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**OTS proposals for practical tax reporting and payment arrangements
for self-employed workers**

Response from the Employment Lawyers Association

2 September 2019

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Introduction

The Employment Lawyers Association ("ELA") is a non-political group of specialists in the field of employment law and includes those who represent claimants and respondents in courts and employment tribunals. It is not ELA's role to comment on the political or policy merits or otherwise of proposed legislation or regulation, rather it is to make observations from a legal standpoint. Accordingly, in this consultation we do not address such issues. ELA's Legislative and Policy Committee consists of experienced solicitors and barristers who meet regularly for a number of purposes including to consider and respond to proposed legislation and regulations.

The Legislative and Policy Committee of ELA set up a working party which was chaired by Jonathan Chamberlain of Gowling WLG (UK) LLP to respond to the OTS. A list of the members of the ELA working party is at the end of this paper.

1. Consultation

- 1.1. The consultation invites parties to comment on the high level policy proposal of the use of technology in tax reporting (the "Consultation"). We understand, therefore, that there will be a further consultation in the event that any specific proposals are put forward. The Committee would wish to have the opportunity to comment on any further proposals.
- 1.2. This response to the Consultation sets out the Committee's response in relation to the proposals impacting the self-employed (the "Self-Employed"). The Committee makes no comments in relation to the proposals concerning landlords.
- 1.3. We understand that the Consultation has been launched based on a belief that some people working as self-employed in the freelance, gig and platform economy ("Contractor Economy"), would prefer to submit their financial tax information in real-time, to produce more accurate tax records and pay tax in a more timely and frequent manner (the "Desired Aims").
- 1.4. The Committee accepts that there may be advantages to some of those who are Self-Employed and HMRC, in utilising technology in financial reporting to achieve the Desired Aims. We are aware there are financial reporting systems making effective use of technology operating successfully in Australia and South Korea. Likewise, HMRC's "Making Tax Digital" has assisted in streamlining processes for reporting and payment of tax in the UK. Consequently, the Committee is supportive in principle of further investigation of new technology to help achieve the Desired Aims, subject to further consultation and three key caveats. These are as follows:
 - 1.4.1. There seems an obvious point to be determined, which concerns whether those in the Contractor Economy, should be compelled to utilise the proposed technology or whether it should be optional. In our view, it should be optional.

1.4.2. Query also whether both parties should have to agree to utilise the technology in each case:

- 1.4.2.1 If the parties are in agreement that the technology must be utilised, the matter may be relatively straightforward.
- 1.4.2.2 If the hirer unilaterally determines that the technology must be used, against the wishes of the Self-Employed, this may give rise to a dispute. If in such case, the Self-Employed's fees are subject to deductions, the Self-Employed may dispute the tax and NICs treatment applied to the fees. Accordingly, a mechanism would need to be implemented to enable the Self-Employed to dispute any tax and NIC contribution applied to the fees. The Self-Employed may also be concerned as to how the use of the technology may impact employment status. The Self-Employed may also be concerned about the administrative burden of utilising the technology.
- 1.4.2.3 If the Self-Employed requests that the payment of its fees be paid pursuant to the Technology, the hirer may object to this. Specifically, the hirer may have concerns that the application of the technology increases the risk that the Self-Employed may be deemed to be an employee or worker of the hirer. Furthermore, the hirer may not wish to assume the administrative burden of utilising the technology.

Our view is, therefore, that the technology should only be applied if both parties are in agreement with this.

1.4.3. Both the Self-Employed and the hirer may have concerns about whether the technology will be deemed a factor in determining employment status. This concern can be mitigated against by making use of the technology subject to agreement that use of the technology is not determinative nor indicative of, employment status and should not be taken into account in determining employment status.

2. Conclusion

The Committee welcomes further investigation and consultation on the use of technology for practical tax reporting and payment arrangements for the Self-Employed. However, any such proposals should take into account the points set out in paragraph 2 above.

ELA Working Party

Chair: Jonathan Chamberlain of Gowling WLG (UK) LLP

Christopher Morgan, Sidley Austin

Joanna Courtice, Baker & McKenzie LLP

Anya Duncan, Stronachs LLP

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