Taxing Remuneration: principles and practice.
The legal and policy framework

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Asking the fundamental questions

- Aim to provide a framework for subsequent debate
- Is getting back to basics useful?
- Political pressure
- Practical pressure
- Starting from where we are
- Leads to detailed, pragmatic proposals—
- Or piecemeal fragmented reform.
- Fundamental principles provide benchmark for evaluation even if unattainable
What is remuneration?

- OED – “Money paid for work or service”
- Leaving aside what counts as ‘money’ for next session–
- Neutrality as objective?
  - Between different types of work?
  - Different types of relationship?
- Distinguish based on risk levels? Level of entrepreneurship? How can tax be attuned to this?
- Should we tax returns on capital differently?
- Even if yes– what is a return on capital?
- Disguising income from labour as income from capital
- Distinguish tax on capital gains– might arise from labour too?
Why is legal form relevant to taxation?

- Economic relationships partially determined by legal form
- Spectrum not binary: sole traders, partnerships, employees, company shareholder/director.
- Align at one boundary, may worsen at another
- Purely administrative reasons for differences or are there substantive ones?
- Confusing the picture—National insurance contributions—link to employment rights
What are the differences?

- Mode of calculation
- National Insurance contributions
- Nb “Reduced contributions for self-employed not attributable to reduced benefit eligibility” = £2.85 billion.

2013/14 Estimated costs of tax expenditure and structural reliefs HMT—

Subsidy to self-employed—why?
- Expenses rules
- Method of collection and time for payment.
Employment status

- Tests – should depend on purpose
- Why do we want to distinguish self-employed from employees?
- Employment law tests about relationship and protection of employee
- Is this relevant to taxation?
- Why does relationship between engager and provider of services make a difference to tax?
- NICS confuse the picture again
Tests to determine taxability as employee

- Case law – employment/tort cases designed to govern relationship with engager.
- Aims to find ‘true agreement’ between parties. (Autoclenz)
- Proxy for practicality of applying PAYE?
- Expenses follow PAYE – practicality of making claims
- Notion that NICS/employment rights/tax should be aligned misconceived?
Extending PAYE

- Tests replacing case law
- Eg agency rules – supervision, direction or control
- LLP rules – relationship to profit, influence, capital contribution
- What is the principle that suggests these characteristics require application of PAYE and employee NICs?
- How will this relate to employment protection? Does it need to?
Summary/Questions

- Should we tax all remuneration in the same way regardless of legal form?
- If that is undesirable or impractical, should we keep the differences to the minimum necessary for administrative convenience? (eg try to align expenses rules?)
- Is there any justification for substantive differences, other than those actually linked to higher benefits?
- Extending PAYE– is this the right direction?
- Merging NICs and income tax– is it impossible? Can we do it step by step? Time has come?
- Employment rights?