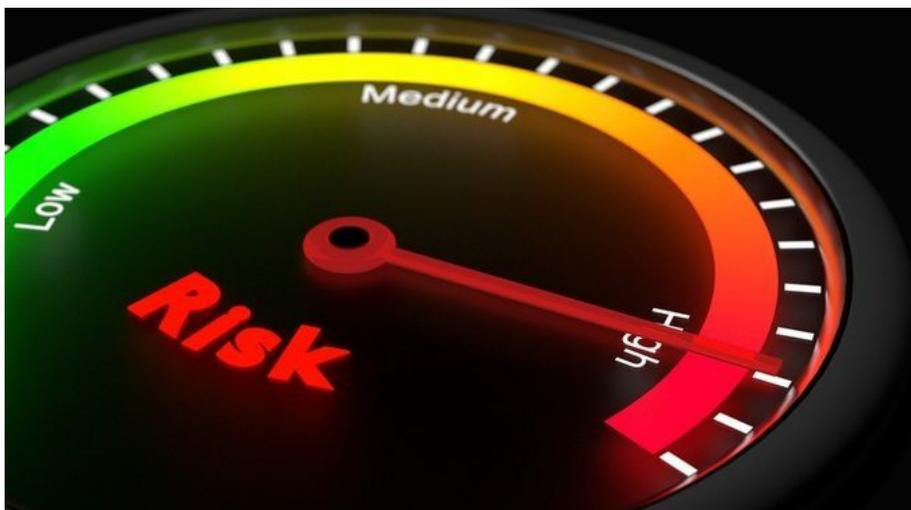


Fix CEST or risk mass uncertainty and tax status disputes, CIOT warns HMRC



Significant improvements need to be made to HMRC's Check Employment Status for Tax (CEST) tool before the private sector extension of the Off-Payroll rules, warns the [Chartered Institute of Taxation](#) (CIOT).

The tax authority has stressed that failure by the taxman to correct the tool's fundamental flaws will lead to uncertainty and protracted disputes over tax status between businesses and workers.

"If businesses are to make the correct decisions on whether the Off-Payroll rules apply then we think that the existing CEST will need to be significantly improved," comments Colin Ben-Nathan, chair of CIOT's employment taxes sub-committee.

CEST ill-equipped to consider necessary case law factors - CIOT

Responding to HMRC's [recently-closed Off-Payroll consultation](#), CIOT has voiced its concern over CEST's failure to consider all of the necessary employment case law factors before arriving at a decision concerning IR35 status. This, it warns, leaves CEST prone to inaccurate status determinations.

"Until CEST takes proper account of mutuality of obligation (MOO), multiple engagements, contractual benefits -such as holiday pay, maternity/paternity pay - and whether someone is in business on their own account, it is unlikely it will be able to reach the right decision on status," notes Ben-Nathan.

"This is important because otherwise the lack of confidence in CEST will increase disputes between businesses and contractors and so lead to significant time and effort having to be expended by businesses, contractors, HMRC and the courts in trying to resolve them."

CIOT comments heap pressure on HMRC

CIOT's comments will apply further pressure on HMRC, following the [publication of an open letter from ContractorCalculator](#) citing the taxman's denial as to CEST's shortcomings, in spite of:

- Disproportionately high numbers of contractors deemed 'inside IR35'
- Rejection of CEST assessments by tribunal judges
- HMRC's failure to provide credible proof as to CEST's accuracy
- Substantial evidence of CEST's failings.

“The fact that one of the UK’s leading professional tax bodies has seen fit to publicly campaign for CEST to be immediately rectified says it all,” comments ContractorCalculator CEO Dave Chaplin. “HMRC simply cannot continue to pretend that CEST is a non-issue.”

Where is the proof of CEST’s accuracy?

CIOT adds that HMRC’s dismal recent record contesting IR35 status in court is itself a cause for concern. This will raise further questions over the capabilities of the tool, which was recently proven by ContractorCalculator to have [returned the wrong outcome in the Lorraine Kelly case](#).

For Chaplin, HMRC needs to be held to account for its insistence upon CEST’s accuracy in spite of such clear evidence. He argues that HMRC should provide proof demonstrating its assertions:

“HMRC should no longer make claims as to CEST’s accuracy without providing cast-iron proof. That means publishing a full set of testing output for every single IR35 court case to date, with a list of the answers put into CEST for said cases. This will enable rigorous independent verification to be carried out, which is absolutely essential for a system that will affect the lives of 600,000 tax payers.”

Off-Payroll delay required to enable CEST amendments

While CIOT has proposed an October 2019 deadline for the necessary changes to be made, leaving time for contracts to be reviewed before April 2020, Chaplin warns that this is unmanageable:

“From a software engineering perspective, HMRC has zero chance of meeting the CIOT proposed deadline, which is only four months away. A proper testing cycle, using independent testers, with the level of testing documentation and proof required to prove accuracy could alone take months.

“That would leave HMRC with a matter of weeks to somehow rebuild a system to accurately assess status. That’s insurmountable. The only logical option is to delay the legislation for at least another year.”

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