to a Panamanian rig operator's subcontractor in the UK North Sea. Without direct authority from HMRC, how is UK Intermediary 1 to know not to account for UK NIC because US FICA is being accounted for (or not)?
- Double tax treaties – which may prevent overseas employees from being charged PAYE, and where it is frequently not known whether PAYE will be payable until a late stage in the tax year (or sometimes even after it is finished). Intermediary 1 and the end user will be in unable to discuss the individual's tax and NIC affairs with HMRC, and HMRC will be unable to disclose any necessary information such as coding notices, so it seems likely that an impasse will quickly be reached
- Statutory residence test – split year treatment.

Mariners, and oil & gas workers on UKCS

Question 5: Do you have views about how about how the Government's proposal that all oil and gas workers on the UK continental shelf should be included in this measure? If so what are they?

45. See answers to Q6 and Q7.

Question 6: Is this likely to have any unintended consequences? If so what are they likely to be?

46. The creation of a secondary NIC liability may encourage oil and gas employers to move overseas, for example to Denmark where social security contribution rates are lower than in the UK.

47. See also answer to Q7.

Question 7: Would it be better for the industry to amend the definition of mariner in Regulation 115 SSCR 2001 or to amend the exemption so that those who meet case B SSCR 2001 will be excluded from the exemption? Or is there another way that this could be achieved, that would be better for the industry? Please state the reason for your preference.

48. Mariners have been generally excluded from the normal liability rules for NIC because they tend to spend time outside UK jurisdiction. Non-domiciled mariners who are not resident and therefore have no call on the UK social security system are outside the scope of UK NIC, which simply reflects the essence of the social security system, ie contributions buy benefit entitlement. This proposal would simply treat NIC as akin to a tax by collecting money without anything being given in return. The NIC system is a very broad brush social insurance system, but it is nevertheless there for social insurance. There are numerous non-domiciled non-EEA crewmen working on vessels of all kinds in the UK Continental Shelf (UKCS) area who would pay UK NICs without justification (ie they would earn or receive no UK benefit entitlements) if this proposal went ahead.

49. It is indeed anomalous if crewmen working on platforms and FPSOs or semi-submersibles are subjected to NIC liability differently, but no more anomalous than charging tax and NICs differently on British-flagged vessels in the North Sea according to the crew member's domicile and residence status, which is grounded in the origins of the system.

50. Given the risks to the merchant marine capabilities of the UK from changing the case C provisions (already recognised by Government), it would seem sensible for any change to be

made within Case B. Any change to Regulation 117 risks the flagging out of ships to other registers.

51. It is illogical at the moment that Case B and Case C co-exist in the UKCS area. Some mariners within Case C are excluded from UK NIC by the provisions in Regulation 117, but if the ship crosses into the UKCS area they are argued by HMRC nevertheless to fall into UK NIC by virtue of Regulation 114. If Case C was created for a reason, and that reason has not changed, Case B should not apply to create a liability that, logically, was not intended.

52. Logically, Case B should be changed to exclude explicitly crewmen on vessels that are legally ships and would be excluded from UK NIC liability if they were 'only' mariners, so that there is no conflict between Cases B and C.

53. However, if the Government chooses to collect extra contributions from and in respect of mariners who would otherwise have no liability, then Case C must be changed.

54. More logically, both Case B and Case C should both be changed, so that those workers who will have no call on the UK social security system have no NIC liability whether they are on a ship or a floating offshore installation in the UKCS area, but those who are resident or domiciled in the UK are liable if they work on either a platform or a 'stationary' vessel in the UKCS area. A time threshold might be imposed that achieves the Government's aim of catching FPSO, flotel, etc crews but does not accidentally catch ships that are moored or anchored temporarily.

Question 8: For oil and gas workers it is intended that the end client will be the licensee of the oil field. Are there likely to be any adverse impacts from this?

55. Licensing can be as complex as the assembly of crews via intermediaries. Fields might have multiple licensees and sub-licensees, many of which will have no UK presence other than the fact that they own the licence or sub-licence. While the operator will have to have a presence, the licensee might not have a physical presence in the UK.

56. The final supply in the chain to the licensee might not be by the operator who runs the installation, so it might not be clear to anyone who Intermediary 1 might be in this context. It might be very difficult for businesses in the chain to know that there is an offshore intermediary somewhere in the supply chain, and for the licensee who is ultimately liable to find information. The new legislation may purport to impose an obligation on one offshore company to provide information it does not have to a company or companies in a different jurisdiction or different jurisdictions, any of which might have confidentiality laws that the companies cannot breach without committing an offence.

Chapter 6: Record keeping requirements

Records that need to be kept

Question 9: How big an administrative burden is the requirement to have in the power or possession of an intermediary business, records of how the worker is ultimately engaged and paid where that business is supplying labour or services including the supply of labour likely to be? Please provide examples and as far as possible illustrative costings as part of your response.

57. To obtain this information will require renegotiation of contracts or appropriately worded law to find out the required additional information about others in the chain. At present it is likely that Intermediary 1 will know only the names of its immediate predecessor and successor in the employment chain

58. The administrative burden will only follow the renegotiation of contracts and the negotiation of foreign legal hurdles to the supply of information. If a law was passed by, for example, the French parliament imposing an obligation on a UK employer to disclose personal data about one of its workers to another UK business in the supply chain which could not be disclosed under the UK's Data Protection Act, it is likely that the UK employer would not easily agree to comply for fear of committing an offence in the UK. It should be no different in reverse. Cost does not enter the equation. At the very worst, any such UK entity would have a reasonable excuse for non-compliance.

59. Any liable party will need to know that a worker is employed by a foreign intermediary and be entitled to information about his or her earnings and any foreign tax and NIC obligations and treaty coverage. The liable party will then need to collect that information and process it, on or before each payday if the UK entity is to operate PAYE. The liable party may need to involve HMRC in providing information about PAYE codes and verification of NINOs, if indeed HMRC has the power to communicate with someone who is not in law or de facto the employer.

Reporting requirements to HMRC

Question 10 (version in summary): How big an administrative burden is it likely to be to make a quarterly return to HMRC? Would a more or less frequent return be desirable? Please provide reasons for your answer.

60. Any additional returns will create additional burdens.

61. In the context of single-issue agencies, such as Sark-based nursing umbrella employers, the quarterly burden would be understandable. In the context of multi-contract supply chains, where information is supposed to flow through a series of entities, some of which may choose not to comply, and whose workers might be a transient population that changes from week to week, the burden could be very serious and in some cases impossible to comply with.

62. This is not a CIS-type arrangement, where most contractors and sub-contractors are within HMRC's jurisdiction and subject to UK laws on tax, social security, data protection, Companies House reporting, etc. It would be wrong of HMRC to impose a burden on employers that the department itself could not deliver, even if properly resourced.

Question 11 (version in summary): How difficult is it likely to be for intermediary 1 to obtain this information? Please provide reasons and examples with you answer;
Question 12: Is there anything that it is likely to be particularly difficult to produce? If so please provide reasons; and
Question 13: Is there anything additional that Intermediary 1 or end client businesses should provide when they are engaging offshore employees?

63. To obtain this information will require renegotiation of contracts or appropriately worded law to find out the required additional information about others in the chain. At present it is not unlikely that Intermediary 1 may not know who is the offshore employer or how long the employee has been employed.

64. Any and all businesses buying in services delivered by people from other businesses will need to apply the proposed new information request procedures to all their suppliers in respect of all of their workers. Every business in the UK will potentially be affected, as they will have to check whether there is any element of offshore employment in the supply chain, even when they are buying from a business that is prima facie UK-based.

65. It may be clear to a hospital that it is buying a nurse from a Sark-based umbrella company, or to a school that its supply teacher is employed offshore, and in the offshore oil and gas industry there is often going to be an assumption that there is some foreign involvement, but the condoc does not set out any limits on the types of business that will need to comply.

66. Any UK business hiring temporary workers from a UK agency could be hiring within the scope of the proposed legislation, and that agency could itself be sourcing from another intermediary, which might be offshore. The end client is buying services from a UK business which might have an offshore entity in its supply chain, so the intention to include even composite service provision means that every UK to UK contract for services that includes workers would need to be checked. This is potentially an enormous burden on UK industry, imposed to solve a niche problem and raise around £100m. Some exclusions will be needed to avoid this burden if the legislation is enacted as planned

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12.8.13

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 icaew.com/en/technical/tax/tax-faculty/~/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)