Contents

- BBC Supplementary written evidence to PAC
- Appendix I – BBC letter to HMRC regarding off-payroll working in the public sector, 4 August 2016
- Appendix II – BBC email to HMRC regarding IR35 implementation, 2 February 2017
- Appendix III – BBC letter to HMRC regarding off-payroll working in the public sector, 24 March 2017
- Appendix IV – HMRC letter to BBC regarding off-payroll reform, 30 March 2017
- Appendix V – BBC letter to HMRC regarding off-payroll working in the public sector, 13 June 2017
- Appendix VI – HMRC letter to BBC regarding off-payroll working in the public sector, 30 June 2017
1. Q54-60. What checks were conducted prior to the introduction of the CEST tool?

In April 2017, the Government made it the responsibility of public bodies, including the BBC, to assess the employment status of everyone it engages for the purposes of tax collection. This change in responsibility placed any liabilities for tax and NICs, along with the resulting interest and penalties for misclassification, on the BBC and the licence fee payer.

At the same time, HMRC introduced the CEST tool to assess whether people are employed or self-employed for tax purposes. We raised implementation concerns with HMRC in August 2016 as part of their consultation stating that we had doubts about the readiness of accounting and payroll systems and staff training, if the changes were to be implemented in 2017, rather than allowing more time. We also raised concerns in March 2017 about the number of determinations the BBC would face, the associated resource implications and the potential impact on the individual presenters (see details of this correspondence set out in the answer to Question 2 below).

According to the NAO’s report on the BBC’s Engagement with Personal Service Companies ‘others responding to the consultation also raised concerns about the April 2017 implementation date’ (3.7).

The CEST was released in beta form to the BBC on 20 February 2017, just before the new legislation came into force, leaving the BBC very little time to use it to assess the people it engaged as part of its contingent workforce including on air talent.

As the NAO says, when the public beta was available from 1 March 2017, HMRC ‘made a number of wording revisions, including to the questions concerning personal service and the right of substitution’. Following the live date of 5 April 2017, there were still ‘small edits to the wording made after this date’ (3.8).

The tool initially produced ‘unable to determine results’ in roughly half of the 255 on-air cases assessed.

Upon release the CEST tool produced determinations for a very high proportion of on air presenters as employed for tax purposes when they had previously been assessed as self-employed, including in cases where there was clear case law around self-employment. Accordingly, the BBC worked with HMRC to agree guidance to supplement the CEST in places where it produced a result that is inconsistent with the legal position (e.g. actors and theatrical performers).

Once the CEST tool was published the BBC prepared a detailed description of how we were answering the questions (based on advice we received from HMRC in meetings and telephone calls) which we invited HMRC to sanction. Whilst HMRC would not sign our system off they did agree that our approach was consistent with their understanding of the law and the operation of the CEST tool. The information, detailing how we had answered the questions, was sent to every presenter that had been assessed with their CEST outcome.
This information was important because it explained how we had been advised to answer the questions by HMRC. The answers suggested by HMRC were different to the way someone may otherwise have answered the questions based on common understanding or interpretation. In other words, HMRC had instructed our teams on how to answer the questions, even though that answer was contrary to the general view of how a piece of work was done, paid for or indeed the value of time to a freelancer.

2. **Q114 – 119. The BBC response to the HMRC consultation and subsequent correspondence**

The BBC held meetings with HMRC to explain the nature of the work carried out by our presenter community across radio and television. These meetings started in November 2016 and were constructed around the development of their new Employment Status Indicator and continued through beyond launch of the CEST in March 2017.

The BBC fed into several iterations of the questions that were to be included in the CEST tool. Many of the idiosyncrasies relevant to the media industry were not included in the final version of the CEST tool. We were informed by HMRC this was because the questions that would have been relevant were skewing the answers for other non-media sectors and generating the incorrect determinations.

Attached as an appendix is the relevant written communication the BBC had with HMRC, these consist of:

(I) BBC response to the off-payroll consultation – Letter dated 4th August 2016

(II) Email to HMRC requesting three month period of grace, due to the late release of the CEST – email of 2nd February 2017. HMRC did not respond in writing, a call was held in which they advised that they had no statutory authority to not enforce our PAYE and NIC obligations, and therefore they could not give us a grace period.

(III) Letter to Edward Troup on 24th March 2017, and response from Jo Wakeman of HMRC on 30th March 2017

(IV) Letter to Jo Wakeman from Anne Bulford dated 13th June 2017 and response from Jo Wakeman dated 30 June 2017

3. **Q148 – Q151. To search the BBC internal audit records for items relating to the policy decisions taken with regard to the engagement of PSCs**

BBC Internal Audit has conducted a comprehensive search of BBC and its own records and found no reference to a policy decision taken prior to the 2012 Deloitte Review to engage freelancer presenters solely via PSCs. We would also draw the Committee’s attention towards the written evidence the BBC provided to the DCMS Select Committee in March 2018:

*Was the policy decision to move presenters on to PSCs made at board level? The Committee would like to request sight of any board level papers on this matter.*
The BBC has retained most of the minutes of its Executive Board and Committee meetings from the period under review (1998—2012). Whilst there is evidence of the broad area of freelancer arrangements being discussed (on air and off air) we have found no evidence of specific board level decisions being made concerning the use of PSCs.
Off-payroll working in the Public Sector: reform of the intermediaries legislation

We welcome the opportunity to respond to this consultation document. Our commentary on the consultation is set out in the attached appendix. We would like to confirm that we remain committed to working with HMRC in this complex and challenging area of employment tax to ensure that all workers engaged by the BBC pay the correct amount of tax at the correct time.

If you require any further information, please do not hesitate to contact me on [REDACTED] or [REDACTED].

Yours faithfully

[Signature]

Jenny Henderson
Head of Global Mobility and Employment Tax

Enc.
Appendix - Responses to off-payroll working in the Public Sector consultation document

Executive summary

We have responded in full to each question, but we would like to summarise four key points that we have made:

1. The BBC is committed to ensuring that all our workers pay the correct amount of tax at the correct time. However, as a publicly-funded public service broadcaster competing with private sector production companies and other public service and privately owned broadcasters the BBC strongly objects to being the only broadcaster required to comply with this new IR35 legislation as set out in the consultation document. At a time when the BBC’s income is flat, the additional costs that it will incur in implementing the systems to comply with the new legislation and the increase in fees that will be required in order to secure on and off-air freelance workers will unfairly discriminate against the BBC and put the BBC at a competitive disadvantage. The BBC considers that the new legislation should be limited to core Public Sector bodies, not to organisations like the BBC that compete with the private sector.

2. Due to the lead times which would be involved in creating the systems to make the necessary technical changes, we doubt very much that accounting and payroll systems would be ready by April 2017 in order to implement the proposed new legislation. There would also be in-house BBC systems to update and training to undertake across the BBC’s workforce, all at a time when the legislation has not been finalised. If the legislation is to apply to the BBC, we are therefore recommending that the implementation of the legislation is delayed until at least April 2018 in order to allow it to be brought in effectively and efficiently. In the meantime the new Employment Status Indicator (ESI) tool for TV and Radio could be brought in in April 2017, allowing this to bed into the organisation whilst the system changes for the IR35 legislation are implemented.

3. If the BBC is required to comply with this legislation, in order to create a level-playing field across both Public Sector and private companies we recommend that all end-engagers are brought within this new legislation at the same time to avoid potential discrimination and distortion of competition. If it is not possible to do this, then an alternative, which would reduce the adverse impact on the Public Sector would be to set a specific timescale for private sector organisations to be included; ideally no more than 12 months after the Public Sector.

4. We believe that a simpler and fairer solution would be to subject all payments to PSCs to a withholding deduction similar to that used in the construction industry scheme (CIS). This deduction would be held on account of tax and could then be set against the Personal Service Company’s (PSC’s) corporation tax, PAYE or NIC liabilities. This would also reduce the costs involved in transitioning to the new legislation and handling appeals against ‘employment’ decisions made by engagers. In HMRC’s response to the 2015 consultation on this subject, it was stated that they thought that this solution was too administratively complex, but we believe that this is a simpler solution, with many accounting systems already set up for CIS.
BBC background

Following the Public Accounts Committee's (PAC) examination of the level of Off-Payroll Appointments within the Public Sector, the BBC committed to ensuring a high level of compliance in the engagement of all off-payroll workers. In 2012, the BBC commissioned Deloitte to review its freelance engagements and specifically to consider the use of PSCs by on-air 'talent'.

Deloitte made a number of recommendations, which the BBC accepted and actioned. These included ensuring greater consistency when engaging individuals who are performing largely equivalent roles and activities; establishing and applying a new employment status test, which was developed and agreed with HMRC; reviewing a number of priority cases identified as part of the review; and reducing the overall number of PSCs with which the BBC engages.

Following the Deloitte review, the BBC developed a revised approach to the engagement of freelancers. Policies, guidelines and frameworks were all updated. Specifically, the BBC has:

- Developed and made available new Policies and Guidelines for those involved in the booking, contracting and authorisation of on-air and off-air freelancer engagements. Training courses (including classroom based) are available for bookers.
- Rolled out a new Employment Status Assessment (ESA) tool developed in conjunction with HMRC. We are committed to and continue to work closely with HMRC in developing their ESA tool for both on and off-air talent.
- Implemented the SmartBook framework for Production Freelancers, that helps bookers identify the most appropriate engagement type for a booking and ensure terms and conditions are accepted prior to payments being made.

All BBC service company contracts with on-air talent include strong clauses placing an obligation on those individuals to comply with all legislation, to warrant that they were responsible for paying their own tax and National Insurance and that the service company was and would remain registered in the UK.

The BBC Trust recently published a review of freelancers. It found that steps had been taken to improve its control environment for freelancer and similar engagements and they were satisfied that action has been taken to address the findings of the 2012 review with processes significantly improved with enhanced and more transparent systems.

Consultation document questions

Question 1: Are there other easily understood definitions that work better than the FOI Act and the FOI (Scotland) Act (FOIAs)?

As a definition, we agree that this will be easily understood. However, we are not convinced that all Public Authorities listed in the FOIAs should be included (see Question 4) as some compete with and operate within the private sector putting them at a significant commercial disadvantage and undermining the competitive level playing-field. In addition, if the underlying purpose of the new legislation is to introduce compliance with IR35, and together, the employment status of nurses, doctors, teachers etc. is the biggest concern, then a sensible option would be to introduce this legislation for core Public Sector bodies. This can be achieved by limiting the scope to FOIAs Parts I – V only.
Question 2: Are there any Public Sector bodies which are not covered by the FOI Acts which should be included in the definition for the proposed rules?

We have no comment to make on this.

Question 3: Should private companies carrying out public functions for the state be included in this definition? Why?

We agree that private companies carrying out public functions should be included in the definition, otherwise it would be too easy to outsource services to avoid the legislation. However, there is no definition of 'public functions' in either the consultation document or the FOIAs, and this needs to be addressed before any definitive comment can be made.

Question 4: Are there any public bodies caught by this definition who would face particular impacts which should be considered?

As discussed above, we do not believe the legislation should catch public bodies that compete with the private sector. The BBC operates in a commercial environment, competing with other broadcasters, content hubs (like Amazon and Netflix) and production companies for on and off-air talent (i.e. television and radio presenters and behind camera workers). Over the last eight years, overall talent spend at the BBC is down by 12.7% and the volume of performers/presenters engaged has fallen by 29%. In the event that the new legislation were to catch employment related to the BBC's content services, people providing services to the BBC may fear that a different tax enforcement regime applying to the BBC would be disadvantageous. Until we see the final ESI tool we cannot know how engagements could be affected (i.e. will the new ESI test mean that more individuals are determined as employed than self-employed). For this reason, individuals may choose not to work for the BBC which would affect the BBC's ability to create the critically-acclaimed programming and services for which it is world famous. A diminished talent pool would also ultimately reduce the BBC's ability to provide licence fee payers with the best value for money.

The BBC and other Public Authorities (using the definition in FOIA) engage a number of individuals for their specialist professional skills. If a determination of their employment status under the new ESI tool indicates that they should be treated as employed they may choose to work outside of the Public Sector, which would jeopardise projects to which these Public Authorities have committed. Diverging tax enforcement rules affecting how public and private sector bodies can engage with professional service providers will distort the market for the provision of freelance services and risk skewing the level-playing field by creating a shortage of appropriate expertise available to the Public Sector. On this basis we believe that all engagers should be brought within this legislation, or at the very least, a start date for non-Public Sector bodies should be set out so that expectations can be managed from day one.

From a legal perspective, we fear that the unintended effect of the proposed legislation (if it were to apply to organisations such as the BBC) would be to distort competition and create an un-level playing field which confers an unfair advantage on the private sector as it seeks to impose differential taxation enforcement terms on different groups of undertakings operating in the same or equivalent markets.

This would be the case on various levels:

1. Public Sector workers compared to private sector workers – where private sector workers would appear to gain an advantage from the effective lack of enforcement.
2. Public Sector end-engagers compared to private sector end-engagers – where the amended legislation would not apply at all to the private sector, when there is no obvious reason why that should be the case.

3. Specifically, at a sectoral level, the BBC (and C4) on whom the obligations as end-engagers will be imposed, along with the consequent costs of compliance, as compared to private sector broadcasters including foreign media companies based in the UK where the legislation will not apply at all.

**Question 5: Are rules needed to ensure that engagers have the information they need to make the decision? If so, what should they be?**

We expect the default position for engagers who do not hold all the information required to make an assessment, will be to apply PAYE and NIC to the payments to the PSC. Therefore it will be in the interests of the PSC to provide all the necessary information.

**Question 6: How would accounting for the 5% allowance work in practice?**

We anticipate that it will be assumed that this would be an allowable tax deduction for all contract payments that fall within this regime, and that this part of the calculation would take place within the accounting or payroll software.

We do not understand why the PAYE and NIC calculation is not based on the deemed employment payment as per s54 ITEPA 2003. This will cause two problems:

1. There will be an additional secondary Class 1 NIC cost for the engager; and
2. The tax and primary Class 1 NIC accounted for will not match with the actual tax and NIC due by the PSC. Associated with this problem will be a mismatch between the form P45/P60 which we assume will be given by the engager to the PSC and the fees declared in the PSC’s accounts.

In addition, the tax and employee Class 1 NIC accounted for under the proposed legislation will be higher than for a private sector worker applying s54.

In order to rectify this additional cost and mismatch of fees, tax and NIC we recommend that the deemed employment payment, in line with s54 is used instead.

**Question 7: Are there business costs specific to PSCs that are covered by the 5% that aren’t covered under the usual business expense rules?**

We are not aware of any.

**Question 8: Does the first part of the test work to quickly rule out engagements that are clearly out of scope?**

Whilst in theory, the first part of the test will be quick to work through; it is unlikely that it will do more than eliminate tradesmen from the scope of the new legislation. Even then, it will not be effective if the Public Authority has purchased the materials or the purchasing of materials is split between the PSC and the Public Authority, which could be the case if they are able to obtain a bigger discount (the proposed 20% test). Across both private and public sector many people engaged via PSCs provide specialist professional skills, and at the BBC there are many behind camera
and on-air workers, it should be noted that these groups of people rarely provide materials and therefore this test will only eliminate a small number of people.

This test does not take into account the use of plant and machinery which is important in television and film production, as well as outside broadcasts, where a number of workers, for example, cameramen, makeup artists provide equipment as part of their fee.

The final question regarding the worker owning their own company is not a straightforward question for anyone who does not come from a finance background, and the draft questions we have seen on this point will confuse the majority of people who make bookings. It would be more straightforward and less prone to error, if HMRC were to maintain a database where Public Authorities could verify that a company or partnership is/ is not an intermediary – similar to verification of gross payment status for the CIS.

**Question 9: Are these the right questions in the right order of priority?**

We assume that you mean the questions in part two of the test (Diagram 4 on page 26).

We feel that this part of the test is flawed and these questions are not fit-for-purpose given that if this part of the test is not amended there could be workers who are genuinely self-employed but end up being subject to PAYE and Class 1 NIC simply because the person completing the test does not have a deep enough knowledge of employment status. Of particular concern are the sentences: “If the answer to both questions is ’yes’, the worker is in scope for the off-payroll rules and the engager will need to account for tax and National Insurance. These questions are based on the current employment status tests.”

Whilst we agree that the right to personal service and control are two factors for self-employment they are not the only factors. Both questions are open to interpretation and in particular ‘control’ is very difficult to gauge and will mean many things to different people. In addition, by only asking these two questions, factors such as being able to choose where and when to work, being in business on one’s own account, advertising for work etc. are being ignored and the worker is being forced down an incorrect decision route with potentially severe financial implications. This will be a factor in dissuading workers from working with Public Authorities because where the Authority is risk averse and simply applies PAYE and Class 1 NIC where it may not actually be required, then they will be financially worse off than if they had engaged with a private sector body.

We recommend that this part of the test is abandoned and instead everyone would move straight to the ESI tool from test one. The test as set out is too simplistic to accurately represent a very complex area of law.

**Question 10: Are the questions simple to understand and use?**

Please see Question 9.

**Question 11: Do the two parts of the test give engagers certainty on day one of the hire?**

We don’t think that it does. Please see Question 9.
Question 12: How can the organisation completing the tests ensure they have the information to answer the questions?

It will be relatively straightforward to set up a pro-forma system so that all the questions are asked and information obtained. The difficulties will arise where:

1. The question is not objective, i.e. the question in test two regarding control, we refer back to Question 9.
2. The person making the booking is not fully aware of the working arrangements.

There will also be problems where a role changes over time. It will be time consuming to re-assess engagements to ensure that the role has not changed or if any changes compromise the original tax treatment.

Question 13: How could the new on-line tool be designed to be simple and straightforward to use?

In order to give the correct tax analysis of an engagement the on-line tool will need to take into account all the case law in this area, and be flexible enough to be amended should there be any further relevant clarifications in case law. As determination of employment status is a complex area, this is likely to mean that the on-line tool will not be simple or straightforward to use, in fact if it is too simple one would have to question whether it is providing accurate results or simply being used as a method to include more workers within PAYE and Class 1 NIC.

We must not forget that the deductions being applied to the PSC fees will affect the net finances of the worker and if the on-line tool does not provide an accurate answer this will unfairly affect them if they are genuinely self-employed. We therefore believe that a simpler and fairer solution would be to subject all payments to PSCs to a withholding similar to that used in the CIS. This deduction would be on account of tax and could then be set against the PSC’s corporation tax, PAYE or NIC liabilities. This would also reduce the costs involved in transitioning to the new legislation and handling appeals against ‘employment’ decisions made by engagers, see Question 15.

On a practical level it would be helpful if the new ESI tool allowed a user to retrieve an earlier test (either complete or part completed) using the ESI reference number; currently the user has to save the pdf document.

Question 14: Where should the liability for tax and NIC (and penalties and interest if appropriate) fall when the rules haven’t been applied correctly?

The liability for tax, NIC, penalties and interest should sit where the fault arose. So if the PSC has provided inaccurate information which has been instrumental in creating an inaccurate answer the liability should sit with the PSC; if the fault lies with the engager then the liability should sit with them.

Question 15: Should the liability move to the PSC where the PSC has given false information to the engager?

Until we have access to the new ESI we cannot determine the type of information that would be requested from the PSC. But if the PSC has given false information which leads the engager to make an incorrect assessment we agree that the liability should be moved to the PSC.
Question 16: What one-off and ongoing costs and burdens do you anticipate will arise as a result of this reform?

We have taken advice from across the BBC and understand that the cost of implementing the IT system changes which would be necessary to underpin the requirements of the new legislation would be in the region of £2-3 million of licence fee payers’ money. We are currently working with our system partners to understand how long they anticipate the development process will take and when the new systems will be ready to use. They have indicated that until the draft legislation (which we still have not had sight of) is finalised and passed into law, they will not be in a position to start development work on the software that supports their services. Not only does the BBC have interfaces between the HR information system and payroll it has its own interfaces into accounts payable for Artists and Contributors and production workers and these would also need updating to allow for the new legislation. This is likely to take some time. Under the BBC’s internal governance it is unlikely that we would be able to incur expenditure until there is absolute certainty that the legislation will be passed into law.

In addition to the IT system changes, the BBC would need to amend internal training and guidance for the staff who book presenters and production workers, and roll out training on the new ESI and system changes, to around 1,000 people.

Other costs would arise in relation to the Apprenticeship levy; employment law challenges where it is concluded that an engagement comes within the new legislation; additional costs of recruitment for specialist roles; and the cost of dealing with appeals where an individual believes that they are self-employed but the engager has treated them as falling within the new legislation.
Dear Mark and Andrew,

I am writing with respect to our meeting on Monday regarding the changes to the IR35 legislation as they impact the Public Sector, and the development of the new Employment Status Indicator (ESI) tool.

As you know, the BBC takes tax compliance seriously and has worked hard over the last few years to ensure that we assess the employment status of all the people we engage so that we deduct the correct amount of tax and NIC at the right time. This applies throughout the business, including on-air talent, production and business hires. Through this process we have invested heavily in the Employment Test, which we use for on-air talent, and SmartBook which is used to engage production freelancers.

When the IR35 consultation paper was published in May 2016, we responded, and ahead of the Autumn Statement we put together a project plan to implement the changes, even though the Government hadn’t confirmed their intention, and the draft legislation hadn’t been published. This project plan has been in place since October 2016. A main feature of the plan was HMRC’s commitment to introduce the new ESI tool which was being developed to assist engagers to determine the employment status of those that they engaged. Workers could also use the new digital tool to assess their position. (Page 26 of Off-payroll working in the public sector, publication date 26 May 2016).

During on-going discussions between the BBC and HMRC we have stressed that we are happy to test the ESI tool and provide feedback, but we also made it clear that we needed this tool to be made available at an early date so that we could assess engagements on a timely basis, work through contract negotiations and renewals, with plenty of time to pay through payroll if that is what was required. We have substantial numbers of engagements, and some of these contracts involve protracted negotiations re fees and terms. As a result of the unsuccessful discussions between the BBC and HMRC regarding the Employment Test and the Radio Industry Guidelines, we are reliant on the new ESI to assess on-air talent. Obviously we will also be using it for business hires and non Appendix 1 production workers.

We were originally advised that a private BETA site would be available in the third week of November, but this has been pushed back a number of times. On Monday Mark confirmed that a BETA site, that we could rely on would not be available until mid February at the earliest. This puts us (and the rest of the public sector) in a very difficult position. We will do our best to assess engagements and contract appropriately, but it is not going to be possible to complete all testing and contract renewal in time for payroll in April, and there will be on-going issues for a couple of months afterwards.

We are therefore requesting a grace period of three months from 6th April 2017 – 5th July 2017, whereby we will not be penalised for tax and NIC that is subsequently shown to be due, interest and penalties for failing to apply PAYE and NIC. We will make every effort to comply with the new legislation in the vast majority of cases, but we do not believe that we should be penalised for being unable to comply, because of delays to the new ESI tool, delays which are beyond our control.
I’ll be in touch to arrange some time next week to discuss and agree a mutually acceptable way forward.

Kind regards
Jenny

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24 March 2017

Private & Confidential

Mr Edward Troup
Executive Chair and Permanent Secretary
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Dear Mr Troup

Off-payroll working in the Public Sector: reform of the intermediaries legislation

I am writing with respect to the changes to the IR35 legislation as they impact the Public Sector which come into effect on 6 April 2017, and the development of the new Employment Status Service (ESS) tool. In particular, as explained in this letter:

(1) In light of the time critical delay in the release of the ESS and the fact that, against expectation, it is producing a very large number of uncertain results, we are seeking a 'grace period' of six months from 6 April 2017 – 5 October 2017, during which the BBC would not be charged tax and NIC or be subject to penalties or interest for failing to apply PAYE and NIC that might subsequently be determined to be due.

(2) We are requesting a further review and reconsideration of views expressed on behalf of HMRC in meetings on 14 and 16 March which in the BBC's opinion would require it to answer certain questions in the ESS in a way that is not in accordance with their plain reading.

(3) We are also requesting that the ESS is reviewed to ensure that it achieves its objective of providing clarity in most cases.

Background

The BBC takes tax compliance seriously and has worked hard over the last few years to ensure that we assess the employment status for tax purposes of all the people we engage so that we deduct the correct amount of tax and NIC at the right time. This applies throughout the business, including on-air talent, production and business support hires. Through this process we have invested heavily in developing, with Deloitte and HMRC, a bespoke Employment Test¹, which we use for on-air talent, and SmartBook² which is used to engage production freelancers. When the IR35 consultation paper

¹ Employment Test – this is an employment status tool that the BBC, Deloitte and HMRC developed as was accepted that HMRC’s Employment Status Indicator tool did not work for the TV and Radio industry. It was a series of questions based on case law
² Smartbook – this is a system that the BBC developed to manage bookings for production workers. It is not an employment status tool, but allows us to manage the large volume of bookings across the business
was published in May 2016 we responded, and ahead of the Autumn Statement put together a project plan to implement the changes, even though the Government had not confirmed its intention and the draft legislation had not been published. Since then we have worked hard on the issue and engaged with HMRC at a policy level, as well as operationally, to discuss how the new rules will apply to the BBC. Set out in Appendix I is a chronology summarising key elements of this. As you can see we have met with HMRC on a number of occasions to discuss the ESS questions.

Importance of the ESS

A key feature of the project plan that we developed was HMRC’s public commitment to introduce the new ESS which was being developed to assist engagers to determine the employment status of those that they engaged. Workers would also be able to use the new digital tool to assess their position. (Page 26 of Off-payroll working in the public sector, publication date 26th May 2016.)

During on-going discussions between the BBC and HMRC we stressed that we were happy to test the ESS and provide feedback, but we also made it clear that we needed this tool to be made available at an early date so that we could assess engagements on a timely basis, with plenty of time to pay workers through payroll and to work through contract negotiations and renewals if that is what was required. We have substantial numbers of engagements, and some of these contracts involve protracted negotiations in respect of fees and terms. We estimate that at least 3,000 engagements are involved, with significant implications for the BBC both commercially and in terms of resources.

It is important to appreciate that the BBC is now wholly reliant on the ESS to assess on-air talent. Although the BBC invested heavily in its bespoke Employment Test, HMRC has made it clear in discussions that it is not prepared to agree that the BBC can rely on these.

In addition, the BBC is reliant on the ESS for business support hires and production workers not covered by Appendix I of the Film, Television and Production Industry Guidance Notes.

Delays in producing the ESS

HMRC originally advised that a private BETA site for the ESS would be available in the third week of November, but delivery was delayed a number of times until 22 February. It was also made clear that the BBC could not rely on the results produced by the private version, so we could not commence any significant work on the large number of engagements that we needed to review. A final Public BETA site, that HMRC committed to stand behind was not made available until 2 March 2017. This put the BBC (and the rest of the Public Sector) in a very difficult position in terms of assessing engagements and putting in place the necessary system changes to deal with the large number of uncertain results with sufficient time before the April payroll. Moreover, in our case and for the reasons discussed below, it was only during meetings on 14 and 16 March that it became clear that the IR35 caseworkers at HMRC were expecting us to answer certain questions in the ESS in a way that did not accord with our understanding of the position.

3 The same applies to the Radio Industry Guidelines, which are published by HMRC but which HMRC now say the BBC cannot rely on. In relation to the Radio Guidelines it is not clear whether commercial radio operators have been told, as the BBC have, that they cannot be relied on, which raises questions of fairness.
If the ESS had been available in November we would have had some chance of being able to do the necessary work by 6 April. This will now simply not be possible, and this is the reason for our request for a six month grace period until October.

We should point out that we have made it clear that the new rules are being introduced too quickly. In our view they should have been put back 12 months to April 2018. We appreciate that this will now not happen, but it would have allowed the ESS to be properly developed and consulted on by all engagers who will have to use it, not just the Public Sector. It would also have allowed proper guidance notes to be produced to set out HMRC’s views and would have allowed engagers to develop systems and processes in a balanced and meaningful way. The need for guidance is particularly marked given that HMRC’s views are in our opinion in some areas at odds with what we, and we think our commercial competitors as well as the individuals involved, will believe the position to be. The result risks significant unfairness, not to mention a drain of talent from the public to commercial sector.

‘Unable to determine’ results and lack of guidance

With the ESS finally available on 2 March we were able to start analysing engagements, but we encountered a problem as the majority of on-air engagements resulted in an ‘unable to determine’ response from the ESS.

We raised this with our Customer Relationship Manager (CRM), and following a call with our CRM, the policy team and IR35 caseworkers, it was clear that in their view we were not answering the questions properly. As we had met with members of HMRC’s policy team three times in the preceding weeks to establish how HMRC expected the questions to be answered we were somewhat taken aback at this suggestion. However we had two more meetings with HMRC on 14 and 16 March (attended by our CRM, IR35 caseworkers and a representative of the technical team) during which HMRC confirmed that this was their position, despite their policy team agreeing to different responses in previous meetings.

This is important because the two questions where HMRC disagree with the responses that we give to the questions move the output from ‘undetermined’ to ‘employed’, or from ‘self-employed’ to ‘undetermined/employed’. We have included details of these questions and the reasons why we disagree with HMRC’s position in Appendix 2.

It appears to us, as a result of these conversations, that HMRC expects the BBC users of the ESS to answer the questions in a way that does not reflect the BBC’s understanding of the underlying factual position in order to obtain a result that HMRC is prepared to agree. This puts the BBC in a very difficult position, and one which contrasts unfairly with other users of the ESS who have not engaged with HMRC.

There is currently no detailed HMRC guidance on what each question in the ESS means, and how HMRC expects different levels of control to be reflected in the answers. This is why we have spent time with the policy team so that we can draw up our own guidance. The policy team have been helpful and open in these meetings.
However, the expectation is that ordinary users of the ESS will answer questions in the tool on the basis of a plain reading of the questions and the available responses. Assuming HMRC do not argue that doing so amounts to “contrived arrangements designed to get a particular outcome”, it appears HMRC will then stand by the results given. By requiring the BBC to answer certain questions in the ESS (see Appendix 2) in a way that does not fit with what the BBC considers to be their plain reading, HMRC risk not treating the BBC fairly in comparison to other users. Either HMRC should make their interpretation of the questions and answers clear to all users of the ESS or they should accept that the BBC can read the questions and answer them in the way in which is, in the BBC’s view, factually correct.

Financial risk to BBC and way forward

The BBC is committed to ensuring that all our workers pay the correct amount of tax at the correct time. To this end, it is neutral as to the results that the ESS produces, provided that there is in the majority of cases a clear ‘employed’ or ‘self-employed’ result. However, where an ‘undetermined’ result is returned we and the worker are left in limbo. If we do not apply PAYE and NIC we are exposed to tax, NIC, interest and penalties as HMRC has made it clear that they will only stand behind the ESS and not behind any other form of moderation. If we incorrectly apply PAYE and NIC we risk alienating our talent and exposing the BBC to legal challenge. It also puts the BBC at a commercial disadvantage with other broadcasters and production companies.

Given our responsibility to the licence fee payer and the sums involved, we cannot leave ourselves liable to challenge for underpaid tax where the outcome of the ESS may be open to dispute. So to manage our exposure we are expecting that between now and October we will have to move many people onto payroll-based arrangements so that their fees are paid after deduction of PAYE and NIC. We are currently working with our IT team to get the systems in place to do this. We must emphasise that we will be doing this on a ‘without prejudice’ basis and that it should not be taken as any indication that we agree that the individuals are or should be treated as employees for any purpose, whether IR35 or otherwise.

We expect many of the individuals affected will genuinely consider themselves to be self-employed and will wish to challenge our approach. In addition, the commercial implications for the BBC in terms of the potential loss of talent to competitors and the costs of operating payroll (in particular, paying employers’ national insurance, potentially in addition to previously negotiated fees) mean that the BBC must itself consider how best to ensure that uncertainties around the ESS are properly resolved.

Our strong preference is to continue to engage with HMRC proactively to (a) resolve the differences of opinion between us on the questions discussed in Appendix 2 and (b) agree a clear position in relation to key roles (in particular in respect of on-air talent) that are currently resulting in ‘unable to determine’ responses from the ESS. In our view this will require the ESS and/or any HMRC guidance that will ultimately accompany it to be revisited having had the benefit of further industry input.
However, in order to manage the potential commercial impact to the BBC, harmful ongoing uncertainty and potentially significant costs we also need to consider initiating a formal process to achieve greater clarity. We are considering further how best to achieve this, but it may involve taking test cases to the Tax Tribunal.

I am happy to meet with you to discuss this matter and mitigating steps that can be taken.

Yours sincerely

Anne Bulford
Deputy Director-General
## Appendix I - Chronology of BBC/HMRC meetings

<table>
<thead>
<tr>
<th>Date</th>
<th>HMRC Attendees</th>
<th>Discussion</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 September 2016</td>
<td>Mark Frampton, Andrew Szczepanczyk, Kevin Reay, Alison Ridley</td>
<td>Discussion of provisional questions, answers and interpretation for the new ESS</td>
</tr>
<tr>
<td>5 December 2016</td>
<td>Jeremy Rosenberg</td>
<td>See the initial prototype of the new ESS, provide feedback on questions and interpretation of answers</td>
</tr>
<tr>
<td>30 January 2017</td>
<td>Mark Frampton, Kevin Reay, Rhys Hobbs, Jeremy Rosenberg</td>
<td>See an improved ESS and discuss questions and interpretation of answers</td>
</tr>
<tr>
<td>17 February 2017</td>
<td>Mark Frampton, Andrew Szczepanczyk</td>
<td>Discussion about the delay in the release of the ESS and what assistance HMRC could provide</td>
</tr>
<tr>
<td>22 February 2017</td>
<td>Mark Frampton, Andrew Szczepanczyk, Kevin Reay</td>
<td>Demonstration of the second Private BETA site and discussion of questions and interpretation of answers</td>
</tr>
<tr>
<td>14 March 2017</td>
<td>Andrew Szczepanczyk, Rhys Hobbs, Frank Grant, Asif Choudray, Stuart Thompson</td>
<td>Discussion with HMRC regarding a moderation process that the BBC could use in the absence of a clear employed or self-employed outcome from the ESS</td>
</tr>
<tr>
<td>16 March 2017</td>
<td>Andrew Szczepanczyk, Frank Grant, Colin Stokes</td>
<td>Discussion with HMRC regarding how the questions are answered, in line with the guidance notes that had been prepared following the meetings on 5 December, 30 January and 22 February.</td>
</tr>
</tbody>
</table>
Appendix 2 - Employment Status Service questions

We would like understand how two of HMRC’s questions in the new Employment Status Service tool should be interpreted as they throw the overall result in different ways:

We have a large number of engagements where the fee is a fixed fee per programme, with a guaranteed minimum number of programmes (all the same show), for example 200 breakfast shows. The fee includes the presentation of the programme plus ancillary services. For live programming, it is broadcast at a set time, but the preparation for the ancillary services can take place at a time and place to suit the contributor, and can take as long as they want or need. This will include reading books, watching films, listening to music, writing material for the show, recording jingles, attending publicity shoots etc. in the ESS the question and answers are:

What is the main way that the worker is paid for this engagement?

1. An hourly, daily or weekly rate
2. A fixed price for a specific piece of work
3. An amount based on how much work is completed
4. A percentage of the sales the worker makes
5. A percentage of the end client’s profits

Our view is that they are paid a fixed fee (2). HMRC’s view is that they are paid an hourly/daily/weekly rate (1) or an amount based on how much work is completed (3). This is important, because on identical facts, the result moves from ‘unclear’ with answer (2) to employed, either answer (1) or (3).

Another question that throws the answer from employed to self-employed is the remedy question:

If the end client is not happy with the worker’s output, when would the worker have to put it right?

1. In their usual working hours at the usual rate of pay
2. Outside of their usual working hours for an additional cost to the end client
3. Outside of their usual working hours at an additional cost to the worker
4. They don’t have to put it right
5. They can’t put it right as the work is time-specific or for a single event

For live work, the answer is (5) as once the broadcast has occurred, the presenter cannot put right anything that went wrong. However for pre-recorded work, where the presenter is paid a fixed fee and the work over-runs for whatever reason they would not receive additional fees, particularly if it is their fault. We would argue that (3) is correct. Originally this answer said ‘outside of their agreed hours at no additional cost to the end user’. In our case, because people are selling time, there will be no additional cost to the worker, but there will be an opportunity loss, because they cannot do anything else. Despite going over this with HMRC, they were adamant that answer (3) does not need amending, but we fail to see how we can answer this question. Answer (1) it is agreed (with HMRC), applies to people that are working a regular 9-5 type role, and anything that can’t be done
today is done tomorrow. Answer (2) is akin to charging over time; and (4) and (5) don't apply in a pre-recorded situation. This matters, because on identical facts, with fixed fee in the preceding question, the answer moves from self-employed for answer (3) to employed for answer (1).
Dear Ms Bulford,

Thank you for your letter of 24 March regarding off-payroll reform. This letter follows a call between the BBC, including yourself, and HMRC colleagues on Monday 27 March, and a further meeting at the BBC, on Wednesday 29 March. I am responding as I have responsibility for tax matters.

It is important to recognise that the employment status rules inevitably rely on an element of judgement based on the facts of the engagement. This has always been the case, and the employment status service is designed to help engagers make that judgement. It remains the responsibility of individual engagers to understand and decide how the rules apply to the individuals they engage.

Your letter raises a number of issues; I want to focus on three substantive points.

**Concessionary treatment to allow extra time or ‘grace period’**

The reformed off-payroll working rules apply from 6 April 2017. HMRC has no powers to delay implementation, neither would it be lawful for us to set aside collection of the tax and NICs due for a six month period as requested.

The off-payroll working rules have been in place since 2000 and the reforms do not change the underlying employment status tests on which they are based. It is essential that the reforms are implemented effectively and consistently across the public sector. To support their implementation, HMRC continues to provide extensive support and guidance. We are responding to feedback to further improve our guidance and also hosting a number of events to support public bodies using the new digital service. I understand that you have details of these events and our published guidance.

**Further review the tests in the new digital service ‘check my employment status for tax’ (CEST)**

We had originally hoped to provide access to the early versions of the employment status digital service from November 2016, and I am sorry that this proved not to be possible when the final delivery plan was agreed. However, we shared our early thinking on the service as soon as we
could; this is reflected in the note of our discussions with you on 5 December. We prioritised the BBC for the testing phase of the digital service and provided the BBC with access to the private beta version from January 2017.

The public beta launch of the service was then scheduled for the end of February and the final service was released on March 2. Whilst I acknowledge this delay introduced some additional pressure to the timetable, we were clear when sharing our early thinking through January and February that the private BETA version was stable and could be used for planning ahead of the final service being delivered. We engaged in extensive consultation, with nine sector-based roundtables across the country in the early part of the year. I would stress that the underlying tests for the off payroll rules are unchanged.

We believe this should reasonably have enabled public sector bodies to prepare and identify areas of risk, particularly given the BBC were already talking to us about the development of the tool and the application to contractors and staff.

You raise a particular concern about the number of cases where the result from the digital service was ‘unable to determine’. There have been long running compliance discussions around particular cases and we have already shared our view of how these kinds of cases should be described when using the digital service. We believe that should enable you to get a definitive outcome in many more cases, providing the certainty you need. Following the meeting on 29 March, we also think we can do more to support you in completing the tool and have offered to provide further assistance to help you explain the results to your staff.

Review how the tests operate, specifically with reference to the BBC
You also ask whether the new digital service can be reviewed to ensure it achieves its objectives. As colleagues explained during the call on 27 March, we believe that the service is delivering on its objectives. HMRC’s priority has been to deliver a digital service that works for all customers and we will continue to improve the service in future. We have some improvements already in train, including additional guidance on working practices and how workers would be expected to remedy unsatisfactory work (question 2 in annex 2 of your letter). We think these will help you and we will continue to work closely with you to support you to use the service. However, we are confident that what we have provided delivers what is needed to help engagers such as the BBC apply the off-payroll reforms.

HMRC is continuing to listen to feedback from public sector bodies responsible for operating the off-payroll rules and we have published further guidance to help public bodies understand the context around particular questions to help them arrive at the correct outcome. Full details are available here:

www.gov.uk/government/publications/employment-status-manual

Thank you for continuing to work with myself and my colleagues to work through to a successful implementation of these important government reforms.

Yours sincerely

Jo Wakeman OBE
LB Director
Dear Ms Wakeman,

Off-payroll working in the Public Sector: reform of the intermediaries legislation

I refer to your letter of 30 March 2017 in respect of the off-payroll reforms. I thought it would be sensible for the new rules to have an opportunity of bedding down before responding, in the hope that the concerns we had would be resolved. Our respective teams have made some progress in addressing (or mitigating) a number of the issues that have arisen from the implementation of the new rules and I understand another meeting has been scheduled for 16 June 2017 in an effort to progress matters further. While this cooperation and engagement is welcome, there remain a number of considerable challenges which I set out below.

I wish to raise two issues; first, the BBC’s concerns about the lack of accuracy and effective operation of the Check Employment Status for Tax assessment tool ("CEST") and, secondly, the destabilising effect on the competition between the BBC and the commercial audio/visual production sector that the legislation has resulted in.

I. Operation of the CEST

The legislation came into force two months ago. There was a significant delay by HMRC in releasing the BETA version of the CEST (which did not occur until early March 2017) and even after its introduction in April, the CEST produced large levels of results that were either "unable to determine" or the "test could not be completed". The BBC engaged urgently with the HMRC to reduce some of the uncertainties raised by application of the questions in the CEST to BBC engagements and the approach of the HMRC teams to the way that certain questions should be answered. While we finally have a version of the CEST which is now relatively stable, we do not consider it fit for purpose, for the reasons set out below.

The results of our application of the CEST to a sample of almost 300 engagements across the BBC (with the application being based on guidance received from teams of experts at HMRC) resulted in an outcome of IR35 applying to approximately 97% of those engagements. This figure raises very serious questions about the accuracy and effective operation of the CEST.
We have been contacted by a number of individuals who are dissatisfied with the outcome of the CEST. We anticipate that they will in turn raise these concerns with HMRC. During a telephone meeting with the BBC’s Customer Relationship Manager at HMRC (Andrew Szczepanczyk) on 31 May 2017, constructive steps were taken to begin to address this issue. We particularly welcomed the offer to enter into a dialogue (scheduled to commence on 16 June 2017) in respect of the outcome of the CEST in relation to cohorts of analogous workers. This is a step in the right direction.

However, we were troubled to hear, during the same meeting, that the default approach that will be taken when individuals challenge the outcome of the CEST with HMRC, is that they will be referred back to the engager (in this case the BBC) for resolution because of resourcing constraints within HMRC. Clearly, this is unsatisfactory, as it would involve the engager having to make judgements without having the requisite knowledge of the wider context or information that would enable this to be done properly. This is the very exercise that the CEST was designed to avoid. More fundamentally, this puts us in an invidious position vis-à-vis our on air talent – who are already challenging our role in the process.

Furthermore, the likely end result is that the individual in question will have little option but to submit a repayment claim to HMRC, as HMRC’s guidance suggests, or to otherwise seek a determination of status from HMRC. Alternatively, the individual may bring proceedings against the BBC and/or HMRC. Indeed, we recently received legal correspondence that alluded to proceedings being issued against the BBC if it withholds any payments to a particular individual’s PSC as a result of the application of the CEST. Further, even if proceedings were only brought against the BBC, as those proceedings would necessarily involve a court coming to a view on the individual’s tax status, we consider it likely that HMRC would end up being joined as a party to any such cases. To avoid these challenges, we would urge you to consider setting up some form of pre-assessment approach along the lines of LP10. Indeed, as we understand that HMRC is under a statutory obligation to provide determinations when they are requested, such a pre-assessment approach could help HMRC to meet its obligations in this regard. In the meantime, while we (as a public service organisation) can well understand the resourcing constraints HMRC faces, we request confirmation that in future you will cease the practice of referring individuals back to the BBC when they seek such a determination.

There is an additional concern that we consider much easier to address – namely the confusion as to the status of the Radio Industry Guidelines (“RIG”) in relation to the BBC. We have been informed by you that the RIG has been superseded by CEST and cannot be relied upon and that in due course there will be a formal notice issued in this regard. While we appreciate that you have informed us that you were unable to make announcements during a period of purdah, we have been contacted by individuals who tell us they are being informed by the revenue helpline that the RIG can still be relied upon. For example, we have been in correspondence with the legal representative of a high-profile individual (currently engaged by the BBC), who was informed in April and again at the end of May that the RIG still applies. It cannot be right that contradictory information is being provided to the BBC and individuals.

Furthermore, the point has been made to us by the above referenced legal representative that HMRC cannot, as a matter of administrative law, simply seek to agree as between it and the BBC that the RIG should be dis-applied. Instead, the point has been made that HMRC and the BBC are required to give effect to the RIG until such time as they are formally withdrawn.
BBC

Given the information provided already to the BBC by HMRC, please can you confirm that your helpline is providing callers with information consistent with that being given to the BBC and that a public update will be provided now that the election is over and purdah has come to a close. In the meantime, it would be helpful if the helpline messaging around RIG applicability could be underscored with your teams in order to reduce the scope for further confusion. (There is an additional point about the impact of the RIG continuing to apply in the commercial sector and not in the public sector which I have addressed at the end of Section 2, below.)

2. Equitable treatment as between public sector and commercial broadcasters

Our concerns about the effectiveness and accuracy of the CEST throw into sharp relief the issues set out in the BBC’s response of 4 August 2016 to HMRC’s consultation to “Off-payroll working in the public sector: reform of the intermediaries legislation”. At that time, we set out the principal reasons why the BBC objected to being the only producer/broadcaster required to comply with the proposed new IR35 legislation as envisaged in the consultation and why, as the only public broadcaster with production capabilities, we believed the BBC would be disproportionately affected. Those concerns are compounded now that the CEST results are themselves so questionable.

Competitive Disadvantage

As you know, the BBC competes with private sector production companies and broadcasters in both radio and television. As a result of the new legislation, and the manner in which it is being applied, those who deal with the engagement and re-engagement of on-air and off-air talent are reporting that many of those who provide such services, or are in discussions about the provision of services, to the BBC fear that a different tax enforcement regime applying to the BBC will be unfairly disadvantageous for them. As a result, some are therefore questioning whether they wish to be engaged by the BBC at all. The BBC is already experiencing significant challenges in engaging individuals for on-air and off-air roles.

Skills Disadvantage

Further, the BBC and other Public Authorities (using the definition in FOIA) engage a number of individuals for their specialist professional skills. If a determination of their employment status under the CEST indicates that they should be treated as employed for tax purposes in respect of the engagement, they may choose to work outside of the public sector, which would jeopardise projects to which these Public Authorities have committed. Diverging tax enforcement rules affecting how public and private sector bodies can engage with professional service providers will distort the market for the provision of consulting services and risk skewing the level-playing field by creating a shortage of appropriate expertise available to the public sector.

The BBC’s position in respect of the proposed legislation was that all engagers (public and commercial sector) should be brought within this legislation at the same time. Alternatively, at the very least, a start date for non-public sector bodies should have been published when the new rules came into force so that expectations could be managed and those having to deal with different tax rules between the public and private sectors could at least understand for how long the difference would be in play (our fall back suggestion was 12 months).
In order to mitigate the damage arising from the imbalance with the commercial broadcasters that are operating in the same marketplace as the BBC, we request that a specific timescale is now set, within which HMRC will communicate the roll out of the changes in the legislation to the commercial sector.

Equal treatment in respect of the RIG

The BBC specialist tax team has also raised at past meetings with HMRC that all parts of the radio industry should be treated equally, across the public sector and commercial broadcasters, and that for consistency and fairness, the same off payroll working rules should apply, either via the CEST or via the RIG. Our testing indicates that, in some circumstances, application of the CEST or the RIG to the same engagement results in conflicting outcomes as to whether or not IR35 applies. This results in an obvious imbalance between the public sector broadcasters and the commercial sector. This issue is already prejudicing our ability to retain and attract presenters in public sector radio broadcasting. We have raised our concerns with your colleagues. Could you also please confirm if HMRC will be withdrawing the RIG from the commercial radio sector and if so, by when and when this will be communicated.

I look forward to hearing from you and I trust you now accept that a meeting will be beneficial for all involved and I would suggest that such a meeting be arranged once our respective teams have progressed their dialogue to a sufficient degree.

Yours sincerely,

Anne Bulford
Deputy Director-General, BBC

cc. Ed Troup, HMRC
Dear Ms Bulford,

Off-payroll working in the public sector: reform of the intermediaries legislation.

Thank you for your letter of 13 June.

I am pleased that our teams have been able to make progress on implementing the reforms to the off payroll working rules in the BBC. Whilst I am open to a meeting, I know that our teams are working through these issues and I think that is the best place to make progress at this point.

You raise concerns on the accuracy and effective operation of the Check Employment Status for Tax service (CEST). I’m grateful to the BBC for your significant help in developing and testing the service, so it is disappointing to hear about the challenges you have encountered. The BBC’s experience has not been the general experience of other public sector organisations; so far CEST has had more than 350,000 uses and fewer than 15% “unable to determine” outcomes.

Our teams had a very useful meeting on 21 June to understand the cause of this number of unresolved outcomes and what you believe are incorrect assessments that particular roles are within the off payroll working rules. Together our teams identified areas where the BBC can get more accurate outcomes through using more detailed guidance to resolve certain more complex cases. We have agreed to provide some commentary about how to complete the tool and other guidance which would help. In particular, we will be setting out when we think it is most appropriate to use the Employment Status Manual guidance on actors, performers and entertainers, and believe this will reduce the number of disputes at the BBC. HMRC does not have a statutory obligation to provide a pre-assessment service; employers and engagers are themselves required to decide the status of their workers. However, we will work closely with your team to support them to determine the employment status of your workers, particularly in the most complex cases. This should reduce the number of disputes and, to further lessen the impact on the BBC of resolving disputes, we propose that we continue working together with a view to developing a process that works better for both organisations and your workers.
We also plan to publish revised internal guidance in July to ensure HMRC compliance and operational colleagues are able to deal consistently with the issues you raise. At the meeting on 21 June, we set out how that could help you explain the reform to your workers and support awareness of the rules across the whole industry. We are grateful for the offer of assistance with that guidance so that our efforts remain coordinated.

Your second main area of concern was the status of the Radio Industry Guidelines (RIG) and how they interact with CEST. CEST is designed to meet the needs of all sectors and distils the most important employment status case law principles to do so. But, in particular sectors where Court/Tribunal cases have considered the particular circumstances of some workers in different sectors such as broadcasting, it is right that the engager (and HMRC) should look to case law and guidance that pertains to those particular workers, and if they are satisfied that this guidance is properly applicable to the circumstances of the individual they can apply it. No particular area of our guidance has precedence over another. As you know, we want to make a public statement on the future of the RIG, and plan to hold industry wide talks when we are able to do so.

The government has said it has no plans to extend reforms to the off payroll working rules. Public sector bodies have a responsibility to taxpayers to ensure that people working for them are paying the right tax, and it is important we ensure the intermediaries legislation operates effectively. Off-payroll rules still apply to engagements in the private sector, and contractors in the private sector continue to have a legal duty to comply with these rules. I hope this reassures you that we remain committed to helping the BBC comply with its tax obligations in implementing the off payroll working rules. I confidently expect our teams to be able to make further progress.

I acknowledge receipt of your letter of 27 June to Andrew Szczepanczyk which we found helpful. Andrew will be responding separately.

Yours sincerely,

Jo Wakeman
LB Director