



OFF-PAYROLL TAX

Treasury Letters Debunked

Helping MPs understand the truth

- 23 misleading claims debunked
- Evidence-based facts explained
- 10 damaging impacts of the Off-Payroll tax
- 11 questions MPs should be asking

A whitepaper by ContractorCalculator

February 2019

“One reason why the Government’s IR35 initiative has been so damaging and destructive is the fact that it has hit at the most flexible part of the economy.”

Philip Hammond,

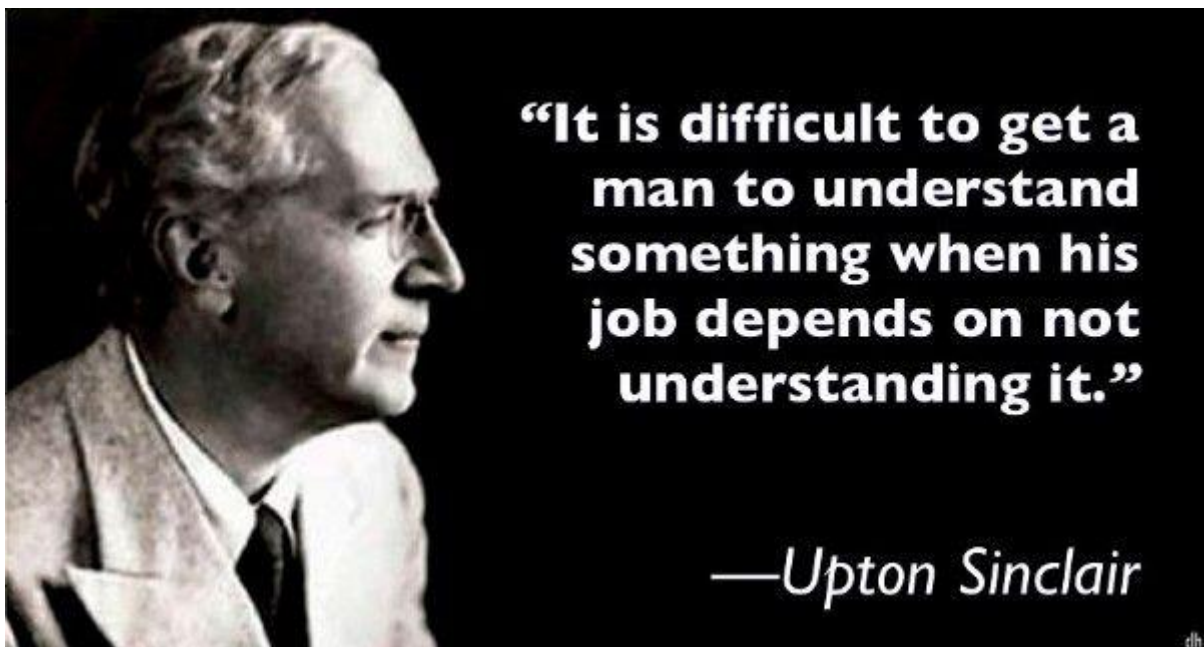
Current Chancellor of the Exchequer

6th November 2001

[Click here for Hansard reference](#)

Ideology: A system of ideas and ideals, especially one which forms the basis of economic or political theory and policy.

Propaganda: information, especially of a biased or misleading nature, used to promote a political cause or point of view.



Executive Summary

By Dave Chaplin, CEO of ContractorCalculator



For me, it's crazy that, almost two decades after the misguided IR35 legislation was introduced in April 2000, it has been resurrected under the guise of 'Off-Payroll'.

HMRC invented the concept of a 'deemed employee' almost two decades ago, in a drive to collect more tax, yet it has since struggled to track down these workers. Its track record of winning only 10% of court cases over the last decade demonstrates that there are far fewer of these individuals in operation than HMRC believes.

The Treasury's claim that it is losing money is based on an ideological flaw. It fails to acknowledge the 'freelance premium' - that individuals charge considerably more for their services, and get taxed on greater earnings, compared to what they earn when they are in full-time employment. That fact alone should blow IR35 out of the water, yet HMRC maintains that individuals are avoiding tax. This isn't true either: HMRC's own calculations demonstrate that 84% of the perceived tax loss where an individual is engaged via a personal service company (PSC) results from the hiring organisation not having to pay employer's National Insurance (NI). Despite this, HMRC continues to suggest that flexible workers are responsible for this shortfall.

In its drive to class as many flexible workers as possible as 'employed for tax purposes', HMRC has misrepresented the laws on employment status. This has manifested itself in the Check Employment Status for Tax (CEST) tool, a simplistic status testing tool which has been labelled unfit for purpose by barristers, lawyers and tax experts. It has been a gross error of judgement to place the complexity of employment status law at the heart of every supply of labour in the flexible economy.

The poor guidance on the law has resulted in thousands of public sector workers being incorrectly or blanket assessed as 'employed for tax purposes'. With there being no appeals process as originally promised during the Off-payroll rules consultation process, this has incentivised widespread adoption of tax avoidance schemes as workers seek ways to overcome paying effective tax rates that are significantly higher than those of employees.

The changes also saw vast numbers of highly skilled, flexible workers abandon the public sector and flexible working completely, resulting in delays to, and even abandonment of, projects due to acute skills shortages. Key services have been put under tremendous pressure as skilled knowledge-based workers seek assignments elsewhere, particularly in the NHS.

OFF-PAYROLL TAX

Many of those who remain now cost more to hire to compensate for the tax increase suffered due to incorrect status assessments. This results in more expensive projects and a poor deal for the taxpayer.

But those with no bargaining power or other options have been forced into being classed as 'employed for tax purposes' yet denied the equivalent rights that genuine employees receive, contrary to the Government's Good Work Plan.

HMRC continues its attempts to justify IR35 using unsubstantiated figures and the Treasury is now making claims based on OBR figures that have a "Very high" uncertainty rating. That's statistician-speak for 'these figures are guesswork'.

So, what's the answer?

Firstly, I sympathise with the Government's position. It wants to take the same sized slice of the tax pie from everyone who provides labour, irrespective of their employment status. Unfortunately, the tax system has this massive £60bn elephant in the room, called employer's National Insurance. This is, in all but name, a 'payroll tax', which firms that hire contractors do not have to pay.

Contractors, on the other hand, pay largely proportional taxes to those on a salary – following the April 2016 dividend tax regime changes, the historic tax advantages talked about are now ancient history in the tax world.

It is the tax differential paid by firms when hiring employees compared with the self-employed that needs to be closed. The day this finally happens, you will be unsurprised to discover that 'deemed employees' no longer exist in HMRC's eyes.

There are two simple ways to achieve this; either reduce employer's NI or introduce a new Off-Payroll tax, payable by anyone who engages somebody Off-Payroll. Government must just get on and do it, as opposed to creating stealth taxes based on the concept of 'deemed employment'.

The concept of a 'deemed employee' was a non-starter in 2000 and it's still one now, regardless of who conducts the assessment. Consider that an IR35 tribunal case in May 2018 took nine days of court time and 3,500 pages of evidence, just to determine the status – and we are still waiting nine months later for the decision. This highlights the mammoth task ahead of any firm required to make an accurate and fair assessment of each person they hire. Even then, the deemed status is just an opinion, and disagreements poison client-agency-supplier relationships, leading in some cases to the contractor suing their clients for misclassification.

I would urge anyone reading this to consider the potential damage this ideologically flawed and misguided legislation will do to the flexible economy and UK Plc as the UK attempts to find its feet post-Brexit.

The Off-Payroll Tax and IR35

What are the Off-Payroll Tax and IR35?

The new Off-Payroll tax legislation, introduced in Chapter 10 of the Finance Bill 2017, currently only applies to the public sector, where it replaced the Intermediaries Legislation (IR35) that was enacted in April 2000. Like IR35, Off-Payroll is designed to counter tax avoidance by targeting 'deemed employees'. These are limited company contractors whose working relationship with their client would be considered to be one of employment if they didn't work through an intermediary.

An engagement which is deemed one of employment is subject to higher direct taxes. Most of the actual tax shortfall from a contract engagement arises from the absence of employer's NI contributions of 13.8% and the Apprenticeship Levy of 0.5%.

Both of these are due *on top* of the rate, or 'deemed direct payment' paid by the contractor. The original IR35 legislation required that the contractor themselves paid these. Off-Payroll holds the hirer liable for these taxes, but, in many cases, these costs are still being wrongly deducted from the contractor's fees.

The payment made to the contractor must then be treated as employment income, meaning a slight increase in taxes for the contractor compared to what they previously paid when working through their company.

Before Chapter 10 of the Finance Bill, IR35 was solely the contractor's concern, but the changes now mean there are more costs for all involved. The key change is that the hirer is legally responsible for assessing the IR35 status of its contractors, adding significant costs onto those who choose to comply.

HMRC intends to extend the tax into the private sector in April 2020, meaning IR35 – or the 'Off-Payroll tax' - is now a problem for everyone.

Ideologically-driven or evidence-driven?

Ideology: A system of ideas and ideals, especially one which forms the basis of economic or political theory and policy.

Evidence-based policy (EBP): refers to situations whereby policy decisions are informed by rigorously established objective evidence.

Despite evidence to the contrary, HMRC believes that the 'freelancer premium' (the amount freelancers charge compared to their equivalent employed counterparts) is zero and relies on this belief to support its claims that non-compliance with IR35 costs the Treasury hundreds of millions of pounds each year, which itself is a dubious claim. Far from evidence-based policy, IR35 is an ideology, devoid of the necessary objective evidence to back its foundations.

10 expected impacts of the Off-Payroll Tax

Many surveys have highlighted what might happen if this new tax hits the private sector, and the widespread theme is that UK plc will be subject to major disruption to business on all fronts. Concerns include:

1. An increased administrative burden and increased costs of approximately 12% for each business that hires and relies on contingent labour.
2. That changes will enable unscrupulous companies to hire individuals as 'employed for tax purposes only' while denying them employment rights, contrary to the Government's Good Work plan.
3. A reduction of the size and mobility of the flexible workforce.
4. Increased costs of hiring flexible workers due to new taxes and a shift in the supply/demand curve.
5. Increased adoption of non-compliant tax schemes among contractors who have had additional tax bills forced upon them by unscrupulous hirers by way of rate cuts.
6. Increase in tribunal and court claims for both incorrect tax assessments and workers' rights from contractors classed as 'deemed employees'.
7. Financial damage to individuals who inadvertently suffer an incorrect status assessment decisions due to CEST's inability to assess status correctly.
8. Increased legal and HR costs for firms who have no in-house capability for assessing employment status accurately.
9. Increased software costs, circa £100,000, for large firms to make updates to their financial software and payroll systems to cater for 'deemed employees'.
10. Squeezed budgets, leading to the cancellation of projects and resulting job losses.

11 key questions for MPs to consider

Q1) Do you understand that, since the April 2016 changes to dividend taxation, roughly 84% of the perceived tax loss of 'deemed employment' is now due to employer's National Insurance?

Q2) Do you think it is sensible for an organisation to be required to carry out a complex and uncertain employment status test every time they want to hire a flexible worker?

Q3) Do you think that, contrary to the proposed legislation, that if a business uses employment status tests to determine that someone is 'employed for tax purposes', the individual should obtain employment rights automatically?

Q4) As more people move to self-employment, reducing the amount of employer's NI collected – often called a 'Payroll Tax' – would it be more sensible to align tax rates by introducing an equivalent 'Off-Payroll Tax', paid by firms hiring Off-Payroll workers?

Q5) With the controversy surrounding the accuracy of CEST, will you support a motion calling for a public inquiry into the tool's development and the accuracy of its results?

Q6) Are you in support of the extension of the tax into the private sector in April 2020?

Q7) When the tax is extended, do you think the millions of UK businesses will suffer no detriment at all, unlike the mess which occurred and is still ongoing at the BBC?

Q8) If a worker is assessed wrongly and taxed incorrectly, should there be a quick and simple process to appeal the assessment without having to take their client to the county court?

Q9) When the Off-Payroll rules are extended to the private sector, do you think there will be any adverse effect on business costs, and a reduction in size and mobility of the workforce?

Q10) Given the wealth of studies (including the BBC by the National Audit Office) that offers a conclusion at odds with HMRC's claim that the public sector tax has proven successful, would you welcome a wider independent audit of the situation by the National Audit Office?

Q11) Would you welcome some research to ascertain whether HMRC's claims of widespread non-compliance are credible and the ideological concept of a 'deemed employee' even exists?

TREASURY CLAIMS DEBUNKED

CLAIM#1

Treasury claim:

“The Off-Payroll working rules have been in place for nearly 20 years.”

The facts:

This is not true. The Off-Payroll legislation (Chapter 10 of ITEPA) is new legislation which came into force in April 2017. The Intermediaries legislation (Chapter 8 of ITEPA) was introduced in April 2000. They are not the same.

Whilst there are similarities between the two different pieces of legislation, in that they both rely on a complex assessment of an individual’s employment status, the tax treatment is entirely different.

	Intermediaries Legislation (April 2000) Chapter 8, ITEPA	Off-Payroll legislation (April 2017) Chapter 10, ITEPA
Sector	Private sector only	Public sector
Assessment: Who does it?	Contractor	Client
Tax: Employers NI (The vast majority of the perceived tax avoidance is due to employers NI.)	Paid out of the contractors earnings.	Paid on top of the contractors earnings.
Liability (if investigated and found to be inside IR35, and was previously processing as outside IR35)	Contractor holds the tax liability	Fee-payer (the client or agency) holds the tax liability.

THE BIG FLAW: Both versions rely on having a complex employment status test. Moving to Chapter 10 just moves the plaster, without healing the underlying condition.

Practical reality / impact:

A firm that assesses an existing contractor, after April 2020, as ‘inside IR35’ will have to pay additional taxes roughly equivalent to a further 12% of the existing cost of hiring the contractor. This increased cost means businesses will have to increase existing budgets, or risk delays to or even cancellations of projects. There are also significant administrative costs to consider for businesses if they want to accurately assess their contractors. This will be a particular burden for growing businesses, who typically engage more contingent workers for cost-effective access to key skills, yet who are more deprived of resources required to accurately fulfil their compliance requirements.

CLAIM#2

Treasury claim:

“The Off-Payroll working rules ensure that the individuals working like employees but through their own company pay broadly the same tax and National Insurance as other employees who are directly employed.”

The facts:

This is a misleading half-truth. It serves to hide the fact that the vast amount of extra tax that is payable under the new rules is payable by the firm hiring the individual.

The new rules are designed to ensure the payment made to the individual is treated as employment income (section 61N(3)) – i.e. a salary. Firms that pay salaries are required to deduct Employee’s National Insurance (NI) and Income Tax from that salary, and to pay Employer’s NI (13.8%) on top of the salary that is paid.

The amount of tax paid by an individual who structures their income via a limited company is closely aligned to that of a salaried worker, particularly following the April 2016 changes to the way dividends are taxed.

Calculations have shown that hirers are responsible for approximately 84% of the tax shortfall where an individual is engaged outside of IR35, with contractors only accounting for the remaining 16%.

When a contractor is considered a ‘deemed employee’, the hiring firm will have to pay a tax sum equivalent to an additional 12% of the cost of hiring the contractor, once tax allowance bands have been taken into account. This is a critical factor that is not being explained clearly by the Treasury.

Practical reality / impact:

As mentioned above, and in claim #1, the Off-Payroll rules impose a significant additional sum on the cost of hiring contingent labour, where workers are deemed to be within scope of the rules. However, the Treasury’s failure to clearly communicate where the tax liability lies, its attempts to liken the legislation to an IR35 update, and its portrayal of ‘deemed employees’ as mainly responsible for the tax shortfall, have caused confusion.

In the public sector, there has been widespread non-compliance by hiring organisations deducting their employer’s NI liability from the fees paid to contractors. While the money still makes its way to the Treasury, the flexible workforce is being exploited. This will happen on a far greater scale if the rules are rolled out to the private sector.

CLAIM#3

Treasury claim:

“The rules only apply to individuals who are working like employees, and do not apply to the self-employed.”

The facts:

This is not true.

The rules apply to EVERY self-employed person. Every single self-employed person needs to be assessed as per section 61M. To suggest the legislation does not apply to everyone is at best a half-truth. An assessment must be made, and additional compliance protocol must then be followed, based on the result of that assessment.

More worryingly, while Treasury claims the self-employed will not be affected, the hirers will be. This is because any complex subjective assessment is not binding in law and therefore does not provide certainty. This means that each contractor hired on a self-employed basis places a significant tax risk on the hirer's balance sheet, one that increases year-on-year.

This risk will not disappear from hirers' company balance sheets. Such a liability will have a negative impact on company valuations. As a result, UK Plc becomes a much less desirable place for businesses to operate, due to the threat of any future tax investigation.

The current rules only operate in the public sector, meaning the risk is entirely contained within the public sector. The private sector is entirely different.

Practical reality / impact:

Companies have market value, valuations and are bought and sold. Companies need to hire on-demand contingent workers to help them grow. As a result of the Off-Payroll rules, they can no longer do this without placing considerable tax risk onto their balance sheets.

This could encourage companies to hire off-shore talent based in markets outside of the UK where the threat of tax risk is not part of their day-to-day operation.

Alternatively, they may decide to relocate outside of the UK, or not come to the UK at all. The Off-Payroll rules impose a significant barrier to business growth and a threat to the future prosperity of UK Plc.

CLAIM#4

Treasury claim:

“It is fair that two individuals working in a similar way for the same employer pay broadly the same tax and National Insurance, even if one of them structures their work through a company.”

The facts:

This is based on many half-truths.

Firstly, as all tax experts will agree upon, the hirer is the party making the significant tax saving by hiring contingent labour, not the contractor. Roughly 84% of the tax loss where an individual is engaged outside of IR35 is the payroll tax, Employer’s NICs. In fact, following the April 2016 changes to dividend taxation, the tax paid by contractors outside of IR35 is not dissimilar to that paid by an employee on a salary.

This narrow Treasury statement also fails to fully acknowledge the wide range of differences in the circumstances of an employee and someone who is self-employed.

It does not say two people working the same should be *treated* the same. To be treated the same would require both tax treatment and employment rights treatment to be the same. But, while this new legislation (Chapter 10) enables firms to class individuals in law as employees, and duly tax them, it does not confer on the workers any employment rights. How is that fair?

Practical reality / impact:

It is companies that will bear the greatest extra tax burden due to these changes. Some firms will attempt to renegotiate with contractors and pass on their tax liability by making deductions from contract fees. However, it would be grossly naive to expect contractors to willingly assume 100% of their ‘deemed employer’s’ tax liability, especially when it has come about as a result of the hirer’s status assessment. This distortion of the truth by the Treasury is one of many factors which will contribute to a rise in conflicts between contractors and hiring organisations, contributing to disruption across the labour market.

CLAIM#5

Treasury claim:

“The Government values the contribution of the self-employed and flexible workers to the UK economy and intends to protect that.”

The facts:

This statement is disingenuous and does not align with Government’s intentions, nor its recent actions.

Though the Government claims to value the contribution made by flexible workers, IR35 – and now the Off-Payroll rules – target the self-employed and are intended to extract greater tax revenues. Meanwhile, recent policy such as the April 2016 Dividend Tax changes have served to diminish one of the benefits of self-employment.

The Off-Payroll rules place a significant tax risk on every UK company that hires contingent workers. This is because the assessment they are required to make is highly complex and subjective and can be challenged at any time by HMRC. This tax risk hits the balance sheet and will be considered by any potential acquirer of a company.

Practical reality / impact:

Companies will lack certainty going forward and may need to buy insurance and external services to try and reduce the risk introduced by the Off-Payroll rules. This comes at a significant cost and builds up tax risk on the firm’s balance sheet, equal to roughly a third of the total cost of all contingent workers hired on a self-employed basis. This will continue to accumulate year-on-year.

This is an obvious deterrent from hiring contingent workers and will result in a reduction of flexible engagements within the labour market, causing firms to miss out on ad-hoc access to key skills. For firms that continue to engage contractors, this considerable risk introduced by Off-Payroll makes UK plc an undesirable place to operate. Far from protecting the contribution that the flexible economy brings, this legislation does quite the opposite.

CLAIM#6

Treasury claim:

“Non-compliance with these rules is widespread, costing the Exchequer millions each year.”

The facts:

This is a definitive claim based on estimates with no evidence to substantiate the claim.

For nearly 20 years, HMRC has brought IR35 cases to court and failed to win most of them. To claim that non-compliance with IR35 is widespread fails to recognise the lack of evidence supporting the claim.

HMRC's estimates claim that around a third of contractors using limited companies will be caught by these new rules. If it is so widespread, then how come they have found hardly any over the last 20 years – it should be like shooting fish in a barrel.

As a by-product of this, any financial estimate of the perceived tax shortfall that the Treasury were to produce would be complete guesswork. It must also be acknowledged that HMRC published public sector figures detailing heightened tax yield via Pay As You Earn (PAYE), interpreting it as evidence of heightened compliance in response to the Off-Payroll tax.

This figure was determined before a full compliance cycle had been completed, meaning it failed to account for drops in Corporation Tax and Dividend Tax yield. This is a reminder that figures provided by HMRC and the Treasury concerning compliance with Off-Payroll and IR35 are not to be trusted.

Practical reality / impact:

Many would argue that HMRC and the Treasury should be tasked with proving their claims that non-compliance is widespread. Instead, HMRC's track record when challenging contractors at tax tribunal strongly suggests that the Treasury's non-compliance estimates are wildly exaggerated.

Instead, the imposition of draconian rules that encourage the exploitation of flexible workers upon the UK labour market is contributing to a growing sense among the contract sector that Government does not support the self-employed. This will likely encourage many to exit the sector, significantly reducing the flexible market's talent pool, upon which UK Plc relies so heavily.

CLAIM#7

Treasury claim:

“However, the cost of non-compliance in the private sector is still growing and will cost taxpayers £1.3bn a year by 2023-24.”

“The estimated Exchequer impact of extending the reform to the private sector has been certified by the independent Office for Budget Responsibility (OBR) and reflects the expected increase in compliance with the Off-Payroll working rules.”

The facts:

The OBR figures were given the highest uncertainty rating possible of ‘VERY HIGH’. The most important sub factor was ‘Behavioural’, also ‘VERY HIGH’, and which meant no information was available. Or, in layman’s terms – guesswork.

Office for Budget Responsibility

Budget 2018 policy measures

Table A.2: Treasury scorecard of policy decisions and OBR assessment of the uncertainty of costings

Head	£ million ¹						Uncertainty	
	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24 ²		
A fair and sustainable tax system								
54 Off-payroll Working: extend reforms to private sector in 2020-21, excluding small businesses	Tax	-5	-150	+1,165	+595	+635	+725	Very High

Off-Payroll - Private sector: VERY HIGH

Budget 2018: Policy costing uncertainty ratings

Measure	Data uncertainty	Behavioural uncertainty	Modelling uncertainty	Of which: most important	Final rating
54 Off-payroll Working: extend reforms to private sector in 2020-21, excluding small businesses	High	Very High	Very High	Behaviour	Very High

Rating	Modelling	Data	Behaviour
Very High	Significant modelling challenges Multiple stages and/or high sensitivity on a range of unverifiable assumptions	Very little data Poor quality	No information on potential behaviour

More worrying is that the Treasury now claims that: *“The methodology and assumptions are aligned with those used to estimate the financial impact of implementing the reform in the public sector.”*

Practical reality / impact:

The vastly different nature of the public and private sectors, and the lack of information leading to a very high uncertainty factor mean the OBRs projections are not meaningful.

The public sector is typically more highly regulated, immediately suggesting that applying the same methodology and assumptions to the private sector is likely to result in overblown estimates of the impact on the Exchequer, regardless of the level of certainty. This, accompanied with the Treasury’s apparent over-estimation of existing non-compliance, suggests that the tax yield from Off-Payroll will likely fall far short of what has been predicted.

CLAIM#8

Treasury claim:

“Earlier this year, the Government consulted on options to address this, meeting with over 450 stakeholders, carefully considering all of the responses as well as the evidence collected on the impact of the public sector reform.”

The facts:

This statement was made in a letter in January 2019. It refers to the previous year, not 2019.

Government’s consultation proposing a private sector extension of the Off-Payroll rules was met with strong opposition from the large majority of respondents. Arguments opposing the proposals were substantiated in many cases with research, often based on the experiences of the public sector. HMRC dismissed the findings of studies shared in response to the consultation as ‘anecdotal’.

Government consequently failed to provide a balanced evaluation of the observations shared by respondents, which [included](#):

- Government urged to delay further change
- Stakeholders called for comprehensive review of public sector impact
- Respondents claim widespread non-compliance with Off-Payroll
- Calls for measures to align with Taylor Review recommendations
- CEST deemed not fit-for-purpose.

Practical reality / impact:

Government has been warned in no uncertain terms that the Off-Payroll rules are misguided, and that they do not have the support of most stakeholders in the UK labour market. Though the private sector proposals included moderate concessions based on consultation feedback, most issues were glazed over, proving that Government always intended to treat the consultation process as a mere formality.

The obvious outcome from Government’s failure to address the many issues highlighted by respondents is that these issues will be realised when Off-Payroll hits the private sector. The fallout will undoubtedly accelerate already dwindling trust in Government from the self-employed sector and the wider labour market.

CLAIM#9

Treasury claim:

“Based on the consultation and public sector experience, the Government has decided to extend the reform to the Off-Payroll working rules to the private sector, which moves responsibility for ensuring the existing rules are applied correctly from individuals to the businesses engaging them, to improve compliance.

The facts:

This is a misleading half-truth. Businesses will not be responsible for applying existing rules. They will be responsible for applying new rules.

The new rules apply taxes differently and impose an additional tax burden on the hiring engager, who now has to pay employer’s NI and the Apprenticeship Levy on top of the fees paid to the contractor. The only common factor is that they both rely on a highly complex and subjective employment status assessment, which, thanks to the Off-Payroll rules, piles further compliance costs on businesses hiring contractors.

Given that the organisations in question will have little to no prior experience of employment status case law, issuing them the responsibility for improving compliance is an ambitious move from Government, which is highly unlikely to pay off.

Practical reality / impact:

The rules impose a huge additional cost on UK businesses who decide to engage workers ‘inside IR35’. However, there is a significant deterrent from engaging contractors outside of IR35, being that the assessment could be challenged by HMRC, leaving the hirer potentially liable for backdated tax, penalties and interest should HMRC determine the contractor to be within scope of the rules.

Widespread non-compliance within the public sector has shown that many organisations would rather take the safer route, imposing blanket rules whereby workers are strictly engaged inside of IR35, regardless of their true employment status. Many organisations have reportedly mitigated their expense by deducting their costs from contractor fees, a scenario which has encouraged many contingent workers to abandon working in the public sector.

Though the Treasury might be happy that more individuals are on a payroll, this doesn’t necessarily suggest improved compliance. In many cases, it is a result of exploitation of contractors, an issue which will only be amplified by extending the rules into the private sector.

CLAIM#10

Treasury claim:

“CEST was developed in consultation with stakeholders, including tax specialists and contractors, to assist individuals and public authorities in making the correct determination.”

The facts:

Many stakeholders took part, but the tool was widely criticised by many who provided feedback. The Treasury’s comment implies that, just because people were invited to comment, that they have endorsed the tool. This couldn’t be further from the truth.

CEST was developed to assist people making correct determinations, but it has failed in doing so. It does not make accurate determinations at all. The evidence provided by BBC executives at the Public Accounts Committee into the broadcaster’s engagement of limited company contractors [made this very clear](#):

BBC director general Lord Hall:

“From 2017 onwards, we were surprised by the way the outcomes of the tests that we had been applying perfectly legitimately and properly before were suddenly changed by CEST.”

HMRC estimates, without any empirical evidence, that one third of contractors are ‘deemed employees’. However, using CEST, the BBC was told that 92% of its self-employed freelancers were within scope of the rules.

Practical reality / Impact:

The only Government-endorsed method of assessing employment status is a tool which is heavily biased, inaccurate and has no authority in statute. Yet worryingly, and seemingly a result of HMRC’s imposition of the tool upon public sector bodies, it has been adopted as the de-facto standard in the public sector.

CEST is only able to consider a fraction of the factors contributing to an individual’s employment status and has a tendency to evaluate legitimately self-employed individuals as ‘deemed employees’. Consequently, its use across the private sector threatens to cause widespread false employment, whereby legitimate contractors are subject to employment taxes, without receiving the commensurate rights.

CLAIM#11

Treasury claim:

“HMRC will stand by the result of CEST, provided the information entered is accurate and in line with HMRC guidance”.

The facts:

This is a vague promise and not backed by any statute in law.

HMRC is an administrative arm of the Government. It does not have the powers to create tools that override tax law and to claim that any answer a tool gives will be definitive in law or binding in any way. It can, and has, changed its mind on results issued by CEST.

HMRC's guidance has also been accused of being misleading and not aligned with the law, while the taxman has also lost the majority of IR35 court cases over the past decade.

There is nothing in law that says anyone must follow HMRC's guidance. People only have to follow the law.

Given how employment status case law is highly subjective, it would be very easy for HMRC to claim that the information entered into CEST is not accurate, making it impossible for a company to conduct a CEST assessment without incurring any risk.

This comment from the Treasury is a sleight of hand to provide reassurance where there is none, and offers no guarantee whatsoever. We are yet to find an insurer who would be willing to insure the tax risk based on a CEST assessment.

Practical reality / impact:

Intended to provide false assurance to hirers while granting HMRC an excuse in instances where it wishes to challenge a status assessment, this single comment effectively grants HMRC autonomy over the deemed employment status of the UK contingent workforce.

Firms are compelled to use CEST because HMRC has indicated that it will stand by the result. CEST is geared towards finding workers caught by IR35 as default. For those who CEST considers IR35 does not apply to, HMRC can feasibly challenge the assessment on the basis that the information provided was inaccurate. This is another factor which will likely contribute to false employment and the ultimate downfall of flexible working in the UK.

CLAIM#12

Treasury claim:

“HMRC will continue to review and improve CEST.”

The facts:

This is misleading and implies that HMRC has been actively reviewing and improving CEST. It has not.

The decision-making engine for CEST has not been updated in two years, since it was released in Beta form in March 2017. In the meantime, testing of CEST conducted by ContractorCalculator has, on multiple occasions, found the tool to return inconsistent and erratic results. This begs the question; when will HMRC even begin reviewing and improving CEST?

The BBC was very clear about why it had considerable problems with the implementation of the April 2017 public sector changes. Executives cited the late introduction of CEST (launched one month earlier), and the fact that it returned hundreds of assessments which were contrary to the decisions previously made based on guidance that had been agreed with HMRC.

Practical reality / impact:

For firms to prepare, HMRC must acknowledge that more lead time is required. Businesses budgeting for, and entering into, 12 month contracts with contractors from 6 April 2019 will require certainty.

This means a new, accurate version of CEST will require completion and release within the next few weeks. This is borderline impossible, particularly given that HMRC has taken no action to improve the tool since its development two years ago.

The fact that CEST's shortcomings are well known to contractors won't help matters. If CEST isn't drastically improved in the immediate future, private sector firms will suffer a similar fate to that of the BBC, resulting in widespread disputes over employment status leading to backlogged tax tribunals.

CLAIM#13

Treasury claim:

“Enhancements will be tested and rolled out before the reform is introduced to the private sector in 2020.”

The facts:

Despite the demonstrable evidence that CEST is unfit-for-purpose – among it ContractorCalculator’s CEST whitepaper and the fallout within the BBC – HMRC’s response to a recent FOI request indicates that there has been no detailed testing documentation published to support the case that CEST provides accurate results.

The software produced will have a considerable impact on the UK economy, UK businesses, and UK taxpayers. As such, it should be released with a full suite of comprehensive and transparent testing documentation proving in detail that it substantiates HMRC’s claim that it is fit for purpose.

Acceptance testing, which includes creating comprehensive documentation is a standard practice of software engineering. Yet the in this instance, it is entirely missing.

If HMRC is yet to conduct formal testing of CEST in its Beta format, it is not in a position where it is ready to begin making ‘enhancements’. Even if alterations are made to CEST, it appears HMRC cannot be trusted to test any alterations to ensure the tool is fit for purpose.

Practical reality / impact:

As mentioned in claim #12, releasing an ‘enhanced’ version of CEST just prior to the implementation of Off-Payroll in the private sector leaves businesses with insufficient time to prepare, which will result in the same chaotic disruption that was experienced by the public sector.

Enhancements to CEST will prove futile unless HMRC amends its fundamental flaws, which are too numerous to be addressed in time for April 2020. CEST, in whatever format it takes, falls short of what is required, contributing to disarray in the private sector.

CLAIM#14

Treasury claim:

“CEST gives an answer in 85% of cases.”

The facts:

This is a comment consistently reiterated by the Treasury and HMRC, but ultimately one which means very little. It is intended to assure those who use CEST that the tool is an effective means of complying with the legislation.

However, it's not sufficient that CEST simply provides an answer. The answer must be accurate. A coin toss gives an answer more frequently than CEST, and, based on research conducted by ContractorCalculator, is almost as accurate when it comes to predicting employment status.

In fact, a two-headed coin would give the same answer as CEST in 95% of cases if it was used at the BBC. CEST must give an accurate answer in 85% of cases. Not just an answer.

Practical reality / Impact:

Following continued criticism of CEST, the Treasury and HMRC have gone to great lengths to ensure that they make no unsubstantiated claims concerning the tool's accuracy. Instead, statements such as: 'CEST gives an answer in 85% of cases' are supposed to instil confidence in the tool.

CLAIM#15

Treasury claim:

“HM Revenue and Customs (HMRC) will provide extensive support and guidance to help businesses apply the Off-Payroll working rules correctly and make the correct determination.”

The facts:

Using the BBC as a case study, it would appear that HMRC is not qualified to assist in ensuring that the rules are applied correctly and the correct determination is made.

Backed up by the National Audit Office's (NAO) report into the BBC's engagement of personal service companies (PSCs), evidence provided by the BBC to a Parliament Select Committee detailed how the BBC made the transition over to the Off-Payroll rules, with HMRC's assistance.

After imposing CEST upon the BBC, resulting in hundreds of dubious employment status assessments, HMRC issued hundreds of backdated tax bills which have still been unresolved two years later as the BBC seeks to agree a settlement.

The BBC is one organisation. Countless businesses are going to be in the same situation as the BBC, across hundreds of different sectors. How HMRC expects to educate the entire private sector is anybody's guess, especially considering recent IR35 tribunal history casts serious doubt over HMRC's own understanding of employment status.

Practical reality / impact:

HMRC's claim that it is going to provide extensive support and guidance to businesses across the private sector is laughable. Though the BBC has acknowledged that it received support from HMRC, the outcome was worryingly predictable. All freelancers were assessed using CEST which found a staggering 92% to be 'deemed employees', subjecting them to backdated tax bills.

If HMRC's idea of 'guidance' is to tell firms to use CEST, its promise to support businesses across the entire private sector sounds less farfetched. However, it will fall a long way short of helping businesses make the correct determination. The reality is that it's going to be impossible to properly educate the private sector and provide certainty.

CLAIM#16

Treasury claim:

“HMRC have committed to focus their compliance efforts on supporting businesses to apply the reform correctly, not targeting historic cases.”

The facts:

A commitment to focus compliance efforts on one area first does not mean definitively that HMRC will not focus on other areas afterwards.

The stark reality is that, without an amnesty to ensure historic tax cases are not targeted, every single contractor who is assessed as ‘inside IR35’ by an existing client will consider moving to a new contract, to reduce their historic tax risk.

HMRC doesn’t have a good track record when it comes to keeping its promises. Its insistence that reform to IR35 in the private sector wasn’t on the agenda when the Off-Payroll proposals in the public sector were introduced is one recent example. Contractors are aware of HMRC’s duplicitousness and will take measures to protect their historic affairs.

With HMRC estimating that a third of contractors are going to be found within scope of the legislation, as many as a third of the entire contingent workforce could leave their existing clients.

Practical reality / impact:

The contracting sector has no reason to trust claims made by HMRC and the Treasury. Considering the aggressive nature with which HMRC has pursued users of loan schemes with the retrospective Loan Charge, nobody trusts the taxman not to target historic IR35 cases.

Leading up to April 2020, this will be at the forefront of the minds of contractors. Many will be reluctant to undertake contracts considered to be ‘inside IR35’, for fear of arousing HMRC’s interest. This will undoubtedly result in a sharp reduction in the number of contract engagements, causing disruption and stifling productivity within the UK labour market.

CLAIM#17

Treasury claim:

“...in the public sector... the vast majority of public sector bodies are making assessments on a case-by-case basis.”

The facts:

This is entirely at odds with the evidence.

There has been widespread evidence that public sector bodies have been conducting blanket assessments, whereby a group of contractors have their status determined by the evaluation of a single role or job description. In other cases, a blanket assessment will entail a hirer simply deeming its entire contingent workforce to be caught by the rules.

Among the evidence is a webinar on the Off-Payroll rules delivered to NHS Trusts in which an HMRC officer from the IR35 team clearly encourages this approach. NHS Improvement (NHSI) conceded a Judicial Review after acknowledging that it had issued guidance to the same effect.

Since then, HMRC has continued to endorse blanket assessments, as revealed in IR35 Forum minutes from November 2018. The claim by Treasury is laughable.

Practical reality / impact:

Firms resort to blanket assessments because employment status law is so complex that they feel inclined to seek a simpler alternative. However, there are no easy answers. Conducting blanket assessments contradicts the ‘reasonable care’ provision in the Off-Payroll legislation. This is particularly dangerous for hiring organisations.

If a firm makes an assessment that a contractor isn’t caught by the rules but is found not to have taken reasonable care, the firm automatically assumes liability for any outstanding tax. Though illegal, taking a blanket approach where all contractors are considered ‘deemed employees’ won’t draw HMRC’s ire. However, it will inevitably reduce a firm’s access to talent in the market, with contractors reluctant to engage with exploitative hirers.

CLAIM#18

Treasury claim:

“Falling within the Off-Payroll tax rules does not currently change an individual’s status for employment rights as there is currently no direct link between employment taxes and these rights.”

The facts:

This is grossly misleading and ignores the law.

The use of the word ‘direct’ has been used like a magician’s sleight of hand – and is disingenuous.

There is one set of rules to determine employment status, which is the underlying case law. This set of rules is then used in both employment tribunals and tax tribunals. To suggest there is no link is an absurd falsehood.

Practical reality / impact:

Chapter 10 (the Off-Payroll legislation), sets out the steps a hiring organisation needs to take to evaluate the employment status of contingent workers, and the ensuing tax treatment should a worker be found to be ‘employed for tax purposes’. Though the legislation states in no uncertain terms that the affected workers are to be taxed like employees, it somehow doesn’t see fit to grant them the equivalent rights.

There has been widespread media coverage concerning workers’ rights in the gig economy, highlighted within the Taylor Report, which itself led to Government’s Good Work Plan. Government has acknowledged that the exploitation of workers within the UK labour market is a serious issue and has promised proposals on how to align the employment status frameworks for employment rights and tax.

Staggeringly, though, it is poised to pull the trigger on legislation which enables firms to hire workers like employees without even basic workers’ rights provisions. It must also be noted that the requirement to provide employment rights would prove an effective deterrent from the uptake of blanket assessments previously highlighted.

Surely if the person is classed as an employee in law they should be treated like an employee in all aspects?

CLAIM#19

Treasury claim:

“However, as set out in the Good Work Plan published in December 2018, the Government agrees that reducing the differences between the tax and rights frameworks for employment status to a minimum is the right ambition.”

The facts:

This is simply an attempt to appease the legitimate concerns that the Off-Payroll rules provide a way for firms to circumvent their obligation to give individuals rights when they are engaged like employees.

Government does not need to wait for the Good Work Plan. There is a very simple solution to this problem. Amend the Off-Payroll rules so that when a firm makes an assessment which indicates that the worker is a ‘deemed employee’, the firm is then required to provide them with employment rights.

As the legislation currently stands, there is no fair treatment for workers that are classed as employees according to the Off-Payroll rules. It’s a very simple premise that someone classed as an employee in law, should be treated as an employee.

Practical reality / impact:

The Off-Payroll legislation, in its current form, is oppressive and provides a mechanism for businesses to circumvent their obligations to give individuals rights if they are classed as employees. This is entirely contrary to the Taylor Report and Good Work Plan. By enacting these rules in the private sector, Government will simply intensify a serious issue that it claims it wants to address. The Off-Payroll rules are counter-intuitive and will only cause the significant portion of UK workers who are victims of exploitation to trust Government even less.

Stating an ‘ambition’ to align the tax and rights frameworks for employment status is meaningless when steps are actively being taken to widen them.

CLAIM#20

Treasury claim:

“We will bring forward detailed proposals next year on how the framework could be aligned.”

The facts:

This is a vague promise to appease the critics, and there is no need to wait.

Following an overwhelmingly negative response to its consultation, it was acknowledged by Government that considerable time was needed to prepare for the implementation of Off-Payroll in the private sector, which has since been postponed until 2020.

IR35 and Off-Payroll are based around employment status. If reform to the employment status framework is anticipated in the imminent future, it means many firms will soon need to plan yet again, with the goal posts having been moved once more.

Forcing through a draconian regime which is known to have encouraged the exploitation of contingent workers makes no sense, particularly when changes to the employment status framework are right around the corner.

Practical reality / impact:

Adoption of the Off-Payroll rules by firms requires a significant degree of preparation. At the very least, hirers need to consider how they engage contingent workers, put compliance procedures in place, and weigh up the costs of hiring contractors deemed to be within scope of the rules. This causes considerable disruption, which Government has acknowledged by postponing the implementation of the rules until 2020.

Government cannot place this burden upon UK Plc, only to introduce further sweeping change that will require the labour market to reassess in the immediate aftermath to Off-Payroll. It creates unnecessary work, costs and trouble, while doubling up on the disruption. Surely it makes sense to change both at the same time and give firms time to prepare for the single disruption?

CLAIM#21

Treasury claim:

“In the meantime, it is right that the Government takes action to improve compliance with the existing rules.”

The facts:

20 years on from IR35's inception, why is there a sudden urgency to address what Government perceives to be issues with compliance, especially given the employment status framework is set to be re-evaluated in the imminent future?

Less than three years ago, Government introduced dividend tax increases. These tax increases reduced the commercial benefit of trading via a limited company to virtually zero, leaving a negligible difference between the tax liabilities incurred by a contractor and an employee on comparable earnings.

The deficit which the Treasury perceives, and is attempting to claw back with the Off-Payroll rules, is caused by tapered employer's NI contributions resulting from rising self-employment. Compliance with the rules isn't the issue.

Practical reality / impact:

Acting now, given the moving targets of employment status is entirely the wrong thing to do. IR35 has been operating for almost 20 years. Now more than ever, for 'deemed employees', switching from permanent employment to performing the same duties only via a limited company carries extremely little benefit. Until Government can provide some evidence to suggest that non-compliance with IR35 is a problem, there should be no urgent need for reform.

CLAIM#22

Treasury claim:

“Those who wish to challenge their employment status for rights can take their case to an employment tribunal, regardless of their tax status.”

The facts:

This is grossly misleading and relies on the reader's ignorance of the law. The reality is that, in law, if a worker is using a limited company, they cannot claim rights in an employment tribunal due to the [James versus Greenwich ruling](#).

This is consistently quoted in cases, and the Treasury is being disingenuous to mislead readers and suggest that somehow a worker who is classed as 'employed for tax purposes' can get rights in court. They simply cannot.

It is also absurd to suggest that a worker who is classed by their 'deemed employer' should then have to initiate court proceedings to get the rights due to them anyway. The Public Accounts Committee (PAC), when referring to the mess at the BBC, created by the Off-Payroll tax, [made it clear that workers should be treated fairly](#):

*“The Committee was concerned that the BBC should work with the presenters affected to find a satisfactory solution. In particular presenters **should be engaged as an employee (with appropriate rights, responsibilities and protections)** unless they are doing so genuinely as someone in business on their own account providing services to numbers of clients including the BBC.”*

Ironically enough, the [original IR35 press release in 1999](#) stated the same concerns:

“But those who do participate often have to pay a price in terms of loss of protection under employment law. They may find their terms and conditions altered - perhaps losing entitlement to sick pay or maternity leave. They may even lose their jobs without entitlement to notice or redundancy pay. They will usually have no right to any claim for unfair dismissal and may lose their entitlement to social security benefits through a failure to make adequate contributions.”

Practical reality / impact:

The Off-Payroll rules are geared so that many firm will be inclined to consider their contractors 'employed for tax purposes', which is HMRC's ultimate goal. Yet, this legislation makes it near impossible for 'deemed employees' to secure fair treatment, because it is counter-intuitive to the taxman's intentions. Regardless, people who are classed as employees should get rights. It's the right thing to do.

CLAIM#23

Treasury claim:

“As with the public sector reform, the rules for determining employment status for tax purposes will not change. Where contractors have been operating the existing Off-Payroll rules correctly, and paying the right amount of tax and NICs, there will be no change to the rates of tax and NICs they pay.”

The facts:

This is not true. The rules of the new legislation are different to the existing legislation. This claim by Treasury completely distorts the legal fact that the two sets of legislation have distinct differences. The ‘rates of tax’ will remain the same, but who pays them changes.

Under the Off-Payroll rules, the hirer is required to pay employment taxes **on top** of the rate paid to the contractor. Historically, IR35 has required that employment taxes be paid out of the earnings of the contractor.

As all tax experts will confirm, the main issue is employer’s NI, which is the 13.8% that employers pay on top of the earnings paid to employees. This is not paid by firms who hire the self-employed.

Employer’s NI accounts for, using HMRCs own calculations, 84% of the tax avoided in engagements between firms and ‘deemed employees’. If HMRC and the Treasury’s estimate that the Off-Payroll rules will yield £1.3bn in tax from the economy is realised, roughly £1.1bn will be retrieved from hiring firms. This is unless hirers renegotiate with contractors and attempt to reduce their rates.

Practical reality / impact:

The Treasury does not understand its own legislation, and by not understanding it, the Treasury is failing to warn businesses about the extra costs they will be facing from April 2020. These misleading messages will incite widespread non-compliance, in many cases unbeknownst to hirers, whereby contractors have incorrect and excessive deductions taken from their earnings.

This will further damage the harmony within the supply chain, giving rise to disputes and legal challenges from contractors. In turn, this is likely to cause endless disruption to projects while threatening to destroy the flexible working dynamic within the UK.

Appendix 1: Snippets of Treasury Letters

As your constituent may be aware, at Budget 2018 the Government announced it would reform the off-payroll working rules in the private sector, in line with those introduced in the public sector in 2017. The off-payroll working rules ensure that individuals working like employees but through their own company pay broadly the same tax and National Insurance as other employees who are directly employed. The rules only apply to individuals who are working like employees, and do not apply to the self-employed.

The off-payroll working rules have been in place for nearly 20 years. They ensure that individuals working like employees but through their own company pay broadly the same tax and National Insurance as other employees who are directly employed. Regardless of earnings, it is fair that two individuals working in a similar way for the same employer pay broadly the same tax and National Insurance, even if one of them structures their work through a company. The rules only apply to individuals who are working like employees under current employment status tests, and do not apply to the self-employed.

The Government values the contribution of the self-employed and flexible workers to the UK economy and intends to protect that. There are many legitimate, commercial reasons for people to work through limited companies and for businesses to engage those companies. However, the off-payroll working rules exist to ensure fairness between individuals working in a similar way and it is right for the Government to address non-compliance with these rules. A further consultation on the detailed operation of the reform to the private sector will be published in the coming months. This consultation will inform the draft Finance Bill legislation, which is expected to be published in summer 2019.

Non-compliance with these rules is widespread, costing the Exchequer millions each year. To address this, the government reformed the rules in the public sector in April 2017. Since then, public sector bodies have been responsible for determining whether the rules apply and ensuring that they and the individuals who work for them pay the right tax. Early evidence suggests this has been successful in improving compliance without affecting market flexibility. The reform raised an estimated £550 million in additional tax revenues in its first year since introduction and, taking into account the expected impacts on corporation and dividend tax receipts, is on course to deliver the net yield estimated at Spring Budget 2017.

However, the cost of non-compliance in the private sector is still growing and will cost taxpayers £1.3 billion a year by 2023-24. Earlier this year, the Government consulted on options to address this, meeting with over 450 stakeholders, carefully considering all of the responses as well as evidence collected on the impact of the public sector reform. Based on the consultation and public sector experience, the Government has decided to extend the reform to the off-payroll working rules to the private sector, which moves responsibility for ensuring the existing rules are applied correctly from individuals to the businesses engaging them, to improve compliance. However, the Government has listened to the views of individuals and businesses, and has decided:

Non-compliance with these rules is widespread, costing the Exchequer millions each year. To address this, the Government reformed the rules in the public sector in April 2017. Since then, public sector bodies have been responsible for determining whether the rules apply and ensuring that they and the individuals who work for them pay the right tax. Early evidence suggests this has been successful in improving compliance without affecting market flexibility. The reform raised an estimated £550 million in additional tax revenues in its first year since introduction and, taking into account the expected impacts on corporation and dividend tax receipts, is on course to deliver the net yield estimated at Spring Budget 2017.

However, the cost of non-compliance in the private sector is still growing and will cost taxpayers £1.3 billion a year by 2023-24. Earlier this year, the Government consulted on options to address this. Officials met with over 450 stakeholders as part of the consultation, and the Government carefully considered all of the responses received as well as the evidence collected on the impact of the public sector reform.

The estimated Exchequer impact of extending the reform to the private sector has been certified by the independent Office for Budget Responsibility (OBR) and reflects the expected increase in compliance with the off-payroll working rules. The methodology and assumptions are aligned with those used to estimate the financial impact of implementing the reform in the public sector. Early evidence suggests that reform has been successful in improving compliance and the OBR has assessed that it has so far raised more revenue than originally expected.

The cost to taxpayers of non-compliance with the off-payroll rules by customers who work like employees in the private sector is still growing, and we estimate that it will reach £1.2 billion a year by the 2022-23 tax year. That is why the government announced at Budget 2018 that it would introduce a similar reform in the private sector from April 2020.

Your constituent raises concerns that HMRC's Check Employment Status for Tax (CEST) tool is not fit for purpose. CEST was developed in consultation with stakeholders, including tax specialists and contractors, to assist individuals and public authorities in making the correct determinations. HMRC will stand by the result of CEST, provided the information entered is accurate and in line with HMRC guidance. CEST gives an answer in 85% of cases, and where it does not, more detailed guidance and support is available. To support businesses in applying the rules, HMRC will continue to review and improve CEST, working with stakeholders over the coming months to ensure the tool and wider guidance suit the needs of the private sector, as well as to address specific points raised during the consultation.

Your constituent raises concerns that HMRC's Check Employment Status for Tax (CEST) tool is not fit for purpose. CEST was developed in consultation with stakeholders, including tax specialists and contractors, to assist individuals and public authorities in making the correct determinations. HMRC will stand by the result of CEST, provided the information entered is accurate and in line with HMRC guidance. CEST gives an answer in 85% of cases, and where it does not, more detailed guidance and support is available. To support businesses in applying the rules, HMRC will continue to review and improve CEST, working with stakeholders over the coming months to ensure the tool and wider guidance suit the needs of the private sector, as well as to address specific points raised during the consultation. Enhancements will be tested and rolled out before the reform is introduced to the private sector in 2020.

- the reform will apply only to medium and large businesses - it will not apply to the smallest 1.5 million businesses;
- the reform will take effect from April 2020 to give businesses time to prepare;
- HM Revenue and Customs (HMRC) will provide extensive support and guidance to help businesses apply the off-payroll working rules correctly and make the correct determinations; and
- HMRC have committed to focus their compliance efforts on supporting businesses to apply the reform correctly, not targeting historic cases.

Your constituent expresses concern that businesses might take a blanket approach to applying the off-payroll working rules to contractors. Independent research suggests this has not generally been the case in the public sector where the reform has been in place since April 2017 - the vast majority of public bodies are making assessments on a case-by-case basis. HMRC provided extensive support to public bodies to help them apply the rules correctly and will do the same for businesses in the private sector. In preparation for the private sector reform taking effect, HMRC will provide a detailed package of education and support for businesses in the private sector.

Your constituent expresses concern that businesses might take a blanket approach to applying the off-payroll working rules to contractors without looking at the facts of individual cases. Independent research suggests this has not generally been the case in the public sector where the reform has been in place since April 2017 - the vast majority of public bodies are making assessments on a case-by-case basis. HMRC provided extensive support to public bodies to help them apply the rules correctly and will do the same for businesses in the private sector. In preparation for the private sector reform taking effect, HMRC will provide a detailed package of education and support for businesses in the private sector, including developing new guidance, FAQs and process maps. Introducing the reform in 2020 will give employers time to prepare and adjust to the new system.

suggests that some public authorities may not have been considering employment status correctly. Employment status for tax is determined by the contractual terms and conditions, and the actual working practices of an engagement. Evidence shows that most public authorities are making assessments on a case-by-case basis.

The Government values the contribution of the self-employed and flexible workers to the UK economy and intends to protect that. However, the off-payroll working rules exist to ensure fairness between individuals working in a similar way and it is right for the Government to address non-compliance with these rules. A further consultation on the detailed operation of the reform to the private sector will be published in the coming months. This consultation will inform the draft Finance Bill legislation, which is expected to be published in summer 2019.

The estimated Exchequer impact of extending the reform to the private sector has been certified by the independent Office for Budget Responsibility (OBR) and reflects the expected increase in compliance with the off-payroll working rules. The methodology and assumptions are aligned with those used to estimate the financial impact of implementing the reform in the public sector. Early evidence suggests that reform has been successful in improving compliance and the OBR has assessed that it has so far raised more revenue than originally expected.

OFF-PAYROLL TAX

Non-compliance with these rules is widespread, costing the Exchequer millions each year. To address this, the Government reformed the rules in the public sector in April 2017. Since then, public sector bodies have been responsible for determining whether the rules apply and ensuring that they and the individuals who work for them pay the right tax. Early evidence suggests this has been successful in improving compliance without affecting market flexibility. The reform raised an estimated £550 million in additional tax revenues in its first year since introduction and, taking into account the expected impacts on corporation and dividend tax receipts, is on course to deliver the net yield estimated at Spring Budget 2017.

Your constituent also raises concerns about employment rights. Falling within the off-payroll tax rules does not currently change an individual's status for employment rights as there is currently no direct link between employment taxes and these rights. However, as set out in the Good Work Plan published in December 2018, the Government agrees that reducing the differences between the tax and rights frameworks for employment status to a minimum is the right ambition. We will bring forward detailed proposals next year on how the frameworks could be aligned. In the meantime, it is right that the Government takes action to improve compliance with existing rules. Those who wish to challenge their employment status for rights can take their case to an employment tribunal, regardless of their tax status.

You raise concerns about employment rights. Falling within the off-payroll tax rules does not change an individual's status for employment rights as there is no direct link between employment taxes and these rights. The government has separately consulted on employment status rules, including the case for aligning the employment status definitions across rights and tax, and will publish its response in due course. Any changes to employment status will be longer term. In the meantime, it is right that the government takes action to improve compliance with existing rules. Those who wish to challenge their employment status for rights can take their case to an employment tribunal, regardless of their tax status.

Appendix 2: ContractorCalculator articles about Off-Payroll / IR35

HMRC still conducted no formal testing of CEST, two years on from its release [05/Feb/2019]
https://www.contractorcalculator.co.uk/hmrc_still_conducted_formal_testing_cest_547410_news.aspx

Off-Payroll (IR35) small company's exemption fraught with difficulty, says JSA [04/Feb/2019]
https://www.contractorcalculator.co.uk/payroll_ir35_small_companys_exemption_547310_news.aspx

BBC chiefs pin problems on CEST after hundreds suffered unjust tax bills [31/Jan/2019]
https://www.contractorcalculator.co.uk/bbc_chiefs_pin_problems_cest_547210_news.aspx

Role-based blanket IR35 assessments are unlawful and highly risky [25/Jan/2019]
https://www.contractorcalculator.co.uk/role_based_blanket_ir35_assessments.aspx

How Off-Payroll toxifies relationships between business, agencies.... [17/Jan/2019]
https://www.contractorcalculator.co.uk/how_payroll_toxifies_relationships_546910_news.aspx

HMRC caught red-handed "abusing powers" as part of Off-Payroll (IR35) [14/Jan/2019]
https://www.contractorcalculator.co.uk/hmrc_caught_red_handed_abusing_powers_546810_news.aspx

85 MPs risk losing seats over Off-Payroll (IR35) [3/Dec/2018]
https://www.contractorcalculator.co.uk/mps_risk_losing_seats_over_payroll_ir35_546210_news.aspx

Did HMRC attempt to conceal admission of IR35 non-compliance... [19/Nov/2019]
https://www.contractorcalculator.co.uk/did_hmrc_conceal_admission_ir35_non_compliance_546010_news.aspx

NAO report exposes Off-Payroll (IR35) chaos within the BBC [15/Nov/2018]
https://www.contractorcalculator.co.uk/nao_report_exposes_payroll_chaos_within_bbc_545910_news.aspx

Updated IR35 factsheet launched to debunk more Government falsehoods [12/Nov/2018]
https://www.contractorcalculator.co.uk/updated_ir35_factsheet_545810_news.aspx

HMRC suppresses widespread criticism of CEST, but is still going to fix it [8/Nov/2018]
https://www.contractorcalculator.co.uk/hmrc_suppresses_widespread_criticism_cest_545710_news.aspx

Latest IR35 Forum minutes confirm HMRC plans to attempt to fix CEST [7/Nov/2018]
https://www.contractorcalculator.co.uk/hmrc_plans_attempt_fix_cest_545610_news.aspx

HMRC glosses over Off-Payroll (IR35) consultation responses in new publication [31/Oct/2018]
https://www.contractorcalculator.co.uk/hmrc_payroll_ir35_consultation_responses_545510_news.aspx

Budget 2019: Off-Payroll IR35 reforms to be extended to private sector in April 2020 [29/Oct/2018]
https://www.contractorcalculator.co.uk/payroll_ir35_reforms_extended_private_sector_april_545410_news.aspx

CEST assessment rejected by judge as contractor reclaims unlawfully deducted tax [16/Oct/2018]

https://www.contractorcalculator.co.uk/cest_assessment_rejected_judge_545010_news.aspx

HMRC 'witch hunt' seeks names and addresses of contractors operating outside IR35 [15/Oct/2018]

https://www.contractorcalculator.co.uk/hmrc_contractors_operating_outside_ir35_544910_news.aspx

Leaked HMRC webinar suggests taxman has misled the NHS on IR35 [10/Oct/2018]

https://www.contractorcalculator.co.uk/leaked_hmrc_webinar_taxman_misled_nhs_ir35_544810_news.aspx

IR35: ContractorCalculator publishes summary of responses to Off-Payroll consultation [24/09/2018]

https://www.contractorcalculator.co.uk/ir35_summary_responses_payroll_consultation_544510_news.aspx

Off-Payroll Working: new petition launched to ensure fairness for all workers [13/Sep/2018]

https://www.contractorcalculator.co.uk/petition_launched_ensure_fairness_all_workers_544410_news.aspx

Government's Good Work Plan in jeopardy as Off-Payroll tax threatens the low paid [03/Sep/2018]

https://www.contractorcalculator.co.uk/governments_good_work_plan_payroll_tax_543510_news.aspx

10 key failings of HMRC's IR35 testing tool CEST – 18-month investigation [13/Aug/2018]

https://www.contractorcalculator.co.uk/cest_failings_contractorcalculator_investigation.aspx

CEST does not provide certainty or reasonable care, says ex-HMRC tax inspector [07/Aug/2018]

https://www.contractorcalculator.co.uk/cest_reasonable_care_ex_hmrc_tax_inspector_544010_news.aspx

CEST was not formally assessed under Government's own standards, reveals FOI [06/Aug/2018]

https://www.contractorcalculator.co.uk/cest_formally_assessed_governments_standards_foi_543810_news.aspx

How to appeal wrongful tax treatment following an incorrect Off-Payroll assessment [07/Aug/2018]

https://www.contractorcalculator.co.uk/appeal_wrongful_tax_treatment_incorrect_assessment.aspx

£200m tax reclaim among multiple consequences of HMRC's malfunctioning CEST tool [03/Aug/2018]

https://www.contractorcalculator.co.uk/200m_tax_reclaim_among_multiple_consequences_cest_543710_news.aspx

CEST exposed as hopelessly unreliable using HMRC's own test data obtained via FOI [01/Aug/2018]

https://www.contractorcalculator.co.uk/cest_exposed_hopelessly_unreliable_hmrcs_foi_543610_news.aspx

CEST only asks a fraction of questions usually posed during an HMRC inquiry [30/Jul/2018]

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