

HMRC edges closer to private sector 'Off-Payroll' rollout with IR35 consultation

Off-payroll working in the private sector

Consultation document

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HMRC has launched its long-awaited [consultation into 'Off-Payroll' working in the private sector](#), and, in doing so, all but confirms its plans to extend the current public sector IR35 rules to the UK as a whole.

Coincidentally, the launch of the consultation comes just days after it emerged that a [contractor had defeated the taxman in an IR35 tribunal](#) during which HMRC itself demonstrated a very loose grasp of the legislation.

"At this stage, the consultation appears to be nothing more than a formality," comments ContractorCalculator CEO, Dave Chaplin. "HMRC claims it is welcoming suggestions for alternative solutions, but if history is anything to go by, this is a done deal."

The cost of non-compliance: can we trust HMRC's figures?

HMRC estimates that a third of contractors operating outside of IR35 should fall within the legislation, but claims only 10% of this group are currently doing so. It believes this shortfall has cost the Treasury £700m in 2017/18 but could rise to £1.2bn a year by 2023.

"As [ContractorCalculator has demonstrated](#), when contractors earn more money, they actually pay more tax than they would if they were employed. The only shortfall comes from employer's National Insurance (NI), which is avoided by corporations and overlooked in the consultation" notes Chaplin. "Yet, as always, HMRC's focus is on ensuring contractors pay more even tax."

Curiously, despite proposing amendments to the legislation, whereby contractor hirers are tasked with assessing IR35, the taxman acknowledges that limited company contractors – who are typically better versed on IR35 – may not have the right skills or systems in place to carry out an accurate IR35 assessment.

"This is frankly a falsehood, and designed to bolster their agenda," notes Chaplin. "Contractors have had 18 years practice at assessing IR35 and our accountants have been running our own payrolls for longer. And as the public sector debacle has shown, hirers have no idea how to assess status properly and instead fall back on unlawful blanket assessments."

Will HMRC consider Taylor Review recommendations?

The consultation attempts to evaluate the effectiveness of the public sector reforms while exploring how to tackle non-compliance in the private sector. Critically, HMRC acknowledges that the latter includes seeking views on a possible extension of the public sector rules into the private sector, a solution which the taxman later describes as the 'lead option'.

Disappointingly, HMRC will not consider any change to the ongoing consultation into the possible alignment of employment status definitions across tax and employment rights, as recommended in the [Taylor Review](#).

"The only way that a remotely fair tax system can be achieved is by aligning tax and employment status. Yet, predictably, HMRC has omitted this from consideration right from the offset," says Chaplin.

"As we have seen in the public sector, these proposed reforms will further enable firms to force workers into false self-employment, circumventing their obligation to give them employment rights. This is wholly unacceptable."

Rising tax receipts means rising compliance for HMRC

According to HMRC, roughly 58,000 more public sector workers than expected paid tax via Pay As You Earn (PAYE) between April 2017 and February 2018, following the reforms. This claw back, it claims, has contributed to an additional £410m in tax receipts. However, these figures, as Chaplin points out, don't necessarily equate to rising compliance:

"HMRC can pat itself on the back for increasing its tax revenue, but much of it is at the expense of contingent workers being forced into false employment. Unlawful blanket assessments carried out by hirers have ensured that thousands of public sector contractors are being incorrectly taxed. Moreover, the figure doesn't account for spiralling costs that Government is paying to keep contractors on key infrastructure projects."

"A full assessment of the figures will not be available until at least Jan 2019, because of the reduced corporation tax and dividend tax receipts that will appear on self-assessment and companies CT600 forms. At the moment HMRC is ludicrously basing its conclusions on an equation missing two out of the three variables."

Nonetheless, HMRC concludes that the reform has been successful on all fronts, dismissing factual evidence presented to demonstrate the damage that the reforms have caused as merely 'anecdotal'. ContractorCalculator was among numerous stakeholders who submitted evidence to HMRC, based on surveys which attracted thousands of respondents. HMRC has dismissed all this empirical evidence as 'rumours'.

Taxman continues to heap praise on CEST

Unsurprisingly, HMRC's summary of the independent research into the public sector reforms largely contrasts with the feedback from the contract sector. The taxman reports that roughly half of respondents said that they found the reforms easy to comply with, with HMRC's Check Employment Status for Tax (CEST) tool cited as a key reason.

"But," notes Chaplin, "if you read the report ([available here](#)), you can see that HMRC has spared its own blushes by cherry-picking from it for their summary. Examples of omissions in the consultation are: "

- "We've found that unilaterally across the board, everything is now coming in more expensive than it was previously..... we've noticed a trend that everything has shifted up [in cost by] 10 -15%." - Central Body, Health and Social Work, 10,000+ employees
- "The people who left us when the legislation came in all said that they were going to increase their rates to absorb taxes & NI." - Site, Public Administration & Defence, 500 to 999 employees
- ".....for roles where skills were in scarcer supply or where they faced competition from private sector organisations (e.g. doctors and IT contractors)..... agencies were perceived to have had the 'upper hand' in rate negotiations and in order to maintain service delivery, public bodies were forced to increase rates."
- "We are trying to entice people to work through our payroll [instead] obviously at higher daily rates than they might charge if they were operating through their own company"

"Some clients may be finding the reforms easy to adapt to, but, if that is due to CEST, it means they aren't accurately assessing their contractors," says Chaplin. "CEST may be making hirers' lives easier, but it is not promoting compliance with IR35."

"HMRC hangs its CEST claims off notions of certainty, and still claims it is accurate [despite no evidence being able to back its claims](#). A coin-flip provides certainty, but is equally inaccurate as predicting employment status."

"It's arrogant that HMRC continues to boast about the success of CEST and completely ignore all of the evidence that demonstrates that it isn't fit for purpose. It has also yet to support its [erroneous claim that CEST doesn't need to consider mutuality of obligation](#) because it considers all contractors are inherently subject to it - a claim effectively refuted by judge in the [most recent IR35 case](#)."

"This has begun to resemble something [Orwellian akin to 1984](#)," Chaplin adds. "We now have our own 'Ministry of Tax Truth', set up to propagate mistruths about IR35. Government may be lapping it up, but no-one else is."

HMRC did, however, acknowledge that 32% of central bodies have found it harder to recruit contingent workers following the reforms, while 28% reported that contractor rates had increased.

Private sector rollout looks a foregone conclusion

Extending the public sector rules into the private sector is evidently HMRC's favoured option, and few alternatives are offered. However, the taxman's recent track record, when it comes to assessing IR35, has given rise to serious concerns about a private sector rollout:

"How can HMRC be expected to educate millions of businesses to assess IR35 when it doesn't understand the legislation itself," says Chaplin. "All we will see in the private sector is further non-compliance. Despite what HMRC believes, [CEST is rightly being disregarded by many hirers and agencies, as recent FCSA data demonstrates.](#)"

The taxman poses further amendments to the legislation to improve its effectiveness and ease of adoption. One is to ask hirers to gather and retain information for off-payroll engagements, while another is to require hiring clients to conduct checks of their labour supply chains to ensure that they are compliant with IR35.

"HMRC is keen to stress that employment status is not a choice. But this tyrannical proposal appears to sanction a regime whereby clients can decide a contractor's status, with no means of appeal," comments Chaplin. "As things stand, HMRC can step in and challenge a contractor's IR35 status. Why shouldn't a contractor appeal the status assessed for them?"

Proposals risk widespread non-compliance and oppression

Notably, the consultation fails to address both the blanket assessments that are currently rife in the public sector and the deduction of employer's NI from contingent worker rates, which is particularly common within the NHS. These are two key methods of non-compliance, and Chaplin expects to see plenty of the same if HMRC progresses with its intended plan:

"There is no doubt that blanket decisions will become the norm in the private sector, but in a different way. Whereas public sector organisations under HMRC's influence, have largely assessed contractors to be inside IR35, that won't happen in the private sector.

"Instead, firms that can provide outside IR35 engagements will have a commercial edge over those that can't. This advantage will encourage non-compliance and a race to the bottom, whereby firms seek to engage workers on a self-employed basis, and low paid workers are prevented from securing employment rights."

He concludes: "This is lunacy, and is juxtaposed to the intentions of the Taylor Review. HMRC needs to stop and think before causing any further damage to the tax landscape."

Join our IR35 campaign

ContractorCalculator is actively campaigning to put a stop to Governments plans to expand the public sector IR35 reforms to the private sector.

To support the campaign against IR35, please [subscribe to our mailing list](#), and help raise awareness by following the instructions set out on [our IR35 campaign page](#). Please follow or connect with our [CEO Dave Chaplin on LinkedIn](#). Dave regularly posts about the IR35 reforms and is an essential contact to have for keeping abreast of the latest news surrounding the legislation.

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