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18<sup>th</sup> May 2019

Phillip Hammond MP  
House of Commons  
London  
SW1A 0AA

Sir Jon Thompson  
HMRC  
100 Parliament St, London  
SW1A 2BQ

Dear Mr Hammond & Sir Jon Thompson,

**Re: Check Employment Status for Tax (“CEST”)**

I am writing to air the grievances shared by hundreds of thousands within the contracting sector over the inadequacies of your Check Employment Status for Tax (CEST) tool. The fallout from which you have brazenly refused to acknowledge, let alone attempted to address.

Since the Off-Payroll rules were introduced to the public sector in April 2017, CEST has been the chosen status assessment solution for the vast majority of hiring organisations. This is largely due to assurances you provided - that assessments carried out using CEST will be less prone to scrutiny.

Use of CEST has also coincided with a sharp uptick in contractors being assessed as ‘deemed employees’ and taxed accordingly, something you have neglectfully attributed to heightened compliance with IR35 rules.

**The contentious link between CEST and ‘deemed employees’**

A [National Audit Office \(NAO\) report](#) on the BBC’s adoption of the Off-Payroll rules found that, of 663 BBC freelancers assessed using CEST between August 2017 and June 2018, 92% were deemed ‘employed for tax purposes’.

When quizzed on this curiously high number at a [Public Accounts Committee \(PAC\) hearing](#), HMRC second permanent secretary Jim Harra insisted that the correct status assessment had been made for each individual. He went on to blame the BBC for the failing to identify said freelancers as ‘deemed employees’ earlier, describing the broadcaster’s previous employment status practices as “a bit adrift”.

An ongoing investigation we have conducted ourselves has uncovered multiple other public sector bodies whose use of CEST has resulted in almost unanimous ‘inside IR35’ results:

- [HS2 deemed 98% of contractors to be caught](#) by IR35 in 2018
- [Network Rail found 99% of contractors within scope](#) in 2018
- The [Met Office deemed 98% caught](#) between April 2017 and January 2019
- In the same timeframe, 87% of Crown Commercial Service (CCS) contractors were deemed employees

Public body	# of assessments	Inside IR35	Source
BBC	663	92%	National Audit Office
Network Rail	925	98%	FOI - ContractorCalculator
HS2	2083	95%	FOI - ContractorCalculator
Met Office	141	98%	FOI - ContractorCalculator
Crown Commercial Services	97	87%	FOI - ContractorCalculator
	<b>3909</b>	<b>94%</b>	

Is it your view that the prior practices of these organisations were also simply “a bit adrift”? Is it not conceivable that CEST – a tool which attempts to determine employment status based on [answers to a maximum of 16 questions](#), and as few as four – is pushing unfeasibly large numbers of contractors inside IR35?

[By your own estimates](#), roughly a third of contractors are within scope of the rules. Why do the figures obtained from the BBC, Network Rail, HS2, the Met Office and the CCS contrast so sharply? The answer is CEST, a digital extension of your blinkered perception of employment status law.

### **CEST – proven wrong in court, rejected by experts**

Recent IR35 tribunal victories for presenters [Lorraine Kelly](#) and [Kaye Adams](#) have helped further underline the shortcomings of CEST, which was unable to determine the correct result when tested against either judgment.

The former case was a particularly comprehensive victory for the taxpayer. Yet somehow, CEST, just like you, [construed the working arrangement as one of employment](#). How is the public expected to trust the output of a tool which has been shown to return the wrong outcome in the most straightforward of employment status cases? Or a tool developed by a Government body which has only outright won one of its [last 12 IR35 tribunal cases](#)?

A factor in many of these defeats has been your assumption that mutuality of obligation (MOO) is inherent in every exchange of labour, an argument which has been [roundly rejected by experts](#) and consistently rebutted by tribunal judges. The fact that CEST doesn’t consider MOO on this same basis is one of many reasons why the tool cannot be considered credible.

## **Two years in, still no proof of CEST's accuracy**

When the public sector Off-Payroll proposals were introduced, we described your plans to create a simple, accurate IR35 assessment tool which provides a binary status decision as “[Disneyland thinking](#)”. We are yet to be proven wrong. Though you have continued to reiterate that “when used correctly”, CEST will provide the correct outcome, we are still awaiting evidence demonstrating this supposed accuracy.

When asked for evidence of testing conducted to ascertain CEST's accuracy, you returned a [list of 24 employment status cases](#) which you claimed CEST had been tested against, detailing simply the name of the case, the result, and CEST's result. There was no documentation detailing the answers entered into CEST for each case, and hence no means of verifying your claims as to each outcome.

After analysing the court Judgments, we conducted [our own re-testing of CEST](#), finding it to be woefully inaccurate. In only 58% of cases did CEST return the correct answer for the right reasons. CEST returned the wrong outcome in seven cases, while in another three it returned the correct outcome, but for the wrong reasons.

You have stonewalled numerous requests for detailed evidence of the testing of CEST, [insisting that the tool was exempt from formal testing](#) under Government's Digital Services Standards as it isn't “a transactional Digital Service”. This seems a hollow excuse when you are encouraging its use to directly determine the tax status of hundreds of thousands of individuals.

## **CEST defence is akin to climate change denial**

You have brazenly disregarded the mounting evidence of CEST's inadequacies whilst failing to provide anything credible to substantiate your own claims. Your public defence of CEST is akin to climate change denial. The evidence is indisputable and right before your eyes, yet you simply refuse to acknowledge it.

Rather than recognise CEST as the cause of the disproportionate uptick in ‘deemed employment’, you have ignorantly attempted to apportion blame elsewhere. Such a refusal to be held to account is unacceptable from a Government department. Especially when your actions are having such a profound and damaging impact on thousands of individuals, public sector projects and the labour market as a whole.

Proposals to introduce the Off-Payroll rules to the private sector with a compliance process underpinned by CEST will only amplify the chaos. This is why we are campaigning for:

- An independent inquiry into CEST and the claims as to its accuracy.
- Independent audits of public bodies to establish whether CEST has provided the correct answers.
- Recall of CEST until an updated and accurate version has been developed.
- The introduction of measures enabling contractors to secure tax refunds if found to have been subject to an incorrect determination.

- A halt to the Off-Payroll plans until you can prove that the private sector is not at risk.

We hope that this letter encourages you to reconsider your position on CEST, and revert back to the old ethos of collecting the right amount of tax, not the maximum amount.

In the meantime, I have two questions:

**TWO QUESTIONS:**

Given the evidence provided within this letter that demonstrates CEST is not fit for purpose, will HMRC take down the CEST product with immediate effect?

If not, what are the reasons for HMRC to not take the tool offline?

Yours sincerely



Dave Chaplin  
CEO, ContractorCalculator