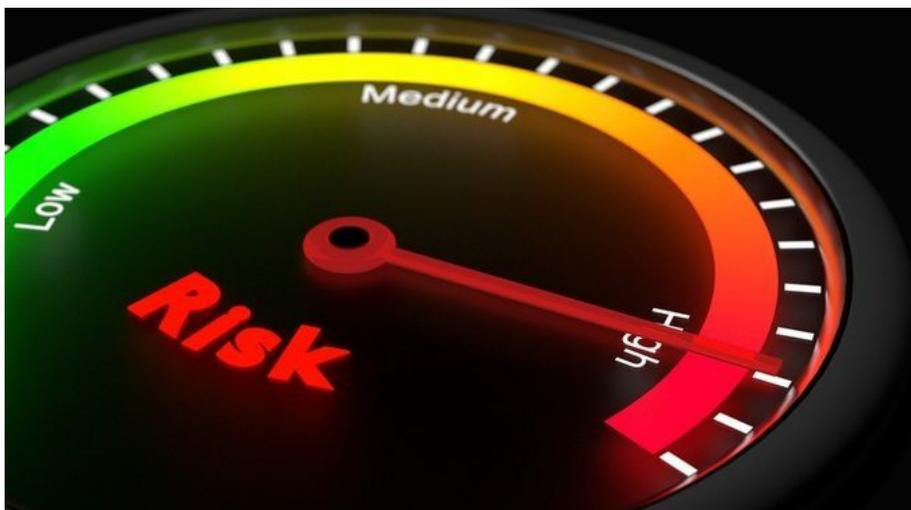


Fear of uncertainty is killing the flexible workforce



The impending introduction of the new Off-Payroll Tax to the private sector has plunged a dagger into the heart of the UK's flexible workforce. The lack of Parliamentary oversight has resulted in a failure to recognise the diminishing impact the rules will have on the freelance sector and the resulting damage to UK industry. So much for the 'party of business'.

Following two decades of failing to achieve its anticipated tax yield from IR35, HMRC has decided to pass the buck onto roughly 60,000 businesses and 20,000 agencies via the Off-Payroll Tax. These companies have until April to learn how to apply an area of law that HMRC consistently misinterprets in court, despite the taxman's inspectors taking 3-5 years to supposedly learn its nuances.

Making an incorrect assessment can prove incredibly costly, with HMRC permitted to pursue the allegedly offending party for outstanding tax liabilities. To negate this risk and uncertainty, many firms are taking the default position that all their freelancers are 'employed for tax purposes', subjecting thousands of genuinely self-employed to zero-rights employment. But with thousands opting to down tools rather than be subject to exploitation, the consequent damaging impact on the economy is now being realised.

Uncertainty underlined by inconsistent tribunal outcomes

The crux of the matter is the uncertainty caused by unrealistic compliance requirements expected of clients and agencies. [Eamonn Holmes' recent tax judgment](#) is an illustrative example. Holmes was surprisingly deemed 'inside IR35' despite freelancing for 40 years and having considerable autonomy over his work.

His engagement with ITV was remarkably [similar to that of Lorraine Kelly](#), who secured a comprehensive victory over HMRC in her IR35 appeal. Instead of finality and certainty, IR35 status in the media sector appears to have become akin to a coin toss.

With evident inconsistencies between recent tribunal judgments, how are the UK's freelancers, end-clients and agencies expected to attain any sort of certainty over tax status? Perversely, even though HMRC has only outright won three of the last 18 cases to reach the courts, it is now tasked with educating the sector.

The uncertainty has resulted in a stand-off and is preventing work from being done. End-clients and agencies are refusing to engage freelancers on an 'outside IR35' basis for fear of the tax risk that accompanies such a decision. Meanwhile, many freelancers whose engagements should be genuinely outside the scope of the rules are reluctant to work 'inside IR35' and be treated unfairly.

Non-compliance compounding Off-Payroll disruption

Another contributing factor for freelancers is the sourcing of employment tax costs for contracts deemed 'inside IR35'. For engagements with affected freelancers, [the Off-Payroll rules require](#) that the 'fee-payer' pays employment taxes *on top* of the rate paid to the 'deemed employee'.

Instead, many organisations are unlawfully deducting this cost from the contract rate, subjecting freelancers to effective double taxation, all without providing the requisite employment rights that their deemed status warrants. And although evidence is widespread, HMRC has shown no interest in rectifying this in line with its stated intentions of 'bringing fairness into the tax system'.

Critical public services such as the [NHS are already feeling the full effect of the fallout](#) following 2017's public sector implementation of the Off-Payroll rules. Diminished earnings and the withdrawal of tax relief on travel expenses for 'inside IR35' workers have made it unviable for travelling locum doctors and nurses to work in remote locations. Many trusts have consequently suffered from intensified skills shortages, impacting severely on patient care.

If private sector firms are to avoid a similar fate and the tax risk accompanying an 'outside IR35' determination, it will come at a cost. The Off-Payroll rules are contrived in such a manner that firms are encouraged to force freelancers into zero-rights employment.

Many freelancers who feel they are a victim of this will charge increased rates to compensate themselves for their tax hit, significantly driving up project costs for businesses. Inevitably, a significant portion will say no to this exploitation altogether, depriving UK industry of the on-demand access to key skills that it relies so heavily upon.

Tax system overhaul required to restore certainty

Tax policy is meant to provide certainty and finality. IR35 and the Off-Payroll tax rules provide quite the opposite. Rather than further meddling, an overhaul of taxation of the self-employed is necessary. The newly adopted model needs to preserve HMRC's tax yield while promising no zero-rights employment, no dismantling of the flexible workforce, no damage to the economy, no burdensome compliance requirements, and crucially no uncertainty.

If HMRC is serious about restoring parity to the tax system, this is what is needed. A simple solution that ticks all these boxes could be far easier to find than HMRC's eternal struggle with IR35 would have you believe.

HMRC estimates that roughly one in three freelance engagements is within scope of IR35 and should be taxed as such. The Off-Payroll rules exist to claw back employer's NICs at 13.8%, so a simple contractor levy of 4-5% to be paid by end-clients on *all* limited company engagements would surely retrieve a comparable amount of tax and provide the certainty the market needs to carry on working and stoke the economy.

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