

Reaction to Off-Payroll (IR35) consultation: 12 months to defuse tax time-bomb



HMRC has set off a 'tax time-bomb' that private sector contractor clients have just 12 months to defuse. This is according to ContractorCalculator, in response to the number of fiscal and practical problems for hirers of contingent labour posed in [the taxman's latest Off-Payroll consultation](#).

- Clients required to accept substantial tax risk or lose access to contingent workers
- Huge admin burden as HMRC asks clients to set up own dispute resolution procedures
- HMRC proposals risk breakdown of engagements before contracts are signed
- Hypocritical proposals remove all concessions for affected contractors.

"Private sector firms need to get compliance procedures in place and begin assessing their workforce ASAP to mitigate their impact," warns ContractorCalculator CEO Dave Chaplin. "Unfortunately, as this consultation indicates, HMRC's vision for the Off-Payroll rules will impose substantial burdens and risks on contractor clients regardless."

Clients asked to administer own dispute resolution procedures

A key point of contention with the Off-Payroll rules in the public sector has been the lack of access to a dispute mechanism for contractors. The requirement for this has been intensified by [reports of widespread 'blanket assessments'](#) conducted by hiring organisations, an issue which HMRC has again denied within the consultation.

The taxman has at least acknowledged that dispute resolution is an issue which requires addressing. Its proposed solution, however, will disappoint private sector hirers and contractors alike.

"The government believes that the most effective approach would be for clients to develop and implement a process to resolve disagreements based on a set of requirements set out in legislation," notes HMRC, later adding: "The government considers requiring clients to set up such a process would not place a disproportionate administrative burdens on these organisations."

"This is a lame passing of the buck from the taxman, which shows the Off-Payroll rules for what they are – HMRC outsourcing its job under the guise of legislative reform," comments Chaplin.

"Having hirers administer and conduct their own appeals processes adds to an already burdensome list of compliance requirements. This is

besides the fact that such a process should be carried out by a third party. How confident can a contractor be of a fair evaluation when their appeal is being processed by the party with whom they are disputing?"

HMRC proposals fail to grasp commercial reality of engagements

The requirement for an appeals process could be negated altogether, providing hirers and contractors are able to agree IR35 status from the offset prior to signing a contract. HMRC has recognised that transparency throughout the supply chain with regards to sharing status determinations and supporting evidence is important.

However, its proposal to force hirers to cascade information down the supply chain in good time doesn't reflect the commercial reality of engagements – particularly as this chain is often convoluted. It also imposes further additional strain on the parties involved. While resolution of this issue is essential, Chaplin notes that efficient information sharing isn't necessarily the answer:

"Contractors don't want 'certainty over their tax position', as HMRC puts it - they want correctness. If a client provides evidence of a status assessment that a contractor disagrees with, they aren't going to sign a contract deducting from them what they consider to be an excessive amount of tax.

"This results in a common scenario where clients, agencies and contractors have spent time and money getting ready to start work, only to find themselves back at square one. It's a fundamental issue with the Off-Payroll rules which threatens to ruin the recruitment process."

Clients warned of 'potentially crippling' Off-Payroll tax risk

The problems for hirers don't end at failed negotiations. The tax risk assumed via the engagement of contractors under the Off-Payroll rules has been significantly downplayed by HMRC.

In its Employment Status Financial Procedures Manual, the University of Cambridge calculates that making an incorrect IR35 status decision can be 'up to 56.3% more than the amount paid in respect of the services'. This considers additional tax, both employers and employees National Insurance (NI) and Apprenticeship Levy costs, plus interest and penalties.

"This is a factor which HMRC has predictably kept quiet about," comments Chaplin. "It's also the reason why so many in the public sector have felt compelled to ignore compliance requirements and blanket assess their contractors.

"The fact of the matter is firms will either have to agree to engage contractors outside of IR35, where working conditions dictate so, or not engage them at all. We estimate that roughly 80% of contractors should be found outside of IR35 where an accurate assessment has been made. For these individuals, hirers will be required to keep records for six years. This threatens a potentially crippling accumulative tax risk over time, should HMRC come calling."

Government maintains that the Off-Payroll rules will not be applied retrospectively. Mel Stride, Financial Secretary to the Treasury, recently [told the House of Commons](#): "This is not about trawling through previous activities. It is about looking to the future." However, as Chaplin highlights, UK firms would be wise to exercise caution when approaching Off-Payroll:

"It must be noted that, in the very next breath, the Financial Secretary went on to mention the [retrospective Loan Charge](#), which is destroying livelihoods by reopening closed tax years over the last two decades. Given the ruthless nature with which Government has applied the Loan Charge, I wouldn't take any comments concerning the Off-Payroll rules for granted, especially considering [the BBC fiasco](#)."

Hypocritical proposals remove all contractor concessions

The latest consultation presents little scope for affected contractors to acquire any form of relief. In a move which will also prove costly for hirers, HMRC has announced that the 5% expenses allowance, which contractors deemed within scope of IR35 have traditionally been permitted to deduct from their taxable income, will be removed altogether

"The removal of the 5% allowance is of little surprise. HMRC seems hell-bent on prohibiting contractors any concessions whatsoever," notes Chaplin. "Affected contractors will increase their rates to accommodate for this, meaning firms who engage contractors who travel for work will feel the effect on their bottom line."

HMRC also used the consultation as an opportunity to reinforce its claim that 'there is currently no link between tax and employment rights', reaffirming that no rights will be granted to 'deemed employees' in the process.

"It's an absolute disgrace that Government is prepared to tax individuals as employees without the provision of basic rights, and rank hypocrisy when you consider the issue is a key agenda within its own '[Good Work Plan](#)'," says Chaplin. "This is a move from a Government which seems intent on pouring glue on the flexible workforce."

Is HMRC backtracking on promise to fix CEST?

HMRC has stated that it will 'explore enhancements to the Check Employment Status for Tax (CEST) service and associated guidance' in response to concerns from stakeholders, adding that any changes will be made before the rules come into play.

HMRC has imposed several high-profile retrospective tax bills on public sector freelancers off the back of CEST assessments, including more than 600 within the BBC. While this demonstrates the mistaken confidence that HMRC has in CEST, it also poses doubts over whether updates to the tool will be made.

"'Exploring enhancements' doesn't necessarily mean any changes will be made, and, given HMRC appears to have the utmost confidence in its tool, I wouldn't be surprised if CEST is still in its flawed, simplistic format come April 2020," notes Chaplin.

"Should any changes be made, they need to happen at least six months before the rules are introduced, which HMRC has not guaranteed. HMRC cannot move the goalposts during the immediate build-up to the changes. This same problem caused chaos in the public sector, which we believe contributed to widespread blanket assessments, but HMRC appears to have a conveniently short memory."

Published: 06 March 2019

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