

Contractor hopes of IR35 reform dashed as Lords' inquiry brushed aside by government

Contractor hopes that **IR35** might be reformed as a result of the of **Lords' Select Committee on Personal Service Companies (PSCs) inquiry** have been dashed by the government's **response**.

"IR35 is with us for the foreseeable future," says ContractorCalculator CEO **Dave Chaplin**. The Lords' conclusions have been effectively brushed aside by the government. And where there was any criticism of HMRC or the government's actions, the response has been to say, 'we will review that'."

HMRC maintains that the deterrent effect is the main reason for retaining IR35, but Chaplin says that the numbers it presented as evidence in the appendix of the government's response "are mainly guesswork".

Calculating the exchequer risk that IR35 generates £550m

According to the government's response: "The figure quoted for exchequer protection from IR35, and the methodology used in the calculation of that figure, is robust."

Chaplin disagrees: "During 2010-11, only 6,000 contractors were operating IR35. HMRC assumes that 220,000 contractors don't operate the tax efficient method of taking a low salary and dividends because of IR35. This is just total nonsense, and has no evidence base."

HMRC has also decided that 4% of employees earning over £50,000 would incorporate if they could, in the absence of IR35. As a result, the taxman adds 55,000 to the population of individuals who contribute to the exchequer risk.

HMRC repeatedly backs up its assertions with statements such as, "this assumption is consistent with intelligence from operational experts in HMRC", but provides no proper research findings or quantitative data.

HMRC promises to publish an 'administrative impact assessment'

Despite frequent Freedom of Information Act (FIO) requests by ContractorCalculator to determine the effectiveness of HMRC's implementation of IR35 since May 2012, the taxman has refused to publish meaningful statistics about its performance.

The closest contractors will get to understanding the cost of implementing IR35 versus its benefits to the exchequer is an 'administrative impact assessment', the results of which HMRC says it will publish during the autumn of 2014.

"These figures – if indeed they are ever published – will only confirm the cost to contractors of implementing IR35, which we already know," continues Chaplin. "Through a technicality, the cost of IR35 has not been scrutinised by the Office for Budget Responsibility (OBR). This should be addressed."

Only high-yield contractors are targeted

The government's response has revealed that HMRC deliberately targets contractors where the tax at stake is higher than the cost of collection.

But, as Chaplin points out, it will be difficult for HMRC to justify the cost of IR35 cases as contractors rarely have to pay up, as there is typically no money left in the limited company: "In the past, HMRC has pursued cases to establish case law.

"It now looks like the taxman no longer does this. The impact is that it has become hard for HMRC to justify its interventions on a financial basis. This pushes all the relevance of IR35 on to the deterrent effect.

"The problem is, if you don't make interventions then you don't create a deterrent. You can set as many laws as you like, but if you don't enforce them people stop adhering to them. This is what has happened with IR35."

The government, the Treasury and HMRC have resolutely refused to accurately answer any questions relating to the specific cost of enforcing IR35, possibly because the cost of running its specialist teams is, embarrassingly, likely to be more than the income they generate and their real deterrent effect combined.

The IR35 Forum has proven ineffectual

In its response, the government frequently makes reference to the efforts of the HMRC-led **IR35 Forum** and the new guidance HMRC plans to publish. As Chaplin explains, contractors don't trust HMRC: "No one is going to use HMRC's service to demonstrate that they are outside of IR35.

"There is zero trust between contractors and the taxman and this will never change until HMRC acts transparently and fairly. New guidance will be valuable

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ContractorCalculator

for contractors, but ultimately contractors will almost certainly continue to use commercial IR35 experts for contract reviews and opinions on their employment status.”

Chaplin’s view is that the government’s frequent references to the work of the IR35 Forum and its part in answering the Lords’ questions are nothing more than paying lip service to addressing the very real concerns of contractors, their clients and support services.

“The government makes a big deal of its support for small businesses, including contractors,” says Chaplin. “However, its lacklustre response to the Lords’ PSC inquiry shows that a major education campaign is needed to demonstrate that IR35 is damaging the UK’s position as a premier supplier of flexible knowledge worker solutions.”

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