

# Off-payroll working in the private sector

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Submission to HM Revenue & Customs and HM Treasury



**Chartered Institute of Personnel and Development (CIPD) & Chartered Institute of Payroll Professionals (CIPP)**

**August 2018**

Please find the joint response from the CIPP and the CIPD in response to the HM Revenue and Customs and HM Treasury consultation on off-payroll working in the private sector.

### **About the CIPD**

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has 150,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

### **About the CIPP**

The Chartered Institute of Payroll Professionals (CIPP) was established as an official industry body in 1985 when the Institute of Payroll Managers (IBPM) was formed. In 1998, the IBPM merged with the Association of Pensions and Superannuation Administrators (ASPA) to form the Institute of Payroll and Pensions Management (CIPPM), which became the Institute of Payroll Professionals in September 2006 and was granted Chartered Status in November 2010. The CIPP is the Chartered Institute for payroll professionals in the UK and currently has in excess of 10,000 members enjoying a range of benefits. In addition, the CIPP is the UK's leading provider of education for payroll, and has established the friends of automatic enrolment which is responsible for bringing together and educating those responsible for implementing automatic enrolment for pensions.

The mission statement for the CIPP is:

Leading payroll and pension professionals through education, membership and recognition.

## **Why we are responding**

The proposed changes to off-payroll working rules for engagements will have a significant impact on both HR and payroll professionals. Previously, determinations to establish IR35 status and the payment of contractors tended to be taken by other parties.

If the proposals go through, HR and payroll will have significantly greater responsibility for determining whether contractor engagements are captured by IR35 which will have a significant impact on existing HR and payroll processes and workloads.

The changes will also have a significant impact on independent HR and payroll consultants who work as contractors with private sector organisations.

## **Evidence gathering**

To provide quantitative and qualitative data to inform and evidence our response to this consultation, we have:

- Published two joint surveys to our members and to the wider HR and payroll profession which ran throughout July and were aimed at:
  - HR and payroll practitioners
  - HR and payroll contractors

We received responses from 43 HR and payroll practitioners, of which 68% represented employers with headcounts in excess of 250. We received 82 responses from HR and/or payroll contractors.

In addition to the surveys, the following face-to-face events were held to gather anecdotal evidence and views directly:

- CIPD together with IPSE held a workshop of HR/payroll and non-HR/payroll contractors to gain their insights about the off-payroll proposals; and
- CIPP together with representatives from HMRC held a roundtable to gather views of HR and payroll practitioners

## **Key findings from HR and payroll practitioners**

- Over 69% of respondents currently employ the services of an individual/s via an intermediary such as a Personal Service Company
- 59% of respondents currently have limited or no responsibility for determining IR35 status and a further 64% have limited or no responsibility for making payments to contractors captured as a result of an IR35 determination
- 53% of respondents have little or no knowledge of the current rules of IR35 for contractors operating within the private and voluntary sectors
- 42% of respondents know a fair amount or know well about the impact and operation of IR35 within the public sector

- 79% of respondents don't believe they have the capacity, knowledge or resources to deliver the preferred option in the Private and Third sectors.
- Whilst 30% of respondents currently have yet to understand the impact that IR35 private sector reforms would have on them, 45% already know that they would need to expend resources to enlist the support of a third party organisation to assist in making an IR35 determination
- 91% of respondents believe that they will need some level of support from HMRC to determine status with only 9% believing that they would need no support at all from HMRC
- 69% of respondents will require written guidance and specialist knowledge from HMRC
- 55% of respondents believe that a phased delivery of any reform is necessary to ensure widespread awareness and understanding of the ultimate implications
- 82% of respondents have an expectation that contractor charges will increase and 86% have an expectation of increased 'employer costs' and workload (89%) as a result of reform (similar to that of the public sector) being rolled out to the Private and Third Sectors

### **Key findings from HR and payroll contractors**

- 74% of contractor respondents who have used the Check Employment Status for Tax (CEST) tool believe it to be inaccurate
- 64% of contractor respondents anticipate needing professional advice as a result of any reform within the private and third sectors
- 69% of contractor respondents are not confident that their clients will have the capacity, knowledge or resources to be able to make a correct status determination
- 56% of contractor respondents plan to only seek contracts in the private and voluntary sectors in which the off-payroll rules do not apply
- 47% of contractor respondents believe that voluntary and charitable organisations will struggle to deliver IR35 reform with 44% believing that the Construction industry will also struggle significantly

### **Summary**

Throughout our evidence gathering for this submission concerns have been raised about the overlap with the Employment Status consultation run by the Department for Business, Energy and Industrial Strategy that ran from February-June 2018 and ideally we would await the outcome of that consultation before being able to make an informed comment as it relates to the Employment Status issues that arise with IR35 determinations.

We also note that Government remains firmly against the idea of a 'third' way which would result in the need for the design of a new tax regime that would accommodate working practices in the modern economy. We would support the calls for IR35 to be revisited to see if it remains fit for purpose as its reach continues to expand outwards

to all engagers and increasingly transferring operational obligation away from the contractor.

We are also aware that issues have arisen with the operation of IR35 in the public sector relating to flat rate VAT and the reclaim of travel expenses and we would join with other stakeholders in having an expectation that these will be resolved as a result of this and any subsequent consultations.

However if the preferred option is chosen, which is to roll out the off-payroll working in the Private Sector reform in a similar way to that introduced to the Public Sector in April 2017, we ask that the RTI system and underlying HMRC processes be updated to make clear where a deemed payment is being made to a contractor under IR35, as opposed to a payment for wages or salary to an employee.

We also call upon HMRC to provide clarity as to how an individual who is 'Genuinely Self-employed' and 'in Business in their own account' can be identified.

It also isn't clear within this consultation whether the Voluntary sector and Charities (Third Sector) are to be impacted by any reform and we call upon the Government to provide clarity at the earliest possible opportunity on this point.

This consultation also comes against the backdrop of the UK's decision to leave the EU. While we don't see Brexit as an excuse for nothing to happen, any changes to how employers apply the off-payroll working rules must be sensitive to what is happening in the wider economy. Similarly, the proposals contained within the consultation should be assessed against the need to improve the UK's productivity and whether the ideas contained with the joint HMRC and HMT document will help improve company performance.

In the event that the decision is made to deliver the 'preferred option' we ask for:

- a full and lengthy consultation period which lays clear the detail to be delivered;
- a generous timescale of delivery for all businesses that also builds in sufficient lead in time for any adaptations that may be needed for payroll, HR and accounting software. A phased roll out timetable that recognises the impact on the smaller business and their limited resources would also be welcomed; and
- consistency of application between sectors where possible
- a phased roll out that provides sufficient time for all affected stakeholders to acquire the required capacity, knowledge and resources. Our practitioner survey suggests that changes should be phased in by employer size over a two- to three-year period

We stress that the private sector is not only a lot larger than the public sector it is also more dynamic in terms of the creation and demise of organisations. This means that for the proposed changes to be successful, HMRC will have to provide information, support and guidance across a far wider range of employers.

We note the options that have been considered out of scope for this consultation. However, a number of calls have been made throughout our research for a de

minimis limit (for example using turnover) to be applied that would exclude micro and small business from this reform. This group are likely to experience the same issues as the contractors captured within IR35 and therefore present the same enforcement challenges to HMRC as are experienced currently.

We also heard criticism of the CEST tool and would recommend that HMRC undertake widespread and public user experience research with a mind to making improvements that will result in greater certainty for all users.

It is clear from our survey findings that there is widespread ignorance of Intermediaries legislation (IR35) both in its original form and also since delivery of public sector reforms. This demonstrates the very significant need for improved:

- guidance and information delivery by HMRC that recognises that in delivering to the masses the style of guidance needs to vary to make it clearly understood;
- numbers of staff on the specialist support helpline as well as expanding the knowledge of the general employer helplines as IR35 becomes 'business as usual';
- education and information delivery to ensure that all affected stakeholders receive clear communications from HMRC during the roll out period; and
- learning by HMRC - lessons need to be learned from the delivery of the public sector reform, which came at very short notice with very little open communication to all affected stakeholders, which will include different departments in large business such as HR, Payroll, IT, Procurement, Finance to name a few, as well as to the contractor industry themselves.

Should reform be delivered to the private sector in a similar/identical manner to that delivered in the public sector there will be an increase to the administrative burden for businesses of all sizes and we ask how this is being addressed by HMRC in its interaction with the work of Administrative Burdens Advisory Board (ABAB) and the upcoming review by the Office of Tax Simplification (OTS).

And finally the 'Elephant in the Room' is the key driver to the issues that this consultation seeks to affect is not being dealt with in any recent consultation but needs to be addressed and explored through open discussion, debate and consultation at the earliest opportunity. The variance in the tax burden (and in the use of the word tax we include Income Tax and National Insurance Contributions) between the employed and the self-employed is significant. Greater equity between all forms of employment needs to be achieved.

## Our response

We have not responded to each individual question in the consultation document but have identified the questions to which each response relates.

### ***Q2. Could the public sector regime better fit the needs of businesses? How?***

A review of the effectiveness of CEST. For instance, is the language pitched correctly at the typical HR or payroll professional together with the wider range of user that wholesale roll out of off-payroll working would result in?

### ***Q3. What if any, changes could help make the administration as simple as possible?***

Do all firms need to be covered by these proposals, or is there a sensible cut-off point? If there was, it would not only limit the administrative burden for these employers but also for HMRC staff. This cut-off point could be linked to turnover or employee size.

### ***Q4. If the private sector rules were changed, do you have any evidence that there are parts of the private sector where the administration of any regime may need to vary even though the basic principles including for determining status, remain the same?***

If the rules are going to change, then it makes sense to keep the administration of any regime the same across the public sector. If there is to be variation, it should be within, rather than between, the sectors.

We would again call for clarity as to whether the Third Sector is to be included within this proposal. We would again suggest that micro engagers could present the same challenges in enforcement to HMRC that the current PSC does.

### ***Q5. Is there any evidence that parts of the private sector will not have, or be able to acquire the administrative capacity, knowledge and resources to enable them to implement any changes in relation to off-payroll workers?***

Our employer survey indicates that currently HR/payroll practitioners have little or no responsibility for either determining IR35 status or paying contractors. The majority of practitioners we have questioned know little or nothing about either the existing off-payroll rules or the preferred option to give the private sector the same or similar obligations as those applied by the public sector since 2017.

Our key findings demonstrate that the majority of HR and payroll practitioners have need for additional support to help enable full implementation of the preferred option

regarding off-payroll workers. We again emphasise our concern about the ability of HMRC to resource this support in the long term.

These findings are supported by our contractor survey that finds that only a minority of their clients use HR/payroll to determine IR35 status or to pay them. Similarly, most contractors predict that their clients would require additional help to assist them to determine their IR35 status.

Organisations will expect HMRC to play a major part in providing support. We have an expectation that HMRC is able to deliver the right level of knowledge and skill across their customer service helplines, as well as the specialist team and within their guidance which will need to be written for a wider audience as well, as the tax and employment status specialists, so as to calm the fears of both practitioners and contractors.

So far, the vast majority of contractors report that their clients have not spoken to them about the proposals regarding off-payroll working and the impact on the engagement as a contractor. This suggests that the HMRC faces a significant task in raising awareness of the proposals contained within this consultation amongst the HR/payroll practitioners community.

#### **Q6. How could these difficulties be mitigated?**

This will require a significant level of investment by HMRC with the provision of information, support and guidance for HR and payroll professionals, backed up by the creation of a communications and marketing strategy and the roll out of an extensive campaign which we would expect to include a range of interactive webinars that support a wide range of learning needs and styles, from the novice through to the subject specialist.

Comments received from HR/payroll practitioners as part of our survey include:

*“Need to know if the contractor has other work, what the contracted work entails. Not all HR teams would know this level of detail.”*

*“Translate legislation into system and process requirements to enable operational delivery.”*

*“Build knowledge of legislation and be confident to implement. Will require budget and wholesale business change.”*

*“Learn about procurement rules and procurement contracts, business structure types, common law regarding contracts and invoicing, VAT.”*

Further comments are to be found in the survey results which are available on request.



**Q8. What action should be taken in the case where the fee-payer hasn't acted upon the client's conclusion that the worker would have been regarded as an employee for income tax and NICs purposes if engaged directly? Should an obligation be placed upon the fee-payer to adopt the client's conclusion and there be sanctions for failing to do so?**

Yes there should be consequences – where the client has made a determination the fee-payer should act on this determination or face appropriate sanctions – although we have no evidence to suggest that this practice is widespread or commonplace.

**Q10. What systems and process changes would businesses need to make?**

In many firms, the organisation would need to introduce process and update their internal systems to enable the flow of information that will ensure that HR/payroll are able to determine correctly the IR35 status of contractors and process their payments accordingly.

Our employer survey indicates that just under half of those questioned anticipate using a third party (such as a recruitment or law firm) to help them determine the IR35 status of contractor engagements. This suggests that there may be a lack of belief in the current CEST tool.

**Q11. Would there be any process and administrative cost implications for businesses? Can you provide evidence of the scale and nature of these?**

Yes, there would be an initial cost as businesses create processes and administration required to correctly determine IR35 status contractor engagements and payments and whilst our experience of seeing similar rollout suggests that the largest expense would be incurred with the set up costs during the transition stage and, as we have members who have been impacted by the public sector reforms, once the outcome of this consultation is known we can gather evidence of these costs.

**Q13. Is there anything else HMRC could do to ease the implementation for businesses, and can you provide evidence of how this would ease implementation or administration for businesses?**

Many practitioners report that they will be contacting HMRC for advice and guidance regarding IR35 status, the majority of those on a frequent basis. Most of them anticipate that they will be given a high or a moderate level of support from HMRC to allow them to determine IR35 status.

Preferred HMRC support (where it is to be accessed) includes:

- Written guidance
- Specialist helpline

- Webinars/podcasts
- Seminars
- Worked examples

However, some practitioners did tell us throughout our evidence gathering that they may look for professional advice and guidance elsewhere.

**Q33. *Would these, or any of the other options outlined above, be more effective than extending the public sector reform? If so, how would they be more effective and on what grounds would they be preferable to extending the public sector reform?***

We repeat our request that consideration be given to placing a de minimis level on the size of engager client captured by any private sector reforms. A business engaging the service of another identical sized business presents the same challenges for HMRC in enforcement as the current system.

**Q34. *Are there any other issues which businesses or individuals who may be affected would like to raise?***

We would again call for the results of the employment status consultation run by the Department for Business, Energy and Industrial Strategy between February-June 2018 to be a known outcome before presenting – if deemed necessary at that point – a final proposal for off-payroll working in the Private sector for public consultation.

This will enable informed decisions to be made and cost evidence to be gathered.

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