

# FINANCE BILL 2014 DRAFT CLAUSES ONSHORE EMPLOYMENT INTERMEDIARIES: FALSE SELF- EMPLOYMENT

Response by the Association of Taxation Technicians

## 1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to comment on the draft amending clauses in respect of the tax treatment of agency workers as set out in the consultation document *Onshore Employment Intermediaries: False Self-Employment* (the Consultation) published on 10 December 2013 and intended for inclusion within the Finance Bill 2014.
- 1.2 We have had the benefit of seeing the detailed response prepared by the Chartered Institute of Taxation (CIOT) and we fully endorse that response.
- 1.3 In section 2 of this response, we comment briefly on:
- the possible case for a Targeted Anti-Avoidance Rule (TAAR);
  - the implementation of the amended legislation.
- 1.4 We also refer to the publication by HMRC on 30 January 2014 of a note entitled *Interaction of Personal Service Companies with the Proposed Changes to Chapter 7 S44-47 ITEPA 2003 (The Agency Legislation)* which we refer to below as “the PSC Note”.

## 2 Detailed comments

### *Possible TAAR*

- 2.1 We note the reference in section 4.12 and Question 6 of the Consultation to the possible introduction of a TAAR to support the legislation. As a matter of principle, we recommend that consideration is first given to the support that might already be available through the GAAR. One of the more compelling reasons for the introduction of the GAAR was its potential to reduce the need for specific anti-avoidance provisions. In view of the relative simplicity (in isolation) of the agency legislation, it would be preferable to avoid complicating it with complex anti-avoidance provisions.

### ***Implementation***

- 2.2 We note that section 6.9 of the Consultation indicates that targeted compliance activity will start from April 2014 although the penalties in relation to the newly required RTI-style returns will not apply until April 2015. In keeping with the 'soft landing' heading to this section of the Consultation, we recommend that the compliance activity should (except in relation to cases of clear abuse) have an educational focus until the introduction of the penalty regime from April 2015.

### ***PSC Note of 30 January***

- 2.3 We note that the PSC note of 30 January was published by HMRC in order to set out HMRC's view on the way the proposed changes to the agency rules interact with the intermediaries (IR35) legislation. That publication is welcome. However, its inclusion of passing references to Managed Service Companies, remuneration that already comprises employment income apart from under the agency legislation, loans and dividends all serve to demonstrate the complex inter-relationships in this area of tax law.
- 2.4 Against that background, the comment (that starts at the foot of the first page of the note) that "*dividends paid to the worker as a genuine consequence of their shareholding in the PSC will not normally fall within the new Agency legislation*" sounds helpful. However, any comfort that it gives is substantially undermined by the footnote on the second page which states:

*"Genuine dividends from the PSC would not normally be considered to be remuneration for the purposes of the Agency legislation. However in cases of avoidance there may be instances where HMRC argue that these payments are remuneration either as general earnings or as remuneration for the purposes of the Agency legislation."*

- 2.5 Notwithstanding our general comment in 2.1 above, we think the proposed agency legislation should identify those limited circumstances when dividends from a worker's PSC fall within its provisions. If the Finance Bill 2014 revisions to the agency legislation do not do so, an opportunity will have been missed to clarify the law in relation to PSCs.

### ***Contact details:***

Should you wish to discuss any aspect of these comments, please contact our relevant Technical Officer, Will Silsby, on 01905 612098 or at: [wsilsby@att.org.uk](mailto:wsilsby@att.org.uk)

Yours sincerely

Paul Hill  
Chairman, ATT Technical Committee

### 3 Note

- 3.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 7,500 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.