Tunnel vision leaves Chancellor on brink of disastrous IR35 decision, warns IPSE

The Chancellor has less than a month to amend his blinkered view of the public sector IR35 reforms and avoid making a grave mistake by extending them to the private sector in the Autumn Budget.

This is according to Chris Bryce, chief executive of the Association of Independent Professionals and the Self Employed (IPSE), who has spoken out after concerning reports that changes to IR35 in the private sector could be imminent.

“It’s something that we suspected and feared was coming, and we’re incredibly disappointed to hear it mentioned out loud,” says Bryce. “HMRC appears to be providing the Chancellor and his team with a very inaccurate account of the impact of the changes on the public sector.

“If the Government doesn’t open its eyes to the bigger picture, it will make a costly error that will do serious damage not just to businesses and self-employed people across the country, but to our economy as a whole.”

IPSE’s IR35 warning: ‘precipitative action will benefit nobody’

Though there hasn’t been a formal announcement that the Autumn Budget will contain further changes to IR35, the signs look ominous. Last week, financial secretary to the Treasury Mel Stride told the Financial Times that the department was considering reforms, citing his belief that the disparity between the private and public sectors needed to be addressed.

Whilst Bryce isn’t surprised by the prospect of further damaging changes, he warns that more ill-considered policies are the last thing the self-employed – and the UK – need right now:

“Precipitative action would be entirely wrong and would benefit nobody. At the very least there should be a serious and in-depth consultation involving every interested party.

“HMRC is clearly in denial about the fallout from the public sector reforms, and unfortunately it seems the taxman is the only person the Chancellor is willing to listen to. Quite simply, Government and HMRC are flying in the face of the facts, and making ruinous decisions.”

Government chooses to look the other way in face of mounting IR35 evidence

As Bryce notes, the Chancellor seems set on extending the changes to IR35 to the private sector despite the mounting evidence of the damage they have already caused in the public sector.

Last month, for example, Transport for London (TfL) announced that critical delays to a London Underground project were the direct result of the exodus of contractors caused by the public sector IR35 changes.

Meanwhile, another judicial review was brought against NHS Improvement in October after it emerged that the public sector body wasn't fulfilling its compliance requirements. This is in addition to multiple surveys illustrating the problems that have dogged the public sector since last April.

"We know for a fact that the changes have caused no end of difficulties for organisations such as the NHS and TfL," notes Bryce. "We know projects are in disarray due to contractors leaving, and we know the cost of this to the public sector far outweighs any tax benefit.

"It's difficult to see how this Government can claim to be an advocate for small businesses and at the same time penalise the UK's very smallest businesses, to the detriment of wider industry. The flexible workforce, and indeed UK plc's as a whole, look set to take another significant hit."

The taxman's IR35 malpractice needs urgent attention

Another IR35 issue the Government appears to be oblivious to is the taxman's twisting of the legislation to boost its own tax yield. Last week, ContractorCalculator revealed that HMRC had acknowledged that its Check Employment Status for Tax (CEST) IR35 tool doesn't consider mutuality of obligation (MOO), a key test of employment status. But HMRC has nevertheless been attempting to enforce use of the tool by public sector bodies (PSBs).

"We've always been very suspicious about the ethics of the tool and its use," comments Bryce. "It had fundamental flaws from day one, and a tool tackling a grey area like this should just act as guidance, rather than as a definitive answer.

"Despite this, HMRC is taking the word of its flawed tool as gospel, and is encouraging PSBs to do the same, even though it directly contradicts case law. The fact that the tool ignores MOO is simply outrageous."

He adds: "HMRC has made it very difficult for PSBs to actually comply with the legislation by insisting that CEST is the only tool it will recognise. Being obligated to use a tool with such fundamental flaws is just wrong, and we're discussing mounting a challenge over this as we speak."

HMRC taking the law into its own hands

The enforcement of IR35 in the public sector is clearly evidence that HMRC is getting ideas above its station, and Bryce believes it is time a line was drawn between what the taxman can and cannot do:

"It's high time that the role of HMRC was clearly defined. HMRC is currently acting as rule maker, judge and police service for the tax system, and the public sector IR35 reforms are a clear example of how the taxman has overstepped the mark."

He concludes: "Tax policymaking should rest with the Treasury where it can be properly overseen by ministers."

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