

## Treasury refusing to acknowledge IR35 “tax time bomb” planted in freelance sector



The Treasury has come under fire for its sustained refusal to acknowledge the true extent of the Off-Payroll tax, which has misled contractor clients and threatens major disruption within the private sector.

Despite having been corrected on multiple occasions, discourse from the Treasury – specifically Financial Secretary to the Treasury Mel Stride – continues to misrepresent the Off-Payroll tax as simply a reapportionment of responsibility for applying the IR35 rules.

The Treasury is yet to recognise the 14.3% increase to the cost of hiring contractors deemed within scope of the rules, composed of employment taxes. Dubbed a “[tax time bomb](#)” by ContractorCalculator, this new liability poses significant difficulties.

“The Treasury’s denial further confirms that, for this Government, the wellbeing of industry and individual taxpayers is a secondary concern where tax is involved,” notes ContractorCalculator CEO Dave Chaplin. “Mel Stride has been alerted to the factual inaccuracies of his remarks several times. Yet, he continues to mislead with comments which will incite non-compliance and cause major problems for business come April 2020.”

### Treasury remarks conflate IR35 and Off-Payroll

In addition to shifting compliance responsibilities further up the supply chain, the Off-Payroll rules reapportion the employer’s National Insurance (NI) tax liability. Under the existing IR35 rules (since April 2000 - chapter 8 ITEPA), a contractor deemed caught by the rules has employer’s NI deducted from their contract rate as well as income tax and employee’s NI. However, the Off-Payroll rules (Chapter 10 of ITEPA) require that employer’s NI at 13.8%, along with the Apprenticeship Levy at 0.5%, is paid *on top* of the contract rate by the fee-payer - this is because the payment to the contractor must be treated like a salary.

This results in what is effectively a stealth tax of 14.3% on the engagement of affected contractors which the Treasury has attempted to disguise by likening the Off-Payroll rules to IR35. In correspondence concerning the proposals, Stride has frequently succeeded reference to the Off-Payroll rules with ‘commonly known as IR35’, while reiterating falsely that the proposed changes ‘do not introduce a new liability or extra tax’.

Adrian Marlowe, chairman of the Association of Recruitment Consultancies (ARC), [recently highlighted](#) that HMRC is also guilty of misrepresentation:

“The proposals are subject to a consultation that declares the new rules are not a new tax. The consultation document published on 5th March 2019 clearly states that the intention is to ‘seek to increase compliance in the private sector with rules that have been in place since 2000, to make sure they operate as intended’.

“However, the proposals go significantly beyond compliance with the original IR35 rules. Dressing them up in this way is clearly politically convenient, but it is not correct, and the sleight of hand appears to attempt to disguise the reality.”

## ‘Employment taxes’, according to the Treasury

Obfuscating matters further is Stride’s failure to use the correct legal definition of employment taxes, which is strictly composed of employer’s NI and the Apprenticeship Levy.

Instead, responding to concerns from a contractor, Stride recently argued: “Employment taxes’ is commonly understood to mean income tax and employee and employer NI. Using the term in this straightforward way ensures the majority of people understand it.’

“Incorrectly using ‘employment taxes’ as a blanket term for various tax liabilities shared between two parties is hardly going to clarify the issue,” comments Chaplin. “Making matters worse, correspondence from the Treasury frequently references the responsibility of the fee-payer for ‘deducting’ said taxes from fees paid to affected contractors.

“Taking Treasury advice in this instance would result in non-compliance due to the unlawful deduction of employment taxes from contract rates. Predictably, this is a recurring issue in the public sector, which the Treasury and HMRC have refused to acknowledge.”

## Treasury ‘ignoring the practical realities of Off-Payroll’

The fallout from this new tax liability is significant. Hiring firms will naturally seek to negotiate lower rates to mitigate their fiscal impact, while affected contractors will hope for improved rates to counter their own tax increase.

Ultimately, renegotiated rates will be determined by the relative bargaining powers of the parties. The one certainty is that renegotiation is inevitable. This is a factor that has been at least partly [acknowledged by HMRC in published guidance](#), which states:

‘Because the fee-payer has a liability to pay secondary Class 1 NICs, they are likely to wish to renegotiate the fee with the intermediary to reduce the rate for the job. They cannot lawfully deduct the secondary NICs from a fee that has been agreed, but could, depending on the contractual terms, negotiate a lower fee.’

Contrary to this, correspondence from the Treasury has repeatedly stated: ‘it is not the case that the reform of the off-payroll working rules requires renegotiation of contracts’.

“While the legislation itself doesn’t require in law that parties renegotiate contracts, this dismissive comment from the Treasury completely misses the point. It disregards the practical realities of the Off-Payroll tax,” highlights Chaplin. “It is Government’s job to clearly convey new policy to the public and sufficiently aid preparation. All the Treasury is doing is setting UK plc up for a state of crisis.”

## Why are HMRC and the Treasury misrepresenting Off-Payroll?

The motivation behind HMRC and the Treasury’s actions is evident. Broadcasting the fact that the Off-Payroll tax will add an initial 14.3% onto the cost of hiring contingent labour would strengthen opposition to the proposals, impeding chances of a private sector rollout.

In similar fashion, Government has been accused of refusing to acknowledge the chaotic impact of the public sector changes, with HMRC having dismissed the substantial body of evidence of rife non-compliance and disruption as ‘anecdotal’.

The positive, and questionable, portrayal of the changes generated by the [HMRC-commissioned IFF Research report](#) prompted many to call for further external research. However, at a [recent IR35 Forum meeting](#), HMRC confirmed that there were no such plans.

“Further research would inevitably uncover more evidence of the challenges and issues that the private sector will soon also be subjected to, including hiring struggles, damage to projects, and widespread non-compliance,” says Chaplin. “Much like the additional tax burden, HMRC and the Treasury have done their utmost to brush this under the carpet. Nonetheless, [the evidence is there for all to see](#).”

## How to prevent private sector Off-Payroll chaos

ContractorCalculator is calling for the Treasury Select Committee to conduct an inquiry into the public sector impact, as well as HMRC and the Treasury’s conduct over the matter. We also believe that independent research by the National Audit Office (NAO) is necessary.

Government should not be allowed to make any further progress with the Off-Payroll tax until HMRC and the Treasury have been held to account. However, this is unlikely to happen without public support.

If you are a contractor, or a hirer reliant on contingent labour, the Off-Payroll tax will have a direct and significant impact on your business, and possibly your livelihood. Join our campaign – [Stop the Off-Payroll Tax](#) – to find out how you can help prevent these damaging proposals

from becoming a reality in the private sector.

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