

# Off-Payroll Tax in the Private Sector

## How damaging would the new tax be?

Published: July 2018

### Introduction and Background

The Government introduced legislative changes to IR35 in the public sector from 6<sup>th</sup> April 2017. In May 2018 it released a long-awaited HMRC consultation document titled 'Off-payroll working in the private sector' which is designed to garner opinion on the best way to tackle non-compliance with IR35 in the private sector.

Many independent surveys along with media reporting has reflected the continuing damage caused in the public sector as a result of the reforms: the exodus of contracting talent and increased rates and red tape required to retain contractors, together with project delays and cancellations. There have also been widespread blanket assessments of contractors in many public-sector bodies, legal challenges by contractors, a proliferation of tax avoidance/evasion, and any net tax collection won't be known until the middle of 2019 once self-assessments have been completed..

Despite the reported damage and incomplete statistical data to assess impact, the Government and HMRC are bullish about pressing ahead with rolling out the new off-payroll tax to the private sector.

ContractorCalculator undertook this *Off-Payroll Tax in the Private Sector* survey of c2000 contractors to gauge the likely behavioural effects of any proposal to roll out the same reforms to the private sector.

## Executive Summary

The findings from this survey paint a bleak picture of things to come if Government chooses to roll out the new off-payroll tax to the private sector. The survey warns of concerning consequences:

- Increased costs of conducting business by firms that hire freelancers
- A reduction in both size and mobility of the flexible workforce, making it much harder to source contingent workers
- Friction between firms and contractors, as those assessed as “deemed employees” challenge assessment and seek to claim full employment rights if “inside IR35”
- Chaos and uncertainty as firms and contractors fight over complex employment status issues
- Political damage to MPs who support the reforms.

## Summary of findings

### **Businesses to face cost hikes if new tax introduced**

- 73% said they would only accept a contract inside IR35 with a significant rate rise
- 63% said they would demand an increased rate if travel was required.

### **Harder to attract talent as flexible workforce shrinks**

- 94% of contractors said they will seek to avoid contracts placing them inside IR35
- 25% would never accept a contract inside IR35
- 54% would work less each year, rather than take on work inside IR35
- 23% will quit contract work altogether.

### **Contractors assessed as deemed employees expect rights**

- 74% want maternity pay; 92% want sick pay; 81% want grievance/disciplinary protection
- 48% would lodge an appeal at an employment tribunal to obtain those rights.

### **HMRC's CEST tool is wholly rejected by market**

- 75% would always seek an alternative assessment
- 79% felt CEST was inaccurate, with 77% saying it did not reflect the law.

### **Off-Payroll tax is a political bomb for MPs**

- 90% of respondents voted at the last election
- 48% say they will not vote for an MP who supports these reforms
- 51% prefer to replace IR35 with a new hirers tax, while 34% are against this idea.

## Commentary by Dave Chaplin, CEO of ContractorCalculator

Dave Chaplin is an expert on contracting and IR35. In 1999, he founded ContractorCalculator.co.uk, the UK's leading resource for contractors and freelancers, which is visited by over 200,000 contractors each month. Dave is also the author of two books: *Contractors' Handbook* and *Beat IR35*.



The public sector is very different from the private sector and HMRC will be unable to encourage private sector firms into conducting blanket status assessment rules across all its contractors.

The public sector is like a monopoly, fixing prices while holding all the bargaining power, thereby pushing contractors into false employment and reducing rates to soak up extra taxes due.

Private sector firms cannot operate this way without having to feel the impact of contractors voting with their feet. And, as this survey shows, they plan to do just that.

In April 2000, when the original IR35 (see ITEPA, chapter 8) came into force, agencies and clients had to facilitate hiring contractors on a genuine outside IR35 basis to attract talent. History is now about to repeat itself, albeit with dire consequences for the low paid self-employed, irrespective of their true employment status.

In the private sector we will see firms, motivated by board level decisions to reduce risk, adopt inside IR35 blanketing. But projects will slip, workers will leave, and costs will shoot up as businesses try and retain the best talent. Why do we predict this? Because that's exactly what happened in the public sector.

Through its appalling CEST tool, HMRC has attempted to enact what it wants the laws to be, not what they are. CEST is grossly inaccurate, does not align with the law, omits key areas of the law and has no legal authority. Fortunately, most contractors, firms and agencies are aware of its failings as this survey demonstrates, and most would insist on seeking an alternative assessment by an expert.

As with the botched implementation of the public-sector blanket rules, the failure of CEST demonstrates that HMRC does not understand employment status, which is further reinforced by the majority of cases that it continues to lose in court.

This begs the question: if HMRC does not understand the law, who is going to train 5.7 million private sector businesses in how to conduct proper status assessments? Most business are not equipped to do this, as it is equivalent to asking them to climb a mountain of red tape whenever they hire a contingent worker.

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## Dave's prediction

So, what is likely to happen if this new tax rolls out and the market (eventually) adjusts to the changes?

The likelihood is that the low paid worker will be paid even less, and for everyone else, once the dust settles in a couple of years, we will carry on working outside IR35. HMRC will then have the same enforcement problem as they do now – only this time they will have the client, the contractor and the agency all testifying against its blinkered view of employment status. HMRC already loses most of its IR35 court cases. Going forward it will lose them all.

The history of IR35 proves that putting complex employment status at the heart of the tax system is a non-starter. To put this in context, I recently attended a nine-day IR35 court hearing where HMRC had challenged three BBC presenters, with the evidence bundles running to 3500 pages. Does this mean we need a three-day hearing before a firm can hire a contractor, and 1000 pages of evidence to firm up the decision? Or, should we believe that HMRC has, in a few months, created a magical tool that encompasses two decades of employment case law and can accurately determine the status of any individual by asking it 16 questions? If that's the case, then why the nine-day hearing? And why is HMRC still losing cases in court?

The HMRC consultation document and rhetoric surrounding off-payroll is full of mistruths, and claims consistently that contractors should pay broadly the same tax as employees. The thing is, they already do. Since the dividend tax changes in April 2016, the only difference in taxes is due to the avoided employers NI of 13.8%, which employers do not pay when they hire contractors. It is naïve to expect contractors, not hiring businesses, to pick this up new tax bill when it arrives .

If Government want an easy way of raising some tax, it needs to bin IR35 and off-payroll and introduce a hirers tax. While many contractors who completed the survey would be happy with that route, politicians won't vote for it and HMRC isn't in the habit of acknowledging its failures.

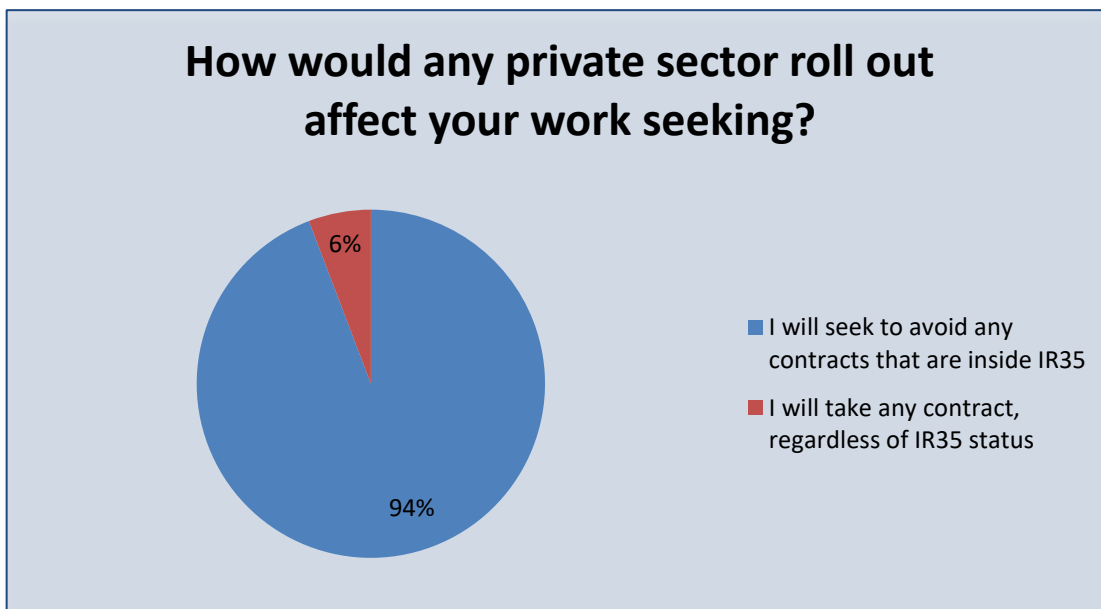
These reforms could come at the worst possible time too. With Brexit right around the corner, choosing to damage the flexible workforce isn't a smart move.

Businesses need to prepare for the coming fight with contractors, because, if they try and force the new tax bill onto their workers, they will get rate rise demands and/or demands for employment rights.

## 94% of contractors will seek to avoid being caught within the new off-payroll tax rules

Contractors were asked to consider how they would seek contracts based on their off-payroll IR35 tax status:

- 94% of contractors will seek to avoid contracts considered 'inside IR35'
- Only 6% of contractors will take any contract, regardless of status.

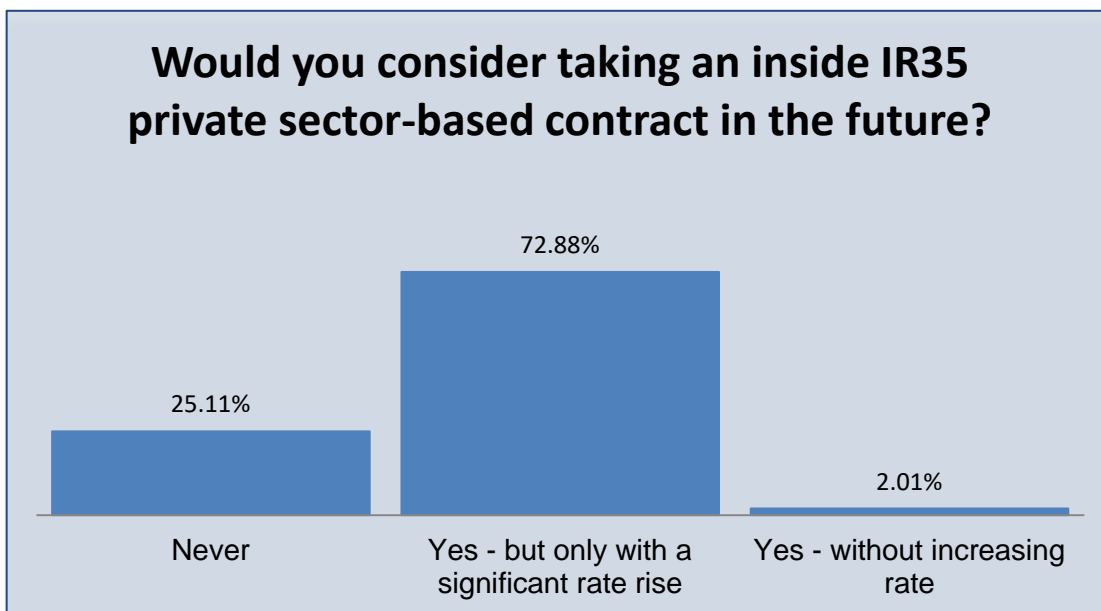


**Firms ill-equipped to properly assess and hire genuinely self-employed contractors on an outside IR35 basis risk being unable to attract the talent they need.**

## 72% of contractors will only take on inside IR35' contract work if the rate is increased significantly.

We asked contractors if they would take on work categorised as 'inside IR35':

- 72% of contractors will only consider inside IR35 contracts if the rate is increased considerably
- 25% say they will never take on 'deemed employee' type work.

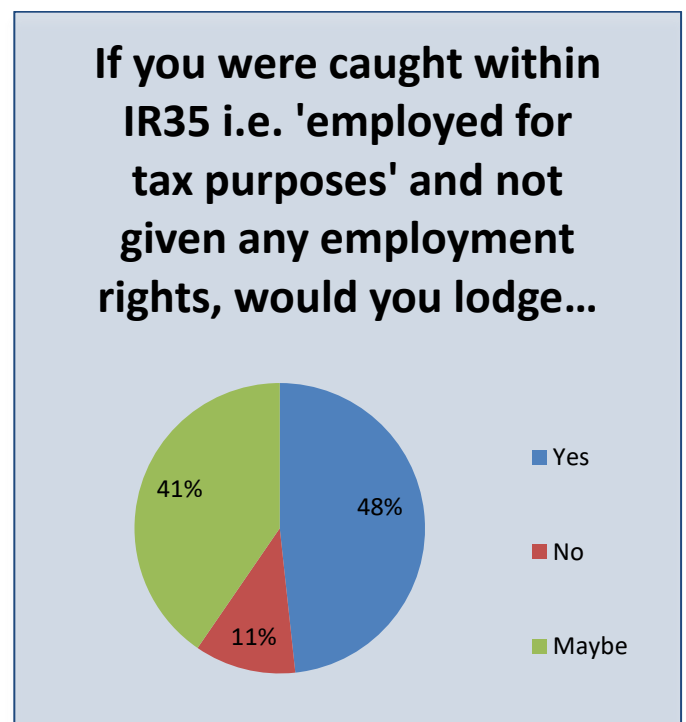
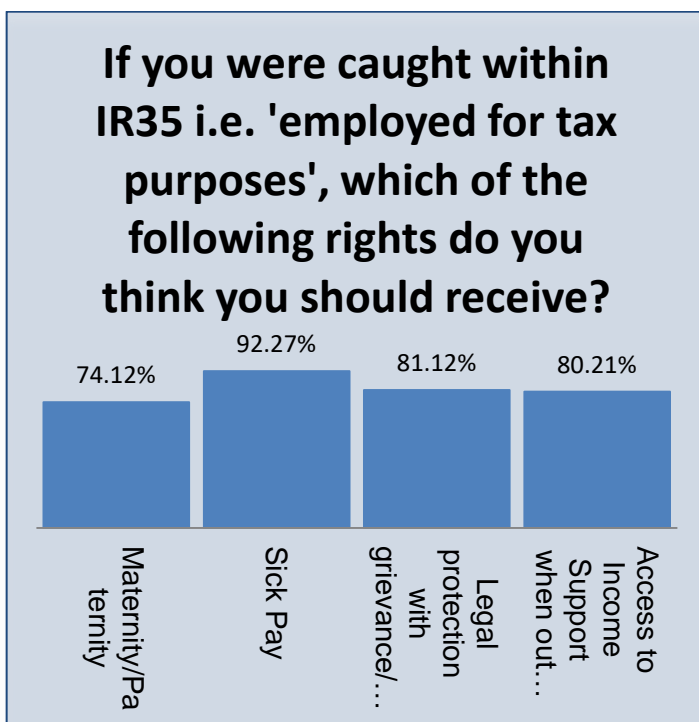


**Firms which have traditionally hired contingent workers to fulfil employee type roles are likely to face increased costs.**

## Majority of contractors assessed as 'employed for tax purposes' expect to get the rights associated with employment.

We asked respondents whether they thought rights should also come with any 'deemed employee' type status:

- 74% want maternity/paternity pay, 92% want sick pay
- 81% want legal protection with grievance/disciplinary
- 80% want access to income support when out of work
- 48% say they would head to tribunal to obtain the rights they feel they deserve.



**Firms assessing workers as employed for tax purposes expect full employment rights and almost half will go to tribunal to obtain them.**

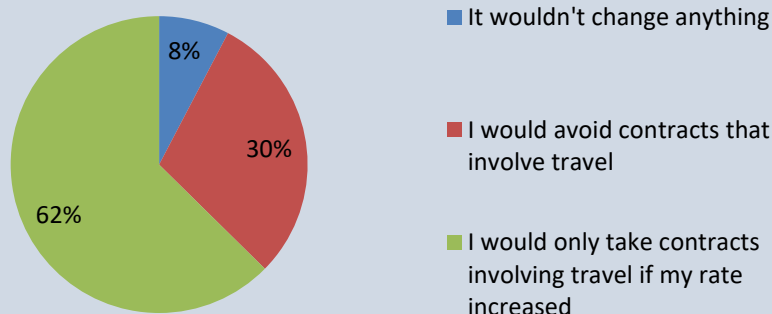


## 92% of contractors say travel would become an issue, with 30% refusing to travel, and 62% only doing so if firms paid more

With travel costs no longer claimable as an expense under 'inside IR35' contracts, we asked respondents their views on whether they would travel to work if caught with the new tax rules:

- 30% said they would avoid contracts with travel if they were inside IR35
- 62% said they would only travel to 'inside IR35' contracts if the rate increased.

**If you were caught within IR35, and could no longer claim expenses, how would this affect your geographical mobility?**



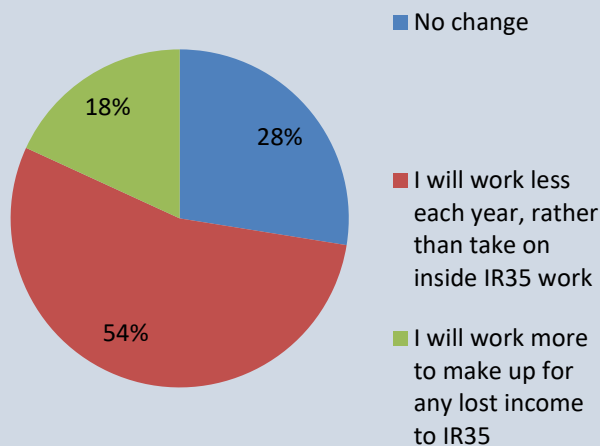
**The mobility of the flexible workforce is under threat, unless firms are prepared to pay increased rates to contractors who travel.**

## 54% of contractors will choose to work less rather than take on 'inside IR35' work, and 23% will quit flexible working.

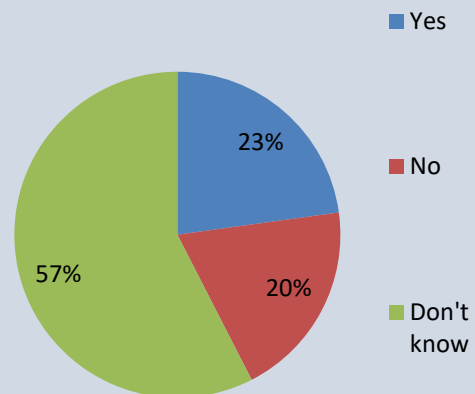
We asked contractors how their work pattern would change if the new tax was introduced:

- 54% of contractors said they would work less rather than take on inside IR35 work
- 23% said they would quit contracting altogether
- 51% of respondents said they would consider changing career (no chart shown).

**If the reforms were rolled into the private sector, would this affect how much you worked?**



**If the reforms were rolled into the private sector, would you quit being a contractor?**

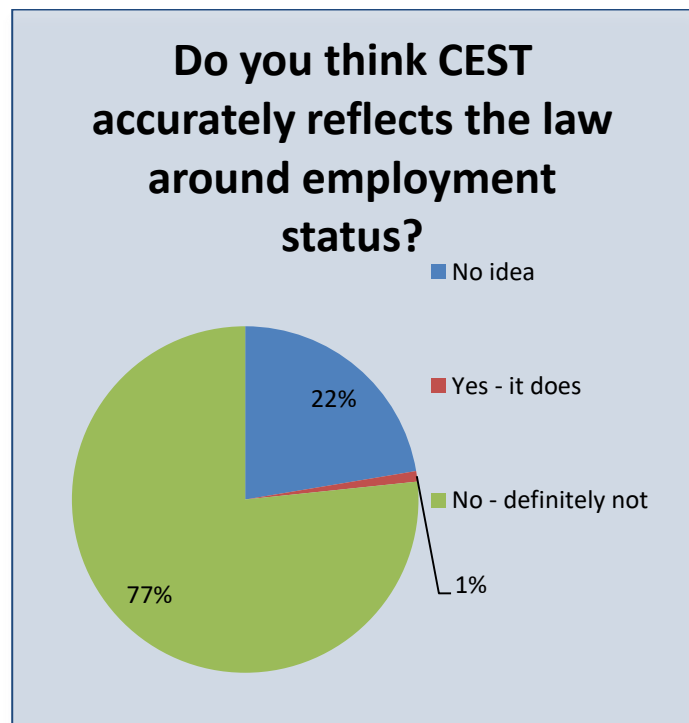
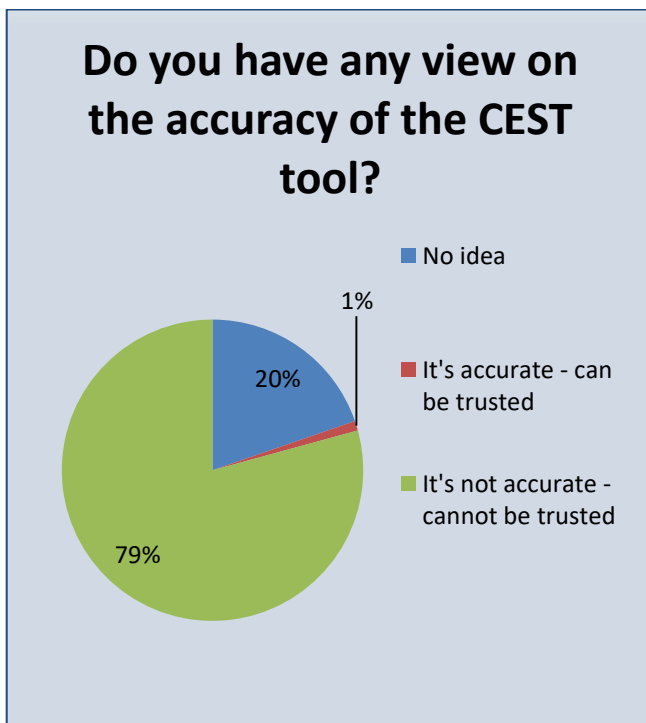


**The flexible workforce will reduce in size, driving up demand, rates and the amount of work completed by contractors will reduce, lowering the tax take.**

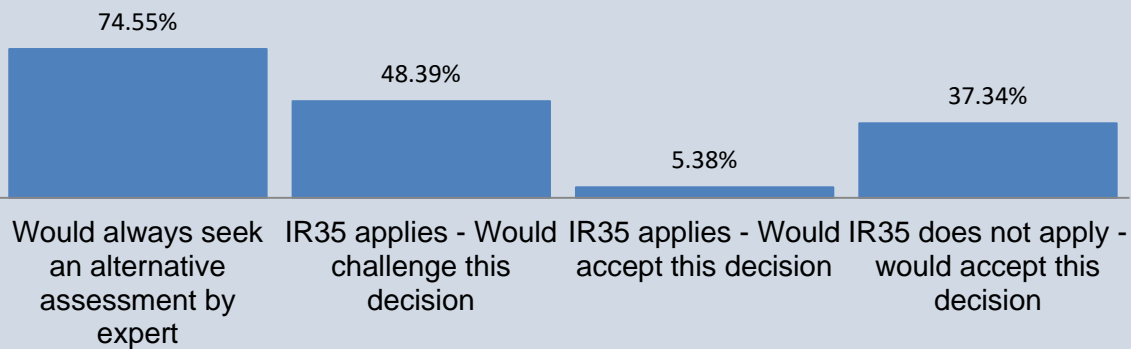
HMRC's IR35 tool is not considered accurate by 79% of contractors, with 77% saying it does not reflect the law. 74% would seek an alternative assessment and 48% would challenge any result.

We asked contractors their views on HMRC's CEST assessment tool :

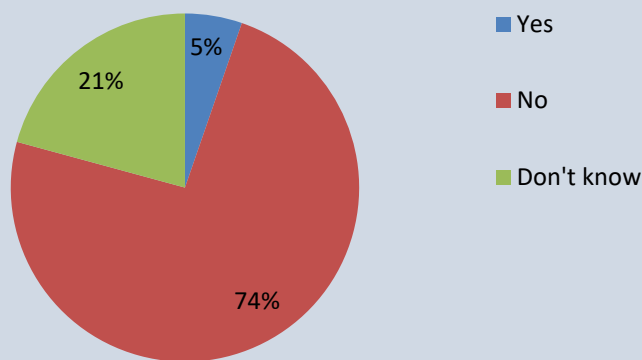
- 79% believe CEST is not accurate
- 77% do not think it reflects the law
- 74% of contractors will always seek an alternative expert's assessment on their status
- 48% would challenge any CEST result saying IR35 applies
- 74% do not trust HMRC to stand by the results of the tool.



### How would you treat a client's IR35 assessment using the CEST tool? [Tick all that apply]



### Do you trust HMRC to stand by the results of the tool?



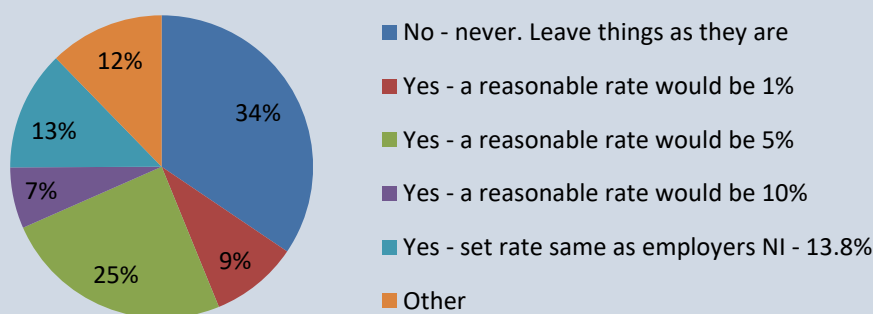
**HMRCs IR35 tool is not considered accurate, is not believed to align with the law, and most contractors will seek alternative assessments by legal experts.**

## 25% of contractors would prefer to cancel IR35 entirely and replace it with a new simple off-payroll of 5%, payable directly by hirers who hire anyone off-payroll.

With the new off-payroll tax designed to clawback employers NI, which is paid by employers, we asked contractors if they would swap a cancellation of the new off-payroll tax rules, and introduce instead a new tax, payable by firms who hired contractors:

- 34% said they would prefer to leave things as they are
- 40% said they would support this, with a new off-payroll tax rate of either 1%, 5% or 10%
- 13% supported a move to introduce a new off-payroll tax the same as employers NI of 13.8%.

### Would you swap a cancellation of IR35 and off-payroll rules, to be replaced by a new off-payroll tax to be paid by firms who hire anyone off-payroll who is not an employee?

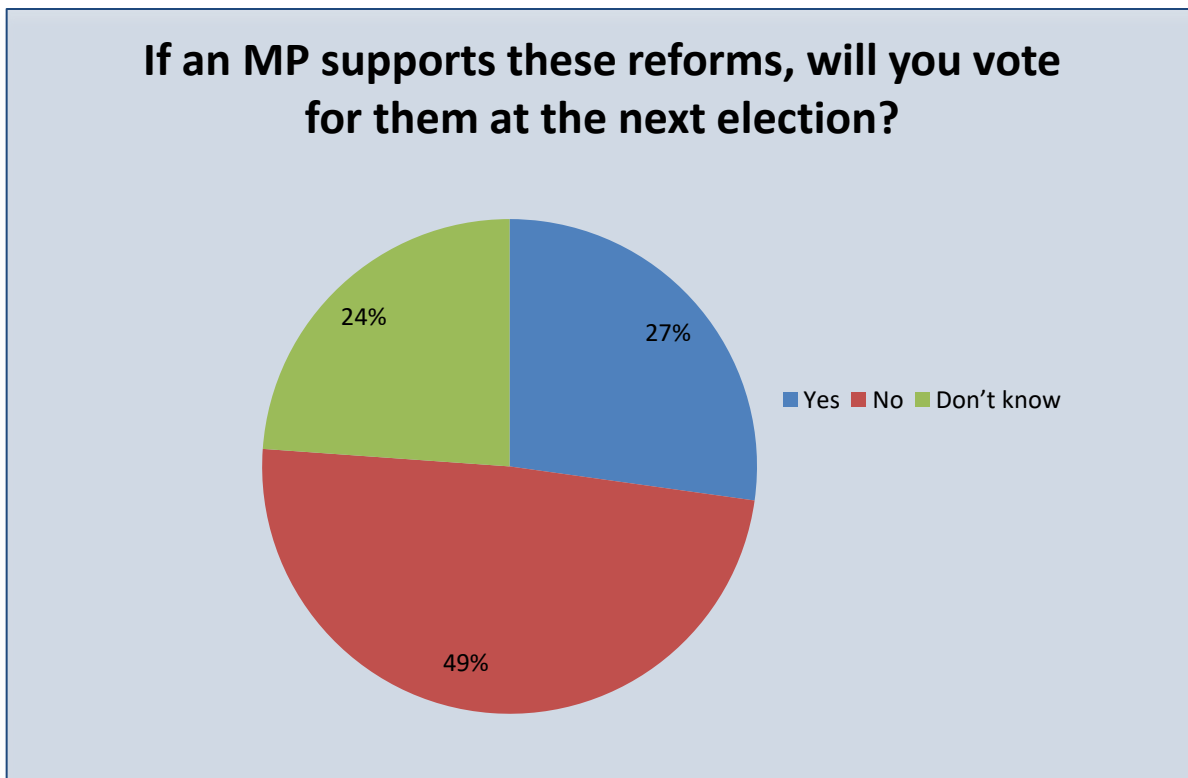


## Many contractors would prefer a simple off-payroll tax, payable directly by hirers who hire workers off-payroll.

## MPs supporting the new off-payroll tax could lose their seat, as 49% of respondents said they would not vote for any MP supporting this move.

We asked respondents if they voted at the last election, and whether they would vote for an MP who supported the new off-payroll tax rules:

- 90% voted at the last election
- 49% said they would not vote for an MP that supported these rules.



**Politically, these reforms are unpopular with the self-employed, with half of contractors saying they would not vote for an MP who supported the new rules.**

## Qualitative data

In the survey we asked respondents to share their views. The main themes expressed were:

- Firms inconsistently assess status, are unable to, or apply blanket decisions
- Being unable to claim travel expenses will reduce or stop contractors working
- Considerable concerns over the impact on the economy as we head into Brexit
- Unanimous belief that assessed as inside IR35 should also mean employment rights given
- Integrity of HMRC's handling of IR35 and off-payroll questioned.

Many contractors caught up in the public sector reforms expressed the problems with no longer being able to claim for travel expenses:

- *"I can no longer do interim jobs that involve significant travel and staying away from home"*
- *"I need to travel so wouldn't take a role if I cannot claim expenses"*
- *"I travel 72 miles per day to go to work, if I can't claim expenses i.e. fuel it is not economical for me to work."*

Many contractors raised concerns over the inability of firms to conduct proper status evaluations:

- *"There is a poor understanding of IR35 among clients and how to do an evaluation of it."*
- *"The impact of organisations withholding payments to contractors (for services already provided) for indefinite periods whilst they conduct IR35 "reviews" is causing real cash flow problems"*
- *"The organisation I 'work' for has rolled out a blanket IR35 scheme and placed all contractors 'inside' the IR35 regs regardless of their actual status"*
- *"Large organisations are applying a blanket approach to all contractors rather than assessing each case by case"*
- *"Public body deemed the contract was outside in both April and October 2017, but then deemed inside March 2018, with no change in circumstances. New contract agreed with Private sector company within 2 days and left public sector. 5 months later, my previous role"*

*is still unfilled.”*

- *“Some public sector bodies have ridiculous blanket approach”*
- *“the reforms have unfairly caught people and deemed them within IR35, using a blanket approach and scare tactics”*
- *“I work for 3 different Local Authorities, two of which have assessed the role of the BIA as outside but one who has assessed it as inside, even though it is the same work for all 3 authorities.”*
- *“I got caught by IR35 and deemed inside. A year later my contract was renewed and I was deemed outside (same end client, different supply rules).”*
- *“[public sector body] are bullying their consultant supply chain making them blanket inside IR35 roles they are seeking to fill, no assessment on a role by role basis merely a blanket inside rule.”*

Contractors who faced CEST assessment were unimpressed with its capabilities:

- *“The CEST tool is not fit for purpose”*
- *“CEST is a farce”*
- *“I do not believe that the CEST questionnaire is fair and reasonable”*
- *“I disputed the illegal blanket assessment using CEST for the entire department”*

Contractors concerned they will no longer be able to stay freelancing:

- *“IR35 is threatening and will force me back into permanent employment which I know is much less healthy for me financially, physically and mentally”*
- *“I actively seek to avoid working within IR35 contracts”*
- *“The prospect of IR35 in the private sector has encouraged me to retire completely.”*
- *“I worked in the public sector up to the IR35 changes last year. This had a huge negative effect on the market. I only worked for 25% of the following tax year. First time I have not had 100% employment in 10 years. Now I work in the private sector.”*
- *“I would NEVER work on an engagement within IR35 as I consider it a punitive and unfair”*



Considerable disquiet was expressed amongst workers, who strongly feel that if they are assessed as employees then they should get the full rights that accompany employment:

- *“Employment for tax purposes without employment rights is simply unfair”*
- *“Why should self-employed pay more tax and NI than employed when we get none of the benefits.”*
- *“if a contractor/freelancer is being taxed the same as an employee, then employment law must be applied in the same way.”*
- *“If I am to be taxed as an employee I would expect all the same benefits and protection as an employee.”*

There were widespread concerns on the impact on the economy bringing these reforms in would create:

- *“it will ruin the economy in the longer term “*
- *“My current client is cancelling all PSC contracts beyond 6 months, effectively putting hundreds of people out of work”*
- *“Reforms threaten the concept of a flexible workforce”*
- *“There's a danger of killing the entrepreneurial goose and preventing anyone from thinking of starting knowledge-based business”*
- *“It will damage the economy and hurt companies who use contractors”*
- *“I think this change, if implemented, will destroy the 'flexible workforce'”*
- *“Very damaging to public sector services, so will be worse in private sector”*
- *“many organisations will not have the resources to deliver projects”*
- *“They're going to kill flexibility in the market place just as the country throws itself of an economic cliff?”*
- *“This will drastically reduce the flexibility of the workforce which could mean the death of some companies”*
- *“At a time of economic uncertainty for the UK, HMRC seems intent on attacking the segment of UK business that provides dearly needed mobility and flexibility in adapting to an ever-changing reality. It is unclear how such short-term gains can be seen as the way forward when they will cause such*

*harm to UK Businesses.”*

- *“This proposed reform could cripple the flexible workforce the UK needs just at a time when it is still vulnerable from the global economy and of course, Brexit.”*
- *“Will devastate innovation within the UK especially for startups that generally need to bring in expertise quickly and for a limited period”*
- *“Leading into Brexit, in a country heavily dependent on the service sector, this will cause significant chaos across the private sector, leading UK companies to either have to increase rates or cancel projects.”*
- *“If I was employed, I would earn significantly less and pay much less in tax”*
- *“Rolling IR35 out into the private sector is just going to raise the costs for businesses hiring contractors”*

Some contractors expressed their concern that the rules mean effectively being treated unfairly:

- *“I know I can prove I am outside IR35 but why should I have to go to court to prove it?”*
- *“...an attempt to impose an illegitimate tax on legitimate contract/contractor arrangements.”*
- *“HMRC are cherry picking statistics and flat out misrepresenting the truth”*
- *“It’s a tax grab masquerading under the much abused word of “Fairness” by HMRC.”*
- *“I have no issues paying the correct amount of income tax, but fail to see why the government should collect tax they are clearly not entitled to. It’s little more than fraud in my mind”*

Interestingly, some contractors would be happy to pay a little bit more tax, provided the uncertainty of IR35 was removed:

- *“I would be ready to pay a little more taxes if we could forget about that whole IR35 story”*
- *“In my opinion, the whole issue of Employment rights, IR35 etc need to be part of a wider review of modern working, simplification and harmonization of PAYE and NIC etc. It seems strange to try to look at one piece of the jigsaw without looking at the whole picture - maybe that is one of the reasons that our whole tax system is such a mess.”*

## Survey demographics

- We received responses from 2,047 contractors.
- 64% mainly worked in the private sector, 19% in the public sector, and 17% in both.
- 91% of the contractors had been contracting for over a year, and 52% had been contracting over 5 years
- Sector breakdown: IT (41%); Interim or project management (6%); Engineering (12%), Finance (13%); with the rest in Other. Contract rates ranged from £100 to £2500 per day.
- 91% of contractors traded via a limited company. The rest were either payroll/umbrella or sole trader.
- Survey was conducted during June 2018.

## Off-Payroll Tax in the news

Latest EAT ruling reinforces that HMRC erred in law with CEST tool [27/Jun/2018]

[https://www.contractorcalculator.co.uk/latest\\_eat\\_ruling\\_reinforces\\_hmrc\\_law\\_cest\\_542410\\_news.aspx](https://www.contractorcalculator.co.uk/latest_eat_ruling_reinforces_hmrc_law_cest_542410_news.aspx)

Has HMRC misled the Chancellor and Treasury on the Off-Payroll tax and IR35 rules? [19/Jun/2018]

[https://www.contractorcalculator.co.uk/hmrc\\_misled\\_chancellor\\_treasury\\_payroll\\_tax\\_ir35\\_542110\\_news.aspx](https://www.contractorcalculator.co.uk/hmrc_misled_chancellor_treasury_payroll_tax_ir35_542110_news.aspx)

HMRCs IR35 CEST tool without MOO can never be fully accurate [14/Jun/2018]

[https://www.contractorcalculator.co.uk/hmrcs\\_ir35\\_cest\\_tool\\_never\\_accurate\\_barrister\\_541910\\_news.aspx](https://www.contractorcalculator.co.uk/hmrcs_ir35_cest_tool_never_accurate_barrister_541910_news.aspx)

Off-Payroll Working: Contractor lifts lid on HS2's non-compliant IR35 practices [28/Jun/2018]

[https://www.contractorcalculator.co.uk/contractor\\_hs2s\\_non\\_compliant\\_ir35\\_practices\\_541810\\_news.aspx](https://www.contractorcalculator.co.uk/contractor_hs2s_non_compliant_ir35_practices_541810_news.aspx)

Have Off-Payroll IR35 reforms rendered contractors guilty until proven innocent? [12/Jun/2018]

[https://www.contractorcalculator.co.uk/payroll\\_ir35\\_reforms\\_guilty\\_until\\_proven\\_innocent\\_541710\\_news.aspx](https://www.contractorcalculator.co.uk/payroll_ir35_reforms_guilty_until_proven_innocent_541710_news.aspx)

NHS implicated in multi-million pound tax dodge following IR35 reforms [17/Jun/2018]

[https://www.contractorcalculator.co.uk/nhs\\_implicated\\_tax\\_dodge\\_ir35\\_reforms\\_541610\\_news.aspx](https://www.contractorcalculator.co.uk/nhs_implicated_tax_dodge_ir35_reforms_541610_news.aspx)

Latest contractor IR35 tribunal win suggests HMRC knew CEST was flawed upon launch [1/Jun/2018]

[https://www.contractorcalculator.co.uk/latest\\_contractor\\_ir35\\_tribunal\\_win\\_cest\\_flawed\\_541510\\_news.aspx](https://www.contractorcalculator.co.uk/latest_contractor_ir35_tribunal_win_cest_flawed_541510_news.aspx)

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New Off-Payroll IR35 factsheet published to counter HMRC's misleading rhetoric [29/May/2018]  
[https://www.contractorcalculator.co.uk/payroll\\_ir35\\_factsheet\\_hmrc\\_541410\\_news.aspx](https://www.contractorcalculator.co.uk/payroll_ir35_factsheet_hmrc_541410_news.aspx)

HMRC is incapable of implementing and policing the Off-Payroll (IR35) Reforms [6/Jun/2018]  
[https://www.contractorcalculator.co.uk/hmrc\\_incapable\\_implementing\\_payroll\\_ir35\\_reforms\\_541310\\_news.aspx](https://www.contractorcalculator.co.uk/hmrc_incapable_implementing_payroll_ir35_reforms_541310_news.aspx)

How HMRC's IR35 reforms are destroying locum nurses' livelihoods and patient care [24/May/2018]  
[https://www.contractorcalculator.co.uk/iir35\\_reforms\\_destroying\\_locum\\_nurses\\_livelihoods\\_541210\\_news.aspx](https://www.contractorcalculator.co.uk/iir35_reforms_destroying_locum_nurses_livelihoods_541210_news.aspx)

76% of PSBs applying blanket rules: why HMRC needs to reconsider IR35 reforms [1/May/2018]  
[https://www.contractorcalculator.co.uk/blanket\\_rules\\_why\\_hmrc\\_reconsider\\_ir35\\_reforms\\_540510\\_news.aspx](https://www.contractorcalculator.co.uk/blanket_rules_why_hmrc_reconsider_ir35_reforms_540510_news.aspx)

HMRC's CEST figures, obtained by FOI, indicate widespread wrongful tax treatment [25/Apr/2018]  
[https://www.contractorcalculator.co.uk/hmrCs\\_cest\\_figures\\_wrongful\\_tax\\_treatment\\_540410\\_news.aspx](https://www.contractorcalculator.co.uk/hmrCs_cest_figures_wrongful_tax_treatment_540410_news.aspx)

HMRC holds no detailed evidence to prove CEST accuracy claims, reveals FOI requests [4/April/2018]  
[https://www.contractorcalculator.co.uk/hmrc\\_holds\\_detailed\\_evidence\\_prove\\_cest\\_540010\\_news.aspx](https://www.contractorcalculator.co.uk/hmrc_holds_detailed_evidence_prove_cest_540010_news.aspx)

BBC pay fiasco highlights mess created by public sector IR35 reforms [20/Mar/2018]  
[https://www.contractorcalculator.co.uk/bbc\\_pay\\_fiasco\\_highlights\\_mess\\_public\\_sector\\_ir35\\_539610\\_news.aspx](https://www.contractorcalculator.co.uk/bbc_pay_fiasco_highlights_mess_public_sector_ir35_539610_news.aspx)

Public sector IR35 reforms push social care sector closer to breaking point [8/Feb/2018]  
[https://www.contractorcalculator.co.uk/public\\_sector\\_ir35\\_reforms\\_social\\_care\\_538710\\_news.aspx](https://www.contractorcalculator.co.uk/public_sector_ir35_reforms_social_care_538710_news.aspx)

Off-payroll rules (IR35) – is HMRC killing UK plc and voluntary tax compliance? [21/Dec/2017]  
[https://www.contractorcalculator.co.uk/payroll\\_rules\\_ir35\\_hmrc\\_killing\\_voluntary\\_tax\\_538310\\_news.aspx](https://www.contractorcalculator.co.uk/payroll_rules_ir35_hmrc_killing_voluntary_tax_538310_news.aspx)

NHS survey: patient care services in crisis as IR35 reforms take their toll [9/Nov/2017]  
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What is IR35

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### 18 years of serving the UK's contracting community

ContractorCalculator is the UK's leading contractor brand and website for contingent workers, with circa 200,000 visitors per month. A vital resource hub, offering a range of free online financial and tax calculators, as well as expert commentary from industry leaders. We also publish the contracting industry Bible, the Contractors' Handbook together with Beat IR35.



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