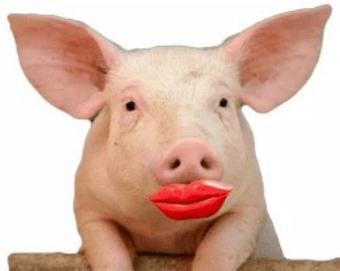


HMRC glosses over Off-Payroll (IR35) consultation responses in new publication

Off-payroll working in the private sector

Summary of Responses 29 October 2018



HMRC has published its [summary of responses](#) to the 'Off-Payroll working in the private sector' consultation. In doing so, it glossed over, and in some cases ignored, many serious concerns shared by respondents.

HMRC craftily published the document online among a flurry of other publications that followed the conclusion of the Chancellor's Budget speech on Monday.

The Chancellor used his speech to announce an extension of the controversial Off-Payroll rules into the private sector in April 2020, with small businesses remaining exempt. HMRC's summary of responses provided little further detail, while disregarding many points of contention shared by respondents.

"This summary from HMRC glosses over many of the very real concerns raised within a large portion of responses, all of which were highlighted within [our summary of responses](#) published recently," comments ContractorCalculator CEO, Dave Chaplin.

"We urge MPs and stakeholders to read HMRC's sexed-up version of events side-by-side with ours, and take a considered view of all the facts, including those omitted by HMRC."

Off-Payroll consultation responses: what has HMRC ignored?

Certain issues were acknowledged, if not addressed, within the taxman's summary. But HMRC is yet to respond to several serious criticisms of the proposals; a failure which calls the taxman's integrity into question. Arguments ignored by HMRC include:

- Government has deemed Off-Payroll a success before the completion of a full compliance cycle
- Criticism of one-sided research into the public sector, which failed to consult contractors
- Evidence of widespread non-compliance with the rules among public sector bodies
- Overwhelming rejection of the Off-Payroll rules among stakeholders.

HMRC's summary ignores the above grievances, stating instead that: 'Tax receipts and independent research suggest that the reform has increased compliance and has not had a widespread impact on public bodies engaging flexible workers.'

Such an analysis fails to acknowledge that multiple respondents presented credible evidence of widespread blanket assessments of contractors in the public sector. Others provided accounts detailing similar non-compliance among hirers who have deducted their employer's National Insurance (NI) liabilities from contractor's pay.

Further to this, a large number of respondents criticised HMRC for conflating a spike in income tax and NI contributions with an apparent heightened compliance generated by Off Payroll. With anticipated diminishing Corporation Tax and Dividend Tax contributions due in early 2019, many warned Government not to jump to conclusions too soon.

"These are criticisms which have been constantly levied against HMRC and Government since they became apparent," notes Chaplin. "The fact that Government can legislate without answering to those affected is farcical."

'More guidance and greater compliance': empty promises from HMRC?

In acting so promptly, Government has done little more than confirm the fears that an extension of Off Payroll was always a foregone conclusion. Adopting the bare minimum in terms of recommendations provided – exempting small businesses and announcing an April 2020 implementation date – will do little to appease stakeholders.

HMRC's summary confirms that businesses defined as 'small' will be subject to the criteria outlined in the Companies Act 2016. This means those who don't have a turnover of more than £6.5m, a balance sheet totalling more than £3.26m, and no more than 50 employees, won't have to apply the rules.

The taxman also claims it will provide guidance which 'addresses the needs of the diverse private sector market', and refine design of the rules so as not to incentivise businesses into blanket assessing contractors, yet fails to elaborate on either promise.

"How is HMRC going to achieve this?" asks Chaplin. "It has failed to provide sufficient guidance to the relatively small public sector, and its rules have seen thousands of contractors forced into false employment. Any right-minded person would expect the taxman to put out this fire before introducing it on a UK-wide scale. A baseless promise to do better next time isn't going to sit well with the contract sector."

HMRC also intends to inform contractors of measures they can take when they disagree with a hirer's status assessment, as well as plans to collaborate with stakeholders in order to fix its [Check Employment Status for Tax \(CEST\) tool](#).

"CEST received an almighty backlash in response to the consultation. Yet, typically, its criticism received minimal coverage in the taxman's summary," Chaplin details. "Fixing CEST so that it is ready for the private sector in 2020 is a near impossible task, considering where it's at now, and HMRC's refusal to budge from its [flawed interpretation of mutuality of obligation \(MOO\)](#)."

Taxman summary suggests anti-contractor bias

There were also widespread calls for an independent review of the public impact, with many stakeholders having little faith in the HMRC-commissioned IFF research. HMRC has acknowledged this, but its response is typical of its and Government's approach to IR35 reform.

The summary states: 'To further supplement the research, Government engaged with public bodies during the consultation process to understand the impact of the reform and any lessons that can be learned from the public sector experience.'

"The key point of contention stressed by respondents was that Government research ignored contractors and intermediaries," explains Chaplin. "So how is speaking to public bodies some more supposed to remedy this? This response simply goes to show that HMRC's consultation was nothing more than a formality."

Similarly, the majority of respondents challenged Government to postpone any further change until its employment status consultation has concluded. Many argued that tax and employment status need to be viewed holistically to disincentivise hirers from forcing vulnerable workers into 'employed for tax purposes' arrangements. Rather bafflingly, HMRC responded by saying that it has no intentions of considering the two issues in tandem.

Though HMRC maintains that increasing compliance with Off-Payroll is the right approach to ensuring that 'individuals working like employees pay the right tax', it acknowledged what it described as suggestions that the majority of the tax shortfall from these arrangements results from an absence of employer's NI contributions.

ContractorCalculator was among many who flagged this up to HMRC, and has published calculations demonstrating that [roughly 84% of perceived tax is avoided by hirers](#). For Chaplin, HMRC's response is an embarrassment:

"It's not a 'suggestion', as HMRC puts it, but a matter of fact that the large majority of the tax shortfall would be due from hirers. For the Government body responsible for the collection of UK taxes, to fail to acknowledge this as fact, and then to continue to make scapegoats of contractors as tax avoiders, is disgraceful."

Join our IR35 campaign

ContractorCalculator is actively campaigning to put a stop to Governments plans to expand the off-payroll tax to the private sector. So far we've managed to get it delayed until April 2020, and it is not yet written into statute. Let's get it cancelled entirely!

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.

The campaign is now at the stage where MPs are being met and briefed. Meetings are essential. We have prepared a [32 page fact pack](#) to assist you with your meeting. Just email your MP name to us on info@contractorcalculator.co.uk and we will send you the information. Then you simply prepare, and meet your MP for 30 minutes.

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