



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

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Dear Tania,

FOLLOW-UP TO MEETING WITH THE EXCHEQUER SECRETARY TO THE TREASURY

Thank you for sending us your recent report '*A professional labour market fit for the future*', about the challenges facing the UK's professional labour market. You met with my colleague, the Exchequer Secretary to the Treasury, Kemi Badenoch MP, on 7 May to discuss your report, as well the findings of the Commission on Race and Ethnic Disparities and their relevance for the members of APSCo.

The Exchequer Secretary asked if I might follow up regarding the topics you raised that fall within my areas of policy responsibility, and I am pleased to do do.

Your report recommended that the Government should review the UK's system of employment status, with self-employed status being formally defined in legislation and with different statuses for 'self-employed independent professionals'.

In line with the Conservative 2019 manifesto, the Government will bring forward measures to establish an employment framework that is fit for purpose and keeps pace with the needs of modern workplaces. These include measures to encourage flexible working, protect vulnerable workers, take a smarter approach

to enforcement of employment law, and build on the strengths of the UK's flexible labour market in supporting jobs.

It has been pointed out by stakeholders in the past that there are risks in defining the self-employed in legislation, including the potential for greater numbers of unscrupulous employers to game the system. Any proposals for reform would need to consider these risks carefully. The Government recognises concerns as to the employment status system and is considering options to make it easier for individuals and businesses to understand which rights and obligations apply to them. Departments are working together on these issues and assessing how best to address them in a post-Covid landscape, and the Government will set out more details in due course.

Your report also recommends an implementation review of the rollout of the off-payroll working reform. The Government agrees that it is important to monitor the impact of any significant changes on the labour market. That is why it committed last year to commission independent research into the impact of the reform of the off-payroll working rules in the private and voluntary sectors six months after the implementation date of 6 April 2021.

You also sought reassurance that, if the research shows that the rules should be amended, the Government will do so. The Government has shown itself willing to make changes to the off-payroll working reform in response to stakeholder suggestions, in order to ensure that the rules operate smoothly. For example, in response to the January 2020 review of implementation, the Government announced a number of changes, including that organisations would only need to determine whether the rules apply for contracts continuing beyond 6 April, rather than for any contract where payment was not made until after 6 April, even if it had concluded. The Government will continue to engage with stakeholders in this spirit.

I understand that in the meeting you expressed some concerns about HMRC's Check Employment Status for Tax (CEST) tool, as to its usability and the emphasis its decision-making places on substitution.

After working with over 300 stakeholders, HMRC launched an improved version of CEST in November 2019. The tool's various enhancements included making questions and the results clearer, increasing the number of questions to provide a more thorough assessment, and building in features to reduce user errors. As of 30 April 2021, CEST had delivered 1.4 million results since the enhancements were launched. This represents a completion rate of 87.8 per cent of uses from starting the CEST journey, compared to a completion rate of approximately 79 per cent before the enhancements.

CEST considers several factors such as personal service (which includes the right of substitution), control, financial risk, being part and parcel of the organisation and being in 'business on your own account', when determining employment status for tax. If a genuine unfettered right of substitution exists, and the worker is responsible for paying the substitute, CEST will give an outcome of outside of the off-payroll working rules.

HMRC consider the emphasis that CEST places on the right of substitution to be appropriate and in line with case law on employment status, in which a genuine unfettered right of substitution is considered inconsistent with employment. In order to help individuals and businesses understand how to answer questions on substitution in CEST, HMRC have produced detailed guidance in their Employment Status Manual that sets out the meaning of substitution, including what is meant by an unfettered right of substitution. In response to feedback, HMRC have also updated the CEST landing page on GOV.UK to improve awareness of existing guidance.

In the meeting I understand you also highlighted the risk of 'double recovery' of tax liabilities, in the event an agency is pursued for outstanding liabilities. HMRC have already held useful discussions with the IR35 Forum, of which APSCo is a

member, on the issue of setting off tax already paid by a worker and/or their intermediary (usually a personal service company, or PSC) against the liabilities of a client or deemed employer who it is later found has not applied the off-payroll working rules correctly.

As you will be aware from those discussions, there is no legislative provision in the off-payroll working rules to provide for a set-off for the client or deemed employer of any Income Tax, National Insurance contributions, income tax on dividends or corporation tax paid by the PSC or the worker. However, HMRC are currently considering the further representations made by the IR35 Forum and will respond to its members in due course.

Yours sincerely,

A handwritten signature in black ink that reads "Jesse Norman". The signature is written in a cursive, flowing style.

RT HON JESSE NORMAN MP