

CIOT tells contractors: "IR35 doesn't work"

"IR35 doesn't work. It is unmanageable, one of the worst-drafted pieces of legislation in the history of our country," says Richard Mannion, chairman of the Owner-Managed Businesses group at the London-based [Chartered Institute of Taxation](#).

In an interview with ContractorCalculator, Mannion slammed IR35 as a piece of politically-motivated legislation with no real reason for being. Mannion notes that IR35 was first concocted in 1999 by then Treasury Paymaster-General Dawn Primarolo, who was a close collaborator of Gordon Brown. Any attack on the legislation was viewed as a political attack on Primarolo, and by extension, Brown himself who was then Chancellor.

Sticking Plaster

"The result," Mannion notes, "was this absurd piece of 'sticking plaster,' which was so badly drafted that even today, almost 10 years later, judges struggle to rule on whether IR35 applies to a given case or not. The courts are obliged to refer to a mass of unrelated case law and to make any number of subjective judgements in an IR35 case: the result is that nobody really knows, or ever will know, if a given contractor is really caught by the legislation or not.

Mannion uses the familiar epithet "sticking plaster," which is the way a House of Lords committee has also characterised contractor tax legislation as it has come out of the Labour Government in the past 10 years. "What is meant by 'sticking plaster' is that all of this legislation, from IR35 to [Managed Service Company legislation](#), to the derailed 'income shifting' legislation, is that these are all failing attempts to resolve a single issue: how do we tax earned income? Should unearned income be taxed at a different rate from earned income?"

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Richard Mannion-CIOT

A Level Playing Field

"At one time," Mannion points out, "tax on earned income was lower than that on unearned income. But the tax system has evolved in such a way as to reverse that situation. At the same time, National Insurance contributions have evolved into a second tax on income: these so-called contributions are put to exactly the same uses as our PAYE payments and are no longer in any way related to the National Health Service or social security in any form."

This raises the obvious issue that some people are paying a great deal more tax on earned income than others pay on unearned income which escapes NI payemnts. "Plainly, that's not fair, and we have to review the entire system and find a way to create a level playing field," Mannion says.

"But above all," Mannion insists, "we have to get away from this useless squabbling about whether a person is self-employed or not. The whole issue, around which IR35 hangs, is entirely irrelevant to the greater question of how to arrive at an equitable system of taxation."

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Mannion further suggests that the UK should adopt the same method of approaching the tax system as that of Ireland where a specialised committee handles tax law. "We need to get tax out of the political arena," Mannion says.

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