

Message

From: Leunig, Tim - HMT [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2F970ACA0EF44F558376F609F08873D1-LEUNIG, TIM]
Sent: 03/04/2020 15:27:13
To: Elsby, Matthew - HMT [matthew.elsby@hmtreasury.gov.uk]; [NR] - HMT [NR]@hmtreasury.gov.uk; Williams, Mike - HMT [mike.williams@hmtreasury.gov.uk]; [NR] - HMT [NR]@hmtreasury.gov.uk
Subject: RE: Request for further discussion. JRS and Self employed schemes

There is no doubt in my mind that a lot of this is tax dodging, although it is true that some sectors only pay companies (to avoid any risk of being deemed to be an employer).
(It is slightly worse, in that you get the first £X of dividends free)

BUT this problem is not going to go away.

I think we should say that "Compared with those of us who are employed, the self-employed are often tax dodging wotsits, and those paid by dividends even more so. So we don't have much sympathy. But if, politically, you want to do something, we suggest that you repeat your earlier line that this will be followed by tax harmonisation. At first approximation we would recommend raising the SE NI to 12%, as per the employed, and the dividend rate to c 17.5% so that whichever way you are paid £1, you get 68p."

Tim Leunig | Economic Adviser to the Chancellor

Her Majesty's Treasury | 1 Horse Guards Road, London, SW1A 2HQ



HM Treasury

www.gov.uk/hm-treasury | Twitter: @hmtreasury

If I email you late at night, please don't feel obliged to reply immediately unless it is urgent.

From: Elsby, Matthew - HMT <Matthew.Elsby@hmtreasury.gov.uk>

Sent: 03 April 2020 15:22

To: Leunig, Tim - HMT <Tim.Leunig@hmtreasury.gov.uk>; [NR] HMT [NR]@hmtreasury.gov.uk; Williams, Mike - HMT <Mike.Williams@hmtreasury.gov.uk>; [NR] HMT [NR]@hmtreasury.gov.uk

Subject: RE: Request for further discussion. JRS and Self employed schemes

Copying [NR] who's looked into this very question. As I understand it, the argument for having lower rates of income tax on dividends has always been that corporation tax is already charged on profits. But the system still favours taking income as a dividend, rather than as earnings:

For £100 of UK profits, you could either (as a basic rate taxpayer):

- Pay 19% Corporation Tax on the profits first, then 7.5% income tax on the remainder paid out as dividend, giving you an overall tax rate of 25.1%, or
- Pay 20% income tax on the profits, plus 12% NICs, giving you an overall tax rate of 32%.

So there's a strong tax incentive to incorporate. There will be some legitimate incorporation too – some people will want to take advantage of limited liability, for example. But I'm still struggling to see why you can't still pay yourself a full salary whilst incorporated, rather than taking the income through dividends (beyond the tax advantages).

Thanks,
Matt



HM Treasury

Matt Elsby

Head of Income Tax, Economics, and Receipts, Personal Tax

1 Horse Guards Road, 1st Floor, Orange Zone, London, SW1A 2HQ

T [NR] www.hm-treasury.gov.uk

From: Leunig, Tim - HMT <Tim.Leunig@hmtreasury.gov.uk>
Sent: 03 April 2020 14:58
To: Elsby, Matthew - HMT <Matthew.Elsby@hmtreasury.gov.uk>; [REDACTED] NR HMT [REDACTED] NR @hmtreasury.gov.uk>; Williams, Mike - HMT <Mike.Williams@hmtreasury.gov.uk>
Subject: RE: Request for further discussion. JRS and Self employed schemes

Yes, I think that these people have already had their support in the form of lower taxes. But I thought that about the self-employed. I would have limited them to 9/12 of the CRSS for sure!!
Can we get the tax team to pass a view on whether the corp tax they pay is de facto income tax? That would change my mind.

MIKE: self employed people paid via divis are claiming that they really pay the same tax, cos they pay corp tax, and then something else. Do you have a view? The team can explain the exam q more clearly.

Tim Leunig | Economic Adviser to the Chancellor

Her Majesty's Treasury | 1 Horse Guards Road, London, SW1A 2HQ



HM Treasury

www.gov.uk/hm-treasury | Twitter: @hmtreasury

If I email you late at night, please don't feel obliged to reply immediately unless it is urgent.

From: Elsby, Matthew - HMT <Matthew.Elsby@hmtreasury.gov.uk>

Sent: 03 April 2020 12:17

To: Leunig, Tim - HMT <Tim.Leunig@hmtreasury.gov.uk>; [REDACTED] NR HMT [REDACTED] NR @hmtreasury.gov.uk>

Subject: RE: Request for further discussion. JRS and Self employed schemes

Thanks Tim,

I'll go back to Mike in just a second, thanking him for his email, and saying we are exploring all these options with HMRC. I've copied [REDACTED] NR on the CJRS questions – I think the examples of the issues that freelance workers are facing are genuinely helpful.

Our plan is to put up advice on PSCs on Thursday. We're going to look quite seriously at both the options Mike suggests – they're quite similar to the suggestions that have been brought forward by other groups. But there will be a choice for the Chancellor for whether, in principle, he wants to support these workers at all. Whilst I think we accept that incorporation is necessary in many circumstances, it's less clear to me why it is necessary to take income from your company as a dividend, rather than as salary. So we may want to continue to make the point that dividends are returns to capital, and should not be considered as similar to the income replaced by the CJRS and SEISS. (Not least because we are excluding property income from support through the SEISS.)

Thanks,
Matt



HM Treasury

Matt Elsby

Head of Income Tax, Economics, and Receipts, Personal Tax

1 Horse Guards Road, 1st Floor, Orange Zone, London, SW1A 2HQ

T: [REDACTED] I&S www.hm-treasury.gov.uk

From: Leunig, Tim - HMT <Tim.Leunig@hmtreasury.gov.uk>

Sent: 02 April 2020 12:31

To: Elsby, Matthew - HMT <Matthew.Elsby@hmtreasury.gov.uk>

Subject: RE: Request for further discussion. JRS and Self employed schemes

NR – I will leave with you, but if you want to discuss anything, let me know.

Tim Leunig | Economic Adviser to the Chancellor

Her Majesty's Treasury | 1 Horse Guards Road, London, SW1A 2HQ



HM Treasury

I&S

www.gov.uk/hm-treasury | Twitter: @hmtreasury

I&S

If I email you late at night, please don't feel obliged to reply immediately unless it is urgent.

From: Mike Clancy <Mike.Clancy@prospect.org.uk>

Sent: 02 April 2020 10:58

To: Elsby, Matthew - HMT <Matthew.Elsby@hmtreasury.gov.uk>; Leunig, Tim - HMT <Tim.Leunig@hmtreasury.gov.uk>

Subject: RE: Request for further discussion. JRS and Self employed schemes

Good morning **NR** and Tim, we recognise the challenge facing government in responding swiftly to an unprecedented crisis, the moral hazard aspects of these schemes and that public money should be properly targeted.

So we have some further thoughts and proposals to share with you now. Can I also clarify that we have also engaged with you through our Bectu Sector in recent calls with the creative sector organisations. Prospect is the main union and Bectu is our creative sector.

Personal Service Companies

The problem: For workers established as Personal Service Companies this is often the only option in the industries they work in, however it leaves them unable to access either the JRS or SEISS because they will usually not have a PAYE scheme set up and take most of their income in dividends from their own company. The issue for the Treasury is the difficulty of distinguishing this income from income from other dividends and therefore designing a system that does not reward people for dividend income not derived from PSCs.

Potential solutions:

Option 1: Directors of PSCs will have Dividend Vouchers issued whenever a company pays a dividend, listing, among other things, the name of the shareholder, number of shares held, and amount of dividend per share. These are normally simply used to assist the self-declaration process but could be used (in combination with self-assessment returns) to verify how much dividend income is coming from a worker/director's own PSC. For ease the system could operate through self-declaration and random sampling by HMRC to minimise fraud potential.

Option 2: The majority of those set up as PSCs will submit a self-assessment return which will include their different income streams including dividend income. This will not detail the source of the dividend income which could also include dividends from other investments. However this information could be combined with the balance sheet of the PSC (which should have been submitted to Companies House) which will detail shareholder funds (which should be helpful given these are largely single-shareholder companies). This can further be verified using the Profit and Loss Accounts submitted to HMRC with the CT600. These pieces of information taken together should therefore give a reasonably accurate and verifiable picture of dividend payment from the PSC to the director, which should allow the income replacement scheme to operate. The need for both a self-assessment return and a balance sheet should make the system resistant to potential fraud.

PAYE freelancers

The creative sector (and many other areas) utilise large amounts of workers via a series of short-term PAYE contracts for different engagers over the course of a year. Workers in this situation might be able to qualify for the JRS under certain scenarios, but this depends on the exact timing of their contracts and the willingness of engagers to furlough 'freelance' workers.

There are different issues faced by this group:

1) Problem: People who can be furloughed as they were in a contract on 28th February but this contract expires shortly meaning they will then have nothing to fall back on.

Solution: Make clear that freelance contracts can and should be extended by employers on a rolling basis until the end of the JRS period.

2) Problem: People who started a new contract after the 28th February cut off and therefore are not eligible for furloughing,

Solution: replace the 28th February cut off with the date of the announcement of the JRS on 20th March.

3) Problem: People whose employers refuse to furlough them because they are not a permanent staff member.

Solution: Treasury must make clear that this is not acceptable and that they expect these staff to be furloughed. Easier provision of short-term loans to assist smaller employers who are reluctant to furlough for cash-flow reasons, will also support this being made an employer obligation.

4) Problem: People who regularly work PAYE contracts as their main source of income but were not in a contract on 28th February and did not start another contract after that date. This is by far the biggest issue for PAYE freelancers and our latest survey shows around half of all those who work in this way in the film and TV sector are in this predicament.

Solution: For those who have a previous employer (ie before February) that might be willing to furlough them then the Treasury could change the guidance to allow this to happen, however this will be a minority as employers are unlikely to wish to furlough past employees and many production companies cease to exist once the production is over and so would be unable to furlough workers anyway.

A better solution would be for the Treasury to use the PAYE data they have to calculate average earnings for people who declare as 'PAYE freelancers' and compensate them at the 80% rate directly without going through an employer's payroll system (this could be done like a tax rebate). The difficulty will be verifying those who are eligible and those who are not, however again the historic PAYE data should prove helpful in avoiding fraud, although there will be issues around new starters who will have only a limited record of working in this way. Unions and employers should be consulted on creating a system for verifying these workers to help to avoid fraud.

I hope you can give these proposals early consideration. The pressure on these individuals is being felt now and combined with other delays in terms of universal credit and loans, it is creating untenable personal circumstances. I repeat, the vast majority of people who have these arrangements do so, not as a tax hedging strategy, but simply because it reflects the expectations of engagers and without them they would not obtain work. That is an issue to return to once we are through this crisis.

My mobile is I&S

Regards
mike

From: Elsby, Matthew - HMT [<mailto:Matthew.Elsby@hmtreasury.gov.uk>]
Sent: 31 March 2020 18:14
To: Mike Clancy; Leunig, Tim - HMT
Subject: RE: Request for further discussion. JRS and Self employed schemes

Dear Mike,

I'm very sorry for the delay in getting back to you – but thank you very much for your email. All the issues you raise are definitely issues we are thinking about, and whilst we can't promise that there will be easy solutions, I thought I'd set out where we currently are on these.

Personal Service Companies (PSCs)

As you know the Self-Employment Income Support Scheme has been designed to quickly identify the self-employed using existing mechanisms within the tax system – we are using those who report self-employment or partnership income on their tax return. This has meant that those who pay themselves through dividends, rather than through trading income, are not supported by the SEISS.

The issue here is that HMRC are not able to distinguish between dividends derived from an individual's own company and dividends from other sources, so we do not have a clear mechanism through which to support dividend income from an individual's own company, without also supporting dividend income from other investments.

It's worth noting that the Coronavirus Job Retention Scheme (CJRS) is available to employers, including personal service companies, so individuals paying themselves a salary through a PAYE scheme are able to apply for support, subject to their abiding by the requirements of the scheme. For clarity, dividends are not covered by the CJRS. Income from dividends is a return on investment in the company, rather than wages, and is not eligible for support.

Freelancers

Thanks for setting this out, we are aware of and understand the issue with regard to freelancers and it is something we are actively looking into.

The recently self-employed

This is an issue we're actively looking into – it has been very difficult to design a solution for the recently self-employed which isn't open to widespread abuse. The issue is that HMRC would not be able to distinguish genuine self-employed individuals who started trading in 2019-20 from fake applications by fraudsters and organised criminal gangs seeking to exploit the SEISS. We are continuing to look into this issue, as it is clear that there are some really difficult cases here, but there are no easy solutions here.

We are urgently continuing to work through all three of these issues. With all of this, there is a balance to be struck between finding a solution that works for most of those affected, and minimising opportunities for fraud and abuse. We will also be updating our guidance on the SEISS shortly.

I hope this is useful – we genuinely do welcome any engagement from you on this, and it is especially helpful to understand where we should focus our policy thinking next.

Thanks,
Matt



HM Treasury

Matt Elsby

Head of Income Tax, Economics, and Receipts, Personal Tax

1 Horse Guards Road, 1st Floor, Orange Zone, London, SW1A 2HQ

T: **I&S** www.hm-treasury.gov.uk

From: Mike Clancy <Mike.Clancy@prospect.org.uk>

Sent: 31 March 2020 10:54

To: Leunig, Tim - HMT <Tim.Leunig@hmtreasury.gov.uk>; Elsby, Matthew - HMT <Matthew.Elsby@hmtreasury.gov.uk>

Subject: RE: Request for further discussion. JRS and Self employed schemes

Good morning Matt, I am checking whether we are going to have any engagement on the points I raised last Friday?

I well appreciate the workload challenges we are all facing, but as you know these matters are very pressing.

Grateful if you could respond.

Regards

mike

From: Leunig, Tim - HMT [<mailto:Tim.Leunig@hmtreasury.gov.uk>]

Sent: 27 March 2020 16:24

To: Mike Clancy; Elsby, Matthew - HMT

Subject: RE: Request for further discussion. JRS and Self employed schemes

I am not the right person for things that demand real knowledge. But **NR** is, or knows who is!

THANK YOU FOR WRITING

Tim

PS I make quite a good secretary to Matt - under 10 mins 😊



Tim Leunig | Economic Adviser to the Chancellor

Her Majesty's Treasury | 1 Horse Guards Road, London, SW1A 2HQ

www.gov.uk/hm-treasury | Twitter: [@hmtreasury](https://twitter.com/hmtreasury) **I&S**

If I email you late at night, please don't feel obliged to reply immediately unless it is urgent.

From: Mike Clancy <Mike.Clancy@prospect.org.uk>

Sent: 27 March 2020 16:14

To: Leunig, Tim - HMT <Tim.Leunig@hmtreasury.gov.uk>

Subject: Request for further discussion. JRS and Self employed schemes

Dear Tim, further to the helpful engagement earlier this week, we have had the announcement of income support for the self-employed and the publication of guidance for the Job Retention Scheme (JRS). There are some issues now arising, which we want to work with government to resolve, so the intent of the schemes is delivered in practice and fairly to all.

INQ000656437_0006

As a result, there are three categories we are seeking an urgent discussion about. This is because they face risks which are not covered by the self-employed scheme or where there are practical impediments to their being furloughed under JRS:

1. **Personal Service Companies (PSC)**

A proportion of our members provide services to clients through small limited companies, particularly in the creative Sector. The vast majority work this way because, at some point in their history, an engager has told them that this is the only way they can be contracted. We infer that engagers have done this very often to avoid a relationship where employment rights might be accrued and/or to avoid paying employer's NIC.

In some cases the engager will have determined that an employment relationship does exist, but nevertheless want to be billed through a limited company because the liability for any unpaid employment tax (under IR35) rests until April 6 this year with the PSC, not the engager (PSC Directors have often been unaware of this).

Engagers have always carried the tax risk for self-employed sole traders, not working through limited companies and a growing awareness of this in recent years has increased requests for workers to form limited companies. Therefore PSC in the creative sector is a feature of the labour market and the expected terms of hire. It is not a tax hedging strategy.

PSC creative workers are generally not paid more than comparable counterparts engaged as self-employed sole traders, or direct PAYE employees. The tax advantages of working through a limited company are always overstated. Very few have established PSCs in order to reduce tax, and in some cases, where they rent out costly equipment, or hire other workers to supply services, it is the correct model for them, not least because limited status gives them protection against business failure, for example default by trade debtors. Self-employed sole traders, on the other hand, are liable for all debts owed to creditors, and risk seizure of their assets if they default.

Income is usually taken out of PSCs by payment of a salary below the NIC primary threshold of £8,632 p.a., so no NIC is paid, and because this is also below the income tax Personal Allowance of £12,500 there is no PAYE either. Any other payment taken out of the company is in the form of dividend payments to the shareholder/s, which attract a tax-free Dividend Allowance of £2,000 this tax year (increasing to £5,000 in April), and beyond that are taxed at 7.5% on basic rate, and 32.5% on higher rate. However, PSCs cannot make these payments until they have declared a profit, all of which is subject to Corporation Tax at 19%, and this low salary/dividend payment model is perfectly legal, provided they are not in an employment relationship with their clients. The payment of Corporation Tax is often forgotten by those extolling the PSC arrangement as being tax-efficient from the owner-operator's point of view.

In summary, the exclusion of PSCs within this labour market needs prompt reconsideration or it will penalise individuals who are not enjoying high income and who in other regards would be covered by the income protection thresholds of the JRS and self-employed schemes. Related to this is the £50k cut off and its application, which also needs more discussion of its impact in practise.

Those who should be covered are also readily identifiable, because they are listed by HMRC as follows:

2. **Freelance PAYE (FP).**

FP is a common nomenclature widely in use, not just in the creative sector but also elsewhere. For example we see it as an employment form in Archaeology. Essentially, it is a misnomer and a better means of expression is intermittent employment which is on a PAYE basis potentially for more than one employer in a given period.

In principle such employees should be covered by the JRS, but we already have evidence they will suffer from not having an employer who will furlough them, despite their having had an employment relationship at some point in the relevant period. This is my previous point of not having a 'dominant' employer. Almost by definition these people are low paid and exactly who the JRS should be helping.

The JRS guidance implies they are covered but it needs to be explicit, so that people affected can 'require' furlough and potentially from more than one employer. There also needs to be clarity on how their 80% is calculated and over what period.

The government should urgently update the guidance to make it clear that these workers can and should be re-hired and furloughed by their last engager- even if this was before the 28th February cut-off date. The seasonal and episodic nature of these employment forms means that many workers were not formally in a contract on the precise cut-off date but were, very close to it.

The JRS guidance says 'furloughed employees must have been on your payroll on 28 February 2020...' It seems unclear what being on the pay roll would mean – is it just Having been paid in February or does it go back further? If it is just February, then that would make it even more difficult for freelance workers.

3. **The recently self employed**

Newly self-employed people and start-ups will be at a disadvantage as their income will not be properly reflected in their 2018/19 tax return or they may not have done one. As well as extending the deadline for filing 2018/19 returns for four weeks, the Chancellor should allow start-ups to submit their 19/20 return early and have their income assessed on this basis.

Finally, I also take this opportunity to make a free standing point about JRS. Eligibility is dependent on the furloughed employee having no work. Reduced hours or tasks, excludes access. This sharp delineation will lead to employers facing a moral hazard and furloughing more employees than may be strictly necessary. It also fails to recognise that some employees can remain productive, working remotely, but on a reduced basis. Therefore we advocate that the 80%/£2500 scheme should be capable of pro rating, where reduced hours/tasks can be sensibly contemplated. Self- evidently this would also mitigate the impact on public finances.

We need early engagement on 1 and 2 above next week and hope we could arrange a call with you please.

Regards

Mike

Mike Clancy

General Secretary

Prospect, New Prospect House, 8 Leake Street, London SE1 7NN

Email: mike.clancy@prospect.org.uk

Tel: Mob:

Follow us at: prospect.org.uk [Twitter](#), [Facebook](#), [Instagram](#), [Linkedin](#), [Vimeo](#)



The content of this email is confidential and intended for the recipient specified in the message only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. You must not act on or disclose the content if you have received it in error. Instead, please inform us at the address above and follow with its deletion from your mailbox. While we have made every effort to exclude viruses from this e-mail, you are advised to check it using your own software before opening any attachments. All your personal information will be held by Prospect and treated as confidential, with appropriate security. Please think before printing.

This email and any files transmitted with it are intended solely for the use of the individual(s) to whom they are addressed. If you are not the intended recipient and have received this email in error, please notify the sender and delete the email. This footnote also confirms that our email communications may be monitored to ensure the secure and effective operation of our systems and for other lawful purposes, and that this email has been swept for malware and viruses.

This email and any files transmitted with it are intended solely for the use of the individual(s) to whom they are addressed. If you are not the intended recipient and have received this email in error, please notify the sender and delete the email. This footnote also confirms that our email communications may be monitored to ensure the secure and effective operation of our systems and for other lawful purposes, and that this email has been swept for malware and viruses.