HM Treasury

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[redacted]

27 March 2018

Ref: FOI2018/04559

Dear [redacted]

Freedom of Information Act 2000: The Finance Act 2017

Thank you for your enquiry of 28 February 2018, which is a follow up enquiry in response to our previous correspondence (ref FOI2018/02542).

You asked for the following information:

> *"Thanks for your reply. You have said that the liability for deducting employer NICs falls to the engager or agency, but who pays them - the engager, the agency or the contractor ?"*

Thank you also for your email of 2 March providing clarification of your request:

> *"To avoid any issues of semantics with terms such as "deducting" and "paying" I'd like to use a concrete example. I am not asking for tax advice, I'm simply asking HMT as prime instigator to show me how it envisions the off-payroll rules should work.*
>
> *Suppose that a contractor using his PSC is offered a contract within the off-payroll rules. Do you expect the employer's NIC to be deducted from the contractor's pay (so the contractor is paying both employee's and employer's NIC) or added on top by the agent or client (so the contractor is paying employee's NIC but the agent or client is paying employer's NIC)."*

This was followed by your email of 9 March, in which you repeated the second paragraph of the email we received on 2 March:

> *Suppose that a contractor using his PSC is offered a contract within the off-payroll rules. Do you expect the employer's NIC to be deducted from the contractor's pay (so the contractor is paying both employee's and employer's NIC) or added on top by the agent or client (so the contractor is paying employee's NIC but the agent or client is paying employer's NIC).*

This response is being made in answer to all of the above correspondence.

The client or agency would pay secondary (employer) National Insurance contributions (NICs) related to the engagement, as it does for directly employed workers.

It may be helpful for you to see an illustrative example of how the rules apply. This illustrative example is taken from guidance published by HMRC at:

https://www.gov.uk/government/publications/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note

> **Payments and deductions made by the Ministry (all figures are illustrative)**
>
> Each month, Rebecca IT Ltd invoices the Ministry £7200 which includes £1200 VAT.
>
> The Ministry treats £6000 as Rebecca's earnings and deducts £1400 tax and £400 employee NICs which it pays to HMRC via RTI with £700 employer NICs.
>
> Each month, the Ministry pays Rebecca IT Ltd a total of £5400, which is £4200 for the services provided plus £1200 VAT.

If you have any queries about this letter, please contact us. Please quote the reference number above in any future communications.

Yours sincerely,

PB

P Beglin
Information Rights Unit

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Your right to complain under the Freedom of Information Act 2000

If you are not happy with this reply, you can request a review by writing to HM Treasury, Information Rights Unit, 3/Red, 1 Horse Guards Road, London SW1A 2HQ or by emailing us at the address below. Any review request must be made within 2 months of the date of this letter.

Email: foirequests@hmtreasury.gsi.gov.uk

It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

If you are not content with the outcome of the review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner will not make a decision unless you have exhausted the complaints procedure provided by HM Treasury which is outlined above.

The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF (or via their website at: https://ico.org.uk).