

Response by the Professional Contractors Group to the consultation paper “Working towards a new relationship: priorities for reducing the administrative burden of the tax system on small business”

Introduction

The Professional Contractors Group represents the UK’s freelancers and welcomes the current period of scrutiny of HMRC’s powers and their exercise. PCG has also submitted a response to the recent consultation on HMRC’s powers. Both submissions respond to each paper in full, even at the risk of some duplication of comment.

Freelancers represent a group of workers outside the normal division of employer and employee. This has on occasion caused the previous tax bodies, notably the Inland Revenue, some confusion and uncertainty in how to apply the law to them. This has resulted in some of the UK’s most experienced and flexible, and therefore valuable, workers finding their efforts to pay their taxes highly vexatious. PCG will always be willing to work with HMRC and other bodies to enhance their understanding of freelance workers and looks forward to a constructive dialogue with HMRC, working towards making the tax system easy for all small businesses to navigate.

HMRC’s relationship with small business

The very title of the consultation document “Working towards a new relationship” implies that the current relationship between the tax authorities and small businesses has proved unsatisfactory. Many of PCG’s members would certainly concur with this. In point 2.4, the consultation document observes that the government has taken many steps to assist small businesses since 1997. Aside from whether or not it is proper that an implicitly party political point should be included in a document such as this, it can be observed that many small businesses perceive the government as, at best, something of which to be wary and, in some cases, an institution intent on hounding them with bothersome regulation and punitive taxation. Some of the examples included are, moreover, not of clear-cut benefit to the small business community: the reduction in the corporation tax rate involved the opening up of a tax loophole and its rapid closure when it was exploited to a greater degree than envisioned by the Chancellor, for instance. The range of simplified tax schemes may have been of some benefit, but this has been more than offset by the vast uncertainty introduced into the tax system in recent years.

The consultation document observes that the desired simplification of the tax system for small business will require a combination of policy reform and better delivery. PCG could not agree more: in recent years, a combination of poor policy and poor delivery has made the tax system almost impossible to navigate with any certainty. Both the IR35 legislation and the new interpretation of the settlements legislation have made it impossible for our members to be sure that they are completing their tax returns correctly, so as to pay the amount rightly owed according to statute. Under a self assessment regime, this ambiguity is completely unacceptable. The inevitable consequence is that taxpayers who have acted in good faith and sought to pay the correct amount of tax have been penalised, even, in some cases, for arrangements put in place many years previously in full accordance with the law. It is imperative that HMRC recognises that people generally want to comply and treat them accordingly. This approach has not always been adopted by British tax authorities.

Historically it has been widely perceived, not inaccurately, that rather than acting as a facilitator and assisting people to pay their taxes correctly, the old Inland Revenue investigated people vindictively and aimed to “get” them for as much tax as possible, almost as if they presumed the taxpayer to be guilty of evasion unless proven

otherwise. A wholesale change in approach, from presuming guilt to presuming compliance, is necessary for HMRC to gain broad acceptance and trust among the UK's small businesses.

PCG would also observe that the consultation document seems ambiguous on the matter of what constitutes non-compliance. Point 3.14 makes reference to the "deliberate non-payment of taxes" - an inadequate formulation. PCG unequivocally condemns the evasion of taxes: that is, the non-payment of tax rightfully owed in law. PCG would remind HMRC, however, that the avoidance of tax is legal: if Parliament has arranged the law such that certain business arrangements will be liable to less tax than others, it is entirely legal for businesses to arrange their businesses in this way until Parliament decides otherwise. Any such new arrangements may not, of course, be implemented retrospectively. Retrospective reinterpretation of existing statute is morally unacceptable, yet the former Inland Revenue was known to engage in exactly that practice in the name of restricting "avoidance". The IR and its successor have no remit to penalise legal avoidance.

If the government sees fit to "clamp down" on avoidance using the proper parliamentary processes, that is entirely legitimate and PCG will never object to this in principle. That said, it has been widely observed that many large companies operating in the UK pay very little tax relative to the size of their operations. PCG would suggest that if ever the government does wish to restrict avoidance, it would be far more fruitful for it to direct its attention at these large companies than to target the UK's small businesses, whose value to the economy has been recognised in the 2004 Pre-Budget Report consultation paper "Small companies, the self-employed and the tax system" as well as in point 2.3 of the current document.

Points to be welcomed in the consultation paper

The current consultation paper contains much that PCG expects will prove beneficial to small businesses in the UK. Numerous measures which will simplify communication with HMRC and introduce new facilities for taxpayers are welcome to our members: the single point of contact with HMRC; the accessibility of simple information concerning payments completed and outstanding; the shorter tax return; the facility to pay VAT by direct debit; and the simplification of forms, which the consultation document rightly identifies as an issue which small businesses would like to see addressed.

PCG also welcomes the more thoughtful approach towards inspection and regulation. Specifically, the trials to improve risk assessment and the impact assessments for new forms or practices seem to be very positive steps. The risk-based approach to inspections in line with the Hampton report is also welcome, with one caveat: the difficulties mentioned above which the former IR encountered when dealing with freelancers, as they were outside of the normal employer – employee framework, may have led them to be viewed with suspicion and classed as particularly risky in terms of compliance with tax. As has already been observed, any such view would be wholly wrong and PCG hopes that freelancers will not bear the brunt of the new risk-based approach to inspections: freelancers want to pay the correct and fair amount of tax, and merely demand clarity in determining what that amount is.