

Former Financial Secretary Mel Stride calls for IR35 abolition

Treasury Committee

Tuesday 20 October 2020 Meeting started at 9.30am



Former Financial Secretary to the Treasury Mel Stride called for the abolition of IR35 during a [Treasury Committee meeting about tax after coronavirus](#) this afternoon.

Making his closing remarks, the man who helped usher in the extension of the Off-Payroll legislation to the private sector singled out “the dreaded IR35”, adding: “I think we all agree that it is best abolished as soon as possible.”

The comment rounded off a meeting in which MPs, industry experts and stakeholders all voiced strong opposition to the legislation in both its traditional and modern format, and in which alternate measures for addressing inadequacies in the tax system were also posed.

IR35 and Off-Payroll are not fit for purpose, experts agree

Stride’s opening questions sought to identify means by which the self-employed could be more comfortable paying higher taxes in response to the COVID pandemic. However, this notion was promptly called into question.

When asked to address limitations on Government support to the self-employed during the pandemic, including the [exclusion of limited company contractors](#) and those with trading profits exceeding £50,000 from the Self-Employed Income Support Scheme, Interim CEO at the Association of Independent Professionals & the Self-Employed (IPSE) Derek Cribb noted:

“Effectively one in three members of the self-employed population have had no support whatsoever, so the idea of them having to pay tax to fill the coffers that have been emptied out into other people’s pockets is a little challenging to sell.”

Attention quickly turned to IR35 and the unfortunate timing of the impending Off-Payroll extension, which threatens to compound already difficult conditions for the self-employed and many hiring firms:

“We’ve seen half a million people falling out of self-employment in the last 6-9 months, according to ONS statistics,” added Cribb. “It seems slightly perverse to have the Off-Payroll legislation coming in when you want to encourage people to be flexible and to help the UK economy out of a crisis.”

Meanwhile, Head of Tax Policy at the Confederation of British Industry (CBI) Andrew Titchener highlighted the impact of Off-Payroll on hiring firms, observing that the compliance burden, concern over tax risk and status disputes are already resulting in diminished contract engagements:

“Off-Payroll seems to be achieving the worst of both worlds, because it increases the complexity and cost for employers while at the same time removing flexibility in the labour market,” he commented, elsewhere adding: “For every worker, you effectively need an employment

lawyer, a tax lawyer and an HR professional to decide what their employment status is.”

Is a simple status solution possible?

Whereas experts all agreed that IR35 is not fit for purpose, discussions over means by which to remove the legislation without widening the tax gap yielded some differences of opinion.

Many advocated the introduction of a simpler statutory test to ascertain employment status, though the argument for circumventing case law was contested by Professor Judith Freedman CBE, Professor of Taxation Law and Policy at University of Oxford:

“A rigid test based on how long someone has worked for an engager, for example, would be very easy to manipulate. Alternatively, a nuanced test would have just as much baggage as the case law. Simpler tests make it easier to engage in creative compliance and play the system. Unfortunately, there isn’t a simple test and there isn’t a simple difference between the employed and self-employed.”

ContractorCalculator CEO Dave Chaplin concurs: “Calls for a simple statutory test are misguided. Anyone who thinks there is a simple test that can be created hasn’t looked at the detail. If the holy grail of an employment status test existed, someone would have discovered it in the last 20 years.”

Addressing the elephant in the room

Another suggestion posed was closer alignment of taxation between the employed and self-employed. Though Freedman argued that she saw no principle upon which the two should be taxed differently, Cribb was quick to point out the multiple challenges faced by the self-employed:

“We need to retain the incentive for people to be entrepreneurial. This involves recognising the administration, insurances, uncertainty and risk that the self-employed undertake when considering the tax burden.”

It was not long before the elephant in the room was acknowledged, as Cribb noted that employer’s National Insurance (NI) avoided by hiring firms accounts for the majority of the perceived tax shortfall from self-employed engagements.

Office of Tax Simplification (OTS) Tax Director Bill Dodwell observed the impact that the absence of employer’s NI has on hiring decisions made by companies, which has proliferated the gig economy and ‘false self-employment’, noting: “The bigger the tax and NI difference, the more economical encouragement there is for a company to operate in the lower tax version.”

Experts were in agreement that a similar contribution should be expected of hiring firms whether engaging an employee or a self-employed contractor, and proposed measures to remedy the issue included the introduction of an ‘engagers levy’ and the abolition of employer’s NI in favour of an increase in Corporation Tax (CT).

Less talk, more action, experts urge Government

With the consensus being that a smaller disparity in terms of overall tax yield from either engagement is necessary to render IR35 redundant, experts acknowledged that such efforts would have to take place gradually over a number of years. However, the onus was placed on Government to act sooner rather than later.

“We don’t need any more reviews, and we’ve had plenty of discussion,” noted Freedman, acknowledging the 2017 Taylor review, the recommendations from which Government has still failed to act upon. Meanwhile, Cribb highlighted the [Lords report on Off-Payroll working](#) and the [disappointing response that it prompted from Government](#) earlier this year.

Ultimately, though the discussion proved fruitful, Chaplin is cynical about the prospect of any change: “Everyone has been talking about the need to do away with IR35 for 20 years. This is nothing new. Unfortunately, the political will isn’t there to change matters, even if the potential outcome is a functioning tax system.

“There are also many politicians who run their own companies and would be subject to higher taxes if the playing field changed. The hens don’t tend to vote to get their wings clipped.”

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