

NHS Digital hit with £4.3m tax bill after reliance on faulty CEST



NHS Digital is facing a £4.3m tax bill after HMRC challenged a significant number of IR35 status assessments conducted by its very own [Check Employment Status for Tax \(CEST\) tool](#).

The tax bill, which includes interest and penalties, covers the period from 1 April 2017 to 31 December 2018, and was revealed within NHS Digital's [Annual Report and Accounts for 2018-19](#). The report also confirms that NHS Digital has since changed its approach to assessing contractors, after having its CEST assessments targeted by the taxman.

The revelation is a stern reminder to contractor clients to grant little substance to HMRC's hollow promise to stand by status assessments conducted by the tool. This is a pledge which has subsequently been appended with a series of caveats, with the [latest Government guidance on CEST](#) stating: "HMRC will stand by the result given unless a compliance check finds the information provided isn't accurate."

This claim to stand by the result was also proven to be inaccurate after HMRC tried, unsuccessfully, to get evidence based on its own [CEST tool thrown out of court, claiming it was "irrelevant"](#).

Targeting own tool's assessments yields taxman £4.3m

Worryingly for public and private sector hirers, the NHS Digital report details how, following the April 2017 public sector implementation of the Off-Payroll rules, the taxman challenged its assessments carried out using CEST, stating:

'We undertook a considered assessment of the status for each individual contractor which we believed met the HMRC requirements. However, HMRC have challenged our assessment.'

'We have been in extensive discussions but now consider it appropriate to acknowledge their position and create an accrual covering the period from 1 April 2017 to 31 December 2018. This accrual is £4.3m including interest and penalties.'

The report also acknowledges how NHS Digital altered its approach to status assessments in January 2019, since which point it does not report to have been subject to any further challenges by the taxman:

'Up to December 2018, we assessed all contractors using the toolkit supplied by HMRC. From January 2019, we are now making an initial assessment internally. Any contractors considered to be outside of scope are then being reassessed by an external provider.'

CEST comes up trumps for HMRC's tax yield, again

This isn't the first time that CEST's use in the public sector has resulted in a controversial multi-million pound tax yield for HMRC. In

November 2018, a [National Audit Office \(NAO\) report](#) revealed that the BBC had adopted CEST in mid-2017, replacing an employment test developed with Deloitte in liaison with HMRC.

Having been used to assess the status of 663 freelancers between August 2017 and June 2018, [CEST found 92% to be deemed 'employed for tax purposes'](#). Consequently, the BBC paid £8.3m of tax on account to the taxman between April and September 2017, to cover potential tax that HMRC believed should have been paid following the introduction of the Off-Payroll rules.

Whereas the NHS Digital tax bill is roughly half of this sum, the report also notes that the total annual cost of temporary labour also increased by £3.2m to £16.3m in 2018-19.

NHS report proves CEST use is a recipe for disaster

As ContractorCalculator CEO Dave Chaplin highlights, CEST's fundamental flaws, coupled with HMRC's propensity for challenging its outcomes, make its adoption an incredibly ill-judged idea:

"It's no secret that CEST is as useful as a chocolate fireguard. Because of how biased CEST is, the only way to get an 'outside IR35' determination is primarily on substitution. The problem is, CEST does not ask any questions after that, meaning it hands out determinations that have been made in a manner contrary to how the courts look at these cases."

Chaplin concludes: "As we've said many times, make sure you use an insurance-backed solution. And if you don't use our own solution [IR35 Shield](#), then use someone else. But whatever you do, do not use CEST."

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