

£200m tax reclaim among multiple consequences of HMRC's malfunctioning CEST tool



Last week we exposed the test data used to evaluate HMRC's Check Employment Status for Tax (CEST) tool for what it is – hopelessly unreliable and biased. Our near 18 month-long investigation found that the taxman's tool [arrived at a flawed conclusion 42% of the time](#) when properly tested against the 24 test cases which HMRC claims it used.

Having seen our 690 pages of evidence, the *Daily Telegraph* reported that the self-employed are being '[routinely misled by an official Government tool](#)', while the story was [also reported by Recruiter](#) and [HRDirector](#).

CEST's shortcomings have been evident to us since its inception. But, as the general public becomes wise to this colossal blunder, the true consequences of HMRC's deception will soon be felt by recruiters, hiring organisations, and the taxman himself.

HMRC reiterates debunked claim in defending CEST

It took ContractorCalculator more than a year to obtain evidence of HMRC's CEST testing sessions, which the taxman only shared reluctantly [following an intervention by the Information Commissioner's Office \(ICO\)](#).

The evidence amounted to just a single page list of 24 court cases used to test the tool, and no further detail. After examining 557 pages of court judgments, we produced 690 pages of detailed testing documentation, debunking HMRC's claims regarding CEST's accuracy.

This makes HMRC's latest defence all the more audacious, if not particularly surprising. Repeating the rhetoric that it has pedalled for several months, and which we had just comprehensively disproven, the taxman's prepared response to the *Daily Telegraph* and *Recruiter* was:

"The CEST digital service was rigorously tested throughout development, with input from external stakeholders, in accordance with government data standards prior to release. Results have been tested by HMRC against known case law and settled cases."

The costly consequences of CEST for HMRC

As HMRC continues to avoid reality, the consequences of CEST are bound to come thick and fast. The taxman has heralded the Off-Payroll tax as a huge success, claiming it to have generated an additional £410m.

But, if just fewer than half of those assessments were incorrect due to a flawed CEST assessment, HMRC may need to prepare itself for a tax reclaim of around £200m from disgruntled contractors.

By manipulating the law and casting its net too far, HMRC has already encouraged genuine tax avoidance. Notably, Off-Payroll and the

subsequent excessive taxation that has been forced upon many has resulted in a [proliferation of dubious tax avoidance schemes](#).

Feeling like they are unable to secure fair tax treatment, disenchanted, and sometimes desperate, contingent workers are drawn increasingly to these schemes. With CEST's fallacies exposed, this problem is bound to worsen.

How will mistrust of CEST impact UK plc?

The primary growing mistrust in CEST, HMRC and the Off-Payroll tax can permeate the labour market in several ways, all of which make bleak reading for UK plc.

Fewer contract engagements are an inevitable outcome. A [recent ContractorCalculator survey](#) of more than 2,000 contractors found that 94% would avoid contracts placing them inside IR35, with 25% stating they would never accept a contract within IR35.

An October 2017 survey by the Association of Professional Staffing Companies (APSCO) found that public sector placements had already dropped, [according to 70% of recruiters](#).

UK business risks intensified skills shortages as a result. As the UK prepares to leave the EU, with more than 5m private sector businesses – many of whom rely on highly skilled contingent labour – HMRC couldn't have timed this farce any worse.

The remaining contract engagements could also pose problems. Costs to hirers are on the rise as contractors increase their rates to counter the tax hike imposed on them. 45% of APSCO's respondents reported a rise in public sector contract rates; a similar figure would threaten a huge additional cost for UK plc if Off-Payroll is introduced to the private sector.

94% of contractors told us they believe they should receive employment rights if forced to work under IR35. Meanwhile, 48% claimed they would be willing to lodge an appeal to secure those rights, meaning dubious CEST assessments could have costly legal implications for hirers.

'If you think CEST is risk-free, think again'

Many hirers and agencies are believed to have stood by CEST's assessments because they believe it to be the risk-free option. HMRC has coaxed public sector organisations into using CEST, and has reiterated that it will stand by the tool's assessment, providing the impression that hirers and agencies will be protected against tax risk.

In truth, there are two scenarios whereby HMRC states it may challenge CEST's outcome:

1. If incorrect advice is believed to have been provided
2. If an HMRC enquiry leads the taxman to conclude that the result should be dismissed.

Effectively, HMRC has said that it will stand by CEST unless it decides not to, which is a fairly regular occurrence. The taxman is already very active in challenging CEST outcomes – we have witnessed this first hand with many of the investigations in which we are involved.

So, if you think CEST is a risk-free option, think again. Proper compliance with the legislation is a far less risky alternative to believing the taxman's empty promises.

The message is loud and clear for all parties involved; CEST is more trouble than it's worth. The sooner HMRC acknowledges this, the better.

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