Consultation on the minimum wage: LITRG response

General Features

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LITRG respond to the Low Pay Commission's consultation on the future arrangements for the minimum wage.

As representatives for those on the lowest incomes, we obviously welcome the existence of the National Living Wage (NLW), particularly as the general consensus is that the negative effects of the NLW have, to date, been minimal, in terms of job losses, employers implementing trade-offs etc. However, if the bold increases of late are to be maintained, it is possible a tipping point will soon be reached.

In our response to the Low Pay Commission's (LPC's) questions on the future trajectory of the NLW, we therefore urge caution. We tell the LPC that we have specific concerns around the 'false self-employment' of low-paid workers. Historically, employer's NIC has tended to be the driving force behind false self-employment; however, we think that avoidance of work protections, including the minimum wage, may now be playing a part.

We also recommend to the LPC that any future increases in the minimum wage should be considered in the context of their interactions with tax, National Insurance and other systems, such as universal credit and tax credits. These, taken together, can often mean that low paid workers feel little benefit from minimum wage rises (we give an example of where a £79 monthly pay increase translates into only £26.12 in the pocket of the worker – the rest accruing to the Exchequer in increased NIC and benefit withdrawal). We think the LPC could take a more proactive approach to ensuring that the various systems that low paid workers come into contact with are a bit more coordinated.
To the question of HMRC's enforcement effectiveness, we suggest that workers would ultimately benefit more if HMRC concentrated on arguably more complex cases involving 'worker' status ('workers' as well as employees are entitled to the minimum wage) and false self-employment.

In terms of what more could be done to support compliance, we highlight the fact that tax and minimum wage rules interact and diverge somewhat on key issues, and may be causing employers confusion. For example, under minimum wage rules, all salary sacrifice is problematic if it takes your pay below the minimum wage – no matter what the benefit. As you will know, for tax purposes, salary sacrifice for tax/NIC purposes is tolerated for certain benefits that the government want to encourage such as pension saving and cycle to work. We give another example: if a worker has to pay for any type of uniform – even if it is just a pair of black trousers, black shoes and a white shirt – the cost incurred must be deducted from their pay to establish whether the minimum wage is being paid. However, under tax law, the rules are much stricter – many employers will have it lurking in their minds that such standard attire is not deductible!

Our response acknowledged that different approaches may be justified (as the two systems are trying to achieve different things), however we think more could be done to highlight and clarify such points of difference with employers. At present, guidance for employers trying to deal with such issues is not sufficient. The bottom line is that more should be done to support those who want to be compliant, as this would free up resources to deal with engagers at the other (deliberately non-compliant) end of the spectrum.

LITRG's submission can be found on the LITRG website.