

Stop the Off-Payroll Tax: Final push required to mitigate Off-Payroll damage



The contracting sector urgently needs to rally if it is to mitigate the damaging impact that the Off-Payroll tax threatens to the private sector. Although draft legislation has been published, there have been some positive developments in recent months.

Whether the contracting sector is able to capitalise on those positives depends on its members. The bulk of the research for our campaign, [Stop the Off-Payroll Tax](#), has been completed, helping us to create all of the briefing materials which are readily available for individuals to present to their MPs.

But, should contractors and business owners fail to go and see their MP with the evidence of how damaging this legislation is, then the chances, the chances of restoring some degree of parity in the tax system will suffer significantly.

Stop the Off-Payroll Tax: our campaign to date

Over the past few years, we have achieved a lot with our relentless campaigning and investigatory work, which has:

- Exposed numerous mistruths upon which HMRC has attempted to justify the Off-Payroll tax
- Uncovered evidence of widespread non-compliance and 'false employment' in the public sector
- Exposed fundamental flaws and biased nature of HMRC's Check Employment Status for Tax (CEST) tool
- Revealed the fiscal impact on contractors and substantial threat to the economy
- Resulted in meetings with senior MPs across all political parties, and enabled many constituents to inform their MPs

A lot has been going on behind the scenes, and our robust, evidence-based approach has opened many doors. We've had many meetings with high profile MPs and Government bodies and helped inform Parliament in its review of the Off-Payroll fallout in the public sector.

We must also recognise the considerable work and research conducted by other major bodies in the tax community, many of whom have been calling for change for quite some time.

Government moves to redress balance in the tax system

Our campaign's ultimate aim has been to establish fairness in the tax system and to prevent exploitative measures by HMRC. Although the

Off-Payroll proposals are still scheduled to go ahead, there have been positive signs from within Government.

Last month, Government announced a host of measures in response to the [House of Lords report on HMRC's abuse of powers](#), including the introduction of a new professional standards committee to monitor the taxman.

This is a move which has been [welcomed by the Chartered Institute of Taxation](#) (CIOT), and is one the contract sector should take similar encouragement from. This is clear acknowledgement from Government that HMRC has overstepped the mark in recent years and that we haven't been banging the drum for no reason.

Whereas former Chancellor of the Exchequer Philip Hammond brazenly relayed HMRC propaganda when challenged on the unfairness of the Off-Payroll reform, with an influx of new Government ministers comes a potential cause for optimism.

There is the chance that his replacement Sajid Javid and his fellow ministers will grant serious consideration to the damage caused by the proposals that the previous cabinet was ignorant to. But this will only happen if contractors and business owners play their part and make their voices heard.

What have we achieved so far?

Following an extensive and exhaustive investigation during which we demonstrated conclusively that CEST is unfit-for-purpose, the taxman has finally agreed to attempt to fix the flawed tool. But, not without putting up a fight.

Publishing a considerable amount of evidence and sharing details with the National Audit Office (NAO) and various Parliamentary Select Committees was required for HMRC to acknowledge that its claims as to CEST's accuracy were false.

We sincerely hope that HMRC learns from this experience, and offers some degree of transparency when designing and testing the updated CEST, by publishing comprehensive test data for public scrutiny. If the tool is to be used to determine the tax status of tens of thousands of contractors, this is the very least that we should expect.

Once the new version of CEST is released, ContractorCalculator will test it thoroughly and publish all of the evidence for our readership to form their own opinion. In the meantime, until CEST is proven to provide correct answers, firms should steer well clear.

And whereas most areas of concern were ignored by HMRC during the consultation phase, the issue of blanket assessments was addressed to a degree. Along with numerous other organisations, we submitted irrefutable evidence of widespread blanket assessments by public sector clients forcing contractors into false employment.

Although HMRC has brazenly maintained publicly that blanket assessments aren't a serious issue, the private sector proposals now require that clients provide contractors with a [Status Determination Statement](#) (SDS) upon having assessed their IR35 status. An SDS is essentially a detailed assessment highlighting the reasons for the status determination, intended to ensure firms take 'reasonable care' by making them demonstrate such.

What are we still campaigning for?

We are still banging the drum, as there are still various areas of concern that require urgent attention:

1. **Tax avoidance:** In the public sector, contract rates for 'inside IR35' roles have been advertised with the employment taxes bundled into the rate. This results in unlawful deductions, and contractors suffering a perceived tax hit considerably higher than that paid by employees. This has incited the adoption of tax avoidance schemes, which are likely to become increasingly prominent until this malpractice is addressed.
2. **Employment rights:** There are no employment rights for those deemed 'employed for tax purposes'. This injustice has been recognised by Government's Good Work Plan, yet somehow Government doesn't see fit to consider this within the scope of the Off-Payroll tax.
3. **No statutory appeals process:** Only the courts and HMRC have powers to make a final determination on tax status - until then it is just an opinion. But the Off-Payroll tax grants clients the power to ultimately decide status, without any recourse to an independent appeals process at the point of the decision. This is grossly unfair.
4. **Unfair agency liability:** It seems blatantly unfair that a client can make an incorrect status determination, for which the agency has to bear the cost.

We aim to meet with HMRC to discuss the tax avoidance issue and will be pushing for what would be simple amendments to the Finance Bill

addressing the tax liability issue.

However, if Government is going to redress the balance for contractors by aligning employment status for tax and employment rights, and introducing a statutory appeals process, it will need prompting from the contractors themselves.

The fight against the Off-Payroll tax is far from over and the facts and evidence are all in our favour. Please, fight for your contracting future by [signing up to the campaign](#), obtaining the Off-Payroll campaign briefing material and scheduling a meeting with your local MP. Our efforts have yielded some success, but there's a lot more to be done between now and April 2020.

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