Finance Bill Sub-Committee
Off-payroll working rules: treating people fairly

Collated written evidence

Richard Adams 12
David Adlam 14
Sachin Agarwal 19
David Ainslie 20
Stephen Alden 28
Basharit Ali 31
Richard Allan 33
Rob Allright 35
Ishrat Amin 42
Matt Aston 43
Dean Attidore 45
Daniele Azzaro, Dekoo Ltd 47
Andy Balcam 50
Leigh Baker 53
Martin Barber 55
Sally Bargman 57
Paul Barker 59
Michele Barry 60
Michael Barwise 66
Namgyal Basi 69
Bauer & Cottrell Ltd 72
Christopher Beach 78
James Beattie, RJB Dynamics 80
Mark Beeden 83
Gareth Bennett 88
Jonathan Bentley 90
Amelia Berriman 92
Ross Beveridge 95
Rex Bigger 96
Mike Bolsover 98
John Bosco 101

Eran Boudjnah 104
Steven Bowden 106
Eric Bowen..... 114
Lianne Bowie..... 116
Colin Boyd 122
Gary Boyle..... 123
Kieran Brady, Consult Brady Ltd 127
Tim Brain..... 128
Daniel Brearley..... 133
Paul Broomhead 136
Dave Butcher 141
Marcella Campbell..... 143
Stuart Campbell 144
Stewart Cannon..... 146
Richard Carmichael 154
Geeta Chari, Jason Love, Adam Morris & Kaushik Patel 156
Martin Charlton 164
Anthony H J Chan 166
Simon Churchley 169
Caroline Clark 170
Iain Clark 179
Andy Clarke 183
Roger Clarke 189
Chris Clegg 191
Rob Colley 196
Jeff Coteman..... 199
Chris Cruickshank, Four M Accounting Services LTD 200
Ebert Coetzer 203
Paul Coley 206
Matt Collard 208
Andy Collier 209
David Cooper- Cooper Geomatic Ltd..... 215
Bruce Cornfoot 216
David Cotton 219
Benjamin Craig..... 222

Darren Davies 231
Mark Davies 234
Robin Davis 236
Alan Denny 240
Sanjib Dhar 242
Mark, Diggler.co.uk 246
Colin Dinnie 248
Joanne Dodd 250
Ian Dodson 252
Ricky Du Plessis 253
Luke Dyson 257
Michael Edwards-Bate 263
Elixier Consulting Limited 265
Mike Elliot 267
Dean Emerson, Victrix 269
Baris Ergun 271
Allan Esler Smith-Accounting and Tax Limited 273
M.A. Evans 277
Lee Fear 279
Stuart Finnigan 285
Simon Firth 287
Ken Fitz-Patrick 291
Darrel Flint 293
Catherine Fox 293
Paul Foley 301
Ian Franklin 304
Alasdair Fraser 308
Matthew Fryer 312
Le Geniak 318
Colin George, Smartex Computers Ltd 321
Amritpal Gill, HAYACHI SERVICES LTD 323
Mark Gallagher 329
Anonymous 1003
Paul Garrish 332
Ross Garvey 333

Lincoln Gearey 334
Peter Geldard 339
Andrew Gilfrin 343
P Gill 346
David Godley 349
Simon Gooch 351
Mark Gordon 352
Paul Gourley 355
Chris Gray 356
John W Griffiths 358
Roy Griffiths 362
Philippe Guenet 366
Ian Hall 369
Steve Hall 371
Chris Harrhy 374
Bryan Hart 376
Gar Hawa 379
John Hayes 382
Michael Hedges 387
Steven Harrison 391
Helen Hibberd 397
Sarah Hickey 399
Paul Hill 402
Paul Hindhaugh 405
Robert Hodges 408
Andrew Hodgson 409
Kenneth Hogg 411
Oddgeir Hoiland 416
Jamie Hopkins 417
Matthew Hopley 419
Adam Hopwood, CompuLink Solution Ltd 427
Christopher Horsey 429
Richard Hoskins 434
Keith Humphreys 436
Dave Hunter 438

Farhat Hussain 439
Naeem Ismail 440
Katherine Claxton, IVC Evidensia 444
Andrew Iwasko 446
Brian Jackson 455
Peter Jackson 458
Chris James 460
David Jarrett, XLT Consulting Ltd 462
Justin Jarrett IAFC 466
Dawn Jenner 468
Graham Jenner, Jenner Accountants Ltd 469
Jega Management Ltd 473
Anthony Johnson 474
Graham Johnson 477
Jane Johnson, New Media Playground Ltd 480
Andy Jones, AC & JM Jones Consulting Ltd 484
Martin Judd 485
Vidhyarthi Kantumuchhu 487
Alex Kay 488
Andrew Keohane 490
Andrew Kinsella 495
David Kirk 498
David Kirk 507
David Kirkwood 509
Ahmed Khan 515
Ben Knibbs 517
Shankar Lakshminarayanan 519
Murray Lambert 522
Rex Lampier 524
Thomas Lamonby 527
Mark Landry 530
Mark Lawless 531
Fraser Lawson, Beau Engineering Ltd 534
Stephen Lawton 536
Jon Leader 539

David Lee 544
David Lee 546
Simon Lee 547
David Leech 548
Mark Levitt 549
Tom Lavery 554
Gary Lawson 556
Christopher Lindley 558
Jon Lobo 563
Tim Loftus 567
David Longe 574
Christopher Lopez-Smith 576
Alan Lowdell 578
Aaron Lynch 586
Stephen Matthews 589
Mark McAleer, Talent Development Solutions Ltd 589
Mike McDonnell 593
Ian McGraw 598
James McDougall 599
David Maclean, DA Maclean Consulting Ltd 601
David Magee 604
Richard Mann 607
Simon Marshall 609
Chris Mattingly - Chief Executive, The Contractor Co-op 612
Adrian May 614
James Maynard Lowe 617
Susan McNaughton 620
Anita D. Millar 621
Dean Miller 628
Chris Mitty 629
Aslam Mohammed 636
Nigel Moore 640
Edward Moore 641
Frances Morris, Morris Business Consulting Ltd 644
Marta Morawska 647

Steve Morgan 648
Dave Murphy 649
Stewart Neville 651
Dave Murray 653
Graham New 655
Andrew Nichols 658
Andrew Nickolls 662
Stephen O'Brien 670
Jon Oliver 671
John Openshaw 674
Andy Ong 680
Tim Orme 682
Bernard Osbourne 685
Andrew Padley, Lorand Design Ltd 686
Adrian Palmer 688
Ben Parkes 693
Bipin Parmar 694
David Parr 696
Clive Parry 697
Mark Parsons 699
Marc Pattman 705
Pertech Associates 710
Daniel Perry, Metagility Ltd 711
Mike Pettigrew 716
Paul Phillips 718
Craig Phipps 721
Robert James Piers-Leake, Softly Does It Limited 727
Vladislav Piscunov 730
Jeremy Place 732
Nic Plum, Eclectica 733
Arvind Poduval 736
Charlotte Poynton, Proto Consulting 738
Dave Prichard 740
Vineet Rai 743
Fred Rayers 744

Adrian Redman 745
Elaine Richardson 750
Dave Rigler 751
Geoff Robbins 754
S Robson, Charcoal Hills 758
Dominic Roberts and Liza Roberts 762
Martin Roll 765
Steve Rollins 767
Will Roney 769
Mark Rowland 775
Garry Scott Rayner 783
Gianni Sawyer 785
Matthew Searle 787
Mohan Seenippandian 794
Jo Sellars 795
Nik Sen 802
Isabel Serval 804
Nazim Shan 805
Raj Sharma 810
Brian Sheen 814
D. Shetty 816
Philip Shore 818
Kiri Shukla 820
Richard Shuttlewood, Erintech Ltd 823
Geoff Sibbald 830
Nigel Simmons 833
Jag Singh 836
Evan Skuthorpe 839
Alan Smith FCA 841
Mark Lawless 844
Tom Smith 847
Robert Smith 850
Thomas Sproston 853
Vincent Stacey, Shaun Barton, Nick Bowman, Jonathan Forsythe, Lee McMichael, Mick Cameron, Mark Battry, Siddique Meah and Rajesh Mahay 856

Gareth Stanton 866
Richard Stephenson 869
Andy Stokes, (Andy Stokes Consulting Limited) 872
Lucie Stokoe 878
Craig Studholme 883
Peter Surgett 884
Simon Taylor 886
Vicky Taylor 889
Dr Andrew Tekle-Cadman 891
Daniel Thiel 893
Mark J Thomas 894
Adam Timberley, ACMTIX LTD 896
Mark J Thomas 898
Anthony Thorne 900
Neil Tofrik 903
Sayvai Tosu 905
Alison Trafford, AMT Analytics Ltd ..... **Error! Bookmark not defined.**
Ian Treharne 907
Dean Turney 908
Kevin Urquhart 911
Hitendra Varsani 914
Mohammed Vaseem 917
Frank Vernor, Last Throw Ltd & Centaur Quest Ltd 919
David Vinas 924
Paul Vincent 927
Chris Wain 930
Ian Waite 933
Garie Walsh, Gew Solutions Limited 941
Justin Walters 943
Maria Wareham 945
David Watkins 948
Robin Welch 950
Dr Martin Wheatman 954
Phil Wheeler 961
David Whistler 962

Andrea Wilkinson Leith, AWL Purchasing Consultancy LTD 966
Davina Wilkinson 967
Andy Williams, New Technologies Limited 967
D J Williams 971
Tyrone Williams 972
Austin Williamson 973
Ritchie Williamson 977
Dr Jessica Wilson 979
Ian Wilson 980
Martin Wilson 983
Paul Wood 986
Mike Wood 988
Matt Worsdell 989
Cliff Wright 990
Christopher Young 992
David Young 996
Petrus Zeeman 998
Romit Zutshi 999
ANONYMOUS EVIDENCE 1003
Anonymous 1003
Anonymous 1010
Anonymous 1013
Anonymous 1014
Anonymous 1015
Anonymous 1016
Anonymous 1020
Anonymous 1022
Anonymous 1027
Anonymous 1030
Anonymous 1033
Anonymous 1039
Anonymous 1049
Anonymous 1057
Anonymous 1064
Anonymous 1067

Anonymous.....1067
Anonymous.....1071
Anonymous.....1073
Anonymous.....1077
Anonymous.....1078
Anonymous.....1081
Anonymous.....1083
Anonymous.....1084
Anonymous.....1085
Anonymous.....1087
Anonymous.....1090
Anonymous.....1092
Anonymous.....1094
Anonymous.....1100
Anonymous.....1102
Anonymous.....1103
Anonymous.....1105
Anonymous.....1107
Anonymous.....1108
Anonymous.....1111
Anonymous.....1113
Anonymous.....1117
Anonymous.....1121
Anonymous.....1122
Anonymous.....1123
Anonymous.....1124
Anonymous.....1127
Anonymous.....1129
Anonymous.....1132
Anonymous.....1137
Anonymous.....1138
Anonymous.....1140

Richard Adams

I am making this submission in a private capacity, as a self-employed Contractor who will be (and is already) being affected by these changes.

I wish to comment on what I believe to be deeply flawed legislation that has been drafted with little understanding or consideration for the extremely wide ranging and debilitative effects it will have on small businesses like my own throughout the Country. I currently stand to potentially lose my business and therefore my family's livelihood within the next few weeks.

I am an IT Contractor specialising in large and complex systems, usually with a significant security aspect. For this reason, the bulk of my clients will be from Companies forming the large and medium enterprises that are the apparent main targets for enforcement. The very nature of my work means that smaller businesses would not have the requirement for, nor the finances to deploy sufficiently complex systems to require my services in the first place, something that will be common to IT Contractors across all sectors.

Impact on organisations

The very threat of this impending legislation has already had dire consequences to the Contracting workforce. Due to the excessively complex nature of the legislation and the threats of investigation by HMRC, possibly resulting in large fines as a consequence of any transgressions or mistakes in assessment, a plethora of large Companies, including many multinationals and FTSE 100 names have decided to pre-empt the legislation and dispose of their entire contract workforce in advance. I strongly urge you to look at the large and growing list of such names that can be found at www.offpayroll.org.uk, there is an all too familiar recurrent pattern forming across the Country, in many diverse sectors.

My current client, a UK-based FTSE100 Energy Company is extremely risk averse. Based on what limited advice their Accountants were able to provide regarding IR35, they have decided it is actually a safer business decision to refuse to engage any Limited Company (PSC) Contractors from April, despite their IT function being recently outsourced to India and their Permanent IT staff being disposed of, leaving them dependent on skilled Contract staff to resource a large number of specialised projects, some of which are important to Critical National Infrastructure (CNI). It surely speaks reams when they believe the risk of significantly delaying or not completing such projects is still seen as a lesser one than the threat posed by potential HMRC investigations?

Determining the tax status of workers

The tests for determining tax status are not at all clear, either for engagers or workers. My current client has, in addition to refusing to transact with PSCs, made a blanket determination that all future contracts will be automatically deemed as being inside the scope of IR35, despite a complete absence of any attempt to make the very same individual assessments that HMRC claim are both mandatory and the 'expected result' of the legislation; indeed HMRC specifically state that such blanket Status Determination Statements are *not* valid and will not satisfy the requirement for the engager to take 'reasonable care' in its determination. Presumably it has been (probably quite correctly) assumed that no small business will have the funds to mount any legal action against a large or medium enterprise making such a determination and I hardly think that HMRC would be interested in doing so!

The ability for the Contractor to dispute a determination is of very little practical help. At best there is almost no chance that I could afford to wait for the statutory 45 days for a disputed assessment to be responded to, that is a very long period without income for a small business. There are also documented instances already where assessments of existing contracts have been disputed, only for the contract to be immediately terminated as a result and that is before the regulations have even been enacted.

The HMRC CEST tool is unfit for purpose, being extremely difficult to use (several questions do not make it clear whether they refer to the functions of the engaging Company or the Contractor and require considerable trawling through the rudimentary help pages in order to resolve) and even HMRC themselves have lost many Public Sector cases where they have used the CEST tool as evidence and it has promptly contradicted their own case, causing them to lose.

The result of CEST is of little use anyway when illegal blanket determinations have already been made. I used the tool myself, entering the precise, accurate details of my own circumstances and was deemed firmly *outside* IR35's remit, however my client refuses to deal with my Company after April 5th anyway, so my choices are either to have my contract terminated immediately at that time or alternatively to operate under the auspices of an Umbrella Company.

Policy objectives and wider context

Umbrella Companies serve very little useful purpose except to theoretically deflect the risk of adverse IR35 assessments from the end client to the umbrella, not something that is the supposed intention. If I was to use an umbrella company in order to stay with my current client then I would, after the umbrella took its percentage on top of all the mandatory 'employer' deductions, be seeing a drop of more than 35% in my income. I would also be receiving mandatory deductions for holiday

pay that I do not want, and which would then be lost, entirely to the umbrella's benefit if I did not actually take any holidays. The majority of end clients are explicitly refusing to increase day rates to compensate for this umbrella effect, so the losses will all be to my disadvantage while not offering me any useful or required benefits. The only plus to me would be that I would no longer need to collect any VAT, nor pay any business and personal administration fees (also subject to VAT) to my Accountants, so further reducing HMRC income on top of the reduction in my personal taxation due to my own lower income.

Umbrella Companies may often be owned by the same organisation as that providing service to the end client and are sometimes the *only* umbrella company that that same agent will deal with. Effectively then, if I wish to contract for a given end client, I will be forced to use a specific umbrella, thus giving that organization two bites at the cherry. The mass blanket determinations being made currently ahead of IR35 are only serving to exacerbate this problem. It should also be considered that many of these third-party providers are based offshore, especially in India and are therefore more likely than most to be able to take full advantage of any tax efficiencies that this allows, resulting in yet further reduction in HMRC income.

Summary

I started my small business following many years of working as an employee in several large organizations. I have never considered myself a corporate individual and have relished the chance to now be my own boss, pursue my own interests and use my hard-learnt skills to my own advantage, accepting the costs of running my business and paying for my own frequent ongoing training needs. I would be devastated if I had to finish my working life being once again just a small cog in another faceless behemoth.

I believe that this legislation will completely fail to achieve the Government's objectives, save in a media-friendly 'something must be done' context like that used when failing to tax Google etc effectively, and will instead be severely damaging to both small businesses and the UK economy, surely not an ideal situation in a newly independent Britain?

I urge you to reject implementation of IR35 this April. In its current form its will be destructive rather than effective and will cause permanent damage to thousands of small businesses across the Country.

25 February 2020

David Adlam

About Me

I am a highly skilled and experienced software engineer who specialises in safety critical aviation software. I have been directly impacted by the manner in which these changes are being introduced, or more accurately by the manner in which my current client is introducing these measures due to lack of time to properly implement the measures after the relevant legislation is enacted in mid- to late-March.

The company that I am currently supplying to has taken extensive measures over the years to ensure that we are not employees. The proposed changes has changed their behaviour to the point where they have decided that we will all be required to operate inside IR35 as if we are employees, but we will still not be employees.

Of the 12 questions posed in the call for written evidence, I have deleted those that I feel I do not have anything to offer, and answered those where I feel I have some relevant experience or ideas.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

Answer: No. HMRC is moving the burden from the supplier to the customer. The customer I'm currently supplying doesn't want any of that risk so are taking a blanket "all inside" approach. HMRC's approach to their failure to deal with IR35 over the last 20 years (they have lost 99% of cases that are defended by IPSE) is to go from the anarchic system that we have today to a totalitarian system. The large businesses that have benefited from the low costs of the existing system are now moving all the cost of this change onto the suppliers. A middle ground needs to be found where the current uncertainty of employment status is removed so that nobody carries any risk that a decision is incorrect. If a client and a supplier have taken reasonable measures such as a professional independent assessment of the relationship then not only should penalties not apply, but that status determination should be respected by HMRC and no back taxes should be due if HMRC disagree. HMRC are after all extremely biased in these matters.

As currently being implemented these measures are killing the flexible economy.

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

Answer: The evidence is that most large companies are reacting by effectively terminating contracting as an option. Many contractors are not engaging in contracts past 31 March until this legislation is introduced and we know what the rules are.

If these measures are adopted as proposed, they should be enacted this year for adoption in 6 April 2021 at the earliest to give businesses time to implement the required processes to handle the change in the law. Businesses should have at least 6 months to adapt to the new rules before they come into force once they are enacted. Hence 6 April 2021 is a sensible date if legislation is passed in the next few months.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Answer: The burden on the engaging businesses determining employment status should be moved from the client being entirely responsible for something they do not understand but fear might pose a financial risk, to the client being responsible for ensuring that all contracts and relationships with suppliers have been through a rigorous assessment process by a skilled independent assessor. Such services have existed for the last 20 years since IR35 has been operating. They are not used on all contracts so those service providers would require time to expand their capacity. This would place the responsibility for the status determination into the hands of the experts who understand these extremely complex issues.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

Answer: No they are not clear. The tests are based on case law. You do not have absolute clarity of your employment status unless it has been tested in court. This is the most unacceptable part of IR35 now and for the last 20 years. Parliament appears to be unable or unwilling to legislate on what constitutes employment. This causes contractors unnecessary stress as although we take all reasonable measures to ensure our contracts and working relationships are appropriate if we are operating "Outside IR35", if investigated by HMRC a guilty until proven innocent approach is taken.

Significant stress is caused by the effort that is required to resist the default "guilty until proven innocent" approach taken by HMRC, and the significant cost in time and professional advice to prove HMRC wrong. If there were clear unequivocal rules on employment status then this would be a straight forward decision for all suppliers and clients and we would

all have the evidence readily available when HMRC wishes to make an enquiry, significantly reducing their costs as well.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Answer: CEST is a bad attempt at a one size fits all tool and it doesn't include key factors in employment status such as Mutuality Of Obligation (MOO). The use of such a tool is inappropriate for such a complex issue that covers many diverse industries. CEST should be scrapped and replaced with a requirement to have the relationship professionally accessed. There are services that do such assessments now and have been doing so ever since IR35 was adopted in March 2000. The cost to the contractor is a few hundred pounds – this would be an unwelcome but reasonable additional cost.

The examples used with CEST are not appropriate to my industry. Neither is the way the questions are asked, or the answers available when answering. Further, HMRC do not stand by the determination made by CEST so it is pretty much pointless except for scaring companies and suppliers who do not know better into an "Inside IR35" determination when "Outside IR35" would be appropriate. CEST is killing the much vaunted "gig economy".

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Answer: Large companies are performing these assessments now, and have been for the last few months. This is completely uncontrolled as there is no legislation giving the contractor any rights. In my case I have not been involved in the process other than being given an option to "appeal" the decision. Despite providing significant evidence that I am outside IR35 my appeal was rejected in 1-2 days without any reasons being given. I understand this would be illegal if the legislation had been passed, but as there is no legislation in place I have no rights.

The legislation needs to make it clear that only status determinations that are fully compliant with the legislation, and that are performed after the legislation has been enacted, are valid. This gives rise to a need to enact the legislation at least 6 months before it comes into force to give everybody time to properly prepare for this significant change.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Answer: Yes. Any one of the following, or any combination of them:

Require that the large companies only engage suppliers who have had their contract and working relationship assessed by a professional assessment service.

Parliament enacts legislation that unequivocally states what constitutes employment.

Parliament being honest about income tax and rolling all the various taxes (Income tax, NI and the apprenticeship levy) together into one tax.

11. What is your view of the role of umbrella companies in the context of these proposals?

Answer: I've never operated through an Umbrella Company but this has been proposed as an option by my current customer. I don't see this as a viable option. Umbrella Companies have none of the advantages of employment and all the disadvantages of contracting, so I do not see them as a viable option.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Answer: This is two questions.

The answer to the second question is simple – Employees, including deemed employees for tax purposes, should have employee rights. The engagement is either one of employment, or one of the supply of services. If it is employment then there should be no discrimination.

In the short term this is destroying the "Gig Economy". I have heard of people who have not worked for the last 2 months already because nobody knows how to engage them – the legislation is not defined. Many, including myself, have contract end dates before these new rules are introduced as we do not know what the process will be or the rights of appeal that we will have, and at the moment we have no legislated rights. We will have to negotiate any new engagements after the legislation is passed, which is likely to be less than three weeks before it comes into force. The timescale for introducing these rules is already having an economic impact. And that impact is likely to extend into the next quarter as many contractors will be out of contract and seeking to negotiate.

25 February 2020

Sachin Agarwal

I would like to say thankyou to you for giving opportunity to share experience on implementation of ***new off-payroll rules.***

I am going to response to some of questions asked by committee as below:

Q 7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Ans. I have used this tool to determine my status and found that questions are very subjective and open for interpretation. Different people can make different meaning for same question and there are not enough guidelines available to resolve that conflict of opinion, that results in different status.

CEST should only return result as either Inside IR35 or Outside IR35 but there is a third status also as 'undetermined' and after that there is no information available that what steps should be taken.

This tool required significant improvement by making questions relevant to each profession and in the beginning asking profession like IT, Building, Media, Health care etc and then presenting questions which contractors can relate and answer accurately.

Q 9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Ans. I believe biggest concern of HMRC is that businesses are saving 'Employers NI' but engaging contractor work force so HMRC could put a levy on businesses that they will have to pay x% for each contractor they hire to HMRC. More the number of contractors more levy will be, it will force businesses to think very carefully before taking each contractor.

Q 10. Will the Bill, as drafted, achieve the Government's objectives?

Ans. I strongly feel implementation of this bill is not going to achieve any of government's objectives. It is going to create lot of disruption to businesses as critical projects will be put on hold or delayed in absence of resources.
Lot of contractors will be out of employment and struggle to meet daily needs which may result in mental health issues.

If unemployment is going to increase, then how HMRC will get more revenue, I believe introduction of this bill will reduce tax collection. Every contractor is paying VAT which will straight away vanish, apart from this they pay Income Tax, Dividend Tax, Corporation Tax so if all PSCs will be closed then government will not get any such tax.
Businesses are going to offshore these jobs rather than hiring permanent employees which will further send all monies to out of UK. If UK contractors are going to earn less, then they will spend less, and it will impact economy.
Businesses need contractors so they can get niche skills on demand for duration of project and after that contractors can move on and help other businesses, if government make everyone permanent then how those niche skills be shared among many companies.

25 February 2020

David Ainslie

Summary

I'm a highly skilled IT contractor where a lot of my skills/knowledge are fairly niche and hard to come by. For many years I've been a great asset to many clients and as a result to this country.

Over the last 13 years I've always been in demand.

With the new legislation I see no more contracts for me in the UK, only abroad, and at the end of March I shall be unemployed for the first time in 23 years and so may well have to take my expertise abroad.

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector?

What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

I have been contracting for about 13 years and grown extensive skills/experience in fairly niche technologies where expertise is quite hard to come by.

From about 2014 to 2017 I worked on various greenfield public sector projects all of which were a success and all were worked on by contractors.

Not only did the teams of contractors provide skills that were not available, we produced these systems at lower costs, shorter timescales, and higher quality than the usual big consultancies.

Notably, I worked on 3 high level Home Office projects until the off-payroll rules came into affect.

These projects, which did not involve any permanent staff at a technical level were:

- Registered Traveller: About 20 contractors including myself

- Global Entry: 3 contractors including myself created this system which was such a success we were invited to meet the US Ambassador at his residence to congratulate the production of our system and its integration with the US.

- Electronic Visa Waiver: About 10 contractors worked on this, where I assisted in advising and resolving technical errors due to the skills I have which no one else possessed.

All contractors, were well outside IR35 and contracts were correctly written outside backed by experts and insured. However, when the off-payroll rules came in, the Home Office immediately wanted to blanket cover us inside. Did this mean they didn't know anything about their own projects? None of the work was inside so how and why could that change overnight?

Out of the roughly 20 contractors, only 2 stayed behind to remain inside IR35. Those 2 were by far the less skilled and less knowledgeable than the others.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed?

In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic?

Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

Companies are not even trying to apply the new rules. They are simply offering contractors new contracts that are inside IR35, offering permanent roles or letting them go.

Many experienced IT contractors including myself chose many years ago to be highly beneficial to clients due to our technical expertise.

Going permanent means a career, which in IT means becoming "hands off", less technical, and moving more into management and the business side.

However, IT, certainly regarding the highly skilled and knowledgeable, better serve clients by staying "hands on" and not moving to the business side.

The off-payroll is stopping my types of contracts being available. Usually when I look for a contract, there maybe on average 10 to 20 around the UK. I’ve now started looking and there are none. Strangely, there isn’t even any roles with start ups.

Companies, especially banks, that are all about money, see an opportunity to save on VAT (which ironically HMRC will lose millions).

Certainly my current client, who is a large corporation, have enough money in reserve to sacrifice the contractors; this is the case regarding my current contract.

So the off-payroll rules are basically not being applied because most companies are completely avoiding them, so everyone takes a hit, such as corporations, accountants, recruitment, HMRC and the UK in general, but of course mainly highly skilled people who become wasted assets.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

In the past few years I worked more with start ups as they see the technologies I specialise in start to grow and will be part of the future of IT systems.

Already I see that these types of contracts are no longer available. I now only see them in USA and Europe, especially in the up and coming tech hubs of Switzerland, Netherlands and Germany.

This year I've seen more highly skilled people I worked with either take on contracts abroad or have moved abroad.

So even if small companies are exempt, they will also suffer from losing the top talent. For me the latest areas of IT I've been focusing on are "artificial intelligence", "data science" and "blockchain" and this is where the UK will start to fall behind other countries and we won't be able to catch up on these billion pound technologies.

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

The highly skilled IT contractors will seek more contracts abroad or move abroad.

The less skilled will accept being inside IR35, but that is the point. Off-payroll will pull in the minority sub-standard contractors and then either incorrectly put other contractors inside or lose them altogether.

The majority of IT contractors, who are also the ones that business and government need, will have their lives turned upside down e.g. I'm contemplating working abroad but because of the age of my sons, my family would have to stay behind for a few years, thus families are broken up, another knock-on effect that ripples through and damages society.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures?

What should HMRC do to help businesses understand the new administrative rules?

First, HMRC must do their job which is to collect tax fairly, which helps everyone including themselves. However, they overstepped their mandate a long time ago.

Then trust. With trust, everyone wins, including HMRC, but not only did contractors lose their trust in HMRC a long time ago, I see businesses also not trusting them.

Lack of trust puts up barriers which again has a knock on effect.

But these factors are also a breeding ground for more unscrupulous people e.g. the middle men between contractor and client.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker?

Do they reflect the reality of the contracting environment?

Absolutely not. IR35 was already unfair before first being introduced into the public sector, but the private sector is far worse because of even more benefits private sector employees have e.g.

Bonuses: I was on a project that was successfully rolled out and so my contract ended but some of the permanent staff received bonuses of up to £50K.

The contractor takes on so many risks. As with anything in life, to offset risk there must be reward. Contractors have only one real reward and HMRC want to take that away leaving all the risk.

More importantly the tests are completely out of touch with IT.

IT is a field that changes almost everyday, dealing with multiple dependencies, as a result, the way we work often changes on a daily basis. Tests are static.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool?

Does it require improvement? If so, how might it be improved?

You cannot have a one size fits all. You can not have ambiguities.

As mentioned, IT projects in which I contract can change almost daily due to a multitude of dependencies.

A lot of the work I do on a project, I am the only one who can do it, only I have the skills.

However, with regards to CEST and the overall questionnaire of whether one is inside or outside, the whole process is biased.

Because of the 3 main items of "control", "substitution" and "MOO", if HMRC have 2 items in their favour then all the rest incorrectly becomes negligible.

Substitution is immediately unfair and biased e.g. you may be hired because the client does not have your skill in-house so you are most definitely outside IR35 because you are not similar to an employee so how could you be taxed as an employee.

However, a particular skill you've been hired for in IT (where there are thousands of skills) maybe very rare at a moment in time and there is literally no substitute. Compare this to a self employed singer with a unique voice.

MOO almost can never be applicable to an IT project. An IT project that I would work on can involve millions of lines of code with hundreds of dependencies where the scope/parameters change daily. There is no such thing as a client needing to provide work.

Control I can understand, because certainly the lower level contractors are often controlled because they lack all the necessary skills, knowledge and general know-how to deliver an IT system.

8. How effective will the status determination process be in resolving issues of employment status?

Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

The effectiveness will be the opposite of that desired. Is it fair to now tax an extra person correctly as an employee at the expense of now incorrectly taxing another? And that is being extra generous giving a 50/50 benefit of the doubt.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

IT will grow exponentially. Systems not only need highly skilled people that can sometimes be hard to come by, but as IT becomes more important with regards to cost, time, quality, security - pushing away the people that benefit both private and public sectors is very short-sighted.

An IT project on average will last between 6 to 12 months. Many countries do not have the concept of IR35; many of them allow contracting on a project up to a year, some two, and after that they are automatically employed with full employee rights. Simple. And simple is good for everyone.

The UK, well the government, for some reason like grey areas, and IR35 is one big grey area. That causes problems for everyone and simply wastes time and money, and in the worse cases can ruin lives.

The UK government is completely out of touch with modern IT systems. They are big, they are complex, and a lot of rubbish is produced wasting so much time and money. E.g. when I worked on some public sector IT projects I was shocked at the poor quality and waste of money.

The UK and especially HMRC over complicate everything, often to justify their roles or to show off or just about anything except common sense.

Common sense and simplicity are the key.

10. Will the Bill, as drafted, achieve the Government’s objectives?

No. Aren't the objectives supposed to be fair i.e. not discriminate?

Are the objectives to lower standards; to incorrectly tax people; to remove all reward and leave nothing but risk; to exploit?

The IT consultancies are rubbing their hands as they will get more business. Unscrupulous umbrellas will more than ever take advantage of these latest HMRC mistakes and then they will blame the contractors and not the umbrellas and certainly not themselves.

Many government projects already use IT consultancies and this will grow.

However, I know for a fact that not only, on average, are the consultants of lower quality than the average contractor, but I know that the consultancies can use completely sub-standard workers.

An IT contractor can never be sub-standard, because of history from previous projects, references, certifications, assessments, tests and interviews.

Regarding the IT consultancies, I know from first hand that they've had consultants work on projects who start off with zero knowledge of the technology involved.

An IT contractor cannot do this as their contract would be immediately terminated.

11. What is your view of the role of umbrella companies in the context of these proposals?

Contractors who are forced into using umbrellas either because of being correctly or incorrectly inside IR35 can no longer use their own limited company which is safer and more trustworthy for the contractor and end client.

There are many umbrellas looking to rip off contractors but HMRC does nothing about this because with IR35 they have fuelled the fire by punishing victims.

E.g. a contractor who was not paid by their umbrella for 3 months and then the umbrella just disappeared. How many hundreds of contractors were affected?

I received an email from an umbrella stating they were approved/recommended (seal of approval on their website) by the company that insures my contracts are outside IR35.

Upon asking for confirmation from my insurer, said insurer did not know this umbrella. When I revisited the umbrella's website, the recommendation had gone.

12. How do the new measures relate to the wider context of changes in working arrangements, including the “gig economy”?

Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Of course not. How disgustingly hypocritical that the government and especially HMRC say these rules are fair when it is pure discrimination and exploitation?

What happened to the country I used to be proud of? If anything, many of us have become embarrassed by our country and yet it is not our fault.

It is very poor management, and the HMRC bullies are just part of the problem that is going to lead to this country falling behind the rest of the world.

If someone of my expertise is working on an IT project where I would be producing work that no one there could, because of the sought after skills that I was hired for, only to be told:

We are going to pretend you are no different from the rest of the team and so tax you the same, but you won't get any of the following:

- Bereavement

- Maternity/Paternity

- Sick leave including time off for operations (the UK lost billions last year from sick leave alone)

- Holidays

- Bonuses

- Redundancy pay

- Pension

- Health insurance

- Expensive and necessary equipment to do your job

- Gym

- Paid courses

- Time to find another job i.e. still paid

- Paid travel/accommodation to go to client sites, and other travel e.g. interest free loans

I call that exploitation.

As with everything, risk must be offset with reward.

Contracting is risky, but the government will now remove the only reward from the genuinely self employed.

20 February 2020

Stephen Alden

Thank you for the opportunity to express my views on IR35.

Firstly I would like to say that during the campaign for Brexit the biggest concerns raised by remainers was the impact on the NHS, financial and automotive industry's if Britain left the EU.

The damage caused by IR35 far exceeds the potential damage caused due to Brexit.

Many health care professionals have left the NHS, the blame laid mainly on Brexit, but I certainly feel that rolling out IR35 to the public sector had some effect. The extra revenue raised from company NI is money taken from our already underfunded NHS.

The banks and the Automotive industry rely heavily on contract labour. Many banks have already come out and stated they will no longer hire staff on limited company or agency type contract.

I have worked as a limited company within the automotive design sector for many years.

Staffing requirements vary greatly during the 3 year cycle that it normally takes to bring a new car to market. During peak times it would not be uncommon for the workforce to be predominantly contract or agency staff who are released when the work load reduces.

If the financial and automotive industries lose the access to trained, qualified, experienced staff on a contract basis then I feel it is inevitable they will move their operations to countries that do not have the same restrictions.

I am currently working at a niche car company that is undergoing fantastic growth due to the infusion of large sums abroad.

Due to location there is a massive shortfall in the number of people trained or qualified to undertake the work required. To overcome this, a very high percentage of contractors are used and most come from areas where the automotive industry is stronger ie Essex (ford) or the Midands (JLR, ASTON MARTIN). Most of the contractors stay locally in B&B's or hotels and are therefore somewhere in the region of £200 per week out of pocket, not to mention the disruption to their personal lives.

If the contractors are told they can longer work as limited companies and must accept permanent positions many will leave. This will cause massive

disruption within the automotive industry and deprive the local hotels and B&B's of much needed revenue.

The automotive industry certainly needs the flexibility to adjust staffing levels as and when required, the most efficient way of doing this is the use of contract labour.

The proposals of IR35, whereby contractors will be seen as employees without the same conditions as permanent staff namely holidays, pension, sick leave, bonuses, overtime rates is unfair to say the least.

I have been alive long enough to remember a previous government telling people from areas of high unemployment to "get on their bikes" to go to areas where there were better prospects.

This is something contractors do on a weekly basis. Under IR35 they lose the ability to build up the company funds to support themselves between contracts.

Contractors are a diverse, experienced, flexible group of people that have built up a wealth of knowledge and experience from working for many employers. When an automotive company need people who can "hit the ground running" contractors are an ideal choice. No training to pay for, no holidays, no pension, no sick pay and no redundancy when their services are no longer required.

Within the automotive industry I have noted that the number of permanent CAD designers has declined. I have also noticed that a very large number of contractors are over sixty. The department I work in there are NO permanent staff designers, all the contractors are over sixty, all stay in B&B's and all will retire if they are considered to be within IR35.

Working through a limited company has given me the chance to stay employed. Whilst working for a large automotive company they advertised permanent positions. I was told I was ineligible to apply as I don't have a degree yet I could carry on doing the same job as a limited company contractor.

IR35 will limit my chances of future employment. Operating as a limited company I have been able to go to where the work is, both in the UK and abroad. The reduced salary I would receive under IR35 would mean I could only look for local employment as the cost of accommodation would be prohibitive. The chance of local employment is low which explains why I have had to work away from home on many occasions.

Determining the status of workers is far from clear. I have asked my agent on several occasions if IR35 will affect me, they haven't given a

definitive reply. I asked the company I am currently consulting to and they have offered no clarification.

I have seen the reports from various contracting organisations stating that the CEST tool is unfit for purpose. I believe the tool has been revised yet is still considered unfit.

Many companys can't understand the criteria for "inside/outside" IR35 and are just declaring they will no longer employ contract staff to avoid being investigated and fined by HMRC at a later date.

I have investigated the use of an umbrella company and the loss of control and loss of income make this an unsuitable proposition.

I find the implied reason for the introduction of IR35 to be rather simplistic and lacking in research.

I have read the reason IR35 is being rolled out is because Teresa May considered it unfair that people were earning £100,000 per week, paying little tax doing the same work, In the same office as permanent staff earning far less but paying more tax. I have always paid substantial amounts of tax, my accounts are filed regularly on time every year. Would the permanent member of staff consider it fair if they had to pay £200 expenses per week, pay indemnity insurance, live away from their family 4 nights per week, not get paid holidays or sick leave and then told they were no longer needed and not to turn up next day?

My final point is. What has changed within IR35 from when Sajid Javid called for "the repeal of the silly IR35 tax" to now, a tax he appears to fully support. How are we meant to understand IR35 when the person who seems responsible for its implementation now was obviously strongly against it.

How do we trust someone who directly contradicts himself on life changing legislation.

Sorry, I am not a politician, I am simply a man trying to protect his livelihood and the company that I have worked for 30 years.

If you are looking to recoup money in taxes may I suggest you target the employment agents that take a high percentage of our rate and give nothing in return.

I was hoping that this inquiry would be a thorough investigation, taking in to account views expressed by the people directly affected. This would appear not to be the case. I read in the press yesterday that HMRC have announced that IR35 will only affect wages paid after April 4th 2020. It would appear that HMRC is pushing ahead regardless of the inquiry findings. They also say the results of the inquiry will be announced on

February 29th, a mere 4 days after the last submission date which I don't believe is long enough to give the submissions considerations.

8 February 2020

Basharit Ali

SUMMARY
In the public sector almost all staff are assumed to be under IR35
HMRC have assumed that this will equally apply in the private sector
The compliance burden for all sectors is too onerous
The definition of small organisations is unreliable
Contractors are either looking to change contracts, abandoning contracting, or moving abroad with an overall disposable income reduction of 20% expected
There are worries IR35 will be applied retrospectively
An objective set of criteria set by an independent body that includes contractor representatives should be used and audited to ensure consistency irrespective of assessor H) The CEST tool does not meet the criteria above under G. It is unfit for purpose
The risk of being a contractor, running a business and having no employment rights are being ignored by HMRC
HMRC have yet to show how these rules will impact net tax received as a whole
Umbrella companies only exist as a result of the unworkability of IR35
Most contractors see themselves as businesses and accept the risks of running a business and so do not expect the same rights as an employee or the same tax burden

Existing measures in the public sector
What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?
Virtually all contract staff have been treated as if they are under IR35. The public sector are not willing to differentiate between contractors as it's too much work. This use of a default rule that all staff are IR35 is being applied at all public sector enterprises and will also happen in the private sector.

Impact of new off-payroll rules on organisations
Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

No, as evidenced in the Public Sector most organisations are defaulting to assume all staff are under IR35. They are not willing to take on the compliance burden which is far too onerous.
Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?
The rules ask that small companies use 2 of 3 criteria - Annual Turnover, Balance Sheet Total and Number of Employees - below which they are excluded. These vary continuously. One week a company may be excluded but not the next week. These criteria are unworkable and most probably unenforceable.
What will be the effect of these new measures on a chain of contractors and sub- contractors? All are being treated as if they are under IR35. This is unfair and inaccurate. A majority are moving to other contracts to avoid being categorised as under IR35. There is also the potential for HMRC to retrospectively apply this categorisation to previous contracts once they have been found to be under IR35 however inaccurate or plain wrong that is. Some contractors are abandoning contracting altogether. Whilst some will move abroad. Overall the average impact on contractors is to reduce their disposable income by 20% a year.
What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?
The new rules are subjective, inconsistent and HMRC have lost in court on most occasions when they have been challenged. An objective set of criteria proposed by an independent body that can be applied consistently by businesses and staff. Otherwise this is a poorly written and applied set of rules that are inconsistent. They should be abandoned.
Determining tax status of workers
Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
No they do not. I myself, colleagues and engagers have gone through the criteria with guidance notes and arrived at a different conclusion as to status. It’s inconsistency and guidelines that are open to interpretation make this almost impossible. And it literally can take days.
What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
This is a biased set of criteria that does not take into account a contracting environment. Different diligent professionals using this test to assess the same individual arrive at different conclusions. An objective set of criteria proposed by an independent body that can be applied consistently by businesses and staff. This body should include representatives of the contracting profession.
Something that I can confidently state did not happen with CEST.

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
Status determination is subjective with criteria open to interpretation. Again an independent body applying objective criteria is needed and would resolve this.
Policy objectives and wider context
Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
The fundamental difference between an employee and a contractor is the risk a contractor takes on whilst running their business. An assessment of the risks being taken by the contractor and how these are mitigated through public liability insurances, professional indemnity insurances, substitution, milestone/product delivery, lack of sick pay, lack of annual leave, lack of a pension for example should be paramount. These are ignored by the CEST tool.
Will the Bill, as drafted, achieve the Government's objectives?
No. Taxes received through contractors as a result of VAT, corporation tax and taxing of dividends will drastically reduce. This will not be offset by an increase in income tax and national insurances. HMRC have yet to provide a model that takes all types of tax income into account. There approach is egregious.
What is your view of the role of umbrella companies in the context of these proposals? An umbrella company effectively employs the contractor instead of the engager. In reality though there is no sick pay, annual leave, career path, or other numerous benefits of being a permanent member of staff. And on change of contract the contractor will move to a different umbrella company This is unlike a consultant who works at PWC or Deloitte. An umbrella company exists as an entity because IR35 is inconsistent and unworkable.
How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
It is unfair to apply tax rules as if someone is a permanent employee whilst at the same time denying them the rights of an employee. Most 'gig economy' workers see themselves as self employed and taking risks that gives them flexibility and independence. There are also a significant minority who would like to accrue the benefits of being an employee. However most contractors are not in this category.

Richard Allan

<u>Impact of new off-payroll rules on organisations</u>

1. Organisation has made a policy decision to no longer engage with contractors via PSC/Limited company.
2. All contractors have been denied the right to a status determination.
3. Some project team members have already left their position due to the organisation's response to IR35. These people have been replaced with consultants from an Indian consultancy firm. The replacements have less experience and are more expensive.
4. Other project team members are considering their position. Some plan to leave contracting in the UK to work abroad or take time off for training. Many others are looking for roles in organisations with a fair approach to IR35.
5. Highest priority projects are those delivering regulatory, legal or compliance changes including changes related to Financial Crime or Anti-money laundering.
6. In the medium to long term the organisation will struggle to resource these projects.
7. As a result the organisation may not be compliant, face fines from regulators or have inadequate controls to prevent Financial Crime
8. Project costs have increased as the organisation now has to pay employer NI and the apprenticeship levy for contractors.

Impact on me as an individual

9. I have worked as a contractor for 15 years and consider myself very much self-employed.
10. I work on projects that have a fixed start and end date. At the end of each project I leave the organisation.
11. I have a niche skills and experience that are only required by organisations for short periods while delivering projects.
12. The roles I undertake are temporary not permanent.
13. If a project is cancelled then my contract is cut short. I am not reassigned to other work as an employee would be.
14. When a project is cancelled I am left without work and the financial impact of this.
15. On at least 4 occasions I have had projects cancelled. One time I was given 2 days notice.
16. I have been without work on many occasions.
17. Some organisations have required me to take enforced time off or furlough to save costs. I do not receive any income in these periods.
18. The stress of being self-employed has caused me mental health problems such as depression and anxiety.
19. The changes related to IR35 have exacerbated this stress. I am struggling to sleep, have suffered loss of appetite and have been extremely grumpy with my family.
20. I am concerned about how I will pay my mortgage and support my family.

Determining tax status of workers

21. The assessment tool (CEST) needs to take into account whether
    a) contractors are working on time limited projects.
    b) Whether the skills and experience brought by the contractor are only valuable to an organisation for a limited time period.
    c) What happens to the contractor if a project is cancelled.

25 February 2020

Rob Allright

Areas of interest

The Sub-Committee welcomes views on any of the following questions relating to the proposed extension of the off-payroll working rules to the private sector. The SubCommittee is interested to know about the real-life experiences of individuals and organisations, as well as more general responses—for example, relating to the impact of these (and predecessor) measures on the tax classification of workers and the broader impact on the labour market.

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What

lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

My experience depended on the timeline. There was a huge amount of confusion and many projects were affected. With the need for thousands of IT systems to change as a result of Brexit-related regulatory changes this year and for potentially several years ahead, there will be real risk of failed projects or missed deadlines (farming, customs, tax, banking, services, import/export, transport, medical, data-intensive).

a) Initially, there was general avoidance of public sector roles for several reasons. ***Incorrect blanket assessments*** *due to HMRC bullying/scaremongering of public sector organisations and misinformation was a key reason. The result was a lack of key skills and many important projects were delayed. "Ironically, we understand the*

team developing the CEST team suffered a walk-out by contractors." - https://www.inniaccounts.co.uk/guides/off-payroll-ir35/determining-your-status-cest-is-crap/

b) Soon, key projects fought back and implemented assesments on each sub-contracting business. Most relationships were found to be business to business outside IR35 engagements.

c) Eventually, whole organisations or departments implemented assesments on each sub-contracting business. Most relationships were found to be business to business outside IR35 engagements. My understanding is that ***HMRC is one of these - so a huge amount of hypocrisy*** *there.* ***Without outside-IR35 assessments, HMRC would not be able to complete many projects****. Most public sector contracts that I'm aware of are firmly outside IR35.*

d) Foreign-based consultancies and outsourcers offered whole teams to replace UK based businesses. Huge reduction in employment taxes, VAT, coporation tax etc. There was a huge amount of marketing by these organisations. Whole areas of UK client offices changed rapidly from UK based sub-contractors

i) Consultancy liasion UK-based plus offshore resources (Tata DS, Cognizant). Usually 1 UK person and 3 remote people (usually India, often regiosn hundreds of miles apart, so unable to work as a team).

ii) Body-shopping (NashTech / Harvey Nash) - import of individualy recruited people from Vietnam and other countries where the individuals had not worked together before and many had never travelled outside their home country or region leaving them dependent on the intermediary.

f) Sub-contractors had determinations made by others with no input from themselves leading to ludicrous situations - "HMRC contractor scores IR35 payout after yet another taxman blunder" - https://www.theregister.co.uk/2018/09/24/hmrc_ir35_case_settlement_thousands_cest/

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including

costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

HMRC do not seem to care whether this is practical. There is huge confusion among end clients, agencies, prime-consultancies and sub-contractors. The CEST tool does not include a key element - Multuality of Obligation (arguably THE most important element). As they have been criticised for years about this and have actively avoided fixing the issue, I conclude that they do not care about the burden on businesses, the uncertainty is huge and consumes resources that would be better spent. In response, a series of dubious companies are advertising and HMRC are doing nothing to prevent harm.

"HMRC has been accused of purposefully deceiving the public and Government in claiming that the new Off-Payroll IR35 rules, introduced in April 2017, haven't given rise to increased engagement with disguised remuneration umbrella schemes."- https://www.contractorcalculator.co.uk/did_hmrc_conceal_admission_ir35_non_compliance_546010_news.aspx

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

Many small consultancies (prime contractors) provide services to large businesses (end-clients). In turn, they bring in sub-contractors with specialist skills on a project / task basis. Neither end-clients nor prime-contractors could have tasks to employ specialist staff directly, so a sub-contractor route is best where a sub-contractor has one or more specialists that cover a skill area or service, often re-using their previously developed frameworks (something an employee could not do). End-clients are issuing blanket bans not affect their prime-contractors, saying that all people serving end-client contracts must be permanent employees and not sub-contractors. This will lead to projects failing as it does not match the reality of highly specialist people who are needed only at a few key moments on a few projects.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

As above (3) - End-clients are issuing blanket bans not affect their prime-contractors, saying that all people serving end-client contracts must be

permanent employees and not sub-contractors. This will lead to projects failing as it does not match the reality of highly specialist people who are needed only at a few key moments on a few projects. As an individual person, there is no role for me in an end-client for more than a few weeks at a time. Only very large consultancies could afford to have me sitting around when my skills are required - gambling that enough clients have enough projects that need my specialist skills. The burden on intermediaries lining up a pipeline of work would be huge and impractical.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Look at what happens in other countries, in most EU countries, IT and other specialists are allowed to be self-employed and able to offset costs of doing business, they are held to NOT be employees. The rules are unclear and unworkable as HMRC view them**. Include Mutuality of Obligation** and adminstration becomes much easier. HMRC rarely win court cases unless the defendant represents themselves. HMRC should NOT be allowed to use barristers. Instead the inspector should represent HMRC as they used to.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

*HMRC always overlook **Mutuality of Obligation** (MOO) - CEST does not (or did not last time I looked) include MOO. If the end-client does not provide sick-pay, pension, holiday etc then they cannot be considered an employee. Some organisation in the chain MUST provide these, whether an intermediary (agency, consultancy) or the direct employer (sub-contractor) of the person. **Match employment status with tax status.** An employee does not pay insurances (public liability, professional indemnity - mine cover £10 million and cost a LOT of money!), does not have to fix incorrect work or pay for another company to fix it. Sub-contractors do have these obligations as they are very different. An employee-employer contract is a contract of service whereas a sub-contractor-client contract is a contract for services.*

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it

be improved?

Last time I looked and every review I've seen (even recent) - dreadful. Avoids key questions and is weighted to provide an incorrect response (inside IR35). Even when organisations have used it, HMRC have ignored outside IR35 results

"The NHS has been hit with a £4.3million tax bill after HMRC decided it had set its contractors' IR35 status incorrectly, even though the organisation used the taxman's very own IR35 tool, CEST, when doing so.

...

Despite conducting case-by-case IR35 determinations, the numerous flaws and inaccuracies of CEST - which NHS Digital used to assess status - meant that these contractors, in the eyes of HMRC, were wrongly placed outside IR35. Above all else, this should serve as a reminder to businesses that to rely on CEST poses a considerable risk, even if they are assessing the status of each contractor individually. " - https://www.qdoscontractor.com/news/2019/10/30/nhs-handed-4.3m-ir35-bill

and

"As a result, the £243,324 that HMRC was demanding Mr Alcock paid them in National Insurance contributions and income tax will be cancelled

....

That there was no expectation from Mr Alcock to be offered work by his clients and accept it was the crucial factor in the tribunal deciding that his various engagements were outside IR35. Therefore, it was Mutuality of Obligation (MoO) that held the key to this contractor's successful appeal. " - https://www.qdoscontractor.com/news/2019/11/06/hmrc-loses-ir35-tribunal

Employment tribunals will be under pressure as it's the easiest way to pove HMRC wrong - "A contractor has successfully used an employment tribunal to prove their outside IR35 status and can now seek to reclaim thousands in overpaid tax, in a case during which the tribunal Judge ruled Elbourn was self-employed. This decision contradicted the result previously given using HMRC's Check Employment Status for Tax (CEST) tool, which had wrongly concluded that IR35 applied to his engagement." - https://www.contractorcalculator.co.uk/cest_assessment_rejected_judge

545010_news.aspx

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

*End-clients are subject to **heavy pressure and lies** (strong word, but what else could you call it?) from HMRC. This is an older article but I've read others more recently.*

"Leaked HMRC webinar suggests taxman has misled the NHS on IR35

...

Tax experts and lawyers have called into question HMRC's grasp of the laws surrounding IR35 and expressed fear that the taxman has misled the public sector on implementing the Off-Payroll legislation, following the exposure of a controversial webinar delivered to the NHS.

'Working through intermediaries: implementing IR35 guidance in the NHS' was delivered by HMRC's policy advisor on IR35, Mark Frampton, to NHS Improvement in September 2017.

Leaked to ContractorCalculator by the Independent Health Professionals Association (IHPA), the hour-long webinar may help explain the reportedly huge number of blanket inside IR35 assessments since the Off-Payroll tax took effect, with experts slamming HMRC's guidance as 'misleading' and 'inaccurate'.

"Frampton's comments on employment status case law is a matter of concern," warns Martyn Valentine, director of employment status specialists The Law Place. "The guidance issued to Trustees appears geared toward finding almost all NHS locums within scope of IR35."

"The consequence of this guidance to NHS Trusts has already resulted in a reduction in locums prepared to work in hospitals, leading to rota gaps not being filled, and a worsening of the winter crisis and endangering patient care," adds IHPA secretary-general, Dr Iain Campbell." - https://www.contractorcalculator.co.uk/leaked_hmrc_webinar_taxman_misled_nhs_ir35_544810_news.aspx

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

*Look at what happens in other countries, in most EU countries, IT and other specialists are allowed to be self-employed and able to offset costs of doing business, they are held to NOT be employees. The rules are unclear and unworkable as HMRC view them**. Include Mutuality of Obligation** and adminstration becomes much easier. HMRC rarely win court cases unless the defendant represents themselves. HMRC should NOT be allowed to use barristers. Instead the inspector should represent HMRC as they used to.*

10. Will the Bill, as drafted, achieve the Government's objectives?

No. Many skilled people will retire, work abroad or move to less specialist roles as the huge investment in training, skills and other aspects isn't a part of end-client behaviours. Outsourcers will gain much of the work and so export work to other countries. HMRC never include all taxes in their comparisons. They dishonestly and deliberately exclude VAT, Corporation and other taxes in their comparisons and neglect to factor in work that goes abroad. Overall, UK business competitiveness and activity will decline and hence tax revenues too, probably over a 5-10 year timeline as new opportunities cannot be realised in the UK.

11. What is your view of the role of umbrella companies in the context of these proposals?

Many dubious companies are promising a lot but will be gone by the time HMRC takes action and the sub-contractors will suffer (loadn charge etc). Some of these are marketing directly to sub-contractors, many are aiming at intermediaries and end-clients. Many of these contractual relationships insist on a specified umbrella company which may be acting incorrectly and building liabilties for the individuals in sub-contractors ruining their lives.

Umbrella companies will cost money but offer no employment rights (in general). So - all the responsibilities of self-employment with no employment rights incurring additional costs. It is likely that a model of no employment rights will be attractive to unscrupulous end-clients and this model will likely spread to people or roles that are currently employment (contract of service). ***Full time employees will be replaced by umbrella employees with no rights.***

12. How do the new measures relate to the wider context of

changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

As said in (11). It is likely that a model of no employment rights will be attractive to unscrupulous end-clients and this model will likely spread to people or roles that are currently employment (contract of service). ***Full time employees will be replaced by umbrella employees with no rights.***

25 February 2020

Ishrat Amin

I would like to voice my views and concerns on how I feel IR35 will impact me and my profession. I would also like to voice how it has already impacted me and my colleagues.

- since the IR35 deadline has approached, many organisations have adopted a blanket approach to IR35 by declaring all roles are within IR35. This is despite some roles being outside.

- Some organisations refuse to deal with contractors unless they are operating via an umbrella company - disregarding whether the role is inside or outside IR35
-
- Many roles have been terminated as a result of the IR35 legislation (including my own)
-
- Currently there are very limited roles in my profession (testing roles). Many my testing colleagues in my network are currently unable to secure a contract with the uncertainty posed by IR35
-
- By forcing contractors into using an umbrella company, I will have no choice but to close my limited company. There would be no point me keeping this running when it is generating no income. However, if I do find a role outside of IR35, would I then need to open a new limited company? I feel this is the death of the limited company!
-
- The closure of limited companies means a loss of corporation tax
-
- As part of my limited company, I have been building my pension. I put in a set amount each year so that my future is secured, and I am not reliant on the state. What happens to my pension if there is no income coming in to my ltd? I am not sure how an umbrella company

pension operates; however, this choice is being taken away of putting money into my SIPP via my limited company.
-
- In my years as a contractor, there are possibly 2 to 3 months in a year where I would not have a contract. however because of my limited company, I am able to continue operating because there are fund in my limited company. being inside IR35 doesn't guarantee me a job. However, how does it compensate for me not being in work for several months?
-
- I am not an employee of a company so I do not get health benefits, pension and other benefits. This is compensated by having a rate that is higher than a permanent job. However, if I am within IR35, and I am now considered an employee, why do I not get these benefits that would be offered if I was a permanent member of staff?

- when taking a contract, a contractor is likely to have to be away from home. This will then include travelling to the destination, paying for accommodation, and food. As an employee, the organisation would pay for this. However, as a contractor working for an umbrella company, you will only get tax relief on this. When considering a role, a contractor will determine the net rate after taking these expenses out. However, under an umbrella company, these rates become unfavourable inside IR35. We are unable to claim expenses in the same way through an umbrella company vs ltd.

- I have been told by my agency that I will need to get my contract reviewed at a cost of £130. If they deem I am outside of IR35, then this is ok. However, the company have a choice to accept this or not. So if they don’t accept it then it is a waste of money because it’s not binding. Also I have been told that I would need to get my status checked every 6 months at a cost of £130

- Many contractors are worried about HMRC pursuing them for past contracts where they were deemed outside of IR35. As a result, are considering insurance to protect themselves.

- I am due to go into hospital for an operation. I have a 8 week recovery scheduled. During this time I will not be entitled to any sick pay to cover this time off work. This is unlike an employee who would get paid for this time

12 March 2020

Matt Aston

Impact of new off-payroll rules on organisations

4. What will be the effect of these new measures on a chain of contractors and sub- contractors?

As a Freelance contractor in the UK since 2007 via the above Registered Limited company (Established 1999), the tax revenue generated from my PSC/Limited company paid annually is equal to ~£60k per annum (breakdown below):

- *~£16.5k Per annum - Corporation Tax*
- *~£33k Per annum - Personal Tax on Dividends*
- *~£3.5m Per annum - PAYE/EE NI*

My Day Rate was £600 as a Digital Programme Manager. My Net Drawings = ~£75k per annum.

As a direct result of my contract being terminated early by the end client (a Private UK Water Utility company) whereby no formal discussion or communication was made, the immediate effect/impact means to my family and myself, is that we can no longer pay:

1) *~£30k per annum - Mortgage repayments*
2) *~£30k per annum - School fees*
3) *~£3k per annum - Council Tax*
4) *~£12k per annum - Food, Fuel and Utility bills for a family of four. (not quite the lavish lifestyle the Right Honourable Lord Desai believes we Contractors all have through tax avoidance…)*

As outlined above, the combined tax my PSC and myself personally was paying HMRC directly and taxed levied by way of domestic outgoings (also outlined above) amounts to best part of >£70k pa. As a result of the forth coming tax reform, HMRC will no longer feel the benefit of that revenue.

Our home is now at risk, the education of both my children is also at risk and I am suffering with mental stress and anxiety as a direct result of the new reforms resulting in my contract being terminated and do not see a way back anytime soon.

Why should I stay/work in the UK anymore? I am now looking to take my 30 years' experience in IT across telecoms and Utilities and use it in the Middle East, where perhaps the remuneration will enable me to provide my kids a decent funded education.

Please enlighten me as to who drafted the business case for IR35? Forecast £440m pa in increased tax revenues from inside IR35 tax liabilities Vs contractors who will no longer be generating tax payments to the same scale as that above. If half of the (170k) contract flexible workforce are left in the same position as I have been, then the loss in

tax revenues is more = £2.5bn pa, never mind £unknown losses incurred in local economies.

Levelling up Britain Boris? You will flatten it at this rate. Abolish IR35 reforms on 6th April. It just doesn't stack up....

25 February 2020

Dean Attidore

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

A – I cannot speak for the Public sector as I have worked primarily in the Private sector.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

A – I cannot speak for Organisations specifically as I am responding as an Independent Consultant. That said, I observe that the impact has **NOT** been adequately assessed. Surely the HMRC cannot have knowingly wanted companies to suddenly shed significant percentages of their workforce, jeopardising critical programmes (including Brexit-related), destroying staff morale, placing organisations into panic and fear, significantly increasing outsourcing (and thereby losing money to the UK economy). The *Cons* FAR outweigh the *Pros*. The impact on contractors is nothing less than CATASTROPHIC. HMRC need to assist organisations in

educating them to work with contractors to create work packages that ensure the role does not breach compliancy. Right now, they see it as too much effort, with too much risk.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

A – No. I do not feel it is clear and woefully inadequate. It does not reflect the reality of the contracting environment.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

A – The CEST tool is useless. It seems that whatever you do pushes the result to be IN or INCONCLUSIVE, despite it obviously being out.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

A – Ineffective. E.g. If a contract is determined as inside and HMRC challenge this, the client is not liable and the contractor accepts all liability and as such requires £10m liability insurance – Ernst & Young. Everyone is in fear – Contractors and Businesses.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

A – Yes. Target those in contracts 2+ years. Return the onus back to the contractor

10. Will the Bill, as drafted, achieve the Government's objectives?

A – DEFINITELY NOT!!!!!!!!!!!!!!!!!!!! The UK economy will lose more than it gains and create a skills shortage. Only the large (and expensive) consultancies and outsourcing firms will benefit from this.

11. What is your view of the role of umbrella companies in the context of these proposals?

A – Umbrella companies are fleecing contractors. The rates are ridiculous and we are being unfairly taxed. As we are PLCs, we'll be forced to close or suspend our companies – at cost and complication.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

A – i. The changes don't relate in a positive way. It has already had catastrophic impacts on the gig economy. Blanket determinations and culls of the contractor workforce has turned the market upside down. Businesses are outsourcing. Businesses are scared to take on contractors, in fear of HMRC investigations and challenges. There are practically no "outside" IR35 roles out there. The market is flooded with unemployed contractors, therefore it is even harder to find a job. I've been applying for MONTHS!!! A role I applied for had 500+ applicants – WITHIN AN HOUR!!!! After the end of March, it is going to be MUCH worse!! How can anyone possibly find a job? I am the sole bread-winner in the house, with a family of four so am **ruined**. I am paying for accountants and the running of my limited company and will have to close it -at cost.

ii) It is obviously not fair – we are better skilled and have to pay to be that, put in more work, have greater pressures, yet are taxed as employees but have no rights. No holiday pay or sickness leave. No employee benefits. No invites to staff events. No training. All this, and to rub insult to injury, our pay is DRASTICALLY slashed. Utter, utter nonsense.

24 February 2020

Daniele Azzaro, Dekoo Ltd

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

It is too early to fully understand the impact on the public sector. Any reporting that has been used so far by HMRC has not showed the full picture of the impact but only focussed on higher number of payroll staff. What has been the loss in corporation tax and VAT received? Also, a good number of contractors have just migrated to the private sector hence diluting the overall impact. It is very important to note that public and private sector are two completely different industries with different end objectives. This can be already seen on the different response taken by

large private sector companies to bypass the rules and minimize their risk.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

The impact of the extension of the off-payroll rule to the private sector has not been adequately assessed. No estimation of the compliance burden to both client and PSCs has been included within estimation, and most of the assumptions made have proved to be out of touch. While HMRC wanted to mainly target employers who were bypassing the existing rules by disguising some of their employees as external consultants – the current change is impacting the vast majority of honest contractors who are genuinely working as small businesses, taking the associated risks without any employee guaranteed benefits. The current impact is not dissimilar to bombing a hospital full of honest people to hit a criminal hiding inside it.

Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

No – it's clear that the impact of the change is directly affecting small organisations too. This could be seen by the ban of very large firms such as HSBC and Lloyds to work with consultancies who use associate PSCs. As an owner of such a small business I can confirm that this is already impacting my business directly, with companies concerned about taking any risk of legal actions due to overly complex and unclear rules.

3. What will be the effect of these new measures on a chain of contractors and sub- contractors?

From the response of the private sector, it's clear that the impact on genuine contractors is devastating for the profession, as many roles are disappearing and being offshored, and those remaining within the country are all being converted to be inside to protect against the legal risk, and as companies are basically creating a cartel, genuine contractors will have very limited chances to continue their profession, so important for a country who wants to be productive and flexible. It's also very important to note, that many of the contractors were used to scale up and become proper SME businesses which are so important to the country. All of this is going to disappear should these changes go-ahead even if ill-informed.

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

There should be a clear set of black and white rules: looking for example at the rates (i.e. above a certain daily rate it's very unlikely it's a disguised employee and the taxes paid to HMRC will be significant and generally more than the tax received by an employee with the same level of seniority) and duration of the engagement (i.e. more than 2 years could incur higher taxes). In general, simple black and white rules will ensure transparency and remove the risk of the unknown which sits with the current law.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

These tests are absolutely not fit for purpose. How can such a test result in "unable to determine" answer? All the questions are border line and it is genuinely difficult to answer one way or another even when following the guideline. They also do not reflect the reality of the contracting environment and don't seem to truly target the disguised employees which were the main reason of the change. Also, it is important to note that HMRC has lost most of the cases that it has brought in court – if HMRC doesn't understand this law clearly, how can all businesses be requested to do so?

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Overly complex, doesn't provide an outcome in many cases, questions are open to interpretation as individual may fit more than one answer. As above, the main problem is the actual law which is too complex and poorly associated to employees right.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

It does not seem to be fit for purpose, as we have seen many large companies bypassing the problem by removing all-together any outside IR35 contractor to remove any risks. Many others are pretending to make an assessment case-by-case but they judge by default everyone in and then only conduct the assessment after the appeal (hence the appeal cannot be made against the actual assessment). The law must be

postponed to allow more time for a proper understanding of employers right which are being reviewed.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

   Yes, use black and white rules such as daily rate and longevity of the contract. Disguised employees are very likely within low rates and long longevity. Also, high rates ensure that the amount of tax paid to HMRC is large and in most cases larger than an employee undertaking a role with similar seniority.

10. Will the Bill, as drafted, achieve the Government's objectives?

    No – less taxes will actually go to HMRC due to loss of corporation tax and VAT. Contractors who will move to permanent roles will accept lower salaries hence providing less tax income. Many roles are being offshored with tax income disappearing from UK treasury. Again, the assumptions made have already proven to be completely out of reality and didn't consider the behavioural impact of the changes.

11. What is your view of the role of umbrella companies in the context of these proposals?

    They will be benefit from this change as many contractors will be forced to move in such schemes.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Only individuals who have the minimum guarantees provided to an employee should be taxed as such.

21 February 2020

Andy Balcam

Question 6

6.1 Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

6.2 No the tests are not sufficiently clear and do not reflect the reality of the contracting environment.

6.3 Some rules are open to interpretation. For example substitution. I have a substitute who has equal or greater skills and experience than I do but my end hirer won't accept them because the end hirer's internal standards and procedures mean the sub would need to be vetted. I have offered to py for the vetting but the end hirer resists. The end result is that I am deemed by the end hirer to be inside because I haven't provided a substitute.

6.4 Similarly 'control' is open to interpretation. For example my end hirer enforces a 3-week furlough over Christmas and New Year. Their view is that enforcing the furlough evidences that they have 'control' and therefore I am deemed inside IR35. This is regardless of working practises where I choose what work I do, how I do it, what tools I use.

Question 7

7.1 What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

7.2 The CEST tool places a disproportionate emphasis on substitution. My other observation with CEST is that it does not take into account whether the subject will be paid holiday pay, sick pay overtime, maternity or whether they will have any employment rights, which are surely key factors of whether an individual is truly an employee or not.

Question 8

8.1 How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

8.2 CEST appears to be biased towards providing an Inside determination. There is no escalation route for users as hirers are relying on the tool and there is no readily available trusted alternative.

Question 9

9.1 Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

9.2 The issue here is that the governments objective is counter productive. Why take a group of driven, entrepreneurial individuals with high levels of experiencer, skills and flexibility and bring them down to the level of employees?

9.3 Freelancers, by and large, choose to be freelance because they have a particular set of skills and an interest in a particular type of work that makes moving from assignment to assignment more attractive than staying in the same job for an extended period.

9.4 I specialise in large business change programmes such as merger & acquisition projects. Working as an employee in a company I might see one project in 5 years so I need to be flexible and move from programme to programme. This also benefits the end hirer as they can bring in the specialist resource they need, get the job done and then the resource moves on.

9.5 That style of working is very attractive but carries risk and the freelancer has to fend for themselves in terms of employment benefits, training and so on.

9.6 The objective therefore of 'levelling' that workforce with business as usual employees makes no sense to me. Similarly, the objective of making the freelancer pay more tax is a nonsense as the exchequer gets more than twice as much tax from the freelancer.

9.7 The end result will be individuals giving up as the risks of short term contracts and moving from role to role are still there but the benefits of operating within a limited company have been removed so there's just no point bothering.

Question 10

10.1 Will the Bill, as drafted, achieve the Government's objectives?

10.2 I don't think so. My experience is that my end hirer has essentially blanket assessed everyone as inside IR35. This has led to a number of the most experienced and skilled individuals leaving to take up outside IR35 roles or just taking time off work altogether until the dust settles. Those of us that have chosen to stay are mostly looking around as well but the market is flat because of the uncertainty.

10.3 The other thing I'm seeing is that some larger hirers are blanket banning limited company contractors completely and pushing individuals into umbrella companies or offshoring the work. Offshoring will obviously mean that all of that skill and experience asn well as the tax goes with it.

10.4 Rather than levelling the tax paid by the highly motivated, skilled and experienced worker and the employee the end result will be that the high motivated, skilled and experienced worker will lose their motivation and settle for a run of the mill job.

Question 11

11.1 What is your view of the role of umbrella companies in the context of these proposals?

11.2 I imagine that the 2 strongest lobby groups in favour of IR35 have been the consultancies such as Infosys and the umbrella companies. What a bonanza it is for them. Right now they're being super helpful but once we're all ensnared I expect the prices will start to go up.

11.3 Are they regulated? They flipping well need to be or it will be Loan Charge II: The Sequel.

11.4 In effect the new measures introduce a contrived employment model where individuals will have a pseudo employment contract with the brolly that has absolutely no meaning as any holiday pay or sick pay is all coming out of the freelancer's pocket.

Question 12

12.1 How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

12.2 For avoidance of doubt the new measures tax individuals as employees but with no employment right AND IN ADDITION tax them as employERs with no company! All inside IR35 freelancers will have to stump up the employer NI as neither the hirer, agency or umbrella will pay it for them!

12.3 Obviously the new measures fly in the face of the gig economy. At a time when Britain needs a flexible motivated workforce the new measures are completely undermining that very workforce

25 February 2020

Leigh Baker

As a background, I have been consulting for many years in the financial industry, always on a project basis providing expertise that is not resident in the firms I engage with. I have developed a website and branding at considerable time and financial cost, sub contract where I can to optimise returns, work bloody hard on multiple contracts and try and business develop in my 'free time'. Whilst I forgo the trappings of a career – pension, title, car, paid holidays, employee protections, stability of income I am happy that the work has paid well (I paid £120k tax last year – personal and corporation and VAT) and provides interesting challenges from firm to firm. The new off pay roll rules are putting that at risk, not

only my livelihood but also the tax revenues that I generate, given many Banks I have undertaken work for a saying no to all PSCs even if the working relationship is definitely not as an employer/employee – they just don't want to take any risk of getting it wrong.

Not all of your questions relate to myself directly so I have selected those that do.

What will be the effect of these new measures on a chain of contractors and subcontractors?

Incredible harm, I am expecting to be out of work for at least 6 months , contributing zero to HMRC. I may have to take a permanent role to pay the bills but this will not generate anywhere near the tax revenues I could do if these rules did not exist. The multiplier effect to my accountant and wider economy should also not be overlooked.

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? The rules should be simplified. I understand some contractors disobey the current tax regime many working for the same firm on revolving contracts for many years. Why not introduce a time based rule whereby if a contractor is with a firm for >1 year then they should have to attest to HMRC why they are not an employee as part of a tax return? Giving factual evidence to support the assertion.

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? No, many people tasked with making the determinations know next to nothing about IR35, arguably HMRC don't either as they seem to loose 8 out 10 cases they try to legislate against. Indeed if HMRC don't know the rules how the hell is someone unfamiliar with them? Such people will invariably take a zero risk approach and classify many people incorrectly as inside IR35. Why is there not a penalty they other way ? As it seems unfair that only HMRC can challenge outside decisions and gain recompense if a determination is incorrect.

Do they reflect the reality of the contracting environment? In many cases no as they do not take into account all the extra hassle I have in running my business, how is the person making the determination going to know about all my other badges of business?

What is your assessment of the Check Employment Status for Tax (CEST) tool? Poor – why is mutuality of obligation ignored? It features in every IR35 tribunal case. Why do HMRC not stand by the tool themselves, a recent case tried to argue that CEST said 'outside' yet HMRC ignored this fact. It seems to hang on the substitution clause which is unfair since every engagement has its positive and negative pointers of differing importance.

Does it require improvement? Yes

If so, how might it be improved? Expansion to cater for tax law – inclusion of mutuality of obligation

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed? Unsure but there will likely be little to challenge as most firms are saying payroll or nothing.

Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they? See my response regarding using a time based methodology and asking the tax payer to file rationale as to why outside ir35.

Will the Bill, as drafted, achieve the Government's objectives? No, tax take will go down, money is already flowing outside the UK to external agencies supplying payroll labour from other countries.

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees? Definitely not, this aspect is a disgrace. What is to stop other permanent employees being moved to this new zero status type employee?

7 February 2020

Martin Barber

I am writing to you to provide my views on the extension of off-payroll working rules. Please be aware that where I mention HMRC, I am referring to either HMRC or HMT. I am not sure of the finesse regarding their exact roles.

Let me preface the main content of my email by making you acutely aware of the extreme anxiety that these impending rules are having on my fellow colleagues and friends. On a personal level, I have been struggling with sleep, my mind negatively obsessed by the consequences of these damaging rules, both to myself and the wider British economy at a time of great national upheaval. This uncertainty has been haunting us since the changes were first announced in the public sector. The country is constantly reminded about its low productivity, I certainly do not see this action improving the situation.

Before going into the detail of why the latest changes to IR35 are so damaging, a wider perspective on the original legislation should be

gleaned. The original rules are vague and confusing to the point that nobody but qualified solicitors and judges can unpick them, and even then, they make mistakes. So my first question would be to ask if they were ever fit for purpose. If rules are expected to be implemented and followed by the masses, then they need to be understood by the masses. Clearly HMRC are unable to understand their very own rules, as they have lost the vast majority of investigations that have gone to trial since 2010.

This is just not good enough. First they accuse wrongly, second they waste further tax payers' money chasing frivolous claims.

The continued changes to these rules, are a poor attempt at fixing something fundamentally broken.

This is the twenty-first century and it sees the working world changing at an ever rapid pace, the old norms of working for a single company for the entirety of your career are largely dead. A flexible and dynamic economy is what is demanded by society. IR35 flies in the face of this.

What will be the effect of these changes? I will explain what I see happening:

Large businesses will not engage in a laborious process of assessing contractors whilst also accepting the potential tax liability for making an error. It is very simple, companies are risk averse. Plus the assessment process also comes at a cost. Also, the external “expertise” in these matters just does not exist in large enough volumes to support the large swathes of companies that need contractors.

Creation of No Rights Employees. Lowering employment rights to the point that, who will be offering jobs with the benefits of holiday, sick pay, pensions, etc. in the future? This is a race to the bottom. A stealth way of reducing workers' rights in this country. Is this how Great Britain outside of Europe, plans to compete in the future? If so, we may as well drop the "Great" immediately.

Project work shifting offshore. This is not a matter for debate, this is happening and it is clear to see, the internet is awash of evidence.

You only need to consider project work to realise the damage this will do. It literally is not feasible for companies to have full contingents of full-time staff in a world economy. They need flexible workers. Flexibility in the work force should be promoted, not punished. This is the work force that allows the country to adapt and rise to the challenges of tomorrow. Punishing that segment of society will only cause economic pain.

On to HMRC's "solutions":

CEST - woefully inadequate tool that has not been tested, that was not built using real world examples and case law. It has a glaring omission; Mutuality of Obligation (MOO), which HMRC assumes in every case. HMRC have even tried to have evidence from CEST rejected in a court case. You could not make this farce up.

Status Determination Statements (SDS), which are to be issued by each client for the contractors they engaged with and HMRC have left it up to the clients to design their own dispute resolution processes. How are the disputes ever going to be resolved to the satisfaction of the contracting party? The client will make its decision based on its reluctance to take on risk. That alone is the only thing they will consider. There is even mounting evidence, that even after external providers of IR35 compliance have carried out reviews and assessed a contractor as outside, that the client refuses to accept the result.

When HMRC are challenged on the effect of these rules to the Public sector, they state that it has resulted in increased payroll tax. However, they have failed to examine (conveniently or otherwise) corporation tax, dividend and VAT (in the case of financial services) tax losses in the same period.

HMRC are simply targeting the easiest link in the chain. They want more tax revenue and have decided that the self-employed are an easy target.

It is becoming more apparent that there is no over-sight of HMRC, they are a law unto themselves.

Lords, I implore you to help and support the flexible workforce, to educate your peers, to challenge the government, push for a completely independent review of IR35 that encompasses the full economic effects of these draconian and frankly downright unfair rules.

At this present moment, I am waiting to receive the blanket assessment from my main client (not sole client). To this date, they have communicated nothing. I will not be accepting an inside PAYE position, because I am outside the rules. I will have to give up work on offer, for nothing other than HMRC's ongoing incompetence.

10 March 2020

Sally Bargman

IR35 - View from a veteran advertising freelance copywriter

Whilst I understand the IR35 financial rationale behind the desire to remove 'disguised employees', this rule seems like a blanket initiative designed more for the banking and IT industries who employ freelancers purely for tax efficiency over a long-term period, (years).

But what about the problems it will cause for more 'project based' creative industries such as advertising? An industry that regularly grows and shrinks dependent on day-to-day demands from clients. What will agencies do when certain unique creative/tech skills are required but not enough to sustain that role 100% of the time?

For the freelance advertising individuals themselves, my concern for is that IR35 will greatly impact those not necessarily outside permanent employment by choice.

Those who, like me aged 58, are considered 'old and past it' (only 5% of advertising staff are over 50) and therefore not desirable for the payroll but 'handy' for the odd 'safe pair of hands' jobs. How will I, and people like me, continue to pay a mortgage and bills over the next 9 years until pension age?

What about people who, (like me a few years ago), need the flexibility of freelancing for child minding, school holidays etc.?

Or who need flexibility to take time out to help ageing parents?

These last two examples will more likely impact women in the workplace.

What about those who are 'in-between jobs'? Due to the fluctuations of business revenue, mergers, acquisitions, buy-outs etc. in the advertising industry, redundancies are not uncommon. (I can count 9 in my 35-year career.) Freelancing is an essential way to pay the bills whilst a new permanent role is sought.

Already as the threat of IR 35 looms, freelance roles have become scarcer.

There has been a reticence/fear of hiring freelancers so my friends in permanent roles say that they are overburdened, stretched and stressed.

We freelancers may have long waits between jobs, but this waiting does not feel like a holiday. There is the need to chase up more work and the stress that none may be forthcoming in the near future.

In some years, work is scarce and profits can be low. Whilst the cost of living has risen, day rates have not increased in over 20 years. How will a further 20% drop in income help the advertising freelance community?

A 20% drop on top of the reality that we do not get paid for holiday or sick days when in PAYE freelance contracts.

A 20% drop when a percentage may have to go to an umbrella company who do very little for their money – just another layer.

If you have a limited company, state benefits for in-between times are not an option.

HMRC needs to reconsider how important flexibility is in the advertising industry; adopt a less black and white approach that supports the unique business models of the creative sector.

Please get in touch if you would like further insights from a creative industries representative.

10 March 2020

Paul Barker

I have had a Ltd company for many years and have contracted myself out to companies in the UK and also abroad which has mostly been a good experience, but now with the real threat of IR35 coming to fruition in April 2020, this will have a devastating effect on myself, primarily because of the mortgage have and also vehicle I need for work purposes, in so far that I will have to be give back the vehicle to the company whom I bought it from on a PCP agreement, which I will no longer be able to afford and because of the arrangement, i will get nothing back, so will have no vehicle for work.

To make matters work, the money I will be deducted for extra Tax and NI, will mean I am not able to afford the payments on my mortgage and so will have to sell my house of 29 years , which I have put a lot of time and effort into getting it just right, which seems a long time, but when you are contracting you often have to work at a distance where you need to stay away, meaning B&B, and an extra cost which is not allowed for in the rate from the agent, so you are not able to work on your property in the week, like most people, so it a will mean getting something cheaper and possibly not in the area, we would wish for.

I do not see how we can be classed as permanent staff, as we do not get sick pay, holiday pay, Bonuses, help with glasses, protective clothing, get promotion, the chance to general meeting, sometimes we are only invited to Christmas functions if there aren't enough permanent staff, we also don't get discounted lease cars and a few others.

If we were to be given permanent status, would the company give us the salary we are currently on because I don't think a permanent member of staff would go to another company for a lower wage in general.
If they are going to introduce this IR35 they need to step it in over a possible 10 years gradually rather bulldozing in and hitting honest hard working people so hard, as I for one will be taking my skills abroad and making sure I pay their taxes.

Michele Barry

I would like to thank the sub-committee for inviting views on the proposed reforms. Please find my observations detailed below. This is submitted in a personal capacity.

Executive Summary

- The proposed changes have already had unintended consequences on the market. I am currently looking to seek permanent employment even though I would much prefer to have the control and flexibility of working for myself. Many others are doing the same, also not by choice. As a result, the additional costs that are incurred in operating a Limited company will not form part of the economy any longer. Professional Indemnity insurance, accountancy fees, business banking, corporation tax, dividend tax etc.

- A major unintended consequence of the proposed change is that clients are applying blanket bans on the use of Limited company providing services to them, either via an Intermediary or direct. Clients do not want to take on the risk of determining an incorrect status as the process is subjective. They are protecting themselves by removing Limited companies out of the equation altogether. The impact to the flexible workforce will be significant, in particular to those that currently need to travel to their clients. The inability for those 'workers' to claim expenses when operating as PAYE directly affects their net earnings and their ability to continue to provide their service to their client(s).

- A new situation which has not been thought through, is when clients want to reduce their running costs they will be able to make permanent staff redundant and hire them back for less cost as PAYE via an intermediary. Large companies (clients) will then be able to avoid paying bonus, additional pension contributions and additional sick/maternity pay. There will be no feeling of security in the permanent job market and the UK will struggle to attract

and retain the best talent. This will happen in time. These changes will impact everyone.

- I would recommend that you do your own calculations to see whether the tax that is owed and therefore paid is vastly different between a PSC and a permanent employee. I calculate it to be about the same but the risk is entirely on the PSC to constantly look for more income revenue, provide training, insurance, holiday and sick cover. These other items are overlooked in the discussion document by HMRC. They provided very basic examples which are misleading. It is now more advantageous to be in permanent employment if net earnings is the most important box that one is trying to tick.

- It would be much simpler and less stressful to be a permanent employee for a large corporate however the UK will never create the next Google if this situation is allowed to unfold. How can you ensure that the UK stays innovative if you don't encourage and incentivise small companies?

- I believe that IR35 regulations should be removed entirely in order to encourage startups and the next wave of small to medium sized businesses. In this instance if the aim for HMRC is to try and ensure that everyone pays similar tax, then focus on setting more precise rules on tax and Employers/Employees NIC. Apply the rules to all companies, not just small ones.

- Dividend tax balanced out the tax differences some years ago between a Limited company and permanent employees and yet the UK still saw a massive increase in the number of self employed people. People want the flexibility of choosing where they work, the hours that they work, the amount of holidays that they will take and don't want to be dependent upon office politics and performance reviews. This should be encouraged as it breeds more independent thinking and drives creativity and risk taking which leads to more innovation. Innovation, retaining highly skilled people and geographically spreading the workforce to alleviate pressures on key infrastructure and housing should be the target. All of these things will be directly and negatively impacted by the proposed changes to IR35.

1.What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?
2Impact of new off-payroll rules on organisations

I have no direct knowledge in the public sector space.

2.Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden(including costs)of these new rules realistic?Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

I don't believe that the impact has been adequately assessed. I think that the HMRC has drastically got this wrong and it will have far reaching and economically damaging results. The compliance burden shifting to large corporations has resulted in significant numbers refusing to buy services from PSCs either directly or indirectly. This has far reaching consequences to both the economy and to employment rights for ALL UK residents. If you take the time to look at Twitter or LinkedIn you will see that many PSCs that are between 1-20 employees that have been operating for years are losing their main clients who are refusing to deal with PSCs as a result of this ruling. They are shutting down as a result.

3.Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?
I don't understand how this is even possible to manage, won't it mean that plumbers will have to know how much the turnover of their clients is to know whether or not they should or shouldn't be self determining their own status? Plumbers could supply their services to large building firms that may be over the threshold or might not be. Does this mean that they have to receive payment directly into their personal accounts for those clients and use their company for all others? This seems an inconsistent and more complicated than it needs to be.

4.What will be the effect of these new measures on a chain of contractors and sub-contractors?
PSCs are losing business as large enterprises are refusing to buy services from them. PSCs are being closed as a result. This will have a knock on impact to all of the other companies that in turn supply them with services such as accountancy firms and insurance firms. The financial sector will lose out on money in their business accounts also.

PSCs have been presented with a take it or leave it offer of a PAYE

arrangement either via an Umbrella company or via an Intermediary. This, in real terms is anywhere from a 20-40% reduction in their earning capability if they want to continue to earn a living and are forced by circumstance into accepting it. This implies that everyone in the chain is trying to pass the Employers and Employee NIC to the person who would under PAYE be considered an employee. How can that be right or fair? People who were entrepreneurial and confident in their abilities to take the risk of running their own business and controlling their own affairs are being forced into a situation where they are having to accept terms and a determination of employment status that they don't agree with in order to not to impact or lose their family, marriage or house. Large corporations are also taking advantage of the situation by aiming to reduce the amount that they pay out while converting their method of employment to PAYE only.

5.What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules? Determining tax status of workers
It would be far simpler and fairer to remove IR35 rules completely. The amount of tax that a person pays via a PSC is about the same as via PAYE or Permanent employment. The changes that were made some years ago to the Dividend tax already addressed that imbalance.

If that isn't going to happen then the onus needs to be with the PSC to determine their status. Trust and verify should be the approach. Provide a determination tool that is fair and not designed with a specific outcome in mind (the original version of the tool was like that) and potentially legislate that each PSC complete the questions to demonstrate compliance. Spot checks can be done by HMRC to verify. The real issue here is that the employment law does not match the tax law. This needs to be addressed as a priority and before any IR35 changes take place.

6.Are the tests for determining employment for the purposes of these rules sufficiently clearto both engager and worker? Dothey reflect the reality of the contractingenvironment?

The tests aren't clear to everyone. They have also changed multiple times with no version control around it. At one point when I checked it I was deemed Outside IR35, a couple of weeks later a contact told me that no matter what answer he supplied, it deemed him Inside IR35 and

when I tried it again, I found the same to be true. I tried tonight and it has been adjusted more sensibly and I am now deemed Outside IR35 again... How can HMRC be allowed to just mess about with a tool that is being used for such an important and life affecting task for such a large number of people? There should be version control around changes and clarification around how they handle people who used the tool on specific dates for specific versions of the tool.and the tax implications.

It also doesn't matter whether the tool is clear or not. Large companies do not want to take on the liability of getting it wrong and are blanket banning. This is economically incredibly damaging and will be an excuse to off shore. Large companies such as Infosys and Wipro will take that money and supply those resources from alternate locations and the tax on those earnings will not go to HMRC. Large clients will choose to use the likes of Infosys/Wipro and start to shrink their permanent staff headcount because they will no longer have to pay as much for 'employees'. They can avoid paying bonuses, matching pension contributions and sick/maternity pay. The intermediaries won't be paying those either, sticking to the bare minimum statutory requirements, resulting in a workforce that are deemed 'employees' but with less benefits and rights. Job security for permanent staff in the UK will be unstable and people will seek a better life elsewhere if they are able to do so.

7.What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement?If so, how might it be improved?
Yes, it requires improvement. They need version control around it and some framework for people either being notified of changes and also clear and fair rules around how they will be judged as a result of changes to the tool. Results should not be retrospectively applied where determinations made previously differed. They need to get it right first and trial it for a year across multiple sectors and circumstances to ensure that they have the right questions to determine a fair status.

8.How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?Policy objectivesand wider context
It won't be fair nor will it resolve issues of employment status. The fact is that the employment law doesn't match the tax law view of what an

employee is vs a self employed person. How can a progressive and highly educated country such as the UK have two areas of law that are fundamentally not aligned? This needs resolving and aligning before further progress can be made. People have to stop and ask what the objective is of IR35 and then work out how to achieve it.
Having safeguards and a means of allowing decisions to be challenged is only relevant where clients are not applying blanket bans on employing services via a PSC.

9.Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
It isn't clear any more what the objective of IR35 is. If it's to ensure that people pay the equivalent in tax then you can do your own sums to see that that is already the case. Prior to the dividend tax being introduced, I would say that it was more tax efficient to provide services through a limited company. Now I would say that it's about the same. I would recommend removing IR35 and focussing instead on clear laws around how a limited company can be operated and taxed. The unintended consequences that I outlined above are going to be devastating to the UK economy, with or without Brexit and will change the face of employment within the UK making it a very unattractive place to work.

10.Will the Bill, as drafted, achieve the Government's objectives?
I don't believe so. If you compare the take home earnings of working as a permanent employee for a company vs PAYE vs Umbrella vs PSC, permanent now comes out on top followed by PAYE, possibly Umbrella and then PSC. HMRC have made it better financially to be a permanent employee of a large company. The issue is, companies don't want all permanent staff on their books so they will opt for PAYE. This in turn will create a new type of employee with less rights as it is financially more attractive to large corporates to use intermediaries with PAYE fixed term temporary employees. All of the self employed people that live and work outside of the large cities (and some who live inside them) will not be able to afford to continue to supply their services because the only way that it is viable for them to do so is through a limited company that enables them to claim their expenses as they travel to and from their clients. This will mean that where there are skilled workers for example in technology, they will reconsider their work life balance and opt for more local less skilled, less pressured work (if they can afford to readjust) or they will look to move to other countries that have a skills

shortage. Either way, the tax that HMRC have calculated is being avoided won't be forthcoming regardless of whether they are right or wrong about PSCs avoiding tax. In fact, this could end up with a lot of self employed people signing up for benefits due to being unemployed, once they have been forced to sell their houses to survive.

Companies are in a state of disarray. I know of one person who has been trying to negotiate a contract with a client for the last 3 months and nobody understands how to agree anything as there are so many parties involved and not everyone is clear about which part of this chain pays for which bit of which tax.

11.What is your view of the role of umbrella companies in the context of these proposals?
They provide little value add to the new PAYE 'employee type' and will charge for the privilege of doing payroll. People will just go permanent directly with the client instead although they will not be able to afford to take on permanent employees that they can't remove easily. This will impact on their bottom line and flexibility and will force people to take the PAYE option via an intermediary.

12.How do the new measures relate to the wider context of changes in working arrangements, including the “gig economy”? Is it fair that some individuals are taxed as if they are employees,but do not have the rights of employees?
No, it is not fair at all. I think it will ruin the 'gig' ecomomy. I think it will also severely impact the future of permanent employment within the UK as I explained above.

16 February 2020

Michael Barwise

RESPONSE
With reference to IR35:
IR35 does not address an unlawful act. Remuneration partly as dividend is lawful and widely practiced. Therefore the assumption that it generally has fraudulent intent when practiced by limited company director contractors has no merit.
The self-evident assumption on the part of HMRC that sole director limited company contracting is fundamentally an artifice dedicated to tax avoidance has no evidential basis and is therefore unjustifiable and

abusive. Although this might be the intent in some cases, to brand and penalise an entire sector of the business community on the basis of an assumption of universal intent is irrational and unfair, all the more where the activity in question (partial remuneration as dividend) is essentially lawful. There are many legitimate reasons for consulting on the basis of a contract for services, not least the short term nature of many consulting assignments.

Law and regulation must apply to all persons equally. Remuneration partly as dividend is widely (and in other cases apparently acceptably to HMRC) practiced in the corporate world. It is therefore unconstitutional to discriminate against any specific subset of companies in this respect.

The distinction between a "managed services company" and a "personal services company" has no basis in company law. It has been invented merely for the purpose of preventing directors of certain companies benefiting from an entirely lawful reduction their tax burden that is widely practiced by, or to the advantage of, directors of other companies. Any legislation that differentially discriminates between categories of persons engaging in a practice common to all can not be considered constitutionally acceptable. As it stands, IR35 is also inconsistent in other ways. Consider the position of a contracting consultant working beyond state pension age, whereupon personal NICs would no longer be due. There would under these circumstances be no difference to HMRC whether the contract were considered "within IR35" or not, other than which of the two parties to the contract pays the employer's NICs. However the restrictions on the contractor under IR35 would remain to their detriment. Furthermore, the declared basis of the discrimination, resting as it does on such arbitrary distinctions as whether a director personally performs services for the client or on the percentage shareholding, is equally unjustifiable. A self-evident and significant effect of this is to create an anti-competitive marketplace, offering large multi-employee consultancies preferential access to assignments at the expense of small specialist consultancies that provide high quality and often essential services to both the business community and government.

Effectively forcing working relationships to be contracts of service is seriously detrimental to both consulting contractors and their clients. There is a significant difference between practical working relationships under contracts of service and contracts for services. Under the former, the worker's activities are dictated unilaterally by the recipient of the service so the worker performs duties "under orders". Under a contract for services the provider of the service can agree terms mutually with the client, and is thus free, and may be expected, to guide the client on the basis of expertise. In the case of specialist consultants such as myself, delivery is seriously impaired by operation under a contract of service as it is often necessary to drive culture change to achieve the required business outcomes. This is effectively impossible under a contract of service. Furthermore and fundamentally, wresting control from one of the parties to an assignment negotiation and awarding it to the other by

requiring the client or agent to determine IR35 status unilaterally instead of relying on the terms of a mutually agreed contract is an unreasonable and unfairly biasing intervention into that negotiation. By ignoring the nature of the contract, IR35 effectively creates a new class of working relationship that has no basis in law other than for taxation purposes but which leads both to unfair exploitation of a sector of the workforce and reduced benefit to the recipient of services.

Contracting, and in particular expert specialist consulting, could become uneconomic were "within IR35" to become the default working relationship.

The fundamental problem is that under IR35 a contractor is still obliged to accept the liability and insecurity intrinsic to a contract for services with all its associated obligations and costs, but is treated for tax purposes as if under a contract of service that in principle includes employment rights and security they will not in fact be provided with. Traditionally, these rights would be provided for the contractor by the limited company of which they are both director and employee, out of the company's revenues prior to corporate taxation. Obligations such as professional indemnity insurance and financial cover during gaps between contracts would also be covered in the same way. However under IR35 there will be no "company revenues" out of which to do so as all revenues are taxed as personal income. The higher costs and risks characteristic of independent consulting can only be borne economically if treated as business expenses offsettable against taxation. The IR35 regime also precludes the economic accumulation of corporate capital, thereby acting as a very real inhibiter of growth.

There is already a demonstrable decline in availability of short term consulting contracts, and there is a danger of "within IR35" becoming a standard basis for abusive terms of engagement that would otherwise potentially be unlawful.

There is already accumulating evidence that in order to avoid the potential liability imposed by the extension of IR35 to the private sector, businesses are ceasing to engage contractors, and this is having an adverse effect on the delivery of projects and services. From my own experience as a specialist risk trouble shooter whose assignments are necessarily relatively short, the effect of the announcement of the IR35 extension has definitely been to reduce the number of opportunities available. There is also a very high likelihood that extending IR35 to the private sector will engender an effective black market in "zero rights employment", as it will in principle be possible for clients and umbrella companies to treat contractors by default as within IR35, effectively on a contract of service to them but without the employment rights that accrue thereto. Indeed this could become a dominant recruitment model for the future, undermining both the freedoms of independent consulting and the statutory security of employment.

Consequent personal position

Consequent on the above observations and supported by the extensive public coverage of its adverse effects so far, I consider that not only the extension of IR35 to the private sector, but the entire regime as currently implemented should be abandoned as unconstitutional, arbitrary, questionably economic, and damaging to both the livelihoods of individuals and the economy at large.

Potential remedies

As an alternative to IR35 as currently implemented, should one be proven strictly necessary on objective consideration, I might recommend complete revision of the criteria so they reflect the reality of individual contractual and working relationships instead of, as currently, relying on a complicated and ambiguous system of blanket rules and a demonstrably biased assessment that preferentially returns a finding of "within IR35". It should not be beyond human ingenuity to rely on the terms of contract and, as is common in other areas of fraud management, apply sanctions in individual cases where acts expressly for purposes of tax evasion could be demonstrated. However, should such revision prove too hard to conceive, I might suggest definition of a realistic maximum duration of contract that would be automatically outside IR35, possibly with provision for control over rolling contracts. This could provide a single simple unambiguous solution to the perceived problem of disguised employment by eliminating the phenomenon of multi-year notional rolling contracts with nominal duties – in my experience primarily encountered in government service itself. Another alternative might be a schedule of specific service categories agreed in consultation with the end user market (not with third party intermediaries such as umbrella companies and agencies) to be automatically considered outside IR35. Finally, as an equitable alternative to IR35, revision of the tax rules relating to NICs and/or dividend taxation could quite possibly eliminate the perceived problem entirely while maintaining a level playing field for all.

24 February 2020

Namgyal Basi

Summary: The Private sector does not appear to be sufficiently prepared, as evidenced by the actions they've publicly announced, to follow the correct implementation of IR35 changes to the Private Sector. Rather than follow the CEST appraisals on every engagement, they are taking a blanket 'inside IR35' position on all their engagements and furthermore have decided not to engage PSC's at all. Evidence of this is publicly available and is reported in the news.

As a consequence, individuals who have chosen a very valid and legal career path of providing services via PSCs are being demonised and a career path being killed completely. People who have so far assessed their roles to be outside IR35, through this blanket position are being left

having to choose between two unfair options – (a) Either leave their current engagements or (b) In effect accept their previous assessments were incorrect and in principle acknowledge they have previously broken the law. While the government has provided a grievance redressal option, it is not practical and would tantamount to career suicide for an individual to raise a case against their client.

To support the above Summary please find below answers to specific questions you have raised in your request for evidence:

Question 2: Compliance Burden: The IR35 legislation changes distinguishes between the responsibility of determination (Private Sector Clients) and Tax collection (Fee Payer). However it appears private sector companies believe the obligation of fair tax collection lies with them. To protect themselves they have decided not to engage PSCs. Workers are being forced to engage via Umbrella companies who then take a commission. In effect they are killing off PSCs. My understanding of the law is that once an engagement has been deemed as inside IR35, the obligation of fair tax collection and payment is transferred from the client to the PSCs (as fee payer) should they wish to engage PSCs. If this understanding is true, this clarification should be provided quickly to avoid Private Sectors killing of PSCs and Middlemen Umbrella companies gaining a commission without adding any real value on the engagement.

Question 3: Exclusion of Small Organisations: It was commendable on the part of the government to exclude small organisations given they are more likely to require services via PSCs at this stage of their growth. However many Small Organisations in turn provide services to larger Organisations and many larger Private Sector companies are now providing instructions to all their service providers that they cannot engage PSCs in the service they provide. This in effect increases the pressure on Small organisations and puts them at a competitive disadvantage to larger organisations providing services in the similar space. Evidence of such instructions is readily available in communications by many of the large banks as an example. To elaborate on the competitive disadvantage 'A small company providing mobile app creation services often requires to temporarily engage specialist to deliver certain end client requirements. They would now need to consider keeping a specialist full time or lose out to bigger competitors with pockets deep enough to keep a specialist engaged full time'.

Question 4: (A) As described above, the interpretation of the rules is leading to the end of PSCs. In this scenario most workers are likely to seek full time employment. In the IT space, this would mean becoming employees of large System Integrators. The effect of this is that clients would then need to pay a premium (often double the daily rate) to the System Integrator (increasing their cost to do business), the worker would be given a much lower salary and the System Integrator would

retain most of the earnings as profit. Since many System Integrators are registered outside the UK and don't pay Corporation Tax, the UK government doesn't stand to gain as much.

(B) As a contractor running my PSC I currently have the option of working part of the year. I have the flexibility of balancing salary to myself over the course of the year knowing I plan to not work for some months. Inside IR35 with Private Sectors insisting payment via Umbrella companies Tax will be collected assuming I'll be working the full year. I therefore wont have the funds to not work for some months as the additional tax can only be claimed back at the end of year via self assessments.

Question 5: HMRC should re-clarify that the obligation of the Private Sector is only to determine the IR 35 status and they do not bear the burden of fair tax collection and therefore not be worried about engaging PSC. This would allow workers to continue to have the flexibility of working through PSCs as opposed to full term employment. One of the key reasons for working through PSCs as opposed to employment is the flexibility in choosing the types of work they would like to engage on. The end result would be happier and therefore more productive workers. This would mean Private Sector continues to get services at the daily rates they do today and therefore not increase the cost of business (which would happen if they were to get the same service via a large System Integrator) and ultimately the cost of their products to consumers.

Question 6,7,8: Unfortunately as stated previously the tools to correctly determine status are being bypassed altogether through blanket assessments by corporates that everything is within IR-35.

HMRC should discourage the blanket assessment of roles as being 'within IR35' through mechanisms stronger than a grievance model. Severe penalties should be announced for inaccurate 'within IR35' determinisations as a deterrent as most organisations appear to be thinking that blanketing everyone within IR35 is the easiest, cheapest and safest option for them.

Question 9,10,11,12:

Most PSC engagements in PSCs are for roles where (a) the Client doesn't have a long term need for the position (b) don't have skills internally nor want to build the skills internally as this isn't their core line of business (b) role is part of a short term initiative – e.g migrating from one system to another, or a strategic transformation. The Client would not consider hiring into employment people to fill these positions and logically therefore they can't be 'disguised' employees.

It would be good for IR35 criteria to evaluate if the client would have other-wise 'hired permanent' employees for the engagement. If a client

deems they would, then the 'IR35 contract' should come with an offer for a permanent position included.

There are also PSC engagements where the person has been doing the same role for years and within the clients business there is a continued need for that role. Roles in 'IT support' for example. These are in my view genuine cases of disguised employment. So an IR 35 criteria based on tenure of requirement of the role (not the contract) would be useful to filter out such cases. Example – Is the role likely to be required for continued business operations in X years (Say 3 years).

7 February 2020

Bauer & Cottrell Ltd

Bauer & Cottrell has been trading since 2003 providing IR35 and tax/NIC advice to contractors, agencies, end clients and employers. We undertake thousands of IR35 contract reviews each year and assist and defend client cases subject to status/IR35 investigations by HMRC.

Kate Cottrell was appointed, as the IR35 expert by the Office of Tax Simplification producing the report on IR35 for the then Chancellor, George Osborne. Kate was a founder member of the HMRC IR35 forum and served on the forum for many years. She also assisted and gave evidence to the House of Lords enquiry on the use of personal service companies.

Please note:
This is an extremely brief submission based upon our real day-to-day experience of this reform in both the public and private sectors. Because of the nature of our work we have sight of the reform from all sides.

SUMMARY

- We need to see a full and proper evaluation of the reform in the public sector before pressing ahead with the private sector.
- The private sector is not prepared for an April 2020 start.
- We need a realistic evaluation of taxes and NIC that the reform is expected to raise together with a realistic assessment of the compliance and financial burden for all in the contractual chain.
- Everything is being provided at the last minute, owing to the delays in the parliamentary calendar. This is too late.
- Unintended consequences- blanket bans on PSC's, risks to National Security and numerous firms preparing to go out of business.
- More work needed on HMRC guidance and CEST.

- We need an independent appeal process.
- Delay = a golden opportunity to address tax and employment status once and for all with entitlement to benefits clarified and the creation of a fair system for the UK.

Existing measures in the public sector

What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

1. History is currently repeating itself. The advent of the rules in the public sector caused what can only be described, as complete chaos and the same is happening now with the private sector but to a much greater extent because of the numbers affected and the fact that at, February 2020 there are companies of all sizes (including some with global businesses) that have not heard of the reform together with agencies and contractors that just do not know what they should be doing.

2. It is difficult to learn any lessons from the public sector because there has been no published evidence of the impact on the public sector apart from an inadequate research paper published by HMRC, which had numerous caveats and was limited in coverage. Anyone working in this field is extremely frustrated that there has been no response to the numerous submissions on the draft private sector rules where many problems have long been highlighted. The OBR has already stated that HMRC's impact assessments and figures are best guesses and unreliable.

3. The public sector roll -out was all last minute (even though it had been delayed for 1 year) with HMRC's CEST tool released just weeks before implementation of the rules. Those with IR35 assessment responsibilities in the public sector had a very difficult time. We are seeing the same situation in the private sector, owing in part to the parliamentary calendar. No one can afford to wait for the final legislation but it is a difficult situation where decisions are having to be made on old rules and "potential" new rules. Much of the old public sector guidance was removed from HMRC's website without warning and although HMRC's new guidance, which is still in draft format, is welcomed it is far too late with just weeks to go.

4. As with the public sector we are seeing numerous blanket assessments – all inside IR35 and in some cases an about turn to all outside IR35. Some who have done their best to do proper assessments and finding inside IR35 positions are now back in touch to ask what can they do?

They have discovered that their competitors are offering to take on the workers outside IR35. Many of our clients have already handed in their notice. The recent change to the rules (affecting now work after 6th April rather than services provided) released just last week is too late.

5. We are seeing again the creation of numerous "solutions", which do not work and in particular hundreds of so called "umbrella" companies are being created but many appear to be non-compliant – a further massive increase in avoidance schemes. We are also seeing new "solutions" e.g. joint employment, which makes everything even more complicated.

6. We have now seen cases where retrospective investigations are being made on contractors e.g. Glaxo Smith Kline. We also see that public sector bodies have been fined by HMRC because of incorrect assessments e.g. NHS £2.8M. We wonder what the public will make of one government department fining another when the money concerned is the taxpayers. How was this enforced and at what cost? We also ask how such action sits with HMRC's claims that they will not undertake retrospective investigations?

7. No account has been taken in the draft legislation of all those public bodies that were exempt under the public sector rules because they were not subject to the FOI Act e.g. in particular the security services and we are witnessing chaos in this sector. There are numerous subject matter experts, specialists and those undertaking highly sensitive work contained here and many are vital to our security but the CEST tool simply puts them inside IR35. These organisations cannot afford to lose these people but cannot afford to offer permanent employment.

8. As in 7 above there are numerous unintended consequences of rolling this out to the private sector and this includes further changes for the public sector. Many of these public sector bodies are unaware of these changes, thinking they sorted it all out previously.

Impact of new off-payroll rules on organisations

Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

9. The assessment of the compliance burden is not realistic. Many large businesses have been able to utilise in-house personnel but even then, they have had to invest in training in order to do so. That said many clearly see the costs of complying with the rules and the risks of getting it wrong are just too much so have decided to not use personal service companies from now on – February 2020 e.g. most banks.

10. There is still a wholescale lack of understanding for all businesses affected. For example, many are unaware of the need for and the costs of specialist software to deal with those inside IR35.

11. This proposed reform has enabled HMRC to significantly reduce the size of the IR35 population, which was always their intention. However, this has clearly gone too far with blanket assessments being made and many organisations ignoring the new rules by banning the use of PSC's and even extending such bans onto their service partners, such as consultancy providers, which is having a negative effect on their business model and operation. By proposing that the end client run any dispute process HMRC has effectively passed most of the compliance burden onto the taxpayer.

Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

12. We have seen numerous cases of groups of contractors getting together (often at the behest of the client) to form small "consultancies" to benefit from the small company exemption. However, many have got this wrong and many are acting, as employment businesses/agencies but have no knowledge whatsoever of all the different rules and regulations affecting agencies. It is impossible to judge the size of an organisation just by checking, say, Companies House records. As liability would rest with the end client, we always advise that a small business seek written confirmation from the client that they agree that their business is small.

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

13. The rules are very complicated. Ideally HMRC should confirm, whether or not a business is small and outside the rules, not least because they have all the information.

14. HMRC's guidance assumes a basic knowledge of tax and employment status, which clearly many do not have. The guidance confuses self-employment with "deemed" employment and is not clear enough

regarding the payment of and by whom of employers NIC. Calling the rules "off-payroll rules" and stating these are "sometimes known as IR35" adds to the confusion – the rules have been called IR35 for 20 years! Those new to these issues are confused by the terms "Intermediary", "Office Holder" etc. There are numerous real-life situations not covered adequately in the guidance such as those providing services abroad. Certainty is needed and this can only be provided by HMRC. It should be possible to decide from the guidance exactly what your position is. For example-am I a Fee Payer? can I deduct employers NIC, do I have to pay holiday pay or give equal rights to these people? Exactly who is to make an assessment and where the liability lies should be crystal clear.

Determining tax status of workers
What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

15. The CEST tool is inadequate. It does not account for one of the fundamental status tests - mutuality of obligation. Anyone can gain an outside IR35 assessment by saying a substitute can be sent, so the result is in fact worthless, if proper consideration is given to case law and IR35 cases heard at the tax tribunals. CEST in our opinion should not be relied upon to establish status.

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

16. We are already dealing with numerous "appeal" cases and many concern cases where we have previously reviewed the contracts and working practices and we have client confirmation of the reality of the working practices and given an outside IR35 opinion. Clients, utilising staff with little knowledge of status are saying "thank you for your appeal, we have considered it and our original decision of inside IR35 stands". This is wholly unfair and wrong and not in line with any other rights of determination for any tax or NIC dispute. We would recommend an independent appeal process conducted by those with the required knowledge.

Policy objectives and wider context
Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
Will the Bill, as drafted, achieve the Government's objectives?

17. YES there are much simpler ways. We have before us a very complicated mess and one which is leading to numerous unintended consequences. We are already seeing all sorts of firms making plans to go out of business from all sectors connected with the industry and this

includes accountants, agencies and small and medium sized businesses. The proposed rules are an enormous burden for businesses of all sizes. The fact that many organisations have simply banned from their entire supply chain PSC's has arguably already met the objectives by reducing the size of the IR35 population and improved compliance, although many now caught by this should not be. There is now evidence that although the legislation is designed to stop false self-employment, due to the blanket inside IR35 assessments clients are favouring and the entire ban on PSC's in some sectors, we now have the reverse position of false employment. This means that many taxpayers are now paying the wrong amounts of tax and NIC due to misclassification by their client.

18. This is a golden opportunity to have a joined- up approach to tax/NIC status and employment rights. We do not understand why the Taylor review and the Good Work Plan has not been implemented in full. By taking this opportunity to do so now the whole system will be fair for everyone however they operate, including the gig economy. It is wrong that you can be a "disguised employee" but have no employment rights.
What is your view of the role of umbrella companies in the context of these proposals?

19. Many compliant umbrella companies do an excellent job but there are many that are little more than avoidance mechanisms, which do not appear to be policed by HMRC. Whatever way you look at it an umbrella company is an artificial structure in the context of employer and employee. Many users have no idea that the umbrella company is their "employer" and many are shocked at having to pay them in order to be paid. Their employment rights also differ from those of a permanent employee.

20. With the advent of IR35, the implementation of the public sector rules and now the proposed private sector rules there has been a huge increase in umbrella companies good and bad and this is continuing.
How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

21. It is not fair that a portion of the workforce is being denied employment rights when they have contributed the same as others. It must be remembered that any shortfall of "taxes" in these cases is all about NIC – employers and employees NIC. The fundamental principles of the National Insurance Scheme concern paying in for future entitlement to benefits. It cannot be right to collect the NIC but give nothing in return unless you are prepared to ditch the contributory principle.

22. HMRC has committed to not undertaking "targeted" retrospective investigations. We are unclear that such a claim can ever be made by the collection body. Contractors do not believe this claim and even though they would not be the liable party under the new rules many are being forced to take out insurances, pay for their own assessments and some are being forced to indemnify Fee Payers and Clients. This too is wrong when the responsibilities, as drafted sit with the other parties.

19 February 2020

Christopher Beach

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

> The impact has not been adequately assessed.
>
> In order to comply with the new policy, many large organisations including Barclays, Bank of America, BP, Deutsche Bank, Accenture and others are performing blanket "Inside IR35" determinations for contractors, or ending engagements with contractors. The policy change forces clients to take on risk that they cannot adequately measure due to the ambiguity of the defined IR35 conditions. Therefore, clients are not taking on the risk at all.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

> The exclusion applies to clients but not contractors themselves, many of which are small companies whose directors will face the full impact (loss of livelihood) of the new policy. Contractors whose limited companies have an annual turnover below £1M should be exempted.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

> Contractors are being put out of business, forced to close their companies down due to a lack of "outside IR35" contracts on offer.

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

The test (CEST) is not entirely clear. In contracts, clauses such as substitutability are often caveated with reasonable conditions (such as security checks). Yet the CEST test for substitutability is worded "Can the client reject a substitute?" - how might this simplistic question be answered?

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The test (CEST) is not entirely clear. In contracts, clauses such as substitutability are often caveated with reasonable conditions (such as security checks). Yet the CEST test for substitutability is worded "Can the client reject a substitute?" - how might this simplistic question be answered?

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed? Policy objectives and wider context

Decisions can be challenged, but the IR35 law specifies no independent body with the jurisdiction to resolve disagreements

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

The government has already equalised the tax burdens between permanent staff and contractors by changing the dividend tax rates. IR35 is therefore unnecessary

10. Will the Bill, as drafted, achieve the Government's objectives?

No, the bill will result in the wholesale loss of the UK's skilled flexible workforce

11. What is your view of the role of umbrella companies in the context of these proposals?

I would avoid them because they do not give me the control and flexibility I achieve through my limited company. I wish to engage clients, not intermediaries

7 February 2020

James Beattie, RJB Dynamics

Existing measures in the public sector

1. Personally, neither my company nor myself have been impacted by the changes in the public sector, as my company has always worked in the private sector. However, I am fully aware of staff shortages, projects being delayed or even cancelled and increased costs to projects due to contractors leaving the public sector to find engagements in the private sector. The fact that HMRC believe that the implementation of the new rules into the public sector have been successful, purely based upon an increase in PAYE and NI taxes being taken, very strongly suggests that very few lessons have been learnt. The only fundamental difference between the rules of the public sector and that of the private sector is the pledge not to automatically claim back taxes. There has been very little guidance regarding the new rules from HMRC and the guidance that has been given is not fully clear and misleading. This may well lead clients (and PSCs) to inadvertently fall fowl of the impending rules or simply misinterpreting the rules and incorrectly classifying PSCs.

Impact of new off-payroll rules on organisations

2. I don't believe that the impact of the extensions has been adequately assessed whatsoever. Clients simply do not have the manpower to asses each PSC individually using the CEST tool. Those who are carrying out the CEST test do not fully understand IR35 and do not look at the individual contracts of the PSC and adjust the answers accordingly. Blanket decisions are being made due to this.

3. The rules of small business are clearly defined and I believe that these businesses are fully aware of their classification. However, I don't believe that they will necessarily understand that they will instantly become liable for IR35 compliance i.e. there is no transition period, if their status should suddenly change from small to medium. This is likely to have the impact of small business close to the borderline deliberately refusing to grow or at least delaying to grow due to the implications of IR35.

4. The impact on a chain of contractors will be financially crippling, yet contractors are expected just to roll over and accept this. There seems not to be any firm guidance from HMRC on how much directly will be taken from the hourly or day rate by being forced into a (unregulated) umbrella firm (potentially leading to further non-compliance) or being

deducted at source. This figure seems to range anything between 25% and 40%+, yet no benefits are gained. The reason contractors are hired are to plug a short-term gap of skills and/or resources. Contractors are generally working on a zero-hour contract in that, no-show-no pay, as there are no employment rights in place, yet we are being taxed as an employee. Contractors work for a client on the premise that if the work is not to a sufficient standard their contract may be terminated at any point or even to the extent that a client just doesn't like the contractor being supplied. Paying additional taxes as an employee does not bring with it additional rights of termination.

Further to this, I am currently living in North Yorkshire and am fulfilling a contract in Barrow-in-Furness. This is a 220 mile round trip and to be able to deliver my services effectively and efficiently I must pay for accommodation to be able to in the client office. Currently this is tax deductible through my company. However, my client has decided that I am Inside IR35 as so I will no longer be able to claim these subsidies though my company and to continue the contract Inside IR35, I would have to be pay for them out of my own pocket and after tax has been deducted at source. This simply does not make it economically viable for me to continue the contract.
On a personal level, I have been able to cover the costs of running a family with my wife being a stay-at-home mum to look after our two young boys. Being classed as Inside IR35, this is potentially forcing my wife back into work. This is a choice for our family as we believe it is the best for our two young boys coupled with the fact that there would be very little benefit for my wife to work due to the need to cover costs of rap around care of our two young boys. Therefore, this is far from socially progressive and my wife may well be, essentially, forced back into work.

5. To simplify the administrative burden of IR35, firstly, contractors need to be recognised by HMRC as an entity and a very valuable workforce for the UK. With this in mind, rather that HMRC seeing either employee or true outsourced resource (plumber etc.) contractors/PSCs should be able to declare themselves as such and pay a special tax rate. HMRC too easily forgets (or does not realise/ignores) that contractors are paid differently, behave differently and do not have any employment rights at all. This firstly needs to be fully understood by HMRC and secondly, far more guidance and information must be provided both contractors/PSCs and end engagers.

Determining tax status of workers

6. The rules for determination are not clear to either party whatsoever. There are far too many misconceptions, such as the two year rule. The language used is misleading and is often put in technical terms. Contractors and HR divisions of end clients are not tax experts, yet are expected to fully grasp and understand the language used by HMRC.

   HMRC sees a contractor as behaving like an employee. In reality, this may often appear to be the case in that a contractor is required to integrate themselves into a team a work alongside the permanent employees. However, the contractor knows that they are constantly being measured on their performance and their deliverables and as such they are always performing at the peek of their ability due to the risk of contract termination for substandard work. The stark reality is that employees know they are protected in certain ways by employment law.

7. The CEST tool is far too weighted by the answer that HMRC wants it to give you i.e. Off-payroll Rules Do Apply. The fact that commuting to a client office or the outlay of specialist IT equipment is not considered a genuine business expense. This shows how out of reality HMRC is. How would I be able to get to a client site or be able to carry out a service that my Company was being engaged to provide otherwise. The CEST tool also asks the question, are you paid for correcting mistakes? This is certainly not always a practical and efficient way of working. If I am contracting in at a client site, I am seriously expected to stop billing at an hourly rate to make an amendment to a document as I have not fully received the correct information to begin with. Where do negations begin on who should be paying the costs of the amendment? As a result, both myself and my client naturally understand the total inefficiencies of this process and will amend the document at the cost of the client. This is simply not a realistic scenario and even so between fully outsourced services. There is always give and take, depending one the level amendment required. CEST does not have any appreciation of this whatsoever.

8. The process of resolution is poorly thought out. Once a client has made their decision, there is no external, impartial body to say otherwise and the client, has no obligation to change their original decision given that they have taken an appeal into consideration.

Policy objectives and wider context

9. IR35 was originally put in place to prevent employees becoming contractors overnight and effectively, paying less tax for doing the same job as they always have done. HMRC have progressively used IR35 to treat contractors as cash cows by increasingly diminishing the benefits of being a contractor and pursuing contractors as an easy target to prop up shortcomings in the economy. This is damaging the transient workforce and will inevitably force UK clients to outsource work overseas as they are unable to attract employees let alone contractors/PSCs. I have personally seen this happen by companies outsourcing work to their Indonesia and India offices.

10. The bill may achieve some of HMRCs goals by increasing PAYE and NI taxes, but HMRC too often and all too easily, forget that they are losing out on Corporation Taxes and higher VAT payments. The implementation of theses new rules are highly damaging to the UK economy by smothering corporations in red tape and not denying temporary workers which ultimately aid in smoothing out the peaks and troughs of resources.

11. Umbrella companies are non-other than leaches that are there to give HMRC the taxes at source. They cream off a percentage from the contractor, at the contractor's expense for supplying a service that the contractor is being forced to use. Umbrella companies are not regulated and thus HMRC are unwittingly providing the route to increasing non-compliance.

12. By forcing contractors to pay tax as employees but gain no benefits is simply fundamentally wrong. Contractors are fully aware that they do not have employment rights and in return pay less tax.

25 February 2020

Mark Beeden

Existing measures in the public sector1.What has been the experience of the new off-payroll rules in the public sector?

I had a number of employees working for me that left private sector contracts paying circa £500 a day to public sector contracts that paid £650+ pension + holidays + Employers NI. Large sectors of the private sector have refused to engage contractors, or those that have are employing them on terms significantly less beneficial. Public sector

contractors are getting paid as much as double their private sector counter parts.

Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed?

No – The impact failed to recognise behavioural aspects. It failed to assess the responses of business and individuals.

It also failed to assess the level of non-compliance. HMRC continue to state there is large scale noncompliance however this was the case then why wouldn't hmrc be winning more court cases?

Organisational Behavioural response:

Major companies such as Barclays, GSK, Lloyds, HSBC, and many others are doing blanket bans of contractors (A quick google search will verify this). They are doing the following:

- Converting contractors to perm at significantly reduced rate
- Onshoring resources from overseas via Managed service providers

It also fails to assess conflict of interests by parliamentarians themselves. Primarily the chancellor himself who is married to daughter of the Indian billionaire founder of Infosys. One of the biggest benefactors of this reform is offshore companies who are being used by larger companies for flexible workforce instead of contractors.

Individual response:

A result of blanket bans from most of the major companies the response of individuals is one of 3 options:

- Convert to perm
- Stay out of the market until an outside ir35 comes available
- Find an inside IR35 contract

I personally do not have the ability to hold off. This is because I have already spent 7 months out of role in 2019 as a result of IR35 hence I have consumed any cash reserves in the business.

According to an ini accounts survey 91% of contractors do not trust HMRC. I am one of them this means I will not take any inside ir35 contract.

Hence I am only left with 1 option, that is to go perm. My company generated £311,000 in revenue for 2018 total liabilities (VAT/ Corporation Tax / Self-assessment tax) £112,000. The perm salary I am looking at is £100,000 this means at the best case Employers NI + paye is going to be £47,000. So my tax contribution is reduced by more then 50% and I have a personal income deficit of over £133,000. Every single person I know is in exactly the same situation, swapping £500 + a day contracts for £50 to £80k perm jobs.

Another impact not assessed is the impact on business change spending. Businesses are incentivised to invest in change when they have access to a highly flexible labour market. IR35 has left companies with taking on significantly higher operational overheads from increasing perm resources and a higher cost of change from paying for more expensive managed service providers. The result is business is vastly reducing spending on change projects to offset these overheads.

There was no assessment of the impact on recruiters, accountants and insurance companies.

4.What will be the effect of these new measures on a chain of contractors and sub-contractors?

As a result of blanket bans from major companies the impact on contractors is significant. Contractors are left with one of 3 options:

- Convert to perm
- Stay out of the market until an outside ir35 comes available
- Find an inside IR35 contract

I personally do not have the ability to hold off. This is because I have already spent 7 months out of role in 2019 as a result of IR35 hence I have consumed any cash reserves in the business.

According to an ini accounts survey 91% of contractors do not trust HMRC. I am one of them this means I will not take any inside ir35 contract because I do not trust that HMRC will not try retrospectively try and reclaim tax.

Hence I am only left with 1 option, that is to go perm. My company generated £311,000 in revenue for 2018 total liabilities (VAT/ Corporation Tax / Self-assessment tax) £112,000. The perm salary I am looking at is £100,000 this means at the best case Employers NI + paye is going to be £47,000. So my tax contribution is reduced by more then 50% and I have a personal income deficit of over £133,000. Every single person I know is

in exactly the same situation, swapping £500 + a day contracts for £50 to £80k perm jobs.

5.What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules? Determining tax status of workers

Hmrc should confirm that they will not retrospectively apply these new guidance on to past contracts. No historical investigations would provide the confidence to accept inside ir35 which will help drive the right adoption.

HMRC should delay the ir35 implementation for 1 year to allow business to adjust.

Hmrc continues to update guidance and cest tools still which has not left business enough time to adjust.

6.Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Dothey reflect the reality of the contracting environment?

No they are not clear and they do not reflect reality. The way contractors fundemenatly operate is no different to what a large consultancy firm like deloitte and PWC who all offer the exact same services as contractors do. So why do these rules only apply to contractors and not to consulting companies?

The main bone of contention revolves around 3 aspects:

- Control – the reality is level of control you have depends on the client and the organisational culture. Some clients want to see you face to face in an office, some will be more hands off. Some will give you a framework to work within, some will not. This particular element is very vague and cannot be reasonably measured and applied.

- Substitute – This has no relevance to the status of a contractor. Clients buy individual levels of expertise for short periods of time. Even when a client purchases from a big 4 consulting company if the individual working is sick then they wait until that person returns. As they do a contractor.

- Outcome based work – Project work is almost always outcome based once a project is finished contractors work finished. Making work outcome based is going to cause significant complexity for the

individual contractor. having to swap time and materials based contractors for deliverable based puts an unreasoble level of risk onto the contractor which could be massively open for abuse by larger companies.

On all 3 of these aspects the rules should also be applied to consultancy companies in the interest of fairness who operated exactly the same way as an individual contractor. It is my view that this is an unfair rule applied to individual contractors as a result has meant there is now an unfair advantage to large outsourcing companies and larger consultancy providers.

7.What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement?If so, how might it be improved?

It is fixed to ensure as many people as possible are determined as inside IR35

9.Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Yes – cancel the proposed rule change and make it law that individuals staying more then 2 consecutive years at the same organisation will have to be either determined as in inside ir35 or a notification to HMRC for investigation.

10.Will the Bill, as drafted, achieve the Government's objectives?

No – roles are being outsourced, and converted to perm significantly reducing the income of the individual and the tax.

12.How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees,but do not have the rights of employees.

This is not fair. Contractors are paid higher day rates to reflect the risk they are taking and the lack of employee benefits. Although they may not pay the same percentage tax they are paying a higher level of tax.

This policy makes it no better to work inside ir35 as it does a perm role. This is massively disincentivising risk reward.

Social Mobility: there are not many jobs these days that individuals from lower class backgrounds can earn £100k +. Contracting allows people from all types of background who work hard at specialising in particular areas move up the social ladder. I and many people I know are working

class backgrounds who have been able to accelerate our life chances and that of our children by earning the contractor salaries.

Gareth Bennett

My perspective of the IR35 reform is from the healthcare industry.

In the past, I have managed many urgent and primary care services using contractors over a period of about 15 years and I have also been working as an independent contractor providing Healthcare for about 3 years.

Over the last 3 years I have also operated a temporary staffing platform (www.mymedic.network) that enables contractors and other temporary worker to find placements. We currently deliver around 35000 hours per year. There is the potential for the highly mobile / flexible contractor workforce in healthcare to reduce their input to urgent and primary care service which could have a detrimental impact on service delivery, but I would like to concentrate on determinations on my response.

There are lots of reasons why medical professionals might appropriately operate as a business but a key issue for ir35 as it stands is the way determinations (SDS) are made.

There are lots of ways to come up with an SDS, one of which is the CEST tool. But all these tool ask questions aimed at a very wide range of industries, so coming to an accurate decision on each question is almost impossible because there is a very wide margin for interpretation within each specific case. Even if you contract with an expert, they can base a decision on questions they have set clients, contractors and intermediaries - which can be interpreted in a variety of ways.

You then usually get an answer of "probably in" or "probably out" with maybe a percentage confidence of some degree. There is then no other way of determining if HMRC will take you to a tribunal and win unless they actually do that - meaning that regardless of how well you have answered the questions you end up deciding how much risk you are prepared to take.

Unless you understand IR35 really well, you would have no idea how likely that risk is to materialise - so can just see big numbers and lots of risk.

This leads lots of our clients to intentionally make very safe calls on each question, leading to very safe, but inside ir35 determinations - that are not at all accurate to the situation but
mitigates their perceived risk. We also see clients deliberately manipulate determinations for their own gain by making incorrect determinations - perhaps trying to convert contractors to employees. The contractor often has no input into the process and there is liberal use of blanket or role determinations. Ultimately we have experienced a great deal of inaccurate determinations being sent around that incorrectly find legitimate contractors to be inside IR35.

HMRC say that this does not affect legitimate contractors at all, because they only consider you a legitimate contractor if you have a determination of outside IR35. They paint it like this is simple and all inside determinations are accurate, but all outside determinations (including through CEST) are potentially inaccurate and open to them investigating. The whole thing leads people towards making 'inside' determinations regardless of the reality. Once a determination of inside is given the contractor then feels worried about being investigated for past work because of this single badly constructed determination.

It all feels like a rigged game to generate HMRC revenue, and nothing like a fair system of assessments.

If someone is found as inside - "it must be right, so we will look at your past contracting and pursue you for back tax"
If someone is found outside - "it must be wrong and we will investigate and fine you if our army of expensive lawyers are able to win the complex argument in court. Or scare you into giving in before court"

The legal basis for IR35 is so complex that as I understand it, HMRC wins less than 50% of cases it takes to a tribunal. Yet, it paints the SDS as straight forward and will not affect true
contractors - how can it say that when it gets more tribunals wrong than it does right?

Then we have the issues of trying to reorganise highly complex and mature services based around legislation that has not even been announced or fully explained - and will not be until less than a month before we are supposed to make career changing decisions about highly skilled professionals.
It seems that everyone recognises that IR35 is not fit for purpose and needs a review. The government has, I believe, announced a full review at some point. So it seems like a very poor decision to implement these changes prior to a review, risking widespread disruption to productive businesses just as we need Britain to be doing more business.

I would like to see a full review before something is implemented so aggressively and with such a potentially big effect based on inaccurate and incorrect determinations. I'm also happy to be contacted for further comment.

11 March 2020

Jonathan Bentley

I am submitting evidence to you to highlight key points that will affect the way I run my Business and why it will be no longer economically viable for me to continue unless the UK tax system is properly re-thought out for the self-employed.

Family residence: Powys, Mid Wales

Operating as a Freelancer since 2004 – Public and Private Sector engagements

Expertise:
Enterprise Architecture and Cyber Security Consultancy

Average spend on Professional development per year:
£20,000 (currently deductible as a training expense), this involves 4 weeks off work per year for study and exams

Average spend on expenses to get to work:
£25,000 (worst year was £48K) – these are not paid by the client, but are paid by the PSC as operating costs

Pre-requisites to trade:
Employers Liability insurance £10m
Public Liability insurance £2m
Professional Indemnity insurance £1m
Product Liability insurance £1m
Professional Institution Memberships
Computers, phone, software and licensing
Accountant and Accountancy Software
Car insurance for work to multiple locations

Locations worked:
London, Croydon, High Wycombe, Watford, Liverpool, Bristol, Birmingham, Leeds, Hull, Manchester, York, Warrington, Dublin, Amsterdam, Hook, Chichester, Portsmouth, Ipswich, Milton Keynes, Northampton, Knutsford, Glasgow, Edinburgh, Kuala Lumpur, Hong Kong, Pune, Rio, Budapest, Stockholm, Barcelona, Madrid, Brussels, Newcastle,

Nottingham, Peterborough and Carlisle (all through my UK PSC and subject to UK taxes).

Contract durations (often than one being delivered at the same time):
1 month x 9
3 months x 8
4 months x 2
5 months x 4
6 months x 3
8 months x 2
9 months x 2
11 months x 1
12 months x 1
14 months x 1
16 months x 1
30 months x 1

Cumulative time out of work:
17 months without income

It is really important to understand my dynamic in this. I always travel for work/stay away as I am fulfilling a specialist skills need and truly embody the principle of being a flexible resource.

Here is an interesting aspect, I am currently engaged for a Quango Inside IR35 in London. I am being paid through PAYE as HMRC would prefer. I raised my daily rate by 45%. I was able to do that as market conditions and need played their part. I pay just over £2,000 a month in expenses to get to work out of my net income per month. I personally earn less and the tax I pay is substantially less than working through my PSC, however I am motivated by wanting to work for the client and adding them to my portfolio. During this time the organisation has advertised for and recruited a permanent headcount, I asked about applying and it was made clear that my skills were very specific for a point in time piece of consultancy and not suitable for conducting a permanent position for them. I continue to be renewed on that basis. As the market changes then it will not be possible for me to raise my daily rate to compensate for the changes.

I am convinced that I do not have a skillset that is suitable for becoming employed. I have honed my skills as trouble shooter/consultant to help organisations out in specific circumstances. It is also not feasible to carry expenses of £2000 a month out of post-tax income, nor could I find work in my specialism close to my residence. If the changes go ahead, then I am likely to work abroad again, it is likely my family will also come with me.

Thank you in advance for your consideration of my evidence and I hope it has given a slightly different angle on what this means to one family.

9 March 2020

Amelia Berriman

1.Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed?

1.1 I do not think so there is a general feeling of panic in clients, agencies, consultancies and contractors. For example: in late 2019 my previous client HSBC were to allow deliverables based contracts for project roles. Their stance changed almost weekly until they confirmed they would blanket assess project and programme resources as being within IR35.

2.In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

2.1 The contractor, the agency or the consultancy is taking the bulk of the burden when a client blanket assesses the approach. I see no clear effort from HMRC to assist me in understanding this burden. The best source of data is the legislation text.

3.Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

3.1 I personally believe it is robust. However, I witness a lot of confusion in the smaller consultancies that I work with as to what IR35 is so I am not sure HMRC have communicated the changes well.

4.What will be the effect of these new measures on a chain of contractors and sub- contractors?

4.1. The impact on me as a contractor is that I have left a programme role early that would be blanket assessed within IR35 to go to a short term role deemed Outside IR35. The business consultancy work that I do is sufficiently high pressure and carries sufficient reputational risk that I would not chose to work outside IR35 and I would most likely revert to paid employment, early retirement or a career change rather than be taxed like an employee with no rights in highly stressful, long hours working assignments.

4.2 From what I have seen agencies deploying staff to client who have blanket assessed contractors are doing the following: cutting their margins to compensate the contractors for the additional taxes to be paid, attempting to package work as managed services, and moving contractors from one assignment to another to endeavour to increase their day rates to mitigate the tax impacts.

5.What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

5.1 A simple blanket tax could be applied to all contract style engagements to be paid by both the end Client and the Contractor. In a way the revised Dividend Tax has already impacted Contractors.

HMRC must postpone the implementation of IR35 in the Private Sector in its current guise, the unintended consequences will result in a reduced taxation take, a reduction in a skilled temporary workforce and potentially a brain drain abroad.

***6.*Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?**

6.1 No.

7.What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

7.1 The CEST tool appears open to subjectivity. I have run two assignments through the tests and find they both can be identified as being Outside or Inside IR35 or Inconclusive. One assignment is deemed Outside IR35. The other I would deem as outside IR35 with a statement of work, deliverables etc but the client is blanket assessing all contractors as Inside IR35. To improve the test you probably have better advice than I can give, I would check if the assignment has an end date and if there are clear deliverables for the assignment. If there are neither it is likely the role is an employee in disguise.

8.How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

If you are client focussed you are unlikely to challenge a client on their status determination for fear of damaging the ongoing relationship. My previous client HSBC, and the contracting consultancy communicated no

access to a route to challenge the employment status. I therefore saw no option but to leave the assignment rather than be incorrectly assessed as Inside IR35. There must be an independent body for people to turn to for arbitration, clients cannot mark their own homework.

9.Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

9.1 Yes. To limit contractors acting as employees in a role which is Business as Usual the tests should relate to where the funding for the work comes from within the business- i.e. operational or capital budgets. In over 20 years my roles have never been subject to an operational budget all my work has been programme/ project funded by capital budgets. The test should also seek to understand the likely length of the role. And what determines the "end " of a role- ie. completion of deliverables.

10. Will the Bill, as drafted, achieve the Government's objectives?

10.1 If the objective is to raise tax revenue, No. HMRC have misunderstood the contract market. It is often highly skilled people who are flexible and move around developing their skills and knowledge to become expert in their field- often doing roles that employees would not take on for fear of damaging their careers or they do not have the skills to carry out. I will not work on a contract outside IR35 and carry the same delivery and reputational risk at the greater cost to my business. In the long run my business is likely to pay less tax as will I.

11.What is your view of the role of umbrella companies in the context of these proposals?

11.1 My personal view having spoken to one is that it is an added cost and business risk with limited clear value to the contractor. The value to the end client is that their taxation risk is mitigated, and the contractors pay the Umbrella company for the client's risk to be mitigated.

12.How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

12.1 It is not fair to be taxed as an employee and not receive the following: paid holiday, training, business benefits given to employees (reductions on products, locally negotiated access to gyms etc), paid sickness, career development. This legislation will allow unscrupulous employers to employ people with no employment rights.

22 February 2020

Ross Beveridge

Determining tax status of workers

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

1 The tests are opaque and not clear. Engagers have been provided insufficient time to prepare for the introduction of these changes, particularly when the changes have not yet been finalised and communicated. This leaves businesses no time to correctly assess the situations and ensure determinations adequately consider all aspects of the engagement. Blanket bans, conservative decision based on heavy handed HMT and HMRC rhetoric are driving a wedge between the workforce and engagers. The economy will be the big loser in this as skilled and experienced people will seek work outside the UK to avoid the potential situation where they are deemed as 'employees' for tax purpose but yet do no attract the employment benefits that an employee expects. 'No rights workers' cannot be an acceptable scenario in this day and age.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

2 The CEST tool developed by HMRC attempts to simplify and mechanise an assessment that cannot be viewed as a series of answers to complex questions. The CEST tool fails to address the question of MoO sufficiently and oversimplifies other aspects. The tool drives employers to make assumptions and inference because the questions are not clear.

A series of around 20 questions cannot be used as a valid means of assessing something as complex as this determination.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

3 The status determination process, if employing CEST, is unlikely to resolve the issue of employment status. For the past 10 years I have made the determination that I am outside IR35 and that my company bears the risk of HMRC investigation if they find otherwise. This was a risk, that I was prepared to accept knowing the full details of the implications. Large organisations are now being faced with heavy handed HMRC narrative around the implications of getting this wrong. This is driving poor decision making, to the detriment of the contract workforce

and ultimately the engagers business and the UK as a whole, including a decline in HMRC revenue. What is needed, is a proper review and implementation of an appropriate tax system for contractors. This may take the form of a 3-5 % levy which could be applied across the board which would remove the unnecessary and flawed determination process and yield more revenue generation for HMT and HMRC. This would maintain the skill and experience of the contractors that may otherwise disappear elsewhere.

10 March 2020

Rex Bigger

As a director of a small consultancy firm I thought I would inform your lordships on the effect this is having on our working relationships with our clients.

Summary
Under the legislation we count as a small business and have ensured that our engagements with clients, and with our contractors, have kept us outside the new legislation.

However, as the determination is down to the Client's interpretation of the legislation, we have been hit hard by this from 2 of our clients.

Impact of the Off-Payroll Rules on Organisations

Client 1 is a major European manufacturer with an office in central London where we have a team of 9 developers working on an ecommerce platform.

They have issued a blanket determination that all teams working for them are deemed employees. They have not done individual assessments and have not provided CEST documents for our team. Their interpretation of the legislation is loose at best and currently do not have a challenge procedure in place.

When we challenged the decision, we were told that their determination was not going to change and that essentially they would terminate the engagement if pushed. This puts us in a very difficult position.

We have discussed with our team their status and it is looking like we will lose 6 of the 9 contractors we have, as they are not willing to work in this fashion.

If the team remained onsite, we would be looking at a drop in profits of 60% as we absorbed the Employer's NIC. However, due to the impact on the contractors it is now more likely that we will lose this client altogether.

Client 2 is BP. We have one employee there on a one-year project. Again, the employee is well outside of the legislation and this is confirmed by the CEST tool.

Instead of making a determination of employment status, BP has decided to cancel all independent contracts and moving forward only hire from a list of umbrella companies. Thus, effectively forcing us to place the individual in an umbrella company to continue the working relationship.

As they are dropping the concept of independent resources there is no challenge route available.

As a company we would not be impacted by this, however, our employee is unwilling to work for an umbrella company which means we either find a replacement (effectively at a lower rate) or lose BP as a client.

Losing both clients will severely damage our business for this financial year.

Determining Tax Status of Workers
The CEST tool does appear fair and has consistently shown our employees to be outside of the legislation. However, neither of our clients above have used it or are willing to use it.

The failing of the tool is that it is not independently assessed. It is up to the individual client to use it and base it on their interpretation.

For example, client one sees our team as their employees regardless of how they work and the terms of our agreement with them. Taking that bias into the CEST tool, without referencing the contract will not change their mind.

Policy Objectives and Wider Context
Looking at the legislation, any contractors caught in this will really not be paying any more tax, assuming they are withdrawing all their profits as dividends. However, all the contractors we have spoken to do not do this. They all keep a portion of their profits in the company to cover for a "rainy day" and for ad-hoc expenses. This would force them to take it as a salary.

The impact comes for companies like us. We have a competitive advantage over the bigger consultancies by hiring top quality contractors

for projects and keeping our margins low. Suddenly having to pay Employer's NIC wipes out that margin for some team meaning that it is not cost effective to continue to use them.

Ultimately this will mean less profits for us and our contractors, and so less taxes being paid.

Umbrella Companies
I have pulled this out as separate section as I feel they deserve it.

In the chain of payment, if the intermediary was hired by an agency and was deemed an employee. The agency would bear the burden of the Employer's NIC.

By placing an umbrella company between the agency and the worker, the umbrella company passes the Employer's NIC onto the worker, and then charges the worker on top for the privilege. I do not see how this can ever be deemed fair.

The fee the umbrella is charging the worker is to do the paperwork that the worker was already doing. In most cases the personal services company will still exist and still have clients, so the worker will still require an accountant and still be doing this paperwork.

Umbrella companies only pay for days invoiced, so there is no sick pay and no holiday pay, although a great many of them offer free cinema vouchers. I am not sure how this quite compensates.

Conclusion
I hope the above has shown the impact this has on a small business like the one we run. Our biggest concern is that this will bounce us back to day one, searching for clients willing to take on a team like ours.

In the meantime, we will lose our highly skilled staff.

20 February 2020

Mike Bolsover

Sector: Broadcast television Freelance
PSC Ltd company

I was a sole trader, but various agencies I was with in the past, had made PSC a requirement of membership.

Impact of new off-payroll rules on organisations

1. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
2.
I know that engagers' budgets for my work are tight already and that any companies assessing me inside IR35 could not, and would not reimburse my travel and subsistence allowances that I claim for in my self employed business (PSC).

This would put me out of business completely. I would not be able to take a PAYE job as I do not live near any Employer clusters (Manchester London or Bristol etc)

Also I do not work full time, so a PAYE arrangement could not offer any increase in job security or employee benefits.

Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion? A big confusion exists among my colleagues about this provision. Many small PSC freelancers think the exclusion applies to the freelancer's company size, not the engager. So clearly the HMRC have not communicated this well to those affected. Indeed, neither my company, nor me have had an official HMRC warning about the changes.

What will be the effect of these new measures on a chain of contractors and sub- contractors? N/A

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?
Point out that the assessment should be individual not blanket. Part of the assessment involves the context of the contractor's historic work pattern, This is not being applied by the banking sector at present, and this is a worry if such blanket assessment goes viral in business circles.

Determining tax status of workers
Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment? Luckily in my sector, Broadcast Television, there is an established HMRC list of accepted Self-employed grades, which should supersede the CEST tool, but there is no guarantee that large companies with blanket policies won't try to ignore that. There is also no guarantee that this won't still exclude PSCs.

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
It doesn't include a test for Mutuality of Obligation (MOO), a major reason many IR35 appeals have gone against the HMRC and in favour of the contractor (BBC and ITV presenter cases)

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
In spite of an appeals process and the 45-day rule, this would not work in the last minute and precarious engagement process encountered in my sector. Many engagements are "pencils" and only firmed up at the last minute, they are not usually longer that 12-week engagements and often involve "down weeks", where I am not paid.

Policy objectives and wider context
9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
I will try to avoid a rant here, but historically the government were all for this neo-liberal flexible workforce, indeed I was made freelance as a result of deregulation.

Eventually Government realised that a large amount of NI was being avoided by the rampant adoption of off payroll working by employers, hence IR35's introduction.

The simple solution all those years ago was to make engagers pay "employer NI" for all engaged personnel, so they could still employ contractors who paid tax and their own NI in the standard self-employed way.

Engagers would have had to make a very different assessment of the relative merits of employing permanent staff, or having contractors, and this may have meant many more IT personnel, TV workers, and other contractors would have kept their full time (NI paying) jobs.

I propose a levelling up of the NI contributions paid by engagers, and leaving tax to the individual (which I always thought was the point of self-assessment !)

Will the Bill, as drafted, achieve the Government's objectives?
If only. With Parliamentary time being somewhat limited by more pressing matters in the last 3 years, little or no scrutiny has been given to these provisions.

They will drive some contractors abroad to more benignly taxed jurisdictions (construction in particular).

Many like me could just retire, with more NI from me, ever.

Companies will outsource IT contractors overseas, outside of the UK's tax jurisdiction, reducing tax and NI take further.

What is your view of the role of umbrella companies in the context of these proposals? This would not help me as again the subsistence and travel costs would not be reimbursed, or be deductible

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

It is very important to understand that most freelancers take a great financial risk finding and doing work on an ad hoc basis. They do not exist in the same

They should not be taxed as employees unless all of the benefits of full-time employment are met, especially mutuality of obligation. If the job is for a specific short term project (as with current IR35, less than 9 months), PAYE should not apply.

There should be clear blue water between full time proper jobs and a series of short term contracts.

However I still stick by my comments above that an NI contribution for all engaged personnel engaged in excess of 7 days, PAYE or Self Employed, should be made.
It might be a different percentage for PSCs and self-employed, as we pay some form of NI anyway.

John Bosco

Impact of new off-payroll rules on organisations
2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
Comment:
I believe that the impact on the private sector has been grossly underestimated as the complexity of the guidance, the time allocated to implementation and the fact that HMRC are unable to interpret their own

legislation has caused a great deal of confusion for companies in the private sector.

My experience is that the private sector has seen the assessment of compliance as a great burden and subsequently have decided to avoid the cost by declaring that they will not engage contractors in an effort to avoid the risk of liability for employments cost as they see it.
The correct balance for assessment was already in place before the introduction of "Off Payroll"

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?
Comment:
These measures will cause many contract staff to be forced into working through umbrella companies and will create an underclass of employees without the standard benefits that are enjoyed by genuine employees such as pension rights, working time protection and genuine redundancy entitlement.
My experience is that there is already a take it or leave it selection process underway in which contract agencies are compelling contract staff to choose an umbrella the will give a commission back to the agency in return for it herding contractor business their way.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?
Comment:
Scrap these measures as they do not offer the best way for HMRC to gather taxation from the many small businesses that take daily risks in pursuit of supporting both their business and the many other parts of the economy that they help to generate alternate taxation from.

Determining tax status of workers
6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
Comment:
The HMRC test are complex and very difficult to understand and do not reflect the work expectation or risk that the engager or contractor are expected to take on, hence the mass move to disengage with all contractors by many engagers.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
Comment:

Having used the CEST tool, it neither takes into account Mutuality of Obligation or the risk that the contractor is expected to take on. For instance business liability insurance, which would not be expected of an employee.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
Comment:
In many cases engagers are not prepared to complete these, preferring to distance themselves from contractor workforce.

Policy objectives and wider context
9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
Comment:
There should be a fairer assessment that takes into account the temporary nature and business risks that contractors take on under their own companies and acknowledges that these are not risks that a permanent employee has to burden themselves with.

10. Will the Bill, as drafted, achieve the Government's objectives?
Comment:
No because in the long term, there will be less flowing into the economy and any extra tax levied in PAYE will be offset by lower rates of VAT, corporation tax and a lower recovery rate for PAYE as previous contract staff either retire, go overseas or the client work is outsourced to overseas companied meaning the exchequer loses out altogether on revenue. This will also leave the UK with a dependency on an overseas market, at a time when we need all the revenue generating capacity we can get.

11. What is your view of the role of umbrella companies in the context of these proposals?
Comment:
Umbrella companies serve no other purpose but to process payroll for so called employees adding little value and depriving staff of many benefits and protections that true employees receive.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
Comment:
This country should be careful of creating a disengaged employment "under-class" with very little rights while still being expected to contribute more than their fair share of taxes on a pro rata basis.

Unfairness in taxation depends on where you are standing.
Employees if they are to be that should be entitled to a universal set of minimum benefits and those that choose to strive to build a better future by creating businesses should be recognised for the risks that they take and the contribution to our society as a whole and not treated as disguised employees as they are far from that. These people have always and will continue to be the ones that create the prosperity of the future and this will not continue to be the case in UK if the short-sighted minions in HMRC have their way.

Eran Boudjnah

I am a French national residing in the UK since 2013. I have been contracting in the UK for over 6 years, during which I have worked on projects for HSBC, Sky, EDF, O2 and Just Eat, to name a few. It is with great sadness that I realised, after 6 years, I may have to soon leave the UK, along with my tax contribution (I just paid over £24,000 in personal taxes, covering 6 months).

1. Impact of new off-payroll rules on organisations: While I am not in a deciding position, I can report that a project I am involved with at HSBC will be heavily affected by my leaving due to the bank's decision to blanket ban contractors, including those hired by their major service providers (InfoSys in my case). As the Android Chapter Lead on the project, my leaving has significant impact on the ability of the team to deliver. The project was further impacted by one of the designers leaving, and other key personnel have either left or are leaving soon. I have already secured a new contract, so the direct impact for myself is minimal. However, for the project this is a major blow.

2. As someone who has worked as a contractor in the UK for 6 years now, I have made many connections. Many of them worked at Sky (particularly on the Sky Go/Q project). Sky has also blanket banned contractors, and so not only risked their delivery, but sent a lot of contractors looking for work. The same is true for TSB and Discovery.

3. It is worth noting one of the actions taken by companies such as HSBC is to simply outsource work overseas, where they do not have to worry about IR35 related taxes at all.

4. It is also worth noting that the changing market ("I haven't found any outside (of IR35) as of yet", to quote a recruiter I just spoke to) may force myself, and many like me, to look for work elsewhere. I say this with great sadness, as I love the UK and London in particular.

5. The exclusion of small organisation is irrelevant, in reality, when many are providing services to entities such as HSBC, who have not only banned contractors from working directly with them but have banned them from getting hired by third parties, too.

6. The effect on contractors is, of course, immediately evident. Some choose to go PAYE, others have to secure new contracts. All of them would now be cutting their expenses considerably and competing on a smaller market for openings. It seems many may find themselves out of work for months. Not only will they not be paying tax in that duration, but they will be cutting down on expenses as so giving back less money to the economy. I daresay there will be a ripple effect here.

7. The correct approach (in my humble opinion) would have been to enforce the existing rules, rather than delegate that responsibility to large enterprises who clearly do not was the burden of the responsibility and the risk involved. While it is true there is some tax avoidance in play, which should be rooted out, labels all contractors as tax avoiders is doing a grave injustice to highly skilled, highly experienced professionals who come in, do their job and move on, with no benefits other than payment for their trouble.

8. It is already a well-established and known fact that the CEST tools is not a reliable form of categorising employees/contractors. It has been challenged by HMRC themselves with the NHS. The amount of misinformation surrounding IR35 is staggering. It is quite a straightforward issue, yet there is no effort to communicate it to the public.

9. There can be no status determination process if companies are going to outright ban contractors. I am sure this will resolve itself within a few months when companies struggle to find the people to deliver the work required - but until then, the process is broken, and projects will simply crawl to a halt.

10. To summarise, my experience and impression from working for clients and with colleagues throughout the technology industry, is that the exact opposite of the expected outcome is what we will see. That is, taxes would decrease, not increase. This is because:

    10. A. Many contractors, who are mostly well off and so spend considerably more than other parts of society, will start cutting back on expenses waiting for the storm to pass.

    10. B. Companies who let contractors go would struggle to replace them, often turning to offshore solutions, thus not paying taxes

in the UK, or placing projects on hold - either way reducing taxes paid.

10. C. Contractors turning employees would pay lower taxes overall, as their income drops considerably. As mentioned, their spending would drop, too.

11. When comparing permanent employees to contractors, it is important to understand this is more than just a choice of how to pay tax. Contractors do not have sick days. They do not have vacations. They do not benefit from the perks offered to permanent employees, in the form of leaves, insurance, pension contribution, gym memberships, pensions, free meals, bonuses, cars and so forth. They do not partake in most social events arranged for permanent employees. They do not have long term confidence of employment, or long notice periods. They do not get trained by the companies. In many cases, they need to bring their own equipment, and are responsible for delivering in an unforgiving market. Many of my contracts are less than 3 months long. I then have to go back and search the market for my next contract. I am often between contracts for months. That is not a worry a permanent employee has. I have to pay for my own travel expenses; I have to plan my own retirement; I cannot rely on a pension. I have to educate myself to stay relevant. I have to manage my own company's taxes, including VAT. I therefore hire accountants. I have to prove myself time and time again, often only a few months apart between challenges. I come in, I deliver, I move on. Contracting is not permanent employment in disguise to avoid taxes. It is a different way of life and a different challenge altogether. In fact, the amount of tax I pay each year is considerably higher than some yearly salaries.

12. Umbrella companies to my understanding are taking advantage of loopholes in the system. They are a middleman making profit from an awkward situation. I am amazed umbrella companies are allowed to operate at all.

Please forgive my lack of technical term knowledge, the above expose my views and experience as a contractor, not as an accountant.

22 February 2022

Steven Bowden

Please find below a person statement aimed at addressing the questions posed in the Call for written Evidence for the Economic Affairs Committee – Finance Bill Sub Committee.

Summary

Question 2:
-HMRC state 90% non-compliance – However cases brought by HMRC since 2010 have only had a 12% success rate which indicates 90% compliance.
-Lessons not learnt from Public Sector rollout – Success claimed when no real evidence to back up.
-Consultation had a large amount of push back from all sectors, this seems to have been largely ignored.
-Review was promised due to pressure of General Election, but this has been abandoned under the banner of a so called review of implementation, which also seems to have been none existent.
HMT and HMRC are still adamant that there are no blanket assessments happening and no adverse impact on the economy or business.
Question 4:
-Huge impact on the market.
-Inside restricts flexibility as no way to expense travel so tied to local area.
Question 5:
-Delay rollout, Rethink IR35 from the ground up – Come up with a fair effective non constrictive tax model.
-No one should be in this much doubt around their tax position, we are one of the oldest economies in the world, it is unacceptable that there is this much confusion.
-Be fair to all parties.
Question 7:
-CEST tool too generic for such complex tax affairs. HMRC take 4 years to train, yet are expecting a retail companies HR dept. to adequately assess a 3rd party contractors tax position.
-No evidence of CEST being tested against any case law, or any testing at all. Smacks of dog ate their homework.
-The question has to be asked with this and so many failed cases if HMRC really understand IR35. This is another example of this legislation not being fit for purpose.
Question 8:
-My assessment made without my knowledge or involvement, yet stated that I had completed the answers.
-Done with large consultancy firms involvement (GDPR issues abound) who also offer offshore capabilities (no conflict of interest)
-Appeal completed but no action, still inside regardless of more than enough, factual reasons, practical examples of disputed answers and contractual clauses to support my outside position.
-Appeal ignored with no recourse, David vs Goliath scenario where I can accept or walk away.
-This seriously compromises my current tax position of I remain and go inside.
-No faith that HMRC will not try and claim retrospective inside taxes, regardless of what anyone says – Loan Charge is all you need to know!

-Already seeing examples of unscrupulous activities where individuals are seeing profit to be made from the chaos.

Question 9:

-Betters ways of establishing a fair tax system
-This approach is not fair to anyone, but especially to the end contractor.
-All costs including Clients Employers tax and employment levies are being passed onto the contractor.
- There are many ways to achieve the desired result without destroying the UK's flexible work contingent.

Question 10:

-Offshoring has already become the new norm, the markets are barren and everyone is waiting to see what the final legislation is so that they can desperately try and work out how to react before 6th April.
-How can something so complicated not only not be advised of in advance, but still have so much uncertainty.

Question 11:

-Some elements are taking advantage of the situation
-This can only lead to Tax Avoidance schemes of which the perpetrators are allowed to walk free and leave contractors to pick up the pieces.
-The whole supply chain needs regulation.

Question 12:

-This legislation will create a subclass of employee, employed for tax purposes with absolutely no rights.
-What will stop corporations from pushing permanent staff onto inside IR 35 arrangements to save on costs and benefits?
-Contractors using LTD are not the same as Employed. We fund everything.
-Businesses are able to dictate our tax arrangements yet some are trying to pass on the liability and risk along with their own costs.
-It is IMMORAL for a business to tell me that I am employed for tax purposes but then demand that I pay their Employers NI and Apprenticeship Levy.
-We have had all our rights dissolved!

Detailed Answers

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC? (Question 2)

I don’t believe that the correct assessment has been made. When the public sector roll out was completed there was a flood of contractors who left public sector employers to work outside IR35 in the private sector. I don’t believe that this was taken into account when forcing this onto Private Industry. Private companies cannot and will not be bullied into accepting risk based upon ill thought out and unclear rules and guidance. Especially with HMRC’s history of moving goalposts. In this instance, you are seeing what was inevitable, but what you would never have seen in the public sector while there was somewhere else to go. Private business refusing to engage with anything other than PAYE, stagnant freelance markets, and uplift in tax avoidance schemes masquerading as Umbrella Companies. Worst of all some businesses using this as a means to make profit from this and reduce costs by engaging with resources but not wanting to pay for this.
In the last seventeen case decisions, since April 2010 HMRC have only fully won 2 cases out of 17 - just a 12% win rate. This is against the backdrop of HMRC claiming that there is widespread non-compliance with the rules. If that's the case, then why aren't HMRC winning cases? They claim 90% non-compliance. If that were the case then these figures would be very different, the actual evidence from court cases seem to be the opposite with 88% compliance and 12% non-compliant.
List of IR35 court case decisions

Date of case	Date of Desc	Name of case	Who won?
03 Aug 2001	12 Sep 2001	Battersby v Campbell	HMRC
01 Dec 2001	22 Jan 2002	F S Consulting Limited vs McCaul	HMRC
01 Oct 2002	01 Oct 2002	Lime IT vs Justin	Contractor
27 Feb 2003	28 Mar 2003	Synaptek vs Young	HMRC
15 Aug 2003	03 Nov 2003	Tilbury v HMIT	Contractor
01 Jan 2004	08 Oct 2004	Usetech vs Young (inc High Court)	HMRC
01 Mar 2004	29 Jul 2004	Ansell Computer Services	Contractor
23 Mar 2004	22 Oct 2004	Future Online (inc High Court)	HMRC
15 Dec 2004	17 Jan 2005	Netherlane Limited	HMRC
28 Jun 2007	05 Jul 2007	Island Consultants Ltd V Revenue & Customs	HMRC
23 Jul 2007	20 Dec 2007	Datagate Services Ltd	Contractor

20 Sep 2007 11 Dec 2007 Dragonfly Consulting Ltd
HMRC
26 Sep 2007 11 Dec 2007 MKM Computing Ltd
HMRC
01 Nov 2007 11 Dec 2007 First Word Software Ltd
Contractor
22 Jan 2008 19 May 2008 Alternative Book Company Ltd
HMRC
24 Nov 2008 15 Jan 2009 Larkstar Data
HMRC
08 Dec 2009 06 Apr 2010 Novasoft
Contractor
15 Nov 2010 05 Jan 2011 MBF Design Services v HMRC
Contractor
10 Jan 2011 24 Jun 2011 Marlen Ltd
Contractor
17 Feb 2011 11 May 2011 ECR Consulting
Contractor
12 Apr 2011 06 Jul 2011 Primary Path Ltd
Contractor
24 Oct 2011 28 Nov 2011 JLJ Services v HMRC
Split case
15 Nov 2016 27 Jan 2017 Armitage Technical Design Services
Limited Contractor
26 Sep 2017 14 Feb 2018 Christa Ackroyd
HMRC
04 Oct 2017 16 May 2018 Jensal Software Limited
Contractor
08 Nov 2017 19 Mar 2018 MDCM Ltd
Contractor
12 Nov 2018 20 Mar 2019 Albatel Limited (Lorraine Kelly)
Contractor
11 Mar 2019 16 Apr 2019 Atholl Limited
Contractor
10 May 2019 13 Jun 2019 George Mantides v HMRC
Split case
18 Sep 2018 09 Jul 2019 Kickabout Productions
Contractor
07 May 2018 18 Sep 2019 PAYA / Willcox / Allday Media
HMRC
23 Sep 2019 29 Oct 2019 RALC Consulting
Contractor
08 Oct 2018 25 Oct 2019 Canal Street Productions
Contractor

4. What will be the effect of these new measures on a chain of contractors and subcontractors? (Question 4)

Contractors, HSBC and Lloyds and others have banned PSCs throughout the entire supply chain. Small consultancy firms who should have been exempt from April's changes have been dragged into scope. Expenses can no longer be claimed back against tax, so the area of commute goes from UK wide to 1 hour/50 mile commute. This has massively impacted the ability to have a flexible workforce, which the government claims to prize so greatly. I will no longer be able to work in many of the major cities in the UK, being tied now to Liverpool and Manchester.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules? (Question 5)

Delay the reform, Remove IR35 and engage in a fair and clear and concise approach to taxation for genuine Freelance workers. This is the only fair way forward and I am repeatedly told that this is all about creating fairness.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved? (Question 7)

It is too generic and high level to be at all effective. On such delicate taxation law, the questions read as if you are completing an online questionnaire for a marketing agency trying to sell products. It is clear that HMRC do not understand IR35 any better than most of the businesses being tasked with assessing it. How can Tax law be dictated in such a way? Any sensible contractors will have engaged with Tax planners who can advise on contracts and working practices as I do. In that respect and given the severity of getting this wrong I understand more about IR35 than most HR departments in business. It is unfair on all parties to expect them to pass judgement. HMRC take 4 years to train their inspectors on this, yet we expect HR departments with no TAX experience to get this right in 17 days? CEST cannot be proven to work, not testing data has been kept, which would indicate a lack of testing. I am a testing contractor I know what there should be, requirements based on Case law, evidence of test acceptance criteria and go live position should be recorded. None of this seems to exist.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed? (Question 8)

An assessment was completed on me without my knowledge and a report produced that only when I appealed against an incorrect Inside assessment, was shown to me. This document was fraudulent and clearly stated that I (the contractor) had answered these questions. I had had no sight of the questions nor of the assessment as management in the

business had been advised to not discuss any of the process with contractors until the assessment had been made.
An inside "blanket" assessment was then given and I was told to speak to my agent, who in turn said speak to the business as we can't help. But they did offer umbrella solutions and payroll forecasts with their fees factored in and employer's taxes taken from the employment income, which is unlawful. On this and any appeal, you can have your say but the result has been a blank face and no engagement; still saying inside with no further appeal and no come back. If you don't like it then you can just walk away, however this has happened across the country so contract work has become almost impossible to find. This is then compounded by a growing unease that HMRC will deem, anyone who was outside who then enters into an Inside arrangement, to have always been inside. I keep being told that this isn't HMRC's intention, but no contractor I know believes that this will not happen. If this is to happen then there needs to be a Tax amnesty on previous engagements inside to outside, or any contractor in this position cannot continue working with the same client, it's too risky.

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they? (Question 9)

There must be ways where this can be better approached, remove IR35. You are either employed or you are not. I am employed, but not by my client, by my LTD Consultancy firm. Bring in rules that allow for flexible working and compliment it, but still ensure that tax is fair. I would happily put more through PAYE but with the ability to offset expenses against PAYE rather than Corporation Tax. Make my PAYE rate reflective of my daily rate as in a specific percentage has to go through PAYE. But importantly, ensure that Business are also paying their fair share, currently I am not far off paying the same tax as an employee % wise, the issue here is Employers NI. If clients want to engage flexible working they should also pay for the privilege, rather than pushing it onto the consultant. Currently they want none of the risk but no extra financial penalties and they have the contractors over a barrel, given that they are dictating workflow and effectively working as a cartel (not knowingly I'm sure but the effect is the same). A flat rate of tax across the board would also work and remove NI. Or a special type of LTD Company for this sort of work where taxes can be tailored and the country can keep its important flexible workforce delivering benefits for the UK.
Dave Chaplin of Contractor Calculator quoted below:
"It's pretty simple. HMRC claims that a third of contractors should be deemed 'inside IR35', and the combined employment tax cost of engaging an 'inside IR35' contractor to the hirer is roughly 14%. So instead of the undertaking the cost, administration, complexity and uncertainty of Off-Payroll compliance, why not just add a 'hirers tax' of 4-5% to all contract engagements?"

10. Will the Bill, as drafted, achieve the Government's objectives? (Question 10)
No – Offshoring of work to Consultancies has already becoming the new norm so tax take will be down. If I become Permanent, then I will be earning 40% less so I will pay far less tax and no VAT claimed for the Treasury. There seems no sense in this at all from a financial point of view, as I do not believe that it will raise the funds that they claim are due.

11. What is your view of the role of umbrella companies in the context of these proposals? (Question 11)
I have seen some further agency's adverts stating Inside IR35, but the contractor is still expected to have Indemnity insurance, even though in an umbrella this should be covered by the umbrella company.
It's even looking like contracts from agents will have a clause stating that if HMRC were to disagree with the decision then the client are not liable and contractor accepts all liability and being asked for £10 million liability insurance... Is this even legal?
I have also seen comments from agents Contract role, £386 a day inside IR35, umbrella co. will take 50% upfront. Net pay around £150 a day. This is all wrong, paying correct tax is one thing but this is opening the door to some very unscrupulous activities.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees? (Question 12)

While I accept that there are some freelance contractors who should not be operating outside of IR35, I do not believe that this is the majority. The main issue seems to be one of fairness, but for me it's the fairness of financial gain vs risk. Contractors mitigate risk by having a greater remuneration. While it's true that rates do not reflect permanent salaries, this is due to market forces and supply and demand. But what a contractor forgoes and supplies for themselves is where the fairness ends. Is it fair for an employee to receive, Sick Pay, Life Insurance, Medical Benefits, Paid Holidays, Security from Redundancy etc. when a LTD Company Contractor has to pay for the below out of a day rate after tax:

Adequate Employer's Liability Insurance,
Public Liability Insurance,
Professional Indemnity Insurance
Computer Virus Protection on Consultancy equipment
Accountancy Fees
Bank Fees
Companies House Fees
Corporation Tax
VAT

PAYE
NIC (employers and employees)
Workplace Pension
Professional Subscriptions/insurances - IPSE, QDOS
Staff Costs
Office Costs
Mobile Phone Costs
Travel Costs
Computer Equipment Costs
Office 365
Cloud Subscriptions
Stationary Costs
If it were that a freelance contractor could work inside IR35 and PAYE on all income including employees NI, then I think many would gladly do so for the peace of mind of not falling foul of the quagmire that is IR35. However EMPLOYERS NI and Apprenticeship Levy are also passed onto the freelancer in this instance meaning that this is no longer a fair comparison, either from a Benefits point of view but from a TAX one too. Employers NI and AL are being passed onto the contractor as the business do not want to pay any more out than they are already doing so, in this respect they push this down the line via the agent and umbrella company who all take their "cut".

How can it be morally right for a business to determine a freelance company's tax position as being employed for Tax purposes, pass on THEIR Employers NI and AL to the contractor and in doing so give the Contractor absolutely no benefits? This is ZERO hours contracts on steroids.

25 February 2020

Eric Bowen

I am an accountant in practice and I am very concerned the effect the proposed changes are going to have on our local economy, and how it will adversely affect some of my clients. I would like to make some points about this subject.

HMRC have now had 20 years of IR35 legislation to fully investigate companies and individuals who work "off payroll" and prove that they are operating illegally. HMRC's success rate at proving this has been extremely poor. Why? Simply because these companies and individuals operate legally. These companies and individuals have been subjected to unprecedented levels of scrutiny and inspection. There are frequent investigations and court cases, and HMRC win very few.

The first ten years of IR35 was predicted to raise £2 Billion. It actually raised on £12.1 Million, and I have seen estimates that this cost the taxpayer over £1 Billion to collect! This statistic in itself proves that the vast majority of companies and individuals operate legally, as HMRC have been unable to prove otherwise.

The proposed "reform" is being used as a tool to intimidate the end clients, who use off payroll workers historically, into pushing these workers who currently operate legally off payroll, into PAYE positions. Please note these are not (on the whole) staff positions that they are pushed into. They are PAYE positions via agencies or umbrella companies, so these end clients can continue to hire and fire at short notice.

Working off payroll, in other words operating a genuinely self employed business is, among other things, a risk/reward scenario. In return for extremely short notice periods, absolutely no company perks, benefits or pensions, and having to pay for all the costs of training and running their own businesses, these off payroll workers are paid a higher rate of pay. From this they then have to run their own business, provide their own pensions etc. and have the benefit of having the freedom to work when, where and how they choose. Self employed people relish this and do not want, or need, employment rights forced upon them.

Many of the end clients are imposing "inside IR35" determinations which the off payroll worker is not allowed to see or participate in. In no way can these be accurate without worker participation. How can this possibly be fair?

IR35, at the best of times, is a subject that is not well understood. This, along with HMRC pressure on the end clients, is resulting a huge number of bad business decisions being made. Some companies, under the threat of HMRC investigation, are deciding to simply not use off payroll workers via their businesses after March, and instead are insisting they operate via agencies or umbrella companies. There are a number of major effects this will have on the economy. Locally the workers made to go this route will have significantly less "take home" pay due to a combination of additional deductions being made by the agencies and umbrellas for operating PAYE for these workers, and additional taxes & NI being imposed, making it cost prohibitive to continue operating their businesses. The local economy, which is barely starting to recover from the largest oil and gas recession, will now be thrown into reverse gear again as there will be less money available to be spent locally.

My off payroll worker clients have always been advised to have their contracts and working practices professionally reviewed, and the result of this is that the vast majority of these clients are deemed to be outside IR35. These determinations give my clients the opportunity to insure their

potential IR35 taxes if they choose to, allowing them to continue to run their businesses without worrying about unnecessary IR35 investigations by HMRC. It is actually quite sad that the continual pressure from HMRC has put these businesses into a position of uncertainty that makes them feel the need to insure against the possibility of a tax being imposed, when taxes should be crystal clear.

The providers of the insurance products mentioned in 7) have similar products lined up and ready to go for the end clients who choose to look after their off payroll workers. This would mitigate the risks that HMRC imply the end clients are taking

In summary, the proposed changes are simply wrong. They imply that off payroll workers are tax evaders and need to given employment rights whether they want them or not. In fact all that is happening is that they are being driven into PAYE positions via agencies and umbrella companies, and are losing their freedom to work in the manner which suits them, and drives a thriving economy. These "reforms" need to be stopped as the current system is not broken and therefore does not need repaired.

10 March 2020

Lianne Bowie

Summary

The changes to IR35, who has the responsibility for assessing if a resource should be treated as an employee and liability for enforcing the appropriate treatment of tax shouldn't be as negative as has been to date. Whilst HMRC has devised the CEST tool to determine employment status, it doesn't work. They may be happy to stand by the outcome it is unlikely they will have any tangible ownership or accountability for the detriment caused by the inaccuracy of the tool or the administration changes.

The determination of employment status to a level that is indisputable cannot be achieved through the CEST tool. Where there is no clarity users are advised to contact HMRC, to get their judgement. This is subjective and the impartiality of the determination is not guaranteed

Because the CEST tool doesn't provide enough certainty, the response by many medium/large employers has been to implement a blanket ban on all contract resource to avoid any potential tax liability and mitigate risks.

These businesses are deciding to put contractors directly onto their own payroll as employees whilst others say you must work through the supplier with an umbrella company/other contrived solutions.

Regardless of a correct employment determination, this is incorrectly creating employees and, reportedly, a sub-class of employees. Employment Law will be tested by the changes – pension/benefit entitlement, equality, fairness, absence management, redundancy, job seekers entitlement etc.

I work for myself as a lifestyle choice. Contracting does not make you rich; arguably I would be financially better off if I had continued working as an employee of another company rather than for myself. I doubt that I would be experientially or emotionally better off.

I do contracts that have a defined outcome. I work closely with my clients to deliver the right outcomes – examples include people changes aligned to mergers/acquisitions, reducing headcount, reorganising how work is done, moving work and therefore people to new locations and so on. I work closely with my clients, I align where I work and how I work with them as I need them as stakeholders to engage in the process they go through and how they share this with employees.

Some businesses have resource with my skillset internally but, as this is not every-day transactional work and normally part of a longer and broader strategic plan, the people with those skills are employed to do other things. Businesses don't need these skills all the time and that's why they engage with someone like me – their most likely options would either be to back fill an employee or get a contractor to deliver the project. Alternatively they could employ a consultancy business to do the same thing although it will cost more, likely allow less engagement and be more complex to manage. CEST and the IR35 changes are taking out a route to market and entrepreneurship in one fell swoop.

I also manage my business in the same way any other business would. I source my own work – sometimes directly and sometimes through agencies, I pay my taxes, maintain my insurances, manage my own budget, benefits and absences and ultimately take responsibility for myself.

I believe I'm incorrectly caught up in all of this. The accuracy of the CEST tool and the consequential risk mitigation from business with blanket assessments means that my potential client base has diminished dramatically and has possibly dried up. The changes don't fix anything and don't really address what they set out to do, if it ever really was to ensure that all employees got treated the same. So, the CEST tool doesn't work, the IR35 impacts are anti-competitive, are negatively impacting resourcing strategies, not doing what they set out to do and are not fit for purpose.

Areas of interest

Question 1

No comment

Impact of new off-payroll rules on organisations

Question 2

2.1 The definition for inside/outside IR35 is not clear – determining employment status remains too subjective. The CEST tool doesn't work - where there are nuances, more than one answer to a question or the answer is not included as a choice. The tool then directs the person seeking assessment to contact HMRC. This action results in a human interpreting the conditions for determining status.

2.2 The penalty for all parties - business, supplier, individual - for misinterpreting the rules could be severe. In their response to the consultation on changes, I understand that the CIPD called for better guidance from HMRC. This included a request for an improved and refined CEST tool, as inaccurate determinations can be made even if reasonable care is taken. They accurately stated that non-compliance is not only deliberate but can often be accidental and take place out of ignorance.

2.3 The compliance burden would be more reasonable if the rules were clear. HMRC should be providing rules on assessments that allow a "beyond doubt" interpretation before implementing these changes. As well as commercial impacts the human impact of an incorrect determination could be extremely severe, even irrecoverable, if errors are made.

2.4 It should be noted that HMRC will also be asking business to report on "off-payroll workers" as part of Payroll reporting. This suggests that HMRC want to maintain visibility of direct suppliers and the question would again be where do you draw the line?

Question 3

No comment

Question 4

4.1 The impact and effect of the proposals is already being felt. Many contract opportunities currently being resourced are deemed inside IR35 – this is a significant change to 12 months ago. Having finished a contract in November 2019 I have so far been unable to source anything that isn't inside IR35.

4.2 There appears to be little confidence in the CEST tool by anyone. Rather than risk an HMRC infraction and the consequences, medium/larger sized businesses appear to be avoiding the risk by making blanket assessments of inside IR35 for all non-permanent roles.

4.3 The effect will be to dry up a rich stream of knowledge and expertise – the Public Sector implementation of the rules are the best indicator of this impact.

4.4 The burden on employers could be to drive them either towards a "fat and non-productive" or a "lean and average" workforce just to sustain commercial requirements.

4.5 As we're already seeing, some of those individuals who currently supply their services through contracts will become permanent, some will undertake Fixed Term Contracts (essentially employees), some will use umbrella companies and some will remain independent. Limited companies will be wound up and there will probably be a few recruitment and accountancy related business failures.

4.6 The positive effect could be to see an end to the backfilling of roles that have been made redundant with contract resource and for employers to be able to improve risk mitigation on roles that are challenging to fill by more easily being able to recruit permanent employees. Also, Insurers are creating new products for IR35, the impacted recruitment companies/accountants may create their own spin off consultancies and the larger consultancy businesses already in the market will be hoovering up resources which they can sell back to business for much more than when they were contracted to them.

4.7 Ultimately it's hard to see anything other than a wider detrimental impact to the flexibility of the agile workforce by removing or severely restricting this route to market.

Question 5

5.1 There is huge scope to simplify and reduce the administrative burden of these measures:-

5.1.1 Don't implement these measures until the rules have been refined enough to be fit for purpose. The tool does not work because the rules are too subjective. The employment status determination should be clear and most likely indisputable.

5.1.2 IR35 was introduced 20 years ago but has never been properly enforced. Simpler rules akin to those originally proposed should be made to work:-

5.1.2.1 If the work of an individual is the same as that of another employee, and has been carried out for a substantial/sustained period of time (the 24 month rule) then the individual would be an employee.

5.1.2.2 This could be tracked through expense receipts in the same way as the Principal Place of Employment for PAYE employees can be determined.

5.1.3 c) The response from Jesse Norman to the house regarding what is being done to support the roll out of the new rules is helpful but all of the actions set out need to be done once the determination rules and tool are able to provide enough irrefutable definition.

5.2 There are too many ways in which the tool says it is unable to determine the outcome. The rules must be clear and transparent for everyone before the regulations are implemented.

Determining tax status of workers

Question 6

6.1 The questions in the CEST tool that have been set to determine status are not clear and do not reflect the reality of my contracting environment**.** The issue appears to be that the motivation and objective of the legislation contradicts what the tool seems to determine. Rather than a general assumption that everyone is avoiding paying tax the intent should solely be to determine employment status.

6.2 In an effort to bring this to life, one of the tools questions on costs asks:-

Will you have to fund any other costs before your client pays you?

The reality is that I may need to travel to different locations and pay "non-commuting" costs. If I need to, I pay the expenses then invoice the client.

The outcome for me, as long as I've answered NO to all of the preceding questions, is:-

If I answer YES to this question, the tool determines that I'm ***outside of IR35.***

If I answer NO the tool says it is unable to ***make a determination.***

6.3 Or another one on financial risk

If the client was not happy with your work would you have to put it right?

A lot of what I do is iterative so getting the client to be "happy" with my work can take repeated efforts.

If I answered "Yes, unpaid and you would have extra costs that your client would not pay for" then I'm deemed **outside IR35.**

The other **4** responses give an **unable to determine status.**

None of the responses relate accurately to what the situation might be and the tool can' tell me if I'm inside or outside IR35.

If the client was really unhappy with my work the contract would probably be terminated. I maintain appropriate insurance to protect myself against any negligence or "faulty work". If I was unhappy with what the client was asking for I could also terminate the contract.

Question 7

7.1 The CEST tool is poorly designed and does not provide enough definitive or substantive outcomes. There are still too many unknowns.

7.2 It requires substantial improvement and needs to reflect a better understanding of what it is trying to assess which should be an employment status determination.

7.3 Detailed and robust guidance is still needed and the rules the tool is supposed to represent need to be clarified.

7.4 Continuing to press on with something that is so evidently already broken is really poor practice, inefficient and will cost a lot more to repair later rather than fixing it properly now.

Question 8

8.1 Again, the status determination process is not effective. There appears to be a preconceived determination of "inside IR35" and the point of the process is to prove "outside IR35".

8.2 HMRC will need to be resourced appropriately to support any roll out especially if they will be making the determinations because the tool can't.

Policy objectives and wider context

Question 9

9.1 Refer to 5.1.2

Question 10

10.1 The objective of the new rules isn't clear. What are the objectives?

Question 11

11.1 My impression is that umbrellas are being proposed as a solution that allows employers to avoid having employees

Question 12

12.1 It's hard to see a situation where the new measures encourage entrepreunership and the gig economy.

12.2 All of those who are an employee in name should have the same rights.

12.3 We should be able to rely upon the definitions of an employee and a contractor. How these categories are determined need better and clearer definition that removes as much subjectivity and doubt as possible.

24 February 2020

Colin Boyd

I am an IT contractor and have worked in the industry for over 20 years.

I just wanted to offer my insight into the new IR35 legislation that is planned to be implemented in April 2020.

One thing to bare in mind with IT contracting is the deal is that you lose pensions, holiday pay, sick leave, reasonable notice periods and all other benefits associated with permanent employment in order to achieve a bit better income into your company and just provide an expertise to a company for specific period of time.

As a contractor I have numerous times been give very short notice from 1 day to a week that my services are not required normally because a project is cancelled.

Contractors provide a flexibility and essential service to numerous companies in the UK and the new IR35 legislation is a big step to destroying this.

Already companies like RBS, HSBC, Galaxo, Barclays, etc.. are deciding that all contractors need to be PAYE and making blanket decisions, companies are already forcing everyone to switch to PAYE contracts before March.

Not only this but some companies are mass terminating contractors(HSBC) so unemployment will be increasing across the IT sector and other industry sectors.

I have been told my current contract with my client will be cancelled for the 28th of February.

Once IR35 legislation is implemented most contractors will therefore be working if lucky with no real permanent benefits yet paying more tax than people working next to them who get benefits, as contractors will have to pay additional employer NI(13.8%) and apprentice levy(0.5%) and get no benefit from it.

Looking a few months to years along the line this is what will happen :-

- IT contractors will stop providing the services in a flexible manner to companies and move to permanent employment.
- Companies will not have this on tap wealth of skills to quickly call on and utilize, affecting economical growth and flexibility to the economy.
- IT contractors will see their income drop by over 20% with a knock on affect to the country (Not only in IT but Health, Oil, Legal, Construction, Accountancy contractors etc .. hundreds of thousands of individuals.)
- Associated companies like accountants, financial advisers, agencies etc built around this Eco system will be in risk of failure affecting 10's if not 100's of thousands of jobs.
- The knock on affect of contractors drastically reducing their economic activity will have wider affects on the economy.

If you could find some time to discuss face to face I would be grateful or when you have an opportunity to vote against this legislation please do.

Xx February 2020

Gary Boyle

Introduction and personal summary

I am an interim manager who has operated through a PSC for the majority of the period since April 1997, delivering projects and programmes of work.

Since July 2019 I find myself, for the first time in over 20 years, unable to secure any interim work for an extended period (with concerns over mortgage payments and saving for retirement). This is largely down to the impacts of the Off Payroll roll out.

Typically my clients are FTSE 100 banks and insurers. The fear of HMRC investigations sees Clients (and consultancies that I sometimes sub-contract to) banning PSC's or only offering 'inside' contracts (regardless of the specific circumstances of the engagement). They are also turning to off-shoring and/or utilising large consultancies as an alternative to contractors. This has created a shrinking of the market opportunities, hence my 8 months of no work.

I am seeing lower rates on offer (whether inside, outside or fixed term contract) and am seeing relatively low salaries being offered for permanent opportunities. All of these opportunities are oversubscribed with candidates. On average I am seeing rates some 30% lower, typically inside IR35 (although they easily meet the criteria of outside, even using CEST). Additionally these rates are often further reduced (by maybe £100 a day) to cover the clients Employers NI costs.

The above results in a lower tax take for HMRC and when combined with more 'down time' I expect to see my tax contributions decrease by maybe 75%. In the last tax year my corporation and personal taxation was about £100,000. A 75% reduction is a considerable reduction for HMRC. Also my VAT pa was over £50,000 – as I typically work for FS clients then this is not recovered from HMRC. Without an outside determination I will not be charging VAT.

Clients have enjoyed the skills and flexibility of the interim market. This will no longer be the case.

Per above this isn't good for me, for HMRC or for my clients.

Additionally we now see a new type of worker ie taxed beyond a permanent employee but without any of the employment benefits. This could become a new employment opportunity for clients.

Impacts of Off-Payroll rules on Organisations

Clients are taking a low risk approach and are typically offering paye or inside contracts. They tend to use CEST despite the shortcomings of the tool eg it ignores Mutuality of Obligation. HMRC have lost about 80% of the cases that have gone to court – hence CEST is designed to side step the case law.

Clients are seeing contractors exit as they don't want to switch to inside and take the risk of a retrospective tax investigation. This is impacting the client's projects which in turn will impact profit.

Clients are having to suffer significant costs to operate their IR35 assessments and implementation.

Clients run the risk of claims from contractors, in court, for employment benefits (holidays, sick pay, pension etc).

Clients will be losing the flexible workforce which will impact their ability to mobilise initiatives and may drive increased costs due to using consultancies instead. These workers are key to British businesses and to our 'FinTech', start up and innovation sectors.

Clients need to be encouraged to continue to offer outside contracts without fear of draconian enforcement by HMRC.

Determining Tax Status of Workers

Many adverts for interim roles do not declare the IR35 status nor do they make it clear that the advertised day rate will be reduced to pay the clients employers NI costs.

CEST is widely used to determine status despite it not aligning to Case Law. It is designed to get inside determinations. Many are accepting these inside roles but in the knowledge that the role should be determined as outside and in fact when they run CEST themselves they get an outside determination.

A clients existing contractors, where determined as inside (where previously self-determined as outside) are generally very concerned that this is a red flag to HMRC and fear a retrospective from HMRC. It is expected that the majority will decline the contract and leave.

Those carrying out the determinations do not understand the contracts or the legislation. They are clearly taking an approach that gains inside determinations.

The inside determinations (or PSC banning / paye) are blanket assessments ie there are few or no exceptions.

The appeal process is via the client. It is unlikely that a contractor will appeal as its likely the 'offer' will simply be revoked. It should be noted that organisations like QDOS now offer professional support for workers appeals.

CEST must reflect tax law.

An appeals process can only be effective if it's independent.

Policy Objectives and Wider Context

The introduction of Off-Payroll has seen a large number of Umbrella companies come into operation. This is likely to cause issues eg some may condone tax avoidance, some may over charge for services, some clients and agents force their Umbrella upon you, it makes it hard to

continue paying into existing pensions etc Contractors will see themselves moving from umbrella to umbrella as they move between clients, further complicating their pension savings.

It is not fair to create a new type of worker who is taxed beyond a permanent employee but gets none of the employment benefits. It is likely that employers will seize the opportunity and use this as a cheaper way to employee people including those that were not previously contractors.

Contractors will no longer be paid a premium and will be unable to save for the inevitable down time between contracts. This will also deter new people from entering into the market.

Contractors will no longer be able to claim expenses whilst on an inside engagement – this will make it hard to accept contracts far from home.

Contractors will potentially move between inside and outside engagements meaning they will still have to cover the costs of a Ltd company, liability insurances, accountant etc

It is expected that the changes will adversely impact Accountants and Agencies with some going out of business.

A typical contractor will now see their tax contributions REDUCE as a consequence of the off-payroll roll out AND they will see their take home pay reduce. See worked example below*

A delay in the roll out so as to give another year to work up a better solution seems the best solution. This 'better solution' might include a 2 year rule (ie stay 'too long' with a client then switch to pay roll with full employment benefits).

*Worked example of the tax receipt reduction:

A typical contractor charges £600 per day. Using the various on-line calculators it is clear that the tax received from contractors will be reduced regardless of off shoring, less work, more down time, general rate reductions etc. When compounded with off shoring and down time etc then this gap will increase significantly.

Outside at £600 pd = £132k pa. Dividend and corporation tax = £44,834.00 (and VAT at £26240 which for an FS client will not be reclaimed)

Inside at £530 pd (client typically reduced to cover eNI) = £115K pa. Paye, eNI and NI = £43,439 (no VAT).

11 February 2020

Kieran Brady, Consult Brady Ltd

As an IT contractor who has been contracting for 15 years, 13 years of that via a Limited Company, I am directly affected having been working on a DWP site since late 2018 and assessed as caught by IR35 for the last 5 months.

Within the DWP, HMRC take the view that the majority of the DWP's contingent labour are employees for tax purposes and have instructed DWP's hiring managers on how to answer the questions in the HMRC CEST assessment tool in order that such a determination is reached. This view was introduced at short notice in late Summer 2019 and all contract renewals since have been affected.

If a hiring manager determines the status of the worker to be 'outside IR35' then approval for that determination must come through several higher tiers of management and be scrutinised by a DWP lawyer with expertise in the field. The spoon-feeding of how determinations should be made, in addition to burden of management scrutiny and further governance is leading to the hiring managers taking the path of least resistance since they do not having the framework needed to consider each contractor relationship on its merits, leading to a blanket approach which enables their job advert to be circulated to recruitment agencies more quickly in order that they can fill their urgent role at short notice and enable them to return to their main responsibilities.

The real impact of the way it has been introduced is that contractors deemed as employees for tax purposes are not prepared to perform the same role for reduced income and making their Ltd company a redundant entity where they do not agree with the determination, and any notion of appeal is soon tempered with the realisation that your role would be at risk for 'rocking the boat' and a resource prepared to take the role within IR35, or a large consultancy who are already ensconced within The Department will offer someone from their organisation.

The risk of having contracts terminated at short notice was illustrated to me in 2016 when a DWP Digital budget shortfall halfway through the financial year issue meant in-flight projects were put on hold and any contractors not working on business-critical systems were let go with immediate effect [1]. The overhead of training remains the same. Contractors have always paid for their own training which can run to thousands of pounds in order that they can provide true value to clients and hit the ground running when brought in to get projects across the ine. Since there are no longer any allowable expenses when caught by IR35, where the client sees you as an employee for tax purposes alone, the contractor has to pay for that training from net income. The same

applies to travel expenses. Contractors have always travelled far and wide to provide value and expertise at short notice, often traveling a long way and living away from home for the duration of the project. Again that cost will have to come from net income along with sick pay, holiday pay and other 'standard' employee benefits not afforded to the new class of employee HMRC have created.

With expenses no longer being allowable, and the lack of job security risk remaining the same, then either an upward trend will result in rates to factor these costs in, or the contract market will stagnate, along with the UK government's ability to deliver projects. Critical projects within the DWP have been directly affected, with knowledge and skills being lost week on week.
Since there are still budgets to be spent and projects to deliver, contractor roles are not being filled since the risks outweigh the rewards with rates not having yet moved. In this current void however, large consultancies are capitalising on manager's needs to deliver projects and are bringing in recently qualified graduates to replace the highly skilled contractor roles, presumably at a similar cost to DWP.

The private sector will be affected in the same way. The CEST doesn't cover key measures of being in business on your own account such as Mutuality of Obligation which is sufficiently complex that a questionnaire should not and cannot be expected to be a basis for a cast-iron determination that mutuality exists or not. The DWP, for instance, introduced furloughs for contractors over Christmas.

I hope my real world experience of the ongoing issues being caused by IR35 helps to influence the Government to find new approaches to supporting the UK's flexible workforce.

[1]https://www.computerweekly.com/blog/Computer-Weekly-Editors-Blog/DWP-Digital-overspent-by-60m-in-six-months-heres-how-it-got-back-on-track

23 February 2020

Tim Brain

This submission is made in a personal capacity.

To whom it may concern.

I have been a flexible worker for almost 10 years now, working for many clients on a short-term contract basis all over the UK.

Existing measures in the public sector

Question 1.

- The Government are pushing ahead with the rollout of the off-payroll tax to the private sector, ignoring two previous consultations and clear evidence of damage to public sector projects and to public services, including the NHS, with the off-payroll tax leading to staff shortages. It is my opinion that these lessons learnt have not been considered prior to the extension off the off-payroll tax to the private sector. The assumption is that the impact will be minimal.

Impact of new off-payroll rules on organisations

Question 2.

- The impact of the extension of the off-payroll rules to the private sector has not been adequately assessed. With regard to the compliance burden, I am of the opinion that the right balance has been struck with particular regard to hiring contractors. However, AWR will need to be considered for those firms looking to move contractors onto payroll meaing more costs and regulations to deal with.

Question 3.

- No comment.

Question 4.

- Since late 2018, I have sent 7 emails to my MP with targeted questions. Never have I received an answer to my questions, instead receiving 6 stock letters from HM Treasury & 4 requests to meet my MP rejected.

- I warned HM Treasury in February 2019 that, based on HMRCs estimates, for circa 200,000 contractors assessed as 'inside' IR35, individual renegotiations would need to occur. I also warned that companies would not be prepared for this. Yes, they had the time but did not take action. The 'comprehensive' programme of education and support activities provided was not sufficient or targeted.

- I cannot continue to commute 120 miles per day if I am unable to charge in any expenses for this travel. I will refuse to work via an Umbrella company or inside IR35 for any role that is greater than 15 miles from my home address, unless I am compensated appropriately. The flexibility of the contractor workforce will vanish overnight. Specialist contractors will not be as flexible as they have been historically. Jobs will be off-shored.

- The relative bargaining power of parties will dictate the outcome, the starting point of which is that the hiring firm has a new tax bill which they are going to try and push onto the contractor by reducing their fees. In turn, the contractor wants a higher day rate to compensate for the extra taxation to be paid via PAYE and inability to charge in expenses. I have been offered such a 25% day rate increase as my current client are panicking. They are running scared of HMRC/HM Treasury. I am a legitimate contractor working outside of IR35, but my current client is refusing to engage PSCs. However, I cannot continue to work for my current client, as I have no confidence in not being retrospectively investigated for the period that I determined I was working outside of IR35 with my current client.

- Instead, I sit at home whilst this whole thing blows over. This damaging measure will decimate contracting and freelancing in the UK, and will harm the economy. April 2020 will see a big game of musical chairs – all contractors moving roles due to the threat of retrospective investigation by HMRC. The net result is that my client will be unable to deliver change projects currently resourced by its contractor workforce. I am working on a cyber security project to ensure full auditability around what third parties are doing when logged into my clients corporate network. This will now be significantly delayed. In case of a breach, my client may not be able to confirm what happened, where and why.

- I am asking for a delay in the off-payroll reform, and legislation to ensure that fair assessments can take place. The self-employed, and the services that they provide, should not be locked out of our economy at such a crucial time for our country.

- A review of the implementation of simply is not good enough. It’s clear that businesses are not ready for this change. Recruitments agencies are not prepared. It is folly to think that HMRC are going to be able to educate 60,000 businesses, 20,000 agents and support them to assess 400,000 self-employed workers by April.

- Give the self-employed an opportunity to continue to contribute to our economy.

- The Conservative Chancellor, Sajid Javid, announced a review of IR35 in the General Election, yet sadly it seems this was a cynical election

ploy, as we have now found out that the IR35 roll-out is to go ahead anyway and the promised review is no more than another consultation into the changes that will be going ahead anyway! It's not a genuine IR35 review at all, merely a meaningless consultation to give the false impression of listening. This is just dishonest and shows the real attitude of the Treasury towards contractors and freelancers.

- The Off-Payroll Tax is "double stealth tax" on the many businesses that use contractors and freelancers. It will slap a huge 14.3% tax on UK businesses, made up of employer's National Insurance (NI) (13.8%) and the Apprenticeship Levy (0.5%). Many firms, however, simply won't pay this extra sum and already firms are laying off contractors, seeking cheaper offshore providers and telling other workers they will have their pay rates slashed.

- According to HMRC's own figures, at least 150,000 UK contractors could lose up to a quarter of their pay, with some families unable to pay mortgages as a result and thousands of contractors will be forced into false employment and unfairly taxed as employees with no employer pension contributions, sickness or holiday pay.

Question 5.

- I do not see an issue. Medium to large companies are used to administrative burdens of this type being placed on them.

Determining the tax status of workers

Question 6.

- My own experience is that although my employee status was determined as 'outside' by the Governments own CEST tool, my current client has implemented an off-payroll PSC ban – something which HM Treasury said would not happen as; 'the rules only apply to individuals who are working like employees under current employee status tests, and do not apply to the self-employed'. I quote from the letter I received from Mel Stride MP on the 17th December 2018.

Question 7.

- It is frustrating that HMRC continue to attempt to justify the flawed CEST tool. Mutuality of obligation continues to be ignored – CEST incorrectly assumes that it exists in every contractor engagement. This

is frustrating when MOO has been the deciding factor in many IR35 tribunals.

Question 8.

- The status determination process will only be effective where companies are willing to engage via PSC. With regards to an appeal process, the fact that the client who originally determined your status is also responsible for considering your appeal suggests to me that the appeals process may be flawed.

Policy objectives and wider context

Question 9.

- We continue to see the tax system become increasingly complex. I am happy to pay more tax, but also want to be treated 'fairly'. Why not introduce a simple higher corporation tax rate for all limited companies operating as a PSC?

Question 10.

- The Office of Budget Responsibility gave an uncertainty factor on their estimates for the off-payroll extension into the private sector as 'Very High'. The most important factor is the behavioural uncertainty, for which they have 'no information on potential behaviour'.

- I have already seen 3 of my long-term contractor friends accepting permanent jobs. The job market is dead due to Brexit & IR35 uncertainty. The result is ultimately less tax income for this government. As an independent contractor, my long-term contractor friends would pay circa £36000 per year in corporation tax, dividend tax & VAT. As a permanent employee, HM Treasury will see approximately £16000 per year in the form of PAYE, employees and employers NI. The pendulum has shifted too far – the now significantly reduced benefits of working as a contractor will mean more people falling back on the security of a permanent position.

Question 11.

- We are already seeing evidence of umbrella companies appearing who are promising 90% take home pay. It goes without saying that the introduction of the off-payroll rules into the private sector will lead to the increased promotion of tax avoidance.

Question 12.

- The UK economy and our public services are reliant on specialist self-employed contractors and freelance working, contributing their time and skills, alongside employers. These self-employed workers pay for their own pensions and don't receive holiday or sick pay, and they do not have the security of employment and often have periods without any work.

- It is unfair that HMRC want to tax these people - who do not get the benefits of employment - as employees, and will decimate the vibrant contracting and freelancing sector in the UK and lead to loss of jobs for thousands of people.

25 February 2020

Daniel Brearley

1. Thank you for this opportunity. I have the following comments to make in relation to your questions (numbered) and I have chosen brevity over grammatical structure;

<u>Question 4</u>

2. I am engaged by Lloyds Banking Group. From 1st March 2020, my Limited Company is impacted by a blanket-banning of Private Service Companies (PCSs – please forgive the use of the term which is a mere construct of HMRC, my company is a Limited Company).
3. My company has withdrawn its services from Friday 28th February 2020 rather than me being forced into an umbrella PAYE arrangement personally.
4. My services are provided with no supervision or control (I am the expert), no mutuality of obligation and I take the financial risk of incurring expenses and being subject to no notice period – when my client has no work for my company, I do not have the opportunity to sit back, get paid and wait for work to be provided – the impact is my mortgage doesn't get paid.
5. My client has, to date, accepted my company's right to supply a substitute worker. 100% of my services are provided from my remote offices rather than on the client's premises. My company provides professional indemnity insurances covering its services and mistakes are remedied in my company's time, not the client's. My company pays for my training and other necessities.
6. My company does not have any replacement contract(s) arranged beyond 28th February 2020.
7. I will not roll my company's engagement over into a personal umbrella PAYE contract with the same client, for acute fear of retrospective and wholly unfair investigations by HMRC. There is no legislation to prohibit enforcement for perceived historic underpayments. Indeed HMRC's ESM0117 gives very clear guidance to Inspectors to pursue me.

8. The Chancellor's recent "soft landing" (for one year) speeches are meaningless, disingenuous and dangerous. Arguably, it would be over one year before tax returns were submitted in any event and then ESM0017 gives HMRC open season.

Question 7

9. Due to blanket-banning, I have had no experience of CEST.
10. Hall vs Lorimer (1993) guides that a mechanistic approach to an assessment of a worker's status is not appropriate. CEST is a wholly mechanistic approach which ignores a vital element (mutuality of obligation) and has been shown to produce incorrect determinations.
11. Even if one opines that Inside IR35 vs Outside IR35 is a valid construct in any event, it is clear from others' evidence that end clients are not properly reviewing the working practices between the client and the service provider/worker on a case by case basis.

Question 9

12. What is at issue is HMRC's 'loss' of Employers' National Insurance Contributions (NICs) on engagements of contractors. There have been much simpler, less holistically disruptive solutions suggested by others, e.g. a Contractor Levy paid for by the end client. There is simply no requirement to disrupt entire sectors, supply chains, livelihoods, or stifle innovation and regulatory delivery, or burden clients with massive administrative overheads or enrich Umbrella companies.

Question 10;

13. When one contrasts the total tax income to HMRC from my company's engagement via PSC in 19/20 with the total tax income that would have been generated had I received the same day rate under an umbrella PAYE, HMRC would have actually lost income;

PSC; *(source: Nixon Williams Accountancy portal for my company)*

Corporation tax	£18,655.18
VAT (my company)	£21,612.50
VAT (end client)	£24,462.50
Personal dividend tax	£ 5,341.95
	£70,072.13

Umbrella PAYE; *(source: umbrella quote from PayStream for £455.00 day rate)*

PAYE	£24,482.40
Employee's NI	£ 5,814.48
Employer's NI	£12,032.62
VAT (end client)	£24,462.50
	£66,792.00

14. Given the binary contractor choice in Financial Services of blanket-banning or zero-rights umbrella contracts, perhaps it is more likely that I will take up a permanent role. The equivalent role in Lloyds Banking Group offers a base salary of circa £55,000. Total tax income in 19/20 would therefore have reduced to **£20,583.44** *(source: thesalarycalculator.co.uk)*
15. It is an understatement to suggest that these personal scenarios render HMRC's simplistic business case as woefully inaccurate.
16. ESM0017 gives HMRC the right to also pursue end clients who are now placing 'outside' contractors 'inside' for unpaid employer's NICs. One could argue that might be a risk even where the worker has changed but the role remains the same.
17. The common law test for employment includes considerations of elements particular to the worker (business on own account, other clients, intention). Blanket-banning/assessing end clients (perhaps even clients attempting individual assessments) are ignoring these and are failing to exercise reasonable care. There could be a burden therefore for the client deducting PAYE and NICs at source. In the event of an HMRC investigation, it is not inconceivable that this could lead to additional damages being sought from the client. (*source: Alexander Wilson LL.B, IR35 Barrister, https://www.linkedin.com/pulse/ir35-risk-client-business-wilson-ll-b-hons-dunelm-cta/?trackingId=6%2FC%2FVhKnTTeIUHZajh61NQ%3D%3D)*
18. The IR35 test is the same as the common law employment test, with the legislation lifting the common law test directly into statute. An 'inside' assessment will result in a correct assessment on employment status where the balance of power lies with the employer. Precedence exists therefore that the paper-form of engagement will be immaterial and employee benefits are all in play. (*source: Alexander Wilson LL.B, IR35 Barrister, https://www.linkedin.com/pulse/ir35-risk-client-business-wilson-ll-b-hons-dunelm-cta/?trackingId=6%2FC%2FVhKnTTeIUHZajh61NQ%3D%3D)*

<u>Question 12</u>

19. My company has been offering expert project management services to the Financial Services industry since 2016. When my daughter was born with severe disabilities, my wife and I gave up work (I worked in a University and she was a Midwife) so that she could care for our daughter and I could prioritise (i) income maximisation over valuable employment benefits and security and (ii) flexible working – to be available to help out at home and medical appointments – over rigid control/supervision and working practices.
20. I am not prepared to pay employer's NICs in addition to employee's taxes whilst receiving no holiday pay, sick pay, pension contributions, right to notice period and redundancy, right of representation and all of

the other typical employee benefits and security – this is essentially implementing 'zero rights' employment by the back door.

21. My company will not be engaged in the Financial Services sector again given that every potential client in the sector (barring one single Challenger Bank) is implementing blanket-bans of PSCs.
22. This unfair IR35 implementation eradicates my reasons for contracting, leaving me with a worse working status than permanent employees.
23. I am not an affluent contractor and I do not fund luxuries or assets. I am the sole earner with higher than usual expenditure given my wonderful daughter's needs. Everything I have earned has gone into making our home a fit space for my daughter to grow in independence and feel secure. My home's market value is £150,000 less than I have spent on it, but we don't view our daughter's lifelong home as a financial investment – rather I am using today's incredibly hard-earned income to pay for another's lifetime and sparing her from reliance upon The State. I can pay my mortgage until July 2020 using the remaining retained profit I have in my company. After then, I am at risk of losing my daughter her lifelong home.
24. My mental health is rapidly deteriorating.

26 February 2020

Paul Broomhead

1. BACKGROUND

1.1 I have been a Contractor in the IT sector since 1999, I have worked extremely hard to build up a successful business

1.2 I provide Agile consultancy and delivery services; **I am not in the service of the clients I engage with**

1.3 My current Contract and Working Practices have been reviewed by Qdos and approved as Outside of IR35 – despite this my client is terminating our contract on 28-2-20 as they are 'risk averse' and fearful of IR35. There is a key project my client would like me to complete and I would like to complete, however, we cannot work together as a direct result of this IR35 legislation

1.4 Despite being officially categorised as outside of IR35 for many years, I am impacted by this legislation and the impact is life changing - I am a single parent with 2 children to support; as a direct result of this legislation, I have no income as of next week – this will have some considerable impact on us as a family and will likely mean I have no option but to sell the family home my children have lived in for their entire lives

1.5 The on-going uncertainty and lack of options in terms of how to provide for my family has caused some considerable anxiety and distress

1.6 I met with my MP, Kwasi Kwertang, on January 24th to discuss the matters outlined here. I outlined the personal impact to my family of the IR35 rollout to the private sector. Mr Kwarteng assured me that the government values and supports the UK's flexible workforce; however, this impending and damaging legislation is at odds with this statement. I remain unclear how the government supports Contractors

2. CONTRACTOR TAXES

2.1 It is a misnomer that Contractors pay less in taxes than employees, it is the case that Contractors pay more in taxes, and we pay these taxes on all revenue generated:

- 20% VAT
- 19% Corp Tax
- Income Tax on Salaries & Dividends

2.2 Example for illustration purposes:

A Contractor who charges £600 per day and is engaged with clients for 225 days in a tax year will pay the following taxes:

£600 + £120 = £720 per day

£720 x 225 days = a total income generated of £162,000

From this the Contractor pays the following taxes:

VAT:	£ 27,000
Corporation Tax :	£ 26,000
Income Tax:	£ 28,500
TOTAL TAXES:	**£ 81,500**

Whilst it is the case that Contractors are taxed in a different way; it is far from the case that Contractors pay less taxes than employees. Contractors may pay less in NI; however, employees do not pay VAT or Corporation taxes and as the illustration above shows, these are non-trivial sums.

2.3 If this Contractor becomes an employee, a typical salary for this role would be in the region of £80,000 per annum. NIC's & income taxes for this salary would amount to approx. £2,000 per month - significantly less taxes than the Contractor pays, along with a considerable drop in income for the Contractor.

3. AT ISSUE

3.1 IR35 Legislation Effectiveness

It is HMRC's case that they intend to use the IR35 legislation as a means to capture the one third of Contractors, circa. 60,000, they believe are operating as employees. The legislation has failed to be effective as it captures not only those Contractors acting as employees but also a considerable portion of the 120,000 Contractors who are genuinely outwith IR35, as I am, and it taxes us excessively and unfairly. In addition, it also promotes:

3.2 Employment Without rights

IR35 treats Contractors as employees ONLY for the purposes of taxation purposes, this results in those of us who are outwith IR35 being treated as an employee whilst having no employee rights, such a sick pay, holiday pay and so on.

3.3 Destroying the flexible workforce market

There has already been significant damage done to the flexible workforce and, should this legislation be implemented in its proposed form, the impact will deepen

3.4 Lack of Skilled Resources

Leaving private organisations without the skilled resources they require to deliver projects.

4. IMPACT ASSESSMENT

4.1. My Family:

4.1.1 Financial Responsibilities:

As a direct result of this legislation, I find myself in a position with no clients, and therefore no income, as of 28-2-20 for the first time in more than 20 years operating as a Contractor. I have considerable outgoings each month and, as a single parent with very limited funds, I have no way of funding my mortgage, feeding

my children or servicing my other monthly bills such as Council Tax and utility bills after this date

4.1.2 Mental Health:

The uncertainty and lack of ability to financially support my family is causing considerable distress to our family; increasingly so to the point of sleepless nights and an inability to concentrate

4.1.3 Supply & Demand

Due to current market conditions that re a result of the IR35 proposed legislation, I am no longer being considered for projects I am well equipped to deliver because the market is currently flooded with Contractors, in some case there is more than 1,000 applications to take on a project.

When I am contacted about taking on a project, it is now at a drastically reduced rate (often 50%) due to the market being saturated with Contractors. The result of which is to leave me in a position where I have no income or a reduced income to the point where I am unable to adequately support my family.

4.1.4 Economics

As a result of this impending legislation, I no longer spend any funds on any goods or services that are not entirely necessary expenditure. This in turn has an impact on the economy - as I am not now spending money on goods and services, such as goods and services such as local restaurants, cleaning services and home maintenance – all of these businesses have generated less revenue.

4.1.5 My Limited Company - Zapp! Digital Limited:

If this legislation is implemented in its current form, it's extremely likely I will be forced into liquidating my successful company due to a lack of clients.

4.1.6 Forced Employment / Professional Impact

This legislation will force people like me into employment against their will. In my 25-year career, I have worked as an employee only once, in 2001. I am focused on providing services to my clients not being in the service of these clients. Working as an employee is a very different mindset and approach and I have little or no experience in this – despite this, I am of the understanding currently that I will likely be forced into becoming an employee due to the responsibility I have to support my family.

4.2 UK Companies:

The defined IR35 changes could make UK companies less competitive against their foreign rivals and this could cause a downturn in the UK economy compared to European economies. Organisations will turn to off-shoring and large consultancies as a means to deliver the projects Contractors have been delivering – resulting in work and revenue being moved outwith the UK

4.3 UK Tax Receipts:

Tax revenues will decrease as a result of this legislation.

4.3.1. Scenario 1: Contractors lose their clients / projects – in this scenario the loss of projects means no income into Contractors limited companies and in turn there will be no company or personal tax liability

4.3.2 Scenario 2: Contractors move to employment – in this scenario considerably less taxes become due – see the example outlined in Section 2.2

4.4 My Clients:

- I have built up a successful business over 20 years, intentionally ensuring my clients were always left more than satisfied with the services I provided to ensure they would request further services from my PSC in the future – and they have done so on many occasions. However, this legislation puts the clients I have worked so hard to retain in a position of being too fearful to engage me to deliver projects critical to their Business – this is the case with my current client.
- **My Current Client:**
  Despite already operating on a fully IR35 solution with my current client, UKTV, they are too fearful of IR35 and are too risk averse to continue working with PSC's beyond Feb 2020 – all Contractors have been terminated.

5. CONCLUSIONS

5.1 This legislation has failed to capture only the 30% of Contractors it aims to – it has already almost destroyed the flexible workforce and Contracting market in the UKIt is not the case, as HMRC state, that considerably more taxes will be generated by this legislation – it is far more likely considerably less taxes will become due

5.2 HMRC's driver to increase taxes by Contractor's paying more in taxes is based on a lack of understanding of the private sector, and

specifically that Contractors would be able to continue to operate as they were whilst paying more in taxes. It is clear this is not the case with banks and many large organisations banning PSC's altogether putting many thousand Contractors out of work

5.3 This legislation is damaging to the economy, the flexible workforce, UK businesses, families and will result in reduced tax receipts. It is therefore impossible to conclude it is a successful piece of legislation.

5.4 The legislation should be halted and re-shaped so that it applies only to the one third of the 180,000 Contractors behaving as employees whilst continuing to support the 120,000 Contractors who are providing services to, and not in the service of, their clients.

19 February 2020

Dave Butcher

Please find below my response to the call for evidence to the finance bill, more specifically the topic of IR35 off-payroll leglisation that is due to implement a series of significant changes on April 6th 2020.

Please note this submission does not intend to answer all questions just some of those it is felt are most relevant to my own circumstances. In particular the responses below focus on the section referring to the ***Impact of new off-payroll rules on organisations***

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

In a word – No. In my opinion the original roll out of the off payroll rules in the public sector were not adequately addressed, and although some alterations have been made to the incoming rules due to come into force on 6th April in the private sector, not enough consideration has been given.

At the end of January I was presented with a determination stating I was inside, but when completing the CEST tool as a worker – the determination required further information.

Where a PSC continues to be used for inside ir35 the compliance burden having been transferred to the end client becomes impossible to enforce and notwithstanding market pressures, soured relationships to name a few does not prevent PSC simply winding up leaving large burdens on the end client. It is for this reason that many companies have chosen not to engage PSCs.

Whilst the compliance burden transferred to the end client/organisation the fear has become reality with many organisations (my own end client included) simply choosing to take a risk averse approach adopt a blanket approach and banning PSC's all together. Speaking of my own circumstance and that of many within the client in which I currently work, despite the perception of individual determinations having been carried out it is clear with approx. 1,100 contractors on the same contractual terms with the supplying agency that a blanket approach has been taken. Why – because it is difficult to argue when all on the same terms.

The end client with which I work has simply chosen not to retain the vast majority of the 1,100 contractors, even on an inside ir35 basis to absolve itself and mitigate as much of the financial risk as possible pushing up to 80% of it's contingent workforce back into the market. This message/behaviour is similar to other organisations around the UK.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

As a PSC My end client has chosen to adopt a blanket approach for it's (circa 1,100) contractors. The client's original intention was to provide those with contractors beyond the end of March to re-negotiate a new contract by an umbrella company of its choosing. Contractors that completed engagements prior to the end of March would simply not be retained and are free to re-enter the market. This exodus started from January 2020.

My PSC provides niche services and carefully selects the clients it engages with, often in transformational projects rather than a BAU capacity.

In 2018/19 financial year my PSC provided a total of £32,000 in Corporation Tax and VAT to HMRC with a further £5,500 in personal tax.

Having abolished the 10% dividend tax in 2016 and moved to a staggered reduction in tax free - allowance from £5,000 to £2,000 in addition to the 7.5% and 32.5% for basic and high rate taxpayer the HMRC and treasury has already seen significant recuperation of funds (shown below).

It is widely expected the budget of 2020 will reveal a removal of the dividend tax free allowance from £2,000 to £0 to close the taxation gap between the worker and PSC employee.

Removal of the tax free allowance: ~ £0.80bn in 2018/19
Basic/High Rate tax: ~£6.8bn in 2018/19 rising to ~£7.8bn in 2019/20

Implementing the new off payroll rules in April 2020, will have significant effect on the figures quoted above through a reduction in PSC's drawing dividends..

(Reference: https://www.ippr.org/files/2019-11/reforming-the-taxation-of-dividends-nov19.pdf)

But … whilst the impact on myself (or any other PSC for that matter) is clear what has been absent from all consideration is the impact upon many of local businesses in the vicinity of the end client of the contractor.

As a PSC with the ability to claim reimbursable expenses, contractors using PSCs are prepared to commute further to a place of work. As an individual I put on average £312.70 per week back into the local businesses.

This is broken down as follows:

- Travel: £152.70
- Lodging: £100
- Meals: £20
- Taxi: £40
- **Total:** £312.70 per week.

It's of course not fair to say that all 1,100 contractors where I am engaged would be putting the same back into the local businesses extrapolating this up to even 25% and the impact to (in my case Swindon) per week is ~£85,000. Speaking with local business owners the impact of the new rules are already being felt.

My ltd company has employees some of whom are funded by income from my engagement with end clients. With many clients not engaging PSC's beyond April 2020, there is a possibility that one or more of the staff will need to be made redundant.

Marcella Campbell

SUMMARY
I have been working as a self-employed HR Consultant for 16 years via my LTD.
I have had the pleasure of working across all both sectors, private and public.

I have been able to build a successful and varied career, working with local, national and international organisations who have benefited from my various skills and experiences which I have gained over the years.
At present, the private sector market for HR consultants is incredibly risk adverse, 90% of the positions that have been advertised since October 2019 have been deemed to be inside the IR35 status as "blanket approaches" are being made.
Additionally the fee has drastically reduced by at least 30%.
ANSWERS TO SPECIFIC QUESTIONS
Existing measures in the public sector
1. Specialised change and transformation roles are incorrectly being assessed as inside IR35
2. Fees have reduced by either 30% or are being offered very high salaries on a fixed term contract.
Impact of new off-payroll rules on organisations
3. A large proportion of positions are being offered as fixed term contracts because they are deemed to fall within the IR35 status.
4. This is resulting in a take home pay of at least 50-60% of monthly income.
5. This is reducing the flexible work-life balance which is afforded to contractors.
6. Unable to have multiple clients/reducing the ability to work part-time for two different organisations.
Determining tax status of workers
7. There proposed take home pay from umbrella companies can be inconsistent.

20 February 2020

Stuart Campbell

I wish the following submission to be considered by the House of Lords **Economic Affairs Finance Bill Committee on the matter of provisions to extend the off-payroll working rules to large and medium-sized businesses in the private sector.**

The introduction of this extension will have a significant impact on independent consultants and small consultancies (consultants) in the Finance sector. This sector contributes a significant amount to the GDP of the UK and any encumbrance to continued improvement and growth will add challenge to the UK, with Brexit introducing the added challenges of Europe (Frankfurt, Paris et. al.) looking to become the centre of finance for EMEA.

The Finance sector depends on the use of consultants to provide critical expertise and experience to deliver specific major change projects within

their organisations. These changes occur infrequently in individual organisations and the overhead of maintaining permanent staffing would impact efficiency and profits. The ability to engage consultants for specific deliverables is critical to growth and continuing leading edge services.

Many consultants operate as single person businesses but still deliver to schedules of work in line with the largest suppliers. They are paid only for the work that they do, take full responsibility for NI, tax and all government regulatory reporting and filings like every other business (large or small) in this country.

This is a solution for which there is no problem defined. If the government believes that such consultants are avoiding tax or other regulatory requirements, the ongoing advancement of the online VAT, filing and reporting is a much better mechanism to monitor and trap.

This legislation:

- adds compliance and administrative burdens to both the consultants and the financial institutions who employ them
- removes flexibility of service and growth for the financial institutions
- forces financial institutions to reconsider major project pipelines and timescales - will result in a reduction of the core of experienced consultants to the industry

Global institutions will move their R&D and project activities abroad. Experienced consultants will look to follow either to Europe or elsewhere.

By implementing this extension, the UK government is going against every promise to encourage and support entrepreneurial spirit in a post-Brixit environment.

It is clear in the finance industry and its suppliers that there is much confusion as to the rules and reasons. This is about to create a catastrophic "dumping" of consultants out of the financial institutions. This will generate a delay in active project activity designed to keep the UK as the financial centre of Europe and a subsequent chaotic scramble to work around the legislation and recover failed projects incurring delays and additional costs.

I therefore believe that this extension should be abandoned.

21 February 2020

Stewart Cannon

Summary
Up until the new rules were announced, businesses have been happy to engage with contractors for decades. There is natural give and take but the interests are mostly aligned. As soon as you allow the interests of one side to outweigh the other then of course that party will take advantage. Countless businesses are now using their new found "power" to assess and simply push aside all the contractors. They see the HMRC risk as too great and the potential to save money as too enticing not to do it this way.
The quality of HMRC Impact assessment is flawed because it fails to take into account the effect of the consequential massive reduction in available opportunities in the market will have on tax revenues. No work = no tax. Thousands and thousands of contractors are either currently out of work, or will soon be as all the "blanket" decisions to not engage contractors come into play in March.
The timeframe to ensure compliance is extremely short. While draft legislation may have been around since June 2019, – organisations are also simply not prepared. Now with less than 6 weeks to go before the legislation is due to commence, they are panicking and dropping contractors completely until the legislation is settled. It is simply a very poor approach by HMRC/Treasury to expect immediate effective compliance with something that isn't finalised weeks before compliance is required.

The creation of a new sub-class of Employee – the No Rights Employee. Given a choice a business will want to reduce costs and headcount. Inside IR35 roles mean that effectively a person has no job security, all the tax burden and can be got rid of with little notice. There is also no VAT on an inside IR35 role too. Businesses are going to jump at the chance to reduce their costs, and it won't just be contractors who will suffer. Businesses will turn permanent roles into Inside IR35 roles (because it's the law) and then they can save loads – no VAT, no pension, no sick pay, no holiday pay, no benefits etc.
POSSIBLE ACTIONS TO TAKE:
1.1. Get rid of IR35 rules altogether. It is overcomplicated and unnecessary and a grab for tax. Allow businesses to thrive in a less administratively burdensome manner. We want to thrive under Brexit don't we? Killing the flexible workforce isn't the way to do that.
1.2. Legislate (not promise) that there will be no retrospective tax investigations for any contractor going from Outside IR35 to an Inside IR35, or Permanent role at the same organisation.
1.3. Remove the CEST Tool completely. As it doesn't follow all the employment case law and is HMRC's interpretation of what they want the law to be rather than what the law actually is. Let private sector sort their own assessments out.

1.4. Put in place an accreditation requirement for status assessments. There has to be someone in each organisation that is adequately trained to do the assessment, and it should be regulated/licensed. At the moment leaving it to businesses to decide is going to create a vast difference in the quality/correctness of assessments because the skills required to do these assessments aren't present in most organisations.
1.5. Codify the employment case law into statute and issue simple guidelines. At the moment the CEST tool embodies HMRCs view on employment law and as it is incorrect it creates confusion. Their guidance also reflects their views on what the law should be, and as they interpret some of it incorrectly their guidance is also incorrect in law. HMRC guidance isn't law and shouldn't be perceived as such. Note the HMRC win/loss ratio for cases. They are on something like 90% loss rate in the last 10 years alone.
1.6. Consider an alternative to trying to get at this perceived tax loss. What about putting a "contractor premium" license in place. Kind of like car tax. In order to own a car you have to pay car tax. Why not the contractors pay a fee to be a contractor. It will be a cost of business to the contractor but allows them to continue business. This doesn't necessarily have to apply to all self-employed people, but those of a certain calibre, such as those that are required to register for VAT turning over more than £85k for example. Imagine if there were 500,000 selfemployed contractors having to pay a £2000 fee to continue business. This is an instant £1b to the treasury, annually guaranteed.

SUBMISSION RESPONSES TO THE QUESTIONS
Existing measures in the public sector
2. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?
No submission made.

Impact of new off-payroll rules on organisations
Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
In everything that I'm aware of, the impact of the off-payroll rules to the private sector has been woefully inadequately assessed. Statements of assessment have been by HMRC/Treasury that were made years ago, and are still being used today to show "no/minimal impact". They seem to ignore what is actually happening in the UK. All published material from the business communities is contrary to any statements made by Treasury/HMRC. The impact is much worse than is the official line from HMRC/Treasury.
Who am I?

I'm a contractor who moves from place to place. I've been contracting for over 15 years. I provide services to organisations on a short term/long term basis. I work in projects, and once I've done my thing, I go onto the next contract. I have to search for my own new opportunity myself and I've provided services to many different organisations over the years. I bring my own expertise and equipment and I'm never an employee of those organisations.
Now I find myself again having to look for my next opportunity in a month's time. A little bit scary since the market has all but dried up due to the impact of these future changes is having. If I don't find a suitable opportunity available the impact on me personally and my family is that I might have to sell my house. No work = no ability to pay mortgage. I'm also dual citizen so I can actually leave the country. Again = no taxes for UK. I'm not alone in this. There are thousands and thousands of people in the same situation.
Quality of HMRC Impact assessment is flawed because it fails to take into account:
Vast reduction in available opportunities in the market – as businesses have come to realise that HMRC will come after them for incorrect assessments, or for perceived underpayment of taxes for contractors, the businesses have simply decided to be risk averse and just not engage any contractors operating as Limited Liability companies. See offpayroll.org.uk for an anonymous market led view on which organisations are doing what.
Serious impact to Tax revenues – I know that if I was able to get a permanent job that it will bring in about half in revenue that I bring in as a contractor. Half means a massive drop in total tax take by HMRC from me (no VAT, no Corp Tax, no Dividend Tax, no employers NI (as I do employ people)), which results in about half the tax when you add in PAYE and employee NI. HMRC thinks that it is like for like, but the reality is far from that. There is never a live situation where a contractor on £100k, will be earning the same as a permanent doing the same work. It doesn't happen ever!
Consequential spending – I do travel for my work. I do stay in locations away from home. I do carry lots of insurance as a business, I do spend money on accountants fees etc. If I was a permanent, I would do none of those things. All that money that I provide as payments for other services to other businesses will not
happen. Other businesses will suffer. There are entire businesses out there that support contractors in some way. They are all going to be impacted.
Administrative burden – there is going to be one. A business now needs to have a status determination statement, a process of assessing them, a statement of operating practices, and a process in place to ensure that the business is constantly monitored to see whether it changes its status from Small to

Medium, and back. A small business doesn't just get away from having to do this admin because they are a small business.
Organisation's preparedness – organisations are simply not prepared. They are panicking and dropping contractors completely until the legislation is settled. The one I'm working on a project for now, didn't even understand the rules and I had to educate them. There is no communication forthcoming from HR or Finance but I did hear that they were trying to make everyone Inside IR35. No one had talked to me about it, as the reasonable assessment process would require an examination of my working practices. In general it seems that where a business isn't prepared, or prepared to take the HMRC risk, they are simply dropping all contractors and saying either "leave", or "Go on Payroll". Jessie Norman said recently in a response to a question in parliament that this was "firms choosing to acknowledge disguised employment and bring those contractors in-house". Interesting rhetoric but a very incorrect statement of the real reason as to why organisations are doing what they are doing. Firms with thousands of contractors are de-risking and cutting costs. I have colleagues who've been told, go on payroll at a rate of 30% less or leave. How is this an approach to settle disguised employment? It is cost cutting exercise sanctioned by new legislation.
The creation of a new sub-class of Employee – the No Rights Employee. Given a choice a business will want to reduce costs and headcount. Inside IR35 roles mean that effectively a person has no job security, all the tax burden and can be got rid of with little notice. There is also no VAT on an inside IR35 role too. Businesses are going to jump at the chance to reduce their costs, and it won't just be contractors who will suffer. Businesses will turn permanent roles into Inside IR35 roles (because it's the law) and then they can save loads – no VAT, no pension, no sick pay, no holiday pay, no benefits etc.
Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?
A simple observation here – it doesn't matter if you are a small organisation, and know you are small, when the large organisation who you use as your client, bans contractors in the supply chain. These measures are going to put some consulting firms to bankruptcy. They rely upon specialist skills on a "needs" basis (who are contractors) and if they can't service the clients then you end up with no revenue, and you go bust. Simple.
The idea of excluding small organisations from the rules is fine. The criteria isn't necessarily easy to follow however. There should be a very simple measure such as something people already do when lodging returns with the companies house. It would be very simple to just take the small company exemption rules and apply those. The moving from a "small" to "medium/large" assessment also seems unnecessarily burdensome - if this has to be done during a tax year. It makes no sense

administratively to have to suddenly reassess all the contractors during a year.
What will be the effect of these new measures on a chain of contractors and subcontractors?
Where do we start with this one. - I'm a Contractor.
A potential Client says no engagement with Limited Companies. Results in: No opportunities for me.
I join a Consulting firm as a "sub-contractor". Their clients say no engagement with Limited Companies. Results in: No opportunities for me nor the consulting firm. (The consulting firm can't afford to have employees on their books when there is no work (they'd have to pay them).
I now can't get a contract, so I look for permanent.
Firms looking to recruit a permanent don't like long term contractors because they think we'll just leave if the opportunity comes up. The rate for permanents is generally also about half of what I can make as a contractor.
This results in no opportunities for me.
What about if there was a permanent job at a better price in a different location. As a contractor I can run all the expenses of going away from home to that engagement through my business. As an Inside IR35 no rights employee or even a permanent employee I cannot do this. Therefore I simply won't look at those roles because it is cost ineffective to do so. – Result – no opportunities for me.
I use my Agencies as a contact and a channel for new opportunities. They convey the message that there are only Inside IR35 roles or permanent roles out there. - Results in: no opportunities for me.
Conclusion – the new measures are going to severely limit contracting as a choice because the reaction by the private sector is so severe due to the threat of HMRC action and the complexity of compliance.

What about other businesses that use sub-contractors – the administrative burden of having to potentially provide a SDS and a statement of working practice and assessing the business continuously to make sure that there is no movement from a "Small" to "Medium" enterprise is going to eat up valuable time from being a small business. A local firm that uses labour for projects now has to provide each one of them assurances that they have been assessed correctly (despite being a "small" business) just because the sub-contractor needs to know. How is the sub-contractor to know that the company engaging them is a "small" business or not? The burden falls on the small business. So the exemption doesn't really mean no administration.

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?
Make the measures simpler.

Legislate (not promise) that there will be no retrospective tax investigations for any contractor going from Outside IR35 to an Inside IR35, or Permanent role at the same organisation.
Remove the CEST Tool. As it doesn't follow all the employment case law and is HMRC's interpretation of what they want the law to be rather than what it actually is. Let private sector sort their own assessments out.
Put in place an accreditation requirement for assessments. There has to be someone in each organisation that is adequately trained to do the assessment, and it should be regulated. At the moment leaving it to businesses to decide is going to create a vast difference in skills required to do these assessments resulting in incorrect assessments being made.
Codify the employment case law into statute and issue simple guidelines. At the moment the CEST tool embodies HMRCs view on employment law and as it is incorrect it creates confusion. Their guidance also reflects their views on the case law, and as they interpret some of it incorrectly their guidance is also incorrect.
Get rid of IR35 rules altogether. It is overcomplicated and unnecessary. Allow businesses to thrive in a less administratively burdensome manner.

Determining tax status of workers
Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
Tests are not clear to both engager and worker. Very simple reason is that that the outcome of the tests are based upon areas of law. Case law isn't summarised in a nice and easily understandable guide. There are about 1000 pages to go through that embody the actual law. Employment law is complicated. You cannot simplify it into a mechanistic approach. Ask any tax lawyer.
The tests don't reflect the reality of the contracting environment simply because a contractor simply isn't an employee. Businesses that want drop in labour to do work and want that labour to come and go. They don't want employees and additional costs. IR35 assessment processes now means that every contractor is assumed to be an employee unless you can prove otherwise through the assessment process. It relies upon a business having trained resources skilled in doing these assessments. The only skilled people are those that know Employment case law. Organisations don't have this on tap.
What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
Completely inadequate. It is trying to mechanise something that can't easily be mechanised. HMRC will say it complies with the law, but it actually doesn't in fact comply with all of it. What it does is comply with what
HMRC want the law to be, rather than what the law actually is according to the decided cases. It also takes such a narrow view on what is a contract Outside IR35 versus one that is Inside IR35 and leaves the user

thinking that they have a true result when in fact the underlying logic of it is biased towards Inside IR35 rulings along HMRCs interpretation of the law.
I think the issue isn't one of trying to improve it. I think it should be removed completely. There are so many tools out there now that give a more balanced approach. If the private sector has to do their assessments, then let the private sector choose a provider (or do it themselves). Making a government sanctioned assessment tool that is biased towards HMRCs view of the law, rather than the actual law isn't fair on anyone using it.
How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
Let's say you are at an organisation, and you are assessed as Inside IR35. If you disagree, then you appeal to the Assessor which happens to be the engager. Why would any contractor wait around for 45 days, paying PAYE, and NI only to get the same result. There is no independent tribunal assessment on the facts. We have laws for a reason, no-one gets the right to be judge, jury and executioner themselves in modern society. There is nothing compelling the engager to reverse an Inside IR35 ruling as HMRC is only going to be interested in chasing and penalising the engager for an incorrect Outside IR35 ruling. There is no incentive for any organisation engaging contractors to do anything more than pay lip service to an appeals process, knowing full well that they can simply hear all the evidence and still say "don't agree". The contractor suffers at this point not the engager.
A dispute resolution process isn't necessary if both parties interests were aligned. IR35 is forcing the hand of two parties with different interests against each other, and trying to force one of them to toe the line with the other. A contractor is a contractor for a reason – they don't want to be an employee and want to choose where/when/how they work. To put this another way:
It is in the financial interest of the business financially to keep the assessment as an "No rights employee", since they can cut out VAT, don't have to pay holiday pay, sick pay, or provide pension or any other benefits. They can also get rid of the contractor at will. Unless it is a charity, most businesses operate to make money for their owners.
It is in the interests of the Contractor to be assessed as an Outside IR35 contractor because they can pay their own costs, manage their own tax affairs and will take their own risk of not working. They get a premium rate for a reason. It is flexibility that contractors want.
Up until the new rules were announced, businesses have been happy to engage with contractors for decades. There is natural give and take but the interests are mostly aligned. As soon as you allow the interests of one side to outweigh the other then of course that party will take advantage. This is what has happened. Countless businesses are now using their new found "power" to assess and simply push aside all the contractors. They

see the HMRC risk as too great and the potential to save money as too enticing not to do it this way.

Policy objectives and wider context
Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
The objective of the new rules is to try and get the 13.8% employers NI that contractors actually pay, but on a grander scale. An inside IR35 determination will result in this 13.8%. However the reality of choice is that businesses faced with additional costs are taking the easy road and dropping contractors altogether. How is that going to achieve the objective? There is an apparent £3.2billion out there to find – a fiction if there ever was one. The business case doesn't stack up as the OBR did already say.
A simpler way of gaining access to this apparent loss is to put a "contractor premium" license in place. Make the contractors pay a fee to be a contractor. It will be a cost of business to the contractor but allows them to continue business. This doesn't necessarily have to apply to all self-employed people, but those of a certain calibre, such as those that register for VAT for example. Imagine if there were 500,000 self employed contractors having to pay a £2000 fee to continue business. This is an instant £1b to the treasury. A large percentage of them are going to be in similar circumstances as myself. I work in a service industry providing services. If I had to pay a fee to operate then I can do that. It is simply a cost to operating like any other.

Will the Bill, as drafted, achieve the Government's objectives?
No. The fear campaign that is implicit in the Government's approach and HMRCs/Treasury lack of listening to the reviews and/or all the evidence that the whole IR35 situation is creating market chaos. It has changed the market dynamic. It will change it to such an extent that tax revenues will drop. If I can't get work, I won't pay tax. If I can't get work because there are no roles on offer because the entities with the roles are scared of HMRC then the objective has failed to be delivered no matter what the bill as drafted says.

What is your view of the role of umbrella companies in the context of these proposals?
Various umbrella companies are around that are providing unsuspecting or ignorant contractors a seemingly compliant solution. In reality 7 suicides and the Loan Charge regime are the result of such an unregulated industry. Umbrella companies serve no purpose and should be severely regulated if they are to remain. There is no reason for them. They are nothing more than glorified payroll processers who charge the contractor a fee to pay them their own money, and create a pseudo employment relationship.

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
Absolutely not. Read norightsemployee.co.uk. It is a tongue in cheek website but actually reflects the upcoming laws. The government are going to legislate the situation where you tax someone like an employee but give them none of the reasons for being an employee (like benefits and holidays etc). Organisations in the UK will start to shift permanent roles over to inside IR35 roles because they will be legally allowed to do it. The UK is supposed to be striving forward, flexible and improving after Brexit. As a contractor I'm happy to have no rights. I provide for everything myself, including allowing for time off work. I will not be happy to be forced into a situation of being taxed like an employee but still get no rights. It is an anathema to me.

21 February 2020

Richard Carmichael

I wanted to write to you to explain the devastating impact the introduction of IR35 in the private sector (from April as currently proposed) will have on my family's current finances and future financial prosperity. I hope to also demonstrate that I already pay a fair tax contribution compared to an employed person on a similar income. Indeed I will show you that IR35 will place an unfair tax burden on me and will result in a 25-30% loss of my net income! This will ruin my current finances which for the past decade have been based on my Personal Services Company derived income and will inevitably lead me to cease contracting. I will also suggest alternatives to IR35.
Background:-
I am a contractor (consultant) working in the Financial Services Industry. I became so by necessity following the demise of my previous employers in Aylesbury, Equitable Life and then HBOS. Contracting presented a speedy route back into work without the need for me to retrain and start on the bottom rung of the ladder again.
I work through a Limited company which was incorporated in 2011. The company is VAT registered which is voluntary (so I strongly refute any accusation of avoiding tax). I specialise in audit and compliance work (remediation). I have been contracting since 2008 and in those 12 years have had 13 contracts (13 end clients). My clients have included the likes of Lloyds TSB, Barclays, Nationwide BS, Scottish Widows, Santander, RBS, Standard Life, and Prudential. None of my contracts have been performed in my home town Aylesbury. I have to travel far and wide and have worked in Brighton & Hove, Maidstone, Canary Wharf, the City,

Dartford, Northampton, Leicester, Milton Keynes and Livingston. I therefore incur large expenses mainly due to travel and staying away from home during the week. I would prefer to work from home (I have invested in high spec computer equipment) but clients in the Financial Services industry prefer to run contract work centrally from a secure site to comply with the industry regulations around data protection, information security and fighting financial crime. My contracts have all been project based completing work that end clients do not have the in-house expertise for. Project duration can range from a few weeks to eighteen months. However, all parties involved understand the work is temporary and upon delivery of the project the contract ends and there is no obligation on the end client to offer further work or for me to accept it. I compete for all my work on the open market. I fund my own personal and professional development through my business and I provide my own professional liability and indemnity insurance.
My fair tax contribution:-
Outside IR35
I have just completed my tax return for 2018. My PSC turnover was £56,675. My tax contribution to HMRC for 2018 was £19,273. That was made up from £11,335 VAT, £6,588 Corporation Tax and £1,350 dividend tax. My wife and I both have a share in the company so we are able to divide the profits (dividends) between us utilising our personal tax allowances. We are therefore both basic rate tax payers. We can claim full child allowance - we have two daughters of school age and this helps with the cost of school dinners. I am able to offset expenses to tax - I do high mileage (36,000 p.a.). I spend £4,000 on diesel per year (of which approximately 61% £2,440 is duty) and I service my car 3 times during the year. I have to replace tyres, brakes and exhaust parts more frequently than average. I draw a monthly net income of £4,500 from the business. This amount includes returned expenses.
If I was inside IR35?
My £56,675 turnover would be my gross salary. My tax contribution to HMRC would be £15,784. I used the Moneysavingsexpert income tax calculator to calculate that I would pay £11,026 personal taxation and Employee National Insurance contributions of £4,758. I would be a higher rate tax payer and lose the full child allowance. I would not be able to offset any expenses. I would not have an employer, would not enjoy any employment benefits such as holiday pay, sick pay, Death in Service insurance or pension contributions. I would have no employment protection. The Agency Workers Regulations won’t apply to me. My net income would be £3,210.
Summary - Total tax paid through PSC £21,713 (including fuel duty) versus notional tax if inside IR35 £15,784 (plus employer NI contributions £7,821) = £23,605. Is the gain of £1,892 to HM Revenue & Customs worth the damage to my finances and my family's prosperity and the loss of additional economic activity I contribute?

From this comparison you can see that I make a fair tax contribution already from my PSC. Yet my monthly income will fall from £4,500 to £3,210 under the new IR35 scenario. This is going to place me in financial difficulties immediately as practically all of my income will be accounted for on financial commitments. I will no longer be able to afford the cost of diesel to travel to client sites. Indeed I need a net income of £3,600 to cover mortgage, bills, insurances, and food. I will have no disposable income. I would also have to pay Employer National Insurance contributions from my gross salary as well (£7,821). How can that be fair? Why is the full burden of this punitive tax change falling on the shoulders of the contractor (and totally cost neutral to other parties in the supply chain) when it is the client firms who are avoiding paying full employment costs in the first place?
It is very unlikely I could continue my career as a contractor in my profession with the introduction of IR35 into the Private sector. As demonstrated above my net income will fall to equal to or below my living expenses. I would no longer be able to afford to travel the distances I do to compete for work. That is if any work exists as many firms are now not contracting PSCs. I don't know what my future would be at age 54.

Alternatives to IR35:-
I have some potential alternatives to IR35 to suggest. The first is to make it a statutory requirement for all PSC's to be VAT registered. When the flat rate VAT scheme was withdrawn I understand a large number of contractors ceased being VAT registered. VAT at 20% on turnover makes up for a large proportion of the tax shortfall compared to an employed person.
The second is to allow a PSC to be able to declare its IR35 status for the first 24 month period of a contract with a single end client. If at the 24 month stage the contract continues the employer has to offer the contractor a permanent contract of employment and if that is declined by the contractor and the contract continues, the contract becomes automatically inside IR35. This will ensure that transient workers like me are treated fairly.
Thirdly, HM Revenue & Customs target REAL tax avoiders on very high salaries (Public sector senior managers BBC newsreaders etc) through the use of intelligence gathered from tax returns and companies house returns and leave us true self employed flexible contractors to continue to contribute to the success of the economy.
I hope you find my evidence useful in your considerations. I hope the Government can be persuaded to postpone the introduction of IR35 until a proper impact assessment can be completed.

Geeta Chari, Jason Love, Adam Morris & Kaushik Patel

This is a joint submission from the following individuals who work through limited companies. The submission is made in our capacity as the directors and shareholders of these companies.
Paragraphs in the Summary are numbered. All questions are numbered as in the 'Call for Written Evidence'. The paragraphs in the answer to each question are lettered, to avoid confusion. Dated 25 February 2020

SUMMARY

Over the past 30 years the current contracting arrangements have become hard-wired into the way UK companies structure and develop their business models, including their human resource strategies around recruitment and training and development. It has also created a thriving contractor ecosystem to support the changing needs of UK financial services and other industries.
HMRC should accept contracting is beneficial to the economy as a whole, contributing key skills that are helping the UK economy thrive. In this context, HMRC needs to define clear guidelines companies can follow to determine who is inside or outside IR35. At present, those guidelines do not exist and as such it provides a grey area companies are abusing by making blanket "inside IR35" determinations.
Collectively, we are a group of four contractors working through limited companies, for a large, international consultancy to help them deliver a project for a global client. Without any detailed review, the consultancy informed us recently that it has determined we are inside IR35. This approach contradicts Her Majesty's Revenue and Custom's (HMRC) own guidance, which says "reasonable care" must be taken in determining any individual contractor's IR35 status. Some of us have been told not to use HMRC'S CEST tool.
All of us are looking at an average reduction in income of around 35 percent. On top of paying PAYE, NI and very likely employer's NI, we will not receive any of the benefits afforded to, and enjoyed by the consultancy's employees (e.g., paid holidays and sick leave, pension contributions, paid professional development, provision of equipment).
We assert contractors cannot be expected to pay the same as (or greater tax than) permanent employees without receiving the same benefits: we absorb a wide range of costs not experienced by permanent employees and absorb financial risks for the work we deliver.
Companies' use of blanket determinations on limited companies is forcing contractors to use umbrella companies. Our collective experiences of umbrella companies are that they represent poor value for money for both the company and the contractor. They are also unregulated and opaque.
We believe HMRC should conduct a full IR35 status assessment of every contract, at their expense, as they are asserting this position on the economy. We also believe in the current circumstance it would be unfair and inequitable to impose retrospective taxable action on contractors or

companies. We believe anything less will result in an inaccurate, and therefore unjust, blanket ban on all limited companies.
We may therefore decide not to contract in the new tax year; instead, living off savings and dividends from our limited companies while we wait to see if and how the employment landscape settles. The result would be a reduction in revenue for HMRC at a time when economic experts and industry leaders are calling for significant investment in the United Kingdom, and the UK economy is facing a potential worldwide recession as well as the significant uncertainty being generated through the Transition Trade Negotiation process.
Impact of new off-payroll rules on organisations
Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
Collectively, we are a group of four contractors working through limited companies, for a large, international consultancy to help them deliver a project for a global client. The consultancy has many consultants available for work but they do not possess our skillsets, which have been created from over 60-plus years' experience working in the City of London on global change projects in the regulatory space.

As contractors we absorb a wide range of costs: we do not receive paid holidays or sick leave (i.e. all leave is unpaid). We all pay for our pensions, professional training and development, equipment, any professional memberships or subscription, and accountancy services. And, very importantly, we assume all the financial risk for our work, consequently paying for personal indemnity insurance.

Without any detailed review, the consultancy informed us recently it has determined we are inside IR35. Frustratingly, the consultancy has not communicated to any of us the specific reasons our individual contractual arrangements bring us within IR35, making it difficult to challenge their assertion currently. This action, known as "blanketing" in the contractor community, refers to organisations that have taken a broad position to deem all contractors inside IR35 to mitigate risks, without assessing the specifics of any individual's contractual circumstances. This blanketing process was established by HSBC and is being used widely as the precedent across the private sector.

Such an approach is believed within the industry to result in wrong decisions, as there are many different individual factors to consider when determining IR35 status. Presuming every contractor engagement belongs inside the rules, for example, risks mistakes.

Also, this approach contradicts Her Majesty's Revenue and Custom's (HMRC) own guidance, which says "reasonable care" must be taken in determining any individual contractor's IR35 status. While we acknowledge the definition of "reasonable care" can be interpreted in many ways, it is acknowledged that blanket determinations fail to demonstrate this.

We have also had different messages communicated to us individually from the consultancy: some of us have been told not to use HMRC'S CEST tool; others have been warned not to purchase independent assessments, as the consultancy will not recognise them. None of us have received any written position from the consultancy. All this has made what is an already a confusing and stressful experience even more difficult.

We all have near-identical contracts and some of us have completed the HMRC CEST tool. HMRC assesses us as being outside IR35. Some of us have also undertaken independent contract assessments, which corroborate this position.

All of us are looking at an average reduction in income of around 35 percent; some are estimating a higher loss and some lower. On top of paying PAYE, NI and very likely employer's NI, we will not receive any of the benefits afforded to, and enjoyed by the consultancy's employees (e.g., paid holidays and sick leave, pension contributions, paid professional development, provision of equipment).

Also, our contracts can be terminated without any due cause, with no notice; a clear disadvantage compared to rights afforded employees.

The burden of tax under IR35 is certainly unfair at best given that all costs are being transferred to the contractor with no apportion of benefit for bearing those costs.

And, if, for the sake of completing the project for the consultancy, we do, reluctantly and inaccurately, accept our new contracts are inside IR35, it appears HMRC can now treat our previous contracts with the same consultancy as also inside IR35, requiring us to pay PAYE and NI, on any sums earned from that previous contract.

Such an adjudication will wipe out savings we have worked hard to achieve in previous tax years.
What will be the effect of these new measures on a chain of contractors and sub- contractors?
Given the uncertainty surrounding the legislation, the blanket determination applied by companies – and the prospect of our previous contracts being subject to IR35, we may decide not to contract in the new tax year; instead, living off savings and dividends from our limited

companies while we wait to see if and how the contractual landscape settles.

This will involve living frugally on the savings we have accrued and the mechanisms available in our limited companies. This will allow us to function without claiming benefits. The result of these actions would be a reduction in revenue for HMRC.

Also, by removing ourselves from the marketplace, key skills will be lost, reducing the quality of project delivery. A similar effect occurred when IR35 was introduced into the Public Sector in 2017, where there was a significant talent drain into the Private Sector. This time there is no such alternative and we believe the talent drain will become a common issue within UK's private sector at a time when its importance in the post-Brexit UK economy has never been higher.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

HMRC needs to define clear guidelines companies can follow to determine who is inside or outside IR35. At present, those guidelines do not exist and as such it provides a grey area companies are abusing by making blanket "inside IR35" determinations.

Even representatives of the consultancy we are working with have complained about HMRC's lack of clarity regarding the determination of contractors' IR35 status. The only area of clarity provided by HMRC appears to be the penalties for failing to comply with the legislation. Such an approach is generating a highly risk-averse position from companies, penalising contractors, potentially damaging and destroying an essential element of the economy – and in the longer-term eroding the very revenue the legislation was aiming to generate.

Determining tax status of workers

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

Over the past 30 years the current contracting arrangements have become hard-wired into the way companies structure and develop their business models, including their human resource strategies around recruitment and training and development. It has also created a thriving contractor ecosystem, which is contributing to the health of the UK economy through flexible and agile seasoned professionals offering services and skills that are no longer available within companies.

Together, these elements create an integrated, nuanced and complex set of relationships, interdependencies, opportunities and activities.

We accept there are contractors who have been installed in organisations for many years – and, who, in almost all respects, are disguised employees (and paradoxically now have many of the rights of permanent employees through the longevity of their contracts). We agree such situations needs to be resolved – and for those contractors and their clients to be held responsible for their tax liabilities. However, in line with the spirit and aim of the current tax arrangements, many of us deliver specific, project-bound work and then move on.

The government's vague and unsophisticated approach to applying IR35 currently does not take into account these important elements – and risks creating a "throwing-the-baby-outwith-the-bathwater" scenario.

We suggest in-depth assessments of the work being done on a case-by-case basis, involving legal reviews and interviews with the contractor and client, is an adequate and appropriate test. For example, our project, a global change project spanning Asia-Pacific, Europe and the US, is highly complex, requiring careful sifting to determine any possibility of "disguised employment".

Also, the vast majority of employers are, unfortunately, arriving late to IR35, with little understanding of the regulation or its impacts. Combined with HMRC's vague and insufficient guidelines – and the precedent set by HSBC, it is only creating ambiguity, uncertainty and the current situation where large companies are exercising their might over individual contractors, who will have no means of recourse.
What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
The current tool is a very blunt instrument (e.g. the questions asked are not sufficiently detailed) – and, in our case, not being accepted by the consultancy (for the reasons outlined above), even though HMRC has said it will stand by the determinations produced by their tool as long as the information provided was correct.

We believe a more detailed questionnaire is needed that does not provide ambiguity for companies to use against contractors. Also, clearer definitions from HMRC of key determinant elements (e.g. substitutionality) would assist companies and contractors to understand what is intended and to be able to test and evidence such measures accurately.
How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
Currently with the vague guidance from HMRC, there is too much ambiguity. In response, companies are using their resources to impose a risk-averse blanket position on contractors. And with such vagaries in the

guidance, contractors have little to work with in terms of contesting companies' positions.

We believe HMRC should conduct a full IR35 status assessment of every contract, at their expense, as they are asserting this position on the economy. We also believe in the current circumstance it would be unfair and inequitable to impose retrospective taxable action on contractors or companies. We believe anything less will result in an inaccurate, and therefore unjust, blanket ban on all limited companies.

Also, where a company determines a contractor is "inside IR35" and the contractor believes they are outside IR35, we believe a truly independent arbitration process should be available whereby the contractor can get their contract reviewed without the outcome being influenced by the contracting company. The consultancy we are working for is offering to provide an independent assessment, however, we are not being told by whom – and whether the independent assessor has had any role in the initial blanket determination. If they did, then it's highly unlikely they will assess individual contracts as being outside IR35.

Policy objectives and wider context

Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

HMRC should accept contracting is beneficial to the economy as a whole, contributing key skills that are helping the UK economy thrive.

We assert contractors cannot be expected to pay the same tax as permanent employees without receiving the same benefits: we absorb a wide range of costs not experienced by permanent employees and absorb financial risks for the work we deliver.

One suggestion is HMRC allows all contractors to pay an annual 'inside IR35' fee to HMRC, in return for not having their contracts assessed. If the contractor chooses to pay the fee, pegged to earnings but not disadvantaging them vis-à-vis permanent employees, all of their contracts will be deemed exempt from HMRC probes for that financial year. If a contractor believes they are outside IR35, they would not pay the fee. If HMRC receives evidence of misclassification, it would then be justified in conducting a probe. In no case should the contractor's client be responsible for any taxes.

Will the Bill, as drafted, achieve the Government's objectives?

We don't believe the Bill will achieve the Government's objectives. Instead, we believe the Bill, as drafted, will drive contractors out of the Private Sector as most large company introduce blanket 'inside IR35' determinations. It will cause financial hardship and greatly disadvantage many highly skilled contractors – and those who work in the attendant

contracting ecosystem, who have invested in their knowledge and skill set over many years into helping our economy grow and thrive.

We also believe the Bill, in its current form, will also create additional costs for companies, as they will either have to absorb additional Employer NI costs or recruit and develop new people to fill the gaps created by contractors leaving the marketplace. Such actions come with attendant costs; costs that companies are managing through the contractor marketplace currently.

Also, highly skilled and experienced contractors will look to maintain their hard-earned day rates and may demand increases in their day rates commensurate to the increase in taxes they will be expected to pay, if they are determined to be within IR35 (e.g., this report of such demands from contractors working within Thomson Reuters currently). Such demands may prompt companies to recruit lower cost, less experienced and skilled contractors, with the attendant drop in quality business outcomes.

Indeed, with the UK economy facing a potential worldwide recession – and the significant uncertainty being generated through the Transition Trade Negotiation process, this blunt instrument will significantly handicap our collective ability to respond to the opportunities and economic realities we are facing as the United Kingdom in the short- and medium-term – and impair our true competitiveness in an increasingly aggressive global marketplace.

It will also, ultimately, reduce the revenue collected by HMRC, at a time when economic experts and industry leads are calling for significant investment in the United Kingdom – and to which the current government itself is committing in their recent manifesto statements.
What is your view of the role of umbrella companies in the context of these proposals?
Companies' use of blanket determinations on limited companies is forcing contractors to use umbrella companies. Our client has offered this as one of a small and very restricted set of options in response to their initial determination. Our collective experiences of umbrella companies are that they represent poor value for money for both the company and the contractor. They are also unregulated and opaque. From a contractor's perspective, they could lock us into pension plans and working practices that are not suitable for us in our specific circumstances.
How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

It is absolutely unfair. Lower-skilled contractors (e.g. drivers and delivery people) can be taxed as sole traders with Class 2 and Class 4 NI rates. There is no reason why a highly skilled contractor, who takes greater business risks than a permanent employee, should be disadvantaged.

25 February 2020

Martin Charlton

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved? (Q7)

1 Introduction

I am a contractor working at a large defence company within the UK, I am employed by a limited company of which I am the sole Director. Over the last ten years I have worked at approximately eight different defence companies, providing specialist design engineering skills to projects vital to the safety and efficiency of the Armed Forces. Having worked for many clients I am able to convey different working practices and methodologies to new clients, thereby improving their products and businesses. I became a contractor to gain these different experiences, work on a variety of projects, and provide some flexibility to my work life balance. I fear all that will be lost if I am forced by the upcoming tax regulations to close my company and become an employee.

2 Using CEST

Within the last few days I have used the HMRC CEST tool to assess how my current contract would likely be viewed in terms of IR35. I was surprised to discover that my contract would be inside IR35. After my initial shock I gave greater consideration to the questions and came to the conclusion that the whole process appears fundamentally flawed. I am not pretending to know the inner workings of the tool, nor how the determination is arrived at. I assume it is using a point scoring system. However, I believe the CEST questions are designed to give an unfair and biased view, they appear to start from the premise that the respondent will be inside IR35 unless there are strong reasons not to be. Many of the questions seem to be designed to show that the contractor has the same behaviours as an employee. For the most part, even as a contractor, I have to behave like an Employee, I do not work in isolation, I have to interact with client employees, to gain their trust and assistance in order to carry out my work in a professional and efficient manner.

Unlike employees I do Not:

Receive paid holidays

Receive sick pay

Receive pension contributions

Have a three-month notice period, which is the norm for the client employees around me

Receive training on new systems and processes

Attend work seminars with paid for accomodation

Benefit from employee rights i.e. unfair dismissal

Attend team briefs

Receive anti-static clothing necessary to access certain areas

Receive free company T Shirts

Attend the Christmas Meal

As a Contractor I:

Do not request time off for holidays, I inform the company when I am going

Do not request days off, I tell the company in advance when I will be out of the office

Have only a one-week notice period

Have to own a limited company

Have to buy Professional Indemnity Insurance

Have to buy Public Liability Insurance

Have to employ an accountant

Of course, being professional I will try to fit any time out of the office around my current project, but ultimately, I decide. The client could terminate my contract, giving 1 weeks' notice, but this certainly would not happen if I were an employee as I would be protected by employment law (it may lead to a warning but I do not think it would be an offence that warranted immediate dismissal).

3 Conclusion

CEST should include more questions to discover if the contractor is not treated in the same way as an employee.

It appears that the main problem HMRC have with contractors is that they are not paying as much tax as an employee, even though contractors do not enjoy the same rights. It is true that as a contractor I can arrange my circumstances to reduce my tax liability, but not by that much. A number of years ago there were ways in which a contractor's personal tax could be dramatically reduced but these loopholes have been steadily closed off. Now we are mostly left with some well controlled expenses, minimum PAYE, and dividends. Tax on dividends has recently changed to enable HMRC to receive increased revenues. The result is that the Tax I do not pay via PAYE is mostly offset by the tax paid via Corporation Tax and Dividend Tax.

I think that this new introduction of IR35 will be bad for the industry in which I contract. Many companies are banning the use of contractors, which will lead to project overruns. In some cases, these overruns could be significant, particularly if contractors with the necessary specialist skills are unavailable due to having taken permanent employment with a competitor. I provide skills on a temporary basis, as and when required, if I am forced into permanent employment what happens when those skill are not required on a project?

Like a great many contractors doing similar work, I am small fry; the additional tax collected will be minimal but the disruption to projects and client companies could be significant. Possibly the disruption and costs will outweigh the increased revenues? Did anyone at HMRC consider only applying the new rules to the larger 'avoiders' of tax? Perhaps anyone falling into the highest tax bracket?

25 February 2020

Anthony H J Chan

Capacity which made: Corporate

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

Study by the CIPD and IPSE, the association for independent professionals and the self-employed, found more than half (51 per cent) of public sector hiring managers thought they had lost skilled contractors because of April 2017's changes to the IR35 rules, while nearly three-

quarters (71 per cent) were facing challenges in retaining their contractors.

Draft Finance Bill proposal has had no significant changes.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

Blanket bans on PSCs direct or indirect has been applied and no assessment being made by Large Corporations in the Finance sector.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

Not answered.

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

Many contractors and sub-contractors face the prospect of either having part of all of the Limited company business income being forced as PAYE and no longer be able to operate as a business.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Not answered.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No. The Limited Company PSC could be engaged with multiple client contracts and have other sources of taxable income.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Not answered.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Ineffective and lack any realistic safeguards to enable challenging the client. There should be an adjudication process which the Limited Company PSC could submit a challenge and for the evidence to be independently assessed rather than the client marking their own homework.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Not answered.

10. Will the Bill, as drafted, achieve the Government's objectives?

Don't believe will achieve higher tax receipts where contractors has been reported to retire early, work outside the UK, or refuse to work classified as inside IR35 roles.

11. What is your view of the role of umbrella companies in the context of these proposals?
Umbrella companies are an unnecessary intermediary and are at large unregulated.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

The proposal to treat individuals who are taxed as employees and enjoy no employment rights and have to bear to risk of temporary employment is unjust and ridiculous. The longer term impact could inadvertently enable unscrupulous firms to fill and replace full time employment roles with no rights employment roles.

Thank you for taking the time to read my comments. I humbly ask the Finance Sub-Committee to consider 2 points:
What incentive would there be for firms to offer full employment roles when they could hire a similar worker who pays HMRC the tax they require and is not mandated to offer any employment rights?

Why would a UK Incorporated Limited Company used to elicit and supply contract business have a different tax treatment to other UK Incorporated Limited Companies supplying a service?

24 February 2020

Simon Churchley

I understand you are interested in the effect of Government's proposal to extend the off-payroll working rules. This has directly affected me and I will be out of work from 5th march this year as a consequence.
I provided independent engineering governance/process services to an Aerospace company for products destined for the Royal Navy for between 0 and 8 hours (Occasionally more when travel required) per week, based from my home location. I am part-time retired and like to think the company and country benefit from a lifetimes RN marine engineering experience.
On the 29th January I received an e-mail from my client advising that I was categorised as a Systems Engineer along with a CEST form pre-populated (on 12th December) with 'blanket' answers for all those categorised as Systems Engineers. Needless to say all freelance Systems Engineers are assessed as 'Inside' IR35.
My E-mail reply contained the following text (adjusted to remove names). The response may seem over reactive, but I have to protect my position pre-Apr20 and, although I recognise HMRC have stated assurances in this regard, their track record suggests it would be folly to reply upon on such assurances.
"Dear IR35 Team,
I acknowledge receipt of the correspondence below.

I do not agree with your assessment and challenge your claim that you have taken reasonable care with your legislative obligations on the grounds that:-
You have not assessed me as an individual.
You have used the HMRC CEST tool which is widely criticised within the industry, legal profession and generally not thought 'Fit for Purpose'.
It is on the record that HMRC themselves ignore the CEST result in Tribunals, so CEST is meaningless and offers no protection for either myself or <Client>.

Should you wish to review your decision I attach information (originally provided to principle points of contact in Nov 19) that may help you understand the services I provide within the constraints of the <Company> environment.

For the record and to be clear, I give notice of termination of <my company> - <Agency> contract (To <Agency> and <Client> for Information) on the 5th March 2020 and will endeavour to agree an earlier date.

Rgs
Simon Churchley (Agency Ref - nnnnn)

PS, Having essentially retired to Devon (with a <Client> pension) in 2018, I was honoured to continue a part time, remote contribution exploiting my lifelong experience for the benefit of T26. Frankly I can't be bothered with this nonsense and will not engage in any further debate on this IR35 issue, particularly as its blatantly obvious <Client> have put no thought or effort into a considered response to HMRC."
I received a template/boiler acknowledgment of my reply which ignored my individual circumstances.
I am happy to provide copies of the e-mail exchange and the detailed CEST answers provided by the client if requested, but I daren't include this now or the submission will be excluded.

Caroline Clark

Employee (mainly consultant) 11 years

Contractor for 25 years – many short contracts

Working across industry multiple sectors mainly Private / Privatised; Utility and Financial Service as liaison between Business and IT.

Impact of IR35 into public sector; **Forced into early retirement** despite potential life-changing loan[1] charge tax demands which will take all my pension and likely need to sell property. Too few Agents have been able to adapt and give their clients the confidence to work outside IR35, roles dummied down and offshored, too senior for roles and spent too long in contracting to be considered for permanent. IR35 has blighted my contracting career and made me advise others not to do it.

[1] Went with umbrella to avoid protracted IR35 contractual negotiations, Agent/Clients indifference was concerning me / no insurance at the time and had 4 consecutive contracts in one year.

Public Sector Experience

1. Public Sector – working through a "consultancy" – unsettling

- Offshore agent rang with little understanding of the role but confirmed outside IR35
- I feel I was very exposed with no idea on how to check everything was in order.
    - It appeared I would be working through a "consultancy" so IR35 did not need to be considered – the consultancy appeared to be a Ltd company set up by an architect and project manager.
    - I was informed verbally that IR35 was not relevant as I was working through a consultancy – I was not sure so had some changes to align the contract with the way in which I planned to work and aligned with outside IR35. Unusually the Agency just took the amendments.
    - After 4 weeks on the job I was let go to be replaced by someone known better to the "consultancy".

I had to assume all was correct as it was a Government department. Issues;

- I had **no idea if I did or did not need to worry about IR35**, or who to consult?
- The "**consultancy**" were non UK nationals band and **could disappear overnight**, all were contractors. They had apparently responded and won an invitation to tender (I had no evidence of this).
- The **Agency was offshore** – would they be culpable for the tax?
- If HMRC could not get the tax off the consultancy or Agency then **would I have to pay the tax**?
- What was my position legally e.g. if I was not paid?
- I took reduced rates – both the agency and consultancy were taking cuts.

2. Public Sector/Regulator / Commercial arrangement – informed and efficient agency

- Agent rang appeared to understand the service and client; confirmed outside IR35

- Interviewed with the consultancy – all contractors - who had the contract with the commercial company
- Was **provided with IR35 friendly (outside) contract**, I and the client were provided with a **questionnaire on how I was going to work** and the agency **paid for IR35 insurance cover** – I assumed this covered the client and I, but I had my own insurance still running.

3. Public Sector/Commercial arrangement

- Agent rang – Project Manager had confirmed outside IR35
- Passed all phone interviews etc – everyone invested quite a lot of time at this point
- Driving into final interview, agent rang: HR did not have the risk appetite and were making it inside IR35 – with an immediate 20% hike in rates. (see notes below, risk is the overarching decision maker). (**I cancelled my application, interview and returned home –** this was a contract in a new area I had been trying very hard, and was very keen to break into and **have been unable to since** i.e. it was career changing)

Lessons Learnt – Finance Bill

There are some reputable agents, but there is a **lot of ambiguity and misinformation with no regulation, redress or protection for contractors** leaving contractors very vulnerable (**Evidence**; see 1. Public Sector – working through a "consultancy" above);

- Public services are working through tendering and "consultants" – **contractors working through consultants** are working in exactly the same manner as before, but **IR35 is not a consideration** – this **is complete bureaucracy**
- With **New legislation need to include additional intermediaries** – **less ability for oversight** by the contractor, no checks and balances as to whether they are unscrupulous (e.g. Loan Charge fiasco),
- **More vulnerable to being taken advantage of** e.g. claiming payment (intermediary companies can fold and disappear or are registered in different countries – EU reciprocity will not hold for much longer, many international)
- **Lower net as payment for extra "consultant" intermediaries, insurance etc** now take out, without any further tax being raised
- **Unable to compete; UK tax payer have all these overheads**, when the companies can bring in offshore salaried staff almost as easily.

- **Restricting business options**; For reasons to "protect their business" the contractor has to sign up, for an extended period to only work through that;
    - Agent for that consultancy
    - consultancy for that client.
- The **Public service** extra "inside" **IR35 rate uplift** has an increased direct project cost, but **no cost to the Treasury** as they will get that back from UK contractor taxes – the **private sector** is different it will be a **direct cost**.

The Contractor is forced to work more as an employee to avoid the IR35 test; the consultant is working "as" one of the consultants not an independent contractor so IR35 is not relevant;

- Rather than the contractor running their own business they now seem totally dependent on **layers of other arrangements which they have no understanding of** or say over
- are subject to a **lot more risk** such as non payment,
- As they are working to the "consultancies" agreement with the client, they are **constrained on how they act and perform their task** i.e. they are actually working more under direction and control than they were before, and their loyalties are to the consultant not to the clients.

<u>Extension of rules to private section adequately assessed?</u>

<u>NO</u>

Same issues all along –

- **The rules must be unambiguously up-front**; another "interpretation" of the **rules** could result in a different answer
- **The HMRC must have the confidence of the clients so they can make reasoned judgements** based on the provision – otherwise its just based on risk appetite (**Evidence;** see 3. Public Sector/Commercial arrangement above)
- **Status is based on risk appetite** not an understanding of employee/non employee

Clients don't understand what the rules mean.

if someone is busy and asks me for a cup of coffee, getting them one is human nature not direction **Evidence;**

- people have refused taking coffee/tea from me as they are afraid it might be taken as bribery or control.

- my main contact would not meet with me alone in case it was misconstrued as her giving me direction
- the client wanted to improve team working and so wanted to invite contractors to a Christmas dinner, they were concerned it would be indicative of employment, after protracted discussion they landed on inviting them, but asking contractors for a donation!
- Some contractors do not use the clients canteen as they think this could be construed as employment (although they did have access to it anyway), but the canteen was where I did a lot of networking and discussed business with very busy users
- I had a builder, arrived with a heavy bag, the builder, unbidden, came down and carried the bag up the stairs/hill – this was not in the contract so is he now deemed my employee?

There is no protection for the clients against contractors; clients don't want to be ransomed by contractors who can just tell HMRC the client was telling us what to do and the clients get a big fine.

There needs to be a clear **difference between professionalism, providing a service** (not just deliverables) **and employee**. The client is concerned I will be rude to their staff, talk loudly to my friends on the phone and watch Wimbledon on my work terminal (yes we have had them all) – these are all professionalism nothing to do with direction and control, but how does the client know where the boundaries are?

Decisions are made based on risk, Finance Bill assumes that contracting is something its not – private sector have differing resource demands so they pull in people with the relevant skills as and when they need them, they cannot afford to train everyone as to what IR35 is to ensure nobody ever tells a contractor how to do something.

Evidence; One of my Clients admitted that they just did not trust HMRC, thought they were out to make and example of a company, take loads of money from them for any perceived infringement and then use that money to grow their tax investigation team to get more companies. They were scared and just wanted out, they really did not care what the contractors got – their view always has been that they will just get someone else if you don't want it, off-shore or not.

Clients get in experience where they have gaps – so those people can work out what is needed. If they had the skills to define the service then they would probably not need the contractor.

Liabilities are transferred to the Contractor. The Agent picks up all the Clients liabilities including taxes, and then backs them off to the

contractor, so contractors would end up paying tax demands potentially costing more than they earn.

- The contractor, not the Agent will pick up the tax liability **Evidence:** I had started at an urgent lucrative contract on the understanding of an IR35 friendly contract, but when I got it, unlimited liabilities were backed off onto me – so had the HMRC told the agent to pay taxes related to my service, they would have paid them and **taken the tax plus agents/clients direct and indirect costs from me without giving me any opportunity to defend them**. Even with insurance, I would not have been covered as I have to use the insurances advisers and I have to minimise costs – neither of which I could do in such a case. **I had to walk away** without any recompense and I had been out of work for some time, and have been since and I suspect neither the client nor agent will look at me again.

Is the exclusion of small organisations sufficiently robust?
No
Don't understand relevance of criteria – why 50, if its only a couple of people why does the turnover matter
Evidence; see 1. Public Sector example above. I think as I was working directly for small "consultancy" (of 2) they thought it fell under this exclusion although the main client was not small – If this is actually the case then its crazy, all we are doing is adding another intermediary more cost and exposure for the contractor for nothing.

What effect will these new measures have on a chain of contractors and sub-contractors?
Companies will stop investing in their contractors and they will encourage high turn-over to avoid any potential issues **Evidence:** E.g. Royal Mail has a policy not to keep contractors longer than 2 years as they are concerned there will be IR35 implications.

As with any successful relationship – including management consultant ones with their clients – the contractor needs to be integrated with the client to be able to understand and offer them relevant services, if the client is constantly concerned they might be seen as holding them there when there is say no work, or its outside the original definition, the contractor/client relationship will no longer work.

What should HMRC do to help businesses understand the new administrative rules?

Ensure the rules allow the client/agent/contractor to have a definitive category – there are some options as to how this is done.

Tax **needs to go back to basics so there is one system, the base elements (**which can be defined unambiguously without the need for interpretation) **need to be defined and tax based on the combination of elements** which apply and **not just an in/out** category, then it could fairly be applied across all workers and clients and agents could understand the differences. The HMRC and tax payers will all have issues until they stop trying to fit an in/out across a whole spectrum of different ways of working.

Evidence; There are insurance companies which review the contracts and returned questionnaires and deem it in or out – if they can do it why cannot HMRC – but the turn-around needs to be fast, and if they only automate it there will be an element of gaming.

Determining tax status of workers

See immediately above, need an unambiguous set of criteria. Needs to be quick – they just want flexible resource in to do a job – it's the kind of contract not work that makes one employed or not.

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker?
No; there is confusion between what is professional and "employee" behaviour and currently open to interpretation by client, agent, contractor, consultant, HMRC, courts.

The use of "employee" is completely artificial and confusing, "employee" is specific in law – if its not this definition then don't use the word. Any category needs to be clear and ambiguous otherwise they need to find another set of categories, ridiculous as a worker you don't know what status you are and need to go to court to determine it.

What is your assessment of the Check Employment Status for Tax (CEST) tool?
Its not definitive so of no value, it only informs people as to the types of consideration.

Its major criteria is substitution without "client agreement" – "client agreement" is not clear.
Clients think that means they higher a contractor and the next day they can just roll someone in off the street who might not fit with their culture, do security checks one etc. Not even consultancy's substitute without the clients agreement however informal that check is.

Does the CEST require improvement? If so, how might it be improved?
It needs to be improved to the level it can be used as evidence of the category determined. If its just an indicator its not of any use.

Policy objectives

In your opinion, are there better or simpler ways in which the objective of the new rules might be achieved?
Yes – as above. Have a **set of unambiguous questions** – with computers a large range of questions could be detailed and then provide levels of meeting **criteria making up the assessment/final tax due**. The contractor/Agent could complete it and the company verify/approve it.

Tax should be **related to circumstances**, currently if a person takes a contract a long way from home and they are deemed inside, then their **expenses come out of their net effectively curtailing mobility** – whereas the employer, who will be in the position for a long time and likely to move locally, would have had relocation and it would have been paid by the company / gross.

Will the Bill, as drafted, achieve the Government's objectives?

No

HMRC have simply moved deeming in/out responsibility to companies – but they have not resolved the uncertainty of the status and the tax ultimately can still fall on the contractor who in reality has no say in the status.

HMRC to provide simple, clear, unambiguous guidelines, if they can't do this then their categories do not work. Consider regulating/registering recruitment agents and/or intermediaries or even contractors.

History goes something like;

- Contractors are self-employed.
- Clients are concerned that HMRC might deem them employed and charge the clients taxes.
- The Clients back the tax off onto the contractors.
- The contractors work under Ltd companies to limit their liabilities.

- Contractors with Ltd companies distribute their funds other than through PAYE using dividends, avoiding the employer NI which employee's and self-employed do not pay
- HMRC introduce IR35 as they see less tax than normal employer rates being paid
- The Clients realise the companies just close down and could end up being culpable for tax, so include the contractors themselves in the liabilities.
- Contractors go through umbrella's to avoid ambiguity in IR35 assessment
- Umbrella's see opportunity to use Loans to pay contractors and take a cut themselves
- HMRC fail to collect tax's from Loan payments so request special legislation including to collect tax from contractor where company no longer exists
- HMRC move deeming in/out and payment responsibility to agent/companies

Through all of the above steps, we are still at step one – how do you define whether someone is effectively self employed – that is all this is about.

However the tax system now needs re-vamping, with all the different worker situations, gig economy, 0 hours, part-timers, remote working etc etc, the tax system needs to go right back to basic entitlements/receipts and tax from there not some sort of artificial "employee or not" category which no longer resembles the work place.

Clients are risk adverse and time short – they do not have time or inclination to do some sort of assessment, which if incorrectly done could land the with huge fines, and have no time to train all their staff on how to deal with certain contractors to ensure they are outside – so they blanket assess – only they are not allowed to blanket assess so they a) offshore and b) pass a policy not to deal with PSC's.

The contractors now need to go through umbrella's – with no controls on the umbrella's and the amounts they charge the contractors, exposing the contractors to extortion and issues such as the loan charge – which they are still recruiting contractors in for.

Its just go worse, nobody trusts anyone and its getting more and more confusing. Need to go back to the drawing board on the whole of tax and engage the parties.

12 February 2020

Iain Clark

Background
I have been contracting for around 6 years and was engaged locally in Edinburgh from September last year. At the tail end of November contractors were advised by the client that if they did not want an IR35 status determination they had to provide notice by mid-January. This would result in contract termination at the end of January, effective from the end of February to enable all Limited Company payments to be made in the current tax year.

Issues with Her Majesty's Revenue & Customs
I decided that I did not want a status determination from my client which meant that my services were discontinued from the end of February. The primary driver of my decision was mistrust of HMRC and a fear that they would look at clients Outside IR35 in the 2019/20 tax year and determine anyone working Inside IR35 with the same client in the 2020/21 tax year would be subject to some form of look back with HMRC basically deciding that if you were found inside post the tax year end then you must have been inside pre-tax year end (irrespective of blanket bans, risk management by firms, etc.). I'm afraid that the HMRC statement of no *automatic* look back had sufficient caveats to make contractors wary.

I would also say that if HMRC do perform a look back are they conducting a full and fair assessment of the Corporation Tax and dividend taxes paid or are they narrowly focussing their efforts on this is what PAYE would have been due when comparing Outside and Inside IR35 cases? I honestly do not know the answer, I only suspect that I do.

The late decision to amend the implementation date to apply only to services conducted post 5th April made no difference. I asked for my contract to be restored to its original end date of end of March but the client refused as they had already made arrangements based on their work done to meet the original deadline (this is also likely to be an issue for last night's announcement of a delay in implementation for 12 months but more on that later).

I watched Monday's House of Lords proceedings with interest and I have to say that I was less than impressed with the performance of the representatives of Her Majesty's Revenue & Customs and Her Majesty's Treasury. The lack of detail and evidence supporting their responses was, quite frankly, staggering. It appears to me that the House of Lords has a greater grasp of the impact of these changes and the concept of fairness than people who have been working on this for an extended period of time.

HMRC have subsequently released a 3 page document of the testing of CEST which has been clearly described as inadequate in a variety of online publications.

Post IR35 Impacts
Following what was effectively the implementation of IR35 rules by some businesses at the end of February there has been a dearth of Outside IR35 contracts in the financial services sector, either as a result of blanket bans or the vast majority of determinations being categorised inside IR35 (my original submission stated my opinion that determinations are based on the risk appetite of organisations to have exposure to a tax liability / HMRC investigation and the NHS evidence on Monday would appear to support my opinion).

I was lucky enough to find a new 5 month contract (Inside IR35) working in Leeds from the beginning of March. This means that I have been travelling for 4 hours to my client's office on a Monday, staying 3 nights in a hotel and returning home on a Thursday after a further 4 hour "commute". As well as being away from my wife and 3 children as a direct result of IR35 changes, I have had to accept an inside IR35 contract where I am forced to pay travel and accommodation costs from my net pay having had deductions for Employer's National Insurance and Apprenticeship Levy, Umbrella Company costs and Personal Tax and Employees' NI. In HMRC's evidence on Monday they accepted it was up to Company's as to how they wanted to implement IR35 and it is quite clear that they have no idea of the concept of fairness in the new arrangements that contractors are being forced in to. In fact, based on Monday's evidence, I am not sure that HMRC fully understand the impact of Inside IR35 and Umbrella Company arrangements. Do they get that contractors are paying Employer's NI in addition to Employee tax and NI?

Coronavirus Impacts
The House of Lords Committee explored on Monday the impact of Coronavirus on contractors. I received a call yesterday morning advising me that my contract is being terminated due to the project I am engaged on being postponed indefinitely. I am awaiting the formal notification but there are sufficient contractual rights that the Company does not have to provide the 4 weeks' notice I would typically expect as there are rights for immediate termination for projects being cancelled due to unforeseen circumstances.

Whilst I am aware of other contractors on this project having been verbally served notice, I have not heard of other contracts being terminated although anecdotally I am hearing of other projects being cancelled or postponed.

You could say that this would have happened irrespective of the IR35 legislation and, yes it could have. However, the contractors that have stayed with the client I was providing services to previously are all currently carrying on providing services, so I believe that the fact that I am now out of contract is purely down to IR35.

I also have no idea as to what my "status" is and therefore what my rights are. I was "employed for tax purposes" when I accepted an Inside IR35 contract so am I now unemployed with rights to benefits or do I qualify for other measures as I was self-employed until the end of February and "employed with no employment rights" after that period?

Time will tell but with projects being postponed / cancelled my expectation is that I will simply have to ride out the Coronavirus storm and hope that contracts become available as the country looks to recover physically and economically from its impacts. Quite clearly HMRC will be getting no extra tax from me during this period. You ruthlessly exposed the inadequacy of HMRC's previous cost / benefits calculations so I have no faith in any of their calculations but I am willing to bet that any loss of tax revenue is ascribed to Coronavirus and not to IR35 despite my opinion that I am out of contract due to IR35 (influenced by Coronavirus).

Delay of IR35 Implementation for 12 months
For me this is too little, too late. My previous client couldn't change anything in February when the first of HMRC's late changes were announced. What makes HMRC / HM Government believe that business can reverse all of the changes they have been making with less than 3 weeks' notice?

What do I do now that I am without contract? I have already been in discussions with my accountant about closing my company down as there have been no Outside IR35 contracts available – will this change anything, should I keep the Company going? I have no answers to these questions and, until the market settles down, I don't think anyone will.

Press reporting of the delay has been interesting, and this is an extract from City A.M.

…. "*Barclay confirmed that the changes, which will clamp down on **tax avoidance** by targeting contractors for companies who are, in practice, providing the same service as employees……*"

…. "*Barclay said that the move is part of a broad package of measures the **Treasury has announced to protect the economy** from the coronavirus outbreak*."

Are you really telling me that the Chief Treasury Secretary is saying that he has announced measures to protect the economy which include delaying clamping down on tax avoidance?

What Happens Next (What Should Happen Next)?
HMRC have already stated that this is a delay and they fully intend to proceed after the one year delay. Surely this is an opportunity to address the issue of fairness, the wider considerations of what being employed means (for all purposes not just tax) and to find a solution that meets everyone's needs.

The session on Monday clearly demonstrated that HMRC have a single lens which is contractors providing the same service as employees should pay the same tax. Quite clearly this is a flawed assumption as my Inside IR35 contract has me paying Employer's NI and Apprenticeship Levy (as well as Umbrella Company fees) so whilst the HMRC tax take may be the same it is inequitable that Companies pay NI for employees while it is the service provider that pays Employer's NI and Apprenticeship Levy when they are "employed for tax purposes".

I would argue that if I was providing the same service as employees I wouldn't be engaged, the whole reason I am being engaged is that I have skills / experience available that the Client does not have access to. However, that is not the main point here which is that you are either employed or you are not employed – you cannot be employed for one purpose (generate tax) but not another (receive rights). My initial submission has already pointed to the dangers of this and I fear that my children will end up in a no rights economy.

My next point is that there needs to be an agreed and simple definition where people understand whether they meet some objective tests which determine whether they are employed or whether they are self employed. As has been pointed out CEST is not fit for purpose and companies are determining people inside IR35 as a risk mitigation strategy, not a fair test of employment status. I am not a lawyer and genuinely believe that I am self employed providing services to a variety of companies over the past 6 years but IR35 case law is complex and there needs to be a simple means to determine this.

Look at my circumstances, I have been told that my contract has been terminated. Am I an employee with employment rights or am I self employed and I therefore have a need to understand that there is a financial risk to undertaking contracts for services? I cannot be and clearly am not both. Surely it is also unfair that I have travel and accommodation costs to pay from net income, post-Employee tax and NI and Employer's NI, to enable me to provide services.

HMRC claim that they are not receiving enough tax from the contractor population. There are some claims that their concerns focus on the loss of Employer's NI for Outside IR35 contracts. I do not know if that is the case but surely a contractor tax or a means of making "Employers" pay the missing tax is not beyond the wit of man or HMRC.

Summing Up
I am but one example of the human cost of the decisions taken by HMRC. Historically you have the evidence of the Loan Charge. The human cost of the imposition of IR35 changes is going to be catastrophic when honest, law abiding citizens are having their livelihoods taken away from them at the very time they need to be prepared to battle Coronavirus and to support family, friends and neighbours.

I'm afraid the one year delay announced yesterday will mean nothing for me, and many other contractors, in the short term. What I do hope that it provides for is a proper period of reflection of the goals of this legislation, how best to deliver those goals and how to ensure that there is fairness in the methodology to deliver those goals.

Please let the findings of your review be the catalyst for change, not delay or tinkering but real change for the common good.

24 February 2020

Andy Clarke

The CEST tool is open to incorrect use by employer organisations and their approved subconsultant agencies to avoid any liability for tax reclaims by HMRC. This together with the danger of a highly subjective and sometimes ill-informed approach of managers delegated to apply the CEST tool, usually without sight of the specific contract terms on which such consultants are employed, is likely to result in bona fide Outside of IR35 self-employed consultants being classified incorrectly as Inside IR35. It will be organisationally misused, subjective, not contractually verified and should be scrapped in favour for a new approach.
One of the Telco's in the UK has today issued a blanket statement, individually to the majority of its contract resource stating they are Inside IR35. They are using a tool developed by EY and all of the managers who completed the individual assessments where told how to complete it! No reference to each individual contract was taken into consideration.
Organisations who risk losing Consultants in large numbers before the 5th April date due to the likely blanket attempt to force Consultants inside within the industry.
This could impact between 4.5 and 5 million self employed people and the companies that they provide services to.

Introduction on my role as a consultant in the private sector
I am providing written evidence in a personal capacity. I currently consult as a Project Manager at a Major UK Telecommunication & Mobile Network provider through an agency. I have held a number of roles in the last three years from Planner, Test Manager, Programme Test Manager and for the last year a Technical Project manager.
I am using my vast experience of Mobile and IT Technology to provide a service through my Limited Company on a risk and reward basis. I have no rights as an employee, receive no holiday pay, have no promotion potential and have to provide both employers and indemnity insurance to underwrite the work I do.
The Ltd Company that I provide my consultancy service through also has two other areas of Business: My Ltd Company is a CAA approved Drone Service Provider (since 2016) with multiple clients and also operates and a Community Radio Station (since 2011). These two areas are not currently developed enough to sustain enough revenue without the Consultancy part of the Business and now this has been deemed inside IR35 I have no choice but to close the Business at the end of its financial year – after 18 years of operation.

Existing measures in the public sector
No experience of public sector contracting itself.
It's clear that the sector lost talent when the IR35 changes were implemented and that it has gradually increased the day rates to compensate for the loss.
It is understood that for Public Sector consultants that initial promises by HMRC not to aggressively pursue Outside IR35 consultants who have gone Inside IR35 have since been broken.
The only positive to the IR35 application to the public sector is that it has already taken place and is settled. Whereas the private sector will be in chaos with poor rates available, as Clients and Agencies believe it should be cost neutral for them.Impact of new off-payroll rules on organisations.
The UK has an enviable record for attracting high tech investment far in excess of European competitors. The ability to flex the labour force in response to growth opportunities and the available pool of mobile highly skilled technical expertise is absolutely critical to attracting such investment. This pool of technical expertise is at risk of being fatally diminished by the introduction of IR35 and the mishandling of this introduction. The Prime Minister's dream of a booming high-tech jobs expansion will be instantly compromised.
The Treasury and HMRC have completely underestimated the damage these changes will cause to UK business including the Security Services. It will effectively halt and delay major technical projects in many organisations. The organisations have all relied on consultants, typically experts in their field, to introduce radical and continual complex change. People travel far and wide for the right role, knowing that they can

expense the travel and that the premium rate for the temporary role is acceptable for the risk of being laid off with no notice.
The pattern in Telecommunications has been a year-on-year cycle of cost reductions through redundancies. In particular the focus on reducing Operating Expenditure (OPEX, e.g. employees) has been key for mobile network operators to remain profitable. This has meant from 2002, the Networks have outsourced functions, typically offshore, or they've brought in managed service providers, again offshore, to offer the same function at a lower rate. This has caused staff to accept typically poorer conditions year-on-year if they have remained relatively static. In effect, staff are now competing against offshore staff who are clearly paid far less after being trained up to replace the original UK
staff. It's a pattern of sustained worker exploitation and loss of key technical capabilities within the UK.
The engagement of consultants has given mobile network operators another key advantage, in that they can capitalise the cost of the external staff against network or IT investment. This has accelerated the use of consultants and the year-on-year re-organisations, especially trigger through M&A, oust employees through re-organisation, only to see the same staff often return as consultants.
The engagement of consultants has meant that Clients have avoided paying Employers National Insurance which has also reduced the OPEX bill substantially.
Consultants have had to engage through a restricted set of Client preferred agencies who themselves offer a boiler template contract to sign where it's mandatory to have a Ltd company. It is important to note that contracts are often issued at the very last moment prior to starting a new assignment and this leads to little or no time to discuss the contractual terms. The likelihood of meaningful negotiation of IR35 related contract terms is minimal. This is entirely contrary to establish employment procedures and is possibly a legally questionable practice.
Having been made redundant from a permanent role with health issues at the time I struggled to find work. The nature of contracting meant that experience was desired and any health issues were fine as a consultant won't be paid if they're not working. New Projects are typically given to contract staff brought in to manage them, as permanent staff are up to their eyeballs in the day-to-day grind.
Contracting has offered some very interesting and exciting opportunities for developmental growth, where one could solely focus on a single delivery as intended.
For small businesses it's difficult to know whether the exclusions will be sufficiently robust. There are indications that big organisations may attempt to use small businesses as providing consultancy services as a means for Outside IR35 consultants to continue. Equally, it's been established that some Global companies may try to contract Outside IR35 workers via a foreign subsidiary, brought in as consultancy services. This

creates an unlevel playing field for me for example, where I am unlikely to use this kind of route.
I cannot comment on the effect of the chain of consultants and subconsultants.
The first thing businesses need to know is whether they will lose all contracting staff due to confusion and the fear that the process will set a legally incorrect answer to their status. A concern amongst Consultants is that HMRC will then aggressively pursue practically any Consultant. That is unless theConsultant switches company to break the chain between their previous engagements and any future engagements on 5 Apr. Therefore, HMRCs rules will involve many Consultants just switching jobs out of fear and confusion. It is felt by many that HMRC are only focusing on helping the Clients and their the Agencies but not the Consultants, who are the targets about to suffer major losses in earnings and with possible claims of back-taxes.
Determining tax status for workers
For IR35, the Client has used a tool developed by one of the Big 4 Consultancies to mirror the HMRC CEST tool. Programme managers within the Client, often permanent employees, have been following guidelines to fill in the tool to establish our determination. This is done without referencing copies of
the worker's individual contract terms, which are confidential to the Agency and the Consultant. It is worth noting that in filling in the determinations, there is some evidence of there is an anti-consultant sentiment amongst some permanent employees. Some feel that it is an attempt to get Consultants to accept any terms, or just lose the position. This is not something that employees tend to have to put up with. Despite our contracts being clear about our status there has been a creep in the Client not fully respecting the Consultant's status. I think there is internal confusion even at a Senior Level about treating Consultants like employees which can cause tensions.
Our contracting agency in a recent open office discussion on IR35 has already told us that they expect most of us to be Inside of IR35. This was without knowing the results of the Client's CEST determinations. It was also despite this being based on our "unique circumstances and contract conditions". That was a bit of a giveaway. My own use of the tool when carefully considering my contract, show an Outside IR35 determination. However, the questions as filled in by a manager, combined with this confused internal culture may lead to the Client's determination of my being Inside IR35. In terms of improving the CEST tool, my suggestion is to completely scrap it. HMRC state that they will stand by the result of a determination and they do the opposite as evidenced with the HMRC fining the NHS £4.3m for incorrect submission of information into the tool. So it's confusing and subjective and potentially being misused to give a Client a risk free result.
We expect internal determinations to be announced as late as 26 Feb. We believe that the use of the set guidelines issued to the assessors, the

general prejudice and the collaboration between HMRC, the Client and the Agency are deliberately intended to give the so called "right" answer of Inside of IR35. The agency has also issued guidance that, once the determinations are made known to the Consultants, there is a 45-day period in which to appeal.
Simultaneously the Agency warn of strict timelines for selecting the options to go inside from 5 Apr, either via them as a fixed term contract PAYE employee, or via multiple umbrella agencies, all of whom will take a cut of the previous day rate received by our Ltd Companies. There is then a conflict for the Consultant in appealing the determination versus settling on any new terms on going Inside
IR35. If feels like we can do one or the other. i.e. we're being bounced into these new roles unfairly.
What the government has inadvertently created is a "No Rights Employee" or NRE. This new NRE doesn't need to be paid holiday, pensions or sick leave and can be terminated immediately - which I have already heard is starting to prove attractive to large businesses, who don't want the overheads that come with traditional employees!!!
Policy objectives and wider objectives
What is needed is a complete review of the 1999 legislation that Gordon Browns Government introduced. HMRC cannot viably pursue people based on a faulty tool with faulty information within it. The dividing lines need to be clearer perhaps through some standard contractual terms. It should be easy to achieve but the current mess shows we have a difficult starting point. As mentioned before, officially my role may be a Project Manager but in reality I'm providing subject matter expertise at the same time, performing roles that are not within a Project Manager's remit.
HMRC has a terrible past history of pursuing consultants until they commit suicide, as evident with 7 deaths for the Loan Charge Consultants. This leaves genuine Outside IR35 consultants who move around, change their roles, bring their unique experience and industry experience to a role, completely trapped by this process.
In terms of how this impacts me, I do not feel the ability to continue with the Client from 5 April onwards, particularly due to the unfair likely determination and the risk that this represents to me of HMRC pursuing back taxes against this artificially contrived situation. This leaves me looking for any contracting roles at any other company. This means I have to shelve the value of the unique experience I was bringing to bear for the Client in delivering their current projects. It means that I will have to find a generic project management role, either permanent, Inside or Outside contracting. In the rush to find a role, my experience may not necessarily fit the organisation (e.g. Finance). Hence the rate I can command will obviously be reduced (and the Tax income). Based on bitter experience, it is more likely is that I will be out of work for 2-5 months, especially as the market will be saturated with other out-of-work Consultants and very poor role options available.

In terms of how it impacts the Client. Well the first thing to say is that neither the Client nor the Agencies really recognise how skilled the temporary work force is that they have. There have been previous drives in recent years to just offshore roles to countries like India, to bring in generic exploited resource. In my hard-won experience in the real world, the Client will indeed see a drop in the speed of most activities along with the quality. This will be particularly painful and expensive for the time critical and strategic projects, where equipment or network changes will not be deployed as well as before and software will get out of date etc. I would expect the Client to have a surge of requirements for temporary resource when they wake up to the fact that the business just is not delivering in about 4 months' time. This is usually because the quick fixes will dry up and the "positive communications" will take a while to wear thin before the reality is exposed. In terms of what this means for the average UK mobile customer, well not much, service will continue. However, the pace of technical development behind the scenes will slow to a crawl and hence big innovations in communication will not be as quick, ultimately hurting UK PLC. Is that what the Government really wants?

People will not stay in roles if they'll be hunted for tax based on an unfair rushed determination. People will lose their jobs, take a mini break, and not earn as much. The lack of Ltd company corporation tax, VAT, personal SA tax and earnings/spend will drop tax-take like a stone. Employment opportunities will dry up for consultants and people in this position will spend less within the economy. With Brexit nearing completion, the decimated flexible workforce will not be there to re- act to opportunities of growth, or fast paced deliveries as the Government intends. Everyone will be risk averse, keeping local and the loss of skills to the Economy will become extremely evident.

The current role of the agency is to interface to the client, hire resource, pass on pre-agreed day rate budgets to hire consultants and then facilitate the timesheet processing, invoicing and contract submission. This might sound like a lot of work but in reality, IT systems are used. My own experience of agencies is that they do not do a lot of work to collect their take of our day rates – money for old rope.

In terms of the umbrella company, the likely arrangement is that the agency may take on PAYE Inside Consultants directly or further subcontract to external Umbrella companies to vary things like holiday rights and pension contributions. All of this will come out of a previously agreed day rate that the Consultant used to benefit from. Umbrella companies will apply further fees for their services, so there's another mouth to feed in the chain.

What do I think of both agencies and umbrella companies? Well they are financially unaffected by these changes, unless Consultants revolt. They will just draw further fees from our existing day rate. This completely unnecessary loss in revenue and take-home pay for the Consultant is unjustified.

Most Consultants are independently minded, self-directing, self-motivated and do not need performance management or any other requirements typically associated with permanent employment. For this reason alone, many Consultants will just look elsewhere for the loosest agreement possible, to not become a permanent member of staff again.
In terms of the gig-economy, Consultants like me have worked at high-risk in return for a market- based reward but essentially zero hours contracts. This creates a need for high-performance and motivation but it is rewarded by a good market-based day-rate. If these changes take place and even Outside consultants are pushed Inside, then we will be in effect No Rights Employees. That wouldmean up to 40% less take home pay but zero hours and contrived benefits, such as holiday and pension payments that are just scooped up from the original day rate decreasing the take home pay. The Consultant would not really have rights or employment benefits.
The other main aspect is that, as mentioned before, the agencies are just mandatory middlemen feeding off the real talent. Having to work for these companies as a permanent member of staff on a contrived package, or even worse on their sub contracted umbrella companies, means absolutely no career. You have no standing in the organisation politically and yet you're one of the workers. The agency won't consider promotion opportunities or progression, as in reality they are just focused on your achieving your standard day rate. It's a complete and utter dead end. Most Consultants I know are happy to take the grief and the money for the current role but would absolutely change what they do if it did not reward so well. That has an implication on project delivery for the companies as most people will move from pressured delivery jobs after a short while.

Roger Clarke

IR35 changes: how they will damage my business and force me to retire early

I wish to raise my grave concerns about the government's ill-considered plan to push ahead with unjustified changes to the IR35 tax rules. Despite clearly announcing during the election campaign that it would review the policy, your government persists with intentions to go ahead with the April roll-out – this is disingenuous. I am concerned that, if conducted at all, the review will be simply symbolic rather than a genuine re-appraisal of the policy. If the legislation comes in in its present form it will force me, very reluctantly, to retire early.

The draft legislation is already having a catastrophic impact on UK business. Many large companies that announced their response to IR35 early (including most of the banks, Vodafone and GSK) will no longer engage contractors out of fear they will fall foul of the notoriously

complex legislation. It is now highly likely that these will be joined by other major employers affecting your constituency, such as BAE Systems and Qinetiq. The danger is that many more will follow suit. This extreme reaction means genuinely self-employed people, like me, will lose work opportunities, while clients themselves will lose vital flexible expertise.

The HMRC CEST tool created by HMRC to assess IR35 status has been proven many times to be woefully inadequate and not fit-for-purpose. Reportedly, HMRC are losing over 80% of appeals – do you consider inefficient use of investigation resources and court process to be good use of government funding?

Several of my current tasking clients are planning to stop using contractors because of this legislation, as trying to navigate the enormously complex IR35 legislation could lead to a significant tax liability? They have decided it is safer to say all their contractors are caught by IR35 – whether they really are or not. By effectively cutting off their access to flexible expertise, the government is making UK companies less agile, dynamic and innovative. Today the UK enters the 'post-Brexit' unknown which is going to last for more than the duration of this government; the UK is going to be increasingly reliant on the experience, motivation and skillsets typical of the self-employed – why destroy them?

If hiring organisations decide IR35 applies to all their contracts, genuine contractors like me will be required to pay employee taxes, the employers' National Insurance charge (an effective rate of around 50 per cent) and in some cases even the hirers' apprenticeship levy – **without any of the benefits and rights of an employee**. Please tell me how this is fair. I value the freedom, flexibility and autonomy that contracting gives me. I pay all of my taxes due, in full and on time. Now my autonomy is going to be taken out of my hands in a way that seriously undermines my business.

The Conservative Party is supposed to be the party of business and lower taxation. Why then is the government seeking to introduce a measure which will unfairly penalise the 5 million self-employed currently contributing to the UK economy, the vast majority as wholly tax-compliant businesses? As my MP, I urge you to raise my concerns with the Treasury and do everything in your power to persuade the Chancellor to **stop the April roll-out and conduct a proper review** that considers alternative solutions that would be less damaging. **Of course, everyone should pay the right amount of tax,** but as it stands the IR35 legislation is poor government. In its current form it will be a disaster both for self-employed people like me and for the wider economy.

15 February 2020

Chris Clegg

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

   I have no idea, but judging by the comments seen on Social Media, it has not gone well. This may be because most are a "captive audience" having been part of the public service, but it is interesting that the (unsubstantiated) rumour is that all the contract staff who work for HMRC have all been deemed to be "outside IR35".

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

   I suspect not. The treasury rules are designed to bring in as much money as possible for HMRC and I do not believe they have adequately considered the long-term impact on the Public Service Companies and the economy – as indicated by the considerable backlash. In the medium to long term, rates will have to rise by up to 25% to cover the losses incurred by contractors. This puts a significant increase on project budgets.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

   The robustness is not so much the questions but rather whether HMRC will change the rules further down the line and adversely affect them. HMRC have done this before. There can be no assurance where there is no trust.

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

   The effects are already being felt. As I look for new contracts, I am finding that my usual clients (the big financial institutions) are adopting a "blanket" approach that everyone is within IR35. In

addition, since most of the work today is done through an agency (most large companies do not deal direct), the agencies are demanding we take a rate cut to cover the cost of paying the company NIC which they are now legally obliged to pay (if the client wont).

Also, contractors have a fear that, if they now accept a new contract under IR35 (where previous contracts were deemed outside IR35), HMRC will go back and demand payment for all the other contracts. This is the reason large companies are taking the "blanket" approach. Furthermore, where contractors have been forced in their current contracts to either accept a change to off-payroll or leave, this becomes even easier for the HMRC to demand back payment.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

   I don't see this as an administrative burden. I see it more as dismantling of the current small business contractor market. The administrative burden was small as it fell to each individual PSC. Now it will be shouldered by the end-clients themselves or (Heaven help us) by the "Umbrella Companies".

   What should HMRC do to help? Well, abandon this flawed and ill-conceived process. The impact on the economy will be far reaching and felt for years to come. Key individuals with key skills will go elsewhere – because they can. The less fortunate will accept the 30% - 40% drop in take-home pay but will jump ship the moment they can without any thought for their clients.

   However, the question posed above, i.e. "*What should HMRC do to help businesses understand the new administrative rules?*" says it all. There is no appetite for change, merely how to dress it up with an explanation.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

I think the tests are clear enough, but the rules are badly formed and heavily slanted in favour of off-payroll. The Right of Substitution is a stated in my contracts, but never invoked. I have been fortunate that I have never need to leave mid-contract for any reason – and even when needing a few days for a funeral, I took the time off without needing to substitute.

Also, use of the clients' tools (such as PCs, laptops, mobile phones and email) is a factor of corporate life. Clients want me to be available on their network and not have to worry about external security issues. This, however, is deemed as an indicator of employment and hence within IR35.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

I think it is badly flawed and heavily weighted in favour of off-payroll – and HMRC know it is flawed.
Poor accuracy. According to HMRC, the tool is unable to make a determination in 15% of cases.
Oversimplifying complex legislation. CEST oversimplifies what is an incredibly complex piece of tax legislation. A short questionnaire, it lacks the intricacies required to make correct determinations on the tax treatment of engagements that should be made individually and subjectively.
MOO unaccounted for. One of the glaring examples of CEST's lack of depth is the absence of a test for mutuality of obligation (MOO) – one of the central tenets of whether IR35 applies or not. HMRC believes that an obligation exists in every engagement, so their tool doesn't test for it.
Right of Substitution. From the wording of the questions to the tool's reliance on the right of substitution when providing an answer, CEST poses a risk, not just to contractors, but to the agencies and end-clients that choose to use it.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

All the areas above should be fully addressed and significant testing should be applied to the software before being released. With only 2 months to go, recruitment agencies and end-clients shouldn't rely on

it to deliver accurate information regarding a contractor's IR35 status.

I think there are probably adequate safeguards to allow a decision to be challenged, unfortunately, this will be to the cost of the contractor who will most likely lose the contract as the client will not want to take the risk. This is back to the point that no-one trusts HMRC not to go back on a decision. Even a legal clause in the contract that states any decision is final and binding and cannot be overturned is unlikely to be allowed.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

I believe these rules were originally introduced to deal with ex-employees who, one day were employed and the next day came back as contractors earning massive day-rates for doing the same job at the same desk.

This was exacerbated by the accountants that advised contractors to pay themselves as small salary and large dividends thereby saving themselves a large amount of tax and NIC. All perfectly legal, of course, the accountants were just doing their jobs properly – if not morally.

The Revenue (as it was then) saw this and instituted IR35 (and the lesser known S660) to claw the money back. Umbrella companies with all sorts of schemes (loans, annual company closures etc.) immediately sprung up.

The simplest way to avoid this would have been to <u>charge NIC on dividends</u>, but Big Business would never have gone for this and the government would have failed as a result.

In my view, a simpler way to meet the objective would be:

- Still use (an improved) CEST to determine in or out of IR35 but leave the calculation and administration where it is – with the PSCs. Leave the client out of it.
- If deemed that the contract is within IR35, mandate that the contractor salary be (say) 75% of total monthly invoice. This leaves around 25% to be spent on expenses plus company NIC etc.

10. Will the Bill, as drafted, achieve the Government's objectives?

It will achieve the Treasury's objective – which is to make more money for the Treasury, but this will be at the expense of small business and companies.

It will not achieve the Government's objectives, which is to grow the economy via the life-blood which is the small business and "gig" economy. Companies will face loss of contractors, increased day-rates and extended timescales and delays to project completions. Let's see what this does to the cost of HS2!

11. What is your view of the role of umbrella companies in the context of these proposals?

    My view is that they are an unnecessary evil who prey on the vulnerability of concerned contractors and take large fees to assuage their fears while taking no risks themselves. An example being they force contractors to take a reduced rate to cover the cost of company NIC.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

    I no longer pay NIC as I am over retirement age so the impact to me is less that for some younger individuals, but I have already calculated that I will need to increase my day-rate by about 20% in order to maintain my current take-home pay. For most younger contractors, this will be closer to 25%-30%. Companies will not accept that.

    It is not fair that I would be treated as an off-payroll employee without entitlement to any sick pay, holiday or other benefits. Also, any expenses that I incur will have to be paid out of post-tax take-home pay. This includes things such as the travel costs, Indemnity Insurance, Personal Liability, accountant fees, Pension contributions etc. Therefore, what is the point of being an independent consultant? What is the point of having a limited company?

Final Comments

As a professional contractor for over 20 years I have provided my services to many medium and large companies in London and surrounds, mainly in Wealth Management and Insurance.

As an independent consultant in the area of Programme and Project Management, I have been able to move into these companies with the minimum of fuss unencumbered by the onerous HR processes of full-time employment. This has meant that I have been able to start work and

become productive very quickly and, once the work was finished, leave just as quickly.

The benefit to the companies is that they are able to smooth the "peaks and troughs" of the work (often quite far-reaching in the Financial Services area due to the number of rules and regulations) without having to resort to increasing headcounts and budget allowance for employees.

I run my work through a limited company (PSC) as was required when I started over 20 years ago and pay myself a good wage only allowing my company to retain a small amount to cover holidays, training. Sickness, insurance etc. I have never paid myself a small salary (in order to pay big dividends thereby reducing the NIC requirement, as was often recommended by accountants). In fact, I have never paid dividends – there is never any money left in the company as most goes on salary.

To make matters worse, since I am over retirement age, I have no opportunity to take a permanent role – which given the IR35 implications, would now be a more acceptable option. However, I am being discriminated against for my age. They are not allowed to, but they do. I am considered fine to take on a consultancy/training/mentoring role given my experience, but they don't want me clogging up a permanent headcount position. And I don't blame them.

In light of this legislation – which will cause a lot of pain to the contracting community and irreparable harm to the business world through project delays – I am looking to move away from the UK for work and concentrate my efforts overseas.

20 February 2020

Rob Colley

My submission is made personally from my experience of working as a consultant via a limited company for several years helping end clients implement or improve their service management processes.

Existing measures in the public sector

Some of my initial assignments were in the public sector but once the offpayroll changes were implemented into the public sector I found that assignments dried up and I concentrated on bringing in work in the private sector.

Due to implication that taking work inside of IR35 would impact assignments I had contracted to undertake I always chose to reject

potential assignments in the public sector as I value working independently. It appears to me from talking to others that I'm not alone in rejection of public sector assignments which I understand has led to delays in projects who cannot gets the right specialist consultants to help them deliver.

Impact of the new rules on organisations

Has the impact of the extension of the rules to the private sector been adequately assessed?
Is the exclusion of small organisations sufficiently robust?
What effect will these new measures have on a chain of contractors and sub-contractors?
What should HMRC do to help businesses understand the new administrative rules?
My submission is as a ltd company service provider and not one of the intermediate chain organisations but having said that working with some recruitment agencies over the years has taught me I have a greater understanding of the complexity of IR35 and its impact than many of them. This is a concern because the determination will now be out of my control and I feel that work that should in reality be offpayroll may be deemed inside incorrectly. You will also be aware that blanket determinations are now rife as end clients take a risk management approach. This has been denied by HMRC and Jesse Norman but it is clear that it is taking place as I understand it did to a lesser degree in the public sector.

As a service provider I don't see that it is easy for me to work out if the end client I'm dealing with is classed as small and therefore requires IR35 determination to continue to be made by my company.

I don't feel the real impact has been considered. In recent weeks Jesse Norman answered a question from a Labour MP by saying he was unaware of any blanket decisions being made. He has clearly been provided with this evidence and appears to be choosing to ignore it. So no the real impact is not be adequately assessed and I don't have confidence in HMRC to consider it impartially.

Determining tax status of workers

I have a good understanding of IR35 but as anyone involved knows it is extremely complex even to HMRC themselves who have been taken to court and lost on several occasions for incorrect application of those rules. I know my trade organisation (IPSE) amongst others has been pushing for clearer guidelines, better definitions of self employed and they also

suggested a freelance company option. All of which may help simplify things. The tests always feel a bit open to subjectivity to me. For example under the control aspect having a client tell you they need you onsite would be seen as a pointer to being disguised employment yet watch as the same client makes the same demands of large consultancies who are clearly companies and not employees of the client. The rules have never been clear enough to avoid innocent people making the wrong decision whilst trying to understand the legalisation.

I have not used CEST as I have followed all the feedback on how it is not fit for purpose and doesn't factor in mutual obligation. It certainly requires improvement but some of the improvement will only come from clearer binary based rules in my opinion
Policy objectives. I have used third parties to review my contracts but again there is always the less clear element of how things work in practice.

In your opinion, are there better or simpler ways in which the objective of the new rules might be achieved?
It certainly needs to be simpler. The proposed change bring further complexity to the supply chain and should a determination need to be challenged the mechanism is far from fair or simple and expedient.

Will the Bill, as drafted, achieve the Government's objectives?
I firmly believe the answer to this is no. So far lots of companies have been making blanket assessments to not use Ltd company contractors. It does not follow that these people will then always be available through umbrella company PAYE setups. Instead it seems likely that work will go to the large consultancies using staff from outside the UK, or more so to consultancies outside the UK. The end result is many UK citizens will become unemployed and not be contributing to taxation. Flexibility for the private companies will be limited as they end up reliant on big consultancies and oversees companies for project and improvement delivery. Many people appear to be looking at moving oversees themselves and it is certainly an option I will consider if it gets tough to get new business.

On a personal level I have already provided notice to one of my clients because they have yet to decide their way forward with an immediate loss of income to me and my business. I expect it to be very hard to bring in new work until companies feel confident again that they have a defined way to engage temporary specialist advisors. I am very worried and stressed about my financial future and that of my family in the short to medium term.

I've engaged with my MP and had questions raised with Mel Stride but the answers have always appeared to ignore the specific concerns raised by me and more widely by others.

Jeff Coteman

I would like to provide evidence in a personal capacity and contribute to the Lords enquiry on the draft Finance Bill 2019–20 in relation to the off payroll working rules due to come into force in April 2020.

This legislation is anti-business, anti-flexible labour market and will be catastrophic for small consultancy businesses and the wider UK economy.

By effectively cutting off their access to flexible expertise, the government is making UK companies less agile, dynamic and innovative. It is weakening businesses just when, as the UK leaves the EU, we need them at their strongest.

My company currently contracts with some large London based insurance and IT consulting companies.

Many clients are blanket assessing small IT Consulting companies as inside IR35 and not using the CEST tool.

The CEST tool itself is highly flawed since there is no test for mutuality of obligation (MOO) – one of the central tenets of whether IR35 applies or not. HMRC believes that an obligation exists in every engagement, so their tool doesn't test for it. Yet a court ruling has rejected this claim many times.

The impact of these disastrous rules on my company is that many clients have now started to outsource much of the high-end data analytics and IT consultancy work to offshorers such as the Indian subcontinent to the detriment of the UK economy as a whole.

The result will be less tax for the UK exchequer as a result of these rules.

Going forward there will be significantly less opportunities to provide flexible solutions to clients and our companies revenues will drop significantly with adverse effects on our current payments of Employers NI, Corporation tax and other expenditure.

Other impacts will be a major loss of productivity and flexibility as projects are cancelled given that many small IT consultancies will leave their clients due to the impacts of this badly thought out legislation.

Following the introduction of these rules Public sector organisations have been struggling to attract and keep hold of talented contractors following last year's tax rule changes for the self-employed
The study by the CIPD and IPSE, the association for independent professionals and the self-employed, found more than half (51 per cent) of public sector hiring managers thought they had lost skilled contractors because of April 2017's changes to the IR35 rules, while nearly three-quarters (71 per cent) were facing challenges in retaining their contractors.
I sincerely hope that these badly designed rules will be reviewed and withdrawn before they impact our economy.

16 February 2020

Chris Cruickshank, Four M Accounting Services LTD

I am the Director of a small Chartered Accountancy firm that caters almost entirely for PSC contractors, mainly in the Oil and Gas industry, many in Aberdeen. These proposed changes are already resulting in many of my clients suffering substantially and my business losing revenue as many Organisations who engaged contractors have now frozen or simply banned the use of PSC workers. We currently provide accountancy services to around 400 PSC's.

The HMRC/government pledge was that **the revised legislation would not impact the genuinely self-employed** but what I am seeing confirms that is most definitely not the case. The three main problems I see are:

- CEST – it ignores case law and one of the key status indicators the courts use – Mutuality of obligation (MOO). Most IR35 experts unanimously agree **CEST is not fit for purpose.** The problem is, the middle management/HR types within these organisations that hire PSC workers are not necessarily aware of the well documented CEST validity concerns and there are a few major Oil and Gas companies using CEST and as a result coming up with inaccurate and unfair status determinations as MOO is ignored by CEST. A large Oil and Gas company I know of is using CEST to test PSC's and deeming many to be inside IR35 when that is not the case. I know this as many are my clients. Many of my clients are paying for their own independent assessments from IR35 legal experts who are concluding they are strongly Outside IR35 but the management in the companies hiring the PSC's are not accepting the results of these independent assessments as they simply do not understand the detail enough. The legislation is too daunting and complex for any manager/HR person to grasp and they are blindly relying on

CEST, often not knowing any better i.e. not realising that it's often not fit for purpose. **This is leading to incorrect/unfair status determinations meaning the PSC unfairly suffers (as these cases I refer to have been found to be genuinely self-employed by independent specialists) and as a result they no longer need an accountant or liability insurances. My firm then also suffers substantially as a result of this lost business as will the insurance companies that supplied liability insurance to the PSC's.**

- Some organisations are hiring industry recognised IR35 specialist firms, being told their workers are IR35 compliant but then ignoring that and from fear of the legislation **making blanket bans on use of PSC's and/or unfair assessments**. One large Oil company reviewed their workers and told all PSC's bar one that they were inside IR35 (it is believed one was found to be outside so they could claim it wasn't a blanket assessment). Their reasons for finding them inside IR35 are not fair or reasonable and do not stand up to independent scrutiny or match up with case law. Multiple workers arranged their own independent assessments and the majority of these workers were genuinely self-employed and Outside IR35 however the organisation in question seem to have paid no attention to this and in **fear of the legislation** have made this blanket 'inside' IR35 assessment. It is not fair or reasonable of them. When pressed by some of my clients with my guidance, **those responsible for making the determinations inside these organisations clearly didn't understand the legislation properly**. It's clear it's both fear driven and driven from lack of understanding – no Manager wants to be the one to be responsible for a tax liability should they incorrectly determine a worker Outside so they blanket assess everyone as inside to protect their position. **There is a huge problem with lack of knowledge and understanding inside many organisations**. Those tasked with making the status determinations in these organisations simply don't know how to do it properly as they are not IR35 experts. This and the fear of the tax liability is leading to so many unfair assessments.

- **There seems to be nothing of any substance to stop organisations making either blanket bans or blanket unfair/inaccurate inside iR35 determinations.** There are apparently no consequences from law for them if they act unfairly. They have all the power to make the determination but if they make an unfair determination to protect their own position, there doesn't seem to be anything concrete in law to penalise them or to encourage them not to do that. Some are simply saying they have changed their policies to move away from PSC use but even

though they don't state it, it's clearly as a result of the proposed IR35 changes that they have changed their policy. The guidance states they have a duty of care to the tax payer, each worker must be fairly assessed etc but **there seems to be no consequences for an organisation that decides to unfairly assess or blanket ban.** One Oil company sent an email to all PSC workers in December last year advising they would not engage with anymore PSC's.

There needs to be consequences, real severe consequences for organisations that make repeated unfair assessments en mass to protect their own position . There needs to be a deterrent to ensure that organisations are using the legislation fairly and not putting genuinely self-employed workers out of business. There needs to be something that ensures these organisations who will now hold the power to decide on status must do so fairly and not be able to unfairly assess en mass or blanket ban to protect their position.

The one blanket ban alone that I refer to above cost my firm 5 figures per year in lost recurring annual revenue (which then has a knock-on effect on our employees i.e. possible redundancies, etc) because so many of our clients were impacted by that one unfair blanket ban. If you then apply that across the Oil and Gas industry, you can see how many genuinely self-employed workers are being unfairly impacted and how many secondary business like mine are being significantly impacted. That's just in the Oil industry!

I could give dozens of examples from my own client bank of genuinely self-employed workers Outside of IR35 being subject to flawed CEST determinations or unfair status determinations and blanket banks. Dozens of genuinely self-employed workers so far (still February and March to go – there are still hundreds of our PSC clients to get their status determinations through before April) unfairly stopped from engaging with their client via their PSC as organisations are unfairly using the legislation to unfairly assess and protect their own position. My business massively under threat as a result and already significantly impacted – my own personal income will also be impacted. This will change my life for sure – negatively, along with several dozen, if not hundreds of my clients.

In summary:

- **CEST is unfit for purpose and is forcing many genuinely self-employed people out of business due to inaccurate results. Actual real examples of this form my clients.**
- **Huge amounts of unfair/unreasonable assessments happening or blanket assessments/bans or organisations**

simply changing policy to move away from PSC's – i.e. not fairly testing status. Many many real example of this from my client.

- **There is no notable consequence for organisations that do take an unfair/unreasonable approach to protect their own position.**

<u>The change proposed for April 2020 urgently need to be delayed</u> and businesses urgently need help to handle this fairly and penalties for en-mass unfair determinations to stop genuinely self-employed workers (and the sub section of businesses like mine that support them) from suffering. Please please help to secure a delay to this so it can be properly and fairly re-visited and a much more robust solution rolled out to ensure a much fairer execution by businesses with much more clear simple to understand guidance for ordinary Managers/HR people to be able to digest to make fair and reasonable decisions.

7 February 2020

Ebert Coetzer

<u>SUMMARY</u>

This draft legislation marks the end to employment with rights as the flexible workforce will be taxed as employees with no benefits or rights.

There is no real appeals process or protection for any PSC lodging an appeal against the end client and I am fully aware of PSC's who has appealed and as a result had their contracts cancelled.

End clients undertake risk averse assessments in fear of reprisal from HMRC which then incorrectly classes PSC inside IR35.

HMRC will lose out on a lot of revenue with contracts being either outsourced to offshore contractors (contractors pays VAT, and taxes in their respective countries), UK skilled PSC's working offshore instead therefore this equates to a skill loss in the UK.

In an economic time of uncertainty (Brexit and Coronavirus) is this really the draconian Tax measures that should be imposed on PSC's as this is costing families their livelihoods.

Clients provide incorrect information when undertaking CEST determinations to yield an inside IR35 result with no safeguard for the PSC to address this.

ANSWERS TO SPECIFIC QUESTIONS

Existing measures in the public sector

I do not think any experience has been gained from the Public Sector enforcement of the IR35 legislation for reasons as listed below:

Most Public Sector contractors moved over to private sector when this was enforced on the public sector with very few contractors continuing on their engagements at the time.

Most of the contractors whom continued their engagements were forced onto the Payroll which resulted in the increase in revenue seen by HMRC

This ultimately resulted in a no Lessons Learned Scenario which has led us to where we are today with an ill prepared not well understood legislation.

Impact of new off-payroll rules on organisations

I do not believe the impact to have been assessed adequately, most of the big companies who has now placed a blanket ban on engagement with PSC's has opted to engage with offshore entities instead – the result of this means money spent abroad with the only beneficiaries being the foreign governments and contractors from said foreign countries. The impact on the British economy, which is at a critical fork in the road as we have left the EU, would benefit from the money being spent on UK soil.

The exclusion of small organisations I fell is sufficiently robust and the guidelines around this subject is well covered.

I for one can speak of my own experience and that of contractors I know – My end client has taken the risk averse approach of "blanket inside IR35 determinations", this is also the case for other contractors whom I know personally, engaging with various clients throughout the UK. It is also very obvious from article reported in mainline media in recent weeks that this appears to be the general consensus with very few organisations actually conducting the assessment with due diligence.
In order for this to be successful I feel that new measures should be drafted which is far simpler to understand, with clear guidelines, providing both PSC and Organization with safe guards and ensures a much fairer system for tax and NIC contributions.

Determining tax status of workers

The tests are not clear cut, the CEST tool provided by HMRC, although improved on from previous versions, can still deliver a "Not Able To

Determine" result. You would expect the tool to be able to determine the result as HMRC sets the rules and guidelines for determination, however I believe the tests are so convoluted that not even HMRC always understands the results, hence the tool being insufficient in the determination.

I have undertaken the test numerous times and had differing results. I feel there is room for improvement as the tool does not provide a clear cut answer every time with some of the questions not having enough guidance to confidently answer them. It would be ideal if the tool does not return an indeterminate result as this does not assist in any assessment, if the tool cannot determine the engagement how is the end client able to make an informed decision and a correct decision at that?

Currently legislation allows for a PSC to challenge the CEST result with the end client, however this is a matter of David vs Goliath with most end clients holding firm on their determination. There is also the fear of loss of contract as a result of posing a challenge to the determination.

Policy objectives and wider context

The would be far easier methods much simpler than current legislation that would more than likely yield a better result in revenue for HMRC – One example of this would be a special type of Limited Company for contractors which ensures a percentage based NIC contribution based on company income brackets. As a PSC we already pay scrupulous amounts of Personal Tax, Dividend Tax, Corporation Tax and VAT therefore my suggestion would be that only NIC contributions should be imposed by the new structure Limited Company.

I do not believe the bill would yield the result both the Government and HMRC has hoped for with many contractors willing to walk out on current engagements, organizations opting to offshore the work currently delivered by PSC's and many people forced into employment rather than operating as PSC, the result of the latter point being less income tax as a permanent employee ie. I currently pay anywhere from £32k - £40k per year in Personal Tax, Corporation Tax, Dividend Tax and VAT – If I went into fulltime employment my salary would be £62k thus I would only pay £17k Tax and NIC contributions with my employer being responsible for a further £7k NIC contribution thus a total revenue loss of £8k - £16k per year for HMRC.

I hold a very dim view of umbrella companies in general as some of them tend to push non legal methods of operations. This is with the promise of being able to retain more of the income which is what most PSC's aim for – mainly due to non-paid holidays and no benefits other than what we can provide for ourselves as PSC's. Therefore the more you are able to retain

the better you can provide for the periods of either no contracts or the provision of at least receiving payment from your limited company at times of undertaking holidays.

One of the unintended effects of the Off Payroll is the potential of "Zero Rights" employees – People being forced into fulltime roles disguised as contract roles under IR35 legislation however with absolutely no benefits. This could also spell the death of permanent employment as we know it as it is far more beneficial for organizations to employ people under IR35 as they would have no obligations towards said individuals with no severance payments and the ability to terminate contracts as they wish. This would also mean the organization would not pay employers NIC as the contractor is forced to pay both Employee and Employers NIC which is the case with my end client whereby all PSC's under engagement with the same client has to cover the employers NIC as well as employee NIC contributions. Please review the following website:

https://norightsemployee.uk/

10 March 2020

Paul Coley

Capacity which made: Personal

SUMMARY

- Complex tax test. Very onerous to do for so many contractors.
- Risk averse clients – not willing to properly assess each contractor. Can this really be the norm for ever more?
- Historic tax risk after being deemed inside by a risk averse client;
- Blanket assessments or banning of contractors now the norm – no potential for growth of any new consultancy businesses;
- Against the spirit of tax simplification – flat rate of employers' tax mooted.

ANSWERS TO SPECIFIC QUESTIONS

Existing measures in the public sector

1. No comment on this.

Impact of new off-payroll rules on organisations

2. The tests and the threat of fines is leading to an extremely bureaucratic process. It is the opposite of tax simplification. It does not encourage an agile 21st century flexible and mobile workforce.

3. It is now impossible for small contractors to grow into large new businesses. I have worked for many companies that grew from 2-3 contractors getting together. With the way things are now going they would have been deemed inside IR35 and would not have been able to invest in their embryonic business. This would prevent them employing others, renting offices etc. The companies that I have worked for have clients in China, Japan and Canada bringing money into the UK.

4. In the nuclear sector where I work there have been blanket bans across the board. This is leading to contractors walking away from their projects. This will have a direct impact on delivery. This includes the UK nuclear deterrent where contractors are being forced to leave Barrow, AWE and Devonport. I am leaving Devonport with five others in my small area of the project. We expect to have to sit it out for a few months paying no tax.

Determining tax status of workers

5. This is complicated. Evidence for this can simply be found by looking at the IR35 tax tribunals where the majority are **lost** by HMRC. If HMRC cannot be successful in court how can HR departments be expected to correctly determine tax status.

6. Contractors operating through a limited company do this willingly for the flexibility and freedom to operate as they wish. This is the future. It is the gig economy but on a professional basis. It works. It is now being destroyed

7. Most organisations responsible for determining tax status do not use CEST. They are either banning contractors (the banks), or doing blanket assessments or using their own test question sets. Babcock is an organisation that I am contracting for. It is using the process to artificially include their contractors onto their internal baseline. Therefore, for commercial reasons, Babcock are using IR35 as an excuse to pull in contractors onto the payroll. Organisations are also taking a risk averse approach and are not willing to go on a limb and put contractors outside IR35. This is leading to the closure of thousands of legitimate businesses.

8. There is no independent means to appeal the process and determinations.

9. Babcock and other organisations are reducing their rates from their determination by 14 %. Therefore, with an incorrect tax determination they are then passing on the cost of the employer's NI to the contractor. This is immoral and will be arguably unlawful.

10. Babcock did not discuss my working practices with me. The fact that I have multiple clients, work largely from home, attend conferences in the view to marketing and seeking work etc has not factored into their assessment. These factors point to acting as a business in my own right.

Policy objectives and wider context

11. A flat rate employers' tax or changes to the taxes paid by directors may solve the problem. Tax simplification must be the answer.

12. I do not believe this measure will raise the revenue forecast. Organisations are taking a risk averse approach and simply refusing to engage PSCs or stating everyone is inside IR35. Coupled with the use of CEST large numbers of workers are placed inside IR35, in many cases incorrectly in my view. There is no independent appeals process.

13. Loss of travel expenses will prevent me from working remotely.

14. The tax increases and loss of business working are leading to behavioural changes e.g. many will take up a permanent staff position that will pay less money and attract lower taxes, retire early or work abroad etc. There are at least 2 that I know of that will retire at the end of next month.

15. It is not right that those treated as employed for tax are not treated as employed for benefits. Contractors do not want these benefits if through their own LTD but if this is lost it is immoral for them to be zero rights employees.

16. Genuine fear of being pursued by HMRC if 'determined' by a risk averse organisation to be inside. That is outside April 5th Inside April 6th. Where is all the tax? Even though contractors may be confident in their status, who wants to go through all that?

17. This is all last minute – legislation not actually law yet.

24 February 2020

Matt Collard

In relation to '*Policy objectives and wider context'*, I wanted to draw attention to a fundamental point in relation to the IR35/Off Payroll

legislation, and that is one of HMRC/government revenue comparisons between those 'employed' and in a permanent, salaried position, versus those operating via a PSC/Limited Company.

With the context of tax status of the 'employed' vs. the rights of the employee, I feel that it is to correct to assess the 'business case' of PSC/Ltd vs. permanent employee (who receives all of the rights owed to an employee).

The one-off cost of implementation has already been brought into question, and debated, but I would like the committee to look at the other side of the business case.

Can the committee please therefore consider/revisit two main points:

1. Using **market** rates for the impacted industries (pre announcement of IR35 rollout to the private sector), compare the tax and national insurance revenues from a PSC (that typically operates on a 'day rate' and invoice the engager directly), and a permanent employee in the same sector.

2. Impact to the wider economy of the legislation, and therefore further impact to government revenues, given that many large organisations ARE rolling out blanket bans on PSC's and forcing people inside IR35, for example onto a PAYE arrangement. Those PSCs whilst operating as going concerns, and Limited Companies, make use of accountants and insurance companies (for example to provide public liability insurance). Given that under a PAYE or given equal rights, a permanent arrangement, the PSC will likely close down the Limited Company, they will also no longer need the services of the accountant and the insurance firm. Human impact aside, this in turn will also reduce the VAT, corporation tax, income tax and N.I. revenue that HMRC receive from those companies. There are of course many other sectors impacted, hospitality, travel, equipment suppliers, etc. Discuss.

Thank you in advance for consideration/discussion of these points.

9 March 2020

Andy Collier

Please consider the following responses to the call for evidence regarding IR35.

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

RESPONSE

No response.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

RESPONSE

No. Compliance burden is hitting the Contingent worker hardest. The assessment in one leading telecoms provider, the view taken appears to have been one of simple risk avoidance. The company does not want the RISK of its Contingent workers being deemed to be inside IR35 and so it has instigated what they call an "assessment" lead by a leading accountancy firm. The accountancy firm conducted an impersonal blanket assessment and ignored the contractual relationship between the Contingent Worker and the Intermediary which acts on behalf of its client.

The accountancy firm, presumably on behalf of and with the knowledge of their client, sought to assess the Contingent worker community against criteria that the client itself set and ignored the terms of the contracts held by the Contingent workers. No personal assessments that involved the Contingent workers were conducted by the accountancy firm. The criteria that were set related to the client's preferred ways of working which to my knowledge have not been published.

The accountancy firm advised all Contingent workers that they had been scored against the criteria yet provided no score nor evidence of how this score was derived. To date, despite requests for it to be provided, no such information has been forthcoming and no commitment to it being provided has been received.

3. Is the exclusion of small organisations sufficiently robust, and how might small
organisations gain sufficient assurances that they fall within the exclusion?

RESPONSE

It is my opinion that small organisations are much better placed and able to apply logic to situations. Small organisations know that they depend upon a

Contingent labour market to secure skills and experience that they would otherwise not be able to secure and they will KNOW that the nature of the engagement with Contingent workers IS different and they will have the intelligence to put in place suitable contracts to ensure that they CAN engage the skills they need.

4. What will be the effect of these new measures on a chain of contractors and sub-
contractors?

RESPONSE
The use of Umbrella companies will result in the companies through which some Contingent workers operate being forced to close. This will result in impact tax takes for HMRC, impacting the service sector more broadly as accountants and other service providers no longer have the Contingent workers as a client base.

Ultimately successive layers of large and middle sized companies will be created to provide a buffer for those above in the food chain with each one demanding a margin for the pleasure of their existence. All this whilst the number of Contingent workers reduces. The impact of this will be higher costs to the ultimate engaging company and less for the Contingent worker with the effect of further stifling the Contingent sector and promoting, again, the migration of this valuable resource offshore or to work where their value is not optimised for the benefit of the country.

Some small companies such as mine employ 5 staff. With Umbrella companies deducting fees and tax at source they deny companies like mine the ability to operate profitably and so we face the choice of finding work elsewhere or closing.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

RESPONSE

It is perfectly possible to define the difference between an employee and a Contingent worker. Each group can understand very well their obligations and the consequences of not fulfilling them.

The present imposition of the rules by HMRC is serving to introduce a lack of clarity which is resulting in the risk averse larger companies abandoning the flexible workforce that has provided great service over decades. This will not serve the country well in the longer term.

HMRC would serve everyone well by clearly confirming that genuine Contingent workers with contracts that comply with the rules are considered outside IR35 and will be treated accordingly.

Determining tax status of workers 6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

RESPONSE

No. In my experience, tests for determining employment status are not clear. They have not been communicated. The results have not been communicated. Only the overall outcome has been provided and this is at odds with the Contract under which I was engaged. Contracts have been agreed that have been perfectly clear and have distinguished VERY well between Contingent worker and Employee. These contracts now find themselves overlooked and assessments performed on unrelated, undeclared, criteria in determining if a worker is deemed an employee or not.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it
require improvement? If so, how might it be improved?

RESPONSE

I have used the CEST tool only a few times but have found that it supports perfectly well the outcome that I expected it would.

I would question why it is needed at all given the clarity of the rules around what differences there are between those employed by or otherwise contracted to an organisation.

My REAL concern is that the HMRC approach and the way in which the IR35 regulations have been imposed on businesses has forced them to take an irrational but risk averse approach and they have effectively closed down their use of Contingent workers.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

RESPONSE

In the case of above of a leading accountancy firm supporting a national

telecoms operator in conducting status assessments, the blanket approach that they have taken (for which ample evidence exists) has GENERATED issues of incorrect assessment of employment status rather than helped to resolve issues. The accountancy firm used an undeclared method to carry out undeclared tests and provided no results of their tests to those who were being assessed.

The accountancy firm results almost exclusively contradict the Contingent workers own assessments and the CEST Tool determinations. HMRC has said that it will stand by the CEST Tool determinations. This is very welcome but leaves open the question of what a Contingent worker does if their determination is one that places them outside IR35 when the engaging organisation has already taken steps to declare that they will no longer use Contingent workers on the false basis, forced by HMRC implementation of the rules, that their Contingent workers MAY fall inside IR35? Who is to blame? HMRC? What rights of redress would the Contingent work have?

It is not clear to me, in the time between now and the 6th April, how organisations such as EY will be able to respond to this situation and therefore the only logical thing to do is to delay the implementation of the IR35 changes, to simplify the definition that distinguishes employees from Contingent workers, allows each the fair reward for their services and permits correction of the unjust imposition of parasitic Umbrella companies that stifle the Contingent workforce and add nothing to the national benefit.

Policy objectives and wider context 9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

RESPONSE

In the first instance, distinction of Employees from Contingent workers needs to be clear, understood and agreed. The role of Contingent workers must be upheld. Only then can there be clarity as to how the new rules can be seen to be applied fairly.

Clear distinction between worker types and clear upholding of the rights of individuals to engage in work in a way that suits them is of greater value and should shape the policy that leads to the objectives. Presently the balance has shifted to the detriment of the Contingent worker by an unhealthy amount.

11. What is your view of the role of umbrella companies in the context of these proposals?

RESPONSE

Umbrella Companies can serve a valuable service to those who genuinely need them.

However, forcing Umbrella companies on those that do not need them and those that will actually suffer at their imposition, introduces a totally unnecessary layer/s of bureaucracy and cost which will also serve to make the engaging organisation less competitive.

As a small business owner providing services to multiple clients and having funded and managed my business for 13 years and having worked for 20 years in the sector, the ONLY thing that forcing me to use Umbrella companies will do for me is to force me to reduce staff and, potentially, close the business.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

RESPONSE

Clearly, these rules have been introduced without having been fully thought through. They have NOT resulted in the fair application of logical and fair rules.

Clearly, it cannot be right or fair to penalise Contingent workers and to deny them rights afforded to employees whilst expecting them to pay the same or more tax.

The Government needs to decide if it values a flexible and dynamic workforce with Contingent workers playing a valuable and significant role or if it wishes to force all companies simply to employ personnel on equal terms and to tax them all according to the same rule book.

I don't believe that the Government wants to de-skill or to de-motivate the national working or force sections of it to look offshore for the work they want to do and the reward that they feel they can earn. Rather, I believe that the government wants a fair taxation system within which all categories of worker can co-exist with all operating under easily understood rules that reflect the value that each can bring and risk and reward commensurate with the value delivered.

I trust that the Government will take time to clarify what the rules are and how they will be applied and that they will do this in a way which provides clarity to companies large and small.

The UK deserves to have an economy that has the the most efficient and

effective means for engagement in order to remain competitive and ready to achieve the post-Brexit potential that we all strive for.

25 February 2020

David Cooper- Cooper Geomatic Ltd

My company (Cooper Geomatics Ltd) provides engineering and surveying services to the construction industry and has done so for the last 6 years. The Clients I work for expect you to turn up with all the kit and caboodle to do the task, usually because they don't employ people like me. I am an on-demand resource who is hired for a specific time on a specific job, they don't have to find me work once this task has finished, and the company only pays for what I do. In order to do this the Company has invested in:

- Leica surveying instruments at £12000.
- High spec laptop to handle 3d programs £1000.
- Specialist software, (LSS & AutoCAD) at £1500 per year.
- Professional Indemnity and Public Liability Insurance at £700 per year.
- Training for our surveyor David Cooper.
- Accountancy fees £1000.

In theory hirers / fee payers / clients are supposed to do an assessment of the role, but they aren't doing that they are just applying a blanket ban on Companies like mine. I am confident that the task my Company does is outside IR35. However, because the hirers are taking the path of least resistance because they are frightened of getting it wrong, and stating that every role is inside IR35 the options are available to us are PAYE or PAYE via an agency or PAYE via an umbrella Company. This causes Companies like mine a massive problem. What does the Company do with the assets? My company has invested in thousands of pounds worth of specialist equipment.

By blanket classifying every role as inside IR35 means a disguised employee. I have held permanent PAYE roles in the past and the company has provided everything. So that means then all the items I would have provided listed above I won't be because I'd be deemed as an employee. Employees (in my industry) aren't expected to provide their own tools, or specialist equipment or insurance. They are provided with a computer and a phone and are told what to do. They also have access to sick pay and maternity leave and 4 weeks' notice period.

So, as a direct result of hirers adopting blanket inside IR35 classifications:

1. My company will have to sell the instruments and computer. But because there are others in the same boat as me there will be no demand, so I can't sell them
2. The company will need to be closed down.
3. The company won't need to renew its software subscriptions which will impact on the developers
4. My company won't need to spend the £700 per year PI insurance
5. My company won't need to pay corporation tax i think last year it was £6000
6. My company won't need the services of an accountant
7. My company won't need its website and email facilities
8. David Cooper has industry qualifications that are due for renewal in 2020. The SMSTS refresher costs £595 & 2 days not at work. Who pays for that?
9. On 3rd April 2020 I will be on site with all the equipment and software to do the job. I'll be able to access the site drawings as they are stored on line as I provide my own computer and internet connection. I'll be able to talk to designers / architects as I provide a phone as well. On 6th April 2020 there is a possibility that I'll be on site with just me. The hirer will have to provide the expensive instruments, the laptop with various software on and to access the drawings on line. They'll need to provide me with a phone too JUST LIKE THEY WOULD AN EMPLOYEE

The firms I work for know that my company will provide everything required to get the task done. Now they will have extra expense in procuring software, computers and phones because as a "disguised worker" I won't need to provide it.

I think HMRC and the Government haven't fully thought about the impact of the off-payroll rules and their implementation and as such should be delayed or even cancelled. The unintended consequences of blanket banning personal companies needs to be addressed. For some people who have PSC they are clearly inside IR35 and will have to be taxed accordingly, but for Companies like mine this is a disaster. The economy needs people and companies like me. The construction industry is crying out for people like me who work like I do and the economy will suffer.

9 February 2020

Bruce Cornfoot

Further to the request from the House of Lords Economic Affairs Committee Finance Bill Sub-Committee for written evidence regarding off-payroll working rules, please find below my submission.

For background, I am a freelance supply chain consultant who has been providing services to numerous large organisations through a limited company since 2009.

Existing measures in the public sector

1) I have not worked in the public sector and so have no evidence to provide in this area of interest.

Impact of new off-payroll rules on organisations

2) Evidence shows that large companies, for example in the financial services sector, who legitimately use a large amount of contractors for large change programmes have determined from a risk perspective that contractors will no longer be used. They wish to avoid the risk of HMRC determining at a later date that their assessments were wrong and that employment taxes are due. The new rules leave the end fee payer liable for these. Banks especially do not wish to repeat the liability exposure from PPI mis-selling. Not having contractors eliminates this risk.

Consultancy firms are also following suit as their clients are specifically asking for assurances that there is no downstream employment tax liability from any of their engagements/ are specifying in contracts that the consultancy is liable to reimburse such costs.

Therefore the burden of assessment has been bypassed by blanket decisions not to use contractors at all.

There is a lack of confidence that assessments made in good faith and with due diligence will be accepted by HMRC (see 8 below).

3) I believe they are.

4) The legal complexities, lack of case law around the new rules and the fact that the existing rules cannot be consistently interpreted by HMRC means that contracting chains may cease to exist. This will be beneficial to the employment agency middleman but will increase overall project/ business costs and impact flexibility to engage the right people for the specific task.

5) Increase confidence in the CEST tool by immediately publishing the test data so that it can be peer reviewed. A FOI request for this was rejected by HMRC on public interest grounds although they did indicate that is could be published in December 2020, which means at least 8 months of uncertainty.

Make a legally-binding commitment to accept CEST outcomes if the answers are proven to reflect the working practice in place. At the moment there is a general comment to accept the outcome ("HMRC will stand by the result you get from this tool.") but HMRC have the right to change their mind, as has been seen in previous court cases.

Allow role-based assessments rather than per individual which would cut out burdensome duplication, e.g. if you are recruiting 5 testers all doing the same thing then perform one assessment.

Determining tax status of workers

6) The theory is clear but there is an inability for either HMRC, worker or engager to be able to consistently and accurately interpret them with any degree of accuracy. Tax case law shows time and again that HMRC cannot consistently interpret its own IR35 rules with them losing the majority of cases that go to court.

The rules are not perfect for the contracting environment, for example, engagers will require workers to have ID passes (not sign in as a visitor each day) and will provide them with IT equipment (to ensure the security and control of their IT networks). These can be seen by HMRC as indicators of employment, which is nonsense. The right of substitution is a very real right in many contracts, but engagers, who have a vested interest in the projects succeeding, almost always vet (and can reject) the replacement to ensure that they can do the work required - this is seen by HMRC as not a true right of substitution as the fee payer is involved, to a small degree.

7) I am aware that CEST has had a makeover, but I believe that "mutuality of obligation" (MOO) is not tested as HMRC feel that if there is a contract then MOO must exist. This has been rejected on numerous occasions in court. As per response 5, the lack of transparency in testing means that the tool cannot be accepted until proven to be robust and accurate against case law. The previous version always came out with an undetermined result for all my contracts. New version seems better (TBC).

8) The engager makes the determination and owns the appeals process (marking their own homework). Whether an engager will listen to a worker's arguments or whether they will accept the CEST outcome is down to the engager. The lack of an independent appeals process means that safeguards are lacking and it is unlikely that engagers will overturn their decisions.

Policy objectives and wider context

9) Lobby organisations have proposed alternatives during the consultation but HMRC limited the scope of the consultation to specifically exclude alternative models. One possible simplification would be to establish a new legal entity for personal services companies with suitable tax rules and rates acceptable to both HMRC and the industry. This could potentially generate more tax for HM Treasury and avoid the need for complicated and expensive investigations and court cases. It is also a tax simplification.

10) What are the Government's objectives? If the objective is to tax people fairly, then this is not the way as no account is taken of the worker's overheads, financial risks and work quality liabilities that all come at a cost (or potential cost) which should be excluded from tax, nor the fact that the worker still has to pay VAT and Corporation Tax. The outcome will be more employers NI being collected (whether due or not) as more people are pushed into IR35 rules which is certainly HMRC's objective.

11) I would not use an umbrella company as they are just a mechanism to circumvent the rules, in my opinion. Personally they should be banned.

12) I believe these rules will create a genuine new category of "rights-less employees" as unscrupulous employers push existing PAYE employees into the PSC IR35 model when employers NI is still paid but they don't have to fund employee benefits/ rights. This mean the further exploitation of the lowest paid and most vulnerable workers.

If the system determines that someone is a "hidden employee" and so should be taxed "as an employee" then the employer/ engager should be forced to provide employment rights such as sick and holiday pay, pension contributions, etc. This additional business cost would then give engagers the motivation to set-up work packages and assessments correctly so that genuine contractors can continue to provide their services as they do today.

Thank you for allowing me the opportunity to provide the above evidence and opinion.

24 February 2020

David Cotton

1. Please find below my responses to the call for evidence for the extension of the off-payroll working rules. The submission is made in a personal capacity.

2. Determining tax status of workers: Question 6. Are the tests for determining employment for the purposes of these rules

sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

3. From my experience and that of many others that I have spoken with, it is clear end clients have little grasp on the subtleties of the questions posed by the CEST tool. CEST is a binary tool that fails to take into account the many subtleties that determine if a contractor is self-employed. The CEST tool has inherent built-in bias into the binary question set to arrive at, in some cases, an incorrect determination. It is noted Tax Tribunals, that are extremely knowledgeable authorities on such matters, deliberate over many hours/days in order to arrive a determination of an individual's self-employment status, whereas an end client who in some instances has no knowledge of the legal definition of self-employment has to arrive at decisions within much shorter timescales, which does not support reasonable care.

4. Determining tax status of workers: Question 7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

5. The CEST tool is biased towards placing legitimate contractors inside IR35. Of most importance, the CEST tool does not cover 'Mutuality of Obligation', which is one of the three pillars of being self-employment the other two being:

   - Substitution. As an employee, you would be obliged to perform the services for your end client personally. ...
   - Direction and Control. Direction and control concern how, when, where or what is to be done. ...

6. The lack of 'Mutuality of Obligation' has been the principal reason that HMRC has lost a number of recent Tax Tribunal cases e.g. Alcock vs HMRC, but there are others.

7. The CEST tool to be fit for purpose and itself adhere to reasonable care, needs to take explicit account of Mutuality of Obligation. Unless this happens, the tool clearly contradicts what has been repeatedly confirmed by tax tribunal judges. The CEST tool requires amendment and should also be accompanied by some explanatory text and guidance so the user i.e. end client can make a fair and consistent assessment of whether a contractor is self-employment or not whilst adhering to reasonable care.

8. Policy objectives and wider context: Question 12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

9. It is difficult to reconcile how these rules are attempting on the one hand to make tax fairer, but on the other hand contractors determined to be inside IR35 are subject to paying Employers National Insurance from their current charge rate. It is also hard to reconcile why a contractor who has no employment rights or benefits whatsoever e.g. sick pay, holiday pay, pension, health care etc. should be taxed as an employee specifically where they work away from their families and have significant costs of doing so in order to provide a flexible workforce for our country, which cannot be claimed as allowable expenses.

10. The current implementation of the extension of off-payroll working rules is from my experience, and I am sure many others who will submit evidence for this review, having a damaging effect on the countries' valuable flexible contractor workforce. Flexibility in the economy is being severely impacted at a time when the economy needs flexibility more than ever. I believe key projects, including but not restricted to the nation's continued at sea nuclear deterrent, will suffer as was the case with key projects when the public sector came under the rules.

11. Moreover, it appears some end clients are arriving at inconsistent determinations. For example, BAE Systems have used the CEST tool to determine a vast majority of contractors inside the IR35 rules whereas they have 'cherry picked' some contractors to be outside the IR35 rules. The only differentiator between those contractors who are 'inside' and 'outside' the IR35 rules at BAE on the Dreadnought project is that the 'outside' contractors would have a perceived bigger impact on the delivery of the Dreadnought project if they left the project due to being determined to fall within the scope of IR35, which is not a relevant factor when determining self-employment; in reality these contractors operate no differently to the other highly skilled contractors on the project who are inside the rules.

12. Please refer to this excerpt below from:

https://www.contractoruk.com/news/0014419rivals_compel_clients_rethink_their_inside_ir35_decisions.html

'At BAE, it stinks of a set-up'

Meanwhile, at a leading defence firm, PSC contractors were assessed via CEST in December and the vast majority received 'inside IR35' determinations in only the last few days.

"However, other [PSCs] who do the same role, in the same office, on the same project, [have been given] outside [IR35 determinations]," says a source at the firm, BAE Systems.

"This is a shock. But it rather suggests BAE have done an exercise to ensure the specialists that they need avoid the chop. [At least that's what] it stinks [of]."

13. Finally, the extension to the rules has resulted in some end clients to impose blanket bans on using contractors to ease the burden of assessing a contractors self-employment status and also protecting themselves from a tax bill should they get it wrong.

14. The end result of the extension to the rules will be a much smaller, lower quality and less flexible workforce, which can only harm the wider economy.

6 February 2020

Benjamin Craig

I would like to take the opportunity to respond to the Finance Bill Sub-Committee's call for evidence in relation to the 2020 Finance Bill (specifically the changes to the off-payroll rules).

I have framed my responses according to the specific areas of interest outlined in the call for evidence and have concluded with some general comments about my individual situation - my experience with, and views of, the off-payroll rules.

I am answering in a personal capacity as a contract worker who is directly affected by these rules and the proposed changes.

Per the guidance given, I have included a one-page summary of my full submission.
Summary Response

Existing measures in the public sector
Changes to status determination in 2017 directly resulted in me ruling out taking any contract with a public sector body.

The reaction of the private sector to the proposed changes to status determination has been exactly the same as that in the public sector in 2017.
No lessons have been learned whatsoever.

Impact of new off-payroll rules on organisations
The government has failed to understand the compliance burden on the private sector.
Private sector organisations are simply using blanket determinations and 'take it or leave it' contracts.
The rules unnecessarily increase complexity and the number of intermediaries in the supply chain.
They give rise to potential conflict of interest situations between recruiters and umbrella companies.
A reduction of the administrative burden would be achieved by maintaining the current status determination process (or scrapping the rules altogether).

Determining tax status of workers
HRMC continues to obfuscate the rules out of an apparent fear that if people understand the rules, they might try to game them.
The rules are not fit for purpose for the nature of work in the 21st century.
The CEST tool is overly simplistic, ignores key measures, and does not reflect case law in the areas to which it relates.
There is effectively no method of challenging status determinations.
There needs to be a statutory determination and dispute resolution process if engagers are to determine status.

Policy objectives and wider context
IR35 has always been a Heath Robinson solution to governments' fixation on so-called equality.
Time limits could be placed on contract engagements or self-employed NICs applied to dividends from Personal Service Companies, as an alternative to the complex IR35 rules.
Highly-skilled contractors should not be placed in the same bucket as gig economy workers.
The rules create massive inequality between permanent and contract workers, via contractors paying tax like an employee but receiving none of the benefits or protections.
Inequality is exacerbated by the fact that umbrella workers must also pay all of the payroll taxes themselves, unlike permanent employees.
The rules make it difficult for contractors to create financial buffers to cover time when they are not working.

Personal Comments

Contract work income is used to subsidise other high-risk activities in my business.
Being able to subsidise these activities has resulted in a project which generated over £1m of economic activity and created hundreds of temporary jobs.
Similar projects must now be abandoned as a result of the business being forced to treat all contract work income as 'employment income'.
The government should not throw the entire highly-skilled contract workforce under the bus, simply to catch a minority of people who abuse the system.

Full Response

Existing measures in the public sector - what has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

I have worked exclusively in the private sector since the rules relating to status determinations were changed in 2017. The introduction of this change directly led me to rule out taking on any work for public sector clients.

No lessons whatsoever appear to have been learned from the public sector rollout. Despite government assurances to the contrary, the reaction to the imminent change of rules in the private sector has been almost identical to that of public sector bodies in 2017: blanket status determinations, mass exodus of contractors, and a 'take or leave it' approach to offering work.

Impact of new off-payroll rules on organisations - Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

The government has completely failed to assess the impact of the new rules on the compliance burden faced by the private sector. Specifically, little or no useful guidance has been made available to help business fully-understand the changes.

Medium and large organisations have been left floundering, as evidenced in the prevalence of these businesses either making blanket assessments, and more commonly, forcing contractors to shift to umbrella companies or become permanent employees. It's clear that the motivation for this

approach is to avoid having to deal with the complexity and risk of making status determinations.

Impact of new off-payroll rules on organisations - Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

The dearth of useful information on the off-payroll rules affects small companies as well; particularly those who may be at or near the threshold for being considered 'medium-sized' for the purpose of the off-payroll rules.

The threshold of 50 employees seems to have been arbitrarily set. The need for highly-skilled contractor workers in SMEs varies dramatically across different industries.

Impact of new off-payroll rules on organisations - What will be the effect of these new measures on a chain of contractors and sub- contractors?

The chain of contractors and sub-contractors is already unnecessarily complicated by excessive regulations, so going forward, these changes will simply increase that complexity.

Specifically, the rules are now forcing additional intermediaries into the supply chain (predominantly umbrella companies), which were often not there before. The presence of extra intermediaries inevitably increases the administrative burden and costs for all concerned.

And forcing contractors to use umbrella companies opens up significant potential for conflicts of interest. For example, large recruiters already require contractors to choose an umbrella company from their pre-approved list. There's nothing to stop a recruiter owning an umbrella company and forcing workers to use that umbrella company on pain of not be put forward for work; irrespective of whether said umbrella is well-managed, compliant, or offers a competitive and fair fee structure.

Impact of new off-payroll rules on organisations - What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Quite simply, the administrative burden could be eliminated by maintaining the current system where the worker is responsible for determining their status (or repealing the rules altogether). The changes are wholly unnecessary.

Tax should be a matter between the tax-payer and HRMC. The growing trend of HRMC deputising businesses and other organisations to outsource its responsibilities needs to be curtailed as a matter of urgency across the board.

Determining tax status of workers - Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

The tests are not at all clear and do not reflect the reality of how many industries and businesses who make use of temporary workers need to operate.

HMRC continues to play coy when it comes to setting out the definitive criteria under which a status determination can be made. Its position seems to rely on a spectacular piece of contorted logic: "You must follow the rules, although we can't tell you what the rules are because then you might try to game the rules. But you'd better comply, or else."

Both HRMC and the government fail to understand the concept of work in the 21st century. A 'one-size fits all' model of worker status is no longer fit for purpose. Indeed, these rules seem more about making life easier for HRMC than fostering a flexible and vibrant modern economy.

The prevalence of blanket assessments and forced umbrellas is proof that the rules are so unclear that engagers prefer not to have to engage with them at all.

Determining tax status of workers - What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The CEST tool is wholly not fit for purpose. It's been widely condemned by subject matter experts for not being reflective of case law from successful challenges to HRMC determinations that a given engagement falls within the scope of the off-payroll rules.

Indeed, the fact that HRMC loses vastly more challenges than are upheld suggests even it does not understand the rules.

Specifically, the tool has been criticised for not taking into account whatsoever, one of the key pillars in successful tribunal defences: the absence of mutuality of obligation.

The tool also relies heavily on questions relating to the right of substitution. However, the possible answers are framed in an overly

simplistic way, unreflective of either case law or the reality of an engagement.

For example, one question asks, "Does your client have the right to reject a substitute?" The allowable answers are "yes" or "no". This does not reflect the reality of substitution. In most cases, clients have only a limited right to reject a substitute (usually only on the basis that the individual does not have the skills or experience to perform the agreed services). Case law has determined that this limitation is not considered a 'right of rejection' for the purpose status determination.

Yet in the CEST tool the closest honest answer possible is "yes". The tool then takes this to assume the client has an unfettered right of refusal, which in turn is treated as an indicator of a personal service requirement, and ultimately (incorrectly) a pointer that the engagement is inside the off-payroll rules.

The vagueness of this and other questions also means that in a large number of cases, the tool simply returns an "undetermined" status. This is not helpful to anyone, yet the tool is pretty much the only thing that may engagers have at their disposal to try and make sense of the rules.

Determining tax status of workers - How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Completely ineffective. In my experience there is literally no method of challenging status determinations. In effect, the engager is entirely free to put a 'take it or leave it' offer on the table.

There is often a vast imbalance of power between an engager and a contractor. If we must progress with engager determinations, a robust statutory status determination and dispute resolution process is required, paired with rules to prevent engagers simply making blanket determinations or forcing workers into umbrella companies.

Policy objectives and wider context - Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

IR35 has always been a Heath Robinson approach to addressing the government's fixation with achieving so-called equality between contractor workers and employees. Historically, a quid pro quo of higher day rates in return for higher risk has maintained the balance. These changes destroy that.

However if the government remains hell-bent on further 'equalisation', there are much simpler ways to achieve it than IR35.

One option would be to set a limit on the length a contract engagement can run before it becomes considered 'employment'. There is already a '24 month rule' relating to contractor expenses. Why not extend this to the whole value of the engagement? Although contract length isn't necessarily an indicator of an employee-employer relationship, the longer the engagement is, the harder it becomes to argue that the worker is needed on a 'temporary' basis.
Another even simpler option would be to apply the standard self-employed NICs to dividends taken from a Personal Service Company. The PSC already pays corporation tax, so after these additional NICs, and the income tax the worker subsequently pays on the received dividends, any difference between the effective tax rate of a contractor and that of an employee is likely to be negligible or non-existent.

Both these options allow businesses to retain the flexibility of using a highly-skilled temporary workforce, while not facing compliance risk or cumbersome determinations. And all while still increasing the Treasury's tax take.

Policy objectives and wider context - Will the Bill, as drafted, achieve the Government's objectives?

Doubtful. It's a ham-fisted solution.

One area which has been overlooked is the knock-on effect on revenue and tax of third-parties. Engagers will now face further costs through higher day rates, more participants in the supply chain, and the need to increase the size of their permanent payroll. This in turn reduces profits and ultimately, corporation tax receipts. Likewise, small professional services firms will lose a significant amount of revenue from the contractor market (accounting, insurances, etc), again reducing profits, jobs, and resulting corporation tax. Has the government modelled these losses against the supposed upside of squeezing more tax out of contractor workers?

Policy objectives and wider context - What is your view of the role of umbrella companies in the context of these proposals?

As mentioned, medium and large engagers are pushing all contractors to either umbrellas or to go perm. This opens up potential for abuse via dodgy umbrellas and the conflicts of interest mentioned earlier. It also puts contractors at mercy of unregulated umbrella fees.

Policy objectives and wider context - How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Too often in this discussion, the plight of workers in the so-called gig economy is rolled up with issues relating to highly-skilled temporary workers. We must separate these groups, as the needs and issues faced are entirely different.

The off-payroll rules are manifestly unfair on workers who are determined to be inside the rules. Far from achieving the government's objective of creating 'fairness' between contract workers and employees, it creates a system of apartheid.

There has been wide commentary on the fact that contractors placed inside the rules must pay the same taxes as employees, but get none of the benefits: no holiday pay, no sick pay, no maternity/paternity, no state pension, and no statutory redundancy.

An additional and significant disadvantage, which has received little attention, is that contractors forced to work through umbrellas are must also pay the umbrella company's costs. There is course a fee for their service, however most umbrellas also force the worker to pay their own payroll taxes (Employer NIC and apprenticeship levy). No permanent employee is required to pay these, so contract workers are instantly taking an additional 14.3% hit on their income. In other words, the contractor becomes far worse off than the permanent employee, while still shouldering all of the risks as before.

This situation reflects one of the core problems with umbrella companies. They behave like employers, yet they pass all of their employer costs on to their employees.

If the government is serious about equalisation, it should either exempt umbrella companies from Employer NIC and Apprentice levies, or force them to pay these out of their own pocket.

Lastly, yet another area that is overlooked is the need for contractors to create financial buffers to cover downtime. Employees never have to worry about times where they might not have work, whereas for a contractor, this is a real concern. Not working can be a choice (taking holidays) or be because it takes time to find a new project. By taxing contractor income as it if were employment income, the ability to create these buffers is severely diminished.

Sure, depending on the overall annual income in any given year, a contractor may be due a tax return. But that will not come for 12-18 months – much later than when the money is needed. And in this scenario, why should individual contractors be forced to cashflow HM Treasury?

Personal comments

I operate small company whose main income is derived from providing specialist consultancy services in the areas of customer experience design and digital transformation for business. However, the company also undertakes activities in film production, digital product development, and book publishing.

The latter areas all involve high-risk projects and do not always result in immediate (or sometimes any) revenue in relation the activities undertaken to produce them. However, the company's consulting activities are able to effectively subsidise this work, not only allowing it to take place, but also creating significant external economic activity.

For example, in the past the company was able to produce a feature film which directly created hundreds of temporary jobs and was responsible for around £1m of economic activity. The company did not fund this activity directly, but was able to subsidise the time and expense needed to get the project off the ground via its consulting revenue. Without it, this film simply would not have been made.

Under the proposed changes, this example will no longer be possible. Any consulting revenue will be taxed at source as if it was employment income (due to blanket determinations and forced umbrellas). This has already resulted two further feature film projects to be abandoned, both of which would have generated jobs and seven figure economic activity.

I certainly acknowledge the existence of abusers of the current off-payroll rules, particularly the oft-quoted example where an employee resigns on a Friday and comes back on Monday morning as a 'third-party contractor'.

However, the government's approach seems to be based on a generalistic assumption that every contractor just takes their day rate and pays all of it out to themselves using a company structure to minimise their tax. But this is not reflective of my reality, nor tens of thousands of other highly-skilled contractors like myself.

Shifting responsibility for status determination to the engager just further complicates and already convoluted mess. The analogy I'd put forward is as follows: it's like not fining a driver caught speeding on the road, rather asking the DoT or local authority pay because they manage the road on

which the speeding offense took place. Clearly this is lunacy, as is forcing engagers to make status determinations.

The April 2020 changes need to be abandoned, as does the whole IR35 mess.

20 February 2020

Darren Davies

The Lords Committee Investigation into the extension of 'Off-Payroll working rules'

I am writing in a personal capacity regarding Lord Forsyth of Drumlean's request to hear from individuals who will be affected by the pending introduction of 'off payroll working rules' in the private sector.

I am an IT Contractor, and have been running a Private Services Company (PSC) for eighteen years, and will find myself affected by this proposed ruling.

Although I appreciate the requirement for a fair tax ruling, we must also consider the risks and associated costs accepted by a PSC, and the impact to industry in general.

1.0 General Responsibilities and Operating Costs of an IT Private Services Company (PSC)

Most PSC IT contract engagements are for a 3 or 6 month duration. This is sometimes a leader into a larger piece of work, and can be used to evaluate the PSC/individuals providing the services.

After this initial period, if the work is complete or the client decides not to re-engage with the PSC, then the PSC has to market themselves to find new contracts/work.

This can often take up to 6 months, but is deemed as part of the day to day activity of operating a PSC, so is reflected in the contractor day rates.

Due to the specialist nature of many engagements, PSCs have to look for work/contracts over a larger geographic area (often nationally/internationally). The expense of travelling/accommodation are at the expense of the PSC and again reflected in the contractor day rates. This cost will still be the responsibility of the individual if deemed inside IR35, with many contractors being unable to consider anything other than local work/engagements.

PSC's are often on a 2 – 4 week notice period and do not get the benefits of redundancy pay, or cannot claim benefits such as Job Seekers Allowance unless they close or cease trading their limited company.

Any annual leave is at the cost of the PSC, so is any absence due to sickness, or ill health.

PSCs are responsible for the provision of a pension to any employees. If IR35 rulings apply, then this costs should be at the expense of the Client/Umbrella Company. However, the reality of this is the costs will be subtracted at source from the contractor day rate. It is also assumed that in many cases this will be the same for employer NICs.

PSCs are responsible for keeping up to date with latest technologies and methodologies (especially within IT), so budget is put aside to cover training costs (and not getting paid whilst training) as these costs are not covered by the end client. If deemed within IR35, this costs will still be deemed the responsibility of the contractor. My feeling is that many contractors will stop, or be unable to pay for training, so key skill sets will soon become a shortage / issue within industry.

Other costs associated with operating a PSC include:

- Accountancy costs (circa £2k PA)
- Private indemnity insurance
- Vehicle costs (including business insurance)

2.0 Check Employment Status for Tax (CEST) Tool

It is widely known that this tool is open for interpretation and can be completed in such ways so that an individual can be both inside and outside of IR35.

Since 2000 it has been the responsibility of the PSC to ensure their client engagement status falls outside of IR35. Many PSCs work closely with the end client or employment agency to agree a contract which does not breach these terms.

Come 6th April 2020, the responsibility of declaration of IR35 status will be transferred to the end client. Already we are seeing clients being risk adverse and halting all engagements with PSCs (they have to operate under an umbrella company). Other clients have stated they will treat each case as individual, but the initial trend is seeing these clients also being risk adverse and completing the PSC assessment tool to ensure the contractor falls inside of IR35 (often with no reference to the current contract agreements).

Indeed, this has happened to myself.

My current contract clearly states my PSC has a substitution clause, but when the client completed the CEST tool they answered the following (as per my SDS):

Q: Do you have the right to reject a substitute?

This is clearly an ambiguous question. Of course the Client has a right to reject a substitute (depending on skills/personality/etc.) from any supplier, not just a PSC

A: Yes

By answering yes, this changed my SDS from being outside IR35 to being inside IR35

3.0 Other Impacts of IR35

Business & Innovation: PSCs are often used for their specialists skill sets to deliver a fixed piece of work. Companies can be flexible in their approach to innovation as they are able to call on these skill sets for a temporary amount of time and at a determined cost.

The introduction of IR35 responsibilities falling with the end client has already seen a risk adverse approach to IR35 and will see many PSCs ceasing to trade and skills migrating away from the contractor market into the permanent market. This restricts the move of labour across businesses and will halt/slow many current/future projects.

Accountants: I have been with my accountant since I started my limited company in 2002.

At that time he was a 'one man band', just starting out. He now has four employees.

Approximately 40% of his business is looking after PSCs such as myself, and he has concerns he will lose most if not all of this business, with the knock-on effect being that he will have to make one or two people redundant.

Multiply this by the amount of PSCs that will cease to trade and the knock-on effect to the whole accounting industry is huge.

Hotels & Leisure Industry: I have already mentioned that after IR35, many contractors will be restricted to local contracts to keep costs down.

This will have an impact to local hotels/pubs/restaurants where PSC contactors are engaging on a contract for a number of months that dictates them being away from home.

VAT: Most PSCs are VAT registered and pay >£20k of VAT per annum. Has this been considered when offsetting the increase in PAYE/NICs (against corporation tax)?

4.0 Summary

Although I see the necessity to ensure the correct amount of tax is paid, I feel the PSC is being treated as an easy target to generate more PAYE & NICs.

The impact of this in the long term has not been thought through thoroughly and is blinkered in its approach.

As a country, our people should be rewarded for being innovative and taking risks, not penalised. The operation of a PSC does far more than reduce a personal tax bill, it generates work and tax across industry, providing a mobile, specialist workforce.

If the government insists on proceeding with this ruling, then there should be an overhaul of the CEST tool, ensuring that the questions are not open for interpretation or manipulation.

8 February 2020

Mark Davies

1. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved? (Q7)

My client's CTO has expressed his confusion at the tool and how it will be applied (in an organisation of 7,500).

Despite the changes coming in very soon, there has been zero strategy for how the firm will approach the contractor workforce, as of 25/02/2020. The expectation is all contractors will leave as the tool is unreliable and places too much risk on the client, and most contractors have budgeted to take a leave of work.

My assessment is the firm will work out a strategy on how to use the updated CEST tool (or something like QDOS/IR35 Shield) which will be more robust and understandable. In the meanwhile it will be chaos and all IT projects will be impacted, alongside external client projects.

2. How effective will the status determination process be in resolving issues of employment status? Are there adequate

safeguards, allowing decisions to be challenged? If not, what more is needed?(Q8)

As of 25/02/.2020 there has been zero discussion of employment status. Even though my client is a magic circle law firm there is no strategy or idea how to approach this! The HR Resourcing Director similarly is using delay tactics, but the contractor workforce is already beginning to leave.

3. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?(Q12)

Currently I am outside of IR35. Prior to 2016 dividend tax change, I agreed with HMRC that some contractors were probably underpaying tax in relation to employees, despite the extra risk they take. However post dividend tax the playing field has levelled.

With being inside IR35, I would look to take an indefinite break until:

a) the market decides a strategy around outside IR35 contracts and they become freely available.

b) take a short-term FTE employment contract

c) Medium term – most likely move abroad. Already looking at Singapore, Canada and the Cayman Islands, as well as Dubai.

I want to make clear that an inside IR35 role is NOT an option for me, as there is zero economic advantage and is in fact a disadvantage, as you are an average paid employee with zero rights. In addition, the UK should be rewarding risk-takers who do more than the average employee in helping grow the economy, especially in a post-Brexit world. Firms need a steady stream of skilled labour, not the burden of being forced into making blanket decisions on contractors.

The below costs are currently what I have to cover:

- Public liability insurance
- Sick pay
- Jury cover insurance
- Travel costs
- Laptop / subscription business costs as need this for my work, in addition to one-off costs such as iPad and iPhone I've had to fund myself for mobile projects for clients

- Holiday pay (I only take 10-15 days/year)
- Medical insurance
- Pension contributions
- Accountancy fees

I also pay the following:

- £20k+ corporation tax
- £2-£4k NI – make this voluntarily
- Self assessment tax - £11k in TY 18/19
- VAT - £22.5k last year

For inside – IR35 roles at my client (if and when they make that decision!), it is not clear whether:

a) I cannot appeal – from other contractors in similar roles the answer is a short no. The only option is to quit, as I distrust HMRC's stance on backdating contractors for additional tax, based on their faulty tool and aggressive tribunal approach.

b) accept an "inside" IR35 role, inviting a risk of tax which would be stupid to accept. Many, many contractors will be in this position due to the complexity of ambiguity of the CEST tool and lack of knowledge provided by HMRC. In this instance, majority of contractors will quit and there will be a significant shortfall in tax receipts, but more importantly an much bigger impact on the UK's economy with projects at best, experiencing a delay, at worst a complete lack of skilled resource.

HMRC should, in my opinion, impose a 5% tax on firms wishing to hire "inside" IR35 roles, which either the contractor will pay (reduced day rate), or the firm will take up. Typically for economists, the HMRC have abjectly failed to take into account the reality of humans making their decisions in a IR35 world, and the loss of tax will outweigh the supposed benefits.

Robin Davis

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

1.1. There needs to be a proper study conducted beyond IFF Research's Off-payroll reform in the public sector Research & Analysis (18/05/2018) that was conducted within 6 months of rollout.

1.2. This should include:

1.2.1. The full spectrum of taxes (Income, NIC, Dividend, Corporation, and VAT) paid by contractors before vs. after rollout.

1.2.2. The perceived quality and experience of contractors (and on-boarding timeline) before vs. after rollout. I have been propositioned for such roles which want very experienced 'rocket scientists' for peanuts to compensate for public sector gaps in their own workforce.

1.2.3. The stress/happiness of Public Sector workers then vs. now. E.g. 1.13 of IFF Research's paper states "Conversely, amongst sites, results indicate that the number of paid employees fell at a faster rate than the number of off-payroll contractors" would indicate remaining employees were becoming stressed having to perform multiple roles and thus leaving.

1.2.4. How many contractors (not public bodies) have experienced payroll or admin issues related to this. I have at least 1 PhD friend in the NHS who was hoodwinked into paying the Employer's NIC out of their rate, and not being paid either the right amount or on time.

1.3. IR35 Public Sector Impact (22/06/2018) - "The study by the CIPD and IPSE, the association for independent professionals and the self-employed, found more than half (51 per cent) of public sector hiring managers thought they had lost skilled contractors because of April 2017's changes to the IR35 rules, while nearly three-quarters (71 per cent) were facing challenges in retaining their contractors."

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

2.1. No – Employment Status needs to be aligned between Employment Law and Tax Law. Being taxed as an employee should mean full rights as an employee (of the Engager, not any umbrella or other) – see 2.3.9 below.

2.2. No – HMRC is being too narrow in just looking at income tax and NICs vs. the full suite of taxes that contractors pay – see 2.3.4 and 2.3.5 below.

2.3. No – Any sensible professional would see that the Business Case for this does not stack up:

2.3.1. The Government is risking 12.9% - 14.5% (£271bn - £305bn) of £2.1tn GDP

2.3.2. to collect 0.17% (£1.3bn) of £769bn tax revenue per annum,

2.3.3. which does not include the government's legal & admin costs of investigations and cases

2.3.4. but, per PSC, lose 3.3% of tax revenue in the process (42% vs 45.3% as almost all contractors I have worked with are in the £50-£150k bracket)

2.3.5. (+ another 20% if including lost VAT - which Engagers would not need to pay otherwise and probably spirit offshore to avoid their Corporation Tax liability),

2.3.6. just to catch 3.4% (170,000 or 230,000 - HMRC contradict themselves) of PSCs while impacting 100% of PSCs (4.8 [p3] - 5 [p19] million), 60,000 engager organisations and 20,000 agencies,

2.3.7. introducing extra significant admin, confusion and risk to all, many PSCs of which will be incorrectly classed as inside-IR35

2.3.8. without recourse except through lengthy and costly employment tribunals, which the Taylor Review expressed was "a barrier to people asserting their rights" (p34),

2.3.9. when "there is no direct link between employment status for rights and employment status for tax" (p18) (also encapsulated within the Employment Status Consultation),

2.3.10. meaning Inside-IR35 PSCs will be paying for but not having the rights (e.g. holiday, sickness, pension) of an employee while still having to pay separately (again) for those rights (and/or being double-taxed with VAT and Corporation Tax if still using their PSCs while inside-IR35 e.g. while contending SDS or servicing other clients outside-IR35),

2.3.11. and/or have fragmented pension pots across multiple umbrellas per year, which will be harder to track and consolidate, putting more stress on the individual and greater reliance on the State Pension,

2.3.12. all the while tempting all organisations in the future to have all permanent staff engaged through this mechanism, approved by HMRC (apparently), where their savings have a high chance of going offshore without further revenue to HMRC, while increasing individuals' dependence on the State and reducing entrepreneurship.

2.4. No – When organisations and individuals have enough pressure to stay viable during Brexit and Immigration Law pressures as well as this all at the same time, the risk of failure is greatly increased.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

   4.1. It will greatly increase time to recruit and cost of administration across all organisations and contractors in the chain.

   4.2. It will make contractors less fluid and flexible to contribute where their skills are needed.

   4.3. It will be a nightmare for individual contractors to administer and/or challenge, with significant delays (45-challenge and/or employment tribunal) during which income is doubtful or sporadic, stress is increased, risking more reliance on the NHS and DWP benefits.

   4.4. Contractors have a higher risk of exploitation and exposure within the chain, while increasing their risk of back-dated liability due to problems in the chain not of their making while still being made largely accountable for them.

   4.5. It makes the whole process of working (contracting or "employment") much more opaque with so many entities involved in a chain, for individuals, organisations and also for HMRC.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

   5.1. Scrap IR35 in its entirety, or keep the existing rules as they are.

   5.2. HMRC to internally reassign VAT revenue collected (and/or some Corporation Tax) from PSCs as Employer/Employee NIC etc.; otherwise HMRC would never collect it anyway (see 2.3.4 and 2.3.5 above). This whole legislation appears to be an internal accounting problem within HMRC, who are not looking at the bigger tax collection picture and are now transferring their problem onto everyone else.

   5.3. For genuine "disguised employees" (the 2000 IR35), prohibit organisations from taking on a previous employee as a PSC for at least 6 or 12 months.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

   9.1. See 5.1 to 5.3 above.

10. Will the Bill, as drafted, achieve the Government's objectives?

    10.1. Yes and no. Yes, in terms of collecting more NIC but no in terms of making UK plc less flexible and reducing overall tax revenue, including to offshore operators/organisations. See all answers above.

11. What is your view of the role of umbrella companies in the context of these proposals?

    11.1. It puts contractors at the mercy of umbrella companies who, from the Loan Charge problems, can be dubious at best.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

    12.1. No, it is not fair and exploits the worker for the benefit of organisations. See 2.1 and 2.3.12 above.

    12.2. Either Organisations should apply for a licence each year to operate a "gig economy" with no-rights for the employee, which is then cascaded to all prospective and current "employees".

    12.3. And/or "employees" register with DWP/HMRC that they are waiving their rights before engaging/working with such an organisation.

21 February 2020

Alan Denny

ANSWERS TO SPECIFIC QUESTIONS
Existing measures in the public sector
No response.

Impact of new off-payroll rules on organisations

The impact of the extension of the off-payroll rules to the private sector has not been adequately assessed, particularly the behavioural impact of client organisations. In the Oil & Gas sector, some clients are finding all of their contractors as 'inside IR35' (whether they really are or not) as there is so much fear of getting the assessments wrong and carrying potentially huge financial risk. The vast majority of clients are avoiding the new legislation completely, and simply refusing to engage off-payroll contractors (in some cases also insisting that none of their supply chain engage off-payroll contractors). Very few companies are carrying out genuine individual assessments. This extreme reaction by clients means genuinely self-employed people will lose work opportunities, while clients themselves will lose flexible expertise which is vital in an industry with many peaks and troughs in workload.

The small companies exclusion is not sufficiently robust. In the Oil & Gas sector, some of the operators fear that they could carry the financial risk as the ultimate end client, and are therefore insisting that none of the companies in their supply chain use off-payroll contractors. This could result in several small companies having to place all contractors on payroll even though they are supposed to be excluded from the legislation.

Virtually all of the contractors within my network are planning to leave their clients before the end of March 2020 if forced onto payroll or assessed to be 'inside IR35'. Several have already left. There is a fear that HMRC could look to investigate historical tax affairs if they agree to work for their current clients 'inside IR35'. Potentially thousands of contractors are prepared to leave their existing clients and be without work for a period of time until the 'dust settles', which would have a significant impact on project delivery and cause real damage to the UK economy (with clients now starting to send work offshore).
This scenario could potentially be mitigated if legislation was introduced to stop contractors being retrospectively targeted.

There has been a lack of guidance for businesses and many have left their IR35 assessments late in the hope that additional guidance would be published or until the legislation was officially passed via the Finance Bill (which has still not happened due to the further delay to the Budget). There is now a significant administrative burden on companies with large contractor populations as they attempt to complete all of the individual assessments (which is another reason why some are refusing to engage off-payroll contractors). A delay or halt to the implementation of the off-payroll rules to the private sector would help to spread or remove this administrative burden.

Determining tax status of workers
No response.

The CEST tool appears to be an extremely simplified check which places much emphasis on the right to provide a substitute, whilst ignoring other important determining factors and operating practices (such as mutuality of obligation which has often been the critical factor in previous IR35 cases). On this basis, it is doubtful whether the outcome of a CEST evaluation could be relied upon. There are other commercially available tools which seem to be more robust and include all relevant case law, and CEST should be improved in line with these in order to produce more robust determinations.

No response.

Policy objectives and wider context
No response.

The bill as drafted will force many genuine contractors onto payroll or out of work which will result in clients losing vital flexible expertise. Of course, everyone should pay the right amount of tax, but this is a sledgehammer to crack a nut. It would be a disaster both for self- employed people and for the wider economy.

No response.

It is unfair that some individuals could be taxed as if they are employees without having the same rights as employees. This will create a new class of 'no-rights workers'. In practice, the picture is actually worse than this - when clients decide IR35 applies to their contracts (or they blanket ban off-payroll contractors and insist on on-payroll working), genuine contractors will end up paying employee taxes, along with the employers' National Insurance charge (an effective rate of around 50 per cent) and in some cases even the hirers' apprenticeship levy – without any of the benefits and rights of an employee. How can this be fair?

19 February 2020

Sanjib Dhar

As a freelancer for 11 years with my own Personal Service Company, the IR35 legislation has been one of the most ill-conceived, ill-thought out legislations ever created by HMT & HMRC over the last 20 years effecting my company & the self-employed in the UK.

The concept of "disguised employment" and a "perceived" tax avoidance is such a fundamentally flawed view from HMT & HMRC, which is based on the premise that "**someone who works in the same job, for the**

same company, doing the same role, pays the "same amount of tax" (from https://www.gov.uk/government/publications/rules-for-off-payroll-working-from-april-2020/rules-for-off-payroll-working-from-april-2020)

This is based on a view from a "Tax perspective" NOT an "Employment view". It is also (which is explained later in this document) a misconception that we as PSCs are perceived to be avoiding tax, despite the overwhelming evidence showing that we pay MORE Tax, than if we were to go PAYE or via an Umbrella Company. The fact that 70-90% of IR35 cases HMRC take to court, and lose, epitomizes the flawed legislation.

The public have still never received the true research, data and analysis that HMRC did back in 1999 & 2017 on the modified off-payroll tax rules, & on the true impact of IR35, and how they based these figures on "perceived" additional tax revenue. In my view, this is based on FALSE DATA provided by HMRC to HMT and the Government.

In the IT sector in particular, where the rapid growth in the technology sector has presented a boom in the industry over the last 20 years, it seems that ever since Gordon Brown in 2000 and preceding Governments, has decided to make IT Contractors livelihoods as difficult as possible in one of the few truly successful and innovative industries in the UK.

The view of Government and HMRC towards genuine hard working self-employed IT freelancers is so distorted and misunderstood, it really begs the question as to how such a legislation actually come into effect, who approves these ideas & what actual knowledge they have of how businesses or government departments work (particularly in IT led Projects or Programmes) & what they believe someone should pay towards the tax system as well as what entitlements they have in comparison to a "normal PAYE employee."

Let's look at the facts that HMRC have continuously failed to answer over the last 20 years:

This is what I as a perceived self-employed contractor /single director ltd company owner **SEEN BY HMRC AS A DISGUISED EMPLOYEE & under IR35 is NOT entitled** to in terms of payments or benefits as of 2020:

A. No **Holiday** Pay
B. No **Sick** Pay
C. No Maternity/Paternity Pay
D. No **Redundancy** Pay
E. No **Pension** contribution/Company Pension

F. No Employee liability insurance
G. No Employee discounts for products and services
H. No Healthcare/medical care or insurance
I. No Gym membership
J. No **Bonus**
K. No **Training**
L. No Company Car
M. No Car Fuel Allowance
N. No long-term notice cover (1 week to 4 weeks) normally
O. No Job role/dept flexibility
P. No **Job security**
Q. No Client-site catering (many employees have discounted food – this is often restricted
R. No Childcare vouchers (often subsidised for employees).

And, this is what I, as a self-employed/single director ltd company owner has to pay out of **MY OWN** income received:

1. Dividends Tax
2. VAT
3. Corporation Tax
4. Income Tax
5. National Insurance
6. self-assessments/tax return
7. Continual Bookkeeping
8. Accountancy fees
9. Professional Indemnity Insurance.
10. Other Insurances (e.g. Public / Employees' Liability).
11. Professional Memberships (e.g. IPSE).
12. Training costs (e.g. Microsoft certifications).
13. Software costs
14. Hardware costs (e.g. PC, printer, cabling, servers, etc.)
15. Pension contributions (many employee contributions are subsidised, a significant perk).
16. Stationery
17. Printing Costs
18. Postage Costs
19. Costs of accommodation when away from home
20. Travel/Accommodation costs whilst on business
21. Business phone costs
22. Business broadband costs
23. Company administration costs (e.g. Confirmation Statement)
24. Advertising / Marketing costs (e.g. LinkedIn membership)
25. Health / Medical Insurance Cover (e.g. BUPA, WPA)
26. Allowance for sick days taken (contractors don't get paid when they are ill)

The above, don't even factor in **job uncertainty, risk, financial liability, termination of contracts ranging from 1-4 week's notice & certainly no help from clients once your services when no longer required.**

As mentioned earlier, successive Governments have done nothing in this sector to make things easy for us, having introduced:

1. IR35 - Arguably the primary cause of contractors seeking alternative arrangements - An utter disaster of a legislation, universally disapproved by the contracting community, accountants, IPSE, employers, **but only HMRC & the Government think this is a good idea**
2. Dividends Tax introduced and further increases in this, now at 7.5%
3. Employer's NI as a result of IR35 resulting in reduced income
4. Retrospective Tax law from HMRC due to the Loan Charge
5. Legislation and removal of Managed Service Companies
6. Removal of several expense allowances
7. The botched National Class 2 NICs in 2018, with a U-turn by Philip Hammond
8. S660A..
9. Blanket assessments across the industry now with most clients simply saying everyone is inside IR35.
10. A CEST tool specifically designed to make you be inside IR35, with no MOO or employment rights taken into account.

To summarize, we are not:

1) Uber drivers
2) Zero-hour based contractors (we are after IR35!!)
3) Civil Servants who genuinely are "disguised employees"
4) BBC Presenters who have 1 job in 1 section for 7+ years - (The BBC decided this, not the presenter)
5) Multi-millionaire scheme promoters/tax planners
6) We pay Corporation Tax, Dividend Tax VAT, NI, Income Tax

There seems to be this obsession with HMRC, because of the lack of tax now being "perceived" to be receiving from sectors like ourselves (despite record tax revenues), that everyone pays their equal share of tax - but this is based on an individual's income & method of income. If this was followed to the letter, every self-employed painter, builder, plumber who receives money for work carried out, all pay the same PAYE and NIC as an employee….is this fair based on what the individual's risk is?

https://www.ipse.co.uk/uploads/assets/uploaded/7c7c6438-9094-4847-bb02eeae69652457.pdf

Finally let's take a VERY SIMPLE CASE STUDY, which clearly HMRC & HMT have NO grasp of in terms of how large and medium enterprises work.

Let's take the very basic premise of HMRCs argument

1. Painting Co. ABC, has 50 painters (employees)
2. ABC have 100 painting projects to deliver
3. ABC need 50 more painters to deliver 100 projects
4. ABC can't really hire more employees due to long term costs
5. ABC hires 50 self-employed painters
6. Due to IR35, HMRC class self-employed (SE) painters as disguised employee, as after all, they both do the "same job & need to pay the same tax & NI" as confirmed by the Treasury
7. ABC class SE Painters inside IR35 (See entire industry making blanket assessments) & CEST Tool has also confirmed the 'status' of the SE Painters
8. SE painters leave role as not accepting status
9. SE painter has no work = no revenue = no tax
10. ABC fails to deliver project = no revenue = no tax
11. Accountants, Agencies no longer of use = no revenue = no tax

Now apply that to **every Industry & company in the U.K**. who work on multiple million pound private, public and mission critical 'Programmes & Projects' & the catastrophic consequences IR35 is now causing.

HMRC are simply obsessed with ensuring the entire workforce are under 'PAYE'.
If the Government want to continually target the 4.8m self-employed community, a £257 billion industry then they do so at their own peril.

My current client has deemed me "Inside IR35" (Like the other 75% of organisations in the UK). I am now looking to move my family abroad if given the opportunity, so HMRC will **not receive any tax from me going forward**. For the last 3 years, I have paid over £150k in taxes and yet HMRC & HMT perceive us as tax avoiders!

I urge the government to abolish the abhorrent IR35 Tax legislation.

21 February 2020

Mark, Diggler.co.uk

Your questions:
Existing measures in the public sector
1. What has been the experience of the new off-payroll rules in the public sector? **No comment**
What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals? **No comment**

Impact of new off-payroll rules on organisations
2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? **No comment**
In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? **No comment**
Has the right balance been struck in the compliance burden on the taxpayer and on HMRC? **No comment**

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion? **No comment**

4. What will be the effect of these new measures on a chain of contractors and subcontractors?
=> we will then see a shrinkage in the number of legitimate independent IT freelancers in the UK. They will either be incorrectly forced inside IR35 due to clients nervousness during IR35 assessments or they will seek work outside of the UK or not find work at all. Maybe they will retire (if this is an option for them), I have seen this happen in the last 3 months.
=> the lack of independents for clients to use for "start/stop" projects, will mean critical projects will be resourced from outside the UK or projects will simply not start. This will generating low, if any, revenue for the UK. At a time of uncertainty (namely Brexit) the UK Government should be encouraging small businesses (which is what we are after all), instead of discouraging their growth.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? **No comment**
What should HMRC do to help businesses understand the new administrative rules? **No comment**

Determining tax status of workers
6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? **see below** Do they reflect the reality of the contracting environment? **see below**

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? **see below** Does it require improvement? **see below** If so, how might it be improved? **see below**

8. How effective will the status determination process be in resolving issues of employment status? **see below** Are there adequate safeguards, allowing decisions to be challenged? **see below** If not, what more is needed? **see below**

=> Legitimate independent IT freelancers will be forced inside IR35 due to most clients risk adverse nature (i.e. fear of tax man coming after them if they use an "outside IR35" contractor)
=> Due to the above "always inside IR35" assessment, we will then see a shrinkage in the number of legitimate independent IT freelancers in the UK. They will either be forced inside IR35, seek work outside of the UK, not find work at all, maybe even retire (if this is an option for them).
=> the lack of access to independents consultants for clients to use will mean critical projects will be resourced from outside the UK, generating low, if any, revenue for the UK. At a time of uncertainty (namely Brexit) the UK Government should be encouraging small businesses (which is what we are), instead of discouraging their growth.
=> a general lack of appreciation and understanding of what a legitimate independent contractor stands for – operating their own company, often working away from home, paying for their own accommodation and travel, paying their own indemnity insurance and liability insurance, expecting no holiday pay, sick pay, training or any benefits whatsoever from the client, paying VAT, Corporation Tax, Dividend Tax, Income Tax, National Insurance – has been misunderstood, ignored or overlooked by both clients, revenue and the government.

Policy objectives and wider context
9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they? **No comment**

10. Will the Bill, as drafted, achieve the Government's objectives? **No comment**

11. What is your view of the role of umbrella companies in the context of these proposals? **No comment**

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? **No comment** Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees? **No comment**

17 February 2020

Colin Dinnie

My current role is as a contractor in the financial services sector and I have been engaged for almost 4 years – my daily rate is £250. My

submission is in regard my experience of the transitional process thus far and the personal impact ongoing.

Although the transition means that contractors effectively become employees, we are still liable to employer's national insurance contributions – where is the logic in levying employer national insurance in addition to an employee liability?

The Agency with whom I am engaged have limited the choice of umbrella company to solely FCSA Approved providers and this means that contractors are subject to paying the Apprenticeship levy. In addition to the Employer's National Insurance liability, this means that there are £132.72 of deductions that are made per week (£6,901.44 per annum), due to the lack of choice of provider and being liable as employers, when we are to all intents and purposes, employees.

Contractors are, effectively, going to be treated as second class employees in terms of remuneration – as demonstrated in points 1 and 2, there is a significant reduction in the take home pay of contractors versus employees, yet the contractors will receive none of the benefits enjoyed by the employee. This will have to be funded by the contractor, thereby reducing the viability of the contracting option significantly.

The use of Umbrella Companies does offer flexibility in terms of holiday pay – specifically in whether to have this deducted at source of have the money paid as it is earned. This is not an option under the PAYE alternative, where holiday pay is automatically deducted. I have been self employed for over 15 years and value the flexibility offered by the Umbrella arrangement versus the PAYE alternative.

The change in legislation will have a significant impact on those contractors, such as myself, that need to travel to their place of engagement – the inability to offset travel costs under the new regime will mean that their current roles will no longer be financially viable.

If the purpose of the Bill, as drafted, is simply to maximise the amount of income that can be generated from the contractor market, then in regard to the question of whether it is fit for purpose, the answer is a resounding yes, BUT by treating contractors deemed to be within the IR35 remit, effectively as employees, but then subjecting them to employers taxation liabilities, it fails to deliver a fair and equitable outcome.

The Financial Conduct Authority has a remit to Treat Customers Fairly – the proposed legislation does not offer the same courtesy to contractors. The proposed legislation leaves contractors open to the abuse of the enforced situation, by the Recruitment Agencies, who will profit at the contractor's expense.

In summary, the proposed legislation will lead to a reduction in my personal monthly income (based on a 20 working day period), of £1,751 – this will have a significant impact on my ability to maintain a healthy work/life balance as I will simply not be able to afford to take many days off. Furthermore, it is a significant amount of money to lose from a cashflow perspective on a monthly basis and will lead to an adverse impact on the quality of life that I can provide for my family – as I will not have any entitlement to sick pay, death in service, etc, this will still need to be funded independently. I also need to assess whether the ongoing cost of commuting will mean that the continuation of contracting is viable for me.

A more equitable solution would be to remove the requirement for the contractor to be liable to Employer's National Insurance liability and the Apprenticeship levy.

10 March 2020

Joanne Dodd

Capacity in which submission is made: Personal
Summary:

1. UK contractors are disadvantaged by the new off-payroll working rules as follows:

1.1. The new off-payroll working rules will increase the likelihood that UK clients will import services from overseas contractors in preference to UK contractors.

1.2. The new off-payroll working rules will make it more difficult for UK contractors to export their services overseas.

2. Due to technological advancements remote working is a viable option for many industries and, therefore, it is important that UK contractors remain competitive in the global marketplace.

3. Plans for the April 2020 off-payroll reforms should be withdrawn. A forward thinking alternative solution to the contractor tax issue that does not involve the client and allows UK businesses to maximise on the benefits of a flexible workforce should be found.

Personal situation:

4. I am an IT contractor.

4.1. My client is an overseas company not registered in or resident in the UK.

4.2. I am the worker and am resident in the UK for tax purposes.

4.3. I work through a UK registered limited company. Also known as a Personal Services Company (PSC).
4.4. I perform all services for my client from the UK.
4.5. My contract is direct with my client (client to PSC).
4.6. Due to April 2020 off-payroll working reforms there is a risk that my contract with my overseas client will not be renewed as my client does not wish to be concerned with UK legislation or tax.

Responses to specific questions:

5. I am providing a response to Question 12 in the section **Policy objectives and wider context.**

Q12. How do the new measures relate to the wider context of changes in working arrangements?

6. Comments are provided in the context of contracts that can be serviced remotely. The following cases are considered:

6.1. **CASE 1** A UK client appoints an overseas contractor. The overseas contractor performs services for the client from outside the UK and is not resident in the UK for tax purposes.
6.2. **CASE 2** An overseas client appoints a UK contractor. The UK contractor performs services for the client from the UK and is resident in the UK for tax purposes.

CASE 1:

7. Please refer to subsections (4) and (5) of section 61R from Chapter 10 of Part 2 of ITEPA 2003. My interpretation of these clauses is that they state that if a UK client appoints an overseas contractor who is resident outside the UK then IR35 rules do not apply. Therefore, for contracts that can be serviced remotely, it will be more attractive for a UK client to appoint an overseas contractor than a UK contractor.

CASE 2:

8. Please refer to subsection (7) of section 61R from Chapter 10 of Part 2 of ITEPA 2003. My interpretation of this clause is that it states that an overseas client is treated as resident in the UK. Therefore, if an overseas client wishes to appoint a UK contractor, and the client is classed as medium or large, then the client must apply IR35 rules (status determination and payment of any taxes to HMRC). There is a risk that overseas clients will not wish to be concerned with UK legislation or tax and, therefore, will cease hiring contractors from the UK in preference of contractors from countries that do not impose complex rules on the client.

9. A solution to the issue raised in paragraph 8 of this document is to remove subsection (7) of section 61R from Chapter 10 of Part 2 of ITEPA 2003 and to add in a clause that states that if all entities above

the PSC are outside of the UK, then the responsibility for status determination and payment of tax falls to the PSC. The benefit of this amendment is that the overseas client will not need to be concerned with UK legislation or tax and therefore their decision on whether to hire UK contractors will not be impacted.

10. An unintended consequence of the solution proposed in paragraph 9 of this document could be that UK contractors may purposely seek contracts from overseas clients in preference to contracts from UK clients. Coupled with the issue raised in paragraph 7 of this document, this could lead to a situation where UK contractors service overseas contracts whilst overseas contractors service UK contracts, which is nonsensical.

END OF STATEMENT

25 February 2020

Ian Dodson

I would like to submit the following to the review of the off payroll working
rules. This is an individual submission.

The inability to claim tax deductible expenses inside IR35, specifically transport & accommodation, impacts on the ability to provide services logistically distant from a contractor's base.

The Taylor report highlighted that contractors using limited companies already pay roughly the same rate of tax as employees and sole traders. 84% of the perceived tax shortfall is avoided by the hiring organisation in relation to employers NI. If HMRC believe the alleged shortfall is due to contractors, then other options could be explored such as an increase in dividend tax for contractor personal services companies only or a tax on contractor personal service companies.

Contractors inside IR35 do not get the same benefits as employees and are therefore disadvantaged.

Contractors with a limited company can now use that company to work inside IR35, using the deemed payment calculation. I cannot see why this could not continue, except for HMRC's insistence that the fee payer is now responsible for tax deductions. Most contractors use accountants to work out the correct taxes to pay, whether inside or outside IR35. In any other situation it is the responsibility of the service provider to pay their tax, not the individual or organisation paying for the service.

It seems that using a limited company in the future may not be an option if inside IR35, with some clients or agencies stipulating a contractor works via an umbrella company or an agency. I think that this is a restriction on trading and is anti-competitive.

Umbrella companies provide little benefit in the contractor chain, other than running a payroll. They are not responsible for, or obligated, to provide business for a contractor yet they will benefit from the fees a contractor has to pay to use their service. Some umbrella companies also deduct employers NI from a contractor's rate, which is wrong.

There is too much weighting placed on the substitution clause. Having worked with several contractors over the years I have never encountered a situation where a substitute has been needed or requested.

Clients and recruitment agencies are reluctant to engage with a contractor except through a limited company, shutting down other means of providing a service such as a sole trader.

The changes are causing massive uncertainty within the contracting community. If a similar pattern is followed to the rollout to the public sector 80% of IT projects could experience a delay. The reforms will impact adversely on the flexible workforce and economy of the UK, especially when flexibility is required for Brexit.

23 February 2020

Ricky Du Plessis

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

   <Response> N/A.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

<Response> No – I think HMRC and those involved in pushing this through grossly misunderstand business drivers in the Private Sector and/or don't care…
My industry (mobile communication networks) relies heavily on flexible workforce due to the nature of the workflow (peaks & troughs) and as such the firms involved therein have been faced with a tremendous cost burden in the guise of undertaking the individual assessments and making determinations on their contractors… (not to mention the penalty and PR risk of getting it wrong).
So, what have they done instead? – They have opted to ***BLANKET BAN PSCs from their flexible workforce*** *– my current end client, Telefonica UK Limited (O2), has adopted such a stance and is without due care forcing all its flexible workforce onto Agency PAYE or Umbrella. This comes despite me having undertaken my due diligence to prove my engagement is correctly outside of IR35 (I have had my contract reviewed independently, I have completed a CEST Report according to my contract and I have a statement of work for my contract – all of which confirm my engagement correctly falls outside of IR35).*
To be absolutely clear:

- *These organisations are NOT making blanket determinations of "inside IR35", they are completely circumventing the need to undertake assessments/determinations of any kind by simply banning the use of PSCs and forcing their flexible workforce onto payroll via an ultimatum of "move to PAYE/Umbrella or cease trading with us"…*
- *No assessment/determination = no right for contractors to appeal – we are being screwed here.*
- *My options are to accept that I am being screwed and keep a roof over my family's head or sit without work and erode our savings in the hope thing might improve down the road – my options are VERY bleak!*

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

<Response> No, certainly not within my industry because the use of BLANKET BANNING approaches as discussed above does not discriminate and ALL contractors are being forced onto payroll as a result…

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

   <Response> As discussed above, we are all being forced onto payroll in my particular industry.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

   <Response> Short of scrapping these legislation changes, I believe HMRC should make it compulsory for the end client's to undertake their due care and due diligence by means of fairly assessing their flexible workforce – HMRC should make it illegal for these firms to adopt BLANKET BANNING strategies because of how heavily this impacts the contractors who are then denied any due diligence or due process.

   - *i.e. if an end client wishes to avoid the responsibility, they should completely cease engaging with contractors, meaning no Agency PAYE, no Umbrella and no PSC workers – short of this, they should be required by law to undertake the correct assessments and where Contractors genuinely fall outside of IR35, these contractors should be free to engage via their PSCs – no blanket banning of PSCs.*

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

   *<Response> No, they are being **completely avoided** by the end clients in my industry…*

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

   <Response> I believe it works a lot better than nothing at all which is all I am getting as a result of these BLANKET BANNING strategies.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

<Response> We are being forced onto Payroll by way of ultimatum and BLANKET BANNING of PSCs in my industry – this renders the status determination process absolutely useless…

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

   <Response> Making it illegal for organisations to circumvent the legislation by blanket banning PSCs would be a good first step – that way those of us who are genuinely and correctly outside of IR35 can continue to operate accordingly… The blanket banning strategy is doing real and serious harm to my family and my mental health!

10. Will the Bill, as drafted, achieve the Government's objectives?

    <Response> No, in the case of my industry you will gain employment tax but you will lose all the Corp tax and VAT associated to the PSCs which now need to be shut down as they are no longer allowed to operate due to the BLANKET BANNING strategies adopted by the end clients.

11. What is your view of the role of umbrella companies in the context of these proposals?

    <Response> These effectively facilitate the phenomenon of "ZERO Rights Employment" as a result of these legislation changes – contractors like myself are being forced to use Umbrellas going forward meaning we are now to be taxed like employees, but with ZERO employee benefit rights in return… This is an absolute disgrace!

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

    <Response> 100% accurate, take the case of Telefonica UK for example, who have a flexible workforce numbering in the thousands via intermediaries such are Randstad Sourceright, NSC Global and

Flint Consulting – ALL of whom are now being forced onto payroll with ZERO due care undertaken and as a result, ALL become taxed like employees, but WITHOUT the rights of employees…

It is also worth adding, that we are not offered an improved/adjusted day rate to help compensate for this change, meaning we are all heavily out of pocket as a result, with zero benefits received in return…

I have liaised with several Umbrella firms and discussed the fact & figures with my accountant, and I stand to lose circa £1,000.00 per month from my net pay as a result of these blanket banning strategies forcing my onto payroll despite me having all reasonable evidence that my engagement should rightly be outside of IR35…

- *I will need to shut down my PSC.*
- *I will need to cancel the lease on my company vehicle.*
- *I will need to source a vehicle privately.*
- *I will still incur expenses in relation to undertaking my work, but without the tax efficiencies of being able to expense these correctly via the business.*
- *My household is a single income household.*
- *This destroys our attempt to save to buy a house and get onto the property ladder.*
- *This has a seriously negative impact on my family's quality of life (myself, my wife and our daughter).*

10 March 2020 (revised from February submission)

Luke Dyson

SUMMARY

1. For the purposes of this document, I am a Software Engineer who has been operating as a PSC for 10 years.

2. I have answered the questions I believe relevant to me as frank as possible.

3. In brief, the proposed changes have already had an impact on my business and my future; from 3rd April, I will not have any contracts to work, with no view that there will be any incoming.

4. There are "Inside IR35" opportunities, that have been deemed without understanding the work I do, or how I engage with clients. These positions are simply designed to satisfy the legislation

without providing any context to the work at hand. These positions simply provide a "No Rights Employee" to an organisation who can be fired without notice, and the organisation does not need to provide any benefits, despite being deemed an employee for tax purposes.

5. I believe the implementation of the policy is damaging to business and the flexible economy by implementing an effective blanket ban.

6. We already have an accounting policy, the "24 month rule" for the submission of allowable expenses for travel and subsistence; I believe it is possible to expand this to allow for a status determination beyond 24 months to decide if an engagement is indeed "Inside IR35", and if it is, then the worker should be given the appropriate employment benefits to suit from that point onwards, without fear of reprisals from both the client and the worker.

7. CEST itself is not fit for purpose, and provides vague paths to a status determination without understanding the nuanced nature of an engagement; which makes the tool itself broken. If utilising the 24 month rule concept, HMRC could provide a much more helpful system by providing real advice and services to all effected parties, rather than this Stasi-esc playbook of simply threatening organisations with legal action.

8. The policy changes are being provided at a time of change in the UK, and the instability is already proving to be a burden on everybody, including my own personal mental health, as I debate a future with no clear sight of if I can find work again, and if I do find work, I can be threatened with action without any understanding of how these vague rules and policies actually change the way I engage with clients.

9. The bill should be changed until a real workable solution is found that enables a flourishing flexible economy to continue growing, as well as find companies abusing the policy for tax purposes. I often find the workers aren't the ones to blame.

10. I have found that my 10 years of building relationships with various clients has now been decimated by one policy change, as well as seeing other potential clients making changes in fear of reprisals, making my outlook very bleak.

CALL FOR WRITTEN EVIDENCE – ANSWERS TO QUESTIONS

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

11. I have personally used the CEST tool, as have my existing client. The proof comes from the different outcomes from the same test.

12. As a PSC, I have answered the questions in the CEST tool as a true reflection of the work I do, and how I engage with my client. The CEST tool provided me with an "Outside IR35" determination.

13. My client used the same tool without discussing or including me in the process. The people charged with making using the tool for making a status determination did not speak with myself, the team I work with, or the senior members of staff I engage within their organisation – the CEST tool gave a "Inside IR35" determination.

14. The tool itself is far too simplified to really be a true gauge the nuances of how I operate my PSC with my client organisation, the reflection shows in the different determination outcomes.

15. I am a Software Engineering professional who provides my expertise via my PSC for any organisations that wish to take advantage of my experience, the nuances of my experience mean I could be charged with doing various specific tasks within the client organisation at any time, sometimes I will also offer my experience on areas even though my contract doesn't explicitly specify it.

16. Technology and software a fast moving sectors, and sometimes I have to change what I do based on a rapid change in something performed at a sector level, or at a client or engagement level.

17. So to answer this question concisely; The CEST tool is too weak at determining status, especially given I have a very clear contract between my PSC and my engaging client that specifies specifically what I do. The contracts themselves are often written to allow a freedom of change to reflect how the technology sector can change rapidly.

18. The CEST tool does not reflect the reality of the contracting environment specifically for software technology in my experience.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

19. Based on my answer to question 6 above, the tool itself is not fit for purpose. HMRC even state that they will stand by the decision of the CEST tool, but only if the status determination be a true reflection on the working practices specified in the collection of information within the tool.

20. So, HMRC have even written their own back door into the CEST determination process, making the purpose of the tool to provide clarity and stability to both PSC's and clients completely negated.

21. The purpose of the tool is unclear; it is anonymous, so HMRC do not know who has used it. The questions are vague, so could change based on the submitters feelings of how they are engaging at that given time.

22. As a result of my experience with this tool, myself and 8 other peers who engage at the same client will no longer have a contract to work with beyond the 3rd of April following a blanket determination by the client to ban PSC's – this is contrary to HMRC's own guidance (IR35 clause 61T(6)(c)). Despite this clause being technically unlawful, I have so far not heard any cases being bought against organisations using this approach.

23. Personally as a PSC, I find I work knowing there is a risk the contract can be terminated at any time without prejudice. I am not an employee of the organisation, so equally am not owed any rights beyond the basic terms of engagement bound within the terms of the contract signed with the client organisation.

24. CEST simply shouldn't exist, PSCs and engaging clients already have legally binding contracts that determine how services should be provided. If the CEST tool must be improved, then it should be changed entirely into a contract review service, along with a statement of work, to determine a true determination based on real individual circumstances, and not a blanket approach with vague paths to determinations that effectively destroy relationships I have built with clients for 10+ years.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

25. Based on my recent experience, the status determination process is as ineffective as the legislation itself. If the legislation was clear, then the tools for determining status wouldn't be needed.

26. The meta-industries that have been created as a result of the confusion around IR35 make the whole process even more confusing, as companies compete for your attention to take their status determination tool, buy their insurance, take out their membership, etc. Given IR35 itself is already confusing to understand, its only clouded even more by the various organisations competing to take more of your money to help you prove you're engaging as a business-to-business relationship; something that should already be clear in the contract itself.

27. The only thing I can say with certainty is that the changes to IR35 has been effective at destroying any business relationships I have built with clients over the course of the last 10 years. Many of my clients have now banned PSC's, meaning that any notion of future business has gone.

28. The changes have only provided even more uncertainty for my future, both personally and professionally, as companies who have been very eager to contract me for my expertise now retreat in fear of reprisals for wanting a short term engagement for my experience.

29. The only changes I think that need apply is to the generic "24 month rule", the notion that if a PSC works for an engaging organisation continuously without breaks for more than 24 months, subsistence and travel expenses no longer apply – there are very few instances whereby a contract need exist beyond this term, and I believe a revamped form of CEST and IR35 apply to engagements that exceed this existing 24 month rule. It will provide companies with the ability to engage short term, highly skilled flexible resource for short bursts of time. It will also allow PSC's to continue to engage with their clients on a flexible basis.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

30. As I have mentioned in my answer to Question 8, I believe there is already a cornerstone to flexible working that applies to the accounts of PSCs, and that's the "24 month rule" for allowable expenses when operating for a single client for a period of up to 24 months.

31. This rule allows PSC's to expense travel and subsistence expenses as allowable expenses for the ongoing operation of the business.

32. If this rule be formally expanded, whereby engagement that exceed 24 month must have a formal status determination check before proceeding, I think it would both help the flexible nature of a lot of the work performed in the contracting sector, but provide some much needed solid foundations to how PSCs operate.

10. Will the Bill, as drafted, achieve the Government's objectives?

33. No, my peers and I, both in my existing client, and at other clients, are experiencing blanket bans, with many of us either having contracts terminated, or given the option to take on work with an "inside IR35" status, for which I know friends who are electing to leave these engagements as it's an effective ultimatum, as well as a threat to previous income.

34. So, with at least 10 people I know who will all not have any earnings into our business, this has to be a threat to not only my income for my business, the income for myself personally, and also the tax my organisation generates.

35. So I believe the Bill will actually achieve a reduction in tax earned by PSCs in my sector specifically.

11. What is your view of the role of umbrella companies in the context of these proposals?

36. Personally I have been shown a few options for umbrellas, and from what I can see, these are simply vehicles for other organisations to take a cut of costs, without any security that the umbrella organisation will be able to pay the money to the worker.

37. So for me personally, I do not see these as a viable alternative. It would simply be a method for engaging organisation to reduce their accounting burden, by putting all the risk entirely on the engaging work force.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

38. If the Bill proposes that the legislation is applicable to identify flexible resource as either being an employee or not, then the deemed employee should receive equal rights as their permanent employed counterpart.

39. "Inside IR35" statuses have earned a nickname, "No Rights Employee", the only organisations who benefit from these individuals are the engaging client, and HMT. The employees receive nothing for working in this manner other than the money they may or may not receive.

40. This potentially has wider implications, since IR35 is so loosely termed, that engaging organisations can use this to reduce their employment burdens by using it as a scheme to hire people and not provide them with any employment rights. This is grossly unfair, and is being legislated to allow organisations to do this.

17 February 2020

Michael Edwards-Bate

Background

As a basis for the following I should advise that I have been a contractor operating through a PSC continuously since 1996. During that time I have been continuously employed and have paid Tax in the form of PAYE, Corporation Tax and collected VAT during that period.

In 1996 it was my intention to operate on a self-employed basis. This was not possible due to the requirement of Insurance to operate in the Aerospace and Defence sectors where most of my work, as an Electronic Engineer is carried out and hence, I was forced to incorporate (ie Not for Tax Avoidance purposes).

Since 2000 and the introduction of the Intermediaries Legislation (IR35) I have operated principally outside of IR35 on the basis that I consider myself to be self-employed.

The situation was investigated by HMRC in approximately 2006 where the ESI (Employment Status Inspector) did not necessarily agree with our employment status assumption but did not have a sufficiently strong case to take the investigation to a tribunal.

The following are my answers/evidence related to some of the questions of the sub-committee.

4.

What will be the effect of these new measures on a chain of contractors and sub-contractors?

Currently the majority of contractors who are working in the defence/aerospace sectors are being categorised by their clients as inside IR35. In my case my client has not yet made the decision and appears to be deferring the determination as long as possible. This provides no certainty to the contractors.

In the majority of cases the contractors were operating outside of IR35 based on opinions from their professional advisers. In a number of cases the conditions of the engagement were passed through the CEST tool which supported the outside decision.

The clients have then based their decision on role based or blanket assessments which have determined them to be inside. In no case that I know of has the contractor been consulted on this decision.

Note this is not consistent with the process used by HMRC to determine the employment status of contractors where the ESI would discuss with the client and the contractor the actuality of the arrangement in order to determine the hypothetical contract that would exist if the intermediaries were removed.

On that basis many of these contractors would be outside of IR35 with a proper assessment, which considered the actual arrangements, rather than the role/blanket based assessments.

This approach is taken by the clients in order to minimise the risk due the threats of tax liabilities to the clients from HMRC.

Also the revised arrangements for inside IR35 arrangements seem to involve the client costs remaining constant and the additional burden associated with Employers NI contributions and Apprenticeship Levy being applied to the contractor with remuneration either via payroll or umbrella company.

12.

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

The revised arrangements in my opinion do not equalise the treatment of Contractors and Employees either in Taxation or Employment Rights.

Much of the publicity associated with this change has attempted to demonise contractors as Tax Avoiders. The contractors that I know and work with pay their taxes lawfully as required by HMRC.

Currently the situation as far as I understand it for a contractor outside of IR35 the expectation is that the contractor pays between 20 and 25% of gross income in Tax either as PAYE, NI (Employer and Employees Contribution) Corporation Tax, Self Assessment and Dividend Tax.

The situation for an employee currently is that they pay approximately 31% of gross income as PAYE and Employee NI (Employers NI is paid by the employer).

Note that for an Employee a range of benefits are included including paid holidays, employers pension contribution, sick pay and other benefits. None of these are received by contractors.

In the current situation if the benefits are assigned a percentage of income value then the treatment is not very different.

In the revised scheme for contractors, determined by the client to be inside IR35 then the situation is now very different.

The employee's situation remains the same. The contractor will now pay between 35 to 40% of their gross income. This is made up of PAYE, NI (Employer and Employee) and Apprenticeship levy. Note none of the employee benefits are received by the contractors.

This in the opinion of HMRC is fair treatment for contractors.

The result will be that many contractors will no longer take work in this way, many will retire, many will work overseas and a number will transfer to permanent employment. This will certainly reduce the extra Tax which HMRC claim will be raised by the measure.

This reduction in contractor numbers together with the fact that the majority of contractors will change clients. In order to reduce the chances of HMRC pursuing them for back taxes for the previous contract work which had been judged by them to be outside IR35. This will result in significant issues in the defence and aerospace areas..

25 February 2020

Elixier Consulting Limited

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?(Q12)
An immediate observable effect of the proposed IR35 changes has been a drying up of contract opportunities or exposure to blanket decisions that roles are now within IR35.
Contracting often requires long distance travel or staying over at considerable cost. Outside IR35, costs can be offset against the income of the business and so reduce taxable revenues. The net effect is that income will decrease by about 20%, whilst costs increase meaning roles may no longer be viable for contractors. Most client companies will not increase rates to compensate and will pass on all the NI insurance costs to the contractor, not just the employee NI costs.
I started contracting in 2009, at the age of 50, following multiple redundancies, and have sacrificed job security, employment rights and benefits by providing flexible support to organisations requiring my expertise. This has been a sound model for 11 years, during which time I have worked on projects for different organisations, including being from home for more than 2 years. I have not required any state benefits, have continued building my pension fund and have paid VAT, corporation tax, income tax and dividend taxes in full and on-time.
If the aim is to ensure that contractors move into 'permanent' roles and pay more income tax or National Insurance then how likely is this to be achieved for the 21% of contractors who are over 60? Irrespective of employment legislation against ageism, it is a reality and the likelihood is that older contractors will be unable to find permanent employment, may be forced into lower paid work or face early retirement; thereby reducing their taxable income and ability to continue building their pensions, so their long term income when retired will be less and further reducing the tax payable on their pensions long into the future.
At the moment, as I approach 62, I am unlikely to be able to find permanent employment opportunities, whether aligned to my skills and experience or otherwise. Add to this the cost of maintaining a limited company with no income means I will probably have to close down my business and take early retirement. The result may be a dependency on benefits and I will not be paying any tax. Importantly, my long term income (earned and pension) will be significantly compromised and potentially health as there are clear mental and physical benefits from staying engaged in a stimulating role.
In terms of contractors being taxed as employees but not having employee rights or benefits then it destroys the risk:benefit trade off of being a PSC and so lessens the attractiveness and makes being a permanent employee a better option. However, that brings it back to paragraph 4 an d5 regarding employment prospects of over 55s or even part-time workers such as parents who need the flexibility that may not be available as permanent employees.

Operating as a PCS is not a means of avoiding tax but it provides a flexibility of 'for whom, where and when' a contractor works to provide their skills and expertise for a defined period, on a defined task, in a financially sustainable manner. Penalising the vast majority of contractors operating within the rules to catch those abusing the system is not fair and is a sledgehammer to crack a nut. It is also highly unlikely to provide the increased income the HMRC projects due to the unforeseen consequences of restricting and damaging this flexible and dynamic sector of the economy.
Overall the proposed changes have increased complexity whilst reducing opportunity and flexibility when there could be simpler ways of ensuring fair payment of taxes doing this within the PCS environment, for example targeted NI levies or similar if that is the primary concern of these moves by the HMRC.

Mike Elliot

This information is being provided in a personal capacity

1. I was working as an independent contractor providing my specialist IT services through my limited company to a leading UK university. I was able to deliver valuable experience and expertise to my customer, benefitting my business and ultimately generating tax income for the treasury. At the time that the off-payroll rules were introduced to the public sector the University, like many other organisations, predictably blanket assessed most of the contract staff as 'inside IR35'. Conversations were rare, it appeared that the customer made their decisions based partly around risk aversion to new tax responsibilities to which they were unfamiliar, partly due to a total lack of understanding as to how contractor businesses operate, and partly down to a desire to avoid complexity. The result was that projects stalled while negotiations took place. Ultimately I was forced to switch to work with an umbrella company, an intermediary with little or no interest in me as an employee other than the income they were now making, at a higher day rate to my customer. For larger customers such as this one, blanket assessing contractors as 'inside IR35', it effectively killed the opportunity for small LTD companies such as mine to work with them.

2. Despite the guidance supplied by HMRC to organisations, it seems pretty clear that most organisations, particularly large ones, default to a blanket assessment that is simple and low risk. Hiring staff through umbrella companies seems the best of both worlds, employees (of an umbrella company) without the responsibility or burden of those employees welfare.

3. For the type of specialist services that I deliver, a competitive day rate is often too expensive for the smaller business customers out there. For me this effectively rules them out as potential customers.

5. Rather than assessing the current situation for each contract engagement as it stands, then negotiating the subjective result, why not simply state the sort of conditions that would be acceptable to engage a LTD company contractor as both inside and outside IR35. Provide the hiring organisations with a clear understanding of how to structure a contract and agreement to be IR35 compliant, allowing them to make a decision before going to market to look for services. It should be entirely possible for a client to hire a contract resource with a clear determination of their tax obligations. If that falls as outside IR35 then the contractor accepts complete responsibility to pay tax in the usual way.

6. Within IT, it can be tricky to assess the working status through some of the tests. If an organisation is conscious about security for example, then they may require certain work to be carried out on hardware provided by them, rather than equipment provided by the contractor. This is a security driver and not an indicator of supervisory control. With the IR35 rules this can be interpreted as an indicator of employment. Also, the right to substitute can often also be a sticking point as customers do not like the idea that a random person might be used to deliver the service from day to day. If you hire a painter/decorator you often do so on the basis of their quality track record, the same applies for IT. The best indicator in my experience is the level of supervision, and the mutuality of obligation. I agree a set of objectives and constraints with my customer and then it is down to me to determine how I will deliver, with no expectation of follow on work after the contract expires of the objectives met.

The tests assume that for a given roll, one must be either inside or outside IR35. Isn't it actually possible that under some circumstances, a roll could be delivered either by an employee or by a contractor? It could effectively become a choice rather than a tax determination, based on the relative benefits of hiring an employee versus engaging with a private LTD company contractor.

11. In my experience, an umbrella company has been nothing other than a vehicle for engaging a contractor. While the contractor becomes an employee of the umbrella, the umbrella operates just as an employment agency. In my experience I lost all of the benefits of contracting, the autonomy, the flexibility, the ability to take risks and control my business, but at the same time gaining none of the benefits of employment. It leads me to compare an umbrella arrangement with any other employment package. The umbrella arrangement becomes the poorest relative employment package leading me to look for a better full time

employment. Contracting becomes worthless.

12. As a specialist contractor working in IT, I am able to move from customer to customer delivering valuable skills to both our benefits. Being taxed as an employee, with few if any employee benefits, simply ties my hands removing the ability for me to operate competitively as a business. It is impractical to have to switch from LTD to umbrella to employed on each engagement.

There are likely many areas of the gig economy where services cannot effectively be delivered by a contractor for the rates being paid by customers. The contractor needs to earn enough to be able to fund the basic benefits that would normally be provided by an employer, but I do think it becomes the decision of the contractor to enter in to those arrangements. This can lead to exploitation on behalf of the hiring business, gaining access to very cheap labour without obligation. In my case though, my services are in demand and I am able to charge a competetive rate. There is a huge difference between operating as a meal delivery rider say, and a specialist IT consultant, yet the rules appear the same. In my case I do not at all feel exploited, these changes are not in any way for my benefit. They remove my ability to deliver high quality skills to larger customers in a flexible way.

13 February 2020

Dean Emerson, Victrix

I have seen the request for evidence as to how the Finance Bill will impact workers arrangements with companies in the private sector.

Please let explain how these changes affect my small business.

My company currently provides professional services to a small number of customers, I am a sole director in the ltd company and I perform a vast majority of the work undertaken with our clients, however, I do employ a small workforce, and lease a premises to keep my business running smoothly. We are continuously looking for more customers but being a small fish in a large pond, it is more profitable for us to provide services into larger companies who already have a relationship with end clients, and allow them to re-sell our services.

We have recently received an email and I have copied the text below, although we would definitely pass an IR35 assessment, the cost for companies to assess each contractor individually is prohibitive, and so our

largest end client has blanketed all its off payroll workforce and ended contracts (regardless of duration) on the 28th February 2020.

Although this is a major blow (potentially catastrophic) for my small business, I do understand my clients position, they are faced with the cost of assessing a large number of contractors, potentially all with different terms at their own cost, and they are also exposed to the risk of a financial penalty in the case they get one of those assessments wrong.

So now I have explained our situation, let me explain how this impacts Victrix IT Ltd.

With the loss of one of our biggest clients, and with the majority of similar businesses of its kind following suit, and blanket assessing everyone, 80% of our turnover has been lost.
I am currently searching far and wide for new clients but forming new relationships with new customers takes time, especially when we are a small business, competing with large Enterprise providers is always a challenge, although we do feel at times we punch above our weight, however it's looking like this sudden loss of revenue and change in the industry, is going to mean I must make my staff redundant of cease trading. I have already approached my landlord about early termination of our office lease.

As you can imagine, this is a nervous time for our industry. I hope my company can get through this, but at this time I am faced with an option of making people redundant, and closing my business, to ensure I can keep a roof over my head, or trying to keep on pushing through and hope we can secure new relationships before our funds run dry.

I have copied the email I received from my largest client only a couple of days ago!!!

Contractors (PSC)
In advance of forthcoming legislative changes in the responsibility for reporting the correct income tax and national insurance for all contractor resource provided through a personal services company, SCC has reviewed its third-party resourcing arrangements and has decided that it will no longer engage contractors who provide their services via a personal services company or ***limited company.*** *Existing contracts for contractors working for SCC currently in this manner will cease by the 28th February 2020. From March 2020 onwards contractors will be sourced on a PAYE basis directly or via an approved umbrella company.*

Only Umbrella Companies that are FCSA accredited can be used, please see list attached.

We value the services that contractors provide to SCC and will discuss your contract with you individually.

You can see that it is easier blanket assess people than it is to assess them individually.

I hope the government can see the impact this is having on a huge sector of its workforce and halt or revise these (what feel like) malicious changes.

6 February 2020

Baris Ergun

Capacity which made: Personal

INTRODUCTION

I have more than 20 years of professional experience in the IT industry as a Software Engineer and lately as Software Consultant. For the last 3 years I have decided to open a small business and start acting as a consultant on a project basis. All the contracts I have made so far required specific expertise for a single project to be delivered with certain deadlines!

I have been relocating to remote UK locations as well as staying in London or even working remotely for clients in the USA. I can easily decide on various options since I am the sole responsible for all the expenses.

I also manage small and big projects for different clients simultaneously. This has also its advantage from the client perspective; as I can develop and exchange the necessary toolset and best practices horizontally across several clients. Which keeps the clients up to date with current technology trends.

With the help of the funds I am saving in my company accounts; I am also easily developing software projects and products targeting small medium businesses in the UK . This in the long term will also give me the advantage of acting as a small business selling product + consultancy to my clients.

The current proposed IR35 reforms are preventing me from keeping a sustainable business and achieve my goals in many ways. So I decided to make my contributions to this committee in such turbulent times as a last resort.

The current market that I am also part of is in a deadlock. Nearly all the big enterprises are either giving blanket decisions or deeming all of their consultants as disguised employees. Especially financial institutions and others who operate under strict rules are generally trying to avoid possible investigations which IR35 reform changes might trigger. As a result; consultants like me are seeing a sharp decrease in the number of potential clients.

I am also worried to see a new category of employment being created under the new IR35 reforms. And I am also struggling to understand why disguised employment being legalised as a new source of revenue for HMRC. I basically thought the goal of the IR35 was to tackle and avoid disguised employment.

The mental health side of things pushed me in writing this letter; hoping that your committee can at least delay the reforms giving time to the government to clear out all the confusion and decide a better way to tackle disguised employment. According to my opinion; disguised employment should be completely avoided and should not be legalised.

Impact of new off-payroll rules on organisations
Q4. What will be the effect of these new measures on a chain of contractors and sub- contractors?
A4. Not listening to consultation feedback from contractor industry experts and pushing the IR35 reform forward has already started big confusion in the contracting market. I usually could easily find new clients for my small business. Since November 2019 there were very few opportunities for my limited company and nowadays there is a tiny chance that I can find a new client. Which will involve relocating myself temporarily and thus creating nuisance for my family. There is not yet a declarative and clear bill which end clients can adjust themselves accordingly; thus they started to deem every flexible workforce falls into the IR35 category. It is so difficult for companies like mine to cope with this situation and people started to close their limited companies. And started looking for permanent roles rather than entering into a category which is not declarative and certain. As long as I can work I will not choose to work under inside IR35 category work; it will be either by trying to keep running my small business consultancy or permanent employee as a last resort.
This also has its side effect to HMRC. Last year I made a total of 60K contributions to HMRC with my corporation tax, VAT tax, Self Assessment, PAYE, NIC all together. If I decide to work as a permanent employee with

my current skill set I will be able to contribute at most around 30K salary tax to HMRC. As you can see limited company consultancies with revenues higher than 85K a year do not benefit from any tax avoidance. Instead we contribute more tax to HMRC.
End clients also started to look for offshore workforce alternatives especially in the IT market which will decrease HMRC tax revenue. The tax for the labor will be paid in another country and the Offshore company will deduct this from their revenue; which is another reason for tax loss from the view of HMRC.
Policy objectives and wider context
Q9 Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

A9 According to me, the answer might be very simple. Please investigate CIS tax which was introduced for the construction small businesses. Obviously it will be easier to articulate a similar tax scheme for a wider context and collect more tax revenue.

Inside IR35 can be still used as it is; in order to only tackle disguised employment with higher tax penalties. And thus disguised employment can be avoided. Employment Tribunals are very precise in deciding whether a work is contract or "disguised employment"

Q12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

A12. Precisely a very good question. I again would like to emphasize that; I believe that the disguised employment should be completely avoided; in order to prevent creating a new category of employees with no rights.

There is only a single authority who can definitively decide if a work is "disguised employment"; which is the Employment Tribunal. Giving the end clients the power to decide employment status is also giving them powers to push their permanent employees under the "disguised employment" category which is more beneficial from the employers perspective. With current IR35 reform; I think the current employment laws are also being by-passed.

19 February 2020

Allan Esler Smith-Accounting and Tax Limited

Written submission to the Economic Affairs Finance Bill Committee- Employment Status /IR35, written submission

1. I am a Fellow of the Institute of Chartered Accountants and, amongst other matters, advise freelancers on starting up and related tax. IR35 was introduced twenty years ago in 2000. Essentially it is a piece of anti-avoidance tax legislation intending to tax independent and risk taking business freelancers in the same way as employees. I have seen numerous reviews of IR35 by Governments over the last 20 years and all have promised much and delivered little as IR35 is flawed in its intentions.

2. I believe that the freelance sector may be devastated and the economy may be damaged. I explain the 'big picture' as I see it and a different solution under your policy heading 9 and 12 and hope my submission helps your considerations.

   Policy objectives and wider context

   9.Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

   12.How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees,but do not have the rights of employees.

The Basics Part One- the economic reward from freelancers.

3. Let's start with an example: freelancing work in research and development in the pharmaceutical sector- a golden goose in the UK economy as it keeps laying golden eggs and helps drive UK plc.

4. The business dynamics of this sector are driven by the limited timescale profit window from exploiting a patent. Remember the timescale is already shortened due to extended and necessary time expended on passing safety hoops and proving they work prior to widespread product release and marketing. This, in turn, necessitates a fast moving and rapid personnel resource deployment in the area of R&D. Therefore, a percentage of freelancers in the organisations resourcing are retained to provide this flexibility (maybe 15% to 30% of parts of the relevant R&D headcount).

5. In the last month most of my freelance clients who work in this sector have been presented by fait-accompli outcomes dictated by agencies/procuring companies where their independent freelance status may be removed by April 2020. This is because the 'tax risk' of IR35 is being shifted from the freelancer to the finance directors of large companies by new tax rules being implemented from 6 April. The

finance directors are at the poker table and hold all the cards and want a 'no tax risk' outcome for themselves and their company.

6. With this mind-set processes have been developed which result in freelancers being 'deemed' by the agency/pharma company as inside the scope of IR35. The February edition of Taxline the magazine for the Institute of Chartered Accountants' Tax Faculty casts an ominous cloud over the end game explaining that companies "might decide that only their most valued and skilled contractors whose (self) employed status is beyond doubt will continue to be hired individually via their PSCs, preferring instead to bring the general body of contractors onto payroll or onto an agency-run payroll or other arrangements". Get the gist? In reality and over the last two weeks I have witnessed a process that has repeatedly churned through a process that is deeming freelancers through a 'status determination statement' (SDS) issued by their client that is finding them inside IR35 and the freelancer is then presented with two options: work for an umbrella company or an agency (both paye and both appear to have fairly limited benefit packages attached). On every occasion (to date) the freelancer was not offered an opportunity to contribute to this view. The processes seem unfair and one-sided from the outset. Whilst appeals are possible it seems that participating in the processes may also jeopardise the freelancers insurance that they had taken out to protect themselves on tax loss from IR35.

The Basics Part Two. The freelancer carries significant risks just like any other business owner including (in my experience) but not limited to:

7. Being 'forced' by most HR procurement functions to trade as a limited company rather than a self-employed sole trader as HR seems to perceive sole traders as a 'risk' if they hang around for a long period. This fear has perhaps been triggered several years ago by a few sole traders successfully claiming employment type rights after some long term service. In the last 10 years my sole trader/company client ratio in the pharma freelance sector has shifted from about 50:50 to 5:95 so that sole traders in the sector are heading for extinction at this rate of decline.
8. Having to fund accountancy and tax specialist help as running a company is not straightforward. This comes at a professional fee cost to which further costs of equipment, giving up part of the home as a 'home office' and funding your own ongoing training and development is added.
9. Additionally having to fund your own car, holiday pay, life insurance, health insurance, illness insurance, public liability insurance and perhaps professional indemnity insurance and, very significantly, pensions and all this carries significant costs to cover off the risk. BUPA alone can be x4 the cost of a typical employee's benefit in kind 'cost'.

10. The most significant risk, however, comes from the very simple fact that no work means no pay. I have dealt with too many cases to underestimate this risk where caring for children, elderly parents or coping with bereavement is all at your own cost. In employment scenarios the employer, generally speaking, can provide significant support and sometimes well beyond whatever an employment contract may stipulate (i.e. compassionate leave).
11. Finally the risk of no parachute on losing your position with limited notice rights and no redundancy. And remember if no work lands in your lap you have to market, network, advertise and promote yourself and this takes time and money just like any other business. It's worth repeating again- this flexible resource provides massive benefits to the fast moving project driven world where flexibility of resource is key and as already illustrated.

12. In return for this risk freelancers, in turn, benefit from flexibility. They are free to try and organise work around their priorities; don't have to get involved in office politics and can keep fresh by moving from client project to client project. If they end up with a nightmare project/ nightmare office they can extract themselves more easily.

The Basics Part Three. The solution and tax and "Keep it simple. Stupid!"

13. In return for the risk of running their own business the freelancer was able to structure a remuneration package through salary and dividends and usually achieve a slight tax advantage (just like any other business) over an employee. The Treasury had countered this by introducing, effectively, new thresholds in 2016/17 whereby the first £5,000 of dividends beyond the personal allowance were tax free and then dividends were taxed at 7.5%, 32.5% or 38.1% depending on your level of income. Across my client base I saw my freelance clients paying more tax and the gap between freelancer paid tax and employment tax reduced from 2016/17. In 2018/19 the £5,000 was reduced to £2,000 reducing the tax gap further with my clients paying more tax. The perceived 'tax gap' issue was therefore being addressed and the actions were working.

14. I believe the dividend tax approach potentially solves the tax gap and that proper consideration may not have been given to solving the tax gap by the simple lever of dividend tax. It is simple, easily understood and adaptable and should be left to work its course and IR35. The 20 year journey of IR35 and failed reviews should be buried and forgotten. The IR35 reviews by Government also seem to have forgotten about the Golden Goose and the simple economic fact that fast moving business scenarios such as R&D need a bright, flexible and rapidly deployable resource and that's where 'the freelancer' comes in. IR35 reviews have also ignored the reality of the risk that freelancers

bear. So to borrow an old US Navy saying "KISS" 'Keep it simple. Stupid!' I believe the solution to the tax gap is the dividend tax lever and that it's currently set at about right at the moment but can, of course, be kept under review. It should be left alone to do its job. Freelancers can then continue to be rapidly deployed to help UK plc.

21 February 2020

M.A. Evans

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

Presumably not, as many larger engagers have decided to avoid it with blanket assessment. Blanket assessment was not what HMRC intended. It must re-assess the impact, which means the introduction of the new rules must be postponed.

Where is the loss of VAT shown in HMRC's calculations of how much extra tax it will raise? My PSC pays £20,000 in VAT each year, charged to my financial services clients, which cannot offset it. That will disappear if I'm forced inside IR35. I will have to pay an additional £20,000 in income tax & NICs instead, so the problem won't have been solved; it will have been transferred from the client to me. Is that what the Government wants?

Six months ago, my phone would ring several times a week (agents calling with contract work); now it rings about once a month. The genuine freelance labour market has already shrunk because the new regime is not ready and businesses have panicked. Tens of thousands of experienced, valuable workers are about to become unemployed. Is that what the Government wants?

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

There are of course many 'self-employed' individuals who should be employed. Because the tests don't distinguish between such individuals and people like me, who frequently move from one end client to another,

the new IR35 rules will remove perhaps 90% of my market. Is this what the Government wants?

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Yes. It is incomplete. It does not take into account mutuality of obligation or length of contract. Notwithstanding the unreliability of the tests, businesses do not believe HMRC will stand by the results.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

HMRC's problem is PSCs. That problem is created by Companies House. Companies House allows anyone who can supply a few basic details to set up a company. The system is open to abuse and is abused, extensively. It should not be possible for a sole trader to operate as if he / she were a 'collective' entity. HMRC is tackling this problem by creating an unnecessary, additional tax status, 'inside35' – taxed as an employee, with no employee benefits or rights. The only beneficiaries of such an unattractive status will be the largely unregulated umbrella companies. Is that what the Government wants?

10. Will the Bill, as drafted, achieve the Government's objectives?

No. In preparation for the changes, I have been seeking a permanent role for several months. At age 60, after 20 years of contracting, agencies won't even put me forward ("difficult transformation"). Without a contract or a job, I won't be paying *any* tax, never mind "the right amount". If this persists, I will leave the UK. I will no longer be UK-resident for tax purposes and I will take my taxable assets with me.

Goodbye!

11. What is your view of the role of umbrella companies in the context of these proposals?

They should not be necessary. They exist because HMRC makes taxation too complex for some individuals to administer on their own.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

A pro-business government would support self-employment, not discourage it. Self-employment needs a different tax status and it has one - it's called Schedule D and it's suitable for all sole traders.

23 February 2020

Lee Fear

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

My experience is limited to attempting to find new contracts. The public sector has been pretty much a no go as projects have been shut down and the contracts that have been advertised have been inside IR35 and have been out for tender for many months (suggesting no one wants to touch them with a barge pole). The only way they seem to be able to entice anyone to take on the contracts is to offer much higher rates which obviously ends up being paid for by the taxpayer. Even HMRCs own IR35 Checking tool (CEST) was massively affected when all the contractors working on it left in order to make sure they were not caught inside IR35. It is widely seen that the role out of IR35 to the public sector has been largely a disaster by everyone apart from HMRC and the Treasury. It seems HMRC have learned nothing at all from the public sector issues as they fail to acknowledge there have been any problems at all.

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

No, not at all. In fact the exact opposite. HMRC and the Treasury have just seen pound signs light up in their eyes and have gone hell for leather with no regard for facts or evidence. HMRC have and keep on saying that they consider 90% of contractors are flouting the regulations. This is clearly not the case and HMRC have lost 80% of their court cases. Given that HMRC are likely to have only taken the cases they think they would clearly win to court then the fact that they have only won 20% of them should be a clear indicator that their 90% figure is miles away from the truth. In fact it is quite obvious that it is almost the opposite and that 90% of contractors are actually within the regulations. Despite this HMRC and the Treasury are sticking to their false figure which given the evidence suggests that they are both now either blatantly lying or utterly incompetent. There has also been no consideration of the effects of forcing onerous compliance on companies. Large companies are now either forcing every contractor to go through an umbrella company or

moving all the work offshore. If the work goes offshore then the Government will get no tax at all. Umbrella companies are a problem because HMRC hate them and are assumed to be next on their hit list. So HMRC are forcing contractors down a route that either ejects them from the country or pushes them into an uncertain future where they again could be pursued by HMRC. Not only that but contractors have to pay for the privilege of being hired by an unscrupulous umbrella company. Umbrella companies are seen largely as big tax scams. Now it was assumed that companies under a certain size would be exempt from the IR35 legislation (for now). However a couple of weeks ago HMRC issued advice stating that if a larger company hires a smaller company to do work then the larger company could be liable for the IR35 compliance. This has caused smaller companies to also ditch contractors for fear of not getting contracts with larger companies. In some cases the larger companies have told the smaller companies to ditch their contractors or be dropped from the contract.

On top of this many people (including myself) have written to the Treasury with our concerns but all of us always simply get a cut and paste response stating the Government Policy and not addressing the issues raised at all. It is as if no one wants to listen to common sense. Jesse Norman (Financial Secretary to the Treasury) has actually admitted that he has no idea about any of the issues regarding IR35 which is worrying given his position and the number of Letters, Court cases and MP questions regarding IR35.

Judges and even HMRCs own lawyers have told HMRC they are wrong in the way they assess contractors yet they are still ignoring the issues.

Another major problem is that due to Brexit it has been very difficult to get hold of MPs to discuss issues and worries. For instance I have been trying to meet with my MP for the last 18 months but he has been so busy dealing with Brexit that he has not been available. I finally got to meet him a couple of weeks ago and although sympathetic and understanding, he has very little time in which to achieve anything as the legislation is going live in around 1 month! The Government has not allowed enough real time to scrutinise this properly.

The onerous nature of complying with IR35 means that companies are now ditching contractors or forcing them to be in Umbrella companies. Every contractor is different but we are all now being treated the same. One contractor may be clearly outside of IR35 while another might be on the edge. But both are now told they can not be a contractor anymore. There is no way to appeal this and no way to prevent it from happening.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

Please see above. Small businesses are getting caught up in this too. So no it is far from robust and does not seem to have been thought through at all.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

Again, Please see above. The effect is large and problematic. Some Small Businesses may have to shut down altogether. HMRC have ignored all reports of issues and have taken no steps to fix any problems.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules? Determining tax status of workers

HMRC have in fact gone against their own regulations with regard to advice. They have in some cases advised companies to blanket assess contractors which is against the law! HMRC have also blanket assessed contractors themselves (as in the case of GSK) again against the law. I am not sure there is anything that can be done to simplify the burden unless the IR35 regulations are rewritten from scratch to be more specific. They are too vague and open to too much interpretation. Initially IR35 was brought in to stop companies forcing parts of their workforce to become contractors in an attempt to save NI payments (Like in the case of the BBC). However due to how vague the regulations were, all contractors are now caught up in a total mess and facing losing their careers. HMRC needs to be more specific and then do full investigations into each contractor they want to chase (as every case is different even with contractors within the same company). Forcing companies or contractors themselves to do their work for them will just lead to problems no matter how it is implemented. Large companies will always seek the path of least resistance so if bureaucracy gets in the way they will simply hire from abroad or even potentially move the entire company abroad. We need to remember that Sajid Javid has been a vocal critic of IR35 before he became an MP. He could see the problems years ago. Why he then refused to do anything about it when he was in the perfect position to do so is baffling and worrying in equal measure. HMRC could also make the regulations black and white rather than vague and opaque. No one actually knows what HMRC will go after in the future with regard to IR35 as they have so many get out clauses that it is impossible to tell if you are complying with the regulations or not until a Judge in a court of law rules on your case.

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No, HMRC refuse to accept Mutuality of Obligation as important despite it being one of the most important aspects of being a Contractor. As a contractor the client can turn around to me and tell me to pause work for a certain time period or refuse to give me any work at all. During that time I do not get paid. Permanent employees would get paid during this period. HMRCs view of contractors vs Employees is overly simplistic and not based on the real world. Due to how vague HMRC are about IR35 status no one is ever sure if they are in or out no matter what the HMRCs guidance tells them. The rules are also so open to interpretation as to make them useless. No one is ever really sure of their status even if it seems they are absolutely outside of IR35. This is why large companies are dropping UK contractors. It is easier to do that than risk HMRC disagreeing with their status assessments.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

No, The CEST tool is not fit for purpose. Also HMRC do not necessarily consider it as evidence so no one has any faith in its results being accepted by HMRC. HMRC have themselves wanted CEST disregarded as evidence in trials where it deemed contractors outside of IR35 yet where it deems contractors inside IR35 they wanted it admitted as evidence. This has sent out a very bad message and no one has any confidence that an Outside IR35 result from CEST will stop them from being investigated or taken to court. It is clearly ridiculous. HMRC are adamant that their tool is accurate and fully tested despite a FOI request turning up just a single page of A4 paper for the testing documentation. Independent testers did their own testing and produced 300 pages of documentation as a comparison! If it is accurate then they would surely stick by its results in all cases? It is so bad that companies have now sprung up to offer IR35 insurance (yet another cost to businesses) and their CEST equivalents are massively more complex and get assessed by specialist assessors before the insurance cover is granted. This is another reason that companies are ditching UK contractors. The NHS has been fined £4.5 million despite using the CEST tool to determine contractor statuses. How can anyone have trust in this tool and therefore the entire system. To be effective the CEST tool has to give companies and almost cast iron guarantee with regard to its outcome otherwise it is practically useless and can lead to people getting large life changing tax bills down the line despite genuinely believing they are outside of IR35. HMRC is basically offloading all responsibility to others while retaining zero responsibility themselves.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed? Policy objectives and wider context

No, it seems that HMRC are unwilling to listen and have inadequate procedures for challenges etc. There are no safeguards in place apart from our Legal system which leads to large costs for Lawyers or simply accepting HMRCs decision if you can not afford to take it to court. HMRC requires a department devoted to challenges but this would have to be huge given the amount of challenges there would be each month. Apparently companies are not supposed to blanket assess contractor statuses, however HMRC themselves have aided companies in doing this and no company has been punished by HMRC for doing so. Blanket bans on contractors also do not appear to be challenged by HMRC. We really need a new and independent body setting up to act as arbitrators and prevent many of the cases going to court (with all the stress and cost that involves). This should be entirely independent of HMRC as the trust in them is rock bottom and they are seen as vindictive, arrogant, corrupt, incompetent, insensitive and generally unfit for purpose by pretty much everyone right now. HMRC promised that they would abide by the results of CEST however they put a get out clause in that stated "As long as the data input is correct". This would be fine if it were not for the fact that many of the questions it asks are wide open to interpretation. So how do you know HMRC are going to interpret the answers you give in the same way as you do? You can't and HMRC will use this and have used this to go after contractors for unpaid taxes despite the contractor answering honestly and accurately. This is what happened with the NHS. HMRC have also promised that they will not go after contractors retrospectively. However there is another get out clause added in. "As long as there is no reason to suspect fraud or criminal behaviour". Now what does that specifically mean? Could supplying incorrect information be deemed fraud? If so then as we know the answers can be interpreted in different ways, how can we be sure HMRC will not go after us despite answering in a 100% honest and accurate way? Also who do we turn to in the case that this happens? HMRC are not the ones that should be judging their own interpretations. They are acting as the Police, Judge and Jury all at the same time...

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

The new rules are trying to solve a problem that only exists in a small number of circumstances. It is a sledgehammer being used to crack an egg. They ought to deal with it in the same way they do with other tax evasion and do thorough investigations into the facts for each individual

case rather than assume everyone is automatically guilty. One other way to have handled the issue would have been to enhance employment law to stop companies forcing their employees to become contractors against their will. That would solve the problem that IR35 was supposedly brought in to fix and it would have also protected the employees rights too. I genuinely think HMRC wanted everyone to be caught up in all of this though and used the original issue as a way to sneak the legislation through with a view to become more aggressive as time went by when MPs forgot the original reason for the legislation.

10. Will the Bill, as drafted, achieve the Government's objectives?

No, Large companies will still find ways of paying less tax and the tax they will get from contractors will be a fraction of what they think. If I go into a permanent job then I am likely to get paid a massive amount less and hence pay less tax. If I move to Ireland then they will get no tax at all from me. If entire companies move abroad then they could actually end up getting less tax than they do now. Not only that but if contractors end up unemployed then they will claim benefits which obviously comes out of the UK tax income. In fact it is possible this legislation could have a huge downward effect on the whole economy. The UK is a major player in the global IT industry and Advance engineering etc. These sectors are all big users of contractors for obvious reasons (Mainly to do with skills and flexibility). Why destroy that? It has been estimated that the economy could be £2.5 billion worse off as a result of IR35.

11. What is your view of the role of umbrella companies in the context of these proposals?

Umbrella companies are horrific and are also unregulated. They cost a lot of money to be part of and they are also used extensively for tax evasion. They are next on HMRCs hit list. As a Ltd company I can take on employees if my work increases and I can branch out into becoming a fully fledged IT company (Which is my plan). However to still do that I would have to keep my Ltd company and pay an accountant to manage its accounts etc yet also pay an umbrella company for my current work. Not only that, but being part of an Umbrella company is pretty much the same as having a zero hours contract. It is a terrible position to put people in. Not only that but I still have to find my own work, I would be paying a company to merely say I am an employee and therefore pay paye tax while they offer me nothing in return. What is the benefit to me of that? I would also then be in a situation where I would still be worrying that HMRC are going to ruin my career again when they start shutting down Umbrella companies.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some

individuals are taxed as if they are employees, but do not have the rights of employees?

This is a major issue. If you are deemed inside IR35 you pay tax as an employee but you are not given employee rights, so I would still have to pay my own pension, my own training, my own sick pay, my own holiday pay, equipment and my own insurance. The large companies are the ones mainly benefitting from the NI savings yet it is the contractors that are being punished. If IR35 has to be implemented then it should be alongside a change to employment law in order to protect contractors from a double whammy. The other problem is that contractors exist for a good reason. They are highly skilled, highly experienced and in the sectors they are mostly found in are essential to the flexibility of a company. For instance on a software project you will need more people to develop the new software than you will to maintain the finished product. So it makes sense to hire skilled contractors for the period of development and then rely just on permanent workers for the maintenance of the software long term. This need will still be there. So one solution would be to hire permanent workers but sack them before they reach 12 months. That way you do not have to pay redundancy or other benefits but you avoid IR35 and still get your flexible workforce. Being an employee I will also have to take a significant pay cut probably losing around two thirds of my pay. This is a horrible situation for people to be put in. The other solution is to hire contractors from abroad that work remotely, that way a company can fulfil its need for flexible staff while avoiding all NI payments etc.

19 February 2020

Stuart Finnigan

I am primarily a Defence (MoD) IT contractor and my answers are prefaced on that basis. My skills and security clearance are so niche (being former military), that it is highly unlikely any permanent staff member will have accrued the same exposure, skills and experience with operation tempo thus necessitating the demand for contractors such as me.

1. I have only worked in the private sector but been warned to stay away due to the "zero rights" contracts that ensued from the changes.

2. Put simply, no. The 'guidance' from HMRC is fraught with caveats and ambiguity leaving business' little choice but to either determine a contractor "inside IR35" (without carrying out due diligence as it is with my end client) or reportedly ban PSCs altogether. HMRC has no burden in my opinion, rather devolving the known unknowns to clients to hang

themselves should they get a determination 'wrong' (the outcome HMRC disagree with).

3. N/K.

4. They are wholly dependent on niche skills from all over the country to deliver their respective solutions.

5. The entire off-payroll tax (employed for the purposes of tax but without any rights) is flawed from the outset. If HMRC seek to raise further revenue, then I suggest a contractor levy to balance what is deemed as disguised employment. Eradicating the country's ability to respond to emerging business opportunities, especially in a post Brexit world, is beyond madness. Businesses need stability and consistency. It is far too late for HMRC to now "help businesses" with the new administrative rules for implementation on 6 Apr 2020. Businesses have begun continuity planning by offloading new works and projects that required contingent and contract workers simply to avoid the wrath of HMRC.

6. For my line of work, the answers seem rather binary and determine me as "Outside IR35". The CEST tool however, is so ambiguous and has HMRC caveats regarding contrived arrangements, meaning any determination is subject to challenge in any case. The whole process is merely to determine any worker as an employee and tax them accordingly, regardless of the personal and economic impact therein.

7.Frankly, the CEST tool is a joke. For the purported updates the CEST tool has seemingly had (Version 2.4 as of 25 Feb 2020), the update history does not resemble any of the reported enhancements. The following is an extract from the HMRC website:

- 28 January 2020
  - Welsh translation added.
- 25 November 2019
  - The 'check employment status for tax' tool has been updated so if you do not know the worker, the tool will not ask questions about their circumstances.
- 30 March 2017
  - Added a link to the off-payroll working in the public sector guidance.
- 2 March 2017
  - First published.

8. There is insufficient time to challenge decisions before the deadline. The lack of published guidance as of 25 Feb 2020 makes this impossible. Cross refer the HMRC blunder which published their draft guidance in error only to be withdrawn that same day.

9. As per my suggestion at Q.5, if HMRC seek to raise further revenue, then I suggest a contractor levy to balance what is deemed as disguised employment. The nuances of determining each and every role as to whether it is off-payroll stifles a businesses ability to complete globally and deliver short term project work on budget. In my opinion, IR35 is possibly the most flawed rule set to determine or govern taxation of any employment.

10. Absolutely not. Look at the impact in the public sector alone, raising contracting rates to offset the cost of being "Inside IR35" is merely 'moving peas around a plate' (Treasury to Govt department back to Treasury) minus the loss of VAT that they once made. The private sector cannot just invent more money to do the same without it coming from somewhere. I believe that this will result in job losses, reduced productivity and a stagnant economy.

11.There is wholesale fraud taking place and Umbrella companies profiteering on the fact that, at least initially, contractors need to go somewhere. One look at most Umbrella companies and they are upfront stating that the now "employee" will pay the Umbrella "employer" NIC contributions. I believe there will be an equivalent of "mis-sold PPI" claims once the dust settles.

12. Zero rights employment is the best way to describe this move and is wholly wrong, at least morally. The Govt has shown no interest in the best and brightest in various industries rights or welfare in the attempt to force people to become an "employee for tax purposes only". I personally have a complicated family situation meaning split custody of my son who has Autism. Put simply, I cannot afford to do what I do anymore should I be forcibly determined "Inside IR35". I will need to sell my home and downsize and take a permanent role anywhere that hopefully gives me the flexibility that I need. If I do not, then I will be left with nothing; having to choose between having a job or seeing my son, I choose unemployment and seeing my son.

Thank you for taking the time to read my reply.

25 February 2020

Simon Firth

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

RSM - I personally have no experience of this area. My knowledge is based only on news sites.

Impact of new off-payroll rules on organisations
2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

RSM – It might been Considered to have been adequately assessed, post Public Sector changes and six months ago. But, as the current reality is demonstrating, clients are now just Not going to use contractors. If the HMRC feel they done a good job in this respect, so be it.
Small consultancies and contracting will be finished, and people will be forced into Perm-only types of employment.
If a contractor earns into his company £100k which results in £30k tax income, then a permanent salary of £65k will earn the HMRC the net same.
It is this assessment which I believe has Not been considered.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

RSM – I cannot answer this question as I have no first-hand experience. Suffice to say, it appears to just be another element to add confusion. For example;

a) When does a Small company become a Medium company?
b) If one has 51 people working in the company for a period, by when is that company officially classed as a Medium company
c) Does the 50 count towards just employees, or employees and contractors, or employees, temps and…etc.
d) By when does a newly Medium sized company have to effect the change in rules? Is there a moratorium?

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

RSM – Personally, since I appear to be leaving at the end of March, I will likely do something else. I have a company and business with various forms of income that will likely fold. As contracting is being forced to a close, and as I am not built for permanent life, I am exploring options. As for the smaller consultancies offering niche solutions who also need to use contractors, and, as evidenced by the Finance sector dictating anyone working for the banks should not be a contractor, as the consultancies

cannot afford to employee these some-time used people, the consultancies seem to be folding too…

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

RSM – Scrap the whole idea that a client in either the Public or Private sector should determine a contractor's working practices and tax affairs. After all, one does not learn a plumber's taxation with a view to implementing anything prior to engaging him to install a shower.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

RSM – Currently, I believe to the true contractor, who has lived with IR35 for 20 years has afforded clarity. The clients seem currently not to care as their focus really should be;

a) The ability to quickly hire and terminate contractors
b) A complete lack of knowledge of, or interest in, a contractor's tax payments
c) To NOT have to set up HR type departments to deal with contractors the way that HR deals with permanents.

The reality now is that;

a) The clients cannot quickly hire a contractor
b) The clients do not want an investigation hanging over their company for the next seven years with claims for back taxes and fines
c) The clients do not wish to expand their business model to learn something that should be irrelevant to their daily needs.
d) AND SO, with the above, the Clients will never learn the nuances of IR35. Clarity may be there for someone willing to read and learn. The reality is that they do not want to read and learn. And, why should they?

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

RSM – The recent updates to this tool have improved the inclusion of more of the questions that are asked in courts of law. Having used the tool, it has improved the fairness of the questions and the outputs. But, if one accepts and understands the three pillars to the IR35 law, Control, Substitution and Mutuality of Obligation, why has the latest update still NOT included MoO?

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

RSM – As one of many contractors on the receiving end of clients' reactions and forced to leave a client at the end of March 2020, SDS and CEST assessments are not even being used. While the clients have been at pains to not blanket 'assess' contractors as Inside, they Have blanket decided to not use PSCs. This goes against the assertion from the HMRC that;

a) Clients should not blanket assess
b) Real contractors would not be affected by the April 2020 changes. They are. I am.

Also, there still seems not to be a route for a contractor, once in a contract and knowledgeable of the realities of the working condition, to later challenge the Client and/or the HMRC to assert an Outside IR35 position and to be able to claim back taxes and NI that should never have been paid in the first place. This needs to be laid out.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

RSM – If HMRC's ultimate wish is to earn more tax, increase Corporation Tax by 2%. Currently all HMRC seem to be achieving is

a) the destruction of a mobile workforce
b) and, if everyone in the contracting industry go permanent, then there would not be any increase in tax income

10. Will the Bill, as drafted, achieve the Government's objectives?

RSM – If one agrees that the ultimate objectives are to Earn more tax then, as above, if the contracting world goes permanent, then no. I am not sure what other objectives the HMRC has for this change.

11. What is your view of the role of umbrella companies in the context of these proposals?

RSM – I have no first-hand experience but, based on how the Loan Charge issues have been tackled whereby it is the end tax payer being investigated by the HMRC, and Not the organisations inventing the schemes, then I have a fear that Umbrella Companies, who won't be regulated, may find schemes that 10 years down the road, are found to be non-compliant. And again it will be the contractor being targeted for back collections.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

RSM – In a word, No. If one is to be taxed as an employee, one should be treated as an employee. Anything else is pure hypocrisy.

20 February 2020

Ken Fitz-Patrick

1.Background

I have been a contractor for 25 years. I was nudged into contracting after being the IT guy for several companies and successively made redundant after I had fixed everything. Leading me on to the notion of contracting.

I've seen a lot of companies/accountants promise more take home pay with ever more sophisticated, not to mention illegal practices over the years but I have remained honest. I pay myself a decent salary for the role that I do. The "Extra" is put away to fund times where I'm unable to work for any length of time. I have in the past had to fund lean times when out of contract, I did not go cap in hand to the government, I had planned for such times by placing that money aside.

My skills are valuable to IT service providers for a short term during major projects but of little value to them for business as usual activities so I have to travel the country seeking opportunities wherever they may be. This usually incurs a great deal of expense to my Limited Company and quite some inconvenience for my family. I do not know of any permanent employers with a similar skillset who would be prepared to travel the country providing services.

I do not consider myself as rich, I don't drive expensive cars, I work hard and I wish to have a reasonable lifestyle. I have worked with permanent staff and it appears that they sometimes do not feel that same pressure as those contract staff to provide that 100% effort all of the time, who are judged on their results and reputation.

2. Existing measures in the public sector:

Thankfully I have missed the upheaval in the public sector by a few months, I have had history on Public Sector roles but not in recent years. Anecdotally I have heard horror stories form current/past public sector contractors of flawed IR35 decisions – people being put inside then outside and inside again, expensive accountancy firms advice being unheated re IR35 determinations.

3. Impact of new off-payroll rules on organisations.

I can see this from my clients point of view they are being forced down this path by HMRC who seem to have no accountability for their actions they are Judge, Jury and Executioner (literally in some of the loan charge cases). I for one would not like to be the one being hounded by them and could see my mental health suffer even more if that was the case. I am currently constantly irritable over this IR35 debacle and my blood pressure has risen higher.

The current project I'm working on has a number of contractors (all assessed as inside IR35) and the project will likely run into difficulties without us and potentially lead to my client being liable for penalties for non-delivery of the large scale project. If the client are to retain any of us then they will have to pay more.

4. Determining tax status of workers

if I want my small business to continue, I will be forced to find a new role as my current role has been assessed as inside IR35. I don't believe any appeal will be properly assessed by my current client as I have already completed a CEST determination (sent to the client) which states outside due to my business covering costs before being paid I should be outside IR35.

The company doing the CEST assessments haven't even bothered to ask that question and my assessment was purely based on my contract and a few questions about working hours that my hiring manager completed. My current hiring manager has confirmed that he agrees with all answers that I provided during my own run of the cest tool. My colleque had our identical contract / working practices assessed by QDOS at the end of last year which also states it was outside IR 35.

5. policy objectives and wider context

Myself and a colleague have discussed the matter extensively and he suggested that in order for HMRC to capture the tax it isn't capturing due to disguised employment legislation should be brought in using data from RTI. If you are an employee of a company and shareholder in the same company you can't take more out as dividend than salary. This would eliminate those who pay min wage, take all the rest as dividend. This is widespread in the industry and advised by a lot of tax advisors / accountants. I would think this would net HMRC much more than IR35 and be across the board. A fair level playing field and is much simpler to operate at reduced cost.

24 February 2020

Darrel Flint

Re: Point 12: Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

I am a finance contractor and would like to submit a few words on the proposed off-payroll reform, more specifically addressing point 12 of the areas of interest:

I am a firm believer in everyone paying their fair share of tax however I think the proposed off-payroll reform is very unbalanced. Whilst genuine hard-working contractors will in many cases end up paying more tax (perhaps due to blanket assessments from risk averse companies), there is no compensation to offset this. Being treated like an employee solely on a tax perspective is unbalanced as there is no sick pay, no holiday pay, and more importantly nothing to guarantee work.

In my 10 year contracting career I have had multiple unforced contract breaks, one that lasted around 10 months. That 10 month period where there were no suitable job opportunities in the market meant no income to my business and this manifested itself in ever increasing anxiety which affected more than finances such as general wellbeing and family.

If a company deems a contract to be inside IR35, then surely the only fair thing to do is at the same time offer things such as holiday and sick pay, and perhaps a minimum period of guaranteed work. If this can't be done, the other option is to continue with the current regulations.

10 March 2020

Catherine Fox

The following document is submitted as the evidence to the Sub-Committee for consideration, it contains:
Experiences of the impact of IR35 from a contractor in IT and technology
Comments (based on industry experience)
Answers to Areas of Interest questions
Background: what I do

I have been a single person enterprise (or contractor) since 2012 working in the
Information Technology sector as a User Researcher

(https://en.wikipedia.org/wiki/User_research), typically working within multidisciplined teams developing products and services for time limited technology projects.

Typically, a User Researcher is a highly qualified individual often with a background in social research, design and / or computing – for example, I have a BSc in
Anthropology and a MSc. in Human Computer Interaction with Ergonomics (HCI).

In my 17 years' history as a User Researcher, I have worked for leading brands and clients (private and public sectors) in e-commerce, console gaming, finance, leisure, health, travel, media and television, telecommunications, transport, not-for-profit and Government and more.
Why run my own business: illness and ageism

After receiving my Masters in HCI in 2005 from University Colleague London (self funded), I was employed by a number of well-know design agencies. However in 2012, the agency market was unstable and for the second time in 3 years, I was let go by my employers.

At the time, I was also recovering from a long-term illness that could have been viewed by prospective employers as a liability. Ageism was also a consideration as I began my studies as a User Researcher in my early 40s and was significantly older than most people in the design / technology industry in similar careers at the time.

Consequently, I viewed my only choice at the beginning of 2012 was to go it alone and start my own company if I wanted to remain 'employed'.

As an individual earning my own living and not dependant in any way on the State in my late 50s, I have a real concern that IR35 will directly result in long-term unemployment or force me into early retirement after April 2020 (with no private pension provision).

My observations / comments about the impact of IR35:
Unconsidered Downstream costs

Personally observed the following behaviours / outcomes pre-April leading to the stagnation of the contract market since last year:
Significant and devastating reduction in the number of contracts available on the market since last year. Most agencies will say that they have gone from a buoyant market to almost zero in about 10 months. This is because of the nervousness of business resulting in delayed projects and taking on anyone until they have more certain (contracts and permanents).

My experience: I know of many contractors that have not any worked since last year and the number is growing. The interim market has ground to a halt and hundreds of thousands of contractors are finding their jobs disappearing or facing massive pay cuts. At the beginning of last year, if you rang any agency they would have had at least two dozen contracts on their books. I know of agencies now with zero work on their books for over 6 months and they are letting recruitment
staff go.
I have found it harder and harder to find work in the last 12 months and regularly spend most evenings promoting my company and services through 'digital cold calling' (emailing anyone who may be interested in my contracting my services)
Extensive non-compliance by end-clients resulting in mass terminations of contractors and blanket determinations without taking 'reasonable care' as required by the legislation (e.g., Company's being enabled to break the law with no consequences)
Closure of projects as contractors walk from their existing contracts (so increasing costs due to project failures both in the private and public sector)
This is a repeat of what happened when IR35 was introduced to the Public sector.
My experience: My current contract is not being renewed or assessed, all contractors have been asked to leave by March 6th and the incomplete IT project (over a year old), will close. The client has no plans to take contractors in the future and is conducting no assessments.
Massive forced drops in income (if forced inside IR35), leading to debt and mortgage defaults and increase in mental health issues amongst contractors so higher burdens on NHS services
My experience: One contractor friend was near to suicide when forced to consider supporting a family, mortgage etc. with up to a 40% drop in income 'overnight' and had to seek professional help.
Personally I have experienced significant mental stress over the loss of my income which is severely impacting my physical health (and my long-term illness), potentially I could have to resort to signing on.
Loss of employment opportunities overall: There is not a direct correlation between number of contracts and permanent roles in the information technology industry.
My experience: Already my colleagues in the industry are observing that due to increased costs associated with permanent roles and high risk aversion, that some companies when switching to inside IR35 roles, are reducing numbers whether permanent or inside IR35. That is, if there were originally 50 contractors, this has been reduced to 4 permanent roles and 4 inside IR35 – this is becoming very common.
Companies starting to off-shoring digital services outside the UK to avoid IR35 determinations / complications this includes User Research (so jobs are moving outside of the UK)

My experience: This is a trend that I have observed since the BREXIT result and it has only been accelerated by IR35 and the burdens and risks it puts on business. Modern communication technologies makes off-shoring very, very easy. I have personally worked in digital teams where I was the only member located in the UK and my team was co-located across the US and South Africa. Cross located global teams are common and IR35 could add the final fatal push.
Expertise disappearing from the market as fears about facing historic risk from HMRC is forcing many contractors to commonly:
Take their expertise aboard (buoyant IT markets include Middle East, America, Singapore, India and Australia – roles are always be advertised. I am strongly considering moving aboard as wages are higher than the UK)
Retire
Change careers
Going permanent (not popular as number of relevant roles is not high)
Going inside IR35 until they find something else to reduce historical risk (leaving businesses with uncertainty about continuity for project based work impacting business effectiveness, forecasting and profit long-term)
Exploitation or non-compliance by Umbrella Companies (inside IR35), they are not regulated, service is variable and additional fees taken without permission and viewed as non claimable

These are just some of the downstream consequences that result in associated costs not considered by the HMRC which has wider implications for the economy under BREXIT. There will be further unforeseen impact as the human cost is not in the final calculations. We all pay as citizens for human cost either through the NHS, the social system or because of growing economic uncertainty and personal debt.

Areas of interest questions

Existing measures in the public sector
1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?
a. My experience: Lessons learned from the public sector have been completely ignored. The HMRC must be living on a different planet to me! At the time that IR35 was introduced into the public sector, I have been working on a public sector project for 11 months. With in a week of IR35 being introduced over a hundred contractors were let go and the project was halted. To my knowledge, this project was delayed over 18 months and had to be completely re-started as continuity had been lost. It is welldocumented that my experience was the most common experience across the public sector at this time. The only people who really lost out were the taxpayer who had to pay twice to start these public sector projects again. At this time I went to work in the private sector so

consequently all my expertise came out of the public sector I moved into the private sector. Again, it was the taxpayer who lost out as the brain drain went from the public sector to the private sector.
Impact of new off-payroll rules on organisations
Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
My experience: I have yet to read of any documentation from any source which has looked at the impact of off-payroll rules to the private sector and adequate assessment. I recently finished work for company, and in my discussions with them about IR35 their reply was we are not taking any advice or doing anything else except blanket assessments. This seems to be the attitude of most businesses as a way to mitigate risks as opposed to costs as the business I was working for was fully aware of the losses they will incur by not being able to engage with highly skilled contractors.

Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?
My comments: Arbitrarily setting or 50 people as a cut-off point for organisations not impacted by IR35 will not reassure small organisations. For example, is an organisation with 48 employees compared to one with 52 employees any less of a small organisation in business reality? Small organisations in the IT and tech industry will always be at a disadvantage when compared to the big tech Giants. If anything, the big Giants will be able seek legal advice and specialist advice on IR35 which contractors may prefer (more clarity) which will leave small organisations at even more disadvantage in a highly competitive market where access to skilled labour is at premium.

What will be the effect of these new measures on a chain of contractors and subcontractors?
My experience: Contractors often employ other contractors in the digital market to take on overflow work they do not have the capacity to do themselves – this part of the market is now completely stagnant.

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?
My comments: Scape it and introduce some sensible reforms such as an employers contractor tax and leave small businesses alone to grow. There no sensible reply to this question. Overnight, 10,000s of highly skilled people will be out of work or forced to work for less income with no employment rights.

Costs burdens for contractors: IR35 has already introduced significant costs and admin burdens to contractors. In the last two years I've paid over £1000 for IR35 insurance. Some clients will now not engage with a contractor unless they have IR35 insurance covering the contractor up to a million. Other agencies are charging contractors for assessments and passing that the cost of the assessment onto the contractor – I myself have been asked to pay £300 a quarter deducted from my day rate as a condition if I wanted to work for a particular client.

Determining tax status of workers
Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
My experience: IR35 is so complex that the only people making money out of IR35 are the insurers and legal advisors. I often work for agency clients; in my experience most agencies and business are totally unprepared and have no concept of a 'determination test'. Consequently, it is easier for them to put everything inside IR35 and not demonstrate 'reasonable care'. I have even come across some recruitment agencies who say they know nothing about IR35. The admin and cost burden of asking businesses, especially smaller businesses, is unrealistic and not achievable where this level of legal complexity is involved.
What is your assessment of the Check Employment Status for Tax (CEST) tool?
Does it require improvement? If so, how might it be improved?
a. My experience: it is well documented that the CEST tool is completely inadequate and does not reflect the complexity that is required for an assessment. Many of my clients will not except an assessment from this tool because of its inaccuracy and uncertainty choosing use other tools which they have more confidence in. Consequently, this tool is useless to me as most clients and businesses I work for will not accept any results from this tool. Clients have also expressed to me their concerns about this tool because of the arbitrary nature of HMRC in accepting the results and so they have no confidence that this tool will 'protect' them if there is any dispute with HMRC.

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
My experience: There are no safeguards in place. Businesses, well documented, are not being incentivised (i.e., prosecuted) for breaking the law and not taking 'reasonable care' with assessments.
Blank assessments are becoming the norm as businesses are confused by the complexity and uncertainty of IR35 law.
There is no way to challenge these decisions as contractors are asked to leave contracts if they challenge. Resolution is not even a consideration. I know several contractors who were given 5 minutes to leave the

premises when they indicated to the clients that they wanted their assessments to reviewed. As they were man-handled out by security, there was nothing they could do but seek an engagement else where.

Policy objectives and wider context
Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
My comments: These are hard questions to answer with any authority as the original purpose of the IR35 legislation can be strongly argued to be no longer relevant as the tax system is out of step with the on-going changing employment market – so the objectives of the Bill are unclear in this context.
The legislation is over 20 years old and the employment market has moved on from this. No one works in the same factory for 30 years as permanent employees anymore; we will all have numerous jobs in our lifetimes, and will employed in different ways!
My experience: I have been 'employed' in a number of ways during my work life - employed permanently, employed on fix-term contract, employed as an agency worker on an hourly rate, sub-contracted on day rate, employed within my own business etc.
I have been made redundant three times in 35 years, and changed career or job direction five times. Looking at the current job market, I suspect that being a User Researcher will not be my last career change even though I am in my late 50s!

Will the Bill, as drafted, achieve the Government's objectives?
My comments: See answers above, as I am unsure what the objectives are. Contractors pay tax - in the first three months of this year my tax bill alone will be over 30k (Corporation tax and self assessment) which will exclude other taxes I have to pay at the same time - VAT and dividend tax, NI and income
tax bills.
If the objective is simple to increase revenue in NI and income tax then the sums is just will not add up if you consider all the factors. For example, what revenue is going to be received if contractors are either not engaged in a contract (unemployed as business become reluctant to engage), moved to permanent roles where they will be paying less taxes, moving abroad or retiring? How will the economy suffer when highly skilled labour is excluded from the market?

What is your view of the role of umbrella companies in the context of these proposals?
My comments: There are significant problems with the reliance on Umbrella
Companies (UC) for 'policing' taxes inside IR35 including:
Lack of regulation:

o My experience: Lots of cowboys out there and illegal tax avoidance schemes which innocent employees can be caught up in, potentially the door is opening for wide spread criminal activity.

Service is highly variable for both employees and businesses
o My experience: Many questionable practices going on, usually at the expense of the employees, if you ask any questions you are threaten with termination o Not uncommon to have unexplained fees added to a final payslip with no recourse - exploitation of employees on a take or leave it basis, when I challenged a UC years ago about this, they threaten to terminate my employee

Reduces flexibility for the market as some UCs will 'charge' employees for leaving a contract early.
o My experience: It is not usually as a contractor to negotiate with an end-client to leave a week or two early to begin the next contract, this is currently acceptable business practice outside IR35. This has personally happened to me.

Some businesses will only use specific UCs, therefore costs and fees / fines of transferring from one UC to another is borne by the employee and can be costly if doing this several times a year.
a. My experience: Again this has personally happened to me when I obtained a contract with a Government department about 10 years ago who only accepted one UC, so I was charged twice – once for leaving the original UC one week early and again by the 'new' UC with joining costs.

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
My comments: Terms like 'gig economy' and 'contractors' as a reference points are out of date. People today earn their legal living in a variety of ways – so different from their parents but the tax system has not kept up with these social / economic changes which have been taking place for over a generation.
People need to stop talking about contractors as if we are a separate entity from other legal business constructs in this country.
WE ARE MICRO BUSINESSES with same legal status of any UK business and we pay NI, income tax, dividend tax, corporate tax, apprenticeship levie, self assessment, VAT, we can act as employers and have all the associated costs of running a business e.g., employers insurance, accountancy fees, expenses etc, etc.
We take on all the financial risk (like any other business) which can result in variable finances and low or reduced profits over the year (due to lack of client work or loosing client work which I have personally experienced).
My final comments

What happens to the UK economy if IR35 goes ahead and decimates small businesses?
It could have lasting effects on the economy especially with BREXIT and force many businesses to fold so enabling larger businesses to dominate the market.

You may find these stats interesting (source; https://lnkd.in/gJ44Xvx) - 99.9% of all
UK businesses are classed as SMEs (0-249 employees) and of these more than
95% are micro-businesses (0-9 employees).
If someone chooses to offer services a business, take financial risks, pay business costs and taxes, are legally accepted to be a business entity and the HMRC is happy to take business taxes, why should they not be treated as a business in all that entails?

25 February 2020

Paul Foley

Areas of Response
This submission focusses on the following areas of interest identified by the Finance Sub Committee

1. Impact of the new Off Payroll rules on organisations (sub point 5)
2. Determining tax status of workers (sub points 6, 7 & 8)
3. Policy objectives and wider context (sub point 9, 11 & 12)

Summary Position
In summary, I believe that the following represents the best course of action to rectify a confused area of Tax and Law, to provide a guided and balance path moving forward.

1. An immediate Delay to the implementation of Chapter 10 to the Private Sector and a reversion of Chapter 10 from the Public Sector, and

2. Implementation of a pause to any current investigations being undertaken by HMRC in respect of challenges to Status Determination for purposes of IR35, and

3. Commission an Independent Review (led by an unconnected Party) on the subject of IR35 to include representatives from Government , Business Institutes, Trade Associations, Trade Unions and HMRC with a brief to develop any modification to the Legislation as well as to provide Clear Guidance on how to apply, and

4. Regulation of the Umbrella Company market.

Context and Personal Introduction
I am a 44 year old Director of a Limited Company, along with my Wife. We are both Shareholders in the Company. A mixture of Salary and Dividends forms the sole basis of our Household Income. We live modestly in a 3 bedroom house in the outer suburbs of London with our two young children.

Our company is currently contracted to provide Quantity Surveying service's to a major infrastructure provider, we work alongside other Consultants provided by a Major Consultancy Practice on the same basis of engagement.

Previous to owning our own Company I held a senior position at a Leading Consultancy in the Construction Industry and experienced the need to maintain access to a flexible workforce in order to accommodate peaks in the workload whilst being able to maintain a sustainable cost base.

Detail to responses
I apologise in the first instance that I have not tied each of the points below to the sub points identified in the call for evidence, however as I am sure will understand the entire matter is inextricably linked and some of the issues I raise cover several points but lose effect when not articulated as a whole.

The planned implementation of changes to Chapter 10 to Part 2 of ITEPA 2003 will prove not only damaging to ourselves and other Limited Companies that operate in a similar manner to ourselves, but will have significant ramifications to the Country and the Economy as a whole as works are "off shored" or projects halted.

It is clear from the implementation of the reforms that the transference of responsibility for establishing the Status in respect of IR35 from the Consulting Party to the Engaging Party has resulted in;

- Blanket Determinations – there has been an explosion of this practice in the Private Sector
- Skills Shortages – Roles are being already "off – shored" which represents a loss to the Public Purse.
- Project Cost Escalation – NHS and HS2 represent excellent examples
- Project Delays – Crossrail, Network Rail, NHS, HMRC
- Extension of a form of "No Rights Employment" across the Public Sector
- Escalation of organisations promoting Tax Avoidance in the unregulated Umbrella Company market.

By far the last item ought to be of greatest concern, especially in light of the current Loan Charge scandal that has thus far claimed 7 lives as a

result of suicide – if small Consultants are to be forced down the route of being subject to Income Tax and Employee National Insurance Contributions (without benefitting from any Employment Rights) then it must be through a Regulated Medium, else it forms the basis of a far greater problem later in time.

It is clear from my experience that Engaging Organisations are ill – prepared for the implementation of Chapter 10. This is not helped from a lack of guidance and a robust tool from HMRC which is resulting in an inconsistent application of the principals of the Off Payroll Regulations by the Engaging Organisations. It is clear from case law that the CEST Tool is not fit for purpose and that HMRC have neglected to draw in other areas of law (especially where MOO is concerned).

A consequence of this lack of clarity and the risk to penalties placed on an Engaging Organisation within Chapter 10, is driving a "risk averse" behaviour within Engaging Parties to provide a Status Determination on "Inside IR35" basis irrespective of the Terms and Conditions of Contract and Working Practices. The provision of an appeal process becomes meaningless as it is considered by the Engaging Party and not an independent 3rd Party.

In respect of my current engagement, the engaging organisation is extremely risk averse due to political sensitivities around its core business and future plans. Nonetheless it has declared its intention to undertake Individual Status Determinations. This however should be considered with the caveated principal that it believes everyone will be found to be Inside IR35 – a predetermined outcome based on fear of HMRC Investigation and the negative PR that would arise.

It is evident that the implementation of the changes to Chapter 10 and in fact IR35 require a substantial review to ensure that they are Fit for Purpose and reflect the balance in risk that exists in a Consulting / Freelance / Contracting method of engagement.

The impact of Chapter 10 will mean that for many the costs of running a Limited Company (Accountancy Fee's, Company Telephony, Broadband, IT Equipment, Training, Employee life Assurance, Employee Pension Contributions) are all subject to the deduction of Income Tax and both Employers and Employees National Insurance Contributions.

It should be noted that the Day Rates generally applied by small Consultants are generally between 20 – 30% less than those charged by the Larger Consultancy Practices. This will of course have an impact on the viability of some projects moving forward, especially where Professional Service makes up the lions share of the cost. It is evident that Engaging Organisations are in instances seeking for the rates paid to

small Consultants to be inclusive of Employers National Insurance Contributions which is contrary to Law.
I can only hope that the above proves of some use to yourself and thank you for your time in getting to this point.

I wish you the best of luck in addressing this matter with your counterparts in the other House, but suspect that the indignant approach to challenge and questioning that has been evidenced from that quarter previously will remain - maybe only breaking with protocol on Finance Bill will force their hand?

10 February 2020

Ian Franklin

I am the person of significant control and Director of two companies who deliver services in the digital IT sector to private and public sector companies:

Ideasmiths LLP
Ideasmiths Digital Limited

Public and private sector companies are doing blanket inside IR35 determinations and furthermore choosing to have contractor roles as inside IR35 is having a severe impact on my companies and my business partners.

1. Where we contract

Private and public sector organisations mainly in the North of England from Liverpool, to Blackpool, to Leeds, to Newcastle, Leeds and Sheffield.

2. What our clients are doing.

Clients are making blanket Inside IR35 determinations for contractor roles. Furthermore, they are not increasing rates and the public sector is actually lowering rates. As well as PAYE being deducted contractors are finding that Employer's National Insurance, apprentice levy and other employer taxes are being deducted.

3. The impact on us

We were used to Outside IR35 rates of between £475 and £650 per day.

For economic reasons we will not work inside of IR35 especially for low rates. In my view Inside IR35 rates would need to be around £750 to

£850 per day. Public sector inside IR35 rates are going as low as £370 per day. If you take an inside rate of £500 per day after PAYE is deducted you end up with £300 per day. From that we need to make provision for pension, holiday pay, sick pay, training and development and downtime. If you take off these costs then an individual contractor would be left with about £120 per day which in no way compensates for the moral hazard of being self-employed.

With Inside rates of £400 per day or £370 per day then you would be left with £50 to £70; in which case you might as well be a minimum wage worker flipping burgers and not the highly skilled, qualified, experienced digital IT professional that many contractors are.

Needless to say if Employer's NI and other taxes are taken off a contractor would effectively be left working for nothing.

I would also point out that many government departments and large corporations are paying the big management consultancies and IT suppliers £800 per day for their graduate trainees. I consider my outside IR35 rate of £550 to £625 per day which comes with my 30 years experience, qualifications, professional accreditations and £5000 of professional equipment and software to be a bargain compared to a know nothing graduate trainee from a management consultancy.

Making me go inside IR35 for the rates currently on offer reduces me to a zero hour minimum wage worker.

Also if I am inside IR35 then I cannot claim costs against tax. I have been contacted about roles in Blackpool, Liverpool and Newcastle all of which I have turned down because hotels and train will not be claimable inside of IR35. On some of these roles I have been contacted by 20 different recruiters in two weeks and have then seen these roles re-advertised as they cannot be filled. Since hotel and travel costs cannot be set against tax when inside IR35 an organisation's market for contractors is restricted to 35 miles from the place of work. To note Blackpool is not exactly noted as being a hotbed of digital IT knowledge which is why so many of the DWP's IT projects are failing. Also is you were a contractor there you would go to Manchester for more lucrative and exciting work.

Roles on important government digital projects are not getting filled and projects are getting delayed or stopped because of lack of staff.

4. The impact on the firm.

If contract roles go Inside IR35 then my two companies with their 6 partners and directors will have no choice but to close. If everyone does inside IR35 where corrupt umbrellas and similar will be processing PAYE

and there is no scope to claim costs against tax then there is no point in the companies existing.

We have put all plans to expand on hold and plans to take on juniors have been stopped.

This will of course mean a loss to the HMRC in corporation tax, NI payments, VAT etc.

With several contractors working in partnership we have endeavoured to fulfil outside IR35 requirements since:

a) we can substitute for each other
b) we can provide expensive equipment from a shared pool
c) we rent office space
d) we advertise

5. The likely damage to all parties

I know that government digital projects in the North cannot get contract staff inside IR35. I know that NHS Digital in Leeds has had to put projects on hold.

The digital industry in The North is rapidly expanding and needs people with highly in demand skills; junior level people just above graduate trainee in the private sector are being offered £38K per year and senior weight and principal weight people are being offered £60K to £120K. Civil service salaries for juniors are £25K and senior salaries are between £38K (SEO) to £65K (G6). With this discrepancy the civil service CANNOT AND WILL NOT get permanent staff with the required skills and must use contractors.

I know 25 and 27 year olds who ask me which of the three private sector jobs they should accept; needless to say the civil service is not on the list.

In the digital industry there are a lot of contractors running around pretending to have the skills who do not. I have sacked enough of these when leading projects to know who they are. Needless to say these are the people who will work for low rates and Inside IR35.

For quality experienced experts like myself with many years experience and good client handling and team working skills contracts must be outside of IR35 with good rates to be attractive.

For me the whole premise of IR35 is deeply flawed. Gone are the days when a permie could walk out on a Friday and back in on a Monday as a

contractor on a massive daily rate and pay lower tax through low taxed dividends or take income as no pay back no tax loans. That has all gone.

These days, contractors pay income tax, employers NI (from their Ltd companies), corporation tax, VAT etc etc. Dividends are taxed at similar rates to income tax.

We can claim expenses against tax which is good especially when working away from home. But we also accept the moral hazard of being self employed and being binned off a project for a variety of reasons and we have no employment rights.

I am also confused as to why HMRC is going after IT professionals and is ignoring the Uber's and Deliveroo's contractors who essentially many of them should be employees with full employment rights and employers paying NI, pension, holiday sick etc.

The HMRC has a fetishistic obsession with IT contractors and seems to think we are all tax dodging multi-millionaires. They also seem to have forgotten that we pay corporation tax and VAT from their calculations on tax 'dodged'. I am afraid that the HMRC contractor tax IR35 experts have lied to you.

IF I have to work inside IR35 on government projects then they will have to:

- have a rate of at least £750 per day before PAYE
- provide me with at least £5000 of tools and equipment
- pay all my hotel and travel costs to stay near site
- make a contribution to my private pension of %15
- provide sick pay, holiday pay and other employee benefits

So how inside IR35 is cheaper than outside IR35 is beyond me.

I guess the HMRC wants to see important government digital projects failed.

FYI while writing this submission to you I have had four recruiters phone me about the same government health related inside IR35 IT role in the North on new low rates. I have told them to go away. I expect to get more calls about this role over the next two weeks as the organisation and recruiters become more and more desperate to fill it. For one role in Sheffield at the MoJ I received 20 calls in 10 days from different recruiters; this role was then re-advertised and I then got another flood of call.

If you want a flexible workforce, with high in demand computer and digital skills, with many years' experience, who can transfer their skills to in-house teams, and a track record of success then IR35 must go.

9 March 2020

Alasdair Fraser

Determining Tax Status of Workers (Questions 6, 7, and 8)
I will restrict myself to dealing with these three questions, as this issue is the one where the most damage has been done to the integrity of our tax system; this is the issue that has arguably destroyed the credibility of our accounting institutes, and has left Parliament looking like a body that could not recognise failed legislation no matter how clearly it is identified as such. I am ashamed of all of you!
Question 6
<Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?>
I am a tax agent who has spent two thousand hours on the task of understanding the original IR35 legislation. I read every case that is mentioned in HMRC's 'ESM', and I pursued my research into those cases that were used as a foundation¶ by such key judgements as the 'Ready Mixed Concrete' case. It is clear to me that the majority of people who make reference to 'RMC' have not actually read the case themselves, or examined the common-law arguments upon which the judgement rests. Also, pretty much everybody seems to ignore the sequence of events that resulted in Ready Mixed Concrete coming before the High Court of England. RMC ended up before the courts because the engager (RMC) requested a formal 'status' decision from the Minister for Pensions, regarding the correct National Insurance treatment of payments arising from its contracts with the individuals who delivered concrete to RMC's customers. Disagreeing with the status ruling made by the Minister for Pensions, the Ready Mixed Concrete company appealled to the High Court. With this process as my guide, I tried to request a determination of the correct NICs for IR35 purposes, as provided for in the NI regulations; to my amazement, HMRC blithely stonewalled my request for seven years.
The IR35 rules operate only by analogy with the process used to establish actual common-law employment status. In all other contexts, where common-law employment status falls to be decided by a tribunal, the tribunal will be deciding actual status. The entire history that lies behind the idea of common-law employment status depends upon the existence of actual contracts, and the judicial task of establishing actual tort-liability, by discovering whether the worker stands in a SUBORDINATE relationship in relation to the engager. In contrast, IR35 depends on

firstly defining the hypothetical terms of a hypothetical contract, and then going on to discover the hypothetical common-law employment status that is most consistent with the defined (but hypothetical) contract. It seems self-evident to me, that such a process is fundamentally subjective, and it only becomes objective when the body that makes the legal determination is the First-Tier Tax Tribunal.
During the seven years that I debated IR35 status with HMRC, the one beacon of sanity that I recall was when the status officer agreed with me about the significance of a complete absence of any right of control, as might be the situation between an engager and a professional expert who has contracted to deliver defined objectives. A total absence of any right of control over such a worker, by the engager, means that their nexus is no more than a (self-employed) contract for service. However, since courts have decided§ that just because an engager maintains, or even truly believes, that they have no right of control, the actual position in law may be that the engager did have a right of control over the worker; leaving the worker with the common-law employment status of employee. I realised that it really was impossible to prove HMRC wrong, when they declared that the worker might be subject to a right of control, and could be inside IR35. The only option was to request that HMRC make a determination for NICs purposes, as such a determination provides an automatic right of appeal for the taxpayer. I believe that the reason that HMRC stonewalled my request is that HMRC understands the subjectivity of the process of making an IR35 determination; HMRC know that the process is not fit-for-purpose.
Truly, there are no effective 'tests' for determining status in the IR35 context; so therefore it is obvious that there can not possibly be clarity, either for the engager, the worker; or for HMRC themselves.
As to the <reality of the contracting environment>, there are two distinct realities; and they really ought to be treated differently by HMRC. Where there is a contracting chain that includes an Agency; HMRC are entitled to question whether the Agency is genuinely supplying a worker to its customer (the engager). It seems quite likely that if these cases were looked at with the benefit of the judicial analysis from the Rangers Tax Case¥, it might be found that the payments to the Agency amounted to no more than a redirection of wages, earned by the worker as consideration for making themselves available to respond to the engager's shifting requirements.
Where there is no Agency, and the engager makes payments directly to a PSC, HMRC have a different task to fulfill. As a first requirement, the worker should be obliged to confirm that the PSC is actually the contracting party, as the true tax position may be different if the worker actually contracts directly with the engager. Of course, it is debateable whether HMRC have the resources to pro-actively check the true nature of such arrangements; but perhaps it would be possible to require the engager to register self-employed contracts made directly with PSCs? In any event, HMRC seem to have no interest in distinguishing cases where

an employment agency (or agencies) exists in the contractual chain, from those cases where there are none.
Question 7
<What is your assessment of the CEST tool? Does it require improvement? If so. how might it be improved>
Common-law employment status is a legal attribute of some labour-only contracts. It is a matter of law; and can be of interest to third parties, as well as to the engager and worker who create the contract. HMRC's interest is as a third party, but in law they do not have any priority (there is really no such thing as "employment status for tax purposes").
Common-law employment status must be allocated, if income tax and NICs contributions are to be assessed correctly; but there is no default.
The CEST tool will make an allocation of status (85% of the time), but it can't be stressed enough that the result of the CEST tool has absolutely no force in law. It appears to have been created to serve as a visible alternative to the statutory process$ whereby the state makes formal decisions on common-law employment status, for NICs purposes. The role the CEST tool will play from April 2020 onwards is anyone's guess, but it already seems clear that large businesses are (sensibly) not willing to rely on something which has absolutely NO legal authority when it comes to determining status. Their alternative is to remove PSCs from their labour supply chain, by increasing use of direct employment, specifying that the agencies they use must operate PAYE, and encouraging the use of 'approved' umbrella companies.
As for improving the CEST tool, I made strenuous efforts to persuade HMRC that one of the questions the CEST tool depends upon is seriously flawed. I explained the reasons, and pointed out that where the answers available are ambiguous, AND do not cover common reality, it is not possible to use the tool. The response I got from HMRC was that nobody is compelled to use the tool. Subsequent events show that HMRC are happy to 'tweak' the tool, but are not willing to listen to constructive criticism of the logic upon which the tool depends. Perhaps, if the CEST algorithm was taken out of HMRC's hands, and passed to the Office of Tax Simplification, it might have a future?
Question 8
<How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?>
There already exists a true <status determination process>; it has been in place as long as the
National Insurance system has been in place. In the beginning this process was the responsibility of the Minister for Pensions, as the need for the process arose from the requirement that employers act as collectors of National Insurance contributions, on behalf of the state. Employers must have access to a definitive administrative process that will determine common-law employment status, when required; and they must have recourse to the courts for a definitive legal adjudication, when

they are aggrieved by the administrative determination. When IR35 was first passed by Parliament, there was a clear process in place for dealing with actual common-law employment status uncertainties, when they related to National Insurance contributions. The IR35 measures extended this process to include uncertainty over hypothetical common-law employment status.

By this time, the responsibility for the process had been transferred by statute, so that the Inland Revenue were in charge. Thus in time, HMRC found themselves responsible for a <status determination process> that they had neither the will nor the resources to operate. But the process remains on the statute book! CEST can never determine status, but the statutory process that exists can.

Despite the fact that HMRC do not have the legal power to deny access to the statutory process for determining status for NICs, they do have the effective power to shutdown debate and discussion, and they have used this consistently, in full view of Parliament, and all the professional experts. I found it really hard to understand how I could establish that a statutory process existed, but I couldn't discover any way to access that process. I spent seven years trying to solve this conundrum, before I gave up; but it is clear to me that HMRC are the very last people who should be allowed to control the statutory process for determination of common-law employment status. Parliament must act, to return this function to some other department, if we are to bring back fairness to the UK labour market. As far as dealing with the 'leakage' of Secondary National Insurance contributions, it is not a technical solution that is lacking -- it is the political will to implement the solution (ask Mr Whiting).

In particular, Zuijs v Wirth Bros. Pty

This case depended on the proposition that in any contract there will be some room for the subordination of a worker to be demonstrated, no matter that they are NOT subordinate as regards their main contractual task. Mr Zuijs was an acrobat, and Wirth Bros could not direct him in this activity. The evidence showed that they could (and did) direct Mr Zuijs to participate in a '<Circus comes to town parade>, and Mr Zuijs was obliged to comply. Thus Mr Zuijs was found to be an employee, and entitled to employee injury compensation.

§ Market Investigations Ltd (MI Ltd) v Minister of Social Security (www.gov.uk/hmrc-internal-manuals/employment-status-manual/ESM7040)

The description of this case in HMRC's manual tells us a lot about what The Inland Revenue thought was important, when they wrote the summary. However, it is much better to go to a law library, to read the full judgement. That way you can follow the Judge's reasoning. Cooke J was new to the bench, and delivered a careful argument. While he found that MI Ltd genuinely believed they were contracting with casual interviewers on a self-employed basis, they were mistaken. Cooke J decided that each assignment was a separate contract, which rendered irrelevant the fact that MI Ltd were not obliged to provide any work, nor

were the casual interviewers obliged to accept work when it was offered. Looking at the individual assignments, Cooke J had no trouble implying into each of them a clear right of control over the interviewers, such as to make the contract a contract of service. By this argument Cooke J completed his judgement. He went on to check his reasoning, and make obiter remarks regarding the absence of any evidence that the interviewers were 'in business on their own account'. ESM7040 includes a partial quotation from p184 and p185 of the judgement, and within this quotation Cooke J said: ". . . nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. . . . " Yet the algorithm behind the CEST tool can not operate without prescribing the weight that must be given to various considerations. HMRC have got so much invested in the CEST tool, that it really ought to be subject to scrutiny by independednt legal experts.
BUT THIS WILL NEVER HAPPEN, OF COURSE.
¥ Decided ultimately by the UK Supreme Court, Trinity Term, [2017] UKSC 45
The judgement in this case is only 26 pages, and the presentation of the case was recorded, and can be watched on the internet. The court found the arguments advanced on behalf of Rangers Football Club displayed absolutely no merit, despite having succeeded before the FTT and The Upper Tax Tribunal. We can conclude that where payments due as earnings by a worker are redirected to a third party, the engager (payer) is obliged to deduct income tax, and falls liable as Secondary Contributor for Class 1 National Insurance. Where this possibility is notified to HMRC, they really should consider seriously whether the engager truly is the employer, and the payments truly are wages. HMRC have absolutely no right to assume that where the third party is a PSC, the payments it receives might not be redirected payments of wages.
$ See ESM8480 (see second endnote for internet source)
Opinions on contracts: formal decisions and rights of appeal
Regulation 6(4) SI 2000 No. 727 (NICs Regulations)
Section 8(1)(m) Social Security Contributions (Transfer of Functions, etc) Act 1999
The above measures confirm the existence of the process whereby Parliament vested in 'the Minister' the authority to make status determinations, for National Insurance purposes. They clarify that the process also applies to the determination of <hypothetical status>, in IR35 cases.

Matthew Fryer

This submission to the 2019 Finance Bill sub-committee is made on behalf of the Brookson Group. The Brookson Group is a professional services firm which provides compliance and advisory services to freelance contractors, recruitment agencies and end users of flexible labour. The

Group comprises of FCSA accredited umbrella companies, an ICAEW regulated accountancy business and an SRA regulated legal services business focusing exclusively on employment status matters. We are founder members of the Freelancer and Contractors Services Association ("FCSA") which exists to raise standards and promote compliance within our market.

Given the sector which we operate in and the services we provide we have extensive experience of the impacts of the off-payroll rules into the public sector in April 2017 and experience of how end hirers are preparing for the extension of the off-payroll rules into the private sector and how this is impacting recruitment businesses and freelance contractors.

3. Summary

Having experienced the impacts of the 2017 public sector changes we believe there are significant unintended consequences which are not adequately addressed in the draft proposals. These include:

An in balance in the risk v reward scale for end hirers taking on this new compliance burden.
Lack of adequate certainty with regards to the final legislation and guidance in the run up to implementation.
These factors have resulted in a replay of the blanket assessments and bans on use of personal service companies in supply chains seen in the public sector which are resulting in genuinely self-employed contractors now being impacted by what should be a targeted anti-avoidance measure.
Those genuinely self-employed contractors incorrectly caught by these rules are being forced to fund the employers NIC by way of rate reductions, no longer funding business expenses out of their business income and must now fund these out of net "earnings", not being able to adequately challenge the end hirer's decision and not being entitled to employment rights or benefits.

These factors are resulting in contractors no longer choosing to work in this way and either retiring early, working overseas or becoming full time employees. This is impacting the flexibility and productivity of the UK economy – diminishing one of the key attributes of our labour market.
More time is needed to allow businesses to adequately prepare or a soft landing should be formalized if the rules are introduced in April 2020.
There are other, more manageable ways to achieve the policy objective.

12. Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals

The new off-payroll rules in the public sector has distorted the market considerably and resulted in unintended consequences which we do not believe have been adequately addressed in the draft Finance Bill.

Examples of these unintended consequences include:

Given the complexity and subjective nature of the method by which employment status is determined, many public sector bodies initially took and continue to take a risk-based approach to the change in legislation. This approach has resulted in genuinely selfemployed contractors / freelancers / locums being incorrectly taxed as employees (with the employers NIC cost being taken out of their contract rates and no longer afforded tax relief on business costs e.g. travel and subsistence) without any associated employment rights or benefits. This is particularly prevalent in the NHS. The Finance Bill proposals have introduced a requirement for end hirers to take reasonable care when undertaking the employment status decision, however, this obligation is being side stepped by many private sector organisations who are making policy decisions to no longer engage with the services of contractors operating via a personal services company. The policy has resulted in an imbalance in the risk versus reward considerations for end hirers engaging with contractors on a self-employed basis.

There is no clear mechanism by which an impacted contractor can appeal an incorrect employment status decision to an independent party for consideration / mediation. The current proposals seek to address this and include an end hirer driven challenge process, however, having seen this in action in recent weeks it is proving very difficult for contractors to overturn an incorrect determination. An independent appeals panel or an arbitration service using ACAs or specialist mediators should be considered, although, this would come at a cost to Government and is unlikely to be able to turn around challenges in the time required.

The unfairness of this response has resulted in a resurging market for non-compliant payroll providers who are offering services to impacted contractors which seek to restore their net take home pay to that similar to a self-employed contractor working via a personal service company. Unfortunately, we are seeing the return to the market of "loan schemes" and other "disguised remuneration schemes" which are marketed solely on take home pay levels and do not make the users aware of the inherent tax risks associated with involvement. Despite the proposals including provision for debt transfer in the event of non-compliant activity, we have

not seen any HMRC activity to address this growing market which is being compounded by the roll out of the rules to the private sector.

18. Impact of new off-payroll rules on organisations
2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

We are aware that HMRC consider the off-payroll rules in the public sector to have been a success based on the increase in employment taxes collected since its implementation. We believe that this increase in tax take comprises partly of employers NIC collected from arrangements where public sector bodies have incorrectly assessed or via policy decision determined that a contract is not one of selfemployment. We are unaware of a proper assessment of this behavioral effect within the public sector and this is a key risk factor with the private sector role out. We are starting to see similar behavior play out in the private sector, an example is the banking sector where most of the large banks have chosen to stop using self-employed contractors and are attempting to pass the employer NIC cost to the workers by way of rate reductions.

HMRC have vastly underestimated the administrative cost to business of complying with the new rules. Determination of employment status (which is the key to complying with these rules) is a complex area of law. There is no black and white or mechanistic approach of undertaking this assessment as it is driven by case law which has developed over many years to provide the framework within which employment status is assessed. Most end hirers do not possess the in house legal knowledge to undertake this assessment accurately (as they have not had to do so previously) and are therefore faced with the decision of placing reliance on the HMRC CEST tool (which still requires a basic understanding of employment status and a review of working practices and contracts), buying in external specialist legal advice or reverting to a "blanket" decision to treat all contractors as inside IR35 or to stop using them.

It is not only the "cost" of making this assessment that brings administrative burden. Businesses need to identify any impacted contractors (this can be very difficult in extended supply chains and supply chains involving the procurement of "consultancy services"), undertake the employment status assessment, communicate this with the supply chain, deal with any challenges or queries and monitor ongoing compliance with the payment mechanism utilized by the contractors found to be inside IR35. This is not just a burden that is imposed in preparation

for the new rules but is an ongoing requirement given the nature of the flexible labour market.

The proposals place a disproportionate tax risk and significant implementation and ongoing cost burdens on UK businesses. This is one of the key factors driving the cessation of the use of contract workers in large organisations. The impacts of this are yet to be seen, however, it would be fair to conclude that the flexibility of the UK labour market will be impacted which in turn will impact the productivity and competitiveness of our economy.

3. What will be the effect of these new measures on a chain of contractors and subcontractors?

We have undertaken two pieces of research to ascertain the effect that these new measures could have on supply chains. One piece of research was undertaken with 516 UK contractors and one undertaken with 502 decision makers at end hirers who hire contractors. Copies of the research reports are attached to this submission. Key findings include:
Contractor research

If assessed as inside IR35 by the businesses that hire them, more than half of the skilled contractors surveyed by Brookson Legal (59%) said they would consider seeking alternative work with another business. Just under a third (30%) confirmed that they would consider stopping contracting all together and one in eight would consider retiring (14%) or moving abroad (13%).

Half (50%) also said that they would ask for a pay increase and employee benefits if assessed as being inside IR35, suggesting that companies who wish to retain the talents of the UK contractors deemed to be 'disguised employees' by may be faced with increased costs.

Contractors' fears of IR35 are fueled by a lack of trust that the businesses who hire them will be able to manage their new responsibilities. Only 3% of contractors believe that the private sector will be ready when the new rules comes into effect in April 2020 and less than a quarter (22%) trust that their hirers will make the right assessment of their IR35 status. Four in five respondents (83%) have not yet been spoken to about IR35 by the business or businesses they contract for and only a quarter (25%) have taken steps themselves to prepare for the changes.

Businesses also face risks from wrongly categorising genuinely self-employed contractors within IR35. Over a third (37%) of respondents said they would never consider going on-payroll and one in five (21%) would challenge an inside IR35 decision. Over half (53%) believe that the changes will deter people from becoming contractors in future.

End hirer research

More than half of UK firms (59%) admit to considering taking a blanket approach to managing the legislation, because they don't have the time to assess contractors individually. In contrast, 41% wouldn't consider taking this approach as they don't want to wrongly assess any contractors for risk of losing them.

Just under three quarters (73%) of businesses agreed that IR35 will have an impact on the number of contractors they hire. Of these, 48% confirm that IR35 will encourage them to reduce the number of contractors they hire – resulting in thousands of contractors potentially losing out on work amongst 20,640* UK businesses. 39% of businesses expect there will be fewer contractors available.

4. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Unfortunately, this change of legislation has not followed the new budget timetable - https://www.gov.uk/government/publications/the-new-budget-timetable-and-the-taxpolicy-making-process/the-new-budget-timetable-and-the-tax-policy-making-process (see point 1.3).

If this new process had been followed, we would have had the Finance Bill being introduced in the Autumn, but this is yet to happen. This condensed budget time table has been the primary factor in driving policy decisions to restrict the use of
contractors in the UK economy which has / will result in reduction in productivity and flexibility of the UK economy.

As a result, it seems sensible to either provide for a further delay or at least implement a "soft landing" post 6 April where HMRC continue to educate, rather than police the new rules. If HMRC / Government conclude that the policy will proceed with roll out on 6 April 2020 it would be of significant benefit if they could also communicate their approach to compliance enforcement to be one of continued education rather than punitive enforcement against businesses trying to comply. Clearly, this needs to be tempered by an ability to take action against those businesses willfully operating outside the requirements of the new legislation.

35. Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

A balance needs to be struck between the improvement of compliance with the existing IR35 rules and the overly burdensome proposals. Many alternative approaches were submitted to HMRC as part of the consultation process which were rejected due to them being "out of scope". Please find attached the Brookson Group's submission to the HMRC consultation process which includes an overview of an alternative, more balanced approach to addressing the policy requirements (see "Brookson Group Response to off-payroll working rules from April 2020 – page 13 onwards).

25 February 2020

Le Geniak

My responses address items 6,8,12.

Determining tax status of workers – item 6 & item 8
Policy objectives and wider context – 12 – in particular – is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees.

I am subject to a blanket assessment by the large bank I provide consultancy services for.

They say I should pay tax like a full time employee because we do the same / similar work. I will argue we are working under significantly different arrangements, rights, conditions and most importantly risks.

I will not have access to health care, or critical illness cover. I do not have access to their private medical services, if I'm suffering from mental health issues.

I do not have access to pay rises, bonuses, share purchase schemes, or the internal job mobility board.

I do not have access to the human resources (HR) department - there is no process or procedure offered to me in case I've been bullied or suffered from racial discrimination or my hiring manager takes a dislike or disagrees with me.

I work with a two week notice period and can be given my marching orders just by my hiring manager. What is very significant, is that I have

no support of access to our human resources team, with policies and procedures to defend myself.

Compare to our full time employees, who have 3 month notice periods and generous tax free redundancy agreements.

I do not have access to the company pension scheme (a scheme is being offered, under the PAYE, however, it's about 1/3 of the full time employee's benefits).

I do not get invited to important meetings.

I do not get receive a performance appraisal, get set objectives and given coaching feedback and career enhancing stretch tasks for the future.

Am I really taking the same risks as a full time employee. Do I really qualify for PAYE? We are not the same.

And the organization is saying, any new paye contract cannot extend beyond 45 weeks, because, they do not want to give me the same rights and benefits of a full time employee!

This tax changes will impact my family life, we will have no disposable income.
We will have to stop payments on our mortgage. I will be forced to cease trading in my company. The company is no longer a going concern, there will be no opportunity to earn and so it seems very likely the company will default on any corporation tax liabilities, which are payable with a 9 month delay.

Honestly, how can any working family absorb ~ 20% hike in tax payments over night and even less job security (with the 45 week rule by companies to ensure you don't get the full employment rights!

Impacts on my staff:

We employ local cleaner and DIY handy-man and gardeners and accountants and another part time, female director (who looks after marketing and administration for my company). All of these people will be impacted as we will have to stop paying for their services, so their lives will suffer too.

I have worked hard to have my own business, I have two diplomas, two degrees and professional qualifications. I am an independent consultant. I have ambitions to grow my small company, to re-invest the

profits, in research and development and seek out entrepreneurial opportunities.

Why should other consultants or small companies be treated differently to me –
For example, because they are not subject to blanket assessments and being forced into an anti-competitive PAYE scheme or because they have higher levels of post corporation tax profits to re-invest in their businesses – because they work for smaller organizations.

Money circulation:

Most contractors in the UK are using their money in the UK economy and the money is circulating in the system, for the benefit of the UK. We are not moving our money and hiding it offshore in tax havens. We are not global digital service companies with an army of lawyers, accountants and special advisers with global, complex capital structures, who move their UK profits offshore via complex transfer / royalty pricing agreements.

Friends of mine, including my family are suffering stress,turmoil and anxiety.

Many female contractors will be impacted - less opportunities for part time contracts and less money for child care arrangements. Due to large companies terminating contracts or enforcing blanket assessments (little choice but PAYE).

Some contractors are being forced by large corporations to take pay cuts, to absorb the employer's national insurance or offered jobs below their skills and experience.
We see this legislation as active discrimination against a minority.

Wider impacts on the UK economy

One of the UK economy's strengths is the flexible working arrangements - to scale up and down, take a risk and expand and contract, using the highly skilled work force of technology and finance consultants in my industry. This is vital, if we want to maintain and grow the UK as a global technology hub, to be agile, to develop the industries and future global tech companies.

More jobs are being lost and moved offshore to other competing centres as a direct result of these changes.

We should apply systems thinking and consider the hidden costs to the UK of these changes, we should scrutinise the cost v benefits calculations of these changes.

The best short term strategy is a long one. Highly skilled, flexible work-force are Great Britain's greatest asset for our future prosperity.

Solutions for taxation

I believe, there are alternative solutions to taxation and some wider consultation (with a representative stakeholder group) can take place.

There are solutions for taxation in the gig economy, which are fairer and more transparent and which themselves, use technology as an enabler. Solutions which are fit for purpose and the modern ways of working.

Large companies, do employ thousands of consultants either directly or via larger consultancies. It is possible for companies to pay a form of employers national insurance – this can be determined in the contacts.

Revenue based taxation – VAT registered companies, can be an additional sales based tax, where no offsets are allowed.

Blockchain – we can use blockchain based smart contracts. Technology to help with traceability and accountability and faster, more real time payments of new taxes. We have to move forwards, with new ways for the digital age and be ready for non-fiat based payments too. Personally, I am very happy to help the Government to progress a fairer and proportional tax system.

22 February 2020

Colin George, Smartex Computers Ltd

1) I am a Freelance IT Contractor based in Cardiff, and I am writing to raise my grave concerns about the government's plans to push ahead with controversial changes to the IR35 tax rules ('Off-payroll working'). Despite announcing during the election campaign that it would review the policy, this government has no plans to delay the April roll-out. It appears that the review is little more than a talking shop, designed to distract those who will be negatively impacted, rather than a genuine reappraisal of the policy. If this legislation is introduced, it will almost certainly put my company out of business or force me to retire early.

2) I have been a genuine freelance (not a disguised employee!) for over 22 years and my Company (Smartex Computers Ltd) has provided

services to more than 20 major clients and organisations in various parts of the UK - see the attached Clients & Project Work document. Some of these contracts have lasted 2 months, some have lasted 2 or 3 years, and there have also been several fallow periods when no relevant work was available. I also receive no holiday or sick pay, and have therefore both enjoyed the rewards and suffered the risks of being a genuine freelance. I value the freedom, flexibility and autonomy that contracting gives me, but that is now being taken out of my hands in a way that seriously threatens my business, and will prevent me being a part of the UK's flexible workforce. During the last 22 years my business has made substantial contributions to the Treasury via Employers and Employees NI, PAYE, VAT and Corporation Tax, but the VAT and Corporation Tax will now cease.

3) Smartex currently supplies Test & QA Management Consultancy services to a major Credit Insurance company which exists to help reduce business risk. Ironically, that company has now adopted a 'no risk' approach and told all external contractors that they are being considered as 'Inside IR35', a blanket approach being adopted by most of the large UK Banks and Insurance Companies. I was recently informed that my current contract cannot run past the end of Feb 2020. It seems that if I wish to continue providing services to the Credit Insurance company from March onwards then I would have to operate via an umbrella company, forcing me to become an employee with no employee rights - the worst of both worlds. I would be an employee of the umbrella company, and yet all employer and employee NI, PAYE, etc., would be deducted from the fees that I earn – how can that be fair? In December 2019 I used the HMRC CEST tool to assess my contract status at the Credit Insurance company and the result was 'Outside IR35'. However, they say that they have now used the CEST tool and found me to be 'Inside IR35' - I will be very interested to see where their CEST entries differ from mine.

4) Since the introduction of IR35 in the Finance Act 2000, I have had every contract including my current one reviewed by independent tax consultants QDOS to check and ensure that the contracts were 'Outside IR35' with working practises that reflected this. I have therefore been addressing and managing IR35 issues for about 20 years. The current IR35 reforms will undoubtedly impact the UK's flexible workforce at a time when the UK requires greater flexibility during the period of Brexit transition and beyond, and that workforce is about to be constrained in a totally unfair and unnecessary manner.

5) I hope that the House of Lords will recognise the danger and folly of the proposed IR35 changes, and take measures to ensure that the imminent implementation of these changes is reviewed, delayed and hopefully overturned.

21 February 2020

Amritpal Gill, HAYACHI SERVICES LTD

This submission is made on behalf of Hayachi Services LTD, an IT Consultancy previously of only one member of staff (the Director, Amritpal Gill) but as of October 2019 is more than one member of staff (I hired someone on a permanent basis). All staff are members of IPSE, and the business is a member of the Federation of Small Business. We are proud signatories of the Armed Forces Covenant, and will actively work to help those who are or have served as time passes on.

The mains concerns that Hayachi Services LTD is, as will be explored further below, that small businesses cannot be picky about the work we undertake and that the off-payroll rules do not reflect the reality of many small businesses: businesses are run by humans, need time to grow, can experience financial or collective mental strain, and they do make mistakes.

Until 2020 Hayachi Services LTD had been dependent on working with [Recruitment] Agents, they both dominate the market and offer benefits such as their own Credit Control facility meaning it was favourable to us as a business to work with them, in this capacity Hayachi Services LTD considered itself a sub-contractor working on behalf of the Agent to deliver a service to the end-client. Please take note that when refer to Agents we are indeed referring to 'Recuitment Agencies' of all sorts, and many Agents are themselves small-businesses.

1. Hayachi Services LTD has ceased to work with the public sector as a result of implementation of off-payroll, as well as the concerted efforts of HMRC to enforce these rules. It is well documented that institutions such as the Ministry of Defence have applied blanket-assessments in regards to off-payroll, rather than being considerate of the individual circumstances of businesses they contract. In effect, it meant a total submission of control and a rate cut to boot - further to this working with Public Sector bodies would result in a perceived 'taint' of having worked in off-payroll before, and concern over future assessments or investigations meant we would rather not risk that.

Most Agents currently demand use of an Umbrella company otherwise they will not represent a business/individual to their client(s) in the Public Sector. This is currently happening in the Private Sector with the new draft Finance Bill working along the same lines, and clients in the Private Sector being at as much of a loss as many in the Public Sector have been.

2. There has been no consideration of balance between compliance and HMRC seeking tax revenues. I have written repeatedly to our MP Lyn Brown on my view: compliance should be considered by an independent third party at the cost of the person(s) bidding for work. I would be more than happy for my business to engage an external party to audit my business, and make a judgement as to whether we are a legitimate business or not. A Red-Tractor badge for tax compliance, if you were.

Instead, because clients wish to minimize risk and Agents work on thin enough margins as is - blind panic has ensued. The costs on clients to assess possibly hundreds of external-contractors and their sub-contractors is immense, and unfair. Agents cannot afford it either. It is only natural that shortcuts are taken and no consideration has been made of this as far as I can see.

3. Like most large organizations, smaller firms have no idea how to navigate off-payroll: a case in point is a favoured client of ours - an Managed Service Provider[MSP] of nearly 50 staff. With the greatest respect to this client, they lack the knowledge or the expertise to address this properly, to engage with individuals and businesses in a workable manner. Until last week their HR co-ordinator was not even aware they were exempt from the off-payroll rules.

It is also very hard for smaller organizations to try to be pro-active in relation to off-payroll, given that massive businesses such as some of our clients truly lack any suggestion they have sought counsel on this - top-ten law firms and magic circle firms I may add, although this says more about their HR and IT Departments - it would be laughable to

expect a little MSP to have the legal clout or understanding of the law to navigate off-payroll as it stands.

4. The effect will be simple, an exodus of independent contractors from the market. As the owner of an IT Consultancy, I have also given consideration to us moving our business abroad - perhaps to the Netherlands as it is more business-friendly then the UK appears to be (this is sadly coming from a native Brit).

Most clients are not in a position to take on the risk of sub-contractors either, and this will have a particularly rotten effect on smaller businesses. As an example, Hayachi Services LTD works with our MSP client as above for a variety of clients. These clients, being the engaging party, could well decide that they are liable for their supply chain (as is indeed the case) and this could result in terms which restrict the MSP from engaging with businesses like mine, or independent contractors. A small MSP, even of nearly 50 staff, would not be in a position to fight this and doing so may mean loss of business. Should the latter be engaged via Umbrella companies, costs may rise upwards of 30% for the MSP to retain that talent.

I have previously written to a client of mine, a top-ten law firm, in relation to use working directly with them to provide the usual service with my member of staff being complimentary (she is really quite new to IT). I did not hear back. However, an Agent we have worked with previously was able to secure work with them and was happy to represent us (we get along, and are a favoured contractor for this end-client): I could not however engage a member of staff or a sub-contractor to work alongside me because the Agent's business model is to charge a daily rate per-person or charge per-hour of works. This would mean that even under the best circumstances, it would not be in mine or my client's (the Agent's) best interest to provide a free-service alongside our chargeable one.

Off-payroll complicates this further, as a large firm like my end-client would not even countenance using a Limited Company contractor (as it currently stands) post-April. No matter how remote the possibility of our Agent accepting working practices which would be detrimental to their business-model, we as a sub-contractor could not even hope to attempt (legally) such an expansion of our services or value proposition through using an Umbrella.

5. As mentioned above, this would be so simple if external-auditors could simply do a full review of our business; perhaps even a quarterly review, if one would be energetic, of the business and its practices - its contracts, day to day, communication, billing and future plans (everything, in essence) - and coming to an informed decision as to if

off-payroll applies. By putting the burden on an engaging party, the client simply has extra cost and extra risk at no benefit. Nothing about off-payroll benefits my clients, even if they apply blanket-assessments and demand the exclusive use of Umbrella-contractors as they would still have to up-rates to get the expertise they need.

6 & 7. I would invite my noble Lords to go to ir35shield.co.uk and spend twenty pounds to get an assessment and implementation that, frankly, makes you would which Primary School HMRC engaged to develop CEST. If that isn't perfectly clear, I would say that I have no warm words to offer HMRC on CEST other than 'try harder, lots - you will get there one day'.

To reflect the reality of any small business, or contractor, you must consider *their* circumstances. Not of their clients, as small businesses cannot be choosy about which terms they like or not.

For example. a friend of mine who runs a Retro Game shop [Geeks2Gamers] said I was running my business fine without a website. Indeed I was. Trying to seek a website being developed ended up meaning our supplier charged the lot rather than in installments and nearly made my business bankrupt. Now that is financial risk. I have no website still (well, hayachi.uk may still be live upon reading this but I have informed the supplier that we are disengaging with them) but that is our circumstance. Despite this, I would wager HMRC would rather my business be bankrupt but have the website at least - never mind being able to afford my staff members' wages, after all every business has a website no?

CEST also does not explore Mutuality of Obligation, and this is incredulous. I am not obligated to offer anything other than a quarter of my fingers to a client who demands something outside of our contract, or is otherwise unreasonabl. My clients (we are working with two at the moment) can also terminate our contract immediately, or within seven days to allow them to have some breathing space. CEST disregards this, and I refuse to use it so long as I have a modicum of intelligence (and am paying for such a grand tool as IR35Shield.co.uk offers, or the services of a firm such as EGOS who provide our legal services in any case).

8. There are no adequate safeguards in the current DR process. Clients have the final word, and if you bark they will simply let you loose. In other words, any safeguards for a contractor are a false-pretense, like any business (especially a small one) we rely on our reputation and the quality of our work more than sheer volume. This means it would not be unwarranted for us to lose our reputation amongst our clients by disputing a determination, however inaccurate they may be.

In any case, my understanding is that the DR process falls to whether the client is willing to humour you in any case so for it to be effective at all, independent arbitration would be necessary. Perhaps if a legal requirement for arbitration from an agreeed third-party was present, it would allay some fears.

More broadly, this issue stems from off-payroll accounting for tax but not workers rights, and restricts options for contractor(s) by necessarily reducing the financial muscle they have with engaging parties. This weakens the ground that contractors stand on twice at least, and in quite worrying ways.

9. The simplest way to ensure the objectives are met would be quite simple really. If an external auditor were to give a business the little star saying 'in business on its own account' then nothing more would need to be done, a business could invest in this and both clients and the business would rest-assured that would be the end of that conversation. If not, then the business would need to pay its fair share of NIC and other taxes as determined by the auditor, and the auditor would also have the legal obligation to refer any cases to the relevant body should they believe tax-fraud has happened or is on-going. Making such audits mandatory would be a great boon, as it would separate wheat from chaff as well as massively simplify the off-payroll rules while still having the same overall effect.

10. The short answer is no. It will bludgeon many already highly-skilled industries, and reduce the speed at which the UK can innovate. Further to this, the loss to the economy will be many scales higher than any tax-receipts. If the off-payroll rules turn out even half as badly as they have in the Public Sector application, I would wager that my business would not be the only one to leave the United Kingdom or dissolve entirely. So um, all it would do is increase the tax burden on an ever smaller number of businesses not unlike Business Rates have done over the past few years.

9. Umbrella companies have their role, but by their nature restrict contractors to being sole operations. That is not to say that they are not useful, but many contractors engage with their companies as a point of principle and I for one would echo the view that I'd rather dissolve my company than sign-up to an umbrella. Returning to my foreward, the human element is key here.

Either independent professionals are not bothered to run a Limited Company (or other sort) or they lack the skills, expertise and/or familiarity with business to know they can. We do not grow up knowing of the FSB, of Start-Up Loans, etc. and there aren't many banks left

where the Bank Manager sits you down to talk to you about all of these things. It takes time to set up, and Umbrella companies are central to this dynamic for consulting work.

Our Accountant Clearsky Accounting also have Umbrella services, broadly speaking they are two-sides of the same coin and many accountancy firms would (probably) find it difficult to operate if revenue from Limited Companies became much reduced... this could hypothetically mean a more monolithic market with Umbrella companies and a reduction in competition and quality as more people work on a simple cost basis (the ones who care or are, uh like aiming at their foot).

12. As mentioned before, it is unfair that someone who the same pays taxes as the person to their left and right nonetheless has no access to the benefits which come with this. I am certain many of my legal clients will use Fixed-Term-Contracts more regularly, and also treat IT Consultants similarly to Paralegals are now.

Fairness does depend on perspective, I think it is unfair for an excellent member of staff to be bound to a larger business despite their fellows being half as good and being paid the same sum or perhaps more. Much in the same way that someone who doesn't smoke, or take regular holidays, or does not drink - is not rewarded or considered even equal to those amongst a team who do.

Perhaps, what isn't fair is the stress of having to pay your way the same as everyone else and yet being treated as a lower class of worker. I can imagine that many people in the future would suffer severe mental strain as a result of being 'cheaper' to hire than permanent staff, especially if they are more skilled. Coming from an ethnic minority myself, I do wonder how much of that will have to do with the colour of my skin or the school I went to as well.
I take incredible pride in my work, and the work of my business. I cannot say that I would hold such pride in my work if others were rewarded instead of me on account of my ethnicity, or the fact that a manager may not have been trained to account for a person's background. As some who has been homeless, and been in care when I was younger - it isn't nice, and many people couldn't care less. Many businesses are totally unable or aware of how to accommodate for these things - much in the same way that many of my clients have not signed the Armed Forces Covenant: off-payroll hurts social justice in that way as well.

17 February 2020

Mark Gallagher

I've been working as a PSC contractor for over 23 years. Over this time I've completed over 75 contracts spanning practically every business sector - National Government, Police, Defence, Banking, Oil & Gas and Space Exploration amongst them. A number of my contracts have only been a few months long with around 40% of them requiring me to travel and stay away from home during the week, all of which have had to be personally expensed via my limited company. For example, I did a round trip of 900 miles a week to Portsmouth for 16 months, a large part of which was spent in hotels as my contract extensions were only a month or two here and there so I wasn't able to rent long term. I was spending somewhere in the region of £2400 a month on weekly travel and subsistence which is obviously a company expense. What happens when IR35 comes in – I'll receive none of the tax benefits from this outlay, my hard earned money will be taxed at source. I have received and continue to receive no employee benefits, no company car, no healthcare, no pension, no benefits in kind, no share option scheme – no benefits of any kind that company employees enjoy in a fully salaried position. This has been the position for the last 23 years of my career. Tens, if not hundreds of thousands of IT contractors agree as has been borne out in the various petitions that have landed at the governments door over the last few years demanding the demise of IR35.

Contracting is inherently a risk laden enterprise. There have been occasions over the last 23 years where I've been told my services are no longer required, occasionally with no notice and no new contract to go to. I've had my contract terminated before even starting (MoD contract), leaving me out of work and with no money coming in for as long as 2 or 3 months while still having to pay all the bills and provide for my family. Being a contractor can in no way, shape or form be classed as the same as permanent employment – there is no protection, there is no safety net and there are no company expenses (except in exceptional circumstances). Organisations, both public and private utilise contractors as a way to fulfil projects and pieces of work in an agile fashion. The majority of red tape involved with onboarding a permanent employee is done away with and organisations are able to hire teams of people to deal with specific programmes of work at relatively short notice. Instead of spending sometimes months (if not years) finding the right kind of permanent team members with the right experience, organisations can stand up a team of seasoned experts in sometimes as little as a few weeks. This can frequently save organisations large amounts of money while keeping projects on track. It also allows for organisations to remove unsuitable or unqualified resources at short notice and without golden handshakes or any kind of severance pay. On the flip side of that is the increasing difficulty that can be faced by the "honest" contractor in

actually acquiring paid work. I have been told on a number of occasions that I have an "outstanding CV" and yet I will apply for sometimes 60 or 70 contracts that I'm perfectly suited for and hear nothing. I've personally witnessed the hiring of UK and non-UK contractors whose CVs are a complete and utter fabrication, sometimes surviving on a decent day rate for a month or two before they're found out. In the meantime, honest contractors miss out on these positions. I'm sure though, after the hundreds of consultations the government has carried out regarding IR35, all of this kind of thing has been taken into account?

I've watched with interest, from the inception of IR35, at the haphazard fashion in which the government and HMRC have tirelessly and needlessly pursued small personal service companies because of the perception that "not enough tax is being paid" by certain individuals. I'd be very interested to know how many millions of tax payer pounds the government has wasted on this legislation, dodgy consultations and lost law suits all because of what I perceive to be political greed. What's the end result? Has the government turned close to turning a profit in this ill thought out and ill implemented scheme? Oh, and where was the testing of the pitifully weak CEST tool? There are plenty of honest contractors out there doing a good job while knowing that they may be out of work for a couple of weeks or months. They've chosen to take that risk because of the variety and on occasion, an improved lifestyle. Another thing I'd like to point out that the majority of contractors I've met have superb "can do" attitudes and actually work to get the job at hand done as opposed to some permanent staff who coast through just doing enough not to get fired. I've seen more than my fair share of that, often in the public sector.

In what sphere of thought is it fair that huge companies like Google, Apple, Starbucks et al should get away with miniscule tax bills on billion pound profits while one man bands (like myself) sometimes struggle to make a decent life for ourselves. I'm also curious about the one rule for us, the other for them mentality that appears to pervade the corridors of power. I'm sure the expenses scandal that was exposed a few years back is just the tip of the iceberg, where government officials line their nests while trying to destroy the livelihoods of honest, hard working citizens. It also appears that IR35 isn't enough, a few years ago the dividend tax reared its ugly head leaving my family and I worse off to the tune of around £10k a year. Remind me about how that's good for the economy again? I have less money, therefore I can't spend as much money as I would've done on clothes for my children, home improvements, food, holidays etc. – you know, the things that make life somewhat bearable and worthwhile.

Another thing I've noticed over the years, which has put a smile on my face is the amount of public sector contracts I've seen that have been

advertised as "inside IR35" that have been advertised for months and months and months by various different agencies because they can't get anyone. And then all of a sudden, the same contract shows up as out-with IR35. How does that work? I've personally observed this with local government, MoD and DWP contracts. If government agencies have had to take the "out with IR35 route", how do you think the private sector will deal with it if you decide to implement this hateful, money grabbing legislation? Are the powers that be certain that they're pursuing the right people here – the lifeblood of the agile economy? Perhaps the government would be better served hiring decent negotiators so that you could more effectively hammer the Apples, Googles and Amazons of this world instead of doing shady backroom deals that lets these companies away with a fraction of what they should be paying. In the last 23 years, I've easily paid a couple of hundred thousand pounds in corporation and personal tax (probably more than Google, Apple or Amazon), is that not enough? Do you want the shirt off my back too? Is it not enough that I can only holiday at the (enforced) Christmas holiday period because I can't afford to take time off for a summer holiday with my family? I suspect government officials are saddled with the mistaken belief that all contractors kick about in Porsches and Ferraris and live in 8 bedroom Victorian mansions with their mortgages paid off. You couldn't be further from the truth! I'm still kicking about in a 17 year old BMW because I can't afford or justify a new car. Think twice about who you're targeting.

I am currently working on a fairly high profile project for a defence contractor with the end client being the MoD. There are thirteen contractors on the project including myself, all of us having received an assessment of "inside" IR35 from April 6th even though all contracts are currently "outside". The managers for this project have highlighted this assessment as a major risk to the project as a number of critical staff may leave due to the IR35 legislation. A number of us, just out of curiosity, filled out the utterly hopeless CEST tool and even it told us we were outside. However, we were overruled by the client because of a complete misunderstanding of the legislation and the fact that they hadn't taken "reasonable care" on the assessments. The CEST tool states that HMRC will "stand by" whatever decision is gleaned by the tool – this isn't much use if companies can overrule it, especially if they've had a threatening visit from HMRC henchmen. Why else would all the banks cave in straight away and blanket label all their contractors as "inside"? I seem to remember mass walkouts at Transport for London when they tried to the same years ago.

What happens when the myriad non-UK contractors decide that living and working in the UK is no longer tenable because of shameless tax grabs? What happens when all the IT projects that will come out of separation are short staffed because of not enough contractors or qualified personnel? I'm sure whoever's reading this is aware of the idiom "penny

wise, pound foolish”? This is what IR35 is - may its soulless corpse rest in peace.

10 March 2020

Paul Garrish

8 How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?(Q8)

My client assessed groups based on job roles. Everyone in the role got the same determination and (from my experience) every job role was assessed to be inside, primarily by virtue of the CEST tool having no MOO assessment criteria, and being almost wholly determined by ‘financial risk’ which explicitly tried to exclude expenses which for a contractor are incurred at the time and are only recovered indirectly when work is invoiced and paid, sometimes weeks later.

12 How do the new measures relate to the wider context of changes in working arrangements, including the “gig economy”? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?(Q12)

There is a significant risk that IR35 will result in ‘sub-class’ employees with all the tax demands and none of the employment rights. If the issue IR35 really seeks to address is that the tax man is basically subsidising businesses to use contract labour by virtue of saving them the NI, then it has misfired badly as the net result of IR35 is that the contractors themselves are now paying the Employers NI (either directly via a change of arrangement, or through reduced rates from the client). Contractors have opted to take the risk of no job security, sick pay or holiday pay, or pension support, on the basis that they will be compensated financially. Where clients keep the same contractor in place for many years, the contractor is not to blame, the client is, and the question should be why the client opts to maintain this arrangement - and the reason is that, despite a higher headline rate, the contractor is cheaper for the client than a permanent member of staff, in some part because of the Employers NI they escape.

25 February 2020

Ross Garvey

This submission is made by me as a self-employed contractor who has worked on multiple project in multiple industries for the last 23 years.

1. Impact of new off-payroll rules on organisations

1. My current client has done nothing to assess the new rules bur has simply stated they will not work with any PSC's beyond the end of March forcing contractors into the **unregulated** Umbrella company sector with no adjustment to rates so in effect forcing a 30% drop in income.
2. The blanket ban on PSC's is an unexpected behaviour from end clients and has the potential to be catastrophic to the individuals affected by it as well as the organisations projects which will lose resources. This is at a time where the country needs a flexible workforce. The Treasury are creating a zero rights contract and there is nothing to stop big companies forcing everyone into an umbrella company and removing the costs and exposure for all from themselves.

2. Determining tax status of workers

1. If companies do not assess roles, as is happening in the real world, then the rules are meaningless.
2. The CEST tool is fundamentally flawed and many submissions on its flaws shared with HMRC but all have been ignored.
3. If all roles were reviewed and assessed this would lead to a position where project and specialist work would be identified and resourced accordingly. The "true self-employed" would be called upon to fill these roles and provide the services as required. This is hoe I have worked for the last 23 years. I choose to work this way as I like to many varied projects. I use the phrase "true self employed" as HMRC have stated that the new IR35 rules should have no impact them, however blanket bans mean everyone is impacted!!

3. Policy objectives and wider context

1. Simply stated the current policy will force people out of working in a way they have worked for a long time. Projects will fail as resources refuse to work for Zero rights, people will leave the country to find work elsewhere.
2. As the United Kingdom stands on its own two feet in the greater world it is going to need talented and flexible people of people and this pool is going to be diluted considerably by this implementation and terrible way it is being handled by the

Treasury and the Government. Facts are being presented and ignored by Treasury ministers and stating alternate truths.

3. As I stated earlier this has massive ramifications for the "gig economy" in creating a zero rights contract. There is nothing to stop employers making everyone go through an umbrella company and removing the risks and costs from themselves.
4. Another unforeseen issue with the wider context is that Umbrella companies are not regulated so there is a high risk of unscrupulous people committing fraud and taking advantage of others for personal gain.
5. The original reason for IR35 was to stop "disguised employment" and was done for the right reasons. However, this implementation should be paused until the rules are written in a way where all roles should be assessed and "consultants/Project workers" taken out of it.

22 February 2020

Lincoln Gearey

I am an Accountant and have been in business for over twenty years running a small accountancy practice and financial management consultancy business.

Reponses to the Areas of Interest detailed by the Sub-Committee:

Impact of new off-payroll rules on organisations
2. The impact of the extension of the off-payroll rules to the private sector has not been adequately assessed.

The compliance burden has been severely underestimated. It comprises three main elements;

The one off costs of set up and implementation,

The significant ongoing additional costs of compliance and

The risk of getting assessments wrong and subsequently facing legal challenges and financial penalties.

These are all new significant costs and new significant risks introduced to end clients. Those end clients have had detailed discussions with HMRC and completed their own detailed impact assessments. Their conclusions and response is that the combination of these factors is simply too much of a burden and they have taken a blanket approach of not using the

CEST tool as was intended and simply discontinuing the use of these small companies to provide their specialised services.

All of my medium and large clients are discontinuing using our Company's services from the 29th February in direct response to this legislation. Effectively driving a successful business that has consistently paid its fair share of taxes out of business.

5. Scope for simplification
My sense is that this needs to be completely re thought through. The proposals in their current form are best described as a sledgehammer to crack a non-existent nut.

HMRC claim that the introduction of this legislation to the public sector has been successful without disrupting public services. However the evidence on the ground is quite different. Indeed there is now widespread evidence that these changes are directly causing increasing staff shortages, increasing patient waiting times and increasing numbers of key projects and deliverables to be put on indefinite hold.

The vast majority of cases in the public sector where the HMRC has gone to court against the taxpayer have been found in favour of the taxpayer e.g. RALC Consulting (Department of Work and Pensions - DWP), George Mantides (consultant urologist at Royal Berkshire and Medway Maritime hospitals), Jensal Software Ltd (DWP). Only 13% of contested / litigated cases have been found in favour of HMRC. This success rate also clearly indicates that there has not been widespread non-compliance with the existing rules as is claimed by HMRC.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear. Do they reflect the reality of the contracting environment.

The tests are set out in HMRC's Check Employment Status for Tax (CEST) online tool. Whilst the latest updates to the tool have shown some improvements it still fails to differentiate between Business as Usual (BAU) normal cyclical business activities e.g. buying, selling, marketing, daily and monthly accounting, and the one off projects / programmes of change e.g. a merger or acquisition, a divestment of part of the business, a new system implementation, end to end process improvements etc. These activities are clearly not part of the ongoing day to day business activities; these are one off activities over a limited period of time and often require specialist skills and experience that is not available within the client organisation to deliver.

7. What is your assessment of the CEST tool.

As mentioned above there have been some improvements in the latest updates. However it is still far too complicated and has far too many questions. It also still fails to include the most simple and clearest indicator of employment – The mutuality of obligation test. Indeed HMRC have in my opinion been obstructive in introducing this simple test that is widely recognised as the key test which would simplify compliance. The Mutuality of Obligation test asks 'Is the Client obliged to provide work and is the supplier obliged to accept that work'. Clearly where the requirement is for specialist skills for a limited time period with contractually specified deliverables there is no obligation on either party to offer or accept further work whereas if engaged as an employee the Client company is obliged to provide ongoing work and the employee is obliged to accept that work under the terms of the contract of their employment. Easily tested and easily proven but steadfastly resisted by HMRC.

This should be the first question asked on the CEST tool and if the answer is No then no further questions should need to be answered and the assessment should provide an immediate 'Outside IR35 assessment' – If yes then further analysis may be required.

Policy objectives and wider context

9. Are there better or simpler ways in which the objectives of the new rules might be achieved.

I think that there are two key approaches that I would suggest here:

Establish if there really is a problem that needs to be addressed and if there is establish exactly where the problem really lies.

HMRC need to maximise the tax take. It should not be concerned with subjective measures of what is fair or unfair in its own opinion but should look to enforce the existing rules that have held good for decades. It must also look at taxes in the round rather than individual taxes in isolation.

The comparisons used by HMRC to demonstrate the perceived differences between tax and national insurance paid, compared and continue to compare apples with oranges. HMRC set out a comparison of a Company and an Employee with turnover / earnings of £50k – effectively classifying the Company turnover as the equivalent of the Employees earnings. It then went on to demonstrate that the Individual delivering services through a Company paid only £2k in tax and NI compared to the individual delivering services as an employee paying £12.5k in tax and NI.

Whilst the turnover of the Company was treated as the income of the Individual delivering services through that Company the tax and NI excluded the Tax and NI paid by the Company (it only considered the tax and NI paid by the individual). If you classify the income of the Company as the income of the individual then clearly you must classify the taxes of the Company as the taxes of the individual otherwise you are comparing apples with oranges. I appreciate that the approach used by HMRC suits their narrative but it's clearly not a fair or objective comparison.

The comparisons must compare like with like and must look at taxes in the round. Had this more fair and transparent approach been taken the above comparison would have included the Corporation Tax and employers NI suffered by the Company (pseudo individual from an HMRC perspective). If those values had been included the comparison would have been very significantly closer. Indeed had a base salary / turnover greater than £85k been used there would be an additional 20% of VAT payable to HMRC by the Company thereby taking the overall values payable to HMRC almost identical.

When looked at from a maximizing revenues across taxes in the round the above analysis would suggest that there is in fact no issue to be addressed where small Limited Companies are providing specialised services to client companies. It is simply a perception of unfairness that has been precipitated and hyped up, to the extent that these small companies are now being demonised, by a Government department (The Treasury) and service provider (HMRC) that has failed to see the wood for the trees.

Note also that in its haste to address this perceived unfairness it has through previous legislation introduced double taxation of Dividend income. Dividends are paid from post tax profits, they have already suffered 19% corporation tax but now in the name of fairness suffer a further 7.5% or 32.5% tax in the recipients hands. So an effective tax rate of 26.5% for a basic rate taxpayer or 51.5% for a higher rate tax payer – that's an 11.5% higher rate of tax being applied to investment income than the higher rate of tax applied to earned income at 40%. That really is quite some disincentive for young people to save and invest their money into personal savings plans and pensions

There are two groups that are being targeted by the new rules. 1. Professional specialised skilled consultancy and 2. Unskilled, low paid resource. These need to be split and a different approach used for each of those groups. Further details in question 12 below.

11. Will the bill, as drafted, achieve the Governments objectives.

Almost certainly not. The evidence on the ground from the implementation within the public sector mentioned in Q5 above clearly indicates that we are most likely to see significant damage to GDP and UK PLC's productivity together with a huge loss of skilled suppliers / resources that will simply either retire or move their service offering to a neighbouring European country. Indeed we are already seeing this happen in anticipation of the impending legislation. We are also seeing widespread adoption of a blanket approach by client companies and simply not engaging any small companies to deliver services and forcing those that do want to continue to deliver services onto lower paid fixed term contracts of employment. Ultimately this will translate into a significantly lower overall tax take and unfairness in the working rights of people working alongside each other in the same organisations e.g the loss of 20% vat on turnover (easily monitored and easily and regularly collected) for a 13.8% gain in Employers NI on earnings over £8,632 per annum; a loss of 19% Corporation tax and 32.5% dividend tax (51.5% combined) for a 40% gain in Income tax on earnings! It simply does not add up.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

This is a really key point here. The proposed legislation claims to be addressing fairness in the taxation system but at the same time is pressing ahead with introducing unfairness in the working rights of people doing the same tasks for the same employer to the extent that those Suppliers deemed as disguised employees are effectively discriminated against by the deemed employer! No wonder that Client Companies are simply taking a blanket approach and discontinuing the use of Personal Service Companies (PSC's), they are being placed at risk on all fronts.

As noted in Q9 above there are two groups being targeted here. They are both very different supply groups.

Professional specialised skilled consultancy – Skilled resources for one off deliverables that are not part of the BAU normal day to day business of the Client Company.

These suppliers choose to operate in this flexible way. This group have contracts of employment within their own PSC's and are salaried by their Company, pay PAYE and NI and receive paid holiday leave and other Company benefits from their PSC. For this group the taxes paid in the round are broadly comparable to those paid by an employee of the Client Company.

Unskilled, low paid resource – Low skilled resources for BAU normal day to day activities of the Client Company. Typically engaged by large Companies specifically with the intention to avoid employment taxes and employment rights.

The Service supplier Company chooses and forces their suppliers to operate in this way. It is effectively a condition imposed by the Engaging employer. These are the "gig economy" Employers like Deliveroo and Uber Eats etc.

The simple test to identify these Companies that are clearly abusing the rules deliberately with the intention of tax evasion is that you cannot have a legitimate delivery company if you don't have any delivery drivers on your payroll in the same way that you can't have a legitimate accountancy business if you don't have any accountants on your payroll, or a retail outlet without any employed sales staff etc . The whole arrangement is a sham.

I would also like to mention that my local MP, Sir Christopher Chope, has been very supportive, clearly understands the issues and has been actively engaging with the Treasury in regard to this matter. It is also notable that the responses from the Treasury (Jesse Norman) have been far less adequate and clearly demonstrate an unacceptable level of arrogance (perhaps not untypical of the Treasury in its current form) and an inability to listen, plan, communicate and deliver the changes to this legislation that are now clearly necessary.

I would like to thank the Economic Affairs Committee and the Finance Bill Sub-Committee for providing the opportunity to contribute evidence to their inquiry and I respectfully ask that my comments and evidence are taken account of in reaching their recommendations to the House of Lords.

10 March 2020

Peter Geldard

In response to the recent call for evidence, I would like to make the following submissions as to how the extension of off payroll working rules are affecting both my company, the supply chain and the industry I work in.

I work in the airline industry as a licensed aircraft engineer. To cover peaks and troughs in work companies supplement their full time staff with contract staff. Depending on the company and the type of work they perform this will usually be for 6 months. Maintenance organisations carry

out in depth maintenance in winter when aircraft do not fly as much, and the airlines and aircraft operators tend to need extra staff in the summer to supplement very busy flying schedules. There is presently a worldwide shortage of experienced, licensed and type rated engineers.

I can usually work at maintenance organisations in winter and airlines in summer although some contracts run for longer periods where maintenance overruns and a contract can run over 18 months or more, covering both summer and winter seasons.

1. Impact of the new rules on organisations.

The airlines are dependent on having enough licensed engineers to carry out and oversee and sign off the work carried out by unlicensed technicians. There is already a shortage of numbers with many contract suppliers supplementing full time staff for short periods. Some of the contract staff are from mainland Europe as the conditions in the UK are favourable. many have UK registered LTD companies and pay taxes here. The new rules, without having the time or resources to administer them, are leading to either blanket determinations of "inside IR35" or more likely, just an outright ban on engaging contract staff working through a LTD company. This is already having a negative impact as numbers, which were already very low, are now being cut further. The is leading to expectations on remaining staff (both permanent staff and contract staff) being expected to sign off work on aircraft without being seen. This is, in itself, illegal.

With current EU regulations for airlines still having to pay compensation to passengers for a delay of over 4 hours, the cost implications of delays are huge. This move has put airlines in the position of having an outright choice to make, be safe and take the delay, operate unsafely to save money.

2. Have the rules been adequately assessed.

From my position I do not agree that they have. The time frame between the final publication of the new legislation and the implementation date is three weeks. The companies do not have the resources to properly asses hundreds of contract staff supplying the company through individual limited companies and put in place the necessary tools for assessments, appeals, payroll etc. Also the legislation and case law is complex and the large companies making the assessments do not have the ability to do so properly. This is a large factor in companies banning the use of LTD company suppliers as well as being totally risk averse.

3. Determining tax status of workers.

Whilst the rules themselves appear clear, the issue is there is not the relevant skills available within companies to make accurate assessments. The law is complex in this area and a layman cannot make the determinations accurately. Although the CEST tool is simple to use, it does not give clear determinations much of the time. It ignores very important aspects of the relationship which determine if there is a business to business relationship or an employer/employee relationship. HMRC do not themselves seem to understand this either so it is a tall order to ask a company HR department to make an accurate assessment of a suppliers employment status. Companies therefore do not trust CEST as it could still lead to investigation and retrospective tax penalties. It is risk averse and easier to simply not bother and ban LTD company suppliers from the organisation.
.
CEST must be definitive, all answers put into CEST must be verified as being accurate by way of the contract in place and the actual working practises. it must provide results which relate to case law in order to give end user clients confidence in the tool and this be backed up by HMRC, not applied or discarded as they see fit. I believe the vast majority of short term contract work would fall outside of IR35 if this information were included in CEST because there is nothing other than the bare minimum of mutuality of obligation. I believe this has been purposely omitted from CEST for this reason.

Despite my current largest contract being outside of the off-payroll working rules, and the CEST also agrees with this having furnished the tool with accurate answers based on my contract and working practises, the end user still has not made a determination. They have no trust in the CEST tool and have no other method of judging my tax status. The appeal process does not go far enough as it is still the end user making the determination. There is no independent appeal. It is weighted to default to the original determination.

4. Are there better or simpler ways in which the objective of the new rules might be applied.

Yes, it is imperative that workers “employed for tax purposes” are treated as employed for all purposes. This will lead to an end user making an accurate assessment as effectively they are deciding if they should employ the person. Without this we have a “no rights employee”. No one is arguing with the stance that a person doing the same job as another employee should pay the same taxes. They should also then enjoy the same rights.

5. Will the bill achieve the governments objectives.

I am taking it that this is the higher tax take. I can only offer by own

situation and that of others in similar positions. In my last year of full time permanent employment (2015/16) I paid £10600 of income tax, £4200 of national insurance contributions. Total £14,800.

In my last company year (August 18 to August 19) I paid £8700 corporation tax, £8100 VAT, £3600 personal taxes and £900 NI contributions. Total £21300.

If I am atypical then the average contractor trades benefits for cash, if this is then taxed (predominantly at the higher rate) it becomes unviable given that expenses of the assignment has to be paid from net salary. In my view HMRC has made a very wrong assumption and that is that contractors will earn the same money when they are deemed employees with no benefits. They most certainly will not. That means the tax take will drop drastically as indicated above.

6. How this has affected myself personally.

I have several options available, none of which are particularly attractive.

a) Wait to see if LTD company outside IR35 contracts become available. I don't think this is viable as chances are I would be unemployed. Companies are blanket banning dealing with small LTD companies.
b) Take similar work abroad where the end client and fee payer are outside of the juristiction of HMRC which would enable me to pay taxes as I do now. I would have more expenses so take home less pay and HMRC would take less tax.
c) Employed through an umbrella company as a LTD company contractor. After paying umbrella fees, employers NI (yes, umbrella companies pass on the employers NI to the contractor) employees NI and employee taxes I would be left to pay expenses and run my company from net salary. This would leave me in debt each month with not enough left to pay bills and feed myself and family. Again HMRC would take less tax than they do now.
d) Permanent employment close to home. A more viable alternative, this would mean closing my company and having very little expendable income. Again, HMRC tax take much less than at present as illustrated above.
e) Permanent migration abroad. I am now seriously looking at this option, Canada being the most favourable.

In my view, in all of the scenarios above, the tax take to HMRC will go down not up. This will damage the economy, there will be less money for public spending. People and families will have less money so can afford to spend less leading to a knock on effect. Companies will be unable to attract the right skills which could lead to more risk taking and associated accidents/incidents. There will be an inflexibility in the workforce and

more costs for companies. I believe the changes will decimate the aircraft industry, construction, oil and gas and information technology and an alternative solution to IR35 rules which are fair must be sought.

HMRC seem to be trying to maximise tax take and not take correct tax. If this means that hundreds of thousands of people are wrongly taxed at source it seems that the view is that this is just collateral damage and is good for HMRC at any rate. How many small LTS company contractors will litigate against HMRC for incorrect taxation at source?

Thank you very much for giving people affected by the changes to submit their points of view.

7 February 2020

Andrew Gilfrin

1.0 - Question 2;

"Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?"
It is clearly evident that IR35 being implemented in its current form into the private sector is a badly misinformed piece of legislation. Speaking to other workers, colleagues, friends, observing social media and the main stream media it is clear that this is affecting nearly every industry, and not just the industry I work in (infrastructure engineering).
It feels as though the IR35 rules and regulations (whilst generally flawed anyway) have not been adjusted to the different world of private sector with the HMRC having just pushed the same rules and regulations out from the public sector reforms. The public and private sector are very different.
For example, for the HMRC to make the assessment that a private organisation (who has a very different mission statement to a public sector organisation) would assess every temporary worker that they wish to employ and their tax status individually is ludicrous ! why would they ever take that risk. When a simpler / lower risk course of action is either to remove freelance / contractor workers completely, or blanket assess inside IR35 for fear of the HMRCs wrath ! it was only ever going to end one way, most private sector companies are risk averse.
A good example of this is the banking sector / IT sectors – they are not reliant on workers being in their offices to deliver data or projects, unlike construction or engineering. So they have decided to remove all risk ..

removed all workers, banned hiring of workers and moved it all off shore .. now
the HMRC isn't getting any TAX at all. It was only ever going to end one way.
You see private companies are beholden to shareholders , making their decision's and decision making process different to public sector organisations who's profits return to the business, or government. Two totally different models, cannot be assessed in the same way.
Person example – AMG currently carrys out some temporary works engineering advice for a large main contractor working in the rail and civils sector. I do around 1-2 days per week of work for the company. The company is making a blanket decision on my IR35 status as its simply "quicker and easier" to tar everyone with the same brush, than assess individual cases. This is despite that I do not work full time for the company, and infact 90% of my time spent is spent on another contract for another company. How can I be a "disguised employee" ?

2.0 – Question 5;
"What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?"
I understand the question, however I don't believe the question has much relevance, whether the "administrative burden" is simplified or not, the new rules and their requirements are forcing employers to simple not employ freelance or contractor workers to avoid risk or either payments, or being hounded in court by the HMRC. – having a detriment to multiple services / sectors and
projects. The evidence of this is clear within the public sector, of which there is a lot of documented evidence.

- Question 6
"Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?"
Not in the slightest. The old saying of tarred with the same brush springs to mind. A large swathe of contractors including myself who choose to work in this way, do so for the flexibility it provides. For example as a civil engineer not every project is at the end of your garden, when I used to be PAYE with large main contractors I was "forced" to work all over the country, time away from family and
young children. A flexible workforce allows people to stay within the areas they live, and work closer to home. Should I change my PAYE job every 6 months to suit local projects ? that would be crazy !
We don't do it because we want to "dodge TAX" which I feel is what the HMRC seems to think. Infact
contractors probably pay more TAX in some corporation tax payments than PAYE.

The HMRC and its flawed CEST tool has failed miserably to bring any substantial court action against
any of the people it suggests are "disguised" employees – this data is freely available and the open
to be seen. If we were all "disguised employees" under law.. then surely they would have won more cases ? It seems evident that the determination of "what is a permanent employee" needs a better description.
Rather than going down the NRE (No Rights Employee) route the HMRC is intent on going down.
Should it be better that say that if you receive "benefits in kind" from the fee payer you are an employee – a framework already in use by the HMRC. i.e. pensions, cars, health care, "sick pay"

4.0 - Question 7
"What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?"
It is totally flawed. According to CEST everyone's outcome is "hidden employment" – yet the HMRC barely win a court case.
It is widely accepted that CEST is not fit for purpose and its results are not recognized by anyone.
Dave Chaplin has done some amazing research on CEST and IR35 as a whole, and should be consulted on any assessment tool.

5.0 - Question 9
"Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?"
If the HMRC are intent on IR35 then the assessment must change, and be much much easier to deal
with. Otherwise companies will still blanket ban or blanket assess "in".
Thinking on blanket assessments, maybe a more simple assessment is to use time as a measure.Is a contract due to last or will last longer than 2 years (24months) – then its in IR35 . Is it due to last from 0 to 24 months – then its outside IR 35.
This form assessment very simple assessment matches the HMRC 24 month rule already in place regarding travel to and from a temporary place of work – i.e. if travelling to the same location for month than 24 months then claims cannot be made as this forms the "permanent place of work"

6.0 - Question 10
"Will the Bill, as drafted, achieve the Government's objectives?"
Quite simply no.
IR 35 will at best destroy a flexible workforce at the time it is needed most (post Brexit) as people
refuse to be "no rights employees" and simply go permanent PAYE.

Or, which seems more apparent, that companies will simply refuse to hire contract staff pushing works over seas – resulting in no revenue for the HMRC at all.
Meaning that the plan to get employers to pay tax and NI for flexible workers will ultimately fail.
not to mention project delays, project increases, huge skills shortages, and employment agencys being affected also.

7.0 - Question 11
"What is your view of the role of umbrella companies in the context of these proposals?"
Shady, unregulated and subject to more tax dodging that any other form of employment – so why the HMRC think that attacking ONLY ltd companies, yet ignoring umbrella companies is a good idea is beyond me

8.0 - Question 12
"How do the new measures relate to the wider context of changes in working arrangements,
including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?"
I think you have answered your own question! How can I be treated as an "employee" for TAX purposes, when I don't have the rights of an "employee". Seems like there should be a law against that.

P Gill

Existing measures in the public sector
1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

The spirit of IR35 is to prevent larger companies from using Ltd company contractors in place of regular employees (as it results in a smaller overall tax contributions). Pre / outside of IR35, what a contractor and what an employee 'take home' (as a total package) is approximately 'fair priced' (eg contractor rates settle at a level of equivalence to overall permanent pay plus benefits plus rights & protection plus progression & future earnings plus sickness safety-net etc). When IR35 was introduced into the public sector, a very correct and necessary corollary was that rates were usually increased to offset the employers NIC component. The contractor vs employee equilibrium was generally maintained (or contractors were able to leave for the private sector where not) and the hiring 'firms' (government bodies) paid additional tax equivalent to the employers NIC. It was logical, fair and appropriate.

The (in my view) core issue with IR35 being rolled out to the private sector is that firms will typically be trying to pass the additional employers NIC equivalent that THEY should be paying onto the contractor instead. Unlike aforementioned where contractors were able to move to the private sector, there will be no such avenue available, and effectively hundreds of thousands of individuals could be forced to pay what is actually the client's responsibility.

What makes this worse is that contractors are often already effectively exploited and underpaid (there is zero enforced benchmarking or rights when it comes to contractor pay) compared to their permanent counterparts. Often we are not contracting because we choose to, but because there are no permanent vacancies. In my experience, contractors have often been treated like second-class citizens (if a permanent doesn't want to do the work, give it to the contractor; if the perm doesn't put the hours in give it the contractor who must do so if they want to be renewed in coming months; if projects are halted contractors are made effectively unemployed regardless of how much effort they have put in for weeks and months; there is no sickness cover; there are no rights; I've seen contractors been cut for complaining about workload, about work environment, about the behaviour of other members of staff; where the perm would have no such worry and a recourse to HR if needed; I could go on).

Perhaps IR35 is theoretically grounded in an approach that both benefits the individual (to make them more 'employee-like') and HMRC (from a taxation perspective). But with the flexibility in which corporates are being allowed to apply the concept it will, in its current form, be simply a further form of exploitation of the individual in forcing them to effectively pay the corporate's due taxation (a 15% hit to the individual's take home vs what would be a minute fraction of the corporate's baseline profits). I fervently believe this exploitation of a whole sector of society / the economy goes against the forward thing, world-leading, fair democracy we strive to attain in so many ways. I do not understand why this additional exploitation of an already statutely unprotected sector is being deemed a legal and acceptable approach.

In my view there is a relatively (compared to the overall complexities of IR35) simple solution – given corporates cannot be forced into making every contractor a permanent employee (and there are benefits to both corporates and some individuals working on short term bases), each short-term assignment could be benchmarked against the equivalent permanent pay plus benefits package, with an increase of 20% to offset lack of employee rights, permanence etc. This would be on a PAYE basis with the appropriate taxes being paid. As the contractor would be regarded as 'like an employee' from a taxation perspective, having HR departments do this

benchmarking is just one small task compared to the far broader efforts applied for 'proper' employees.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

The impact of the extension to the private sector has NOT been adequately assessed. As I say in my main feedback section above, those contractors that were faced with effective exploitation (paying the client's employers NIC as there was no body to protect against this if the client chose not to abide by the spirit of the legislation) when rolled out in the public sector had an 'escape' from this exploitation in the way of the private sector. If standards are not enforced in the private sector, this exploitation will occur unchecked.

One fairly subtle point that seems to have had no focus is around holidays. IR35 will force contractors to take the same holiday as permanents (and to pay for this with a reduced daily rate so its net neutral to the client). This is all well and good in theory. But in practice, contractors need to earn while they can and take the financial hit between contracts while they are out of work and looking for the next assignment. I would love to be permanently employed and have 5-6 paid weeks off. But not if I have to also take 2 months off every 6 months to a year looking for my next income because the client does not want to take on permanent staff

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?
4. What will be the effect of these new measures on a chain of contractors and subcontractors?
5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

As mentioned earlier I believe a general rule (law?) that the ability to take on and get rid of contractors at will should come with a 20% (or whatever the most appropriate percentage should be) uplift in outlay from the client. All based on PAYE so the appropriate tax is paid. The popularity of the 'gig' economy shows that a proportion of people are willing to sacrifice job stability for extra take-home in the short term. This flexibility (and productivity from individuals working hard, keeping their skills up to date, looking after their health etc with no 'permie' safety-net) can be very powerful for the nature of today's fast-moving economy

10. Will the Bill, as drafted, achieve the Government's objectives?

I do not believe it will raise the taxation that 'all things equal' calculations would imply. All things are not equal – it is very obvious in my industry (financial) that corporates are just working around these complications wherever they can by hiring in other countries. Allocation of capital to net pay vs tax surely needs to be set against just how much capital the UK is losing by short-term, highly skilled jobs going abroad.

11. What is your view of the role of umbrella companies in the context of these proposals?

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

This touches on the crux of my argument – its not just that temporary employees should be 'taxed as if they are employees' (I think that is completely fair), but that the **employer's NIC component should come from the employer ie client**. Without this being enforced (either with existing contract rates being increased as per public sector rollout, or with eg the benchmarking vs equivalent perm + 20% mentioned above) many contractors will be in the ludicrous situation of being paid less than equivalent perm packages outright, but with no perm rights or longevity or progression or sick cover – and yet paying a tax rate that is some 15% higher across all tax bands than the equivalent perm!

17 February 2020

David Godley

The following submission is my personal experience of the impact caused by the reactions to the changes to IR35 and the extension to the off-payroll rules. It is important to note that the impact has not been due to any changes in my personal choice of contracts or working practices, but rather at a much wider pan-industry level. Despite the HMRC website

stating that "Contractors who are following the existing rules correctly will feel little impact." (https://www.gov.uk/government/publications/hmrc-issue-briefing-reform-of-off-payroll-working-rules/hmrc-issue-briefing-reform-of-off-payroll-working-rules) there has been a significant impact, not least as rather than undertaking case by case appraisals, various organisations – Barclays, Lloyds, HSBC, Deutsche Bank, RBS, BAE have simple deemed all contractors as within IR35 – irrespective of specific and individual circumstances.

As a direct result of this, many other organisations have also followed their lead, as a way of mitigating the perceived risk of being found to be in breach of the rules issued by HMRC. The impact has been a massive reduction in contracts outside IR35, and a much greater pressure for those roles that do exist. For any contract that is deemed Inside IR35, the rates have been dropped by circa 25%, to further mitigate an organisations risk exposure.

There is significant evidence of contracts being replaced by permanent positions on considerably less money, with the effect of significantly reducing the overall tax take. A £500 per day contract incurs circa £33k tax, but the £60k job that (typically) replaces it sees tax revenues of some £16.5k. This is merely the tip of the iceberg. All the ancillary costs of running a small business – the insurance, the accountancy fees – all those will disappear too, as will any discretionary spend that would have otherwise gone straight back into the local economy.

IR35 allegedly sets out to achieve one objective – to make tax fairer. The oft quoted two people sat next to each other doing equivalent jobs scenario is the basis for introducing IR35 – so they both pay a similar amount of tax. However, one – the employee – gets a pension, sick pay, and holiday pay. None of those are extended to the contractor, which up to now has been fine – that is why the contractor received a higher daily rate, to cover such outgoings. Increasing the tax burden on the contractor without granting them access to the benefits of an employee makes a less equitable scenario, not a more equitable one. So the changes do the *exact opposite* of their intended purpose – they make the workplace a less fair environment, instead of a fairer one.

I personally will have been out of contract for 8 months by the end of February, despite having strong references, good experience, and in demand project management skills. During that time, I have incurred a cost to the state of nothing, instead relying on careful preparation, in line with most responsible contractors – such as overpayment of the mortgage, and the utilisation of savings. The general recommendation is to have 6 months worth of cover, for any interruptions in contract procurement, but thanks to a perfect storm of Brexit, Christmas, a December General Election and the forthcoming IR35 changes, I am approaching the 9th month of being out of contract, despite having

applied for several hundred positions in that time. My home is at risk, my impact to the state about to be significantly increased, and my contribution to the local economy further reduced. My mental health is under threat, as is that of my partner.

Large organisations are using the opportunity to mitigate their risk by imposing blanket bans, in their generic and brutally unfair approach to the proposed legislation. Other organisations are following their example, and insisting all future contracts are within IR35. In many cases, this would appear to be a cynical way to reduce the bargaining power of contractors, and to provide justification for the offshoring of projects and work to cheaper, and potentially less suitable overseas providers.

The legislation also raises the possibility of categorising new hires as contractors being inside IR35, rather than as employees, thus denying them the fundamental employment rights of holiday pay, sickness pay and pensions. The extension to IR35 as it stands is an ill-considered and poorly executed blanket approach to a small issue which stands to bring hardship and instability to a fundamentally important part of the economy.

24 February 2020

Simon Gooch

I have owned and staffed my own Ltd Company for the past 7 years. I have worked throughout the UK and Europe.

I have just taken a 10 month contract to assist a medium sized national infrastructure business. They are enforcing a mandatory PAYE position for all sub contractors working for them.

This will see my business having to be terminated should I wish to remain in this employment.

Their implementation does not allow for the fact that I have worked for four other companies in my tax year.

This blanket approach to include everyone within IR35 by phrasing questions, so as to give the answers they require, to protect themselves from HMRC liability will either end my business or my contract with the company.

There must be a time limit that needs to expire before IR35 becomes compulsory. At present I will have completed just 8 weeks work in a temporary post before I am enforced to close my business.

I have had many costs associated with building up a successful business. I have also returned a healthy profit every year which the treasury has benefitted from.

I believe national tax receipt revenue will fall as this company is reducing my renumeration so that I wil,l in effect, pay their part of the total NI contribution due. This is unscrupulous on the part of the main employer but is being adopted nationally by many companies.

This is a wholesale tactic employed by many medium to large sized businesses.

My options would seem to be to take my expertise abroad which will be a net loss for hmrc

Why are the small contractors being treated this way when the Googles, Starbucks, Amazons of the UK economy are being wilfully allowed to avoid tax?

10 February 2020

Mark Gordon

I have been an IT contractor for more than 30 years and I have seen many legislative changes along the way.

The original idea behind IR35 was sound. There was for a time a widespread practice of companies and Government departments "laying off" employees on a Friday and taking them back into the organisation on the follow Monday but as contractors rather than employees.

This benefited the employer more than the former employee. The employer had the same skill set available to them but was no longer responsible for the taxable affairs of the contractor and did not need to pay employer's national insurance contributions any longer, nor contribute to a pension, nor offer any other benefits.

Holiday and sick pay ceased to be an issue for the employer, as did redundancy pay.

For the contractor, they might be getting a little more money, but no benefits.

IR35 was put in place to stop this behaviour and most, if not all professional contractors agreed that it was necessary and proportionate.

Since then, IR35 has steadily become and all out assault on professional contractors. It is ridiculous to be in a situation where the kind of work

that I do is even remotely considered to be "inside IR35". I am a Programme Director. I am called upon by clients to direct a portfolio of work with one required delivery outcome. The work is finite and there is no obligation on either my or the client's part to offer or accept future work. The role exists because the client doesn't have a suitable member of staff to handle it and they don't want to appoint a permanent employee as once the programme is complete, there is no guarantee of further work. Nobody within the client organisation directs or controls my work, nor am I required to be in a specific location between particular hours. By any reasonable definition, this would put me and the role outside the IR35 legislation but there are numerous court cases brought by HMRC against contractors in similar situations.

The CEST tool cannot be relied upon. If HMRC had confidence in the tool, they would guarantee to stand by the result, but they will not.

There is no clarity on what constitutes a "small" company. This should be easy to define but HMRC refuses to put a number on it. How then can any company determine itself to be "small" and be confident in that decision?

To now move the onus for deciding the status of a contractor to the client is a recipe for disaster. Many clients have already "outlawed" the use of PSC contractors within their organisations from March 2020 onward. If a contractor in post refuses to move to a PAYE arrangement suffering an approximate 40% reduction in pay then their contract is simply terminated.

I was working within the public sector when the IR35 legislation was applied in 2016/17. I wrote a report for the board explaining the legislation and the potential impact on their department 12 months before it became law. I urged them to act but they did not until the last minute.

They then issued the same kind of ultimatum we now see in the private sector. "Move to umbrella or lose your role". 75% of the contract workforce simply quit and walked out. Programmes, including HMRC's own "Make Tax Digital" programme suffered significant delays because of these walkouts.

The impact on the private sector is impossible to predict accurately but various organisations are taking the temperature amongst the contract workforces in companies who have announce blanket bans on the use of PSC contractors and the indications are that the walkouts will be at similar levels.

Every client who has announced these blanket bans has also said that it will not increase rates to help alleviate the loss of income for contractors.

The short-sightedness of these decisions is breath-taking. The simple question facing most professional contractors is "do I stay in a role but for 40% less money and run the risk of opening myself up to investigation by HMRC because my status has suddenly changed (this in spite of HMRC assurances that they would not do this – current evidence shows this to have been misleading at the very least), with none of the benefits of employment but all of the downside or do I move on?"

It isn't a particularly difficult decision to take. Why would I want to continue the risk of being a contractor unless there is fiscal compensation for that risk? I have been out of contract for 5 months now largely due to the uncertainty caused by this awful legislation. My fees have to cover these periods out of work and that is simply not possible on 40% less. I cannot simply radically alter my lifestyle in the short term to accommodate.

My career has been contracting. For 35 years I have been able to weather the bad times because I could build a certain amount of savings during the good times. That is now no longer going to be possible and therefore I will simply no longer be able to be a contractor.

It is highly unlikely however that I could find a permanent role that would give me enough income to cover my living costs either so that leaves me with two remaining options. Option one is to radically change my lifestyle in the UK – sell my home, move to a smaller, cheaper one, sell my cars and so on in order that I can accept a lower salary. Option two is that I sell up and take what I have elsewhere. Somewhere I can buy a nice house outright and have enough money left over to start a small business. Somewhere such as Spain.

Option two is looking the more likely. If I have to radically change my life, I might as well go somewhere I will be treated better.

Consequently, the UK loses a taxpayer completely. That surely cannot be a desirable outcome?

This legislation is extremely flawed. HMRC is much more aggressive in its approach to contractors than ever before. Its guidance is poor, unclear or simply wrong / misleading. This cannot be an acceptable position for the tax authority.

IR35 is still required to do that which it was originally intended. To prevent companies from taking advantage of the favourable tax position from engaging a contractor who was a permanent employee. It must not be used as a weapon against legitimate contracting. Many companies rely heavily on contractors to ensure they can operate. To drive contractors to the wall is foolhardy.

The rollout of IR35 should be halted. It should be delayed by a minimum of 18 months to allow a full independent review to be undertaken. Part of that review should examine how far from its original intent it has now moved. The review must not be conducted by HMRC, its agents or the wider Government otherwise there will be no confidence in it.

Contractors must contribute to the review in a significant way. Recruitment companies likewise. Clients must also be allowed to voice their concerns.

HMRC should be prevented from opening investigations into previous contracts. Any enquiry should only be permissible from the date of enactment of the legislation.

HMRC should not be allowed to aggressively pursue contractors through the courts. Most contractors cannot fight HMRC. I spent over £100,000 defending myself against them but I am in the minority. Most contractors simply don't have the wherewithal to fight, which makes the fight illegitimate.

HMRC should be forced to produce a tool to analyse the status of a contractor and stand by the outcome. The CEST tool is so far away from the appropriate tool that it is beyond comprehension.

This legislation is the single most damaging thing to happen to the contracting industry in my working lifetime. It is to all intent and purpose the "end" of meaningful contracting. The risk simply outweighs the reward. The damage that will ensue to companies across the UK will be significant. The reckless drive to push contracting out will reduce the ability of companies to respond to sudden crises, changes in policy or direction and to generally find the rarer skillsets that many of them require.

Most professional contractors are genuinely in business on their own account. They provide their own equipment, find their own work, negotiate their own contracts and deliver the required results. Then they move on. This must be protected if the UK, in what is likely to be a turbulent foreseeable future is going to be able to respond to the challenges it will face.

IR35 still has a place, but it is not as the destroyer of contracting. Please stop this terrible legislation before it is too late.

Paul Gourley

I am a Contractor and Director of my own design company and wish to submit evidence to the IR35 Review committee.

Although I live with my family in Northern Ireland, I have been working through my own company for over 20 years providing engineering design services to companies all over the uk.

I have also worked on several defence contracts for aerospace and marine projects. This work is highly skilled and requires many years of expertise which I have built up over 30 years in industry.

No such work exists in Northern Ireland and is such that it can be only for a limited duration and can be located at many different sites in the uk mainland.

To carry out this work I have to demonstrate the necessary level of expertise to be offered the contract and also obtain the necessary security clearance.

I am hoping to work on a new defence program which again is based in secure premises on the Mainland and would require me to travel from my home to the workplace which requires paying travel costs for flights and accommodation.

If this work is determined to be inside IR35 it would no longer be viable for myself and may others.

My experience is that the industry requires people like myself who are willing to travel to wherever this work is in demand, spending time away from my home and family for long periods of time. This work does not provide sick pay, holiday pay or redundancy and requires only one weeks' notice of termination.

The HMRC CEST Tool does not take account of how far someone has to travel to work incurring considerable travel costs. No permanent employee would be expected to do this at their own cost.

This approach will be damaging to British industry and will force many people like myself away from the work which I am passionate about.

Chris Gray

Finance Bill Sub Committee – Call for evidence

I am writing to you in relation to the call for evidence in relation to the draft Finance Bill. Detailed below are the areas I have already directly suffered; or will suffer as a result of the implementation of this bill.

Impact of new off-payroll rules on organisations & determining tax status of workers

There are two main areas that this bill has already impacted me; even though it is yet to pass through as law.

1) Most of the organisations I work with in the Financial Services sector has already decided that they are NOT going to engage with Private Service Companies in the future. As the burden of risk has passed to them on assessment on whether a contract is inside or outside of IR35, they have decided that they will not determine the tax status at all and therefore remove the risk of an incorrect assessment.

   This means that regardless of whether a contract can be justifiably assessed as being outside of IR35, I do not have access to that assessment.

2) The organisation I currently work at has also confirmed that there is to be NO increase in their overall costs as a result of the legislation. As such, myself as the individual is having to take the burden of the Employers National Insurance contribution.

   Both of these changes have already come into effect for most of the people and for me this will come into effect 1st March. We have been told that we either take these terms or we will be told to leave. This I believe is grossly unfair and is not being implemented in the way that the Bill is supposed to be implemented.

Policy objectives and wider context

One of the key things that I think that this bill has missed the point on is the total amount of increased tax revenues that will be resolved as a result of the changes.

1) My business will no longer be paying Corporation Tax

2) I will stop engaging with an Accountant (as will a large number of people). As such, these businesses will be significantly impacted financially with a reduced VAT and their own Corporation Tax payments due to a significant downturn in their turnover.

If the total tax burden is properly assessed, there will be a minimum positive impact but a massive impact to the overall economy as a result of disruptive and unnecessary changes to millions of workers in the UK.

In the current climate, there is even more the need for contract workers who provide significant value to organisations addressing specific skills

gaps that businesses need for specific projects. Implementing this regulation will remove that flexibility as they will not be able to engage with a large number of these people due to the rigid NON-ASSESSMENT stance that a large number of companies have taken

9 February 2020

John W Griffiths

To set context for my responses I can describe my situation as follows. I ran the small consultancy business for 20 years focused mainly on the implementation of wave and tidal stream energy projects and the establishment and operation of test facilities in the sea for wave and tidal stream generating devices. So I was offering fairly specialist expertise which is not widely available.

I should make it clear that I have worked at senior levels in large corporates (20 years), major contractors (11 years), the public sector (British Gas pre-1986 and NHS (2 years)) at Board and senior management levels as well as being a small company consultant for 20years.

My clients included a Japanese corporation for whom I carried out studies on ocean current energy and its utilisation. These were lump sum assignments for which I sometimes engaged help from others as sub-contractors and sometimes did all work in house. I was a Board member (under a contract) for an SME that is a private company limited by guarantee which was self-funding in revenue terms but received capital grants for the infrastructure it required. I also did separate assignments for the company for which I gave an estimate of the days I would need to carry out the work. I worked independently out of my own office supplying my own equipment and materials. I had a substitution clause in the contract which was never tested as the timescales for work always allowed me to be available to carry it out. I did all this outside IR35, keeping my accountants in the loop for guidance.

I am answering the questions from that standpoint as distinct from someone who worked regular hours in a client's office taking daily or other regular instructions about the work to be done as an employee would.

Areas of interest The Sub-Committee welcomes views on any of the following questions relating to the proposed extension of the off-payroll working rules to the private sector. The Subcommittee is interested to know about the real-life experiences of individuals and organisations, as well as more general responses—for example, relating to the impact of these (and predecessor) measures on the tax classification of workers and

the broader impact on the labour market. Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

Answer: The public sector has taken a very conservative view in interpreting whether or not a contractor is a pseudo-employee. My concern is that the method of determining employment status (see question 7 answer) is not sufficiently sensitive to distinguish between contractors with more than one client who take risk to rectify their work if required, provide their own facilities and equipment etc and those who work on contract in clients offices under direction. The result is pretty much a blanket arrangement of people becoming employees, removing quite a bit of flexibility from the labour force.

Impact of new off-payroll rules on organisations.

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

Answer: In my view the impact of the extension of off-payroll rules has not be adequately assessed. Many organisations have not had time to review the compliance burden. Larger /Medium sized organisations should be able to adapt their systems for payroll etc to accommodate but need time. Many companies say they were expecting a more detailed and independent review rather than an internal Government exercise.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

Answer: The definition of a small organisation is clear in the 2006 Companies Act and so long as that is properly adhered to should not be problematic. The definition should be included somewhere in the guidance for the new legislation not just refer to the 2006 Act.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

Answer: It will be far more difficult for consultants and contractors to do what I used to do and bring in appropriate expertise to address specialist issues as part of their contract. It may mean that the best advice or input

is harder to obtain for some specialist needs. This is part of what I term the "loss of flexibility"in the workforce.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Answer: The Guidance should make the definition of a small organisation quite clear, including clarity on small organisations that may be part of a Group. HMRC should gear up to answering questions around this in a prompt and efficient manner – the cost impact should reflect the additional personnel required as well as smart systems that can address the queries online.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

Answer: The tests for determination of employment are very unsuitable at present. They do not discriminate sufficiently between genuine contractors who are taking financial risks, who are not working full time in the clients offices and who are rectifying any shortcomings in deliverables at their own expense, who are not receiving holiday and sick pay and those "contractors" who are sitting full time in the client office under supervision.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Answer: There is a lot of evidence that CEST is inadequate. It only addresses a few issues like substitution, mutuality, etc and presumes to apply a simplistic points system to determine status. If it cannot be made better to recognise the nuances of a contractor's status, it should throw out a query to engage in an online dialogue or phone conversation to clarify exactly how the contractor works before a decision is made. <u>This is probably the major weak link in the whole proposed system and threatens to become an administrative and legal nightmare</u>.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Answer: If a more sophisticated system which can discriminate with much greater granularity can be devised – then this will be effective. It is my

opinion that any attempt to implement with the existing crude CESC tool will give rise to a huge backlog of appeals, Tribunals and legal wrangles. It would be better to postpone this change until a decent and acceptable tool and methodology for determination of employment status is developed and tested with some consensus being achieved on its suitability and fitness for purpose.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Answer: The main focus of this legislation should be to make contractors who are effectively sitting in a client's office on several days per week under the client's direction to be treated as employees. That definition will effectively be fairly easy to identify and rectify. However it will remove flexibility form the system such that many major contractors in the engineering and construction sectors will not be able to create flexibility in the workforce – especially if zero hour PAYE contracts are eliminated. These would be a real necessity to keep the flexibility needed in these and similar industries.

Consideration should be given to application of zero hour PAYE contracts in many situations – they are not the inherent evil that many politicians and campaigners try to say they are!

10. Will the Bill, as drafted, achieve the Government's objectives?

Answer: The present Bill as drafted does not address employment status with sufficient accuracy and will be damaging to those sectors that rely on a flexible workforce as it stands. Some other mechanism is needed to allow people to work for an organisation when needed and stop when they are not required without going through the whole gamut of PAYE "hire and fire" each time. People should be compensated by a higher rate of pay for accepting the intermittent nature of their work which is a risk. They should receive pro-rata holiday pay and some arrangement over sickness which requires further study. Very often people with a minor ailment (cold, short term vomit virus or similar) could work from home for times when they feel well enough. Technology exists to allow that. It also helps to eliminate need for substitution as people are more available for work if there is some measure of flexibility in the requirements which means someone else does not have to take it over unless the incapacity is longer term.

11. What is your view of the role of umbrella companies in the context of these proposals?

Answer: It is my opinion that umbrella companies can cause more issues than they solve. All they are doing is taking fees for carrying out admin

tasks that the employer should be organised to do. They are not reducing overall costs and are introducing more interfaces and potential for error into the system than is necessary. I believe the legislation should restrict their activity to any very specific circumstances where they can be shown to add value.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Answer: Many people who work in the Gig Economy do so by choice and preference. I accept that there are some who are forced to work in it in order to survive. But it does suit many. It is definitely not fair to tax these people as though they are employees when they are not. They are taking more risk and should not be taxed as though they take no risk.

The overzealous application of the legislation as proposed will take away work opportunities from many people. It will prevent the better run organisations in the Gig Economy from functioning reducing job opportunities and service levels.

J W Griffiths B Sc (Eng), C Eng, C Env, FI Chem E, FCI Mgt, former Director of JWG Consulting Ltd

25 February 2020

Roy Griffiths

1.0 Introduction

The proposed rollout of the off-payroll rules to the private sector have run into problems before the final legislation has even been published. Were the proposal to proceed as drafted, there would likely be a large-scale negative impact on freelancers and their clients, with a possible reduction in the tax take.

2.0 Context

2.1 I am an IT contractor, and have been freelancing in the banking and financial services sectors since 2005. I offer my services through a Ltd company (PSC), as I find that this is the most flexible approach, and gives me the most control over how the fees that the company earns are spent.

2.2 Throughout I have operated outside IR35, by taking reasonable measures to make sure that the current IR35 legislation does not apply

to me. For example, my PSC is listed on and has access to a database of other freelancers, which would enable me to find a substitute if required. In addition, I ensure that the contracts that I engage in specify that there is no mutuality of obligation. Also, I manage my relationship with the client to ensure that they are able to specify what the deliverables are, but not how to deliver them.

2.3 I therefore believe myself to be a genuine freelancer, in business on my own account, both according to the general definition, and that applied by HMRC.

3.0 Why Freelancing

3.1 From a client's perspective, I offer a significantly different proposition to that of an employee. I am subject to far less supervision. The client does not have to be concerned about my career progression, to train me, or to carry out appraisals. Neither am I entitled to sick pay or holiday pay. If I am productive, then the contact runs its course, and is sometimes extended. If the client isn't satisfied with my work, or if they simply need to downsize, then the contract can be terminated with a month's notice. There is no redundancy process to worry about. This fulfils a requirement which many engagers have for a flexible workforce, and allows them to expand their resources in the knowledge that they can easily scale them down again to adapt to prevailing business conditions.

3.2 From my perspective, I like the flexibility that freelancing brings. I only need to worry about the project that I have been engaged on, and don't get sucked into the politics of the client organisation. I can also take breaks between projects, without having to worry about fitting in with a holiday entitlement. In short, I have *chosen* to work as a freelancer.

4.0 Policy Objectives

4.1 It is true that the use of a PSC did used to confer a tax advantage. At the time, I would pay myself a small salary, and take the rest of my pay as dividends, saving on national insurance.

4.2 However, since the introduction of the dividend tax in 2016, this advantage has disappeared, and the proportion of tax and NI that I pay is almost exactly the same as it would be if I was an employee.

4.3 Conversely, I would consider the new 'off payroll' rules to be unfair, for a number of reasons. Firstly, under them, I would actually pay more national insurance than an employee, as both employers and employee's national insurance would be deducted from the fee that the PSC receives for my work. If I was an employee, the employer would pay the employer's NI.

4.4 If I worked through an umbrella, and to some extent through a PSC to which the new rules applied, I would no longer be able to put money aside for equipment, software and training to keep my skillset current. This would make it impossible for me to keep up with changing technologies and therefore continue as a contractor in the long term.

4.5 The extra financial burden does not confer the rights that an employee enjoys. I would be subject to more onerous taxation than an equivalent employee, but with none of the protections.

4.6 The PSC that I run has some other business activities, which are not (yet) ready to stand on their own, but which are subsidised by the fees that the company earns from the freelancing activities. This is how any business branches out. However, if I was unable to carry on my freelancing work through the PSC, these other activities would be affected.

5.0 Impact of New Off-Payroll Rules on Organisations

5.1 The greatest problem with the new legislation is the reaction of my prospective clients to it. The majority of the banks, and many other major engagers have simply said that they are not going to carry out the individual assessments to determine the status of each contractor. Instead, they are trying to force contractors to use so called umbrella companies, the alternative being to receive notice of early termination of the contract.

5.2 This is the approach taken by my current client. I now find that my contract has been terminated and, in the current uncertainty, I am having difficulty in finding another one.

5.3 Some engagers are carrying out the status assessments in a blanket fashion, in which it is predetermined that every contractor is regarded as being inside the rules.

5.4 Other engagers, seeing the availability problems that their approach is causing, have moved more projects to offshore centres. This is work

that is being lost to the UK altogether, along with the tax revenue that engaging those contractors in the UK would have yielded.

5.5 HMRC's assertion that the rollout of the new rules would not affect genuine freelancers in visibly incorrect.

5.6 The motivation for these engagers in taking this approach is simple: they don't want to take the risk attached to carrying out the assessments, and getting them wrong, resulting in financial penalties and reputational damage. They see that the NHS was fined millions of pounds for making such an error. They also see that the rules appear to be subjective, and the available tool (CEST) inaccurate with even HMRC refusing to allow its results to be used as a defence. It is likely that engagers will only carry out the status assessments if the law and the tools to support it are tightened up so as to remove this risk.

6.0 Suggested Improvements

6.1 My view, from talking to engagers and others in the industry, is that the whole legislation is too complicated, and the rules by which to assess contracts are too subjective. The tests need to be wholly deterministic and risk free if you want the private sector to engage with them.

6.2 The desired effect, of separating genuine freelancers from 'pseudo employees' could be achieved more simply by applying conditions such as:

6.2.1 Limiting the maximum length of engagements to prevent rolling contracts more typical of the relationship between employers and employees. I would suggest a maximum duration of 24 months, in line with current expenses rules.

6.2.2 Alternatively, it could be required that 'outside scope' contracts are tied to specific deliverables.

6.2.3 The substitution test in current IR35 legislation is pointless. In my 15 years of contracting, I have never witnessed an engager or contractor using a substitute.

6.2.4 Rather than involving engagers in assessing a freelancer's status, HMRC could formalise the current process. The freelancer could be responsible for declaring their IR35 status via a supplementary page of their personal tax return. This could be enforced with penalties in cases

where the declaration was not completed with due care and accuracy.

7.0 Conclusions

7.1 The proposed rollout of off payroll rules to the private sector is beset with problems, setting it up for having a large-scale negative affect on freelancers and their engagers, and resulting in the real possibility of an overall reduction in the tax take.

7.2 The rules are too complex and confer a risk onto potential engagers that they are just not willing to take.

7.3 Following these suggestions will leave the risk associated with an incorrect assessment with the freelancer, where it belongs, but formalise them to allow easier enforcement, whilst making them less subjective to reduce the chance of mistakes being made.

7 February 2020

Philippe Guenet

The following is a submission for the current consultation by the sub-committee looking at the change in the IR35 law.

I would like to offer a different perspective. Not the one of a typical contractor, but the one of somebody aiming to build organically a genuine business and having to contemplate the collapse of this possibility. I am also explaining the damage happening to the economy of UK PLC. The country will definitely be poorer for such a ridiculous decision.

My points are mainly in relation to item 10 of the consultation.
"Will the bill, as drafted, achieve the government's objectives? "

I am covering:
- How the IR 35 is flawed from the view of expenses / capital
- The current damage as experienced with one of my main clients
- How this is killing my business

How the IR35 has been flawed from the very beginning
Being a genuine business shouldn't be determined by the nature of a contract. It should be determined by the approach to be a business. The biggest issue of the IR35 is to limit the level of expenses (to 5%) and forcing the individual to take all the revenues as income. This in itself is an **unfair** treatment of very small businesses compared to other businesses.

A business should be able to choose how it reinvests revenues (which is good for skills and employment in the country), and how much it leaves in the business for capital or future investments. The 5% expense threshold is vastly inadequate in the Digital economy. As a coach, I will spend 10-15% alone on training and subscriptions a year. I need to keep knowledge right up.
This matter is a big issue when working with large Corporations, who are the main clients of this types of services. They have sub-optimised their supply chains from small enterprises as contractors. They make no difference between the one in a form of flex employment and the ones providing a service. Workers are all brought in via umbrella companies as a view to simplify.
The above elements have a knock-on effect for small emerging businesses with this new implementation of the law (please see below).

The current damage of the change
As a coach, I sit in the executive sessions at my main client, a large investment bank. I see the decisions being made. I have to keep the details of the client confidential.
Being very involved into the community and I see how other Digital / Agile talents are being impacted too.
All, I can say is that it is a total carnage.
No bank and no other businesses are taking a measured view. NOBODY is using CEST.

Contractors are :
- 50%-60% let go (with little prospect of finding something else) - roles are generally moving to India or other cheaper shores
- 15%-25% employed permanently by the client
- Rest offered a PAYE option via the umbrella company (which are the worst employer that any talent would dream of)
- NO options are offered for genuinely contracting a service / scope. In fact, most Corporate are banning the prospect of new suppliers so to ensure that they are not caught in breach of the new rule. This is the death of genuine small businesses.

Most contractors reluctantly accepting the PAYE option are buying time until they find something else. With the combined effect of Brexit and the demand for digital skills on the Continent & Middle East, many are considering taking their skills elsewhere until the government realises their mistake with this ruling.

Overall the loss of activity and loss of talents should seriously outweigh the small tax windfall for taxing the genuine contractors.

Or if you shall absolutely proceed with IR35, you should equally force corporates to demonstrate that they are effectively on-boarding some small suppliers and using CEST with the threat of being equally fined if they don't. All this is too much bureaucracy and interference in business, but if you shall create unintended damage, you should at least establish some mitigating measures.

IR35 killing my business

I have worked 25 years in the Digital economy. 2.5 years ago I left a well-paid executive job to set-up an independent business redefining an approach to Coaching the Digital change, and help my Clients build the in-house skills of the people and the leaders to compete in the digital economy.

I have certified officially as a coach (about £15k) and developed new approaches to Digital Leadership. I am working with a main client (Bank) and a number of other small clients. I have developed a training for young talents and ran it with a cohort already. I am aiming to develop it further and selling it to organisations that trains grads. I am also in talk with a University. I have invested into developing a Digital Leadership community (now 3,200 people) and have regular Knowledge Share events that I fund out of my own pocket with the perspective of giving something back. I am starting offering public courses (I am the only one globally running Wardley Mapping courses). This has been 2.5 years of gruelling labour, working about 4 hours at home after a day's work with clients, everyday. My business is getting in a good place. I have some money in it, the offerings are formalising, I am one client away from starting to bring others into the business. It takes about 5 years normally to get an in-flow of demand, and I can start seeing this happening.

All this is about to collapse if I lose the banking client and cannot have another main client to supply the business with cash-flows. My client wants me to stay, desperately. However, I cannot get on their PSL (Preferred Supplier List) and any other option means that I cannot invest back into my business.
So, please tell me, what shall I do?
- Fold my business and go to a dull permanent employment?
- Risk it with most clients not organising to buy from me as a business? I have a family, I cannot do this.
- Take my talent and efforts elsewhere?

At a time when the UK needs to press on with Digital more than ever, I cannot believe that UK PLC is about to shoot self in the foot, unloading the full barrel.

How can you, you people in charge, not see the deeply damaging unintended consequences of the misjudged choices you are making.

23 February 2020

Ian Hall

Preface;

This was originally written prior to the decision to delay IR35 introduction.

I work as a PSC for a major automotive manufacturer in the midlands and appear to be in the IR35 trap.

I have been on PSC type contract for 10 years now, largely because I have been unable to access a permanent role in my field which is oversubscribed by internal candidates. The reason for being in this position was the 2009 crash in the car industry when I was made redundant from Bentley Motors.

My 'employer' whilst being steady employment is a yearly renewal process and indeed last year it was very uncertain if I would get a renewal contract so in response to IR35 and Mutuality this is not in place.

I have used the CEST tool provided by HMRC and do according to the tool, fall out of IR35 for various reasons.

The process at this company appears to have been to (allegedly) assess all contractors as within IR35 unless they can provide evidence to prove otherwise. I would consider no assessment has taken place, given the time frame they had to conduct said exercise and the lack of consultation.

The contractor process in this company managed by an external company, who in turn employ further external agencies to source the contractors for various roles.

In late February I received a notification that all new contracts from the "employer" will be within IR35. I was asked to confirm if I would accept this contract and I was reminded that if I wished to appeal on the decision I had to apply immediately through the chain of agencies.

I have confirmed I would consider a within IR35 contract as I feel that if I didn't I would not receive a renewal offer. Likewise I believe if I put an appeal in I would not be given a renewal offer.

In a further move to force a decision the main contractor managing agency requested confirmation by 11 March 2020, which just happened to coincide with Budget day.

Therefore if one was to sign in for an 'Inside IR35' contract you would be bound by the terms of that contract. If subsequently the budget changed the position of HMRC to delay or remove the inception of IR35, then the only action would be to resign that contract and hope that you would be given a new 'outside IR35' contract.

There appears to be some poor understanding of the implications of IR35.

Currently I am paid an hourly fixed rate, even overtime does not see an increase in the hourly rate . I pay my corporation tax from my company every year and I pay NI contributions from the company. I pay company NI contributions direct to HMRC.

I pay myself a salary from which I pay employee NI contributions monthly. I complete and pay a personal tax return every year.

I do not receive holiday pay or sick pay.

I receive no other benefits from my "employer", unlike direct employees who receive pension payments, sick pay, holiday pay, then also some have medical insurance, car leasing type scheme (at potentially my equivalent level in the organisation)

My only real option is to move to an umbrella type scheme which whilst it pro-ports to supply a pension, sick pay and holiday pay, this is actually from the money that would be paid to them by my end of line agency and would also incur an management fee.

My end of line agency would be unable to support a PAYE version due the additional admin and investment that would involve, so unless I could find another agency and have my role transferred to them (highly unlikely) this is not an option.

My first argument is that if my ‘employer’ see me as employed then surely they should incur the requirements for managing my payments and also then provide contributions to my pension, otherwise how can I be "employed".

Further to this I believe that these contributions will be taken from my payment to the Umbrella company rather than being built into the rate that my ‘employer’ pays, this I’m led to believe is in contravention of IR35. The contractor should not bear the employment costs.

My second argument is that all of the 'perks' provided to the full time employee's are not available to those deemed employed so how can ‘agency’ be considered as employed.

My third argument is that given the various rules of employment surely the option of payment should not constrain the offer of a contract, as the onus would be on the contractor at the end of the day (pretty much like it is now) to pay the HRMC requirements.

It is my firm belief that in particular with my "employer" this is being used as a tool to reduce the workforce without the attention that terminating contractors would bring given the normal circumstances, much as what happened last year. Surely this is manipulation of a government policy to deprive people of the fair chance of employment.

Further to this the "employer " implied that they were to make one time only offers for a permanent role prior to the start date of IR35 but they have advised that because the task was bigger than they expected (how can they have assessed everyone for IR35 then ?) this will not be completed until maybe May this year (again past the IR35 start date).

I would also consider that they will be offering salaries of a reduced rate from the equivalent contract rate, again taking advantage
and manipulating of a government policy to deprive people of the fair chance of employment.

For this reason I know of a few people who will not be renewing their contracts as they are finding contract positions within Europe and other overseas countries where IR35 is not an issue.

I believe this situation with my employer is not unique but I consider that due to their size and ability to corner the market they are taking some manner not insignificant level of advantage.

25 March 2020

Steve Hall

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

Seemingly very poor. Over reliance on CEST by clients produced inaccurate inside determinations, resulting in a mass exodus to the private sector.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
   Seemingly not. Already there is evidence of clients bypassing the ban on blanket assessments by implementing blanket bans on the use of contractors.
3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?
   I cannot comment here.
4. What will be the effect of these new measures on a chain of contractors and subcontractors?
   Almost certain chaos, with no one truly understanding who is responsible for the assessments.
5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?
   HMRC should stop suggesting CEST is a trustworthy, fact based tool, and encourage companies to engage with actual IR35 legal experts. Scrap CEST altogether in fact.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
   No. And CEST makes things even worse, by ignoring significant parts of the rules (MOO, for instance)
7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
   It's beyond awful. As stated above, it ignores key parts of the rules, and over simplifies areas such as control in a way that often erroneously points towards an inside determination, when this is inaccurate.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
   The whole process is utterly flawed. Clients feel compelled to produce an inside determination so as to avoid potentially massive liabilities, and contractors only recourse is to politely ask the client to reconsider. Does anyone honestly thing a client ever would change their mind?

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
10. Will the Bill, as drafted, achieve the Government's objectives?
    It appears that the government and HMRC are operating on the assumption that all contractors deemed inside IR35 following these reforms will just accept it, producing a £1.2bn windfall. Independent research, and engagement with fellow contractors suggests a significant proportion of the community will not do so – and will go permanent (lower salary, lower taxes), retire, or go abroad. Some large clients have already said they'll move work previously done by contractors overseas to the likes of India…. Net result – an estimated £2.2bn economic hole.
11. What is your view of the role of umbrella companies in the context of these proposals?
    The lords and masters of zero rights employment, earning money for almost nothing.
12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
    This will destroy the gig economy. Many contractors travel far and wide for work, incurring costs such as accommodation etc which they can currently (and rightly) claim as an expense. This will no longer be the case. Contractors will be restricted on what they can do and where. Regarding taxing contractors as employees, In no way can this be considered fair. Yes, contractors still get paid (typically) more than their permanent staff counterparts – but they still lack the benefits also. Market forces dictate the rates, and have lead to a point where skills and risks are rewarded with the appropriate level of remuneration.

Chris Harrhy

1. Impact of new off-payroll rules on organisations.

2. What will be the effect of these new measures on a chain of contractors and subcontractors?

3. I am a self-employed, technical author and I supply my services to a defence company in the South East of England through my limited personal service company (PSC), Column Correspondent Limited.

4. My current client has engaged an independent accountancy firm to determine all their contingent workers' employment status. Last week, I received my Status Decision Statement which subject to appeal, has found me inside IR35. This is very worrying for me and my family as this will mean we are significantly worse off to the tune of approximately £12000 a year.

5. I currently travel to my client's site near to Gatwick airport from the family home in Shrewsbury, Shropshire (a return journey of just under 400 miles) and stay in digs during the week before returning home for the weekend. I am currently able to expense my travel and subsistence against my tax bill but this will stop with the new legislation. This will mean I will have to think hard about continuing to supply my services to my current client.

6. My client could be hit hard if many others in the self-employed cohort there also decide to stop supplying their services.

7. My youngest son will hopefully start university in September 2020 and currently would be eligible for the minimum student loan and my wife and I would help with his accommodation and living costs. If my SDS does not change on appeal then he would be eligible for a larger loan and we would be unable to afford to support him at the same level as our household income will be much less. This seems particularly perverse to me.

8. I believe that the legislation will lead to a much less flexible workforce with PSCs unwilling to travel to client sites to supply their services when it will no longer make financial sense. It seems inevitable that this will lead to delays in project completions or cost rises due to increase in rates paid to PSCs to attract their services.

9. Determining tax status of workers

10. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker?

11. Can anyone clear up what the definitive test or tests are? My engager has used the services of an independent accountancy firm (who also happen to provide umbrella company services) who have their own questionnaire which they say is based on case law and not AI led as is the case with HMRC's CEST tool. Other engagers may use different tools or indeed the CEST tool. Therefore, I would argue that the tests are not clear as they appear to exist in multiple forms. Who is making sure that they are objective?

12. How effective will the status determination process be in resolving issues of employment status?

13. In my experience, it is my hiring manager at my engager firm who has reviewed my answers to the initial questionnaire and hence, therefore, there will be multiple hiring managers reviewing batches of questionnaires. Anecdotally, it appears that some contractors at my engager firm are deemed outside IR35 whilst others inside IR35. I believe this may be purely down to the interpretation of individual hiring managers. I believe this then becomes a subjective process and where the draft bill seeks to "ensure that two people working side by side in a similar role for the same employer pay the same employment taxes" could lead to a situation where two contractors working side by side in a similar role for the same employer pay different employment taxes.

14. Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

15. I have yet to appeal but if I did and my appeal is then reviewed by the same hiring manager who did the initial assessment then I cannot see how they would change their initial decision. I believe that there needs to be a more structured approach with guidelines set out and an arbitration body set up to handle appeals, otherwise it becomes contractor versus engager when it is Government and HMRC who are introducing the new rules and not the engager or the contractor.

16. Policy objectives and wider context

17. Will the Bill, as drafted, achieve the Government's objectives?

18. I believe that the real objective is to gather more tax revenue and it will undoubtedly do this. Whether it does indeed "ensure that two people working side by side in a similar role for the same employer pay the same employment taxes" seems unlikely as some will be deemed inside IR35 whilst others will be deemed outside.

19. What is your view of the role of umbrella companies in the context of these proposals?

20. Whilst umbrella companies have been around for a long time I would imagine that they are rubbing their hands together at the thought of all the newly inside IR35 contractors who will need to use their services.

21. Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

22. I have been contracting through a PSC for over six years and knew when I started that I would be forgoing the rights I previously had as an employee. I guess I did a mental calculation that worked out that I was happy to forgo them given my previous record of very few days off sick, the number of days I planned to take off for holiday and experience of employers stopping pension contributions when financial pressure meant they couldn't afford to pay them. I understand that if I use an umbrella company going forward there is some contrived method of obtaining holiday pay but I believe this is just a wheeze where they hold back a certain percentage of my weekly/monthly earnings that is then paid when I say I'm on holiday. It's not fair that I will likely be taxed as an employee but not receive the rights that an employee has.

23 February 2020

Bryan Hart

Introduction

I have been a contractor since 1989, having experienced 3 rounds of redundancy as a permanent employee. Since then I have been running a PSC and had a very exciting career in many different business and sectors, gaining valuable experience and knowledge. My day rate has not really changed in the past 15 years but I make a living and my skills and experience are being used by a large Telecoms business expanding into future networks.

The impact of these changes are unfair and badly implemented. My Client has requested more information form HMRC but the detail is not available.

There are fundamental differences in the way a Business works that HMRC do not understand. A business wishing to expand, upgrade, redevelop or move into new technologies will not have the skills to

perform the activities in house to get the Business to where it want to be. They allocate a budget for the work, recruit contractors with specific skills and the Project is created. The Client does not want these skills permanently, once the project are complete the contractor moves to another organisation. Good contractors may find work in another part of the same business, often after preparing a bid for the work. Once the CAPEX is spend contractors are terminated. This has always been my experience.

1. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

My Client is now preparing to make ALL contractors inside IR35. They believe that unless all contractors are outside IR35 they will be punished and fined by HMRC. This will mean many skilled staff will leave and project stopped. I am working with my Clients to develop Outside IR35 packages of work with Mutuality of Obligation, Substitution, fixed prices and penalty clauses. This is a lot of work but as I am not a 'hidden employee' for NO benefit.

The reality is that when the money runs out contracts are terminated. No holiday entitlement, no holiday pay, usually 2 week's notice, no training courses, no paternity / maternity pay, no pension, no share options, bonuses, no sick pay and no employments rights at all. I sometimes have 4-9 months without work while I look and find something commutable. We don't even get invited to the Christmas party.

On one occasion before a Christmas break where I was forced to take a 1 month break with no pay, I returned to find that my Contract had not been renewed and I had to find another role. How can I get compensation under this scheme?

2. Impact of new off-payroll rules on organisations 2.Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

I am not a high rate tax payer under the current rules of PSCs. When my day rate is automatically taxed reducing my income immediately by 42% , NIC and PAYE extracted at source. I will be left with a sum that has to finance my pension, pay my accountant, buy computer supplies etc. and finance my general income. I will not be able to recover travelling costs (often for expenses incurred that are not chargeable). No Corporation tax, no dividend tax, no PSC, no accountant, no VAT fees etc. It is simply not worth it. I will be closing my Company after 30 years, no one will employ

me I'm too old. Freelancing is dead and the economy will suffer, I'm retiring at 62 and I am in great demand.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

This Companies who offer contracts outside IR35 will continue to attach the best talent. Larger Companies who find it very difficult to assign work packages with all the compliant rules will suffer, many are issuing blanket bans and contractors are leaving in droves. My Accounting Company are already laying off staff due a significant drop in PSCs. Larger Companies will not be able to adapt, systems will fail on a similar scale to TSB and IT work will be off-shored. I have direct evidence of this happening already.

The Contracting community is drying up, those who adapt will ask for addition rate increases to compensate and with the lack of supply Company costs will rise.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules? Determining tax status of workers.

I believe that HMRC needs to develop a new PSC type vehicle to support contractors, we are an incredibly valuable asset and create wealth in the economy. Taken in overall tax contributions, not just NIC contributions, we generate significant tax revenues for the Treasury.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

I have used the CEST tool and I am inside IR35. CEST does not ask me about remuneration, I wait 30 – 60 days to be paid. It does not ask if I receive any benefits from the Client, any pension contributions, holidays, subsidised training, costs of employment, share options, perks and benefits in kind etc. This is heavily based to prove contractors are inside IR35 and is a serious manipulation of the facts.

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

10. Will the Bill, as drafted, achieve the Government's objectives?

No. Contracts will evolve to fixed price work packages, arrange substitutes and develop strategies. The effect will be zero with HMRC achieving nothing.

11. What is your view of the role of umbrella companies in the context of these proposals?

Umbrella companies have evolved to make money for themselves at the contractor's expense. They charge us for the privilege of processing money so we lose out again. Under the new regime this cost will not be deductible as a legitimate company expense

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employee?

This is clearly unfair. If you take the overall tax contribution a Contractor generates, aside from the lack of NIC, we generate VAT, Corporation Tax, dividend tax, some NIC and create work for others, e.g accountants,

XX February 2020

Gar Hawa

IR35 off-payroll tax and how it will damage my business and will force me out of the flexible UK work force.

I wanted to raise with you my grave concerns about the government's plans to extend the controversial changes to the IR35 tax rules into the private sector starting on April 6th 2020. I'm writing to you now to urge you to suspend the April 6th roll-out, for at least twelve months, in order to prevent the closure of thousands of compliant UK businesses and mine is one. A delay would also provide time to explore alternative arrangements which would protect the tax base without restricting the flexible labour market and damaging the wider economy.

Then Chancellor personally promised a review of IR35 legislation during the election in 2019 (as part of the proposed Government review of self-employment) so it was deeply disappointing when the new Government announced that the roll-out was going ahead anyway. Instead of the review of the law, all we have had is a rushed consultation of the implementation of the roll-out, which is clearly not what then Chancellor committed to. I urge you now to have as proper review of the IR35 legislation as promised and halt the April roll-out to allow this to happen.

I am worried that extending these changes to the private sector will seriously damage the smallest of businesses like mine. In fact, it would put me out of business or force me to move abroad to continue my business or inevitably resulting in entirely compliant contractor business having to close.

My current client has already started working with third party IT suppliers to back fill my role and which would effectively could be taken off-shore country in few months' time. And many thousands contracting roles are in the same situation across the multiple industries.

The draft legislation is already having a catastrophic impact, which you and the Treasury must surely now be aware of. Many large companies (including several major banks, Vodafone and GSK to name a few) have announced they will no longer engage contractors out of fear they will fall foul of the notoriously complex legislation. Since then more companies have followed suit. This means genuinely self-employed people are losing work opportunities, while clients themselves are losing vital, flexible expertise.

What is most worrying of all is that many contract and freelancer workers are effectively being forced into a status of **'zero rights employment',** where they will be taxed as employees, via PAYE, but without any of the security or benefits of employment, no sick, holiday or maternity/paternity and no pension contribution. This is grossly unfair and must not be allowed to happen.

How is this an acceptable situation?

I would like to take your attention to some impact areas:

- Inside IR35 requirement will reduce disposable income of the several million freelances. It will directly affect in reduction of spending capabilities and thus impacting to various small and micro businesses.

- Lots IT contractors work will be transferred to IT Third party service providers... effectively lots of jobs will be backfilled by offshore staff and many jobs will be taken to off-shore countries. This will result in loss of local jobs resulting in growing unemployment in UK, resulting in tax revenue loss to HMRC and creating wider talent/skills gap.

- Impact to auxiliary industry e.g. Accountancy firms, professional indemnity insurers, small supply chain businesses just to name few who provided various services to the freelance limited companies.

- Huge job losses at auxiliary companies due to massive reduction in freelancing contractor clients. This will result in huge loss of the tax revenue to HMRC.

- Huge loss of tax revenue to HMRC.... VAT, Corporation taxes paid by self-employed contractor companies and the above auxiliary companies.
- Talent skills gap in mid-term in UK due to more work will be sent off-shore.
- Impact to micro-economy businesses and job losses due to reduced spending by the freelancers**; 5 million freelancers in UK.**
- Impact to Businesses due to talent gap which is growing to go wider.
- Lots of employers possibly **shall replace good number of permanent employees with "'zero rights employee"** aka contractors to reduce the fixed cost, legal and compliance associated to permanent employee.

Even HMRC - who are meant to be tax experts – can't make accurate assessments, losing five the six IR35 cases that have come to light in the last year. So how are businesses, with little or no IR35 expertise, meant to accomplish the impossible task of determining which contractors do and do not fall within IR35?

HMRC may come back and say businesses can use their online CEST tool. Unfortunately, nearly all experts agree the tool is deeply flawed. In April 2019, accountancy body ICAEW told the government that the tool is "not suitable for use in the private sector."

I completely understand the government must do all it can to ensure everyone pays the correct and fair tax, but this is not the way to do it. Delaying for twelve months would provide an opportunity for us to work with government and other experts on devising more transparent, understandable rules that would protect Exchequer revenue while also enabling the flexible labour market to flourish.

Please refer the links for wider outcry:

https://www.ipse.co.uk/ipse-news/news-listing/ipse-joint-letter-sajid-javid-halt-ir35-changes.html

https://twitter.com/hashtag/ir35?lang=en

https://www.ftadviser.com/your-industry/2020/02/06/lords-to-probe-shake-up-of-ir35-rules/

House of Lords launch IR35 inquiry alongside Government review:

https://www.parliament.uk/business/committees/committees-a-z/lords-select/economic-affairs-finance-bill-sub-committee/news-parliament-2019/call-for-evidence2019/

https://beta.parliament.uk/search?q=IR35

I value the freedom, flexibility and autonomy that contracting gives me. Now my autonomy is going to be taken out of my hands – with no meaningful right of appeal – in a way that seriously undermines my business.

The Government is supposed to be the supporter to small businesses and lower taxation. Why then is the government seeking to introduce a measure which will unfairly penalise compliant businesses?

I humbly urge the Lords committee to raise my concerns with the Treasury and do everything in your power to prevent a policy that would be a disaster both for self-employed people like me and for the wider economy.

15 February 2020

John Hayes

Summary
We are a two-director Private Limited Company (PSC) and have been providing specialist project and interim management, training and compliance consultancy services to financial services firms for nearly 17 years (after a 20 year employed career gaining relevant experience). We employ a city accountancy firm who prepare our annual accounts and run our PAYE payroll. We collect and submit VAT on our turnover to HMRC, we pay corporation tax on our profits, we pay employee PAYE income tax and NI on our salaries, plus employer NI as well as dividend income tax on any dividends taken. We pay all relevant taxes on the income generated from our client firms, without they themselves providing us with any employee rights or benefits. It is therefore impossible to compare and determine that we pay a disproportionately lower amount of tax compared to a typical employee with similar income but with a host of employee benefits and rights, and no risk.

My partners current client, a UK Bank, has chosen not to engage with contractors on an "outside IR35" basis. They've enforced a blanket ban on all PSCs without carrying out any individual assessments to determine the tax status of their interim workforce. This appears to be against HMRC Guidance on 'reasonable care' in ESM10014 within their Employment Status Manual which was updated on 27 February 2020. In summary, our current client:

is forcing all contractors to either enter a no-rights employment via a PAYE umbrella, or leave the contract.

They are deducting employer taxes from our agreed contractor income, and not paying this tax on-top-of employment income, which is illegal as well as against the spirit of the tax change.

We will now cease paying all relevant PSC taxes and commence paying PAYE income tax as well as Employer NI but take on the same risks as before without any employee rights or benefits. This is unlikely to lead to a higher tax-take for HMRC.

Contractors will leave the project and jeopardise the regulatory and business milestones. The firm, like other banks, is likely to resource offshore hence generating even less tax for the UK.

We are being forced to take a pay cut or resign.

Existing measures in the public sector

We have not yet provided services to the public sector so cannot provide comment from personal experience. However, it is not difficult to follow news reports of disruption within the NHS and even to IT projects within HMRC itself caused directly by the change to IR35 imposed on the public sector since 2017. There doesn't appear to be any lessons learned from these experiences, indeed any negative impact is being swept under the carpet.

Personal experiences of the impact of new off-payroll rules on organisations

From reading freelance journals, firms in many sectors are choosing not to engage with contractors on an "outside IR35" basis. From personal experience, most financial services firms are choosing to go further and blanket ban all outside-IR35 contractors from their entire supply chain i.e. banning the on-boarding of all freelancers operating under their own Personal Service Company, like us.

Despite evidence being physically presented to him, just a few weeks ago, the Minister Jesse Norman responded to questions in the House of Commons that he had no knowledge that blanket banning was happening.

Is it coincidental that EMS10014 was updated and published by HMRC the week later? Blanket banning of PSCs is rife. Surveys show more than 50% of all firms, and 80% of financial services firms are blanket banning. Why is he brushing this under the carpet? It may be due to further

humiliation for the Minister because HMT's own legislation is meant to guard against blanketing by requiring 'reasonable care' to be taken when assessing IR35 status. Blanket banning by its very nature means the firms themselves will fail HMRC scrutiny for failing the 'reasonable care' test.

Our firm is currently contracted to provide services to a UK bank and the temporary project has been running for over 2 years. We're providing interim operational management on a massively important and regulatory driven remediation project. The client has had to take on numerous specialist interim staff to resource the project, partly due to a lack of sufficiently skilled employees, and partly due to the fact that once the project is complete they will no longer need this resource and can shed it without any recourse to employee rights or costs. The Bank has recently issued a blanket ban approach to all PSC Ltd Company contractors from the end of February 2020. The agency with whom we negotiated the initial contract is giving us two options – either join up with one of their nominated umbrella companies or leave the contract at the end of this month.

This blanket ban approach also effectively renders meaningless the exemption that was supposed to be protecting small companies from recruiting and supplying services of specialist contractors via their own PSCs.

The primary objective of the new rules is on the basis that Firms would now pay Employer's NICs and Apprenticeship Levy on top of the fees paid to contractors whose engagements are deemed inside IR35. Taxation Law dictates that these employer taxes cannot be deducted from the contractor's fees, because if they are inside IR35, contractors are deemed employees and their fees must now be treated as employment income. However, our agency's nominated PAYE umbrella company, our upcoming 'employer for tax reasons', will deduct employer NI and Apprenticeship levy from the rate agreed in the contract, and that's currently being paid to our PSC company. This not only means an automatic reduction in our usual pre-tax earnings of around 34% but the end user Firm pays no extra tax. This is not only against Taxation law but completely against the spirit of the IR35 revisions.

We've asked the agency and the umbrella company as to why they are reducing the contractual pay by the amount of employer NI and App levy as this is in breach of both taxation law and the Social Security Contributions Act. The agency has so far refused to reply, and the umbrella company has responded saying "this is the way we work and if we don't like it we can choose to resign our contract". Not the professionalism to be expected from respected businesses, but do they really care? All additional tax cost is being forced onto the contractor and

they are relinquishing any responsibility to providing any employee rights or benefits and to this extremely complex issue. Their decision is based on the conception that this change is not going to cost them anything, or is it?

As news reports confirm is about to happen across many sectors and industries, this drop in income and enforced no-rights employment is likely to lead many of my fellow PSC contractors to not renew their contracts from March. Firms will need to recruit and replace the lost resource otherwise their project timelines and deliverables will not be met, and certainly not within budget. Surveys show, like with our current client bank, many will take the likely course of action of outsourcing the work off-shore, hence even less revenue for HMRC.

So, personally, we find ourselves in a very unfortunate and highly distressing position. We're being forced to either continue to provide our services with a huge pay cut (by being forced to pay both employee and employer tax paying without any corresponding employment benefits or rights) or resign the contract and look for other contracts. This decision is made extremely difficult on two counts:

I contracted a rare form of meningitis in 2017 and could not continue with my project and our earning power was severely restricted.

As contractors, without any employer sponsored benefits, we take this risk and cover the costs of provision of all those other risks and benefits that do not apply to employees (pension benefits, sick pay, maternity/paternity pay, holiday pay, training, employee rights, and with the added unforeseen breaks in work, insurance and other business service costs).

If we take the enforced PAYE umbrella route, we will pay all employee AND (illegally) all the employer taxes with no corresponding employee benefits.

I find this wholly unfair but we need to continue to earn to pay our bills so we're not forced to claim unemployment benefits (something I've never needed to do).

If we continue our current contract, on the blanket-assessed on-payroll basis, we may now also have to face the additional consequences of a historic tax investigation when we've paid all relevant taxes as due.

HMRC issued a recent "promise" not to pursue contractors for historic tax if they moved to being inside IR35. ESM0117, updated on 10th Feb, contradicts that. As stated above, the Financial Secretary of the Treasury said a few weeks ago that he had no evidence of blanket decision making,

despite two campaigners confirming that he has all the information to show that this is happening. I am mindful of the Loan Charge issue, where HMRC have circumvented normal tax enquiry windows and had a second bite of the cherry, with no access to court, causing misery for tens of thousands of contractors, including some suicides.

Has HMRC considered the unintended consequence of creating this new form of No Benefit, No Rights Employment? Some firms are already changing the status of parts of their current workforce to this new status to generate internal savings and remove the burden of employee rights.

We will hopefully find a new contract but at the moment everything is completely up in the air with no Firms in our sector fully understanding or applying IR35 anything like the way it was intended and it won't have the desired effect HMRC hoped for. Until then, we'll cut our cloth accordingly, cutting back our spending for the foreseeable with the knock-on effect to our local economy. Notwithstanding the fact we'll not be earning or paying taxes to anywhere near the level we have been in the past, we were also going to renew one of our cars, but that's now on hold depriving the motor trade of much needed new business. We will also not need the services of our accountant.

This roll out must, at the least, be suspended until all Brexit related uncertainties have been removed from the economy or I'm fearful that the majority of firms who use interim freelance specialists to help their businesses thrive will face major upheaval at precisely the wrong moment. This is especially so in our own financial services sector which plays a most important part in our economy.

Determining tax status of workers

Firms, especially in the financial services sector where we operate, have shown they are not even considering assessing their interim workforce staff and are blanket banning. This maybe partly due to not being clear as to the technicalities of the tests for determining employment or it may be due to CEST being proven to be wholly inadequate, e.g. it will incorrectly generate an "outside IR35" assessment based on a substitution clause that has not been exercised. HMRC refuse to release CEST test data to demonstrate that the tool is accurate.

HMRC declare they will stand by the CEST output, however, in one recent court case involving a public sector worker, they stated they would not stand by an outside IR35 assessment in that case. Rules to suit themselves; they lost that case. CEST's results do not align with case law as shown by the 17 IR35 related cases over the last 10 years. HMRC has been defeated in all but two and ironically, the horrendous cost of their defence has been funded by the taxpayer.

In respect of the CEST test for determining employment for the purposes of these rules being sufficiently clear, the HMRC manual (which can be used as an alternative to CEST) notes that it is "… *not just a question of undertaking a mechanical exercise of running through items on a check list to see whether they are present or not"* i.e. precisely what the CEST tool does.

It continues, *"Moreover, not all details are of equal weight or importance in any given situation and they may also vary in importance from one situation to another."* It defies belief how the tick-box generated CEST results can be judged as 'sufficiently clear' when HMRC's own guidance completely contradicts this.
No wonder Firms are deciding to not apply the rules as intended and are blanket banning to avoid using CEST for proper tax status assessments.

Policy objectives and wider context

As evidenced above, I do not believe the Bill as drafted will achieve the Government's objectives of generating more tax. The unintended consequences are many (blanket banning, lost productivity, offshoring, missed regulatory project deadlines, no benefit employment status, Brexit competitiveness).
Although it is impossible to financially compare like-with-like the tax bills of a freelance contractor with an employee (who has all employee related rights and benefits provided) it has been shown that since the revision of the dividend tax a few years ago, freelancers do not generally pay any less tax than an employee with equivalent earnings. If HMRC would care to conduct a proper assessment of this fact they too would find this and determine that the additional turmoil caused in the private sector caused by their proposed bill is just not worth it, especially at this time.

Why not merely introduce a new 'contractor' specific hirer tax levy (x% of invoices raised)? So simple to administer without the turmoil or unintended consequences detailed above.

10 March 2020

Michael Hedges

I am writing as a person with over 25 years of experience working with, in, hiring and supporting consultancy businesses operating in the U.K. My own business supports Financial Services organisations (including Retail Banks, Corporate & Institutional Banks, Investment Banks and Insurance

companies), Publishing, Telecommunications and Public Sector organisations.

There are many issues with the new rules, however this evidence relates to just one example (there are many others that I could share): "Resource Augmentation" contracts. Below is a summary of my first-hand insight and experiences over the past two years of how the new rules have affected the Public Sector and will impact the Private Sector.

I summarise for you, from first-hand experience, how and why these contracts are proliferating due to the new rules. How and why these contracts, incentivised by the new rules, are not beneficial to either the client, nor to the U.K. productivity, competitiveness or tax revenue. I also demonstrate the unequal impact to companies, solely based upon size.

1. Resource Augmentation Contracts

Despite the introduction of the new rules in the public sector, a type of contract, referred to as "resource augmentation" continues to operate. They operate in the Private Sector as well, so this experience can be extrapolated forward from April 2020.

Over the past 12 months, the use of these has proliferated as clients become more risk adverse to hiring "contractors". Indeed, "contractor avoidance" by using resource augmentation contracts has, in the past few years, become a major selling point for the medium and large consultancy firms. Small consultancy organisations are effectively excluded from this market as they are seen, just by size alone, as being potentially "inside IR35" and therefore a risk. In just one organisation, up to 100 U.K. staff have been replaced by these types of contracts. The staff replaced may be a client's permanent staff or contractors who were operating outside IR35 under CEST tool determinations.

2. What is a "resource augmentation" contract ?

It is where a supplier organisation will provide the client organisation with any number of named resources (can be one person or many people), on a fixed daily rate per person, and sometimes even with the number of hours to be worked, the location of where they are to work.

These contracts run for fixed periods of time and there will sometimes be a notice period, usually 14 or 28 calendar days. There is usually no tangible or intangible "delivery" that can be demanded by the client in these contracts. There is no liability or risk to the supplier, except if a resource fails to turn up for work and so the supplier will not be paid. For example, the resource augmentation contract will simply specify resources with a skillset – it looks like a classic job description, but with less onerous demands than if it was for a permanent employee hire.

The supplier resource is managed on a day-to-day basis by the client line manager. There is no liability to the supplier for the capability of the resource to do the job the line manager requires, nor is there any liability on the supplier for the quality of the work, nor is there any liability to the supplier to rectify any defects caused by the supplier resource, for any reason.

The supplier resource will have to use equipment, software and services provided by the client for their work. To quote a supplier: "if you want them to make you tea all day, they will. It's up to you what they do. It's nothing to do with us. You just pay us each month."

3. Disguised employment – an unequal arrangement

As can be seen, resource augmentation contracts are, in fact, disguised employment by the client of the supplier resource by almost every measure that the CEST tool has.

Every contractor or small consulting organisations that contracts on this basis would have the contract assessed as "inside IR35" and the client would not employ the resource as an employee from the contractor or the small consulting organisation. They would be compelled to hire and pay the supplier resources on a PAYE basis.

This is also true now, from personal experience, in the Private Sector, with banks like HSBC forcing blanket assessments on every organisation (from Personal Service Companies to small consulting organisations) except those who are on their preferred supplier list (read on for more information about this).

However, clients and HMRC allow medium and large consulting organisations to supply resources like this all the time, without consequence or risk.

4. How are small businesses (including contractors) excluded from being considered for this type of contract ?

Before the introduction of the new rules in the Public Sector, the client could go back to using contractors, with specific outcome-based (better for supplier and for client) contracts, to replace any failed resource augmentation contracts. And often did. However, with the new rules, that competition is now eliminated from the marketplace due to client risk aversion. Of course, the clients could request resources from alternative suppliers, however in practice, due to the many other challenges of dealing with medium to large consultancies, a client will have a very small number of "preferred supplier" consultancies. Therefore, the number of competitive suppliers will be very small (usually there are very few companies on the list).

Why can't a small consultancy get on a "preferred supplier list"? Simply put: clients find it very difficult and, therefore, expensive to control medium to large consultancies. Medium and large consultancies will have budgets to hire salespeople and sell into any and every conceivable part of a large organisation. If client's do not have a preferred supplier list for the big consultancies, the loss of control (costs and risks) can be catastrophic for the client. So, the answer for them is to have as few as possible.

Small consulting businesses and contractors are excluded from this market due the time, effort and cost to get onto a preferred supplier list for a large organisation. I know of organisations that have tried for years and spent vast sums of money, and still never get onto a preferred supplier list.

5. How the supplier makes a profit

The price charged to the client for a supplier resource will include a significant "margin" on top of the gross pay rate of the resources supplied. This margin can be as high as 50% to 60% of the total price charged to the client.

Therefore, to make the prices comparable to a client organisation's permanent staff or contract services, the supplier will use a lower skilled / lower experience / lower capability resource.

Ultimately this model costs the client organisation more than a contractor would. Often, multiple supplier resources will be required to replace one contractor (or permanent staff member). To ensure you have a supplier resource that matches the same skill / experience / capability level as a contractor will require a more expensive resource.

6. High cost to the U.K.: loss of tax revenue and loss of competitiveness for U.K. businesses

It is safe to say the client will pay the similar or, usually, more in costs to the supplier compared to the amount they would pay a contractor. So, a U.K. based client will have a larger cost base on a "like for like" basis.

Further, a consultancy will look to make a 50% to 60% margin on a resource. This margin is comprised of the following:

- Operating overheads (finance, legal, marketing, business development etc)
- Target profit margin

Where are the operating overheads? Well, most medium to large consultancies will have offshore support functions. So much of the operating cost goes offshore, along with the jobs.

Where does the tax on the profit go ? Firstly, to give an indication of the size of the profit margin, I know of consultancies that target a 40% profit margin.

Where is the tax paid? Many medium-to-large consultancies are not U.K. based companies and will therefore see large percentage of the taxable revenues go outside the U.K. A loss of tax revenue to the UK.

The employee and employer taxes, assuming the employee is a U.K. resident for tax purposes, will be much lower than a permanent resource or a contractor (comparing the total taxes a contracting business would pay) because their rate of pay is much lower. In many cases the supplier resources are shipped into the U.K. from offshore and be sent back to country of origin periodically, only to return to the U.K. again later when convenient for tax purposes.

7. Conclusion

The result of the new rules forces U.K. companies into these types of arrangements at the expense of a highly skilled, U.K. based, flexible contracting workforce, decreasing their competitiveness.

Going forward, I would expect to see former U.K. contractors being forced into agency type work for these large consultancy businesses and be themselves sold on to clients under these resource augmentation contracts. However, this will be at a lower pay rate for the agency worker, they will be less able to invest in their own skills (further reducing productivity) and with lower tax revenue for the U.K. economy.

25 February 2020

Steven Harrison

Please accept my humble submission to your call for evidence regarding the recent changes to the HMRC regulations and guidance surrounding IR35.

I am a directly affected individual, as I am a small business owner who provides contract services to both public and private sector organisations. My particular type of services focuses around ICT infrastructure design, though I do understand that this legislation affects workers and small businesses' across many sectors of the economy so I hope my comments will be general enough in nature that they can be applied to the whole, and not only to my own personal circumstances.

In all while I understand and appreciate the impetus of HMRC's actions surrounding this sector of the economy, I must state openly that their

execution has been extremely poor. My comments shall focus on how this execution could have been improved, not on a non-sensical call for the law to be scrapped in its entirety.

I have addressed my submission directly to each of the questions in the call for evidence and are numbered accordingly

Existing measures in the public sector

1. My experiences of the existing measures in the public sector have shown me that they experienced (and indeed continue to experience) much of the same pain now being identified by the private sector. While some hiring managers are able to correctly navigate their way through the status determination statement (SDS) process; it's clear that they only do so when they are unable to progress their project by any other means. While it is true that the "blanket inside determinations" have come to an end, there are still a disproportionate number of roles which are deemed inside when they are in-fact project based roles which should be deemed outside. I think at the heart of the problem is that the rules to determine a particular role's status are too complex and too open to interpretation. In that sense I do not think the lessons were learned, rather the same mistakes are being repeated in the private sector. Instead clearer objective outcomes-based rules are needed.

Impact of new off-payroll rules on organisations

2. **It is safe to say that the impact of the off-payroll rules haven't been assessed at all!** I find what HMRC often fails to understand is the different nature of the private sector vs the public sector. While the public sector can be said to be motivated for the common good (including the taxpayer), the private sector is by its very nature motivated by only one thing – maximising the return on capital for the shareholder. If a rule or regulation provides them with a means to do less, spend less, take less responsibility and deliver greater returns – they will! That is exactly what has happened here. Rather than take the "duty-of-care" to properly assess workers, because they have been legally allowed to skirt this responsibility without penalty or risk to their profits, **they have simply taken the simplest most cost-effective route to compliance – by discriminating against all small businesses!** HMRC needs to understand that there is no shared "burden" of

compliance. The government is the only entity responsible for compliance, private organisations are responsible for profit. They will only show interest in compliance when it directly affects their profit, therefore **being "compliant" must equate to being more profitable**.

3. The exclusion for small businesses, in its current implementation, is effectively an irrelevance. While small businesses are able to freely engage with other small businesses, because many of the larger private sector organisations are trying to extend their ban on small businesses to the entire supply chain the small business exclusion is largely negated. **This amounts to wilful and HMRC supported discrimination against small businesses.** There should be no difference engaging with a large consultancy for a work package vs engaging with a small one-person business for the same work package. Today businesses are being allowed, some would say even encouraged to make exactly this type of discrimination commonplace. There is no need to follow a "Status Determination" process or use the "CEST" tool when they award a contract for services to a large well established consultancy, however if they are awarding it to a small business with perhaps only a single owner/operator (as there is legally no such definition with Companies House on a 'PSC' this is a meaningless label) they are being told they must apply this additional burdensome check process and face penalties if they assess wrongly. It is therefore no surprise that private sector businesses are thusly trying to force small business out of their entire supply chain, even when they may otherwise find work via a larger consultancy firm.

4. The effect on contractors relating to these measures is dramatic. Rather than contractors being able to flexibly and freely form their own small businesses and trade with the UK business market – many are finding themselves forced down the route of "agency workers" where, due to the separate issue of the weak regulations around agency workers in general, they find themselves treated markedly worse than full time employees with no benefit at all to themselves and no ability to control or influence their treatment.

5. There is a tremendous scope for simplifying these measures. The most obvious and easiest step that can be taken is to eliminate the CEST tool and the complex status determination process and

instead replace it with a simple binary test to determine a role and an individual's status. This test, done correctly, would mean that both parties, engager and service provider receive an improved negotiating position in respect of the role.

a. To expand further on this, do not use a "points-based" assessment as this will always be subject to manipulation and abuse. As stated above, the private sector will do everything it can to abuse flexibility to enhance profitability – it is their function in the marketplace.
b. The use of a binary test says "if your answer to any of these questions is yes, the role falls inside IR35". This means that as soon as the first yes which neither party can negotiate to agreement ends the status determination and yields the result of "inside"
c. An example of some simple, non-negotiable binary tests would be:
    i. Does the role have an expectation of set hours and location of work?
    ii. Does the role focus on time worked vs delivered outputs?
    iii. Does the role permit non-negotiated changes of work?
    iv. Does the role provide any "corporate benefits" which would not be extended to all suppliers?
    v. Does the role include management and supervisory control of other workers?
d. Some of the current CEST rules are immaterial to the determination of employment status and need to be removed. For example:
    i. **Right of substitution does not apply**. If I want a specific barber to cut my hair he/she cannot demand that a different barber will carry out the service. I, as the engager of the service, have every right to refuse to be served by the other barber! The right to demand work be carried out by a fixed individual does not form an employment relationship.
    ii. **Contract concurrency and length of service does not apply**. Consumers and businesses alike have many contracts that work back-to-back for all manner of services (electricity, gas, telecommunications). The right for a service taker to order additional services

from the same supplier does not form an employment relationship, providing the other meaningful tests can be passed; i.e. the subsequent service is clearly defined and not simply "additional time".

iii. **Full time work does not apply**. Many businesses will go through periods where they have only one substantial client. This is a business weakness, however it is not a test for employment. How many organisations do nothing other than supply government? Does that make them all "government employees"?

Determining the tax status of workers

6. No, the tests are very indiscriminate and uncertain. See the points above, particularly 5d, many of these so called "tests" within the CEST tool have nothing to do with employment status and allow businesses to make false determinations prejudicially against legitimate small businesses.

7. Again I must stress that the CEST tool is simply not fit for purpose. If a tool is required to determine employment status, then employment status is simply not defined clearly enough! The correct answer is to fix the definition of "employment" to something which is in agreement with UK employment law and has clearly defined separation with UK contract law. This should be a black-and-white determination, not a matter of any considered opinion or any number of factors combined together.

8. **There are no safeguards allowing decisions to be challenged!** Again HMRC has fundamentally failed to understand the nature of private enterprise. If a role is deemed inside and the small business service provider disagrees, what recourse do they have to challenge the determination? Can they force the engager into binding arbitration? Is there some fine or penalty for the engager for wrongly assessing the role as inside (there are penalties if they wrongly assess as outside, but this penalty is not bi-directional)? Is there some independent contract awarding body that they can appeal to? No – again there is no recourse. The small business simply looses the work because of the decision of the engager and is forced either to accept unfavourable working terms to provide for their family; or forced to find other work. Ultimately the issue is

that employment law does not apply and contract law does not have provisions for businesses "unfairly refusing to award a contract".

Policy objectives and wider context

9. Yes there are much better ways for the policy objectives to be achieved. Ultimately**, I believe the objective is to ensure equal and fair treatment of workers.** This however is a two-way obligation, the obligation HMRC is focused on is for the benefit of the taxpayer. There is however also a second obligation that has been missed entirely, the benefit of the worker. **If the issue is truly one of fairness it must be for both parties, the taxpayer and the worker**. The answer therefor is to strengthen and clarify the definition of "employment", particularly around such issues such as "mutuality of obligation" as has been clearly identified in the many cases HMRC has lost through the courts around IR35. **It is worth considering this point in isolation, the tremendous waste of taxpayer resources with all of the cases coming before the courts, most of which have been ruled against HMRC.** If the rules and definitions around employment were clearer there would be no need for such a gratuitous waste of the court's time.

10. No, as drafted and implemented the bill will work completely counter to the Government's objective. The objective here, I believe, is fair treatment of workers, specifically in respect of taxation. Instead what will happen is workers who should be on payroll at a particular level of compensation will be on payroll at a much lower level of compensation (thereby affecting the related NIC and income tax contributions) and a significant part of the workers' gross compensation taken up by long chains of agencies and umbrellas as "corporate profits" continuing the same diversion of legitimate NIS contributions to corporate profits while simultaneously harming the worker's income earning ability. Other "businesses" (which are not workers in the strict sense) will find their profitability and their ability to generate income and contribute to the wider economy through corporate rates, VAT and other business activities will find themselves significantly harmed.

11. I would strongly question the 'value' represented by umbrella companies. While temporary staffing agencies are well understood,

an umbrella company seems to be a largely undefined, poorly regulated method of taking advantage of the self-employed. There is absolutely no reason that agency work (off-payroll employment) cannot be managed in a way that does not necessitate adding yet another step in the supply chain profiting off of the efforts of the worker without themselves contributing material time, effort and resources to the benefit of the wider economy.

12. Increased worker flexibility and treatment for taxation are two interwoven and complicated issues. I have already addressed the issue of fairness to the worker; that anyone deemed an employee should by definition receive the same treatment regardless of their working relationship. That however is an over-simplification. In the gig economy it may be true that a worker chooses to increase their flexibility in exchange for sacrificing some benefits. This freedom to exercise choice cannot and should not be ignored. The challenge therefor is ensuring that this freedom of choice does not unfairly disadvantage any group. So when the question becomes "is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?" you've not asked the whole question. Tax is but one consideration, if they have received something else which is of equal or greater value to them than "the rights of employees" then it's absolutely fair. The key is that the worker must have the right to choose their treatment. If the system is crafted in such a way that a worker's rights are infringed or restricted in some way without recourse (as has been done with the current IR35 implementation) then this is what must be avoided.

13 February 2020

Helen Hibberd

I would like to provide details about my experience regarding the IR35 legislation and the impact that it is/will have on me, which you can hopefully use within your review.

I am a Contractor currently working within financial services at a large high street bank. I pay tax both on a personal basis and through my company in the form of Corporation tax.

I am aware that there is a questionnaire/tool that has been created to establish whether contractors fall within the IR35 review or not.

However, the bank that I am working for, along with the other major banks and large organisations have decided to ignore the tool and apply a 'blanket' approach classing all contractors as within the IR35 regulation - no matter what their individual contract consists of.

As a result of this, we have been given two options:

Register as an employee with an Umbrella company

Terminate our contract

Going forward, as a registered employee with an Umbrella company, I will pay the following:

A weekly administration fee to the Umbrella company

PAYE

National Insurance (Employee)

National Insurance (Employer)

Apprenticeship Levy

I will still be on Contractors terms and conditions - a maximum contract length of 3 months at any one time with a 5-day notice period. The only benefit that I shall be entitled to is statutory sick pay.

Regarding the IR35 legislation, I have read on the 'gov.uk' website, that:

"The rules make sure that workers, who would have been an employee if they were providing their services directly to the client, **pay broadly the same tax and National Insurance contributions as employees**."

As you can see from the above, I will not be paying 'broadly the same tax and National Insurance contributions as employees'. I will also be paying the Employers National Insurance and the Employers Apprenticeship Levy as well. I will be paying more than twice the amount of tax that 'employees' will be. I also have to pay an additional administration fee simply to get paid. Yet I receive no employee benefits and no surety of employment.

Overall, I feel that the intention of this bill has not landed at all effectively. The intention was to make large companies more responsible for employees contracting with them.

All that has happened is that they are continuing the same. These large organisations are passing the buck of all the financial obligations down to the individual contractor - this surely was not the intention of the IR35 ruling?

It will have a massive impact on me as an individual and my family. My Accountant estimates I will be around 30% worse off as a result.

I urge you to reconsider regarding the IR35 regulations.

10 March 2020

Sarah Hickey

Question 1 - What has been the experience of the new off-payroll rules in the public sector?

1. Sarah works as a Human Factors (HF) Practitioner, through her Limited Company (SLH Ergs). SLH Ergs has been providing a consultancy service to clients in safety critical industries, such as MOD, Nuclear, Rail, Aviation and Oil & Gas since 2007.
2. One of SLH Ergs current contracts is to provide HF Consultancy to a major defence contractor. Sarah is delivering the HF consultancy into a number of build projects that will deliver the facilities required to build the new generation of product. These projects are temporary and not part of the core business of the hiring company.
3. The SLH Ergs contract is through an agency company, as dictated by the customer.
4. The SLH Ergs contract has been reviewed, along with the agreed working arrangements and practices by an independent IR35 Tax Consultant and found to be clearly outside IR35.
5. A recent customer blanket CEST assessment of Sarah's IR35 status has deemed her inside IR35. This blanket assessment was challenged through the customers appeal process and the appeal was rejected, even though SLH Ergs could provide undisputable evidence that some of the CEST answers input by the customer were incorrect. The customer made no effort to consult with SLH Ergs to gather the evidence or information that would be required to make an accurate IR35 assessment.
6. The customer will terminate the SLH Ergs contract on April 5th 2020 and from that date SLH Ergs will no longer be able to support the build of critical infrastructure for the customer. This is very upsetting for Sarah as she has built up years of knowledge and experience that, when she no longer supports the project, will be lost. SLH Ergs and Sarah were committed to the delivery of these major infrastructure

projects and to trying to maintain the future customer delivery schedule.

7. As SLH Ergs has a number of clients and will continue to offer HF services out across critical industries in the UK and wold wide, it is not financially viable for SLH Ergs to allow Sarah to work under a personal contract with the customer (inside IR35) and so can no longer support the customers critical projects.
8. The IR35 assessment undertaken by the customer was incorrect and not based on truth or evidence. All contractors being incorrectly classified as inside IR35 allows the customer to use cheap labour taxed at source resource without any rights as employers and with no commitment to cover costs of sickness, holidays, pensions, training, traveling for long distances to support clients etc. This has created a working arrangement where individuals will be taken advantage of.

Question 2 - Impact of new off-payroll rules on organisations and
Question 4 - What will be the effect of these new measures on a chain of contractors and subcontractors?

9. SLH Ergonomics is a small organisation and relies on short term contracts to supply a consultancy service, the attitude of major businesses to de-risk themselves by making all contractors inside IR35 will destroy the industry that SLH Ergs operates in. SLH Ergs supply specialised skills that are often not required within a business on a permanent full-time basis. The change to the application of this rule will destroy the business. A business that pays its taxes.

10. Sarah is a lone parent raising a 10 year old son with only her income, she works part time and flexibly for her clients to support delivery of agreed scope of works remotely, visiting customer sites as necessary to collect data or attend meetings. Sarah and her son's life and living arrangements, and her ability to parent her child, relies on remotely satisfying her customer contract. Working under a personal inside PAYE contract would mean an end to this life. If Sarah were to work for a business as an employee they would demand that she travel away from home for longer periods, without any way of compensating for travel expenses, on a lower income and with less flexibility for part time working and working for multiple clients. As of April 2020 Sarah has no contract or income and no way of paying her mortgage. **This is causing significant stress and is impacting her mental health. Sarah is being bullied and held to ransom to sign inside IR35 contracts (currently other potential customers are taking the same stance), even though her contracts and working arrangements have been, and would be, clearly and demonstrably outside of IR35.** The customer has used CEST to do

assessments, using poor and incorrect information in a tool acknowledged as not taking account of important IR35 criteria, applied by people not qualified to make an assessment. It's clear that the customer assessment and appeals process has no apatite to find any contractor outside IR35.

Question 6 - Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? And Question 12 - How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

11. Obviously not! The IR35 assessment undertaken by the customer was incorrect and not based on truth or evidence. All contractors being incorrectly classified as inside IR35 allows the customer to use cheap labour taxed at source resource without any rights as employers and with no commitment to cover costs of sickness, holidays, pensions, training, traveling for long distances to support clients etc. This has created a working arrangement where individuals will be taken advantage of.
12. Do they reflect the reality of the contracting environment? No. The way in which SLH Ergs contracts to their customers is a true contracting relationship outside of IR35. The way the customer is applying this blanket assessment does not allow SLH Ergs to be a contractor outside IR35, even with the weight of outside IR35 evidence.

Question 7 - What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved? 8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed? Policy objectives and wider context

13. The CEST tool does not allow the detail of particular contractual arrangements to be well considered. It is then being applied inconsistently by people not qualified to use it. There are massive inconsistencies in the assessment answers amongst contractors working alongside Sarah. It looks very much like the customer is inputting the question answers that suit them to get an inside verdict.
14. The customer appeals process refused to even consider undisputable evidence that some of their answers were wrong, or to

consider that the CEST tool does not take into consideration some of the undisputable evidence of Sarah's position.

25 February 2020

Paul Hill

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

1 – Response - The IR35 public sector lessons have not being learnt or considered. The HMRC published financial gains within the public sector due to IR35 have not being compared/viewed against the losses to publicly funded projects where the forced application of IR35 has resulted in the entire contractor workforce been lost mid project flight, leading to shutdown and/or rework of the project, the lack of available skilled resource, cost increases and the need to fill the gap by engaging the 'big four' consultancies at vastly increased cost to the public purse.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

2 – Response - No, it has totally been left to the private company to perform assessments at their own risk, often without inclusion of the contractor(s)

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

3 – Response - Small organisations are effectively easy pickings for HMRC to pursue with a view to prove incorrect determinations, because unlike the multi-nationals such as Amazon or google they are unable to call on an army of top barristers to face HMRC and win.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

4 – Response - They are and continue to result in putting contractors and subcontractors out of work. While the work/engagements are in some cases still on offer the engagement cannot be accepted past the commence of IR35 in April if deemed by the Client to inside IR35 often via floored assessments. This is due to the spectre of retrospective taxation by HMRC which is being let "run rouge" and pursue back taxation on law abiding contractors who previously worked honestly paying all due taxation within existing tax law. Only now to find HMRC saying they were actually all along within IR35 with the determination of now being inside IR35 forming material evidence for HMRC. The burgeon to pay 'back taxes' being on the contractor for all periods pre-April 20.

Many fellow contractors and I are being forced to give up working for our existing client due to a wrongful determination of being inside IR35 following the outsourcing of the assessment to a third party. This will impact my livelihood at time when many other contractors are also finding themselves out of work along with my client whose business model is totally dependent upon contractors in key functions.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

5 – Response - It is not so much a case of what HMRC can do as what boundaries should be set on the HMRC to stop them running riot, being inconsistent and vague. Legislation is needed to stop the retrospective persecution of contractors who honesty operated within tax law without constructs or deceit. It is akin to having a road with a 50mph speed limit with enforcement cameras and five years later the speed limit is reduced to 40mph. It is then decided that limit should always have been 40mph and as the enforcement cameras have pictures of all law abiding drivers who drove at 50mph or less but above 40mph over the last five years, it is then possible to go back and fine all these additional drivers!

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

6 – Response - The tests are not sufficient. HMRC guidance is vague and open to interpretation. Allowing HMRC to apply it as it sees fit on a case by case basis. This is leading to clients being unable to draw clear conclusions, while running scared of falling foul of HMRC. Hence they are imposing blanket bans on contractor engagement or making totally incorrect assessments. Impacting both their business, the contractor's business/livelihood and ultimately the economy as the flexible workforce is eradicated from the marketplace.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

7 – Response - While the CEST tool has been improved, HMRC state it is only for guidance and so does not stand up in court and from previous court cases have shown HMRC to interpret the questions/result to suit their objective. The CEST tool result clearly stats it only "suggests a working status" of in or outside IR35, not a definitive answer.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

8 – Response - There are no safeguards. Contractors are left to whims of the organisation, consultancy or advisor body who performs the IR35 assessment. Once a determination is made often without involving the contractor directly any appeal or challenge is useless as the client determining the status is so worried of being fined by HMRC. Hence it leans/steers towards contractors being inside of IR35 and hence makes grossly wrong determinations. Not helped by HMRC's woolly guidance. Having found myself on the receiving end of an IR35 determination based on grossly incorrect understandings of how I work with no input from myself and effectively no form of redress.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

9 – Response - No, they should be scrapped, and a complete rethink commenced involving the contractor professional bodies/organisations and contractors. Current IR35 proposals intend to levy taxation as an employee while employment rights are based on that of a contract worker and hence are non-existent.

10. Will the Bill, as drafted, achieve the Government's objectives?

10 – Response - If the objective is to destroy the UKs flexible workforce, cripple the "gig economy" and ultimately loose tax revenue then yes it will.

11. What is your view of the role of umbrella companies in the context of these proposals?

11 – Response - Umbrella companies see the proposals as an opportunity to 'milk' contractors. They take tax, employees and employers NI all from the contractor income plus take a fee while not protecting the contractor from retrospective taxing from HMRC and not providing holiday pay, sick

pay, pensions or any form of benefit or employment rights. While intermediate agencies between contractors and the end client are using non-solicitation/non-compete clauses to channel contractors into the arms of their preferred umbrella suppliers, which I am now experiencing first-hand.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

12 – Response - The "gig economy" is effectively crippled/mortally wounded following the implementation of IR35 and will disadvantage the UK at exactly the time it needs a flexible workforce due to Brexit.

It is totally wrong to tax like a permanent employee but provide zero benefits and rights. Especially as many experienced contractors like myself are over fifty years of age and were forced into contracting following a loss of permanent employment, as employers are reluctant to employ older more expensive workers on a permanent basis. Hence these measures are not only impacting the economy and companies of all sizes but my ability to generate a livelihood to pay my mortgage, my bills and contribute to a pension.

13 February 2020

Paul Hindhaugh

1. I write to you today as the Company Director of PH IT Solutions Limited, a small IT professional services company incorporated in 2015 that is now likely to cease trading as a direct result of the implementation of the off-payroll working rules to large and medium-sized businesses in the private sector.
2. I am currently the sole employee of this company and alongside my Company Director responsibilities, I provide consultancy services to customers as a subject-matter expert (SME). My areas of specialisation are IT infrastructure, identity services, cloud and cyber security. I have over 20 years of experience in the IT industry and hold a B.Sc. Computing degree along with multiple technical certifications from Microsoft and the CISSP security certification from ISC2.
3. For the past 2.5 years, I have been providing these services to one of the big 4 accounting firms and their customers. The majority of that time has been spent dealing with the aftermath of the 2017 WannaCry & NotPetya cyber attacks that had a catastrophic impact on UK public and private sector organisations. Mainly this has been for a single organisation, but I have been called upon to provide guidance to my

customer's teams at 3 other organisations that had been subject to a cyber attack. Specifically, my skillset helps organisations recover from these cyber attacks and deploy effective security controls to better protect them from future cyber attacks.

4. ***RE: Impact of new off-payroll rules on organisations – What will be the effect of these measures on a chain of contractors and sub-contractors?*** My immediate customer assesses that over 95% of their contractors will be classified as inside IR35. I am still waiting my Status Determination Statement, but based on other colleagues providing similar services I expect they will classify me as inside IR35. I will then have 2 options – continue to engage through my Limited Company, which may restrict me from providing consultancy services to some of their customers; or become an "employee" of one of two specified employment companies (umbrella companies). The services that my company provides are targeted at large businesses, many of whom will make a similar assessment as my current customer or refuse to engage with sub-contractors who are part of a Limited Company. It is highly likely that I will have to cease trading. I will therefore be unable to grow my business as intended.
5. ***RE: Determining tax status of workers – Are the tests for determining employment for the purposes of these rules sufficiently clear to both the engager and worker? Do they reflect the reality of the contracting environment?*** The tests are not even sufficiently clear to HMRC, as evidenced by the numerous legal cases they have lost in this area. Focusing on one key aspect – Mutuality of Obligations – my customer has no obligation to find or offer me work and neither I nor my company are under no obligation to accept it. The rules do not reflect the reality at all. I am responsible for funding training and equipment that is necessary to develop and maintain the skills and services that my company sell. If I fail to do this, then it is my company and me who will suffer. My customers pay for a level of skill and service that my company is able to provide.
6. ***RE: Determining tax status of workers – What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?*** My assessment is that it is not fit for purpose. Development of any tool or IT system is based on detailed requirements. These requirements then have test cases written against them to determine if they are met. Given that HMRC have lost a significant proportion of the legal proceedings they have brought against companies related to this legislation (but not based on use of CEST) due to their misinterpretation of the rules, how can accurate requirements possibly have been given to the developers of CEST? And how can the test cases therefore prove that the tool is fit for purpose? The answer, of course, is that they can't. The tool provides HMRC with a method to force organisations to assess contractors as inside IR35 regardless of the reality of the situation. The tool requires

improvement but cannot be improved until the rules regarding determination of tax status for workers are rewritten and simplified so that accurate requirements can be provided to the tool's developers.

7. ***RE: Determining tax status of workers – How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?*** At best, with an organisation that properly follows the rules and intent of the status determination process, the status determination can only be as accurate as the CEST tool, which can only be accurate if HMRC properly understand the legislation. It is clear from legal cases that they do not. Therefore, every status determination is flawed. While I am fortunate enough to have a customer who will properly follow the intended process, many others are not. I have a friend who was determined as in-scope of the rules, yet when he asked for the status determination statement could not be provided with one. While in theory it may be possible to challenge a status determination, it will come down to the risk appetite of the engager. Large and medium-sized businesses will not take the risk of incurring significant financial penalties from HMRC for improper status determination statements, so contractors will be given an ultimatum of either engage as inside IR35 or don't engage at all. There have already been multiple well-known banks and other companies that have been in the news because of their decision to blanket ban. What action have HMRC taken against them? None. What penalties are there for organisations that do not properly follow the status determination process? None.
8. ***Policy objectives and wider context – What is your view of the role of umbrella companies in the context of these proposals?*** Umbrella companies will be the only route available to many people impacted by this legislation. My customer is requiring that we only engage through one of two specific companies. I have sent initial enquiries to both of these companies and their knowledge and level of service is appalling. Being forced to become an employee of one of these companies, who provide no real benefit, makes me angry and I feel it is anti-competitive and a likely avenue for corruption.
9. I am completely against these changes and feel they will have a negative impact on flexibility and skills available to the UK market. I pay all taxes required for my company and me personally, which amounts to a significant sum each year; yet this legislation is based on the view that in some way I am not paying my fair share. This legislation ignores the risks and costs associated with operating through a Limited Company and the benefits it brings to UK public and private sector organisations. During my career, public sector organisations including the NHS, HMRC and DWP have benefited from my skills and experience. As the risk of cyber attacks from threat actors including nation states like China, Russia & Iran is on the rise; I expect there will be an increased demand for people with skillsets such

as mine. The impact caused by the poorly thought out and badly implemented off-payroll working rules have left me disillusioned and I am likely to refuse future requests to assist any public sector customer again.

7 February 2020

Robert Hodges

In 1998 I became a freelance IT contractor. Prior to then, I spent 11 years learning my profession until the company for which I worked relocated its operations. This drove me to a life in contracting. Contracts were a plenty for year 2000 and consultants with my skills and experience.

I appreciated freelancing came with risks (no guaranteed continuity of employment, no holiday pay, no sick pay, no company pension etc) but the reward of increased financial remuneration and the ability to choose who I worked for and how were major incentives.

IR35 was introduced in 2000. No-one I knew, least of all my accountant fully understood its implications. In 2003 I was approached by an Umbrella Company introducer who explained that operating my own Limited company (that I'd done for 5 years) was not compliant with the new legislation and that the only way to comply with it would be to use the services of an Umbrella Company. After numerous conversations and lots of research, I closed my Limited Company and joined an Umbrella.

In 2010 I started receiving APN's from HMRC for repayment of EBT remunerations I'd received from my Umbrella company. Week after week, letters and threats of bankruptcy. Years of wrangling with HMRC.

In 2017 the Loan Charge was introduced. IR35 was the cause of me using an umbrella company and falling foul of the Loan Charge. HMRC have issued me with a settlement figure of £460K of unproven debt (a figure I've challenged multiple times and am getting nowhere with).

In the intervening years, roles in my profession have steadily moved off shore with large consultancies hoovering up UK contractor roles and shipping them off to India (predominantly). Contracts have become few and far between for me – I'm having to travel further afield to secure work. There's little continuity between contracts with large gaps in work (months out of work at a time) yet the bills still need to be paid.

I have a house and bills serviced by a contract rate. I have no other assets. I do not lead a lavish lifestyle. I get no sick pay, holiday pay, pension or any other perks. I have not had a holiday in 5 years. My

health (mental and physical) has deteriorated over the years due to the threat of APN's and the loan charge.

In April 2020 the government are rolling out IR35 changes to the private sector. Whilst contracts have become few and far between due to mass outsourcing and off-shoring, the introduction of IR35 into the public sector in 2017 meant contractors left in their droves and took up positions in the private sector exacerbating the problem of very few contract opportunities for me.

I cannot take a permanent role without selling my house. I cannot sell my house in its current state. Renovation work started on it when the company I was contracted to went into administration and it failed to pay my invoices and left me without work again for 5 months. I could and cannot afford to complete the work on my house to get it to a sellable state. I am the single earner in my family and my wife is doing everything she can to secure employment having given up her career to raise our children.

IR35 roll out in April 2020 pretty much spells the end of contracting for me. What alternative do I have? I cannot pay my mortgage and bills on a permanent salary. IR35 expects me to pay Employers NI (why?) as well as Employees NI and PAYE Tax (in other words paying more than a permanent employee would without any benefits – still no holiday pay, no sick pay, no pension, no other perks).

Combined, IR35 and the Loan Charge will bankrupt me. I have been hounded by HMRC for 9 years and IR35 is the icing on the cake. I cannot believe the government cannot see that its not in their interest to bankrupt families such as mine. We will be reliant on state handouts, I will not get a role in Financial Services again (and most likely will struggle to get a job) and the tax take from me will be lost to yet another role outsourced and offshored.

I fear for my future and that of my family and just don't know how much more I can take.

I sincerely hope the Lords Committee reviewing the Off Payroll Tax legislation will see what a crippling effect this is having on me and my family and I'm not alone. There are 000's just like me.

6 February 2020

Andrew Hodgson

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?
I have worked in public sector in fact was engaged by HMRC on an outside IR35 contract, it seems application of the scheme isn't even been consistent within HMRC's own house.

Impact of new off-payroll rules on organisations
2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
The burden of assessment has moved to clients engaging contractors who are making blanket determinations or failing to determine at all. Industry has had insufficient time to adapt and HMRC are dodging their responsibilities here.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?
I can't comment as haven't worked for a client lately that would be deemed as small

4. What will be the effect of these new measures on a chain of contractors and subcontractors?
Effect on contactors is likely to be devastating, I would envisage that there will be casualties of the process due to the levels of stress introduced, this hasn't been adequately assessed. Knock on effects to third party suppliers to the contractor business is also being ignored.
I'm unable to find work close to home doing the job I do, I think it's fair and right that I should be compensated for travelling and accommodation expenses as I have had to travel 6hrs per week and stay over to be at clients site; the role requires this, it's not a nice to have.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?
Fix CEST so that it provides a definitive answer on status in say 99% of cases. Subject to technical requirements I'd be happy to engage on the activity to make the necessary code changes but that would be work outside of IR35!

Determining tax status of workers
6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

At the end of the day the rules are unclear to all but lawyers, hence blanket determinations are being made.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
See point 5.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
Challenging status at this point in time risks clients terminating the contract to save the need for costly status discussions. I personally haven't risked that. Amnesty would need to be guaranteed, bit like whistleblowing….

Policy objectives and wider context
9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
Simpler would be that there should be no middle ground, either a contractor is self employed outside of IR35 or is a PAYE employee with associated rights.

10. Will the Bill, as drafted, achieve the Government's objectives?
In its current form the bill is likely to leave the Government out of pocket due to lost revenue from retiring / leaving UK contractors and the associated stress on affected contractors and their second line suppliers will place an additional unforeseen burden on the NHS.
I'm personally planning to contract in Southern Ireland, resulting in a loss to the Government of 15Kp/a in corporation tax and 19.2Kp/a in VAT receipts, do the maths to scale this up to the numbers affected.

11. What is your view of the role of umbrella companies in the context of these proposals?
See point 9.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
It's grossly unfair, additional tax should come with additional rights.-

21 February 2020

Kenneth Hogg

Existing measures in the public sector

What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

My experience from working within the Public Sector is that organisations are seeking to avoid IR35 in order to be able to recruit contract workers with the necessary specialist knowledge, experience and skills.

Impact of new off-Payroll rules on organisations

Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

HMRC have released little or no information on the assessments they may have undertaken on the introduction of IR35 to the private sector.
Private sector organisations are avoiding both any compliance burden relating to IR35, and the risks burden they envisage from the activities of HMRC in relation to IR35 such as retrospective Tax and NI claims against the organisation by HMRC through discontinuing the employment of contractors.
An unintended consequence of IR35 restrictions will be the elimination of a flexible talent source across many commercial areas.
Organisations are reporting that the imposition of IR35 will severely affect their ability to continue providing services. Just one example is the provision of pharmacy services through locum pharmacists.

Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

There needs to be further reassurance from HMRC that they will not undertake retrospective action against small organisations, as it would only require a small change in number of employees or organisation turnover to bring IR35 within scope.
The imposition of IR35 could create conflict with the Office of Tax Simplification report on simplifying everyday tax for small business.

What will be the effect of these new measures on a chain of contractors and sub-contractors?

There has been a significant drop in the number of contract roles available as the implementation date approaches.

Organisations consider that there are significant risks from HMRC activities relating to IR35, and are instituting blanket bans on the use of contractors.
Much prospective UK employment will be permanently lost as companies offshore activities to other countries.

There will be a significant reduction in contractor legitimate pay.
It is wholly unacceptable that a worker should be defined as an employee under tax legislation and as self-employed under HR/Employment legislation.
There is evidence that the mental health of contractors is being affected by the role out of IR35.

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

The system to increase tax revenues can be simplified by dropping the IR35 evaluation and raising a 'Contractor Tax' that an Employer would have to pay for each contractor employed.

Determining tax status of workers

Are the tests for determining employment for the purpose of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
HMRC do not provide clear information to either employers or workers on IR35. HMRC statements on IR35 are often ambiguous. Information and updates may be placed on the HMRC web site but there are no announcements, so unless one knows what and where to look this information will be missed. There is no guidance within the CERST tool.
It is not sufficiently defined who IR35 assessments should be applied to.
It is not just contractors. The self- employed may now fall in scope.

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? How might it be improved?

The CEST tool cannot be considered acceptable or reliable when even HMRC do not accept the results the tool produces.
Historically HMRC has stated that it will accept determinations made using CEST but this has not been the practice:
HMRC fined NHS Digital for determinations made using CEST
In the case of RALC Consulting Ltd v HMRC- HMRC applied to have the CEST results excluded from evidence
In 17 legal cases on Employment status since 2010 HMRC have won just 2. A full list of all cases can be provided.

The CEST tool should be improved by including advice and guidance within the tool.
The Finance section of the tool does not allow for equipment supplied by the contractor, such as a laptop.
The Finance section includes a question on Materials, but there is no explanation as to how this information will be used in the evaluation.
HMRC have not released nor included within the CEST tool any information on the weighting applied to questions and sections.
Mutuality of Obligation (MOO) is not explicitly covered within CEST.

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

HMRC are in danger of creating a new class of employee / worker. Under IR25 contractors will have no employment rights or benefits. These include no security of tenure, no pension, no sick pay, no maternity benefits, no holiday pay, no training.
The definition of IR35 includes the right of appeal to the employer on employment status determination but no appeal mechanisms have been established. It is very much a case of David v Goliath. Many employer organisations are using blanket determinations which would indicate that the organisations are not prepared to accept any contractor outside IR35.
Employers are not releasing or making available Status Determination Statements. In this situation appeals would not work, regardless of the legitimacy of the appeal.
Employers are disregarding the Duty of Care for IR35 specified in the Finance guidelines.
Employers are disregarding HMRC guidelines on IR35 and undertaking blanket assessments.

Employers are deducting their own tax liabilities from contractor pay including Employer NI and Apprenticeship levy.
Employers do not appear to apply the Duty of Care as identified in the HMRC Employment Status Manual.

Policy objectives and wider context

Are there better or simpler ways in which the objective of the new rules might be achieved? If so what are they?

Current Tax practices for contractors are legitimate and legal. Existing practices allow contractors to maintain their knowledge and experience and be flexible and available regardless of where the work has to be undertaken. Typically contractors currently pay more overall taxation under existing practices than they would within IR35. Factors such as

self-funded training, and working away from home, will disappear under IR35.
To avoid the many pitfalls introduced through the roll-out of IR35 a simpler approach would be to allow contractors to continue current working practices but require Employers to pay an appropriate level of National Insurance and any other taxes due for each contractor that the organisation employs.

Will the bill, as drafted, achieve the Government's objectives?

The bill can achieve the requirement to tax contractors as if they were employees.
The bill will not achieve the requirement to increase tax revenues. Repeated examples on taxation inside and outside IR35 have demonstrated that HMRC tax revenues from contractors, taking into account other taxes such as Corporation tax and Dividend tax, will fall under IR35.

What is your view of the role of umbrella companies in the context of these proposals?

Umbrella companies already provide services to contractors who do not wish to operate through their own limited company and these services would be an appropriate channel for contractors who are determined as falling in scope of IR35. However it is inevitable that Umbrella companies will raise further charges against the contractor, further reducing the contractor income.

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

It is unfair that individuals are to be taxed as employees whilst not having the rights of employees.
HMRC and the government need to get matters joined up. It is inappropriate that a contractor should be defined as an employee for tax purposes and defined as self-employed for employment law purposes.
The implementation of IR35 will restrict the availability of flexible workforces across a wide variety of commercial sectors.
Contractors can have significant outgoings, travelling significant distances and staying away from home to provide their specialist skills. If contractors have to use PAYE/Umbrella it would not be commercially viable to travel long distances.
Contractors will no longer be able to claim legitimate expenses such as travel and hotels and as a consequence will only be able to undertake roles within a reasonable and affordable commuting distance.

Travel restrictions will also reduce the availability of skilled and niche resources to employing organisations.
The reduction in travel and stay spend will have consequences for local economies within the UK.

23 February 2020

Oddgeir Hoiland

IR35 and PAYE for non-citizen, non-domiciled, non-resident Freelancer

I am being hired to work on the Scottish Continental Shelf. Start date middle of March to early April for a 3-12 months gig. (As a specialist chemist/chemical production leader.)

I believe that as a Norwegian, working out of Norway as a Freelancer enterprise, I am out of scope for PAYE. I need confirmation of this to present to Client to avoid being treated as Employed for tax purposes

(UK has treaties which overrules internal law and certainly HMRC's derived regulations.

With a Double Tax Agreement in place to regulate which country my taxes are to be paid to, taxes will arise anyway. Hence UK tax calculation and -payment will offset residence based Norwegian tax calculation. So taxes are not really my problem here.)

Not so for NIC's. NIC's are very problematic.

As a Norwegian citizen living in Norway, I need to pay NIC's in country of residence (Norway) to avoid losing benefit rights as a result of gaps in Social Security payment (e.g. for unemployment benefits and future pensions benefits).

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According to a CEST test today February 24th 2020, I would be Self Employed for tax purposes. I could challenge Client's decission, but as employers have the last word, they have also already blanket decided to wholesale opt for Employed for PAYE tax purposes, very possibly to ensure they dodge falling foul of the new legislation i.e. end up being responsible for Contractors/Freelancer's taxes through the tax liability chain.

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Also:
If a freelancer is treated as an employee, that freelancer must also get the full benefits which follows employment.

If Parliament decides to go ahead with the IR35 changes, HMRC must also deliver Social Security benefits rights and must also ensure employers provide full employment rights.

Without employers forced to deliver such rights, the new IR35 could lead to employers arranging to hire "consultants" only, with the benefit of not having to provide employees rights to anyone at all.

24 February 2020

Jamie Hopkins

Existing measures in the public sector
1. I have not worked in the public sector so am unable to answer

Impact of new off-payroll rules on organisations
2-5. I am unable to answer questions 2-5; my client has decided to blanket ban all PSCs and so there has been limited conversations around off-payroll impacts.

Determining tax status of workers
6. Guidance from HMRC has been clear, to use CEST knowing the tool is flawed. The only real way to assess employment status is by an individual review from an IR35 expert. Where clients have 100's of contractors working on site, this is simply unachievable in the short timescales. In my experience there's a distinct lack of guidance, and even more uncertainty as the final bill will be announced on 11th March, less than a month before implementation.

7. Whilst CEST has been refined, it is still unfit for purpose as it does not consider MOO. IR35 is too complex to be summarised in 16 questions. HMRCs own internal review of CEST determined key questions are missing and ambiguity remains around terms such as "significant". There are many better and more comprehensive external tools (e.g. QDOS, Grant Thornton) that could be used as examples to improve CEST. On the flip side, there's a risk that multiple tools will spring up causing even more confusion than CEST.

8. My client, RBS, has placed a blanket ban on all PSCs, forcing all limited company contractors to go either PAYE or via an umbrella company. This is a loophole which allows RBS to circumvent the status determination. My status has not been determined, I have simply been told my role will be inside IR35 and I am unable to challenge the determination. Whilst I'm all

for paying additional tax, the financial services sector interpretation of the rules is unfair and there are no safeguards to stop clients taking this approach; blanket bans or inside IR35 determinations is simply to mitigate the risk of an unpaid tax claim.

Policy objectives and wider context

9. Business taxation is complex enough without the added burden of IR35. Efforts should be made to simplify business tax. IR35 should be scrapped. Additional tax could be raised by increasing corporation tax for contractors.

10. What is the government's objective? To raise more tax? If so, then I don't believe the objective will be met; in the short term some contractors will leave their current client and take leave. IR35 posts and articles are ambundant on LinkedIn; evidence of contractors leaving existing clients due to blanket assessments, and those who have already left are still looking for work. There appears to be a large supply of contractors looking for work, but limited outside IR35 roles.

It appears the government have not considered the two main consequences of the off-payroll changes: Firstly, the further misalignment of tax and employment law. Contractors will be deemed as employees for tax purposes (where clients blanket ban PSCs), but will continue to be deemed self-employed under employment law. I will be forced inside IR35 but have no employment rights and will still be forced to pay employers NI, the apprenticeship levy and for my own holiday and sick pay. Secondly, by making clients liable for unpaid tax, the majority of financial services are taking a risk averse approach and either banning all PSCs or blanket assessing all contractors as inside. Some lower skilled contractors are taking permanent roles at a lower salary in comparison to their daily rate, leading to reduced tax being paid via PAYE. Higher skilled contractors are taking inside IR35 roles, but as this will mean they are unable to claim expenses they will no longer work away from home or consider long commutes. As a consequence, third party business used by contractors (trains/flights, hotels, restaurants, cafes, accountants) will lose significant trade. Again, there are plenty of stories of local businesses thriving a few months ago and now wondering where the trade went as the switch over to off-payroll begins. At a time when Brexit is already pinching business, the timing of off-payroll seems a big own goal.

I will be closing my limited company as I will have no business income. My accountant confirmed many other contractors are doing the same thing and they have concerns they will need to reduce staff numbers in the next 12 months where customer numbers drop. This is evidence the off-payroll changes are far wider reaching than just identifying disguised employees.

11. The number of contractors using umbrella companies will soar. My concern will be the rise of unscrupulous umbrella companies promising higher take home leading to another loan charge scandal. Umbrella companies are self-regulated at best and this is a golden opportunity to increase turnover.

12. Off payroll changes will stifle the "gig economy", and in tandem with Brexit will have dire and wide reaching consequences for the wider economy. I am happy to pay more tax, but I'm being forced to work inside IR35 with no employee benefits, despite my working arrangements not changing. I work from home in Cardiff (the client's office is in Edinburgh), using my own equipment but am no longer able to claim any expenses through an umbrella company. A typical two-three day visit to the client site would easily result in £250/week expenses. Going forward, being unable to claim expenses will result in my taking fewer trips to the client in Edinburgh and far less money spent on ancillary businesses in Edinburgh.

24 February 2020

Matthew Hopley

Summary

I work as a contractor providing IT consulting services to large corporations. I currently operate via a limited company but I have also worked for a large global consultancy business providing similar services. Before this I was a permanent employee in the civil service where I started my career working on IT and finance projects for the Department for Transport. So, I believe I have a good perspective of how the IT service industry operates. IR35 is having several detrimental impacts on this industry which I believe is a key area for economic prosperity in the UK. In summary these are my observations:

1) The current tools and guidance on determining IR35 status are not clear
2) It is not transparent when using tools like CEST where the boundaries lie on whether the contractor is judged to be in or out.
3) Large companies are fearful of making the wrong IR35 determinations which will lead to large tax liabilities and associated risks of bad PR
4) To avoid these risks, large companies who are my typical clients are making blanket IR35 assessments forcing all contractors to operate on an in IR35 status
5) Companies are choosing to engage larger established consultancies for IT projects rather than contractors. This takes work away from the contractor and is more expensive for the companies to complete IT projects.

6) Being forced to operate on an in IR35 status means that I cannot claim tax deductions for travel expenses (my clients are UK wide), training and other business overheads
7) Operating on an in IR35 basis means I cannot retain profits for periods that I am out of work. I also cannot retain profits for training which is critical in keeping up to date on technology and governance. I also cannot retain profits to invest in taking on staff to grow the business.
8) IR35 will lead to less new business generation in the fields of IT and high skilled consulting which will have long term impact on the UK economy.
9) The highest skilled and most mobile contractors will choose to reside and work in other countries such as Dubai or Singapore which have a large demand for IT contractors and offer favourable tax measures
10) The regulation will encourage contractors to employ tax avoidance strategies
11) Large companies, especially those situated in remote locations without local access to specialist skills will have a large increase in costs to carry out IT projects

I believe the IR35 rollout should be halted or cancelled until clearer guidance and tools have been made available. The government should be encouraging growth in sectors such as IT and high skilled consulting not burdening it with regulation, risk and red tape. The UK must remain competitive as a place to work, grow a business and operate as a large company and this regulation is detrimental to all of these.

Existing measures in the public sector
1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?
There are now less opportunities for small businesses to be engaged by public sector bodies. This work is now being given to larger consultancies at higher costs.
Impact of new off-payroll rules on organisations
2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
Government guidance on the determination of resources for IR35 is not sufficiently clear. This makes it complicated and confusing for managers

within large corporations to judge whether their freelance resources are in or out of IR35. There are too many questions in tools list CEST in order to make the determination.

I have discussed this with my customers within large corporations and they do not feel empowered of qualified to make the determination with the information that is available. The impact of this is that simple resourcing decisions are now being reverted to company's tax divisions to make the assessment.

This is creating a back log of queries putting a burden on the tax governance teams of my clients. This is compounded by the fact that these teams are already overstretched dealing with the impacts of leaving the EU. This is resulting in the following:

1) Projects are being delayed whilst decisions are made
2) Projects are being put on hold or cancelled for the foreseeable future
3) Instead of using freelancers/small limited company's which are now judged to represent complication and risk, companies are choosing to use large consultancies who offer similar services but at much higher costs (typically between 100% to 400% more expensive than a comparable freelance resource)
4) Blanket determinations are being made to stipulate that all freelance resources must work on an inside IR35 basis via an umbrella company regardless of the nature of their work

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

For me personally it is not relevant since all my clients are large corporations. This is typical of all the consultants I know in the IT and consulting sector.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

There is much confusion about where the liability for determination lies and given that many companies are making blanket IR35 determinations there will be less opportunity for work to be subcontracted in the form of one contractor making a substitution to another since contractors will be expected to operate as employees.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help

businesses understand the new administrative rules? Determining tax status of workers

The number of questions in the CEST tool should be significantly reduced and it should be made clear whether answering YES or NO or choosing any one option to any question leads to an in or out determination. The current 'no right or wrong answer' nature of the tool leads to confusion and uncertainty about the determination and where the boundaries lie on judging whether the resource is in or out.

Some of the questions in the tool are difficult to judge and could potentially be answered in several ways dependent on subtle changes in the contract or working habits. So the determiner is left wondering, what if I had answered differently to that one single question, would that change the entire determination? Also, these tools give no guarantee to the engager that the determination given would be reflected should HMRC later conduct an inspection, creating the potential for a tax liability and bad PR.

I believe simple question such as follows would suffice:

1) Is the resource fulfilling the same role as other permanent employees? – YES /NO
2) Is the resource fulfilling a role previously occupied by a permanent employee? YES/NO
3) Is the resource engaged to exclusively work on a project which has a clearly defined start and end date? – YES/NO
4) Is the resource providing specialist skills/knowledge that is required for this project? YES/NO

There should be no more than 10 questions and it should be clear and transparent what the qualifying criteria is to be determined as out of IR35. For example, each question is awarded a point and the resource should score 6 out of 10 or above to be determined out. This would allow the user to know if they are close to the boundary or not. This would avoid overly risk averse assessments and blanket decisions being made.

There should be a guarantee that provided the answers are given honestly that the engager will be protected in case of inspection.

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

The tools available do not make the determination clear to the engager or the worker. There are too many questions in the CEST tool. The current 'no right or wrong answer' nature of the tool leads to confusion

and uncertainty about the determination and where the boundaries lie on judging whether the resource is in or out.

Some of the questions in the tool are difficult to judge and could potentially be answered in several ways dependent on subtle changes in the contract or working habits. So the determiner is left wondering, what if I had answered differently to that one single question, would that change the entire determination? Also, these tools give no guarantee to the engager that the determination given would be reflected should HMRC later conduct an inspection, creating the potential for a tax liability.

The questions do not reflect the reality of the contracting environment. IT projects in large organisations typically take between 6 months to 3 years. The success of these projects requires a close working relationship to be established between the service provider and the clients business. Many IT projects fail because they do not capture requirements fully or sufficiently reflect the working realities of the end users. The practical implications of trying to avoid these project failures is that the contractor usually attempts to work closely with the client. This means that they frequently work on the client site and align their working hours to that of the client for the duration of the project, this is the complete norm in this industry and is followed by both contract resources and resources provided by large consultancies. IT projects are extremely expensive and critical to the clients business so it is to be expected that all parties concerned should want to do everything possible to guarantee the success of the project.

The current guidance for determination of IR35 status would suggest that working on the client site and to the same hours indicates that the contractor is within IR35. However, for IT projects the contractors are engaged to provide specialist technical knowledge and skills that are only relevant to the project and not the day to day operations of the business so in essence they should never be judged to be engaged as an employee since they are providing a clear business service. What is the difference between an IT contractor working on an IT project that takes 2 years and a plumber working on a bathroom refit that takes 2 weeks? Why should one be taxed as a business and the other as an employee?

It seems that the current tools for determining IR35 status such as CEST are specifically targeted at 'catching out' IT contractors engaged on long term projects. Why is this government attacking an industry that is surely the future for growth in any modern economy? The government should be encouraging start-ups in this field and allowing them to operate as a business, giving them the option to grow their business by retaining profits to make investments in training and staff

not branding them as employees and stagnating the industry in regulation, red tape and tax liabilities. The only explanation I can gather is that the government wishes to take away work from small consultancies and freelancers and put it in the hands of the large established corporate consultancies who provide similar services but at much higher costs.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The tool should be simplified, made more transparent and offer a guarantee that it will protect engagers from tax liabilities.

The number of questions in the CEST tool should be significantly reduced and it should be made clear whether answering YES or NO or choosing any one option to any question leads to an in or out determination. The current 'no right or wrong answer' nature of the tool leads to confusion and uncertainty about the determination and where the boundaries lie on judging whether the resource is in or out.

Some of the questions in the tool are difficult to judge and could potentially be answered in several ways dependent on subtle changes in the contract or working habits. So the determiner is left wondering, what if I had answered differently to that one single question, would that change the entire determination? Also, these tools give no guarantee to the determiner that the determination given would be reflected should HMRC later conduct an inspection, creating the potential for a tax liability.

I believe simple question such as follows would suffice:

1) Is the resource fulfilling the same role as other permanent employees? – YES /NO
2) Is the resource fulfilling a role previously occupied by a permanent employee? YES/NO
3) Is the resource engaged to exclusively work on a project which has a clearly defined start and end date? – YES/NO
4) Is the resource providing specialist skills/knowledge that is required for this project? YES/NO

There should be no more than 10 questions and it should be clear and transparent what the qualifying criteria is to be determined as out of IR35. For example, each question is awarded a point and the resource should score 6 out of 10 or above to be determined out. This would allow the user to know if they are close to the boundary or not. This

would avoid overly risk averse assessments and blanket decisions being made.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed? Policy objectives and wider context

It could be successful but it will also force many genuine companies to operate on an inside IR35 status which will be extremely damaging for both small and large businesses that engage in IT contracts.

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Increase corporation tax by 0.5%. This would impact all companies small and large thereby collecting the desired increase in tax revenue without destroying the freelance industry.

Alternatively, increase the tax on dividends. Less people would then choose to structure their temporary work via companies.

10. Will the Bill, as drafted, achieve the Government's objectives?

I believe the bill will have the following impacts:

1) The freelance industry will be heavily reduced
2) Many freelancers will choose to seek full time employment
3) The UK will no longer be attractive to foreign IT experts from countries like India and Turkey
4) The above will lead to less business creation in key economic areas such as IT and high skilled consulting
5) The UK will become more expensive for businesses to implement complex IT projects, this will result in the UK being a less competitive and business may choose to move operations offshore
6) Many of the highest skilled contractors will choose to leave the country to reside and work in countries like Singapore, Dubai, Australia that have many opportunities in IT consulting.

All of the above will be bad for the UK economy and tax revenues in the long term so any short-term gains in extra NIC revenue collection will be overshadowed by the more serious economic impacts.

11. What is your view of the role of umbrella companies in the context of these proposals?

This is a fantastic opportunity for large umbrella companies to take money out of the pockets of hardworking contractors trying to grow their business to instead be paid in fees to administer their payroll. Many large clients are making blanket IR35 assessments and insisting that invoices will be paid via umbrella companies. This further increases the costs for small businesses as it is the contractor who is expected to take the burden of the fees.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

It is not fair at all. Contractors especially those engaged in large IT projects need to invest in training to keep up with the latest technology and governance, we often need to travel to remote client locations, we need to cover the costs of accountancy, insurance and IT costs all of which will no longer be allowable expenses when blanket determination are done for IR35.

Contractors must suffer all the above costs but also have no job security, corporate benefits, employer pension schemes or sickness or maternity/paternity pay. So why should we be expected to endure the extra costs and less benefits whilst also paying the same tax? In fact, under IR35 contractors will pay more tax than an employee on the equivalent salary. This is since companies are paying the contractors fees to umbrella companies who then deduct the employers NI. So, the contractor personally suffers both employees NI and employers NI. This has a huge effect on the take home pay. Also, the contractor must pay the umbrella company fee.

Contractors need to be able to operate as true businesses and government regulation should encourage this not hamper it. Contractors need to have the ability to retain profit in their business so that it can cover periods that they are out of work, training and hopefully taking on staff as the business grows.

The effects of this regulation are clear and cannot be denied regardless of whether the government intended these consequences. Large corporations are making blanket IR35 determinisations, refusing to use contractors entirely and the freelance market is already suffering. This regulation needs to be withdrawn to protect small businesses and encourage growth in areas such as IT and high skilled consulting.

6 February 2020

Adam Hopwood, CompuLink Solution Ltd

What will be the effect of these new measures on a chain of contractors and subcontractors?(Q4)

As a very large number of companies, especially financial service companies have applied blanket ban approaches to the use of PSC's and as such has resulted in a larger number of highly skilled self-employed personal with niche knowledge leaving which has had the understandable effect of delaying projects, and increasing cost due to the lack of these skilled individuals. A great number of these project are urgently required to overall an antiquated industry and being their technology into the 21st century so to support customers and new business and provided those customers with the security they rightfully expect of a financial organisation.

These new rules threaten to if they have no already done so to generate a skills gap within this country which could take a generation to overcome, if ever. I like so many others feel greatly aggrieved by this unwarranted and heavy-handed approach by HMRC and as such like many others am now looking to take my hard-earned skills off-shore where I will be rewarded for the time and effort I have put into building and maintaining them.

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?(Q8)

With so many companies fearful of HMRC's heavy handed approach and for them potentially being made liable for any shortcoming in tax due to the over complex and astonishingly poorly communicated proposed changes they have simply taken the approach to blanket band any engagement with a PSC and therefore no status determination process is ever undertaken.

Will the Bill, as drafted, achieve the Government's objectives?(Q10)

I do not believe so. I believe only in time will we see the full impact of these changes which will result in a overall financial loss to the country and a skills gap, in which case companies will outsource their requirements to large multi-national companies which in turn will used cheaper lower skilled resources from outside the UK resulting in lower Tax

being paid by said service company and in the long run cost the UK far more.

What is your view of the role of umbrella companies in the context of these proposals?(Q11)

Umbrella companies in the context of these proposals are simply a means to an end and a way of shifting the burden of liability proof, nothing more. They offer nothing in return for the self-employed and will likely result in them paying for services they do not need, want or require. These proposals have many knock-on effects which I do not believe have been considered for example and accountancy services company could lose large numbers of its clients as their services are no longer required as the self-employed individuals are force to use Umbrella companies.

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?(Q12)

These measures will have huge impact and I believe the range of the impact will not be realised for quite some time. Many contractors see it as a life style choice not simply and money earning exercise, they are happy to do without holiday pay, sick pay, maternity pay etc as they see these as being offset by their potential for increase take home pay. One the one hand we have the government stating we must all have none state based pensions to provide for ourselves in later life, but many self-employed of a certain age or ones which have been self-employed for a number of years may not have a private pension and instead off set that requirement with the increased rates with which they can build a nest egg.

From a personal prospective I have had to endure shambolic process of an IR35 investigation which took HRMC 6.5yrs to conclude in February 2019, only to have them determine they could not establish that IR35 applied, and yet now for all intents and purposes I'm being forced unilaterally under the mantle of IR35 due simply to the way in which HMRC have heavy handily approached these proposals and instilled fear and the threat of tax liability onto any Medium to Large company with needs the skills of PSC's.

With the way these changes are to be implemented it will create Zero Rights employment. A vast number of the genuinely self-employed will be

over paying their tax liability, and yet have none of the rights associated to a individual with as status of employee.

Christopher Horsey

Never have I felt so compelled as I do now to have my say on a matter of grave importance as is the proposed "Extension of the off-payroll working rules to the private sector" [IR35]

Here is my honest feedback although I feel it is already too late given the comments of Jesse Norman:

"We recognise that concerns have been raised about the forthcoming reforms to the off-payroll working rules," said Norman. "The purpose of this consultation is to make sure that the implementation of these changes in April is as smooth as possible."

I know you must have many responses so let's focus now and provide you with my own impact statements.

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

I work in the Public Sector for DEFRA who have engaged me very professionally via an agency who have considered all of the facts of my relationship with the client in determining that my contract is Outside IR35. I am engaging as a genuine self-employed IT consultant as I have done with my other clients over my 24 years running my own PSC - delivering services into many companies who benefit from my vast knowledge and experience in the areas I am a subject matter expert.

I am lucky – I heard of many horror stories which no doubt will be represented here – but not from me!

Luckily my agency did not use the CEST tool (which I will come onto later) as this tool is not fit for purpose.

When I used the tool myself to review my own status within my current contract I found it delivered the result "Unable to determine the tax status of this engagement"

Had the tool been used for my current contract with my client then perhaps they would have [incorrectly] found my contract to be "Inside IR35" as they would not have wanted to accept "Unable to determine the

tax status of this engagement" as an Outside IR35 determination. I will expand on my thoughts around the CEST tool in that section.

I have heard of only a single public sector body banning PSC's from engaging due to IR35 – Transport for London; perhaps that behaviour should be investigated?

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

We are currently seeing blanket assessments of Inside IR35 and also corporate decisions to not engage with the IR35 determination process and to ban the self-employed engaging directly (and in some cases indirectly) via a PSC.

These FTSE100 companies are therefore clearly unwilling to take any of the compliance burden – actively discriminating against the 70% of self-employed [HMRC figures] who are correctly applying Outside IR35 determinations.

The balance of compliance burden has now clearly swung closer to 99% away from HMRC as they have produced a flawed tool (CEST) which ignores or perverts key employment case law (Substitution, MOO) and when they disagree with an Outside IR35 determination (as they did with the NHS) they don't stand by the CEST determination anyway. Why are HMRC able to supply their own flawed tool as the tool of choice for producing IR35 determinations and then ignore the results when it suits them?

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

I am not concerned about the small organisations exclusion as this will not be difficult to challenge.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

Evidence has already been presented [but I reference also here: http://offpayroll.org.uk] that the supply chain is being distorted by the large number if blanket Inside IR35 assessments or worse still the outright banning of engaging the self-employed directly via their PSC.

As far as I am concerned the banning of my company engaging with previous clients I have dealt with on Outside IR35 contracts (eg. Microsoft UK Ltd) is "Employment discrimination" – I may not be a pregnant woman, have a disability or any other the other current 'protected characteristics' but I do have a characteristic which needs protecting – I wish to remain self-employed and to be able to engage with ALL companies on that basis and this legislation has directly introduced employment discrimination of the self-employed by HMRC introducing a compliance risk that the companies are not willing to take. That is a serious outcome of a legislation which was quoted within the draft legislation: "The 'genuinely self-employed' need not fear IR35 changes" - well I am in fear that I cannot engage with the largest clients I have within my portfolio as they have banned engaging with PSCs – PERIOD – in direct response to the off-payroll working rules extension to the private sector.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Engage with an independent company to produce, audit and supply a CEST tool replacement which takes into account ALL current employment law and the HMRC losses and wins around employment status assessment.

HMRC are only interested in generating Tax/NI revenues and are therefore not best placed to be educating my client around IR35. For example sending out 60,000 letters to all the top companies warning them of the Tax/NI liabilities for getting assessments wrong with the associated penalties of the same – that is not very constructive and was most likely the cause of the destructive lack of engagement that followed.

The lack of engagement needs to be legislated for – it is not right nor fair that companies should be able to side step providing determinations by excluding PSCs from the supply chain – that behaviour should be made against the law and indicated as such within the final draft of this legislation. Excluding PSC's from the supply chain does not in any way demonstrate a "reasonable care" in the handling of the 400,000+ legitimate self-employed.

<u>Determining tax status of workers</u>

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

Employment law and tribunal cases taken to the judiciary are very clear on what tests are key within the determination of whether a worker is an employee (on a contract of service) or whether that worker has more traits of being self-employed (on a contract for services). A problem arises when HRMC (only focused on pushing the worker into being a deemed employee as this will deliver additional NI) ignores case law or actively changes the interpretation of case law as is the case with Mutuality of Obligation and the right of substitution such as to suit their end goal – making the self-employed worker a "deemed employee for tax purposes only"

Over 85% of IR35 tribunals and escalations to the judiciary are won by the self-employed person NOT HMRC. Sometimes HRMC even appeal hopeless cases spending large amounts of tax revenue on such cases only to still lose.

This demonstrates time and again that either HMRC truly do not understand employment case law or they are deliberately wasting tax payers money perusing cases in the hope that the taxpayer will give up and roll over and pay through attrition.

In any case how can we trust HMRC to produce a Check Employment Status for Tax tool (CEST) tool when they and their barristers demonstrate such contempt for employment law?

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Repeat comment from above!!
In any case how can we trust HMRC to produce a Check Employment Status for Tax tool (CEST) tool when they and their barristers demonstration such contempt for employment law?

The tool has proven to fail in providing a clear determination for myself when I am clearly (proven) outside IR35 working in the Public Sector.

It requires replacement not improvement – replacement by a third party company who will test a tool against the current list of Employment Case law with an over 95% accuracy rate – nothing else is good enough!

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

If a company finds you inside IR35 after you have worked for them for 2 years on a previous Outside IR35 determination – the right of challenge is

pointless….it has been proven they will show you the door! The only way is to get it right first time with a third party assessment of your status by a professional IR35 status company or fully tested tool (not CEST !!)

If a company bans the engaging of PSC's – there is no right to challenge this direct discrimination. You either have to engage under PAYE or Umbrella paying the Employers NI for no additional benefits or you must walk away from this client and find another client.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

There is already a 7.5% dividend tax added to close company dividend distributions. I personally already pay over £17000 in Paye tax /NI and dividend tax.

Just leave the rules as they are – target compliance more accurately by stopping the relentless 85% failure rate of IR35 tribunals – perhaps by targeting those employees who have NOT made the choice to be self-employed but have been forced into PSC structures by their employer (eg. BBC) – those are the workers who need protecting and who should be paying tax under the PAYE system and the employers (not the employees) should be hounded for the back Tax/NI due – that would be a fair change!!)

10. Will the Bill, as drafted, achieve the Government's objectives?
It is such a risky time to be implementing such a draconian method of compliance (with BREXIT) I do not believe that HMT will make anything near what they wish to achieve and they run the risk of causing a spiralling negative impact to HMT if the current observations around off-shoring of jobs, reduction in days rates, self-employed workers just walking away and taking a year off or going to the EU. We might even see a bank or two move to the EU – and it will all be blamed on BREXIT when the final push would have been the inability of those banks to secure direct self-employed workers without having to engage in these ridiculously complex assessments. (you heard that hear first – I really believe this will happen!)

What will I be doing? My CV is updated with "I will only work Outside IR35" – If I cannot secure a contract post April 2020 I will be claiming JSA and not paying £17000+ per year in TAXES….multiply that by 70% of correctly operating self-employed professionals who have just been kicked out of the banking and insurance sectors, GSK, BP, Microsoft the list goes on…..that's a lot of TAXES lost!

11. What is your view of the role of umbrella companies in the context of these proposals?
Umbrella companies are being used (often run by the agencies) as a quick method to compliance, often unregulated, and taking yet another cut of the fee paid by the end client – this cannot be good for anyone but HMRC and the Umbrella company.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

No it is clearly not fair! – Contractors have been saying for years that the differential in day rate and NI contributions when you are self-employed are necessary because of the way in which contractors work. Often they can be without work for 2-6 months a year, they have to fund their own sick leave, holidays, pensions, paternity leave, training, travel often 100's miles, stay overnight etc….this is a lifestyle we are most happy to maintain as we have made the choice to embrace the freedoms which come from contracting as well as the risks. To then introduce legislation which classifies us as "Employee's for tax purposes only" and forces us to pay Employers NI contributions (13.8%) the apprentice levy (%0.5) [what employee of any company has to pay Employers NI and the apprentice levy?? – none! – but that's what the umbrella's and Inside IR35 assessments deliver!]
For this new status of "employee for tax purposes only" what do I get?
I don't get paid holiday, sick pay, pension, training. I can no longer pay my travel and hotel costs from pre-tax income but have to pay this from my taxed income.
Some contracts will become unviable if deemed Umbrella or Inside IR35
PAYE is just as bad

This is not necessary
This is not fair

7 February 2020

Richard Hoskins

I write with grave concern over the forthcoming IR35 legislation in the private sector.

I wrote to my MP Ed Vaizey back in October 2018, followed by a meeting in person to discuss the now pending IR35 changes. I have also written to Ed Vaizey's, replacement David Johnston but received nothing more than

the templated response from the Treasury. These changes for me are catastrophic and are already having a massive impact on me, my health and the business overall.

After 17 years of running a small business I am being forced down a road presenting me with an uncertain future. Since the start of 2020 I have had 3 of my 5 clients withdraw their interest in future services as they are not prepared to be seen engaging with a contractor or a Personal Services Company (PSC). I am still yet to see a true definition of what a PSC actually is, but a widespread blanket ban seen in financial services is now spreading out across over market categories.

All the effort, costs and time establishing a reputable business is going to be lost in a matter of weeks

The knock on effect for my business is that the associate based model I have operated has collapsed and 2 people I have engaged to assist in delivering services to end clients have had to be stood down as there is simply not enough revenue to cover the basic operating costs. This will not just affect me but all the support services I use to help the business operate and function day to day.

I now only have secured work until the end of March 2020, thereafter I have no further means of income as my last client withdraws their interest in engaging my services. I face an uncertain future, my career in essence over at just 53 years of age. My client does not wish to risk engaging a PSC (even though there is no clear definition of a PSC by HMRC).

HMRC seem to be running wild creating their own criteria with ambiguity and terrorising the small business market while turning the other cheek to the larger corporations.

I have little choice but to close my business and seek alternative means of income.

I genuinely fear for my longer state of health and general wellbeing, I see no way of covering my mortgage, put food on the table for my family and pay my bills after March 2020 due to the pending legislation intended in the private sector regarding IR35. Small business and interim work force would appear to be culled as part of this new legislation. I ask what the future of small businesses is, the outlook is bleak. I have no choice to write

I also fail to see how this domino effect is good for the economy, surely it is better for small business to pay taxes than receiving no tax at all? The knock-on effect of this proposed legislation is only going to have a

negative effect across business, employment and industry in the UK as a whole as requirement move out of the UK.

Agency bosses (14 at the last count) in the recruitment area alone have urged the chancellor for a delay and or review of this pending legislation as they fear the effects, I would ask you to express my concerns and discuss this with the chancellor at your earliest opportunities.

The impact in the public sector does not make for positive reading even though this is denied by HMRC

I would not normally write but I genuinely feel these concerned over the new legislation and imminent changes/ impact are going to have a massive impact on many families up and down the country, myself included.

Can I rely on the Lords to add some sense to this legislation in form of a delay, the ambiguity, risk and lack of understanding is far from ideal and will only add more uncertainty for thousands of small businesses and interim contractors within the UK market place.

10 March 2020

Keith Humphreys

PLEASE FIND THE FOLLOWING SPLIT UP INTO THE APPROPRIATE SECTIONS IN THE CALL FOR EVIDENCE:

1. N/A
2. In my opinion, the extension of the rules to the private sector have not been adequately assessed. The larger companies do not appear to have been educated as to how to adopt the rules and are opting for a "blanket" approach in determining status.
3. N/A
4. The effect of the new measures on a chain of contractors and subcontractors might be to accurately place a contractor inside IR35, where appropriate and if done with "reasonable care", which is fine. However, what appears to be happening in practice is that the larger organisations are imposing the "blanket" approach mentioned above, often making incorrect assessments and in doing so, they are forcing a self-employed contractor to become an "employee", against his or her will. This has a knock-on effect on the contractor industry, undermining choice and resulting in a massively demotivated group of contingent labourers. This also

means these organisations are ignoring the guidance given under the law.

5. HMRC should provide training and seminars to businesses to help them with the status determination and appeals processes.
6. The tests for determining employment status are subjective and not cut and dried. For example, there are instances where a contractor might be deemed as Outside IR35 by having Control over what, where and how services are performed, not having mutuality of obligation, but not able to provide a substitute for legal reasons. There may be times when the different dimensions become fluid and a person could be operating Inside and Outside on the same day. In short, the "tests" are flawed and the whole legislation needs rethinking.
7. The CEST tool does need improvement. It is too heavily weighted in favour of HMRC and administrators are trained in its use to the extent that they know how to force a contractor inside by the answers they provide to the questions when determining an individual's status, often inaccurately. This forces the contractor to operate on an "employed" basis and may well not actually represent the real status of the contract and infringes the rights and livelihood of the contractor. It means that the contractor's company loses income and the contractor also loses income because of the increased tax burden imposed through the incorrect status determination. The CEST tool should be scrutinised and reviewed by the Accountancy and Legal professions to ensure that it is fit for purpose.
8. Many employers are ignoring the status determination process and opting for a "blanket approach", without providing any reasons why because they think this is the best way to avoid being penalised by HMRC. End clients need to be educated as to how to implement the legislation and the tools used in a just and fair way when determining IT35 status. When changing a contractor's status, they should follow the legislation and not just make blanket decisions. In the same way that an end client can be penalised for incorrectly placing an Outside IR35 status on a contractor, they should also be penalised if they incorrectly place the contractor Inside IR35.
9. Where a contractor is currently deemed to be Outside prior to 31st March on an existing schedule, this should remain unless there is compelling evidence to suggest that the contractor is working Inside.
10. N/A
11. Umbrella companies provide an extra burden on those who've been forced Inside IR35, because as well as having to pay more tax and NI, the contractor will also have to pay an additional fee to use the umbrella company's services in order to process the payroll. Many of them also provide inflated projections of net income in order to attract custom. They should be held accountable when

providing these projections and they should all have FSCA accreditation.

12. How can it be fair that someone is taxed as an employee but doesn't have the rights of an employee? Contractors who are forced inside IR35 have to pay their own pensions, holiday pay, sick pay and employers NIC, as well as the normal income tax and employees NIC. If they are employees, why should they also pay employers NIC? Real employees have these paid for by their employers. If someone wants to be self-employed, they shouldn't have this right taken away from them.

21 February 2020

Dave Hunter

AREAS OF INTEREST - ANSWERS TO SPECIFIC QUESTIONS
Existing measures in the public sector
1. The Public sector rollout saw extensive blanket bans / status determinations as organisations were ill prepared and not supported to implement complex employment law with the tooling (CEST) with its flaws and issues. I myself was caught inside by a blanket status determination with the Financial Ombudsman Service, who was taking Transport for London's lead on determining all workforce regardless of role was inside IR35. Many projects in the public sector was scrapped, delayed or struggling without key resources which are normally supplied by the skilled PSCs.

Impact of new off-payroll rules on organisations
2. The assessment of the extension of off-payroll to the private sector has been over exaggerated to push through the draft finance bill into law. HMRC have created a culture of fear, in order to maximise taxes regardless of employment law. Financial organisations have took the safe option of employing a blanket assessment or ban rather than navigate HMRCs rules and compliance which don't adhere to employment law. The UK are losing the flexible workforce which give companies the leading edge especially in times of recession and Brexit. These contractors are moving abroad, retiring or looking for alternative ways to keep outside of IR35. HMRCs reported numbers of 90% non-compliance haven't been shown in the court cases won, even when the evidence backs up against them tax payers money is spent on losing a case which should have never been pursued.

3. The rules for determining a small organisation isn't very clear and is likely to be open to interpretation which doesn't safe guard the organisation. If the organisation flexes up the workforce to perform a transformation project and goes over the 50 staff even for a short time its

not known the impact this will have regarding current and future contractors.

4. The chain of contractors and sub contractors confuses who is the fee payer and where the taxes should be taken.

5.

Determining tax status of workers
6.

7. The CEST tool is not fit for purpose and HMRC see this as they have actively taken contractors to court when the CEST tool has reported the contractor is outside of IR35. The rules which the tool is built on is HMRCs version of the truth and not based on the actual employment law. HMRC shouldn't look to improve the tool and should take it out of circulation immediately so the tool can be either written from scratch using employment law or to verify the market place tools such as Qdos and IR35 shield offer the compliance CEST should have.

8. The safeguards are virtually non-existent with disputes of status determinations. Having 45 days for a dispute to be initially investigated doesn't protect the contractor or offer any support. A transparent appeal process with clearly identifiable steps is required with a short time to settle the dispute at the maximum of 10 days.

Policy objectives and wider context
9.

10.

11.

12. The working arrangements under IR35 taxing contractors who are contracted to perform activities for an organisation without rights of employees isn't a fair way to tax. If a sum could be obtained by totalling holiday, sickness allowance and other benefits an employee would receive and use this to offset against employment tax this would be a fairer system.

25 February 2020

Farhat Hussain

SUMMARY

- IR35 Legislation is complex and very one sided

- There is no natural justice when being a freelancer and working for yourself
- Was a loyal conservative supporter, will never every vote for the conservative party

ANSWERS TO SPECIFIC QUESTIONS

Impact of new off-payroll rules on organisations

- Impact of new off payroll rules in current organisation is a blanket ban on PSC
- No constructive dialogue with client to assess fairly contractors roles
- Accept the situation or leave mentality from client

Determining tax status of workers

- Had no input into tax status
- Decision was already made without any consultation
- Take it or leave it attitude no option

Policy objectives and wider context

- IR35 is a policy which will put the UK at a disadvantage especially in the technology sector
- People will not want to setup new businesses or invest in new technologies and rather go to countries, which are more receptive to people setting up businesses.
- This policy goes totally against the conservative ethos of working hard, taking risks and being rewarded. I was loyal Tory voter but will never vote for them in the future.
- *21 February 2020*

21 February 2020

Naeem Ismail

Existing measures in the public sector

1. I, unfortunately, cannot comment on the impacts on the public sector as we have not worked for any public sector organisations since the rules were deployed. We have worked in the public sector on several occasions, all of which have been based on key defined outcomes, as well as wider support to all stakeholders involved in the IT enabling projects we have had the pleasure to be a part of.

Impact of new off-payroll rules on organisations

2. The end-client organisation has for the last three or more months, taken key resourcing staff and legal representatives out of normal operational activity to address their approach to the ambiguous rules.
3. We have no comment with regards to small organisation exemptions.
4. The contracting workforce within the current organisation we are providing services to are still unclear as to the prospects beyond the April deadline. Some contractors have been taken on permanently thus removing the challenges for the organisation and the individuals. We cannot comment on their off-payroll status prior to this change in engagement but it certainly appears to be a key risk mitigation mechanism by organisations to avoid losing key skills/knowledge and/or assuming ongoing tax liabilities, as a result of their lack of clarity regarding the off-payroll legislation. For the transitioning contractors, it is being touted as a mitigation to the ongoing ambiguities of the off-payroll legislation and the continuous risk of being threatened with having to legally pursue subjective conclusions against HMRC. From our perspective - due to the unclear and ambiguous statements being provided by our clients - we are now looking at alternative revenue streams. This will ultimately be to the detriment to the end-client's strategic programme of work and therefore cost them in time. The financial implications are complex given the strategic nature of the programme to support the client's growth plans. This could be estimated within the 10's of thousands but is more likely to result in delays that could legitimately be in the 100,000's or millions.
5. The administrative burden must be removed from end-client organisations. A simpler and clearer sector specific set of legislation ought to be rolled out. HMRC ought to be maintaining a level of consistency across all taxation and legislation. The fact that taxation and relief has sector specific inclusions/exclusions but the IR35 legislation does not appears to be hypocritical given the climate of uncertainty, anxiety and administrative burdens it has introduced.

Determining tax status of workers

6. We provide a discrete set of services that are not currently performed by the organisation's permanent workforce, or indeed any other contractors engaged by the organisation. We have been engaged to support a discrete programme of work, and the organisation relies on us to define what and how our services are provided. A level of quality assurance is ensured and agreed between the end client organisation and ourselves on an on-going

basis with and initial outline defined by ourselves in the early stages of the contract – once a fuller understanding of the organisation's policies, processes and practices work and the underpinning requirements of the programme. The CEST tool does not appear to elucidate these responses and therefore is incapable of understanding and determining the status of our engagement.

7. Over the last month or so, we have run the HMRC published CEST tool twice to understand if our self-determination of our operating practices are in line with HMRC's interpretation of the rules and within the context of the IT industry and our specific role and services. On both occasions with the same contract and with the same level of objectivity we obtained a different result. On the first occasion the result indicated that our engagement was outside ir35. On the second occasion the result indicated an "undetermined" status. Clearly not an ideal situation for end-client organisations who are now being made accountable for the determination. We do not believe the CEST tool's "indeterminate" status results are effectively supporting the industry. A more robust and useful approach would be to render an "outside" result in these cases, given that the legislation and rules ought to favour small enterprises attempting to support the UK economy through a flexible approach to providing services – as opposed to assuming a culture of tax avoidance. Alternatively, or in addition to this, sector specific questions should also be raised such as: Are the contracted services related to a specific project/set of projects understood at the time of service engagement? If using client materials, is this solely deemed a client requirement related to other regulations/organisational policies (.e.g the use of client laptops due to security policy)? Does the contractor (PSC) have its own development plan? There are several further questions that would also benefit each sector to ensure a clearer understanding of the engagement is obtained prior to CEST response. In summary, the CEST tool must apply a fair assessment based on industry sector as well as criteria related to the nature of the work.
8. Currently, a CEST determination by the end client organisation has either resulted in an "outside" or "undetermined" result (See point 6 above). At present, it has not been made clear to us what the final assessment by the client has been, what contractual terms are being considered, etc. However, the ambiguous end-client - and middleman agency – contractor-wide communications indicate a "blanket" decision has been applied to every contractor still engaged beyond the April deadline, irrespective of their roles, skills, etc. As mentioned in points 4 & 5 above, general emails to the entire contractor workforce do not apply to us. Therefore, we are

still unclear as to the final determination, the prospect of continued service requirement – despite the programme of work still being in the early stages – and due to the complexities of the change, the end client and/or the middleman agent are unable to inform us. At present, the end-client is "blanket" determining an "inside" status due to risk aversion, lack of guidance & support from the middleman agency, etc. This provides no identifiable safeguard to enable us to challenge the decision. ultimately, the blanket decision process will result in any challenge being futile and our services being terminated.

Policy objectives and wider context

9. Some have touted an alternative taxation for PSCs. However, the past few years have resulted in taxation that has reduced the financial benefits of PSCs to a bare minimum. This has rendered our ability to grow next to impossible. There may be an alternative scheme for PSCs but this is beyond our full understanding and appreciation. I refer to my earlier references to sector specific taxation and legislation, however, which may support the Government's objectives more effectively. In addition, we believe there are more effective policies that can improve economic growth as opposed to narrow-minded legislation that is likely to dissuade the flexible workforce to grow. For example, imposing a certain level of PSC training spend in areas of supply/demand where there are skills shortages in the country would seem prudent to ensure that PSCs are indeed contributing to UK economic growth.
10. We expect the Bill, as draft, will have an adverse effect on a rounded set of economic Government objectives and will not introduce an overall increase in tax receipts. Whatever additional employee income tax and NI that is perceived to be acquired will likely be counteracted by the lack of flexibility in the UK workforce and ultimately the slow growth of corporations.
11. Umbrella companies are likely to obtain better insurance deals due to the bulk nature of the people insured, thus reducing overall tax in the HMRC coffers. Any Vat relief shifts from the PSC as a result of the blanket determinations that are currently permeating the marketplace, with none of them being proposed to be passed on to the contractors. The umbrella companies are quoting several different take home pay amounts to contractors, thus introducing further areas of ambiguity for the end contractor. All in all, umbrella companies – and outsourcing companies/consultancies/IT Service providers/etc – are the ones that stand to win from the off-payroll legislation roll-out.
12. It is only fair to tax an individual as if they were an employee without any employee rights & benefits, if they are being paid

commensurate with the risks this involves + the business benefits they are providing to the end-clients.

Katherine Claxton, IVC Evidensia

Dear Colleague,

Changes to Provision of Locum Services

You may be aware of the changes to the Off-Payroll Regulations, known as IR35 that come into effect on the 6th April 2020. The changes will have a significant impact on the way in which our locums and contractors are paid and taxed in the future.

We have taken the opportunity to review provision of all of our locum services and wanted to share with you the approach that IVC Evidensia is taking in both the changes in the regulations and our general change in policy and how this may impact the way we engage with you in the future.

What is changing under IR35?

Put simply the responsibility to assess whether a locum and/or contractor is inside or outside of IR35, and consequently whether PAYE and NIC deductions must be made before paying the locum and/or contractor, will transfer to the end user (known as the "client") i.e. IVC Evidensia.

"Clients" will be penalised by HMRC if they do not follow the new rules correctly. HMRC will undertake routine audits of "clients" to monitor compliance with the law.

What are IVC doing to prepare for the changes?

We have been doing a lot of work in the background to prepare for these changes, working with our tax specialists to consider the impact these changes will have on our locum arrangements but also to look at the options available to our locums with the aim of finding solutions that balance our requirement to be fully compliant with our operational needs.

What approach is IVC taking?

Having completed the tests required to establish if our locums would fall inside or outside of the IR35 regulations, we have determined that the bulk of those engaged are likely to fall within the IR35 regulations.

Even though we know that most of our locums will be inside IR35, we would still be required to follow the standard process set out by the IR35 legislation in terms or assessing each locum, issuing a formal Status Determination Statement and reassessing on a regular basis. The administration involved in doing this for a large group would be unsustainable and would significantly slow down our locum engagement process.

We have therefore taken the decision to change the way we currently engage with our locums and/or contractors so that we can minimise the administration and remain compliant. This is an IVC Evidensia policy decision that will be applied across the IVC Evidensia Group in the UK.

What does this mean for you?

With effect from the 6th April 2020 you will no longer be able to engage with us via a limited company or as a sole trader.
We very much still want you to cover shifts for us but, you will only be able to do so in the following ways;

1. Being paid through the IVC payroll under full deduction of PAYE and National Insurance as a casual worker; or
2. Engaging with IVC via an IVC approved umbrella company whereby the umbrella company is responsible for deducting PAYE and NICs through its own payroll; or
3. Engaging with IVC via an approved agency whereby you are an employee or worker of the agency and the agency is responsible for deducting PAYE and NICs through its own payroll, or the agency engages an IVC approved umbrella company whereby the umbrella company is responsible for deducting PAYE and NICs through its own payroll.

If you are planning to use an umbrella company or agency, please email details to IR35@ivcevidensia.com so that we can ensure due diligence has been carried out.

We would also be delighted to talk to you about joining the IVC team on a permanent basis. Being candidate driven we are able to offer flexibility to suit your needs and we have a number of full time and part time roles around the country that you may be interested in. In addition, we have a number of roving vet roles available if you enjoy moving around the practices. If you wish to consider a role with us or would like more information about our flexibility and remuneration packages please contact our Recruitment Team at: jobs@independentvetcare.co.uk

What happens next?

We understand that you will need time to consider your options and what will suit you best. We would be grateful if you could let us know by Friday 28th February which of the above options is your preferred engagement route moving forwards.

If we do not hear from you by this date we intend to give formal notice under your current agreement to bring the arrangement to an end by 5th April 2020. You can confirm your decision by email to IR35@ivcevidensia.com.

We would recommend that you seek appropriate professional/tax advice as soon as possible to discuss how our new approach to locums and contractors will impact you, should you wish to do so.

We will provide further guidance to you once you have notified us of your decision.

We look forward to hearing from you.

IVC Evidensia

23 February 2020

Andrew Iwasko

I write personally to you as, in my words, a Consulting Technologist well versed in many forms of technology from all eras. I have worked on and off as an IT contractor for 25 years, played with modern computing for 40 and began working with networked office computing before Microsoft.

What I have written is intended to give some background and comment on the IT Industry and the good and bad aspects of IR35, from the perspective of a contractor. It is not a detailed legal argument, merely something that you may not often get sight of, how some of it actually works.

The IT Industry

1. The Information Technology industry has always suffered from problems in regulation and validation. Whether in selling hardware and software or services, it is plagued with connivance and misdirection, designed to beguile and confuse, all in the aim of making money. Industry standards are often dictated by organisations with a vested interest in selling more products or services, thus finding truly independent Technologists able to differentiate between value and frippery, is difficult to say the least. This is not necessarily the case should an organisation

have funds to employ the best or to engage the leading vendors. Many do not.

Note: It is widely known to Technologists that Microsoft gained near ubiquity in business systems by allowing Windows to easily be illegally copied. Once businesses became dependent on Microsoft software, later versions included robust copy protection. Clever, if devious drug dealer strategy.

2. The IT contracting market sprang up to meet the needs of organisations that wished to embrace the information age, yet had little to no understanding of what was required, nor staff with the skills to implement. Many service companies also began at this time, a high proportion of which were formed by greedy people wishing to cash in on a perceived 'gold rush' where money could be made by hiring a few 'techies' and purporting to know how IT worked to organisations that had no way of understanding if they even held qualifications.

These two situations led to the position the IT contracting market has remained stuck with ever since.

The leading vendors in the industry create a perception akin to scientific development that IT needs to advance at a damaging (to business) rate. Their sales principles follow inspiring the fear of being left behind competitors that deploy the latest and supposedly greatest, technology. Technology savvy organisations are able to determine their own pace, many more, particularly public organisations, are not.
Short term IT contracts are almost entirely undertaken through a third party 'recruitment' agency. These agencies have only one purpose, to place IT contractors in roles and to take a cut for every hour worked. If an unskilled resource is placed, the agency will still get a cut of any monies invoiced until that resource is let go. To compound the problem, agency staff, for the most part, have no comprehension of the IT industry.

3. So with the widely known fortunes to be made in the IT industry, charlatans, incompetents and the simply self-deluded raced to join the rush. The leading vendors didn't mind since they also made money from selling certification in their products, however low the standard of certification might have been. Up until 'The Cloud' vendors didn't have to support the software (for free), Technologists held the majority of that knowledge to that point. Microsoft were famously barred from the Microsoft Mail Technologist groups due to animosity surrounding their purchasing the product from a competitor.

All of the above led to two outcomes for skilled Technologists.

There will never be an end to customers requiring honest and skilled people to develop their IT systems or remediate them from a mess left behind by the last person or organisation.
The truly skilled people and businesses in the industry cannot often be differentiated from the incompetent, until after being engaged.

4. Today
While certifications have become slightly more well regarded, for the most part people holding certification and little experience are not trusted by Technologists, even if they are more likely to get contacted by agencies.
The advent of the 'cloud' sales concept means that the largest vendors have even more control over the pace of advancement and even which of their products customers are allowed to use, based on cost to support and revenue damage based on removing. As with the many fads over the years, supposedly intended to reduce costs (Offshoring, foreign contractors, outsourcing), all this has done is generate a more complex landscape and more work for skilled Technologists.
Most roles that involve engaging a project team of mostly contractors will likely result approximately 10 to 50% contractors being sub-par, requiring more support and resulting in extra work for the skilled contractors and permanent staff. This range estimate is based on the quality of interview process. (at worst this can involve a simple face-to-face meeting with no technical assessment)
The service provider organisations that grew to immense proportions in the 1990s, still regularly need to engage short term contract resources to be able to service all the customers they win. In some cases an entire project team may be complemented by a single permanent member of staff for a customer project. The customer will often not be informed that the contract team has no previous history with the service provider, nor do they hold any in-depth knowledge of their true skillset. This leads to the same result as the previous paragraph, a risk of damaging resources allowed to work on systems they are not qualified to.
If even I am considering contracts abroad solely because of IR35, how many are HMRC going to alienate enough to think why bother with the UK if it wants to use the smallest businesses as a cash cow? I know skills such as mine are in demand and, should I be that way inclined, I could relocate in next to no time.

My History
5. My father was a Polish child refugee resulting from World War II and my mother grew up living through the Blitz in Battersea. They both eventually ran their own businesses, one listed in BDEC and a supplier of unique training equipment to NATO and allies during the Cold War. I worked with my brother, eight years my senior and not only my first teacher but one of the students that explained the first computing 'O' level to the teachers at our school, Merchant Taylors. By the age of 19, I had formed my first Sole Trader company, gained several clients, some

West End accounting and legal firms and expanded by word of mouth, based on a reputation for honesty and quality. I even turned down a role at Microsoft out of loyalty to my customers.

6. In 1995, I was approached by an agency with regards to a contract role at the BBC. I was offered the role but was told by the agency that they would not deal with me through my Sole Trader company (that had been running for several years and was VAT registered). I was forced to create a Limited Company and found that even though my skills in the messaging arena were highly sought after and even when directly recommended to an organisation, I would have to do business with them through an intermediary agency.

7. Since I began before accreditations existed in my field and chose to leave school following my 'O' levels, aged 15, I have little to no qualifications. Despite this, I have worked alongside Microsoft staff and consultants on many occasions, had Microsoft engaged on my recommendation to validate my work for a global organisation and designed a process that although Microsoft said impossible at the time, became the industry standard for migrating email systems for many years.

8. I feel my breadth and length of experience qualify me more than most to write on this matter. I have provided services to utilities, communications and technology companies, central and local government, The NHS, media, fashion, retail, finance and banking industries, to name a few. Contracting for 25 years, trying to protect organisations from the lies in our industry and to help them control technology to benefit the organisation, not cripple it financially. I am lucky that I can see with clarity what most cannot and so my skills, to those that have seen them in action, are always in high demand. My truly independent position affords a high level of trust to my opinion.

9. Some organisations simply cannot budget for someone of my level for any great length of time and could not offer a permanent salary that equates to the skills I can offer, nor least hold my interest. In allowing me access to their systems for just a few months, I can save an organisation a great deal. These organisations cannot afford to engage companies such as Microsoft and so are prey to many businesses that still exist, offering the world when they can often deliver little of value.

10. A case in point would be an NHS trust that had trouble delivering a project using an accredited Microsoft Gold Partner. Three years in and nearly half way to delivery, I was asked to evaluate the position, remediate previous issues and deliver the remaining work. I completed this alone and in under three months. While I cannot divulge further detail of this case, I can say in my opinion, more damage has been done

to the NHS by breaking its buying power up and leaving each Trust prey to the 'sharks' feeding on small public and private sector organisations. The NHS as a single organisation could have developed a medical tablet device rather than using an Apple/Google one, the BBC managed to create one of the first home computers after all.. Organisations such as Microsoft wouldn't offer the lowest level of partner to that NHS, they'd come and visit personally.

11. I have weathered the storms of every new fad in IT that promises to save money but instead generally simply means money goes out of a differing budget and business operations are destabilised… … then people such as I come in to tidy up. My concerns then with the manner and approach taken by IR35 is in it failing to take into account the problems in the IT contracting market which it will likely compound by adding another complication and destabilising the market further.

Many organisations will not wish to add complexity to their hiring process by vetting every contract to see it conforms and so will state all contracts 'inside IR35'. Those that take this approach will exclude themselves from hiring contractors who will refuse to consider 'inside IR35' contracts. Most unskilled contractors don't care what their contract pays, so long as they can get something for a few months that increases their chance of getting another contract and in general pays them at least until their first contract term is over.

Given the section explaining something of the industry, it is fair to imagine the impact of limiting the scope of hiring in a market always denoted as being short of well skilled people. To limit it to the unskilled, desperate and resentful, might not be considered prudent.

12. I can understand that my particular skillset is moderately rare, I have been fortunate to work with some of the greatest minds in our industry, yet sometimes, taking two NHS roles in particular, I take on a role of a far lower level, simply because I would rather I help deliver it than risk it being done by an incompetent. I am not saintly by any means, I happened to be available at the right time and knew I could do something for worthy institutions, at a level of quality not normally seen. Feels better than helping a business sell more garden rakes or cinema tickets.

If now, based on criteria set by HMRC, I ignore adverts for such roles, it may not harm me beyond extending time between contracts, it will harm organisations that would otherwise have access to the full market of IT contractors.

13. In terms of the direct and current impact of IR35 to me and UK organisations, my current role at an important UK organisation is ceasing at the end of February, in a contract that has been renewed 10 times over

two years. This was due to a number of new projects resulting from a massive expansion into the USA and my being capable of covering many differing roles when the company had lost many key permanent staff due to restructuring. In the time I have been on this contract, I suffered a concussion from someone driving into my car and worked from home for short periods for five months. This was an unheard of situation to me and in part denoted the value this organisation holds for the services I provide. Their kindness in this matter is one reason I have remained with them longer than I usually would. How does that fit into an IR35 calculator?

The work I have been undertaking to help this organisation expand operations in the US has not completed but because I have been led to believe they are applying 'inside IR35' to all contractors and I refuse to condone the use of umbrella companies, I will be leaving at the end of February.

I cannot say that losing my skills and detailed knowledge will severely impact this business, all I can say is that were it not for the adoption of IR35, I would have been retained at least to bring a satisfactory end to the projects I am Lead Architect on. My leaving was raised as a risk to the project which has now lost very specific and specialised knowledge from my developing designs. This organisation has also extended their offshore presence to Poland as well as India, moving at least half of the team I was working with out of the UK.

14. IR35 does not take into account subtleties or business demand that may need temporary resource to be retained due to the pertinent and unique knowledge of a system. If those skills are required for two years but the project is delayed, does HMRC have the right to effectively state after an arbitrary time a contract becomes permanent employment? Is that even a part of this legislation?

15. I would also question just how much one such as I is damaging our country by operating as an IT contracting business? What I earn goes to pay for me to live, pay additional funds to care for my mother on top of the poorly run care system that she paid into throughout her 65 or so years working and paying taxes, support my children through normal life and hardships and is spent almost entirely in the UK. Where is HMG losing out from me?

16. Technologists know governments have yet to take charge of IT. Where is the dedicated Ministry of Technology that hires some of the brightest in the field to protect public bodies from the 10,000 page Statement of Works delivered from wily vendors and consulting firms (where everything appears to be promised but later turns out to be an extra cost)? Digital UK? It is so sad to see the path you've been led down,

doesn't even warrant the moniker, joke. Department of Digital?? Pray, do tell, what does that even mean? We need money spent on tarmac, not 'digital roads'.

Did you know? Before being stopped in 2007, 75% of the world's spam email was emanating from an ISP in Silicon Valley, California. Not some 'dark web' location in deepest darkest China or Russia, oh no. It was from the same place the biggest anti-spam software vendors are located (I was developing an anti-spam service dealing with 1.5 million messages per day when it stopped, so saw the difference immediately). Today, the same techniques are being used in the cyber wars playing out around us.

17. I cannot obviously divulge the type or number of security issues I have had to either remedy or advise organisations to rectify throughout my career. Even so, none remained following my intervention, so I have not had to worry I carry any quandaries of conscience with me. It does though make Technologists laugh and shudder equally when hearing about the comparatively paltry data leaks and whistle blower stories, oft accompanied with the words, "If they only knew".

IR35

20. This legislation is not just a blanket across IT, but other industries. How on earth does that work? Does construction have much in common with IT? Faced with questions that say I'm not allowed to include IT equipment in an evaluation of how I perform my role, seems to suggest an attempt to create blocks to perceived loopholes in other industries.

21. Am I an employee or do I run a business? Am I employed by my own business and another at the same time now? It seems HMRC wishes to change how business operates without changing the rules of how businesses operate. Did contractors create the current contracting market or did businesses and who allowed it to happen? Why? Was it because a business could avoid taking responsibility for employee contributions and benefits that could run far in excess of a contract rate? In that case, why have contractors been the target of HMRC until recently? Why is it now a case of putting responsibility onto businesses that involves a non-decision of either taking a cheap standard approach or an expensive, risky and complex one?

22. How well do recruitment agencies fare in the tax payment arena? Being effectively pimps that sit back taking money for the hard work of others, there is a lot of money to be made as a contracting agency. Of course they can then afford to employ accountants who can make their business incredibly 'tax efficient', so are not a concern to HMRC, as long as the correct markers flash up on their accounts like any 'good' accountant will ensure happens. They're still getting their cut of Public Sector contracts aren't they? Did their mark-up take a hit in all this? Do

an investigation, see if more than 1% of agency staff can pass a basic IT test and ask why do they form part of our industry when they damage it so?

23. I personally agree with the principles of IR35. In that businesses have chosen to avoid responsibility for people who should be classed as employees. As such, their culpability is in flooding a valid market with inappropriate people, while avoiding paying taxes and pensions that would otherwise have fallen to them. What is disagreeable is the manner in which HMRC have smashed a hammer onto the market with scant regard to the valid need for skilled contractors whose value was the reason a 'gold rush' began.

24. As such, the results in the IT industry have been similar to a lot of scare tactics over the long painful years of IR35 being almost completely ignored, many contractors take temporary permanent roles to see what happens, others bow down and the remainder refuse to be cowed by a poorly developed set of legislation. On the face this can be seen as a success in the public sector. HMRC get more PAYE inputs, 'inside IR35' contractors pay directly and even though many public sector contract rates have gone up to offset the IR35 imposition, that money goes back to HMRC, so it is all nicely wrapped up. Doesn't identify what quality of contractor you are left with does it?

Note: Do HMRCs figures stating the gains in taxes since 2017 include an offset covering the rises in Public Sector contract pay rates that would have had to be sought from government? Has been bizarre to see Public Sector rates exceed Private Sector.

25. It wasn't as if the best in the industry were racing to help in any case was it? What is that old saying? If you've given up or don't want to have to do much and have a nice easy life, take a job in the Public Sector. (Thankfully there are some principled and dedicated people that do join and keep it all running, I've met some and been privileged to work with them.) An even greater divide could grow between the affluent business sectors and public and small or low margin industries (retail?). Some contractors take a low paid role to fill in while waiting for one that matches their higher level skills. Is shutting the door on the benefits highly skilled people can bring to lower level roles worth it?

26. It is already hard enough to be treated as a business. I have on occasion demanded a change to an agency's standard contractor contract. This process is not only extremely difficult to enact and often requires approval by one of the heads of the organisation. It is seen as out of the ordinary simply because agencies and hiring businesses alike, wish for an easy life. The contractor trying to run a business, paying for insurances, their own training and equipment, their holiday and sick pay, doesn't

generally have a department to do things for them. How is it HMRC can deduct tax, denoting employment, from a contractor's revenue without also expecting full employee benefits to be granted to those contractors or requiring a permanent employment contract be enacted? IR35 – A good way to undermine centuries of developing labour laws.

Then again TUPE was brought in to deny loyal employees long term benefits by selling them on like slaves to other organisations. Here, have a chunk of employees, reset their loyalty clock and we'll buy back whoever stays from you in a few years.. Perhaps the same should be done with Civil Servant Pension special additions? Transfer them to a different organisation and erase long service benefits. Cost saving to the state. (Great having that data freely available online isn't it?)

27. As far as I have seen and I am sought after due to my ability to find the smallest pertinent detail, the evaluation of IR35 is an overly complex, poorly defined, unfocussed and ill-communicated concept. The questions leave little room for subtleties that have been eradicated in the formation of standard contracts and even with my experience in the industry and in running businesses, needed far more explanation than is offered. It underlines my perception that most businesses would see the need to have a legal team evaluate every outcome, before accepting they could not later be held liable. How many businesses would contemplate this?

28. Have I been contacted about IR35 by HMRC? No. Have I been classified as an IT Contractor, even though for several years recently, I worked solely for a client base I built up about 10 years ago? I have no idea. I could work on one 'inside IR35' contract for three months as an 'employee x2' and then move to a two year contract 'outside IR35' as only an employee of my business. Would working on one 'inside IR35' contract tar me and thus mean I was a target for HMRC? Like other businesses, I have evaluated the risk and will take the path of least risk to my organisation.

29. Does HMRC hear IT managers shouting "this is insanity" when told they either can't retain valued resources or hire new ones with appropriate skills, simply because the business has chosen not to waste resources on vetting each candidate for IR35 suitability? (Businesses are risk averse if you weren't aware, so to risk incorrectly calculating HMRC's vague IR35 output generator is an almost certain, no.)

30. Should not a calculation for IR35 validation include that of an ex-employee being hired by the same or associated organisation? The appropriate legislation making such an approach illegal for a defined period of time and appropriate deterring fines to businesses that follow such processes. Agencies currently use 12 months to stop contractors returning to an organisation directly, simply on the basis the agency

introduced the contractor. Why not put the same controls in place that stem businesses avoiding employers' responsibilities, rather than stop valid contractors' businesses from performing their function? Innovative I know, stop the problem at cause, not result.

31. It would seem reasonable to consider a percentage increase in Corporation Tax for limited companies to be paid as a National Insurance contribution. Not least since businesses cannot function without healthy employees and as most accountants make use of current PAYE principles to reduce NI contributions. Try asking an accountant to increase your tax liability, they don't understand such words, so again, is it the contractor or the system of tax governance that is broken?

32. Even worse, we now hear the foul call of 'Umbrella' companies rising again. Those vehicles famously used to pay offshore accounts and completely avoid UK tax, are now being seen as a way of circumventing IR35. For the first time in years I have even been asked if I would use one for a contract in 2020. My answer, as ever, was that I have no interest in using an entity designed to masquerade as a business. Bravo HMRC, another shot in the foot.

33. While HMRC and Treasury representatives can sit laughing, relaxed with no imminent risk to their livelihood, HMRC continues to fail to win even court cases that any would agree should have been classified under the auspices of 'inside IR35'. How then can they justify applying such wishy-washy and potentially destabilising legislation to private organisations that don't have the ability to demand an increased budget from the government to pay more to HMRC, on the basis it all goes back to the government anyway?

Over the course of 20 years one would imagine that even a Public Sector organisation could have designed a properly thought out, honest, fair and obvious approach, rather than dragging a dead dog along for all that time while claiming it is a live prize pedigree parrot.

21 February 2020

Brian Jackson

Numbers and headings reflect relevant paragraphs in 'Call for Evidence' PDF file

Existing measures in the public sector

1. My experience was based on an unsuccessful interview for a role at NHS Professionals in Watford in August 2018 where I discussed IR35 with

the interview panel. They stated that the impact on them was that they had had to raise fee rates where possible to compensate freelancers (to offset IR35 changes impact) and that they were having difficulty recruiting due to IR35 impact.

Impact of new off-payroll rules on organisations

2. The impact of the extension of the off-payroll rules to the private sector not been adequately assessed and the compliance burden is iniquitous. Some of my previous clients (e.g. HSBC) and potential future clients (e.g. Lloyds Bank) will have stopped using freelance contractors completely. My last end-client (London Stock Exchange Group, where I had a successful six-month contract July-December 2019) was still uncertain on how to address the expected IR35 changes at the point where I completed my project and left. I can envisage no prospect of returning for another assignment in the foreseeable future.

3. no comment regarding small organisation exclusions.

4. For me, the effect of these new measures on a chain of contractors and sub- contractors are:

☐ I do not want a permanent role again in my remaining working years

☐ I want flexibility in my working conditions, such as reduced hours and long gaps between contracts, which will not be possible if I am effectively forced into deemed employment under these changes (without any of the benefits of permanent employment, such as paid leave and holiday allowance, pension contributions, paid sick leave and other full-time employee benefits, for example health insurance, life assurance, training courses, etc)

☐ Brexit uncertainty has already undermined my market sector (Finance) and specialisation (Business Change). The IR35 changes will result in a further year or two at least of declining market and opportunities for me

☐ I am now seriously considering making my company dormant or closing it completely and retiring early due to the hostile environment these proposed IR35 changes are creating.

5. All of the indications I have seen (including the latest announcement by Deutsche Bank) is that major organisations are not prepared to take the risk to incorrectly assess and therefore are eliminating the risk by eliminating contractors. At the risk of sounding cynical, this would seem to be HMRC's desired outcome, given how badly IR35 has failed as a flawed regulation over the last decade, now passing the burden and risk

to organisations not prepared to take a chance on HMRC's potentially draconian punishments if they get the assessment wrong.

Determining tax status of workers

6. The tests for determining employment for the purposes of these rules are neither sufficiently clear to both engager and worker nor do they reflect the reality of the contracting environment. When I was a Management Consultant at Coopers and Lybrand (now PwC) I spent two years at the MoD delivering a major change programme across many tranches of MoD branches. This would not be affordable now for a freelance contractor as the penalties for providing such continuity of knowledge and experience are outweighed by the penalties for doing their client this service. There seems to be a fundamental lack of understanding underpinning IR35 about the nature of major long-term projects (particularly business change and IT projects, whether in public or private sector) where experience and continuity are valuable, and probably necessary for the success of these projects. There seem to be a lot of these projects in the political pipeline, so it seems an odd time to implement a regulation which will potentially result in the reduction rather than increase of the (desired) skilled indigenous workforce.

7. My assessment of the Check Employment Status for Tax (CEST) tool is that it is a blunt instrument heavily weighted in HMRC's favour. IPSE has already told HMRC how it should be improved but, to date, these suggestions appear to have been ignored. HMRC does not appear to be genuinely interested in improving the tool so that it is fair, balanced and accurate.

8. The status determination process will be not be effective in resolving issues of employment status – companies cannot afford the risk of getting this wrong nor increasing their costs by putting additional resources into understanding and complying, which is why we are seeing these reactions from the likes of HSBC and Lloyds. For independent freelancers like myself, the so-called safeguards are utterly inadequate – do you think I have the time, resources or more importantly the influence to tell a potential multi-national client that I want to challenge their decision? I'll simply lose the work if I try to do that.

Policy objectives and wider context

9. It was instructive to see the 'Debate' section of City AM on 18 February, where the question posed was "Should the new chancellor suspend the IR35 tax regulations, due to come into force in April?". Two analysts presented the arguments for and against suspending. The most instructive part was that, in essence and in conclusion, both of them proposed that tax reform and clarity was needed, rather than tinkering with IR35, which has consistently failed to achieve its original objectives.

10. Will the Bill, as drafted, achieve the Government's objectives? No, it won't. It is already having a negative impact on the freelance market, and if the legislation is brought in as proposed it will cripple it.

11. I will retire before I go get forced into working through an umbrella company or back into permanent employment, as I wish to be a flexible contractor not an employee. I do not desire the loss of autonomy nor control through these employment methods and, frankly, I begrudge the way that IR35 has created a layer of financial parasites, i.e. agencies acting as a cut off between contractor and client, who add nothing for the contractor other than the loss of a percentage of the rate they are already earning, which goes towards protecting the contractor's actual client from IR35 risk. Working through an umbrella company simply exacerbates this situation.

12. My potential clients will not offer me permanent employee benefits. I will be taxed as if I am a full-time employee. I don't think that's fair. Does it sound fair to you?

20 February 2020

Peter Jackson

I feel I must write to you concerning temporary staffing in the IT market. I have been contracting since 2001 in the UK through a Personal Service Company (PSC). I have always worked on projects with fixed timelines, have frequently had my contracts and working practices reviewed by tax professionals and have always been found outside the IR35 law. It currently looks like I will need to change careers or will be forced to leave the UK if I am to continue contracting under the new IR35 law.

The amendment that the government is making to this law on 06-Apr is radically changing the market. Most large companies are blanket banning PSCs irrespective of whether they are inside or outside the scope of IR35. The blanket bans are being applied throughout the client's supply chain. If a PSC is working with a consultancy and the consultancy is working for an end client, the end client is stipulating that no one who is engaged in the client's supply chain can operate a PSC.

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed?
No, the government's intention was for organisations to assess whether a PSC was operating inside or outside the IR35 legislation. In the vast majority of cases this is not happening and organisations are blanket

banning PSCs. It does not appear to be the additional cost of making the assessment that is driving this decision but the risk of HMRC investigating that organisation.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?
Legitimate contractors and subcontractors are being forced to close their limited companies due to the blanket ban and are being forced into umbrella companies operating under PAYE.
This seems unfair because their work has not changed and the risk of doing business remains the same as it was through a limited company.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures?
The IR35 legislation was working correctly before the amendment. If a PSC was found to be working inside IR35 then HMRC could apply back taxes and penalties as required. I see the only way that the new law can work is if organisations can be made to make a fair assessment of contractors and not allowed to blanket ban all PSCs from their business. In my opinion, if a PSC is working on a project that has a fixed timeline and is in control of how that project is delivered then they should be outside IR35. If a PSC is working as part of the normal day to day running of an organisation, then they should be working inside IR35 on PAYE.

10. Will the Bill, as drafted, achieve the Government's objectives?
No, not for the majority. Most organisations are side stepping this new law by blanket banning PSCs from their supply chain.

11. What is your view of the role of umbrella companies in the context of these proposals?
Umbrella companies are just adding additional cost into the supply chain.

This blanket banning will impact the market in the following ways:

For PSCs
Some PSC owners will close their limited companies and be forced to work with umbrella companies under PAYE as they have mortgages and families to feed.
Some will go on the bench and wait.
Some will look for work overseas or at the remaining few clients in the UK not blanket banning.

For Organisations
Increased costs as the new PAYE 'employees' will try and negotiate their rates higher to offset some of their costs. This will make the organisation less competitive compared to similar organisations located overseas.

They will cancel many of their projects having insufficient resources. They will engage offshore consultancies to try and fill the gaps but this workforce will be less flexible and less knowledgeable than onshore PSC resources.

HMRC
Overall tax revenue may be reduced due to PSC owners going on the bench or working overseas, largely their replacements will be offshore. The economy will be worse off as additional costs will be incurred by the organisation leaving less money to invest. The new PAYE 'employees' will also have less money to spend in the economy.

The only group I see benefiting from this new legislation are the offshore consultancies. I would like to see the new law either abandoned or postponed. Clearly businesses are not ready for it. If the law is to remain, then the client organisations should be forced into making an assessment by law on the status of the PSCs that they engage. If the amendment is abandoned, then the status determination should remain with the PSC as it is today.

In our post Brexit society, we should be adopting all measures necessary to make our companies more efficient and competitive not less. In the IT sector there is fierce global competition and I only see the new law weakening this sector in the UK.

Chris James

Economic Affairs Finance Bill Sub-Committee Evidence Submission.
I write as a Chartered Accountant in practice, with a particular specialisation in the recruitment and staff supply sector, and in self-employed contractors with their own Limited Company, or Personal Service Company ('PSC'). I am therefore very familiar with the history of IR35 and Off-payroll tax rules, and the mechanics of the sector. I am very grateful for the opportunity to add some general observations to the evidence pool being considered.
In my work advising contractors, and employment agencies and end-clients, my experience shows that there is a huge lack of awareness of how the new rules will work, and what is involved in the underlying employment status assessment. As a result, panicked reactions such as blanket bans on contractors using limited companies, are seen in many cases.
I accept that new tax rules will always require an introductory period where understanding grows. However, the final version of these rules (the law) is not yet available. This affects businesses ability to respond, for example in arranging insurance cover for the risk of the failure of processes aimed to address the new law.

There was a slightly disturbing impression given at the Lords Economic Affairs Finance Bill SubCommittee (evidence session, 3.15pm 24th February) by some of the questions posed, that 'everyone knew what was going on' i.e. that there was widespread underpayment of tax by contractors who were knowingly 'gaming' the system. While there are doubtless examples of this, new tax law aimed to correct the position should be designed so to enable compliance, rather than to fundamentally damage a sector that is viewed rightly as a strength of the UK – the flexible workforce, recognised by the Taylor Report.

Last year's election caused a delay in the latest Budget, at which final legislation could have been confirmed and released. In the meantime an education campaign has been in progress by HMRC, however, this was also paused during the last quarter of 2019 due to the election. Therefore, we are faced with last minute legislation, and a lack of guidance.

Given the blanket bans issued by many high street banks and others, alongside HMRC's own estimates that 30-33% of 'contractors' (by general agreement) should be found inside IR35, suggests that an extreme knee-jerk reaction has occurred, rather than an engagement with this (as yet) unfinalised legislation.

HMRC have issued their own review into implementation – but there is no time to implement any meaningful changes as impact is already being felt. Your own Lords Review is very welcome – but again is occurring very close to the introduction of the rules – which again are not yet finalised.

The 'umbrella' market, which will grow significantly as the changes come in, is still not regulated and I have seen many examples of new and old aggressive tax avoidance schemes being launched in this sector. These allow promoters to charge fees, less than the right amount of tax to be deducted, and will harm those umbrella businesses that are compliant, unable to complete with artificially high 'net pay' returns to workers. Workers will later find they have underpaid tax, promoters will do their best to wriggle out of liability, and HMRC will still not have collected full tax where they believe it is due. The similarities to the Loan Charge are hard to ignore.

The CEST tool, sensible in principle is not accepted as a good enough decision tool by the vast majority of commentators on the subject. In addition, complex aspects of the law have not been dealt with sufficiently well. For example, HMRC's guidance in the Employment Status Manual (ESM 10026) suggests that where an end user is overseas, an agency will have to get that business to issue a Status Determination Statement, having reached an employment status decision, despite a likely lack of knowledge in the area. This is impractical and may actually drive avoidance of the law – the legal position seems to be here that the agency is not liable if the end user does not issue the 'SDS', and so work for overseas end users might be seen as an insulation from the law, as liability will remain with the end user, who presumably will have little

difficulty defending itself from a tax authority in another territory. Issues like this matter and need to be dealt with before the law is rolled out. These reasons in total indicate that HMRC are rushing into this piece of legislation, based purely on the assertion that people will always complain about tax changes. This refusal to engage with the large number of commentators – tax professionals and businesses in the sector, is short-sighted.

To harm the 'gig economy' at a time when the UK needs to back and maximise its best products and services is illogical. I have clients who have already seen their work moved out of the UK in anticipation of the changes – and in those circumstances tax and the remaining net pay would not remain here.

Finally employment rights and taxes should be linked. Government is consulting around employment rights but this work is not finished. Once again, this is being rushed through without taking a rounded view of the issues. 21st century working is struggling to be contained by old law, but fast law is not good law. The fact that this new law is being avoided rather than engaged with, is a strong indication that it is not fit for purpose.

I hope that common sense will prevail and the rules be delayed and reviewed. Employment status and tax needs a fundamental review, not another iteration of IR35 which has, at best, a chequered history.

David Jarrett, XLT Consulting Ltd

Capacity in which made: personal & owner operator of a PSC Ltd Company

1.**Existing Measures in the Public Sector**

I have avoided quoting for, and providing services to the Public Sector precisely because of the impact of the off-payroll rules implemented in the Public Sector.

In speaking with similar PSC Contractors, contractor day rates inside IR35 have increased engager costs and many smaller contractors have left the public sector as a direct result of the IR35 off-payroll changes. The only winners have been large corporate suppliers charging higher day rates for the same services.

2. Impact of extension on taxpayer

I have seen no reliable information on how an inside IR35 arrangement should operate, to the effect that umbrella companies have free reign to present their services and fees as 'fact', while the taxpayer (myself) would be at the mercy of legitimate or rogue umbrella operations.

In other words, the transition is a mess which I intend to avoid by refusing inside IR35 working arrangements in preference for either full 'permanent' employment or service delivery outside IR35.

3. Assurances for small organisations

In speaking to prospective clients, they are not clear how IR35 assessment should be conducted and therefore have either stopped hiring temporary contractors or decided that all such contracts are inside IR35 off-payroll extension by default.

This has been worsened by HMRC communicating that the output of their CEST tool assessment is not binding.

4. Effect on a chain of contractors and sub-contractors

I have seen confusion as to the intent and likely HMRC interpretation in this respect. It is causing market disruption for the provision of temporary service contractors.

5. What should HMRC do to help business understand the new administrative rules

HMRC should issue clear guides and scenarios which are binding. Engagers have a clear need for temporary specialist services. The lack of clarity as to deemed employment versus supply of services contracts continues.

6. Are the tests clear to engager and worker?

No. The tests are far from clear, which is made worse by HMRC's statements regarding legal cases and their CEST tool assessments not being binding.

A persistent and unanswered question in the private sector domain and among my fellow PSC service providers is:
Is a specialist delivering a defined outcome on a temporary basis through a PSC Ltd Company, inside or outside the off-payroll IR35 legislation?

The HMRC answer is: it depends and HMRC can challenge each contract in the courts, which is not at all clear.

HMRC continues to challenge IR35 law while accepting legally declared and assessed Corporation Tax, VAT and Personal Tax with respect to the same engagements. The proposed private sector off-payroll legislation and CEST tool assessment does not make the situation any clearer.

All businesses need certainty to operate and adjust. That includes engager companies and PSC operators, both of whom generate value and have to manage business risk within the law.

7. Does the CEST tool require improvement?

Yes. HMRC should publish criteria & scenarios for engagements outside and inside IR35. Stating that the tool's assessments are not binding and challenging IR35 law through the courts is not improving understanding for either engagers or workers.

8. Are there adequate safeguards for status determination?

No. Retrospective reviews do not allow for adequate safeguards. A PSC can follow every aspect of the HMRC guidance, the IR35 law and use the CEST tool to check an outside IR35 assessment, however HMRC undermine any safeguards by challenging their own tool outcomes in the courts. As an engager and supplier, this is not a viable or reliable situation.
Where there is clear intention by the engager not to hire an employee and instead to hire a supplier of service, it needs to be made crystal clear by HMRC in a binding status determination. Relying on legal cases to set IR35 precedent is not an adequate safeguard.

9. Are there better or simpler ways to achieve the rules objectives?

Yes, very much so. In Canada PSC contractors are incorporated in a different manner with a state determined corporation tax rate and clear legal status. This allows for the engagers' needs for temporary specialist services and also for the PSC's legitimate needs for certainty when conducting a legal business.

If HMRC wants PSCs to pay more tax - at corporate level - incorporation and taxation law changes would be a much better way of introducing those changes. At the personal level, tax threshold changes are already implemented by the Government on a regular basis.

The HMRC's constant badgering of the PSC sector of the economy is counter-productive for the engagers who need temporary specialists and for the specialists who bear risk and add economic value. I do not see the same rigour being applied to large scale corporates who routinely use revenue shifting strategies to avoid paying 'fair tax' in the UK.

10. Will the Bill as drafted achieve the Government's objectives?

No. It will raise costs for engagers who need temporary specialists on a supply basis. It has already devastated the demand market for PSC contractors. Flexible working arrangements will become controlled by larger companies at the expense of small companies and specialist providers.

Very few legally compliant PSCs will engage in umbrella employment engagements when they can either go abroad or find 'permanent' or Fixed Term employment at much lower risk.

The unintended consequences of this Bill are huge and HMRC has not done its maths correctly. The Government will lose Corporatation Tax from PSCs and any VAT not offset in chains of supply. Unemployment will increase and the burden for loss of economic value will become evident in 12 to 18 months if this Bill is passed.

This Bill will negatively impact both engagers - who will pay more for the same services - and suppliers - who will struggle to find engagements.

11. What is your view of umbrella companies in the context of these proposals

This Bill will create an open season for rogue umbrella company operators who are not legally regulated or accredited in any way.
This Bill will create a bigger issue of potential fraud on a large scale by those umbrella companies.
Also, where are the safeguards that workers' rights will be protected when they deal with umbrella companies?
It is a gross assumption to consider that workers are not already being exploited by umbrella companies, to their loss of holidays, sick pay, continuity of employment, unexplained deductions from pay they have earned, pension contributions etc.

As a PSC and specialist supply worker, I will never deal with an umbrella company for all these reasons.

12. Is it fair to those in the gig economy that they are treated as employees and have no employee rights?

No, it is not at all fair in these respects to gig workers.
IR35 is the wrong solution to this issue. Alternative legal changes should force such arrangements to be clear supply or employment engagements with appropriate rights for the worker. Clearly, certain engagers are exploiting a grey area of the law in this respect to obtain gig workers without giving any rights for the worker.

To expect PSCs to fall into the same inside IR35 'trap' is to assume that bright people will accept a lower standard of living for no gain. Engagers are already stalling capital investment projects and pursuing alternative large supplier arrangements. The independent temporary worker, or freelancer, will bear the brunt of this Bill's impact at a net loss to those workers.

20 February 2020

Justin Jarrett IAFC

Submitted by: IT Project & Programme Manager; contractor providing services to a variety of clients in the Finance & Insurance industry for 7 years.

In answer to questions where I can provide personal and specific input:

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?	This will severely curtail the flexible workforce from all discussion I have had with colleagues and contacts. On assumption that off-payroll working continues to be rolled out as-is then I personally will be forced to transition to a permanent employment role over a no-rights Outside-IR35 role. Taking the No-rights employee role just makes no sense for me personally. This is due to the following reasons: 1. The take-home difference in reward between the permanent role and the contract role is too small (perhaps nil) to justify the additional overheads and risks of No-Rights-Employee whilst retaining my own PSC; 2. The personal and family stress which will be generated directly by the ongoing risk of HMRC historical tax investigation is too great, no matter how strongly I believe my engagements to have been outside of IR35; 3. I cannot afford to be without income for a protracted period whilst the market readjusts to changed conditions. To back up these points: If my current contract engagement (£540/day) were deemed to be Inside-IR35, the impact of switching to an Inside-IR35 Umbrella arrangement (covering both Employers' and Employee's taxes taken from a real

	Umbrella quote) results in my "take-home" pay becoming £71,578 (55.23% of invoice value). This figure also ignores the overhead costs of continuing my own PSC, e.g. for a future possible Outside-IR35 role. I have personally seen zero evidence or appetite for the contractor rate to increase as a result of an engagement now being deemed Inside of IR35; my personal experience and the expectation I have seen in the market is that PSCs are expected to cover both Employer and Employee taxes. I would personally expect to be able to secure a permanent role at a rate of £90k gross (I left permanent employment 7 years ago on £65k). After Employee taxes this is a "take-home" pay of £60,736. The permanent role will however also come with valuable additional employee benefits; for my last permanent role this included annual bonus (8% for being "on-track"), 14% (maximal) employer pension contribution and a plethora of smaller corporate benefits.
9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?	**Suggestion:** To completely eliminate the cottage industry and all overheads and back-office paperwork associated with managing the process of IR35 wrangling and Status Determinations, court cases, etc, the government and HMRC could: - Entirely scrap the concept of determining whether an engagement and workers are deemed Inside or Outside of IR35; - Charge client companies a new "consultancy engagement tax" at a flat rate which is equivalent to the total Employers' NI value that could be expected to be taken if all "disguised employees" were employed through PAYE; - The flat rate could be applied to ALL contract/consultancy engagements, and hence would only be required to be a fraction of the Employers' NI in order to achieve the same result – perhaps 5% or even 7.5% to yield a net +ve result for HMRC. Whilst this will undoubtedly have an impact, it does have significant added advantages of: - not removing the flexibility and mobility of a skilled interim workforce that will no doubt form a critical part of the continued success and growth of the economy of this country; - remove all fear and concerns about historical investigation;

	- avoid ancillary impacts where the PSC community no longer spend money on travel & accommodation when working away from home.

25 February 2020

Dawn Jenner

I am a self employed contractor. I used to work for the NHS but took a redundancy package in 2016. At the time my daughter was going through a tough time at school and as a single parent with no family nearby I saw it as an opportunity to work for myself and have a more flexible, home-based working arrangement that met the needs of my daughter and myself. Thus enabling me to maintain my career and our standard of living whilst raising her. I have never claimed a penny from the state and don't qualify for family allowance even though I am the only adult in my home. However, the changes to IR35 have proved catastrophic for us.

I worked properly as a consultant. I had a number of different clients for whom I would work a few hours or days a week to do defined pieces of work (projects, investigations, training or provide advice and guidance). I worked from home using my own telephone and laptop and have never charged any travel costs to my clients who were both NHS and private sector. I simply charge them for the work I do on either a project, hourly or daily rate. Unlike some colleagues who took redundancy and then after a few weeks off returned to their original role on a consultancy basis which I completely agree needs to be addressed from a tax perspective.

However, as a result of IR35 changes there is practically no work available to me from April. The NHS has introduced a no contractors outside IR35 rule and in addition any roles inside IR35 even when for minimal duration are now priced at the same value as a perm employee without the acknowledgement that the contractor doesn't get paid for sickness, annual leave or have any actual employment benefits. Private companies have followed suit and Virgin Care, Spire and Care UK have all made a blanket decision not to hire contractors outside IR35. As a result I am now seeing my business wither to nothing. I have to contemplate applying for an employed position however, the government has done nothing to address the fact that despite the modern world with skype and environmental and mental health concerns, the public and private sector still seem to expect people to commute to sit in an office 9-5 to do the same work that can be done more than effectively from home. Working from home or school hours is my only option currently due to domestic pressures – I am an experienced director level consultant with over 20 years experience in healthcare and my world has imploded because of the

unintended consequence of IR35. By the Summer I could potentially be claiming benefits and selling the home I have worked so hard to pay a mortgage on to give my daughter and I security for the future. All for a set of rules that aren't even intended to affect me – none of my current clients are willing to work with me outside IR35 and very few are now offering any flexibility with an inside IR35 appointment. I was successful, I never used an agency for work as it all came through personal recommendations.

I think that in trying to clamp down on the people who abuse the tax advantage of contracting work, many women in particular who use contracting work to provide a flexible alternative to a salaried position will be forced into unemployment

I hope this is helpful in your enquiry and can only hope the government scraps the current IR35 plans in favour of stepping back and considering other options to address this issue or at least reviewing the criteria by which someone is deemed an employee to make it easier for companies to continue working relationships with companies such as my own

Since I am staring unemployment down the barrel, I would be happy to offer my services to assist yourselves in trying to find a fairer and more innovative solution to this conundrum – on an outside IR35 contracted basis of course

10 March 2020

Graham Jenner, Jenner Accountants Ltd

Proposed changes to IR35

Summary

Below and on the following pages I set out my submission.

I deal specifically with the question of the unintended impact that the proposed legislation is having on those who should not be affected by the proposed change - their contracts are genuinely outside IR35 but they will not be able to continue with their existing contract because the end client has decided not to deal with Personal Service Companies (PSCs), in future, as a direct result of the proposed changes.

We are a relatively small firm of Chartered Accountants but, over the years (since before the introduction of IR35) have dealt with large numbers of contractors operating their own PSC. We deal with

approximately 150 PSCs, mainly working in the aircraft and motorsport industries.

We have so far been advised by approximately 20 of the clients that the end client is withdrawing their contract with the PSC and that they will have to be paid via the end client's payroll, the agency payroll, or an umbrella company's payroll.

We have not yet had one client who has been properly assessed as to whether their contract falls within IR35 or not, with many of the end clients still waiting to see what form the legislation will take.

The Venn diagram on the next page attempts to show the unintended impact of the end client's 'blanket ban' on the use of PSCs.

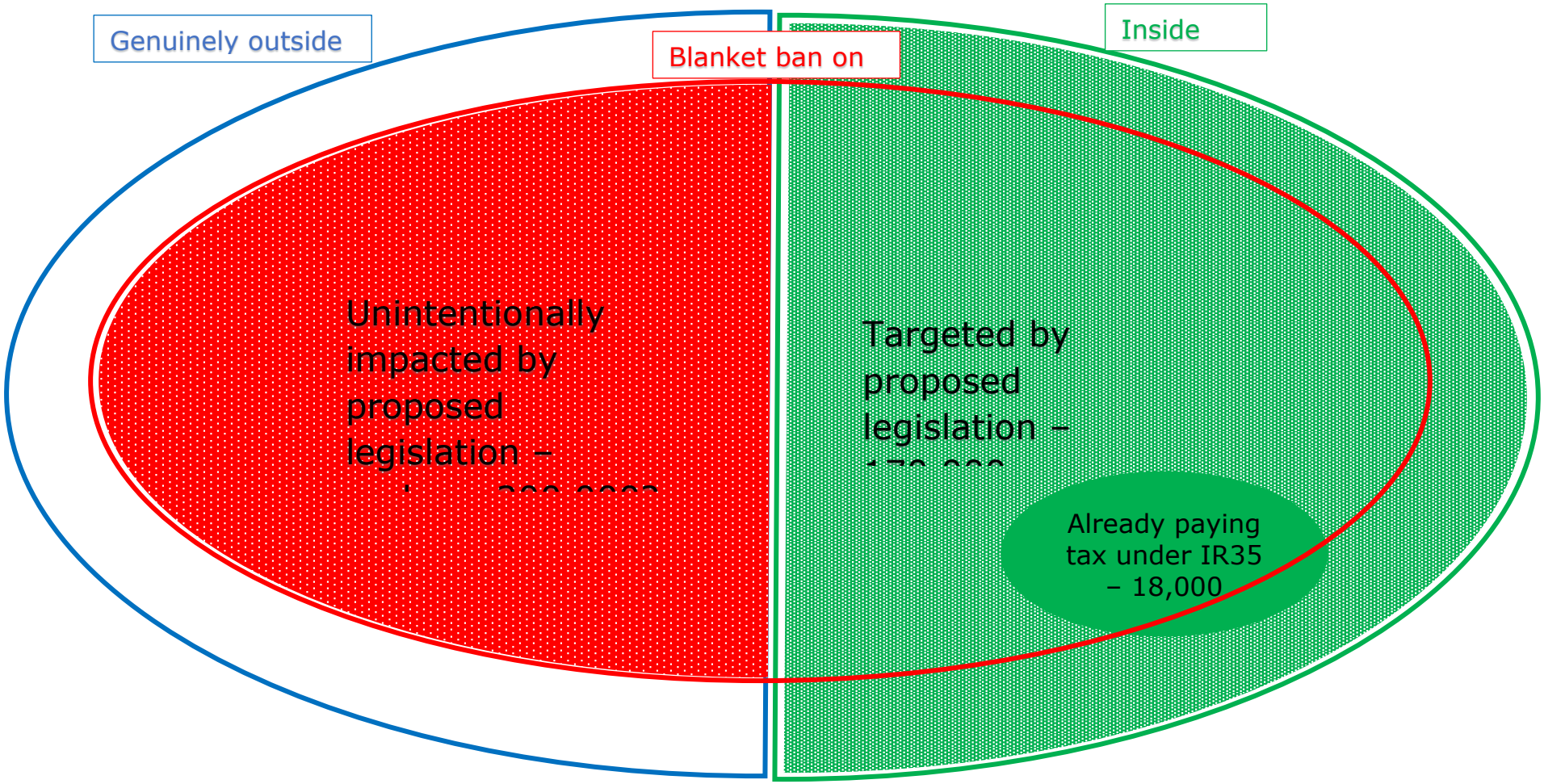
HMRC state that the proposed changes should impact an estimated 170,000 people being those within IR35 but who do not pay tax under IR35. This is where the legislation is apparently targeted and is shown by the green shaded area.

The blue line encloses those who are genuinely outside IR35, whilst the green line encloses those within IR35. The red line encloses those who are affected by the impact of end clients choosing not to allow the use of PSCs as a direct result of the proposed legislation – who may currently be outside or inside IR35.

The red shaded area indicates those affected by the 'blanket ban on PSCs' who should not be affected as they are genuinely outside IR35. but are severely affected due to the end clients' stance.

Those affected but shouldn't be a severely affected impacted - the estimated reduction in NET income for a contractor on, say, a £50,000 pa contract is approximately £7,000. This is not a minor impact.

Venn Diagram of Targeted Contractors and Unintended Effect of proposed legislation



Notes:

The proposed legislation:

a) is intended to collect tax and national insurance from those who are not currently paying it under IR35, but should be i.e. those PSCs that are within IR35 but not currently declaring that they are and not currently paying the tax they should (HMRC estimate – 170,000)
b) is intended to ONLY target those above
c) is intended to right the unfairness of those above not paying the correct tax and NI

Before any legislation is introduced, a proper consideration of the impact is necessary

d) including the impact on individuals, businesses, government and the economy
e) including UNINTENDED impact

The proposed legislation is already having an impact in unintended ways

f) End clients are being asked to determine something that
    i. they have no previous experience of
    ii. that is a complicated subject
    iii. that HMRC struggle to get right (losing many IR35 cases)
    iv. that they may be severely penalised for if they get it wrong
g) As a result of the above, end clients are either:
    i. Ruling all contracts outside IR35 (better safe than sorry)
    ii. Changing their policy so as not to deal with PSCs (safe and less hassle)
h) This is not what the legislation intended
i) End clients can, of course, choose to adopt any policy they like – but it is only because of the severe risks associated with the proposed legislation that they are even considering this change
j) Large numbers of owners of PSCs whose contracts are genuinely outside IR35 are now going to be paid in a different way and will see significant cuts in net income – approximately £7,000 on a £50,000 p.a. contract, as an example.
k) Legislation targeted to correct an unfairness should not have such a significant unintended impact on those that it is stated will not be affected by the legislation

What is the answer?

Change the legislation so that:

1. if the end client carries out the employment status assessment with reasonable care, there is no come back on them if that assessment is subsequently shown to be wrong
2. the penalty for not taking reasonable care should be sensible and NOT the full amount of the tax and NI – penalties should be commensurate with the level of error – not the level of tax and NI
3. there is no financial impact on the end client if they are NOT the 'payer' and the payer doesn't pay the tax and NI – there is no reason why the end client

should be at any financial risk in respect of another party not paying the tax and NI

Legislation that has an UNINTENDED impact of reducing the net income of a person who should not be affected by the legislation, by several thousand pounds is seriously flawed and should not be introduced!

20 February 2020

Jega Management Ltd

Determining tax status of workers

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker?

My experience of the requirements is that they are far from clear and many of them directly contradict what I consider to be best practice.

To give an example, one of the tests relates to whether the contractor uses their own or their client's equipment.

On more than one occasion during the past few years, I have been sent files containing several thousand records of personal data subjects via unsolicited email by employees of my client.

Had I been working on my own company's equipment rather than a client supplied computer and email address, this would have meant that the data had been passed outside the client's domain with potentially serious consequences in terms of GDPR and the DPA for both the client and my business.

This is not a risk that I consider acceptable (nor would I if I were engaging contractors myself) and yet this anachronistic rule actively promotes working practice that is out of step with the risks inherent in the modern working world and the wider data protection obligations that all organisations are subject to.

Impact of the new rules on organisations

What effect will these new measures have on a chain of contractors and sub-contractors?

Working as a contractor exposes me to significant business risk.

In the past 24 months, I have seen a major client fall into insolvency and another client cancel a program of work unexpectedly during its initiation phase; in both instances, my contract was brought to an abrupt end.

Naturally, in neither case was I entitled to, or did I expect, any form of redundancy settlement and, in the case of the insolvency I was left with outstanding invoices that will never be honoured by the client.

These are risks that I gladly accept; contracting allows me to constantly develop my skills by working on a wider variety of assignments than I would experience as a permanent employee and it enables my business to provide insights that are uncommon in my chosen markets.

My clients recognise the value that they receive from the depth of experience that this has allowed me to acquire – and the clear distinction between my abilities and those of their permanent staff.

With risk comes financial reward; if this is eliminated, I find it highly likely that business will suffer from the loss of this talent pool as skills are taken in-house by those contractors for whom the rewards no longer outweigh the risks.

Has the impact of the extension of the rules to the private sector been adequately assessed?

While the expectation is that income tax revenue will receive a significant boost, this seems flawed. There is a strong likelihood that will be more than offset by:

- contractors taking permanent roles with their income tax being assessed against significantly lower incomes;

- elimination of corporation tax;

- elimination of VAT

In terms of the wider economic impacts that also seem to have been overlooked:

- contractors will no longer require the services of accounting firms, hotels (due to reluctance to take roles away from their permanent base) etc

- business liability insurances etc will no longer be required, with reduction in the associated insurance premium tax take

- reduction in economic activity as a consequence of falling incomes

21 February 2020

Anthony Johnson

The IR35 policy has and will cause more damage than good. I have been consulting for over 25 years and have constantly had to reskill during this period. I work in the IT/Finance/Data science sectors. Providing financial institutions with quantitative software solutions.

What effect will these new measures have on a chain of contractors and sub-contractors?

As a result of IR35 in December my work order was terminated and the sector now has blanket banned working with private companies. The current demand for consultants is at the same level as 2009. Should I choice the new IR35 contract terms, I will agree to terms less beneficial than those in permanent roles (excluding PAYE/NI) paying 45% tax on my revenue.

There is no consideration to the risk absorbed when providing clients with consultancy work. When work finishes I cannot claim redundancy and we don't automatically walk into new roles. I am now two months without work. The risk premium for operating in this market is now unviable. The tax rate makes it impossible to save for any downtimes. Typically when the economy is bad we are the first to be hired. Protecting permeant works from this fate. Now with the tax rate I cannot save nor invest in developing new software. I'm unable to deduct expenses and thus I now can't compete against any large company. Everything I do is taxed beyond that of an employee or larger company (employees pay around 30% tax, I will pay 45%). I am unable to contribute to my pension as umbrella companies do not provide this due to administration issues. The cost to manage an umbrella company is very high and we are forced to use one. I cannot structure my tax affairs as this is not going to be done by someone in an umbrella company or thee client. I am now a second class worker with no rights and pay a higher tax rate. This is not a level playing field.

I pride myself that I ran my own business and have built a company which provides flexible work to the finance sector. I "had" multiple revenue streams. This business is now unviable as all the revenue streams the company has is now taxed at PAYE rates. Even though the roles would be outside IR35 determination. Companies are just not willing to take any form of risk with an IR35 determination.

Treating consultants as employees or taxing them as such does not allow for any risk in the system. There will be no benefits from work carried out by the client, no job security. Large organisations will have a field day and worker's rights will be eroded. They will push normal workers into fixed term contracts as this is cheaper for them to do. Workers' rights will be reduced as there is no alterative working environment. Entrepreneurs will no longer have this route to enable them to start business. The dynamic working practices will turn into uncompetitive stale practices. Any support staff that I use to keep my business running will no longer exists. Office space, accountants, insurance, cleaners, temp staff no longer viable.

Changing the emphasis to client determination without the client having to absorb any risk in the determination will ensure that this market place will not exist and is uneconomical. There is no incentives for large companies to correctly determine these roles. Both operationally and from a risk perspective.

The UK benefits from a flexible workforce which makes it competitive and unique to other countries. This work force will be outsource offshored and then the economy will have lost the competitive advantage (this is already started to happen). This workforce will not come back. The cost of implementing new projects and companies trying to implement change will slow and become burdensome. More importantly the personnel whom undertake the changes will all be from another country. Information transfer will stop and there will be no incentive to learn new skills as quickly as possible as there is

no motivation to do so. The only winners will be large consultancies who have no incentive to invest in the local economy. At least all the revenue contractor's spend is onshore and is recycled into the local economy.

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker?

The issue is the determination and CEST tool is unfit for purpose, so there is no independent dispute channel or any form of middle ground. Contractors are being pushed into a corner where we have no room to move within the law. There is no legal framework in place that is fair and equal. How can you implement a policy without this as a minimum standard of care.

Will the Bill, as drafted, achieve the Government's objectives?

I am from New Zealand and have been in the UK for over 30 years. I have a wife and two children. I was planning to stay here longer but now I am investigating moving back to NZ (70% chance at the moment as I will earn the same in NZ as the UK). The UK will lose two contributing persons and two future contributors as a result of this policy.

There is a misconception that contractors doing the same role as a permeant are gaming the system. Even if the same functions we done both parties have completely different objectives. How can a company with multiple personnel be treated as an employee of the client?

HMRC's estimate of a tax grab will never be as high as it expects. The reasons are below:

1. The structure is uneconomical for a contractor, people will change to permanent at a lower salary. This sector is now dead.
2. Being a permanent employee is more advantageous that a contractor at present. Make no mistake IR35 is in place at the moment. I have missed a number of roles as I was depressed about being under IR35 and being taken advantage of by umbrella companies.
3. People will retire early
4. People will move offshore
5. The workforce will offshored.
6. The economic impact on contractors will be significant. Spending will reduce, and the economic multiplier effect is reduced. Government spending from tax does not distribute cash to smaller firms. We saw this in the last economic crash.
7. The upheaval to projects caused by contractors resigning will reduce the economic output and GDP. Contractors have to resign to ensure they are outside IR35
8. The disincentive to work will be high as there is no benefit to working hard and getting new clients. I am turning down roles that I would have previously looked at are uneconomical when 45% tax is factored in.
9. Disincentive to constantly reskill and become competitive

This issue is not about tax. I currently pay in tax on the following:

VAT

NI Corp
NI Personal
PAYE
Corporation Tax
Dividend Tax

It's a misnomer consultants avoid tax. HMRC are quite happy to harbour tax avoiding international companies that destroy the domestic market place.
They are just play ground bullies who can only take on small companies whom they could not prove were acting as employees for the past 20 years.
This is about HMRC saving face, but in doing so destroying the economy.

In your opinion, are there better or simpler ways in which the objective of the new rules might be achieved?

Companies need to define shorter term and long term staff, not cheap labour. It's not the contractors fault this has happened its large organisations who have manipulated the system. The cost should be held by large companies to shift the focus from cutting costs to actually employing staff for specific purposes. Companies should then have a time limit they can contract someone for before submitting an IR35 test. E.g 2 years tenure then submit a test for IR35. That is enough time for the short term project to be completed, or new employees to be on boarded. If they want the contract for longer then a test is submit the test. This is fair on both sides.

21 February 2020

Graham Johnson

Existing measures in the public sector 1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

There has been a real lack of information and clarity from HMRC with very close to deadline communications. Despite years of supposed planning, the changes have been made last minute with companies unsure of the approach to take. Lessons should have been learnt from the shambles that was the introduction of this bill into the public sector.

There seems to be some act of scare mongering to end clients from HMRC communications rather than support for approaches that could have been taken to introduce change rather than blanket ban/knee jerk re-actions to engaging with Limited Companies and their contractors.

2 Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

I don’t believe so. Limited company workers like myself provide a flexible service based set of skills to allow end clients in the private sector to complete projects and temporary pieces of work without the expense of employing permanent staff.

Compliance using the CEST tool is not accurate and other assessment are required such as contracts and working practices are required to give a true overall picture of being Inside or Outside of the new IR35 regulations.

Costs to make these assessments should have been made and companies encouraged to take on assessments rather than make blanket assessments.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

It always makes sense to make some exclusions but these could have been made larger and to help with the transition. Smaller companies should have clear guidelines on what makes them be excluded and how they determine this.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

The flexible workforce of British workers willing to risk financial burden will disappear. We pay both Corporation Tax and personal taxes, I make large pension provision so I am not a burden on the welfare state during my retirement, I pay VAT and I have to sort my own sick pay, take unpaid leave at no expense to clients and manage my own finances. I support local economies when I have to live away from home when at clients a long distance away. This is in the form of lodgings, hotels, B&B’s and restaurants. All this needs to be factored into the overall effect of this flexible workface being taken away.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules? Determining tax status of workers

Documented and simple process for determining whether a role and working practices of the role is Inside/Outside of IR35. There are plenty of Contractor Advice companies such as QDOS who have offered to assist HMRC with this.

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

CEST is floored and has been proved many times to be so. In fact HMRC have used their own tool to fine the NHS for using the tool incorrectly to make determinations. It’s an HMRC tool so how can this be right?

Again a number of Contractor Companies use much better systems of Contract Assessment, Role Assessment and Working Practice assessments to determine a correct

assessment. This means a full and true picture of how the determination is made. This should be introduced across the board for all private companies to make a simple assessment.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Its floored as weighted only a number of key answers and not all the questions. It should cover working practices, working for multiple clients and details of true limited company liability. It relies too much on Substitution and Mutuality of Obligation.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed? Policy objectives and wider context

Depends how it is introduced, policed and what the appeals process is. HMRC has a dreadful track record when it come to court cases involving HMRC IR 35 cases when they feel a contractor should be inside and require payment of back tax and National Insurance.

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

As mentioned in Answer 6 – simple agreed determination process: Role, Contract, Working Practices

10. Will the Bill, as drafted, achieve the Government's objectives?

Absolutely not. It will destroy the Private Sector's ability to deliver projects and pieces of work that require a temporary worker to supply. With Brexit, HS2 and other large projects – these work packages will be off-shored and the economy of these projects be lost.

The flexible workforce will disappear, projects will fail, there will be massive shortfalls caused by the decrease in Corporation Tax, Self Assessment and VAT and then profit made from the Contractor industry in Insurances, Accountancy, Consumables and Expenses.

11. What is your view of the role of umbrella companies in the context of these proposals?

Umbrella companies are here simply to act as the middleman to take deduction from invoices and provide little or no sick pay, no paid holidays and very little pension.

Working for an employer such as an umbrella company as a full time employee should allow that employee to receive full benefits as determined by HMRC. This is clearly not the case for Inside IR35 contractors where it seems for the majority these essential part of employment packages are being withheld.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

I think its disgraceful that benefits and rights of employees are being withheld due to some of these changes. How can HMRC deem that to be fair and proper?

It is going to cause massive changes for thousands of contractors and with the large blue chip companies not willing to do assessments and just implementing changes tantamount to blanket bans of Limited Contractors. It provides uncertaintity, worry, stress and anxiety.

25 February 2020

Jane Johnson, New Media Playground Ltd

Existing measures in the public sector

1. **What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?**

   1.1. Having already been deemed 'inside IR35' in 2017 by virtue of a blanket assessment, while providing a specialist service to RCDTS Ltd (owned by HMRC) I have first-hand experience of seeing many Personal Service Companies (PSCs) forced to make life changing decisions about how they offered their services to their clients, often with no option but to close down their small businesses. Not only that, but the knock-on effect was that many of the big consultancies were able to 'clean up' in terms of picking up all the public sector project work that was likely to fail without the support of independent contractors.

   1.2. This was a financial no-brainer for these consultancies - who ironically then employed some of those who had left public sector roles when placed inside IR35, though not necessarily in the same domain they had left. The issue here is that so much knowledge was lost, the consultancies were able to take advantage of these public sector organisations desperate to get their projects done, and win public sector work unfairly, to prevent some projects from failing completely.

   1.3. This goes completely against the principle of encouraging small business to thrive, and to make the digital marketplace open and competitive. It gave the big consultancies a guaranteed foothold once again, and left the public sector at the

mercy of organisations whose primary objective is to line the pockets of their shareholders not necessarily doing the best work they can for our public citizens.

1.4. There appear to be no lessons learned from this experience. To all intents and purposes the roll out to the Private Sector is a carbon copy of the roll out to the Public Sector. Organisations are not knowledgeable about the rules, are risk averse, cutting corners and simply deciding all Personal Service Companies (PSCs) should be treated as disguised employees. They are driven by fear, whilst HMRC is simply driven by a nonsensical notion that PSCs are somehow avoiding their tax obligations, despite contributing so much to the Treasury and the wider economy.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

2.1. Absolutely not. It will become a case of musical chairs where expert knowledge will leave an organisation, when people are unwilling to work inside IR35. They will either close their business and perhaps be unemployed for a time; go overseas to find work; or eventually find other clients who have carried out due diligence, and can safely employ their services outside IR35. Clients will need to increase rates to attract talent to work inside IR35, and any PSCs willing to do so, will have to start again in terms of building domain knowledge in order to help their client, which means projects will inevitably take longer and cost more to complete.

2.2. There's also the potential side-effect where employers realise that hiring 'inside IR35' workers is actually more beneficial than keeping a permanent workforce on the books. They can replace staff by hiring all the specialists they like, but with no obligation to invest anything other than a day rate into these workers. No more training costs, health benefits, pensions, and no more employers NI (it's passed to the worker) - and no HR overheads as an umbrella company would manage the administration of said workforce.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

3.1. No, not really. This is will become the only workaround available, so eventually HMRC will insist that all organisations regardless of size will need to follow these rules. As the dust settles, small groups of contractors will realise they can join forces and form small consultancies, able to take on sizeable projects, but without getting caught by the rules. If that becomes widespread HMRC will go back into command and control mode and take us all through this exercise again in a few years time, when they decide they need yet more control. They are determined to strangle small businesses and any idea of entrepreneurialism.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

4.1. One of the worst effects of these measures, is losing the benefits of having a flexible workforce that takes new ideas and creativity from one project to another. In government digital services, great importance is place on the idea that best practice and knowledge should be shared, so we aren't constantly reinventing the wheel and ensuring that all our energy can be focused on innovation, not on repeating something that has already been proven elsewhere.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

5.1. Companies need reassurance that they will be fine if they carry out due diligence and place those genuine service providers outside IR35. But given that HMRC have lost over 80% of their court cases against people who they decided were disguised employees, I think it's unlikely their reputation as enforcers of an unnecessary law can be changed. They seem to have bottomless pockets for lawyers, who are the only ones that seem to benefit from this fiasco.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

8.1. In answer to all three questions above, computerised tests, including CEST are woefully inadequate. The rules around this legislation are so nuanced, that even high court judges struggle to come to the same conclusion when faced with the same sets of facts around these cases. The rules need a complete rewrite - as no 'tool' could ever truly get each determination correct. There is no one-size-fits-all solution.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

9.1. The new rules fail to take into account what contributions PSCs actually make, both fiscally and economically. It's not just the tax they already collect (corporation tax, VAT & personal income tax) - but also the knock on benefits to

the economy from these small businesses, through the buying of services from accountants, insurers, software providers, computer suppliers, professional organisations etc. There's more to this than just collecting tax, but unfortunately HMRC only see a very narrow picture. It's an unmitigated disaster for the economy, at a time when the UK needs as many entrepreneurs as possible, to continue to share knowledge and seed our organisations with creativity and innovation.

10. Will the Bill, as drafted, achieve the Government's objectives?

10.1. If the only objective is to assert greater control over the work force, then yes. But if it's about raising revenue then I really don't see how their figures add up, given they will lose out on other taxes from these small business, as well as damaging the economy, by crippling a raft of businesses who rely on these PSCs to provide them with a living also.

11. What is your view of the role of umbrella companies in the context of these proposals?

11.1. I believe the role of umbrella companies is taking advantage of a loophole in the system, that means people can still be employed by a large organisation, paid as if they are employees, but with no employment rights. Umbrella companies only exist to facilitate this mode of employment, and take advantage of workers' fears of not fulfilling their tax obligations, and lack of understanding of the off payroll rules. Umbrella companies themselves, do not fully understand the rules, and are happy to facilitate the passing on of the cost of Employers NI and Apprenticeship Levy to individuals.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

12.1. The off payroll rules should to protect 'contracted' workers who are carrying out duties similar to an employee, but who are not given the full employment rights they are entitled to, because it's cheaper for an employer to inflate their workforce like this, without the overhead of looking after their staff, e.g. delivery drivers on zero hours contracts. However, HMRC has turned these rules into a vehicle to reportedly make tax 'fairer' by targeting and penalising a very different kind of worker, in a much more lucrative sector of industry. They are attacking genuine small business consultants, who are experienced, knowledgeable and who bring a great deal of value to their clients, because HMRC know the revenue from targeting these businesses, will be much more lucrative, than seeking to protect drivers, warehouse workers, etc, from unscrupulous employers, looking to avoid giving their workers employments rights and benefits.

10 February 2020

Andy Jones, AC & JM Jones Consulting Ltd

CALL FOR WRITTEN EVIDENCE – OFF PAYROLL WORKING RULES

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

   Answer:

   Whilst HMRC are referring to PAYE Tax revenue increasing as a result of the changes in the Public Sector, I have not seen any corresponding analysis on the inevitable reduction in VAT and Corporation Tax revenue as a result of moves from Personal Service Contracts to Employed status. I would assume that any financial cost-benefit analysis of these changes would need to factor in all sources of Tax Revenue. This is especially critical in light of the fact that the Private Sector is considerably larger than the Public Sector.

Determining tax status of workers

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

   Answer:

   My experience with my current client has shown a lack of clarity in following the correct due process for both assessment and appeal. At no point in the process has my Limited Company or Employees been contacted directly as part of assessment process. The process was largely invisible to my company and the assessment gave little or no detail about how that determination was reached. It was clear from the very limited reasons provided that they did not understand either my role, my responsibilities, my contractual terms or indeed the core nature of Personal Service Contract Engagement.

   In making my appeal against the determination, responses have been slow and have provided very little additional information. I have not treated the ongoing communication as an appeal, merely an outright rejection of the determination.

   The determinations across almost all roles are almost without exception identical across all contractors within the client. This amounts, in my opinion, to blanket assessments which I understand is contrary to the guidelines laid down by HMRC.

   I do not believe that this new approach is fully understood by my client

Policy objectives and wider context

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Answer

This I believe is a fundamental flaw in the understanding. Personal Service Contractors will end up treated in much the same way from a tax perspective as employees but without any of the standard benefits associated with employed status such as paid holiday entitlement, paid sick leave entitlement, company pensions, healthcare, travel and subsistence, and vocational training. In short they will be considerably worse off than an employed counterpart.

25 February 2020

Martin Judd

ANSWERS TO SPECIFIC QUESTIONS

Note: For the sake of brevity, only issues that are having a direct and immediate impact on HFDE's business are addressed. Paragraph numbers below correspond with question numbers in the Call for Written Evidence.

Impact of new off-payroll rules on organisations

2. The impact of the extension of the off-payroll rules to the private sector has not been adequately assessed because the natural response of large client organisations is to be risk averse. Clients are incentivised to make 'blanket' decisions, rather than taking on the workload and risk of assessing each individual contract for every subcontractor. The understandable crux of this issue is 'why carry out so many individual assessments when doing so may still leave you open to HMRC taking a different view and penalising you retrospectively if the assessment is deemed to be wrong?' Therefore, we are seeing instances of blanket 'inside IR35' decisions (to play it safe) or blanket 'we will not use Personal Service Company (PSC) contractors', which is the issue of particular concern to High Frequency Diagnostics Ltd.

By way of example, take the case of our £multi-billion electrical utility client ('X'), from whom we recently received the following communication:

"X have taken the decision that we will not engage the services of PSCs directly or indirectly beyond 5 April 2020. Therefore we will no longer permit workers who contract via a PSC to work on X engagements. All workers working on X engagements must be:
engaged as an employee by the service provider; or
engaged as an agency worker or employee by an entity engaged by the service provider (which is not the worker's PSC); and
be paid exclusively in a manner which is subject to the deduction of PAYE and NIC.
"We are writing to you now to ask you to confirm that any workers who are currently providing services to any X entity are exclusively paid for the services provided to X

under deduction of PAYE and NIC via your organisation's payroll or another payroll. Where you provide workers

to X who are not currently paid under deduction of PAYE and NIC, please confirm that these workers will be paid subject to PAYE and NIC via your organisation's payroll (or another payroll) from 6 April 2020. Please provide the confirmation by 29 February 2020.

"Additionally, we will contact you in due course to update our contract to reflect this policy change. We intend to include within the updated contract a warranty from you that all of the workers delivering services to X under relevant contract will be exclusively paid with deduction of PAYE and NIC through payroll. We will also include an indemnity to protect X from any PAYE, NIC and Apprenticeship Levy liability that may arise, should a worker who operates via a PSC be provided to X by your organisation."

This last sentence indicates that the policy is not even governed by whether or not the contractor operates legitimately outside of IR35, but simply by the perception of the contractor's company being a PSC. Hence the large corporation X is shifting the entirety of risk onto the contractor, while also saving itself the considerable workload that would arise from carrying out individual IR35 assessments. While this is perfectly understandable behaviour from the client in terms of minimising its workload and risk, the adverse impact of this for the contracting company is discussed in paragraph 4 below.

4. Decisions such as the one outlined above, banning all PSC-based contractors and forcing them to either lose all contracted work or indemnify the client against any liability under IR35 creates a
worryingly uncertain operating environment for PSCs who remain confident that they are functioning as legitimate specialist service providers in the commercial marketplace. There is no means of obtaining any certification or recognised independent validation that the contractor's PSC operates as a legitimate company outside of IR35. Hence there is never any surety against potential HMRC investigation and penalties. Thus, while it seems self-evident to me that HFDE's approach to working with its clients is very different to that of an employee, I can never operate with full peace of mind because at any point that could be questioned in a retrospective investigation. The situation is not helped by the subjective nature of the interpretation within legislation and the fact that there is no binding evidence available through the use of tools such as CEST.

Our mode of operation is to take payment through a combination of salary and dividends, which is necessary to manage the highly uneven cashflow. While I fully support the objective of IR35 in terms of preventing tax avoidance, surely there must be a less harmful way of achieving this without creating anxiety for those who are confident that their businesses do not operate in a tax avoidance mode? Having calculated the tax contributions from my former employment in the public sector (taking into account PAYE, NIC and employer's NI) I confirmed that, for the same net income, the overall tax burden is slightly higher when operating through my PSC, in large part due to VAT contributions.

To summarise: The subcontractor can be left with a difficult choice in the case of clients who refuse to engage PSCs: Either lose their business completely, or operate with an accumulating risk where the subcontractor is forced to indemnify clients against any retrospective challenge from HMRC.

Determining tax status of workers

The ethos of the tests for determining employment for the purposes of these rules is clear but the implementation and interpretation is sufficiently vague that neither client nor contractor can operate with confidence. This is encouraging the adoption of blanket policies by clients to avoid having to assess each case, which is not what the legislation was intended to achieve.

The CEST tool offers little comfort if its outcome is not binding. While it is fair to say that either party in a contracting relationship might misuse the tool by entering inaccurate information, this surely renders it of little value. I would willingly pay an HMRC-approved independent third party to perform the assessment that CEST does if it would guarantee that HMRC would regard the outcome as binding.

21 February 2020

Vidhyarthi Kantumuchhu

I am writing to you with respect to the article published on the Parliaments site seeking contributions to the inquiry on the draft Finance Bill 2019 - 2020.

I am therefore submitting my side of the story on the impact this will cause post April 2020

1) I work for a Pharmaceutical Company as a Contractor using my own PSC
2) The client has now announced that it would not be recruiting any contractors using their own PSC's. They have not assessed any contract, instead they have simply informed us that we would have to take the PAYE or Umbrella route
3) I have used my contract and input all the details in the CEST tool and found my contract to be outside the regulations due to the working practices

Impact:

1) No assessment done on the contract to either put me inside or outside IR35
2) Blanket banned use of PSC’s thereby putting an end to self-employment and the freedom that comes with it
3) Reduced take home pay with all employment costs absorbed by the contractor without any benefits such as holiday pay, sick pay, pensions and other employment benefits
4) The negative effect on take home pay would push contractors to up their rates, this would put more burden on the client’s budget which would in turn push the clients to offshoring
5) Job losses in the UK as a result of offshoring
6) Reduced tax revenue

7) Joining as a permanent employee which pays substantially less money would generate even less tax
8) Contractors investment into start-ups would no longer be viable due to the impact on the take home pay
9) Contractors looking to migrate to other countries where they are treated fairly
10) Brain drain of tech people who would be looking for brighter opportunities in other countries
11) No financial capital to invest in property or other businesses in the UK

I apologize for my colloquial presentation of the impact the IR35 regulation is going to have on common people like me, but I believe the impact to the British economy would be much higher than anticipated, given the way IR35 is being implemented.

I am not against the regulation; however, I believe the implementation of IR35 by clients is being circumvented by simply not engaging contractors like me by blanket banning the PSC's and not assessing the contracts for the fear of the tax liability. The clients have simply washed their hands off us contractors and are not following due diligence.

I am more than happy to pay my fair share of the taxes only if I am assessed fairly. I am now currently looking for opportunities outside the UK and there are many more like me who will either stop working or move to a different country.

6 February 2020

Alex Kay

1. I am writing to you today to try and explain as succinctly as possible why the change to the IR35 legislation which takes the classification as to whether one is inside or outside of IR35 away from the contractor and onto the organisation which the contractor is providing a service to will cause huge disruption to individuals, families, companies and the economy in general.
2. Some of the latest figures published online indicate that there are 5 million contractors in the UK, providing both trade and professional skills and services to hundreds of companies.
3. HMRC have published that they believe only 1 in 10 contractors are correctly deemed to be inside IR35 when they ought to be, indicating a widespread non-compliance with the rules. This does not however reflect accurately with their court decisions as since April 2010 they have only fully won 2 cases out of 17, just a 12% win rate against companies they have deemed to be operating within IR35.
4. It is clear there is disparity between HMRC’s figures and reality.
5. The issue industry now faces is that they are responsible for the status determination of the contractors that provide their resource. Those companies, such as my clients, are concerned they will make the wrong decision and as such are erring on the side of caution and filling in the CEST tool in a manner which

sees their contractors fall within IR35, so as to avoid any potential fines if HMRC were to win a case against them.

6. The main issue contractors will face under these proposed changes, is that rather than their businesses getting paid, funds which then pay for travel costs and accommodation in the way of rented rooms or hotels away from home must now be paid out of the contractors personal income.

7. Income which will have been taxed as if they were an employee, rather than a freelance contractor without the security of a permanent position and none of the perks associated with employment. This is essentially a zero rights employee and honestly I'm surprised it's even being considered.

8. This will simply remove the ability of an individual operating through a company to travel for work. They will not be able to afford it and will as such be forced to compromise into work closer to home. This obviously undermines the effectiveness of a dynamic workforce and I have personal experience on a number of large defence contracts which will no longer be able to meet delivery (an area that is already difficult to achieve for defence!)

9. HMRC believe that they will raise more tax through stifling the contractors ability to travel and work properly, this I can only assume is because they do not have the mindset of a contractor. Personally I left permanent employment and went contracting so as to move between niche and complex engineering roles around the country so as to broaden my exposure and become a better engineer, I enjoy setting my hours and working outside of the framework required by permanent employees, without six monthly reviews and appraisals. I'm there to do a job and then move on.

10. What HMRC do not appear to realise is that many of the contractors they presume will remain in their current roles will not continue to work under these conditions. There are numerous surveys, including a pool carried out by HMRC which show that the majority of contractors will leave their current clients, forfeiting thousands per individual lost in corporation and income tax.

11. The tax I pay as a contractor is far more than I ever paid as a permanent employee. I am taking home more, but I am paying more tax as a result. My business picks up the expense for commercial vehicles, accountancy, insurances, hotels, fuel and so on.

12. The client I have been contracting to for the last few months is making a blanket statement inside, my old clients are also following suit, this is industry wide.

13. I shall be considering my options as April comes around but working abroad seems to be the most realistic option, which would be a shame as I like the UK, but doing a 4 day working week away abroad is a very similar arrangement how many contractors currently operate.

14. The reforms when introduced in the public sector caused widespread departures and I know of a number of people who left the MoD in order to join companies I was contracting to, I'm sure this impacted the public sector massively as in order to get them back, or others in a similar role the rates had to be raised significantly. Raising the rates is not enough for some contractors as they still are

unable to pay for business expenses such as lease vehicles through a personal account.

15. The CEST tool is subjective and flawed. Determinations can often say 'status undetermined' and this seems to be common amongst my colleagues. If the status is undetermined, how is a large organisation able to move forward and make a determination on behalf of potentially hundreds of case-by-case contractors? Simply, they cannot, causing blanketing and a manipulation of the tool to give an 'inside ir35' verdict.

16. My client have an appeals procedure however I have sent more than one email and heard nothing back, this could be due to them waiting for the budget on 11th March as I suspect they are also hoping that these are either delayed in order for HMRC to establish what exactly they hope to gain from these damaging reforms.

17. Defence projects will not be completed, engineering projects will suffer. HS2 will not be possible without contractors.

18. The irony of the determinations made by the clients of contractors, is that they are not contractors. As such they cannot be held wholly responsible for misunderstanding the CEST tool, they are simply not familiar with IR35 nor the impact these changes will have on their businesses. One of the individuals responsible for making said decisions at a major defence company had not heard of it until around 3 weeks ago, though contractors are familiar with it from the start of their careers as independent directors.

19. If HMRC are determined to get more tax from contractors, there are plenty of other ways, for example there could be a minimum national insurance contribution in the event you are paying yourself purely in dividends, or a clause that a certain amount of income needs to be earned prior to taking a dividend – these would mean more tax paid but would not strip the identity of a consultancy director and prevent them being able to travel for work, or indeed work in general.

I do hope this information is useful though I'm sure it is nothing you have not already heard nor are aware of. These reforms will cause real damage to the UK economy at a time where we should be pushing for growth and encouraging people to be working harder and for themselves, generating more income for the UK instead of penalising them and forcing them out of work.

25 February 2020

For Reference

Contractor Calculator, "IR35 Court Cases: History of all cases and references to judgments," 10 February 2020. [Online]. Available: https://www.contractorcalculator.co.uk/ir35_court_cases_judgments.aspx

Andrew Keohane

I have been an independent IT professional for some 7 years now. I left my relatively safe permanent job in Swindon and took the risky decision to go it alone, as the work

environment was having a detrimental effect on my mental health and I yearned to have more control over where and how I worked.

We are now less than seven weeks away from the proposed introduction of the new Off-Payroll rules, and none of the contracting workforce at my current client have received a determination from the client as to our future. To make matters worse, the client is almost certain to be acquired by another party later this year, and that party has already announced a blanket ban on all contractors being engaged through limited companies. This is the situation that the Government assured everybody would not happen, and which Jesse Norman MP was denying all knowledge of as late as two weeks ago in Parliament, despite being presented with evidence of it the week before!

Contrary to the popular view of contractors, my wife and I are not fabulously wealthy. We don't own our home and we live in rented accommodation from one month to the next, as do many families. I have been fortunate to be recognised as providing a high quality of service to my clients, and so have been continuously engaged by a total of eight successive clients since 2013. If I were to be out of work, we would have little to fall back on. The downturn and the Government's war on contracting has already suppressed day rates, particularly outside London, and tax burdens have gone up.

I am grateful to you for your request for contributions and would like to address a few of the headings that you have suggested.

Existing measures in the public sector

What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

As with every aspect of this legislation, the Government is in denial. I know of contractors who were in the public sector at the UK Hydrographic Office when the off-payroll rules were introduced. They and their project teams left in short order, and the projects were effectively dead. I have family members working in the public sector who have projects that are under-skilled and under-resourced and who desperately want to engage contractors. Those contractors have not been available, because the restrictions and day rates render it unattractive.

I have been unable to determine the Government's figures for the number of contractors who left the public sector at the time, but I know from my own experience and that of others that many did. Yet the Government claims that there was no impact. If that is the case, what were these contractors doing and why were they being engaged at taxpayers' expense when they apparently added no value? The two situations are contradictory. The Government is incompetent, misguided or lying.

I have seen no evidence that lessons have been learned from the public sector rollout, nor where these have been applied to the latest private sector phase.

Impact of new off-payroll rules on organisations

Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

This assessment of the impact has been called for repeatedly, under the remit of an independent Chair. As stated above, the Government denies any effect on the public sector, therefore there is no impact to assess. QED. In repeated challenges, the Government has failed to produce any credible figures to justify its vague claims, relying on general statements such as "many individuals" but unable to produce any evidence.

I have attached a challenge to Jesse Norman MP's communication that is full of such unjustified statements. This was compiled by an organisation called 'Stop the Off Payroll Tax', and makes it clear just how flimsy and misleading many of the statements are.

The cost to a business of individually assessing all contractors, communicating their decision, fielding any challenges, introducing working practices, modifying IT systems to engage such personnel through Umbrella companies or similar and managing the impact on projects (including the failure to deliver their expected business value and the knock-on costs of delays) must be considerable. This process cost the BBC alone millions of pounds, but the Government are still trying to play down the costs, and again are unable to justify their numbers. They are clearly not credible.

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

This would be a sticking plaster on a gaping wound. The legislation in its current form must be abandoned. The Government needs to take up the many offers of help from IPSE and other professional bodies to design a legislative framework for employment and related taxation that is suited to a modern working environment.

The Government launched the Good Work Plan to create such a framework, then chose to completely ignore it with respect to the Off-Payroll rules.

In his introduction to the Good Work plan in December 2018, the Secretary of State for Business, Energy and Industrial Strategy the Rt Hon Greg Clark MP stated that "*In the Good Work Plan the government also commits to a wide range of policy and legislative changes to ensure that workers can access fair and decent work, that both employers and workers have the clarity they need to understand their employment relationships, and that the enforcement system is fair and fit for purpose. Delivering this ambitious programme of work will require close working between government and those representing the interests of employers and workers. I look forward to continued engagement going forward to implement these important changes.*"

This current legislation does not support a situation whereby "*both employers and workers have the clarity they need to understand their employment relationships*". Widespread fear and confusion have led to many organisations such as Barclays, HSBC, GlaxoSmithKline and Virgin announcing blanket bans.

Neither is there a mechanism whereby an *"enforcement system is fair and fit for purpose"*. There have been repeated calls for an independent adjudicator for resolution of disputes around determinations. The Government has provided no such mechanism, insisting that the client who gave the determination will also be the arbitrator of any dispute, making the client Judge, Jury and Executioner. This is the equivalent of disbanding the Independent Police Complaints Commission and instructing Forces to investigate their own conduct!

Finally, it does not support *"close working between government and those representing the interests of employers and workers"* since the Government is not listening to those representations. In short, the Off-Payroll legislation is incompatible with the stated aims of the Good Work Act.

Determining tax status of workers
Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No. The Government keeps relying on the CEST tool, which is not fit for purpose.

In RALC Consulting Ltd v HMRC in July 2019, HMRC stated that the Appellant's CEST determination being 'outside' was "irrelevant". It seems that HMRC can prosecute people on the basis of the CEST determination regardless of what that determination is. If it's 'inside' they are guilty, if they are 'outside' then it's irrelevant.

The tests do not reflect the reality of the contracting environment. HMRC chooses to ignore the Mutuality of Obligation arrangements within which the majority of contractors operate and puts far too much emphasis on the principle of direction and control. Working as part of a team that is aligned to the broader corporate strategy does NOT mean that an independent worker is being directed and controlled, it means that they are trying to maximise their effectiveness for their client by not swimming against the tide.

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Yes, it requires improvement. In the majority of cases that HMRC have prosecuted through the high court, the CEST determination has been inconsistent with the Judges' ruling. HMRC prosecuted on the basis of their poor understanding of the law and lost. We are being asked to believe that the embodiment of this ignorance in the CEST tool should be the basis on which determinations are made. Below is a list of recent cases, demonstrating HMRC's track record. HMRC has won two of the 11 cases, with one outcome split, despite marshalling significant legal resources to assist them.

Date of case	Date of decision	Name of case	Who won

15 Nov 2016	27 Jan 2017	Armitage Technical Design Services Limited	Contractor
26 Sep 2017	14 Feb 2018	Christa Ackroyd	HMRC
04 Oct 2017	16 May 2018	Jensal Software Limited	Contractor
08 Nov 2017	19 Mar 2018	MDCM Ltd	Contractor
12 Nov 2018	20 Mar 2019	Albatel Limited (Lorraine Kelly)	Contractor
11 Mar 2019	16 Apr 2019	Atholl Limited	Contractor
10 May 2019	13 Jun 2019	George Mantides v HMRC	Split case
18 Sep 2018	09 Jul 2019	Kickabout Productions	Contractor
07 May 2018	18 Sep 2019	PAYA / Willcox / Allday Media	HMRC
23 Sep 2019	29 Oct 2019	RALC Consulting	Contractor
08 Oct 2018	25 Oct 2019	Canal Street Productions	Contractor

So why is the CEST tool producing determinations that are at odds with the law?

In the case of CHRISTA ACKROYD MEDIA (CAM) LTD. VS HMRC the tribunal stated that "IR35 should not be determined using a 'mechanistic' or 'check list' approach", but this is precisely what CEST aims to do at a woefully simplistic level, completely ignoring many of the subtleties that have led to that determinations being overruled in the courts.

As a former software engineer and now software delivery manager, I know that there are disciplines and processes that need to be followed in the development and testing process. To establish what these were in the case of the CEST tool, and why it seemed to be so inconsistent with case law, I submitted a Freedom of Information request (FOI2019/02610) on December 11th 2019, seeking confirmation of the expertise and costs involved. This request was denied on January 13th 2020 for the reason that "The information about the total cost is held but it is being withheld under section 22(1) of the FOIA as it will be published by April 2020". I immediately appealed, arguing that issuing this information in the same month as the legislation would give me no time to use that data to challenge the legislation. HMRC have confirmed receipt of the appeal but have not responded. I am therefore referring this to the Information Commissioners Office.

In their refusal of the FOI request, HMRC also stated that they could not supply figures as to the cost of testing because "CEST was developed and tested iteratively in line with approved agile methodology. This methodology does not separate the build and test

phases of development but instead involves many build, test and release cycles on a product, therefore we do not hold information broken down to the level of detail you have requested.

My request made it clear that I would take the costings in any way that was convenient for reporting from their project accounting system but they have chosen to ignore this. Also, as a software specialist and Agile Certified Scrum Master with over seven years' experience in this development methodology, I challenge HMRC's other assertion that testing is not required because the software was developed using 'Agile methods'. Agile is heavily focused on testing, to ensure quality and reduce expensive rework. HMRC's attitude to this is confirmed by the fact that they threw away their most recent test evidence, and didn't even record who carried out the testing!

I was under the distinct impression that software developed by or on behalf of the UK Government was supposed to be consistent with the Government Digital Standard (GDS). The CEST tool is NOT consistent with this standard.

A number of clients and agencies are using an alternative assessment tool called 'QDOS' (https://www.qdoscontractor.com/ir35/check-employment-status-for-tax). Within the sector, this tool appears to be much more highly regarded as a means of assessing status. The fact that a 3rd party supplier is providing a tool that appears to be far more capable than the 'official' one created by the Authorities, with all the additional information and resources they have access to, should be a cause for major concern.

I hope that the body of evidence that you are gathering can be used to prevent the imminent rollout of this disastrously misguided legislation.

10 March 2020

Andrew Kinsella

My responses address items 6,8,12.

Determining tax status of workers – item 6 & item 8
Policy objectives and wider context – 12 – in particular – is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees.

I am subject to a blanket assessment by the large bank I provide consultancy services for.

They say I should pay tax like a full time employee because we do the same / similar work. I will argue we are working under significantly different arrangements, rights, conditions and most importantly risks.

I will not have access to health care, or critical illness cover. I do not have access to their private medical services, if I'm suffering from mental health issues.

I do not have access to pay rises, bonuses, share purchase schemes, or the internal job mobility board.

I do not have access to the human resources (HR) department - there is no process or procedure offered to me in case I've been bullied or suffered from racial discrimination or my hiring manager takes a dislike or disagrees with me.

I work with a two week notice period and can be given my marching orders just by my hiring manager. What is very significant, is that I have no support of access to our human resources team, with policies and procedures to defend myself.

Compare to our full time employees, who have 3 month notice periods and generous tax free redundancy agreements.

I do not have access to the company pension scheme (a scheme is being offered, under the PAYE, however, it's about 1/3 of the full time employee's benefits).

I do not get invited to important meetings.

I do not get receive a performance appraisal, get set objectives and given coaching feedback and career enhancing stretch tasks for the future.

Am I really taking the same risks as a full time employee. Do I really qualify for PAYE? We are not the same.

And the organization is saying, any new paye contract cannot extend beyond 45 weeks, because, they do not want to give me the same rights and benefits of a full time employee!

This tax changes will impact my family life, we will have no disposable income.

We will have to stop payments on our mortgage. I will be forced to cease trading in my company. The company is no longer a going concern, there will be no opportunity to earn and so it seems very likely the company will default on any corporation tax liabilities, which are payable with a 9 month delay.

Honestly, how can any working family absorb ~ 20% hike in tax payments over night and even less job security (with the 45 week rule by companies to ensure you don’t get the full employment rights!

Impacts on my staff:

We employ local cleaner and DIY handy-man and gardeners and accountants and another part time, female director (who looks after marketing and administration for my company). All of these people will be impacted as we will have to stop paying for their services, so their lives will suffer too.

I have worked hard to have my own business, I have two diplomas, two degrees and professional qualifications. I am an independent consultant. I have ambitions to grow

my small company, to re-invest the profits, in research and development and seek out entrepreneurial opportunities.

Why should other consultants or small companies be treated differently to me –
For example, because they are not subject to blanket assessments and being forced into an anti-competitive PAYE scheme or because they have higher levels of post corporation tax profits to re-invest in their businesses – because they work for smaller organizations.

Money circulation:

Most contractors in the UK are using their money in the UK economy and the money is circulating in the system, for the benefit of the UK. We are not moving our money and hiding it offshore in tax havens. We are not global digital service companies with an army of lawyers, accountants and special advisers with global, complex capital structures, who move their UK profits offshore via complex transfer / royalty pricing agreements.

Friends of mine, including my family are suffering stress,turmoil and anxiety.

Many female contractors will be impacted - less opportunities for part time contracts and less money for child care arrangements. Due to large companies terminating contracts or enforcing blanket assessments (little choice but PAYE).

Some contractors are being forced by large corporations to take pay cuts, to absorb the employer's national insurance or offered jobs below their skills and experience.
We see this legislation as active discrimination against a minority.

Wider impacts on the UK economy

One of the UK economy's strengths is the flexible working arrangements - to scale up and down, take a risk and expand and contract, using the highly skilled work force of technology and finance consultants in my industry. This is vital, if we want to maintain and grow the UK as a global technology hub, to be agile, to develop the industries and future global tech companies.

More jobs are being lost and moved offshore to other competing centres as a direct result of these changes.

We should apply systems thinking and consider the hidden costs to the UK of these changes, we should scrutinise the cost v benefits calculations of these changes.

The best short term strategy is a long one. Highly skilled, flexible work-force are Great Britain's greatest asset for our future prosperity.

Solutions for taxation

I believe, there are alternative solutions to taxation and some wider consultation (with a representative stakeholder group) can take place.

There are solutions for taxation in the gig economy, which are fairer and more transparent and which themselves, use technology as an enabler. Solutions which are fit for purpose and the modern ways of working.

Large companies, do employ thousands of consultants either directly or via larger consultancies. It is possible for companies to pay a form of employers national insurance – this can be determined in the contacts.

Revenue based taxation – VAT registered companies, can be an additional sales based tax, where no offsets are allowed.

Blockchain – we can use blockchain based smart contracts. Technology to help with traceability and accountability and faster, more real time payments of new taxes. We have to move forwards, with new ways for the digital age and be ready for non-fiat based payments too.

Personally, I am very happy to help the Government to progress a fairer and proportional tax system.

24 February 2020

David Kirk

Call for evidence on off-payroll working

1. Thank-you for your open invitation to submit evidence on the draft proposals in the Finance Bill on off-payroll working. My own perspective is as a Chartered Tax Adviser specialising in employment status, which accounts for about three-quarters of my business. It includes a good deal of Revenue inquiry work in this field. I am the author of *Employment Status – a Tax Guide* (384 pages, published by Claritax and now in its fourth edition), and I represent the Institute of Chartered Accountants in England & Wales on the IR35 Forum, although I should stress that I write this letter in a personal capacity and have not consulted the Institute on the contents of it.

General summary

2. I can sum this up very briefly. The general idea of making end-clients responsible for the operation of this tax must be right, but the way that the Government proposes to do it is seriously flawed and is already leading to adverse consequences that go well beyond the realms of tax. There is a much simpler way which would give the Government 95% or more of what it is asking for with hardly any of these adverse consequences (see my answer to question 9 below).

3. I would urge your Lordships to bear in mind in all this that 81% of the Government's expected additional revenue from all this will come in the form of employers' National Insurance Contributions (see calculation in the appendix 1). This is because to the employee side considerable amounts of tax are already paid even by non-

compliant companies, in the form of Corporation Tax and Income Tax on dividends which, if they ought to be operating IR35, they would not pay. The trouble that comes with the Finance Bill proposals relates almost entirely to the employee side of things: the fact that the off-payroll tax will generally be payable by middlemen not by employers, which encourages both opaque charging structures and well-tried methods of evasion (e.g. contractor loans); and the extension of PAYE to payments made to companies – a purpose for which is was not designed and which requires big business to make changes to its systems that it looks as though it is not prepared to make.

4. I therefore recommend the extension of the public sector rules to the private sector for employers' National Insurance Contributions only, as detailed below.

Particular points

5. Using the numbering in the call for evidence (so that question 1 becomes paragraph 5.1):

Existing measures in the public sector

5.1. *What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?*

5.1.1. The public sector experience has been problematic, as your Lordships will doubtless hear from others. I should like to draw attention to one particular area of concern, which is that it appears to have resulted in an increase of contractor loan schemes. Sir Amyas Morse's Independent Loan Charge Review (see https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/8543 87/Independent_Loan_Charge_Review_-_final_report.pdf) revealed that there have been 20,000 new usages of contractor loan schemes since the loan charge was announced in 2016, including 8,000 between April and December 2019 (see the top of page 7) – in other words, usage seems to be going up. Anecdotal evidence suggests that this is a particular problem with the NHS – in other words, that usage of these schemes is going up *as a result of the public sector reform in 2017.*

5.1.2. This is not surprising if one takes into account that many people affected by the reform will have seen no other way of maintaining their take-home pay. Most NHS organisations made it clear that they were not prepared to pay any extra as a result of the reforms, which meant that the employer's NIC bill had to be passed down the line. Agencies (typical gross profit margin 13%) and umbrella companies (typically 2%) did not have the money to pay this, so the only person left to pay would be the worker. A loan scheme, whilst flagrantly illegal, avoids the necessity to pay anything much in the way of employer NICs without having to show that one is outside the off-payroll rules.

5.1.3. There must therefore be a serious chance of this experience being repeated

when the reforms are rolled out to the private sector before HMRC have got a grip on the matter, which at the moment they very definitely have not. There have been no reports of any prosecutions or naming and shaming, or indeed of business closures in this field, and I do not detect that HMRC even recognise the seriousness of this. I regard the construction industry as particularly vulnerable here once the rules change.

Impact of new off-payroll rules on organisations

5.2. *Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?*

5.2.1. The reaction of much of big business to these reforms has been to refuse to take on contractors, which suggests that the impact has not been adequately assessed as this was not forecast at all. Contractor UK has published a list of large businesses that have publicly stated that they are taking this approach, which includes Royal Dutch Shell, HSBC, BP and GlaxoSmithKline – the four largest companies in the FTSE-100 Index (see https://www.contractoruk.com/private_sector_ir35_reform/company_positions_ir35_private_sector_refor m_april_2020.html).

5.2.2. There are probably two reasons for this: firstly, that they are being excessively cautious because they cannot afford to take the risk of getting their employment status wrong (it being well known that there is a big grey area here), and secondly because paying limited company contractors under deduction of tax would require changes to their systems, including HR systems which are frequently global, for which their group boards – in foreign jurisdictions – cannot see the justification. On the former, it is important to note the consequences of failing to operate PAYE correctly: HMRC come after you for money that you have already paid to somebody else, so it is likely to cause you financial problems much faster than most forms of tax default.

5.2.3. This has several implications. All these companies can move some of their IT contracting (a large element of the businesses affected) abroad, where they will not have to comply with this legislation. It is quite easy for high-level contractors to go abroad to do the work as well nowadays. I do not believe that HMRC have done any research into how much business will go abroad, but some surely will.

5.2.4. It also follows that the flexibility of the country's workforce will be at risk in the sectors affected.

5.3. *Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?*

Yes. The definition of medium-sized businesses ties in with the requirement for an audit, which should suffice in most cases.

5.4. *What will be the effect of these new measures on a chain of contractors and sub-contractors?*

Firstly, more contractors will be driven into umbrellas; secondly, some of them will thereby end up paying the employers' NICs.

5.5. *What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?*

I can see very little scope for simplifying the administrative burden other than by wholesale changes as described in answer to question 9 below. Many of the complications arise from safeguards which have been requested by those affected, who clearly feel that they are important.

Determining tax status of workers

5.6. *Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?*

5.6.1. The tests are the traditional employment status tests which can never be totally clear. All countries have a grey area between employment and self-employment, which makes about 3% of the working population difficult to classify, and changes to the tests will simply put a different 3% into the grey area. Some of the criteria involve making value judgments, where it can be quite legitimate for two people to come to different conclusions on the same facts (examples are the level of control required to be an employee, and whether one is in business on one's own account). HMRC also do not have a good track record in judging this, if recent cases from the Tax Tribunal are anything to go by (see appendix 2).

5.6.2. A statutory definition, even if does bring additional clarity, will give scope for gaming the system, and so is undesirable too. The only real solution is to reduce the gap between the employers' NIC rate on employees (13.8%), and the self-employed (nil) – then it will not matter for tax purposes if one gets the classification wrong.

5.7. *What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?*

CEST is in my view flagrantly biased towards finding for employment, even after the recent upgrades. Improving it will be difficult as it is not really possible to decide employment status in this way – the leading case of *Hall v. Lorimer* makes it clear that one needs to make a judgment on the overall picture, and not do a box-ticking exercise.

5.8. *How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be*

challenged? If not, what more is needed?

I believe that it will be completely ineffective. Big business, by refusing to take on limited company contractors, is putting itself into a regime where the process will not apply. In any case it is not compulsory to issue status determination statements – merely a consequence if you fail to. That consequence is that liability for PAYE defaults remains with the end-client instead of passing to the agency: something that end clients from big business can – and already are – avoiding by means of indemnities being required from those agencies.

Policy objectives and wider context

5.9. *Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?*

5.9.1. The simplest way would be to introduce this reform for employers' NICs only. As noted above, they account for 81% of the Government's expected take. Of the remaining 19%, my estimate is that three-quarters of this would be paid by workers and their personal service companies ('PSCs') under current arrangements (Corporation Tax and self-assessment Income Tax), so even if all the PSCs were non-compliant the Government would raise 95% of what it aims to get. Furthermore I would expect compliance to be much higher: firstly the PSCs would be on notice that their clients considered them to be within the off-payroll rules; secondly there would be too little in it for widespread evasion to be attractive. It would also be far easier for HMRC to police – in my experience they are not good at investigations where they need to gather information from multiple parties.

5.9.2. HMRC would doubtless object to this on the basis that employers NICs would be charged on the mark-up of agencies, umbrellas and other middlemen. This would be misplaced: existing legislation allows engagers not to apply the off-payroll rules where they know that they are paying for something other than labour. It would require them to know what the mark-up was, but there are a number of ways of dealing with that.

5.9.3. This would require a National Insurance Contributions Bill, as National Insurance is not a levy that can be raised in a Finance Bill.

5.9.4. If this is not acceptable I would propose making the end-clients liable for operating the rules in all circumstances, instead of leaving agencies and umbrellas to do that. That way at least they would have difficulty in passing on the employers NICs cost to the workers, which is a widespread practice at the moment.

5.9.5. In any event there is surely no case at all for keeping the current system, to apply only in cases where the end- client is small and in the private sector. This proposal has been floated so as to avoid small business clients having to make decisions about employment status, but it puts the onus for doing so on even smaller ones,
i.e. personal service companies. HMRC apparently do not consider that there

is widespread non-compliance in this sector, and this is unlikely to be because those working through PSCs are more assiduous in checking their employment status when they work for small clients. It is perfectly clear that HMRC will make no attempt to enforce these provisions once larger companies are taken out of them.

5.10. *Will the Bill, as drafted, achieve the Government's objectives?*

Yes but in an extremely messy way and with huge adverse side-effects. For further details please see my answer to question 2. Also I would expect a big increase in evasion though contractor loan schemes.

5.11. *What is your view of the role of umbrella companies in the context of these proposals?*

Umbrella companies stand to get a lot of very easy business. Any client, or agency, that is risk-averse in wanting
(a) not to have unforeseen and unbudgeted demands for tax, and (b) not to have contractors on its books as employees, will ask umbrella companies to take these people on. Furthermore, the client or agency is likely to specify a small list of acceptable umbrellas or maybe only one, which in addition to giving them easy money would give them little incentive to offer a good service. If they fail to do this, as some will, purveyors of contractor loan schemes will step int the breach.

5.12. *How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?*

It is not fair, and is seen by very many people to be unfair. There would be a lot to be said for delaying any reform to bring it in with new proposals for employment rights, which the Government has indicated will be in the offing at some stage soon.

16 February 2020

Appendix 1 – what taxes the Government's proposals will raise

Employers' NICs are a completely different kind of levy in economic terms form the other taxes affected, as they are a tax borne by employers based on their payroll expenditure, whereas Corporation Tax, Income Tax and employees' NICs are taxes based on the income of the people that bear them. It is therefore instructive to look at employers NICs separately. This brings the following result:

Off-payroll - where the money goes to (£m)

Tax head	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
On-shore CT	-3	-149	-584	-724	-747	-805
NICs	0	0	+831	+831	+823	+893
Income tax	0	0	+858	+862	+858	+942
Other tax	0	0	0	-449	-367	-369
CGT	0	0	0	+13	+4	+0
Summary of above:						
NICs	0	0	+831	+831	+823	+893
Other items	-3	-149	+275	-297	-251	-232
Allocation of NICs:						
Employer	0	0	484	484	480	521
Employee	0	0	347	347	344	373
Apply NICs as above:						
On-shore CT	-3	-149	-584	-724	-747	-805
Employer NICs	0	0	+484	+484	+480	+521
Employee NICs	0	0	+347	+347	+344	+373
Income tax	0	0	+858	+862	+858	+942
Other tax	0	0	0	-449	-367	-369
CGT	0	0	0	+13	+4	+0
Summary of above:						
Payroll taxes (employer NICs)	0	0	+484	+484	+480	+521
Income taxes (everything else)	-3	-149	+622	+50	+92	+140
Total	-3	-149	+1106	+534	+572	+661
Percantages:						
Payroll taxes (employer NICs)	0.0%	0.0%	43.8%	90.7%	83.9%	78.8%
Income taxes (everything else)	100.0%	100.0%	56.2%	9.3%	16.1%	21.2%

Sources:

The top five lines come from the ONB budget report for 2018, policy measures database. National Insurance is then reallocated to employers' and employees' in the following proportions, based on an income of £60,000 a year which I would expect to be the average for people on PSCs:

Employer	£7,067.26	58.3%
Employee	£5,060.00	41.7%
Total	£12,127.26	

It is not until 2021-22 that the figures begin to settle down, as for the coming tax year money will be paid under PAYE, but the corresponding loss to the Government of Corporation Tax largely starts in the following year. I have therefore taken the 81% coming from Employer's NICs as being the average of the figures in the two right-hand columns.

Appendix 2 – results of recent cases in the Tax Tribunal

This looks at the results of IR35 cases from the Tax Tribunal for the years 2017 to 2019. There were no reported cases between 2011 and 2017, so the first case from 2017 seems to be a reasonable place to start.

Armitage Technical Design Services (2017)	IT	HMRC lost
MDCM (2018)	Construction	HMRC lost
Jensal Software (2018)	IT	HMRC lost
Albatel (2019)	Media	HMRC lost
Atholl House Productions (2019)	Media	HMRC lost (but appealing)
George Mantides (2019)	NHS	HMRC lost one contract, won the other (appeal lodged)
Kickabout Productions (2019)	Media	HMRC lost on casting vote (but appealing)
Paya and others (2019)	Media	HMRC won most contracts on casting vote (taxpayers appealing)
RALC Consulting (2019)	IT	HMRC lost (but appealing)
Christa Ackroyd Media (2019)	Media	HMRC won at first instance and Upper Tribunal
Canal Street Productions (2019)	Media	HMRC lost

It can be seen that out of these eleven cases, HMRC have only had an absolutely clear win in one of them, and in two even the judges were not able to agree.

I have an interest to declare here, in that I advised Paya Ltd in its case.

16 February 2020

David Kirk

Addendum to call for evidence on off-payroll working

Please find here an addendum to my submission of 16th February, which I submit in three parts: the passage through Parliament, matters that have come to light since then, and observations on comments made in oral evidence.

The passage through Parliament

1 As this is not just a simple matter of a money bill going through Parliament, I hope that it will be helpful if I explain the procedure as envisaged by the Government for getting the legislation on to the statute book, and as it might be if an alternative proposal were to be considered.

2 It is the Government's intention to introduce the Income Tax part of the measures by way of an amendment to the Finance Bill currently before the Commons, to take effect from April next year. Once this is passed into law it plans to legislate for the National Insurance part by statutory instrument, under powers granted by the Social Security Contributions and Benefits Act 1992. This would be done under the negative procedure, as typically applies to National Insurance contributions where similar measures have been passed for Income Tax.

3 It needs to be noted that all the revenue raised by these measures will come from the statutory instrument, not the bill – indeed if the measures relating to tax alone were enacted the Government could be expected to lose revenue rather than gain it (see appendix 1 to my original submission).

4 The House of Lords cannot amend or vote down a finance bill without risking its being overridden by the Commons under the provisions of the Parliament Act 1911. The Commons have no such privilege, though, when it comes to statutory instruments, which the Lords have the right to vote down in any circumstances. Although this would be an unusual course of action, in view of the very contentious and unsatisfactory nature of the proposals I would urge the Lords to do so if no satisfactory accommodation with the Government can be reached.

5 If an alternative is considered desirable that relates to National Insurance contributions only, such as the one proposed in section 5.9 of my original submission (and there are others being promoted), then it would be necessary to bring in a National Insurance contributions bill. Normally speaking these bills are not money bills and so not subject to Commons privilege (see Erskine May paragraph 35.9).

Matters that have recently come to light

Statutory Sick Pay and Statutory Maternity Pay

6 Deemed employees under chapter 10 of the Income Tax (Earnings and Pensions) Act 2003 – that is to say, public sector workers as of now, and all those who will be moved over to the new rules next year – are not entitled to statutory sick pay or statutory maternity pay (although the public sector ones may well be getting these in practice). It must be a matter of particular concern that directors of personal service companies do get these rights as long as they pay themselves above the lower earnings level for National Insurance, which most do – in other words, a large number of people are set to lose these rights if nothing is done.

7 This could easily be dealt with by amendments to the relevant regulations, but these are within the purview of the Department of Work and Pensions, not the Treasury, which is doubtless why this has not been done.

Coronavirus

8 Clearly we all hope that the Coronavirus will be over and done with by April next year, but it is worth noting that there is a big gap in provision here. Under current private sector rules someone who is a director of a personal service company and pays himself a salary of £37,500 or more – and some do, as HRMC acknowledge – could furlough himself and be entitled to the maximum £2,500 a month payment. A public sector worker on the same pay who has been forced into an umbrella company will not be entitled to this. This is because a typical umbrella company will only pay the National Living Wage as basic pay, with the rest as bonus, and the Coronavirus Job Retention Scheme will only pay 80% of basic pay in these circumstances. In any event umbrella companies are unwilling to furlough people to trigger even this payment, as it means borrowing money until the time that the Government's refund comes in.

Observations on comments made in oral evidence

Tax Tribunal decisions

9 Reference was made by several witnesses and Committee members to costs of the Government's proposals, and it is only fair to point some of the costs of the current scheme which can readily be forgotten. When considering the number of Tax Tribunal decisions that have gone against HMRC (see appendix 2 of my original submission), very few people have actually taken things that far. Doing so requires a huge amount of work over some very intricate detail; I have been active in the area for some years myself, and would not be able to take even a simple case on for less than £30,000. If counsel needed to be involved the cost would be substantially higher. For most contractors it will not make commercial sense to spend that sort of money even if they think that their case is very good. This is in my submission a key reason for there to be some reform.

Status challenges under the new regime

10 However I cannot see many people challenging their status determinations under the new regime either, because if they do the main benefit will not go to them. As noted in my earlier submission, most of the revenue raised will be in employers' National Insurance contributions, so if a contractor successfully challenges his status it will be his engager – or if there is an umbrella or agency in the middle that business – who will get this part refunded. In the case of the intermediaries this will be pure windfall.

CEST

11 The Committee asked about the 15% of cases where CEST was unable to give a determination. First of all, since the upgrade to the tool was made late last year this figure has actually gone up, to 20% (see https://www.gov.uk/government/publications/check-employment-status-for-tax-cest-2019-enhancement/check-employment-status-for-tax-cest-2019-enhancement-summary, table at paragraph 3.10). We do not currently know the reasons for this.

12 Also, it is my understanding that if you call the HMRC helpline after receiving one of these replies they will no longer give you a status determination – they will only advise you on how to fill in the tool. In my submission HMRC need to be more engaged in the process than that.

Enforcement

13 HMRC have power to demand security for PAYE under regulation 97Q of the PAYE Regulations, and I recommend that they be asked to consider using this power in cases where they find businesses operating contractor loan schemes.

Employment status generally

14 I should like to endorse wholeheartedly the calls that Justine Riccomini and Meredith McCammond made for employment status to be looked at in the round. This will require the input of the Departments for Work, Enterprise and Business and Work and Pensions as well as the Treasury and HMRC, and the Government will need to resist the temptation to try to manage the process to a pre-conceived outcome. I recommend also that the prime aim should be to decide what is needed for employment law, and to let tax law follow that.

4 March 2020

David Kirkwood

Summary

- IR35 is destroying the UK's flexible workforce

- Blanket bans on contract staff are widespread across the UK's IT and finance industries
- IR35 is causing great anxiety and personal stress for many contractors
- IR35 will seriously hamper UK industry's attempts to cope with current and imminent major changes
- These changes will probably result in a net tax loss to HMRC and the Treasury
- The only guaranteed beneficiaries are the large consulting companies
- Work is being off-shored and foreign workers are being imported to fill gaps
- IR35 will not achieve its stated aim of increasing UK tax take

Answers to Specific Questions

Existing measures in the public sector

1. I have no direct experience of the effects of IR35 in the public sector. Anecdotally, though, it has been a disaster, leading to the loss of large numbers of medical staff in the NHS as well as technical personnel across all areas of public service. Ironically, the one part of government that appears to be least affected by IR35 flight is HMRC, which is alleged to have granted itself an exemption from its own regulations. However, even that has not prevented the CEST tool from seemingly being essentially undeveloped to keep up with changes in statute and case law over the past couple of years.

Impact of new off-payroll rules on organisations

2. There is no apparent evidence that HMRC have even considered the costs of compliance to the private sector. Instead, the real evidence is that they are attempting to shift their own duties on to the businesses that have to deal with them. The change in emphasis in 2020 is that the responsibility for determining the status of any contract is moving from the service provider to the service consumer. The logic seems to be that as there are many fewer consumers than providers, this means that HMRC have many fewer touch points, therefore fewer places that have to be verified.

The practical effect is that there will be a huge increase in the number of short "permanent" employment contracts. This means more administration for both the consumer, the contractor and HMRC. It will also mean that many former contractors will now have an album of P45s and a CV consisting of many short employments, which will look bad to prospective future employers and will make finding new work more difficult.

One impact that has been completely ignored is the self-inflicted poisoning of HMRC's own reputation. HMRC have made insulting assertions regarding self-employed people and owner-run businesses ("only 10% compliance with the rules") and are refusing to substantiate them. They are widely seen in the small business sector as an unfriendly agency.

3. On the demand side, this will have almost no effect as small businesses usually cannot afford to employ resources as expensive as the ones provided by my company.

On the supply side, contrary to small organisations being excluded, it appears that they are the specific target for this new change. Any employee of a company who owns more than 5% of the share capital is liable to IR35, other employees are not. The effect of this is that an employee of a large consultancy such as Accenture or EY working within a client organisation remains an employee of that consultancy: someone like myself, with a 45% shareholding in my employer, may be forced on to the payroll of the client company[2].

Were this shareholding qualification not in place, every contract cleaner would be forced to join the payroll of the company that they clean. Therefore, large companies have an almost automatic exemption from IR35 because of this abstruse rule. There is no known exclusion for small organisations.

(Consider the case where a senior partner in a law firm engages in work for a corporate client. If that senior partner owns 5.1% of the share capital of his firm – a not uncommon case – and has obtained this work through the involvement of a third party, then the IR35 rules may force him on to his client's payroll.)

4. I don't understand the meaning of a "chain" in this context.

5. There is scope for reducing the burden by simply abandoning these measures. They will not produce anything like the expected financial return for HMRC, partly because they are targeting a group of people who are highly numerate, have portable skills in high demand, are individualistic in character and will not be bullied by civil servants. If pressed, they (including myself) will simply go abroad, resulting in an immediate reduction in tax take, major skill shortages in the UK and subsequent off-shoring of effort, with the inevitable reduction in quality that that always has brought.

One immediate amelioration would be for HMRC to urgently issue clarifications and simple words of explanation to consultants and clients. The fear of HMRC's retribution has led many clients to simply blanket ban all contract staff, to everyone's disadvantage and against HMRC's direct instructions. In my own case, although my own CEST determination showed my engagement to be a

[2] The relevant definition is found in S51(4) of Chapter 8 of part 2 of ITEPA 2003... basically 5% of share capital is the cut off for the question you've asked. There is also wording to prevent options to buy shares or planned future transfers of share capital etc being used as a loophole. The full text is: (4)For this purpose a material interest means—(a)beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, more than 5% of the ordinary share capital of the company; or (b)possession of, or entitlement to acquire, rights entitling the holder to receive more than 5% of any distributions that may be made by the company; or (c)where the company is a close company, possession of, or entitlement to acquire, rights that would in the event of the winding up of the company, or in any other circumstances, entitle the holder to receive more than 5% of the assets that would then be available for distribution among the participators. (Chapter 10 references this definition at S61O(4) too)

B2B contract, and the client's determination produced an indeterminate result, the client has placed my contract within IR35, meaning that I will terminate this engagement at the planned contract end next month. Their appeal process is flawed and they are seemingly refusing to discuss it further.

As a small business shareholder, I am bombarded almost daily with emails from HMRC with helpful hints about how to comply with their regulations or with offers of free training courses. I don't need any of this. What I need is a simple tax regime that is easy to understand and involves the minimum of effort.

Determining tax status of workers

6. No, they are not clear to me and it seems that they are not clear to my current client (one of the UK's premier engineering companies).

Apparently the over-riding criterion is the "right of substitution", i.e. that the consulting company has the right to substitute the contractor at will. If this is indeed the case, then CEST appears to mark the contract as B2B and therefore outside IR35. In cases involving specialist suppliers such as many IT contractors this is exactly the wrong way round. If a consulting company provides a filing clerk to a client, any filing clerk will do and there will be no thought given as to the identity of that clerk.
However, consider this case: Sir Elton John would generally be thought of as self-employed but he is actually an employee of The Elton John Band, whose services are provided to concert promoters by Rocket Music Entertainment Group Ltd. This company acts as an intermediary for the band's services. In a case where Sir Elton is unable to perform, his sending Sir Rod Stewart along instead is unlikely to satisfy his client's requirements, i.e. there is no automatic right of substitution. HMRC's rules would therefore place Sir Elton inside the IR35 regulations and he would need to perform as a payrolled employee of the concert organiser. This is plainly ludicrous.

Some of us are the rock stars of our own industries. We have extensive education, long industrial experience, excellent imaginations and a burning desire for our clients to succeed. We obtain our contracts because we are often uniquely suited to a difficult challenge. Replacing any one of us in any particular situation would be difficult if not actually impossible, and could not possibly occur without the express agreement of the client, so the substitution criterion is actually damaging to an accurate assessment.

There is another apparently significant consideration, that of "mutuality of obligation". This seems to mean that one party is obliged to perform the agreed services and the other is obliged to pay for them. It is difficult to see why this condition is considered worthy of particular attention as, without it, there is simply no contract.

7. I have used CEST once. It was simple and quick to use and it produced a determination that my current contract was B2B and therefore outside the scope of IR35.

My current client used CEST to assess my contract's status and it came back with an indeterminate verdict, i.e. CEST could not decide. The client then placed the contract inside IR35, probably as a hedge against HMRC's revenge, which is feared in industry.

As mentioned above, it appears that CEST has not been developed significantly for some time and is considered by many to be even less fit for purpose now than it was originally. Many contractors are unwilling to use it all, for fear that it will produce an erroneous, disadvantageous result that HMRC will somehow attach to the contractor's tax files and use later as a stick to beat them with.

8. In my own case the status determination has been useless. My own result was "outside", the client's result was "indeterminate", the client's decision was to place the contract inside IR35. Although the client had the decision in December, it was not communicated until mid-January, and the quantity of appeals from aggrieved consultants means that no substantive conversation with the client has yet taken place by late in February.

Yes, client decisions can be challenged but it is not incumbent on any client to even consider a challenge and the anecdotal evidence is that few challenges have been successful. In my own case, my client is refusing to engage.

The evidence from the market is that clients will always err to protect themselves. HMRC are feared and their assurances that historical liabilities will not be pursued are not trusted.

Policy objectives and wider context

9. The "new rules" are not new, having originally been introduced in 1999. Assuming that their objective is to enforce equity of taxation between equivalent workers then this may in part be achieved, but only in certain particular circumstances. Consider three Java developers, all providing the same skills to exactly the same software project: a) one employed directly; b) one employed by and supplied by a large consultancy; and c) one employed by a single-person company. (HMRC have effectively killed off genuine self-employment, so no sole trader will be considered here.)

Developer a) will be on the company payroll and his salary will be processed via PAYE. He will receive all of the company benefits such as holidays, training, sick pay, etc. If his employer closes he will be eligible for government benefits. He has no further marketable skills and may be in that position until he retires.

Developer b) will be on the consultancy's payroll and his salary will be processed via PAYE. He will receive all of the company benefits such as

holidays, training, sick pay, etc. but none of these will be the same as Developer a). If his employer closes he will be eligible for government benefits. He will be in that position as long as his employer is being paid for him to be there, at which point he may either go "on the bench" (paid) or move to another client. His employer may pay for training to sell to another client.

Developer c) will be on his own company's payroll and his salary will be processed via PAYE. He will receive all of the company benefits such as holidays, training, sick pay, etc. *if* his company can afford them. If his employer loses this contract he will NOT be eligible for government benefits. He will be in that position as long as his company's client pays for his services, at which point he will have to find a new negotiate a new service contract.

Developer a) is employed by the company and is assisting Developer b) to complete a project being delivered by the large consultancy, and will later become the long-term support technician. Developer c) has been hired by the company to assist Developer a) with capacity, and will leave after 14 weeks.

Three software developers, all doing the same work, but not all doing the same job. Is there any reason for these three people's tax affairs to be exactly equivalent?

If the intention of the rules is to ensure that people pay the same amounts of tax based on the same income *without* considering any other factors then it is inherently inequitable.

Under the IR35 rules, Developer c) would be forced to join the end client's payroll but would not accrue any holiday or sickness pay, training or even an invitation to the Christmas party or any other benefits. Developer c), the temporary resource who has been brought in to assist the resource who has been brought in to assist the company's own resource, is the worst off of all of them. Developer c) will have joined the new ranks of "No Rights Employees".

10. This depends on what the Government's objectives in implementing these regulations are/were, and these are not clear. If they were intended to increase the tax take from the "flexible workforce", then I don't think so. It may force some contractors who were stretching the definitions of self-employment to reduce their own and their client's tax and NI bill to return to the full time employment they had recently left. For people like myself (35 clients in 23 years) this is just an enormous inconvenience and not worth the bother. If clients in the UK insist on applying IR35 then I will seek foreign clients (again).

Government has the expressed aim of encouraging a highly-skilled, technically competent and flexible workforce. This is just one of many Government actions that is entirely inimical to that aim.

11. There is an implied assumption that umbrella companies will always act with greater probity than all contractors, ensuring that exactly the demanded amounts of tax and NI are deducted and remitted timeously and with the least financial burden to their customers. I am not convinced that this assumption is in all cases valid and I am not aware of any umbrella company that provides a solid indemnity covering further HMRC action against any of their customers. Given that many umbrella companies have sprung up recently to capitalise on a sudden and unexpected demand, I do not think that any such indemnity would in all cases be worth the pixels that make up the pdf file. Our company PAYE is run by my wife. She is meticulous in her record-keeping and no fault has ever been found in our PAYE process. I would trust her much more than any unknown umbrella company.

12. Recent advances in IT and communications technology have allowed significant changes in employment practices; have permitted much greater opportunity for technical experts to work with multiple clients in multiple markets and have encouraged labour and business flexibility. Customer expectations regarding business responses have increased hugely. A lively contract market over the past few years has allowed businesses to hire scarce and expensive resource only when required, producing faster times to market. UK employment levels are at their highest ever levels, unemployment at historical lows.

Just at the exact moment where the UK is about to face its single biggest set of institutional changes ever, HMRC are attempting to batter a set of regulations that were badly conceived when they were devised in the 20th century into this new information landscape, and they are using a sledgehammer to do it.

25 February 2020

Ahmed Khan

I'm an IT contractor who has been effected by the Off Payroll changes, please find some of the points I have witnessed with this roll-out in my Organisation.

Impact of new off-payroll rules on organisations:

2) My company as with many others just don't want to go in the detailed process of assessment, it's too costly for them so they have just taken a blanket approach where everyone is assessed to be inside IR35. When questioned they simply reply we are not willing to take any risk of facing HMRC in the future. Some of my Colleagues dared to challenge the status determination of the company, only to be advised that their contract will not be extended beyond February 2020! Thereby putting pressure on others to either remain silent and accept their decision or just leave!

4) My company pays VAT of 20% on top of our day rate, but when calculating umbrella arrangements they are not considering this VAT amount and are reducing their (Employer's) PAYE contribution from our existing day rate. If this is calculated as what my Company is planning to do then it's a loss/loss situation for both the contractor and for HMRC.

On top of that with this reduced pay the contractor does not have any other benefits of permanent employees like paid annual leave, paid public holidays, paid sick leave, pension, redundancy pay, life insurance, medical insurance, etc.,
All in all the contractor will be paying equal tax as employee with no benefits at all.
Some of my colleagues have taken mortgages based on the current earning potential, with the umbrella or paye arrangements they will find it difficult to pay the monthly mortgage payment.

Determining tax status of workers

6) As far as I can see these tests are simply ignored, the only point private organisations are raising is that despite using the CEST tool NHS has been fined 4.3 million so we could also be fined. So they are simply not planning to engage any contractor working through a PSC.

7) When I have used the CEST tool I always find myself to be working outside IR35, but my employer simply disagrees. Basically they have not used the CEST tool at all.

8) Simply put anyone who is questioning the status determination is being told to leave, it's a harsh stand which my company and all other private sector companies are taking. My Company is planning to put a halt to all the projects until they hire more permanent employees thereby reducing their output. This is happening not only in my company, but across the board in private sector. I have couple of friends and all of them (at least 10 different friends) say the same thing, their companies have also made the same decision. Any upcoming projects have been put on hold or are being planned to take it offshore either to Europe or India/Philippines.

Policy objectives and wider context

10) The Government thinks that they are going to raise up to 3 billion in additional taxes with these changes. As far as I can see the contractor rates are going down and VAT is not paid, so if VAT is taken into account I think it's a loss/loss situation for both the Government and the Freelancers.

11) I have been approached by many Umbrella companies who are promising take home pay of up to 80% of the contract value, these are unregulated and are operating outside the rules. If some contractors use these companies then

I think it's again loss of tax for HMRC and will open the contractor for future tax investigations.

12) A contractor sometimes takes up to 6 months in finding new work, when working through PSC the only safeguard for him was some cash lying around in his PSC to support him during these times. With these rules essentially he is paying the same tax as employees and without getting any benefits of employment such as, redundancy pay, sick pay, paid annual leave, pension, life insurance, medical insurance etc., (not even the 8 days public holiday). On the outset, this sounds pretty harsh and unfair to the contractor working through the Umbrella route. Essentially the Gig economy needs lots of temporary workforce with these changes this workforce will be considerably reduced thereby reducing the overall contribution of the freelance sector on the economy.

23 February 2020

Ben Knibbs

I am a freelance design engineer now contracted to Jacobs Engineering on work directly connected with the decommissioning of Sellafield. I work through my own limited company and an agency (NRL).

Determining tax status of workers

1. Since 1984 I have been contracting; exporting my services overseas (paying UK tax while in Abu Dhabi and Kazakhstan), travelling long distances to obtain contract work within the UK and overseas. I have been used to being "let go" by many companies when their work diminished and returning when they get more (including the company I now have a contract with). I have been providing major engineering and manufacturing companies with the flexible workforce they need to compete. In exchange for this travel and lack of security I receive better pay when I work and the tax breaks from running a limited company. I never "go sick" or take advantage of the companies I have been contracted to. I need to produce good work to keep my contracts. I have been re-hired many times by the same companies as my work and expertise is appreciated and valuable. I provide much of my own equipment and I do not receive cost of living increases, holiday pay, sick pay, redundancy payments. I can be terminated with a week’s notice, and have been many times.

Impact of new off-payroll rules on organisations

2. I don't mind having to pay fairly more tax, as has already been the case, for example, with the changes to dividend taxation. However, the changes proposed by HMRC which force my clients to accept responsibility for my contract status, have frightened most companies into taking the no-risk option and declaring contract workers to be inside

IR35 rules. Consequently, the following will suddenly greatly affect me and my family:

3. The client will deduct employer's NI from my rate. My rate will reduce from £42 to £35.10 per hour before I pay any tax myself. They get around your rules by offering me a new lower rate and a new contract. So although I am deemed an employee I have to pay the employer's NIC myself. That alone is unfair and wrong in my opinion, resulting in an abrupt drop in my earnings.

4. Being deemed "employed" I cannot have my wife help in the business for a small salary, using her personal tax allowance. She has no other work or earnings as we had five children and she gave up work after the first. She is 63 so unlikely to find any other meaningful work.

5. I will be unable to claim any expenses and a much larger proportion of my earnings will fall into the 40% tax bracket.

6. As I mentioned above, I don't mind tax reasonable increases, but such a very abrupt, large and unfair change will be difficult to adjust to. It will have a huge impact on businesses who rely on a flexible workforce and a huge impact on contractors who will be treated as employees for tax purposes though actually still contractors without staff benefits.

7. The timing of this major shock to the economy could hardly be worse. It needs re-thinking urgently and should be postponed for at least two years, meanwhile thinking of better ways to make tax fair without destroying business flexibility and competitiveness.

8. One more point. I am working past retirement age and deferring my state pension. In April I will be forced to take my pension to offset some of my losses.

Policy objectives and wider context

9. I don’t think the use of umbrella companies is a good option. If I sign up with one I will have deductions made by the agent, deductions of employer’s NIC by Jacobs, as well as deductions by the umbrella company. Additionally, how can the use of an umbrella company alter my status as a contract worker – it seems like an unnecessary complication that masks reality, a fudge that may fall apart later.

Existing measures in the public sector

10. I know another contract engineer who is currently working on the same Sellafield project as myself. He was contract for National Nuclear Laboratories and left because of the IR35 public sector measures, and plans to leave this DSA contract when the measures are extended to the private sector.

20 February 2020

Shankar Lakshminarayanan

Areas of interest:

The Sub-Committee welcomes views on any of the following questions relating to the proposed extension of the off-payroll working rules to the private sector. The Sub-Committee is interested to know about the real-life experiences of individuals and organisations, as well as more general responses—for example, relating to the impact of these (and predecessor) measures on the tax classification of workers and the broader impact on the labour market.

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

Even though I have not directly worked on the public sector, I know a lot of friends who do. The impact in public sector was mitigated in two ways.

- A good number of contractors moved to private sector in 2017 thus reducing the number of independent contractors available.
- I also know in some cases, the roles haven't been filled yet, resulting in deficiency in service offered by the public sector entity.
- Rates increased in many instances to compensate for the extra tax to be paid. This is unique for public sector as private sector has a much smaller purse.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

I do not think this has been adequately assessed. Most clients within the banking & financial services space have simply blanketed all contractors to be "inside IR35" or have stopped engaging with PSCs without going through a proper assessment and avoiding any major costs to them. This is obviously taking a "zero-risk" approach rather than performing proper assessments to deem if a contractor is inside or outside IR35.

Even by HMRCs own estimate of £14.4m for the 60,000 engagers and 20,000 recruitment agents, this works out at a paltry £180 in costs per entity which seems absolutely ridiculous estimate in the first place.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

Unable to comment on this.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

This is most likely lead to introduction of double standards in the treatment of workers who pay similar taxes, i.e. permanent employee who gets better employment rights vs limited company contractor who will have absolutely no rights despite paying similar taxes. Our employment laws were one of the fairest amongst the world making UK one of the sought after place for hardworking people to earn a living and also contribute to the economy. These new measures will only prove detrimental to the status and recognition we have earned so far.

I also see a lot of new tax avoidance schemes coming into existence luring gullible contractors of excessive take home salaries which will not be legal. The government's new measures will open the flood gates for these schemes which is exactly opposite to what the government promised to provide the hard working contractors, i.e. simpler, fairer system of tax and taking effort to close all illegal tax avoidance schemes.

I am of the view that these new measures will promote new forms of disguised remuneration schemes akin to the loan charge saga.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

HMRC should ensure the CES tool is 100% accurate and works in all cases (of employment types / roles) rather than HMRC's own current estimate of 85%

Even such a mechanised approach giving flat weights to all clauses to deem whether an independent contractor is inside or outside of IR35 may not work in all cases as clauses in one contract may have more weight than the same clauses in another contract as established in the case of Hall v Lorimer (Court of Appeal November 1993).

Enough guidance / training should be made available for clients to be able to perform correct assessments on a case-by-case basis. This requires people with good knowledge of the law to help with the assessments to ensure fairer assessments for deeming if a contractor is inside or outside of IR35.

If contractors end up paying extra taxes as compared to their current situation, then they should have employment rights in line with the taxes they are made to pay. This will unfortunately be at the expense of Government's Good Work Plan (Matthew Taylor) which it is yet to act upon.

A simpler option will be to introduce an engager's levy (akin to employer's NI) rather than having to go through all these administrative burden to recoup what would essentially be an effort to get employer's NI paid on these contractor's pay (to be deemed as PAYE salary under IR35).

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No tests were performed in my case by my client. We were advised that all contractors will be deemed "inside IR35" and will be engaged using a PAYE contract with my role as a temporary worker. There was no option to challenge the assessment nor did we have adequate information about how the client arrived at "inside IR35" status.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

I haven't been assessed based on the CEST by my client. However, having looked at the CEST myself, I can categorically say that, the assessment approach is totally flawed in many ways.

A mechanised approach giving flat weights to all clauses to deem whether an independent contractor is inside or outside of IR35 may not work in all cases as clauses in one contract may have more weight than the same clauses in another contract as established in the case of Hall v Lorimer (Court of Appeal November 1993).

Also the tool gives two different results based on individual's interpretation of the questions. Lack of any guidance on how to answer each of the questions also leaves it to the individual's own judgement to answer the question which leads to a lot of subjectivity.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

As per HMRC, all contractors should be given a written SDS (Status Determination Statement) if they have been assessed by the tool. If they disagree with the outcome, then they should be able to appeal.

This has certainly not been the case in my instance. There was no status determination statement issued nor have we been provided with an option to appeal.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

A simpler option will be to introduce an engager's levy (akin to employer's NI) rather than having to go through all these administrative burden to recoup what would essentially be an effort to get employer's NI paid to the exchequer on these contractor's pay (to be deemed as PAYE salary under IR35).

10. Will the Bill, as drafted, achieve the Government's objectives?

Certainly not. The governments calculations are skewed and does not seem to account for the VAT and Corporation Tax that it will lose out.

11. What is your view of the role of umbrella companies in the context of these proposals?

We were not given the option to use umbrella companies, so unable to comment on this in the context of IR35.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

As stated above the new measures seem to have absolute disregard for Matthew Taylor's Good Work Plan that aims to make the tax system fairer – tax and employment rights are in line with each other i.e. two individuals paying same taxes should have same employment rights. This certainly will not be the case where we have a permanent member of staff and a temporary worker on PAYE contract both paying similar taxes with the temporary worker having a notice period of as low as 4 hours to leave when asked to do so by the client.

25 February 2020

Murray Lambert

As far as I am concerned and have spoken to many others that feel this is disastrous for the freelance / contract work force and will no doubt have a detrimental impact to the contractor work force working in the Oil and Gas industry of which I am part of

For myself having been a Limited company contractor for several years it's my experience that the company's we work at do not want a PAYE work force, they want to be able to increase / decrease their resources as required. Freelancers are generally a more flexible work force. I myself have worked on a 3 and 1 week rota in Turkey this last 12 months as the Client Company didn't have the necessary resources available to fill the roles. I managed my time to ensure I remained tax resident in the UK and avoid the Turkish tax system. I

am now wondering if that was the right thing to do. In 2018 I spent half the year in Dubai in an Engineering consultancy role for the same reason and to be honest if I was a Company employee and didn't get paid weekends then I wouldn't have been there either. This transient work force were all contractors tax resident in the UK

Yes, there are favourable advantages to working through a Ltd company however there are also disadvantages as well. Working away from home a lot is one that immediately comes to mind. Unfortunately this attracts some expense as does flights, accommodation etc. In the past I have had to meet the cost of flying to NL on a weekly basis and accommodation whilst I was here for short periods of time. I wouldn't be able to meet this expense on 5% of the Company income (as proposed in IR35). I do not get sickness benefits if I'm unable to work, no paid holidays and there are no pension schemes to take advantage of. Bluntly I do not enjoy any benefits that an employee would expect.

With respect to the payment of deductions to the Government this is normally done correctly through HMRC paying Employers & Employees NI, income and corporation tax. Other expenses for a Ltd Company including accountants fees and necessary Company liability insurances, not to mention aforementioned expenses for working away from home. Other times it has been necessary to work from home requiring office space with the necessary office equipment etc.

Working on a contract basis which doesn't always mean continuous employment (again my own experience has meant on occasion having to spend up to 6 months not working in the last 10 years). An employee would normally enjoy the availability of paid holidays, sickness benefits, Company pension plans and also a reasonable notice period. If as a Freelancer I have completed my work I am no longer required and have workéd on an ad-hoc basis in the past.

I also have real concerns that implementation of my tax affairs will be decided by an agency administrator who really has no understanding of the way freelancers work but to be fair there doesn't seem to be that flexibility in the HMRC CEST tool used to determine a freelancer tax status anyway. Unfortunately it isn't always black and white. The Gross figure maybe appear healthy but the Net figures doesn't look as healthy when Company expenses / deductions are made. These deductions will remain in the new proposals with no opportunity to offset them. These deductions would not be met by a PAYE employee.

Finally all of the above points have been with respect to myself however I wonder what impact this will have on the way the Client companies want to operate. My thoughts are some freelancers will probably drop their companies and reluctantly accept a PAYE deal however a lot wont and will seek alternative positions elsewhere (most likely overseas). I really think a lot of people will drop out of the industry and the talent pool will be under resourced. Certainly

the Client companies will not increase rates to ensure they keep the freelance resources they current hold

All of above doesn't even consider BREXIT, I really feel having a flexible work force is essential considering what the future holds in that respect, this seems to be the worst time to implement IR35 this hard and for me really defies logic

If deemed to be inside IR35 I may consider changing roles and accepting a PAYE position in the short term (locally to avoid any expense) however I will definitely not be doing that in the near future choosing to take some time off and consider my options. Not something I really want to do but I can't accept this unreasonable tax regime for a Freelancer. If I am to pay tax as an employee then why can't I enjoy the benefits of an employee rather than taxed as an employee but still treated as a transient worker with no employment rights?

I was under the impression the conservatives were going to reconsider this hard line tax regime for a flexible contractor work force and for that reason I felt it necessary to vote Conservative in the last election. I didn't vote for Brexit and now feel totally despondent with the governing party in the UK almost to the extent that I'm seriously considering joining some of my family who have made their homes in Australia. I cannot express my frustration enough how annoyed I feel. I always said to my family that working away from home did sometimes attract favourable conditions and made some hardship justifiable however if theres no benefit ín the future then basically why would you want to do it

Rex Lampier

Summary

- I've provided consultancy to private sector clients in the financial services, digital and security sector for almost a decade (previously working as an employee for over fifteen years)
- I also have experience of litigation at low level (district / county courts) in data protection cases against parties infringing on the Data Protection Act and Privacy and Electronic Communications Regulations
- Most recently was on a minor consultancy engagement to a transport & logistics firm in the East Midlands from December 2019 to March 2020; delivering training on technical products and support in solutions architecture leadership
- This engagement had a clear statement of work, specific deliverables and a finite run period
- I provided my own equipment and paid for training facilities to deliver the course
- I defined my own hours of operation and when I would travel to the clients site in Castle Donnington. No part of the scope includes travel to

their HQ or other sites and would therefore be down to commercial negotiation first
- I determined how and what is delivered in order to meet the targets for the engagement; I accepted no review or demand to alter this (being engaged as the expert I would take into account the needs of the client but the approach and execution was of my design)
- The contract provided no requirement to accept work the client offer; and the client were not obliged to provide work in return
- Despite this the client attempted to classify my operation "inside IR35"; no clear answer was given although they loosely claimed that:
  - They have a level of control over my work – which is not even slightly true
  - They would refuse to allow me to provide substitute should such a situation arise, claiming they explicitly deny substitutes in the contract. In the contract there are no such clauses and I'd actually signed a contract which states the opposite
  - During this assessment they did not contact me once to discuss the "reality on the ground"
- So I would effectively be a permanent employee but with no pension, zero-hours, no sick pay, no holiday and no rights? I don't think so.
- This is typical of organisations that – despite having three years to prepare – have done nothing until the last minute; worse… are relying on HMRC guidance which is either misguided or deceptive at best.
- The end-client appear to be relying on the result of the CEST tool, which is provably inaccurate and harmful
- I indicated to the firm that I would be terminating the service agreement between my company and their agency at the earliest opportunity
- A previous client (financial services sector) has offered me an engagement and claimed to be carrying out individual assessments. However an initial discussion these assessments turned out to be role-based (blanket) assessments – with no involvement from the consultant or consideration of the reality of the delivery. Moreover, the end-client considered factors which it had in previous engagements discounted entirely e.g. working remotely / working from client site had been defined as the discretion of the contractor, not the client.
- I'm also pursuing a client base in the EU, and am likely to set up subsidiaries outside of the UK in coming years

Existing measures in the public sector

- On a number of occasions in the last few years I've tendered bids for contracts in the public sector
- One memorable occasion in 2019 for the Crown Estates; I was told that the contract would be "inside" IR35 after an initial conversation about requirements (despite the end client never having spoken to me nor having any knowledge about how I would deliver on the statement of work)

- I challenged this stating that my modus operandi is that of a micro-consultancy and far from a permanent employee
- Their response was that in order to "get the contract" I would have to work for the agency umbrella – which is ridiculous, and I wonder whether the Crown Estates followed the advice of the agency in this case
- This is a contrived "inside" IR35 scenario which benefits only the operators of the umbrella firms. These firms make a sizeable margin between the original contract rate and the loan arrangements usually in operation

Impact of new off-payroll rules on Organisations

- I've seen no evidence that there has been any real assessment of the burden placed upon the end clients – apparently cemented by the total inability of some to actually do any assessments
- Most end-clients appear to see blanket assessments "inside" IR35 as the cheapest approach in the short term
- There is no balance stuck at all between compliance on the tax payer and HMRC, seeing that HMRC are historically unable to enforce IR35 (having won only two of the cases in the last decade outright, and one of the two split decisions currently being appealed by the defendant)
- End-clients are blindly accepting the HMRC guidance which is based purely on bluff, and apparently not on the letter of the law c.f. ITEP or the Finance Bill (my own experience litigating in court rooms at district level in data protection cases is that the judges are interested in the law, not conjecture or incorrect interpretation)
- The definition of an employee in ITEP does not match the interpretation being applied in these blanket assessments, and in my experience the "appeals process" is merely a token effort which is largely ignored
- **The best way to reduce this burden is to completely re-write CEST so that it actually takes into account the factors reviewed by the courts in the various IR35 cases e.g. HMRC vs. Adams (among many, many others); in which CEST was found to be severely deficient**
- **By having CEST (or a tool like it) apply such factors as mutuality of obligation and control – among the many factors which go to define "employment" vs. "consultant"; it removes the burden on organisations whilst forcing HMRC to provide the accurate guidance it should have delivered originally**
- **We must also see HMRC stand by the results of this tool once it's been corrected**
- I have publicly offered to create such a tool in an "open source" way, which would be transparent and free to re-use; I'm unsure why HMRC cannot do the same with all the resource they have available?

Determining tax status of workers

- The tests for determination are – and always have been – very clear to me. I've tried to keep up-to-date and in touch with my accountant for their views too.

- The tests for determination as defined by HMRC are less clear and in fact omit key metrics which have already been tested in the courts (c.f. almost any tax tribunal IR35 case in the last ten years). One might think that this obfuscation was deliberate to falsify tax liability
- **CEST is only ever going to be useful if it takes into account the real factors – which it does not. See responses in previous section on this:**
  - **Make it take into account MoO, control, etc.**
  - **Force HMRC to stand by the results (assuming honest input)**
  - **Give end-clients back the ease and confidence in dealing with this ridiculous raid on the ~~easy targets~~ contractors**

Policy objectives and wider context

- Giving control of tax determination should not rest with the end client – there are extremely complex structures on occasion which may involved several intermediaries and split engagements. Asking the end client to assess all of this with so many levels of contract *that are unsighted* makes it impossible to assess correctly
- I've seen a number of situations where a contract I've signed with an agency on my company's behalf may include a specific clause e.g. working from home 40% of the time; but the agency contract with the end client may stipulate 100% from their site. This highlights that the majority of miscommunication lies with the intermediary
- If the intermediary were to have final say in the tax determination status they would have a vested interest in forcing umbrella engagements – it's simply more profitable for them with no benefit at all for the worker (less pay, no rights, no holiday pay, no sick pay and no permanent job)
- Giving end-clients the assessment status for people who are contractors effectively consigns them to a 3rd class of workers with no rights, no pension contributions, no [effective] say in their determination and usually a zero-hours effect. Once assessed "inside" IR35 incorrectly we have no effective legal recourse – unless we want to litigate for potential loss of revenue against our client base, or potential damages for them putting us at risk of retrospective tax investigation
- Every party in the chain should have an equal say, and the final assessment needs to be backed up by evidence as well as a properly operational guideline from ITEP and the Finance Bill; CEST doesn't currently do that

- **We should absolutely push back the 6th April deadline until CEST does the job we've been asked HMRC to do for three years**

24 February 2020

Thomas Lamonby

I saw you call for IR35 experiences online and wanted to email you over what's happening to myself and my father as self employed Design and system engineer consultants. (Each working through separate companies.)

1. I'm in my Mid Thirties and since starting work as a self employed engineer, I have been self sufficient and able to pay my tax bills on time (which I do with no reticence). I also have two young children and a Mortgage. The upcoming IR35 shakeup is the first time that I have genuinely feared that I will not be able to fulfill my financial obligations as a father and a house owner. I understand some of the reasons for the upcoming changes, but I do not understand the way in which the legislation is to be implemented and am dismayed at the utter chaos and confusion it is causing in my sector.

2. I run a small company called Waltham Tech Ltd and have spent the last ten years contracting and providing consultancy for various engineering projects all over the south of England, working on the latest RNLI lifeboat, designing Aerospace components for Cobham, designing pharmaceutical process equipment and most recently, working on a project for large British Ship design company for an important US Army defence project. These are just a few of the more notable projects but typically I will spend no more than one year in each contract, always conscious of the fact that I am and want to stay a self employed consultant.

3. The company I currently contract to - relies heavily on contractors to expand and contract quickly when needed, thus running a very efficient business model. This suits us as contractors. We have been told by the company that after managerial meetings it is likely that many people will be terminated early. This is because they are trying to get a handle on the upcoming changes to IR35. You see, the project we are currently working on is one of the biggest projects our client subsidiary has ever won, and as is comes to an end many contractors would have moved on anyway, however as a result of what management deem to be risk presented by IR35 and the employment of self employed engineers, the company will be forced to try and complete the project with a smaller, predominantly permanent workforce and will most likely not finish on time.

4. Aside from our clients problems, we feel that the whole environment in which we operate as engineering consultants has been damaged , the amount of work available on the market has dried up very considerably. Our client company is just one of many that has been seriously spooked by the upcoming IR35 changes. 'Safe' Permanent jobs are also drying up too with contractors rushing to grab one.

5. It's most insulting that the Government says this legislation is being implemented ‘in the interest of fairness’. I personally have just paid a

considerable tax bill and now have a good helping of financial uncertainty where I and many others wonder how we will pay our mortgages and pay for our families well being. There is nothing fair about being forced into this unprecedented 'Frankenstein' tax system that leaves us stranded with no employment rights.

6. **summarized - my main complaints and concerns with IR35 are the following:**

6.1 How can a fair tax system make contractors pay PAYE tax with no accountant to defend their legitimate business rights and then not allow for holiday pay, pension contributions, maternity etc... Its entirely unfair and leaves many contractors ripe for exploitation. PAYE but with no rights... it smacks of HMRC having their cake and eating it.

6.2 How can companies expand and contract when needed for individual projects when l acking a temp workforce?

6.3 A handful of 'one wo/man bands' become large companies each generation, how will these green shoot startups come about when the Government is busy strong- arming small businesses out of the market with this type of legislation?

6.4 How can the Government claim that these changes will have little effect when the engineering industry is in turmoil with contractors, agents and companies all saying that things are grinding to a halt and work is disappearing overseas (I personally know of 5 contractors who have been forced to become permanent or have been let go).

6.5 If we are to believe HMRC on their claims regarding tax evasion among the self employed, then why do they lose so many high profile IR35 tax cases? I'm not suggesting that tax avoidance doesn't exist - but just how are their figures substantiated?

6.6 Why is there not a single conservative MP signed up to the Early day motion 13 regarding IR35? Especially considering there are many prominent figures within the party who are opponents of the the legislation. perhaps I don't understand parliamentary process – but have they been told to abstain?

6.7 Within the industry there is a view that this legislation is being implemented because it will push thousands into a PAYE tax model and will allow HMRC an easy life by reducing the numbers of self assessment returns they need to process each year. Considering the industry response to the legislation so far, has the economic risk been objectively offset against their plans?

6.8 Has HMRC considered the potential drop in tax incurred by contractors like myself being forced into permanent employment? The fact

that the self employed typically deal with their own affairs when it comes to insurance, pension, healthcare and holidays, and the riskier form of employment means that they can often command higher rates of pay. In most sectors there is a huge disparity between permanent and contract work. HMRC may well find that they are collecting considerably smaller sum in tax in many of these cases. Again, do they truly understand how these affected industries work?

6.9 How does the Government envision that such legislation as IR35 will allow technical sectors such as engineering and IT to remain competitive in the modern world? The changes to IR35 have prompted a slew of stories of work moving abroad. There is a economic threat to our sectors posed by countries which are now able, with the internet to offer very viable remote consultancy services for engineering. For example for technical drawings. We have recently heard many stories of work moving to India and central and Eastern Europe, where there are many skilled and talented engineers eager to take on these projects. If the Government and HMRC make the business environment too unfavorable to end clients who need temp workers, we may well see an exodus of projects leaving our shores.

7. As a final thought, my father who contracts separately and has had a successful career for many years is also affected. He is now 74, and although very fit and a capable engineer, he has told me that now that employers are looking for mainly permanent staff, they don't want to take somebody on at his age on a permanent basis - thus depriving the market of an experienced engineer who would normally work short stints 'here and there' . This is obviously 'hearsay' but it does make some sense.

8. As a parting statement I would just say that I am happy to continue ‘paying my way ‘in tax to contribute to the future of our country. I like many other small company directors just want to work and earn a living. But like many others I feel that this legislation completely shuts small businesses out of the economy and leaves it open only to the large companies.

8 February 2020

Mark Landry

In October 2017 I commenced working for a west midlands NHS trust via a contract agreed with their chosen agency. The contract was advertised at £350 per day and was said to be outside of IR35.

On inspection of the contract there were to b 6 payments over a 6 month period which represented milestones in the work that had been agreed (a

project to overhaul their computer network). The total amount to be paid was equal to the £350p/d multiplied by the work days in the six month period and were differing in amounts, thus ensuring that the contractor was not in any way 'employed' by this public sector organization.

The first two months/milestones were paid as per the contract. However, with the appointment of a new manager who insisted on extra work being undertaken whilst assuring me that he would sort the finances out to ensure payment, things came to a head after 3 further months without pay.

We parted on bad terms with the trust (still) owing my company close to £30,000.

The point to my story is that the trust clearly needed to 'get around' IR35 to attract a contractor with the ability to undertake the work required.

I still see fresh advertisements for a network engineer which is easily identifiable as being this agency/trust showing that some work still needs to be carried out.

If only the government hadn't forced IR35 upon them, it's likely that all the work required to put this trusts computer systems into a more stable (and safer for their patients) condition will have been accomplished.

15 February 2020

Mark Lawless

Please find attached my completed submission for written evidence to the inquiry on the draft Finance Bill 2020.
I am a director of a limited company working in the engineering and construction industry. Just to give some clarity on the nature of reality in the workplace today - it is 24th February 2020 and my end client has not even given me written acknowledgement that they are conducting a status determination of my role, let alone an actual determination itself. The questions have therefore been answered with knowledge of what my agent has provided in advance of written clarification from the client.
Most of the questions have been answered with my knowledge of the labour market in construction so please bear this in mind. With the ensuing changes due to Brexit and the early signals of the government's intent to invest positively in infrastructure (HS2), the new rules could really hinder the flexibility and diversity of the UK workforce in my opinion.
Most construction projects rely on peaks and troughs of staff, therefore relying heavily on PSC's during times of heavy workload. The new rules jeopardise this dependence immensely. As my answers will demonstrate, I am very apprehensive whether detailed analysis has been carried out in relation to how the rules will affect each industry specifically. At present the rules just seem to apply to the selfemployed workforce of the UK in general.

Please see my answers below:
Existing measures in the public sector
1. I do not work in the public sector so cannot comment.
Impact of new off payroll rules on organisations
This question would be better answered by end client's HR/Finance departments. I suspect however that it has not. I feel that historically the Contractors themselves have selfeducated themselves on complying with IR35 legislation. End clients have therefore traditionally just paid their contract staff without concern for future tax liability.

The new rules appear to have shocked the majority of end clients into knee jerk blanket 'inside IR35' assessments. Please refer to Offpayroll.org to see the exact scale of blanket assessments being undertaken. Blanket assessments to me, indicate clients unwillingly to educate themselves on the legislation and implement it properly.

I cannot answer this question as I don't have great knowledge of smaller organisations.
My end client, and countless others, are getting around the new rules by simply not engaging with PSC's beyond April 6th 2020. Instead our roles will be changed to umbrella positions or PAYE instead. These are essentially employment positions with no benefits.
This type of arrangement induces a 20% pay cut on my company. As such I will seek work elsewhere in neighbouring EU countries which can offer greater opportunity.
Most other contractors I know are considering their positions. Many contractors work away from home, prioritising working in remote locations on infrastructure-critical projects in the energy and utility sectors. As we cannot claim expenses under these new rules then it will not be feasible for such contractors to work away from home anymore. Someone really needs to think about how the likes of HS2 and Wylfa power station will be done for affordable prices with such disruption to the natural workforce.
I don't know what advice HMRC has provided to such companies therefore I cannot answer.
Determining tax status of workers
My end client's HR department has not contacted me once in this entire process so whether they have clarity or not, is for them to confirm.
Considering they are likely to not engage with PSC's post April 2020, then I would suggest that guidance has not been clear.
I think the newer version of CEST is accurate as when I fill out the form it declares that my role is outside IR35, which it is. It could however by improved by diversifying into industryspecific roles which would provide greater levels of accuracy.
As of today, 24th February, my client still has not declared my status determination. It is clear however from liaising with my agent that they will not be engaging with PSC's after April and roles will only be offered via umbrella or PAYE.

Even though they cannot issue blanket assessments and we should all be entitled to appeals I'm not even sure I am entitled to an appeal considering that legally they can just terminate my contract within a week if necessary. They can then just revise it as an umbrella role thereafter and they are seen to be complying with the legislation. Meanwhile the years of skilled experience that I have acquired and built up working as self-employed individual are ignored. How can CEST determine that I'm outside IR35 whilst my client determines I am not? So I would say that there are no safeguards in place for such contractors.

Reading various reports on Offpayroll.org it is clear that clients in these cases have historically ignored/misunderstood key employment triggers such as substitution, control and mutuality of obligation. This is what is primarily causing them to inaccurately input data into CEST and come out with inaccurate status determinations.
Policy objectives and wider context
It is clear that HMRC are concerned by the magnitude of contractors not complying with the rules across the UK, and quite rightly so. But it also clear that the new proposals are not fair on the self-employed as they tax the individual the same as employees but without any benefits.

Therefore I would suggest HMRC need to convene with self-employed industry bodies and propose new tax rules which provide compromise for both parties. If contractors are not entitled to employee benefits then we should be allowed greater tax incentives (or otherwise) to help make it a worthwhile occupation to pursue and flourish within. Perhaps a revision to umbrella tax rules would be a starting point.

This question is difficult to answer due to the sheer diversity of contracting in the UK. Whilst there is a clear shift to umbrella companies emerging, some of the more astute end clients are recognising that they should be engaging with contractors to maintain access to a highly skilled talent pool.

I think there may be an initial increase in revenue due to the rules. This however could be at the detriment to other areas. I can foresee a lot of turbulence in the construction sector as a result of these changes. Please refer to the latest edition of construction weekly below demonstrating the scale of firms going out of business in January of this year alone.

https://www.constructionnews.co.uk/financial/revealed-22-firms-went-under-in-january17-02-2020/

Umbrella companies may work for contractors who can find work close to their work site. They do not favour those working away from home as you cannot claim expenses under such arrangements.

It is fair to say that a high percentage of individuals will now be taxed as employees but prevented from having any rights or benefits. These new rules completely legitimise this for the end clients.

This concludes my responses to the questionnaire.

24 February 2020

Fraser Lawson, Beau Engineering Ltd

IR35 Private Sector Reforms in the UK Oil and Gas Industry

I write to highlight the chaos that the new IR35 private sector reforms are already causing to the UK Oil and Gas industry.

I myself have worked as an independent international drilling consultant to this industry for over 30 years.

Our industry is both cyclic and project orientated. It has been dependant on a specialist mobile consultant community since it's inception in the 1970s. To infer that consultants are merely 'disguised employees' is particularly nonsensical in this industry. The MD of my current client company has stated that he does not wish to hold an entire employee workforce and indeed could not function profitably without specialist consultants they can pick up or lay down. My current work involves looking after three different drilling projects that have been delayed for a variety of unrelated reasons. If we were required to have retained full staff drilling teams in these circumstances then these marginal field developments would quickly become unprofitable to develop.

The cyclic nature of our business was starkly illustrated as recently as 2016 when due to low prices most contractors were sitting at home that year without any pay or benefits coming in.

The relative affluence and international nature of our sector gives rise to a host of other issues that means many consultants have the means to take early retirement or live overseas. These issues in turn accelerate the 'big crew change' concerns that have been predicted in our industry for many years as the last big wave of oilfield recruitment from the 1980s (including myself) reach retirement age leaving a skills vacuum behind.

Of course neither early retirement or going UK tax exempt would generate any extra income for HMRC which is the intent of this legislation.

Another phenomenon already causing chaos in the oil and gas industry is the split of 'inside' and 'outside' IR35 assessments. Unlike the banking sector where ever body is 'deemed 'inside', the oil and gas operators have (thankfully) not adopted a blanket philosophy across the industry. Early evidence suggests that roles across the sector may ultimately be split 50/50 inside and out. Some individual oil companies in Aberdeen have however

stated that all consultants in their company shall be 'inside' IR35. Not surprisingly many contractors in those companies have already tendered resignations and most of the others are currently seeking alternative posts in the sector that fall 'outside IR35'. This is chaotic and in some cases is actually affecting their company's ability to drill wells through critical specialist skill shortages. Enquiries are of course out for other consultants to fill those vacant positions but who would want to go there for a sizeable pay cut? Inevitably in the longer term consultant rates will have to rise as a result as has been demonstrated in the public sector. At least one major oil company in Aberdeen has already announced increased dayrates for contractors falling inside IR35. This will in turn increase development costs and hamper already marginal oil and gas project economics.

There are many other major flaws in this legislation which discourages entrepreneurial (and HMRC revenue generating) behaviours. For instance if everything is paid to me net as PAYE then there is no business cash remaining for hotels, train and taxi fares, training, accountants fees and a multitude of other legitimate business expenses I regularly incur. Other knock on effects of IR35 will damage the supporting businesses of agents, accountants and insurers. Personally I've had the same Aberdeen accountant for over 30 years. He expects his client base to shrink from 100 to 20 consultants and is planning to retire as a result.

In summary I do not believe this flawed legislation will bring in any real net revenues from the oil and gas industry once all the other negative damaging factors are considered. It is however already proving to be chaotic and destructive to the business even before it comes in to force.

All consultants I know DO support a fairer mechanism for taking appropriate NI payments from consultants. At present NI is not due on dividends paid to consultants from their PSCs and so forms the essence of this legislation. However for a consultant to have to pay both punitive employers NI (13.8% on everything) as well as normal employees NI under IR35 is a heavy financial burden that is much more than any equivalent staff Engineer has to pay. Once other IR35 factors are taken in to account this typically represents a 25% net pay cut depending on individual circumstances.

This unwelcomed pay cut comes at a time when the self employed are being urged by government to contribute to their underfunded pension schemes to avoid the looming 'pensions time bomb'.

Thank you for taking up this IR35 private sector review as Chair of the Lords Finance Bill Sub –Committee. As a passionate and entrepreneurial free-lance consultant I welcome any challenge to this damaging anti-business legislation.

13 February 2020

Stephen Lawton

Existing measures in the public sector

1. The current implementation within the Public Sector has not been successful; I was there when it happened. Most contractors left when blanket bans were announced. Projects got put on hold, were delayed or cancelled. This was widespread. HMRC have refused to accept this and have painted a very rosy picture to Parliament that all went well. Ask them about their independent evidence on the effects. All very limited. They are in total denial (and MPs have been fooled by them)

Impact of new off-payroll rules on organisations

2. I very much doubt the effects on the private sector have been adequately assessed. Let's face it, HMRC haven't bothered to assess the effects in the public sector. What we are talking about is an additional 1/10th extra tax on income tax. When you look at what is happening right now in the private sector you just cannot understand this obsessive hate-contractors attitude from HMRC. The private sector is terminating contractors left, right and centre. How does this generate any extra revenue for the country?

3. The exclusions on small companies is not sufficient. Most users of contractors are not small companies so it really has not effect. Just another measure HMRC use to con Parliament that they really are trying to get the balance right.

4. The effects on the chain of contractors in the supply chain is looking dire. Big companies are now looking through the whole supply chain forcing everyone onto PAYE. I've heard of lots of small consultancies supply services to big companies effectively being cut out of the supply chain due to their use of contractors.

5. HMRC should just simply drop these measures and roll back the IR35 policy in the public sector. Why, because we need "fairness" (to quote every recent prime minister) with regards to taxes paid and benefits received. Here's an idea, if you pay employment taxes you receive full benefits like holiday and sick pay (not the fake benefits that you, the contractor pays for in an umbrella arrangement). If you do not receive these benefits you are a contractor and considered in business on your own account. Simple.

Determining tax status of workers

6. The rules for determining worker status seem fairly simple for the contractors and the judiciary (Control, Substitution and MOO). Tribunal

after tribunal seems to get the status correct to the benefit of the contractor. Sorry HMRC but your record of wins is awful, you haven't got a clue about how your own rules actually work in reality. For the private sector we are seeing a massive overreaction resulting in tens of thousands of contractors being forced into deemed employment when they are in reality in business on their own account. I know this as I'm working with a company who has just decided these new rules are so complicated that rather than bothering doing contractor assessments, they have just decided to ban all contractors, forcing them to choose with going onto PAYE or leave. What annoys me is that I'm clearly outside the scope of the legislation, I have offered to pay for an independent assessment to prove it but still my client has said PAYE or the highway. Ridiculous and unfair.

7. I have no confidence in CEST. I could have written it myself, whatever you enter, you're caught. It doesn't even follow case law. Where is the consideration for Mutuality of Obligation (MOO) – nowhere. Where is the consideration of where in tribunal a judge has decided that a right of substitution clause should be accepted, even if it hasn't been used, asking HMRC to prove that the contractor wouldn't use it if the chance arose.

8. I don't think the legislation is appropriate. It is so complicated and scary for the private sector. If they get an assessment wrong, they risk a massive investigation by HMRC. Its just too much hassle, better to just ban contractors, by-passing the legislation. This is what HMRC wants as it pushes all of the contractors onto PAYE. We need a re-think.

Policy objectives and wider context

9. A better implementation would be just to stick with the current situation. The contractor makes the assessment and carries all the risks of an investigation.

10. Will the Bill achieve its objectives? What are the objectives? Max tax, everyone forced onto PAYE, extra revenue at any costs? Maybe, but what hasn't been considered is that loads of contractors are going to sit on the bench, retire, leave the country, take lower paid permanent roles, etc. This won't bring in extra revenue. I'm looking forward to being able to sign up on the dole for benefits when between contracts. First time in my life. That won't bring in extra revenue. Also, I'm seeing jobs moved abroad. These new workers won't pay a penny in tax in this country. This offshoring is happening at an accelerated pace due to this new legislation – companies are so scared of it.

11. Umbrella companies are rubbing their hands together. Lots of business coming their way. But has the Government thought about all of those dodgy offshore umbrellas who do not pay all of their "employee" salaries as PAYE? After the legislation came into the Public Sector the number of tax avoidance Umbrellas mushroomed creating a massive tax drop. Umbrellas are not regulated so expect avoidance schemes to rocket. Again, at the loss to the exchequer.

Have a look at this, I googled "Contractor Umbrella" and this was one of the first to come up:

https://dailycontractor.com/

Why You Should Join Daily Contractor

A great service
A solution with nearly 30 year track record
100% Fully IR35 Compliant
Legal Team With 30 Years Experience
Insurances included
****Up to 90% take home pay after tax****
Easy Sign-Up Process
Dedicated Personal Account Manager
Same-Day Free Payments

This doesn't sound too compliant – take home 90% after tax! There will be hundreds of umbrellas offering very high (illegal) returns.

12. I feel that these measures worsen the situation of "gig" workers in the wider economy. Many self-employed (like myself) are now being wrongly classified as PAYE workers or deliberately forced into disguised employment due to companies banning the use of contractors outright. I will not benefit at all from the change to my status. The "benefits" that I will receive from an umbrella (I'm paying for them) will not match those that I already receive from my company, yet I will have to pay them for that privilege just to continue supplying services to my existing client.

Conclusion

These measures are ill-conceived, badly timed (BREXIT and economic European slowdown) and just not fit for purpose. MPs for too long have not scrutinised the activities of HMRC or the Treasury to the level that they should, allowing the 20-year retrospective Loan Charge through and now this. The private sector is running scared, they don't want to be liable for the tax issues of their contractors so they are by-passing the legislation completely and banning contractors from their supply chains. Many contractors who clearly are self-employed are being deemed as disguised employees incorrectly. Many are being forced out, to be replaced by large consultancies and work offshored. This doesn't bode well for the economy long term.

See https://www.offpayroll.org.uk/ for all the named companies who are banning contractors – it's the vast majority
Also See https://norightsemployee.uk/ this is what this Government is creating, a new status of worker who has no rights but pays full employment (and employer) taxes. I thought we were into "Fairness" in this country, that's all we hear on TV from Parliament.

15 February 2020

Jon Leader

Areas of interest

The Sub-Committee welcomes views on any of the following questions relating to the proposed extension of the off-payroll working rules to the private sector. The Sub- Committee is interested to know about the real-life experiences of individuals and organisations, as well as more general responses—for example, relating to the impact of these (and predecessor) measures on the tax classification of workers and the broader impact on the labour market.

I have worked as an IT Engineer/Consultant, for about 14 years, mostly as a Permanent employee. I have worked mostly in support of Government Departments traditionally always outside of IR35, mainly in consideration of the security implications and their requirements as the end user (e.g., MoD, DWP, FCO) I have always been expected to comply with necessary Security requirements to be able to work for my end-users, and I am presently cleared to Developed Vetting (DV), which in my case, took 12 months to achieve, and a 4 hour 20 mins Interview, with much stress entailed. I took on my present role, in support of FCO, in October 2018, as a 3rd Line Messaging Analyst for Computacenter, bringing 14 years of specialist, highly-skilled knowledge of Microsoft Operating Systems, with particular reference to MS Exchange, in which I have worked since 2006, having been involved in the build, and transition to DIIF for MoD, of their Messaging Infrastructure. As a Consultant, we are expected to bring experience of legacy and current methodology, and we spend many hours in research in keeping-up with the latest technologies, at our own, or rather, our PLO Companies expense. I am currently completing distance-learning to qualify to Industry standard, in the transition from On-Premise Infrastructure solutions, to the new flavour of Cloud-based (Office 365, AAD, etc.) to remain current and industry valued

Initially in this Contract, I lived in the North West of England, and commuted on a Monday to my place of work (Milton Keynes), returning on a Friday evening, and staying at a B&B establishment during the week. For me, this was a cost to the business of £900/month plus subsistence, perhaps another £300? I did this commute for 12 months, whereupon both myself and my wife, decided to move to the south east, in order to reduce the strain on our family life, and on myself, who underwent journeys of about 5-6 hours each way (unpaid) and considerable stress during said journeys. This is accepted as the

IT Contractors life. We do not take holidays, unless forced to in the form of a furlough by our contracted to company, when work is quiet (usually at Christmas). When we do take a furlough, we do not receive any form of holiday pay, nor any form of sickness pay. We receive a double whammy when not at work, we not receive our day rate, and we have usually paid for an expensive holiday, out of term time, as our only break during the year. For me to make the move to Milton Keynes, with my wife, cost her, her job as a Bank Clerk, with me supporting her this last 6 months, and in purely monetary terms, (removal/relocation costs, increased cost of living for accommodation etc.) I would estimate these to have been in the region of £10,000. We did this to work where the work resides, i.e. the southeast. I was unable to obtain suitable contract work in the North, as most of the Government contracts are based in the south. Effectively, we did what Norman Tebbit suggested, and we got 'on our bikes'. We are a considerable supporter of the local economy as a result, the B&B establishments make a lot of revenue from us, as do the food establishments, the car industry for our reliable transport, and of course, the Treasury. I will be liable for Corporation tax of approximately £14000 this year to date, after my responsibilities to personal taxation, and of course VAT. If I factor this out of my day rate, and make allowance for the commute, and the cost of keeping current in my role, in monetary terms, I am probably paid less than most middle managers/ civil servants. But I am, in employment, and I chose this vehicle, to further my career, and our way of life.

Most of the current Contractors at my place of work, (approximately 72), have decided they will leave at prior to the legislation coming in to force in April. Some have managed to build up a sufficient 'nest-egg' that they can take an enforced absence from work, in order to purse another contract deemed external to IR35.

Most of these contracts will be for smaller employers i.e. with less than £10M turnover and less that 50 employees, or more specialised Government end users such as GCHQ, and MoD, MI5 and MI6 who require our specialised knowledge and Security Clearance. Some will move abroad to avoid the legislation altogether. Some, like me, cannot afford to leave this contract without securing another one, perhaps paying a better day rate, to absorb some of the personal tax liability within the increased turnover. I will ultimately move abroad, where the rates are considerably higher, and the IR35 legislation is not relevant. This will undoubtably REDUCE the tax paid by my colleagues in this country, in my opinion, and that of the Agencies. And it will probably increase the rate that the end-users and ultimately the taxpayers, will pay, as they will still need our knowledge, and they will still require the transitory status these roles depend upon.

We get none of the benefits of permanent employment. No sick pay, no holiday pay, no non-contributory pension, no training, no paid bank holidays. Our current Contracting companies pay no contribution to our NI or pension contributions. We are a flexible and cheap method of actioning the workload, until the contractual need is passed, and we move on to pastures new, at no cost-to-terminate. This is the life of the Contractor.

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

As previously stated, most of my colleagues, will leave the IT Contractor Industry. This will bring an immediate two-fold issue. Insufficient contractors available to process the current workload for our End-users, and an influx of Contractors entering the job-market for permanent roles. This will, in the short-term, increase the burden on the Benefits system to the previously gainfully 'employed". IT Agencies will see a catastrophic hit to their business, and they are paid from the day rate of their Contractors. I would imagine, day rates will increase exponentially, as in order to fulfil their contract to, say FCO or DWP, Computacenter will need to pay increased rates. My current day rate is £350/day. I would imagine, these will increase to more than £400 to £500 in order to achieve the same monetary 'take-home' to the contractors who move to Umbrella/Deemed payment, as they have historically earned. This will inevitably be passed on to the FCO, as the end-user to Computacenter.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

I believe this has been answered above. There has been insufficient information to contractors. Most of us are being coerced into permanent roles or offloaded into Umbrella companies in order to stay working. My contract provider deals through CBS Butler and Hays payment processing. I have taken the CESC assessment and proved 'Outside of IR35' Computacenter have engaged Qdos to blanket determine anyone working on the FCO contract as 'within IR35' Anyone contesting this determination has to pay £90 to Qdos to be assessed. As if Qdos, who have blanket determined based on our standard contract, will change that determination, to an individual. I believe the blanket determination to be illegal, as we were advised it was down to individual consultation, not a blanket one.

Computacenter will NOT accept any determination under CESC. Surely this is a damning assessment of the Governments own toolset.

I will personally lose by this legislation over £300/week in turnover. After expenses accrued but not able to be claimed via Umbrella, I will barely be able to meet my financial commitments in this geographical area, with its economic weighting in terms of accommodation and subsistence cost. It remains to be

seen if I will be able to subsist under this amount of burden. We will be employees without the benefits of employment. We may pay more tax, but our standard of living will diminish. I will probably move abroad to maintain this standard.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

I regard myself to be a small-business owner. I run a legitimate, and compliant PSO. I have already given-up any ability to claim expense by moving South. We can only be financially squeezed so much, before we need to decide, if we can carry on.

4. What will be the effect of these new measures on a chain of contractors and sub- contractors?

Costs will remain the same, while take home pay is reduced to the sub-Contractor. In the short term, I have explained, Day rates will need to increase to attract us to maintain Security clearances needed to do the roles. Ultimately, the end-user, the FCO, will pay more as a result.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

   I believe that his legislation has been pushed in to quickly for those affected to absorb the information, and/or make any potential mitigation HMRC is under pressure to increase its income, but they are being perceived as pressing forward with this, at cost to the smaller, transiently-employed workforce, as opposed to the Amazon's and Starbucks, who SHOULD be paying their share. HMRC, should clarify the status of specialist, Security cleared contractors, who historically have contributed substantially to the revenue collected, but who may now move abroad or into permanent employment

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

Not at all in my opinion. Why should the CESC toolset be so widely disregarded by Industry as proof of status? Why should contractors have to substantiate themselves to independents to a criteria bar set to be unachievable by the bigger Contracting organisations. As said, we receive no benefits of employment. How can we therefore be on-payroll employees?

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

I found it ambiguous, with certain key questions allowing confused, or no definitive answer e.g. I have a contract that allows me to provide a substitute in the event of my being unavailable. In practise, Qdos have said my Contract supplier will refuse that contractual right, even if he meets the security requirement. How is that fair or just or even legal? The toolset needs to be definitive. The questions, unambiguous, allowing simply yes or no, with no grey areas.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

How can the policy be trustworthy and fair, when the toolset developed is under so much scrutiny, and is widely regarded as not fit for purpose? Can it be fair, a large scale contract owner can impose a ruling that the CESC toolset is not acceptable as a means of determination of IR35 status?

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

I believe that HMRC policy of allowing non-payment of Corporation tax to large multinationals, Amazon, Starbucks, etc, smacks of 'chasing the small fish, as an easier target'

10. Will the Bill, as drafted, achieve the Government's objectives?

My belief is that the policy will actually reduce revenue, as people either leave the Industry, or take on lower-paid permanent employment, or simply work abroad to avoid the legislation. Recruitment agencies will cease to trade.

11. What is your view of the role of umbrella companies in the context of these proposals?

Unacceptable, as they obviate legitimate business expense. They also add to the burden of costs upon the small businessman

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Completely accurate in my opinion, for reasons annotated earlier

11 February 2020

David Lee

Proposed extension of the off-payroll working rules to the private sector

Summary
HMRC have never been honest about the impact of the introduction into the Public Sector – I however have friends who were effected at the time and I know that there were wholesale walkouts of staff from projects. Even HMRC were unable to support the CEST tool and actually gave themselves a blanket exemption from IR35 – that say's a lot!!!

There has been situations where people left permanent jobs and returned on a contract basis – this is fundamentally an issue of the company finances – contract staff are an opex cost not a capex cost – why should true contractors suffer because of company accounting practices.

The impact on the private sector may not be the same magnitude as when the public sector changed – this will be down to the fact that the public sector could jump to private – those opportunities to jump from private to public are not so great. But the effect will last longer with people leaving projects over a longer period – this exodus will be due to the mis-trust of HMRC not starting investigations into those people who stayed with end clients.

1. Nothing has been learnt from the Public sector – blanket policies are still prevalent – I myself are affected although I am clearly outside IR35 my client is 'protecting themselves' by making the policy decision that everyone is inside IR35.
2. The impact has not been properly assessed as the biggest loser is the contractor and the effect that ripples down – i.e. accountants, financial advisors all seeing reductions in their businesses.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion? – No comment – no experience.

4. What will be the effect of these new measures on a chain of contractors and sub-contractors? – no comment

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules? – HMRC should provide clearer details of when and why contractors should be classed as inside or outside – and mandate individual assessments. Where peoples assessments

show that they are now inside HMRC must not persue back taxes (unless there has been blatant dishonesty)

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment? –

No they don't – I work in secure environments that mandate use of provided equipment.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

It has improved the one I ran about a year ago was blatantly biased to find inside but the recent one I ran reflected more realistically my working environment and found correctly that I am outside.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

I worry about challenging as that may burn bridges with my client. – it was explained to me that the reason companies are making blanket decisions is that it costs approx. £250 per head to assess individually. So it could be an expense that companies don't want to incur and it's easier to blanket.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

10. Will the Bill, as drafted, achieve the Government's objectives?

No I don't believe that the HMRC will achieve the additional tax revenues – they have still not made available the figures from the introduction into the public sector – why not – that is a better litmus test.

11. What is your view of the role of umbrella companies in the context of these proposals?

They are just sharks feeding on the rules – I have contacted about 6 and they all differ- they quote different figures charge different rates etc; everything is funded from the contractors day rate. There should be legislation to make them standard.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some

individuals are taxed as if they are employees, but do not have the rights of employees?

No I don't, in my current 'outside' status – residual profit remains in the business for sickness, holidays, periods between contracts etc. In the inside environment these safety nets are removed – so the environment now is – I get taxed that same as a permanent employee but with no benefits and no safety net. Reality is that contractors do not cost that much more than a permanent employee (with all support included) but are flexible – i.e. can be used to deliver projects, then move on. The major employers in this country need the flexible workforce but with the blanket rules and disrespect of the contracting workforce will struggle to engage and retain. This then potentially opens up the door to more offshore workers moving in – this would further decimate the industry and would certainly not provide revenue to HMRC.

12 February 2020

David Lee

As an IT Contractor for over Twenty Years I have always been deemed outside of IR35 and as such I have never received any End Client Employment Benefits:
I have No income security (No Mutuality of Obligation)
I pay for my own training
I pay for Professional Indemnity and Products Liability Insurance (End Clients request sight of the Insurance Certificates prior to engagement)
I receive No sick pay
I receive No Holiday Pay
I receive No Company Pension Contributions
I am not protected by Life Insurance

Working outside of IR35 enables me to fulfil the needs of businesses by providing a flexible workforce and as a result of my fees I collect VAT and pay Income Tax, National Insurance, Corporation and Dividend Tax. By working through my own company I can afford to provide a flexible workforce over the whole of the UK due to the necessary expenses incurred being paid for by my limited Company.

The End Client does not see the contract which my limited Company has with the recruitment agency nor do they understand the nature of contracting; the financial risks involved etc. A combination of the fear of IR35 and the lack of understanding of the business of IT Contractors has resulted in end clients incorrectly electing their contractors inside IR35.

Once an IT contractor is deemed inside IR35 the whole process becomes extremely unfair and untenable. The contractor; even if they are a legitimate independent IT contractor; is then forced to pay an Umbrella company to process their fee PAYE. The contractor also pays the Employers NI (surely if

the Contractor is deemed an Employee then the End Client should pay the Employers NI!). Apprentice Levy is also paid (the contractor pays to be an employee of the Umbrella Company and as such must now pay the Umbrella Company's Levy!).

The IR35 Changes due to be implemented in April will result in it no longer being financially feasible to contract. The vast majority of contracts entail working away from home and these costs will no longer be able to be met. Many other businesses will lose income generated from contractors who live away from home during the week (Hotels/Landlords, Restaurants, Petrol Stations/Public Transportation, Accountants, Recruitment Agencies etc). The inability to build up cash reserves in a Limited Company will result in there being no income between contracts causing people to rely on the state for financial support during these periods. UK Businesses will no longer be able to hire skilled workers to meet short term needs and Projects will not able to be completed. As a result of this UK businesses will lose global competitiveness or/and will opt to outsource IT requirements resulting in a complete loss of Tax revenue and a complete decimation of the UK's IT industry with the closure of Hundreds of Thousands of Limited Companies. Any forecasted increase in Tax revenue generated from the IR35 reform do not take into consideration the far greater revenue loss as a result of these closures (VAT collected, Corporation Tax, Dividend Tax etc.) and the disappearance of these services to UK businesses and thus their reduction in profits.

The UK Government should be encouraging the growth of our genuine independent IT contractors. Instead, IR35 will kill the UK IT industry. In these uncertain times (e.g. Brexit), keeping **all** UK industries strong and healthy should be of paramount concern.

17 February 2020

Simon Lee

I have been working as a self-employed contractor within offshore engineering for the last 22 years. During that time I have taken numerous short term contract roles, most of them outside of daily commuting distance of my home, meaning that for most of the last 22 years I have been away from home during the week.

Since the introduction of IR35 around 15 years ago I have ensured that my contracts were outside of the legislation, something I have had confirmed on each contract by my tax advisers.

However, my current end client, a Danish wind farm developer, have decided that my current contract is within IR35. They have taken this decision based not on my IR35 compliant contract between myself and the employment agency, but the contract between the end client and the agency – a contract I

have never seen, let alone signed. To do this, they have employed an "HR Specialist" (Note: NOT a tax or contract specialist) to do individual assessments, thus avoiding being accused of carrying out a blanket assessment.

It has come as no surprise to me that every single assessment carried out within the company has been judged to be within IR35. In my personal case this was despite the CEST tool giving an "Undetermined" status.

We have now been informed that if we wish to continue working on the project, we cannot use our Ltd Companies, but must go through an umbrella company, selected by the end client. An illustration from the umbrella company shows that I will lose approximately 30% of my take home pay. On top of this, I will no longer be able to offset my travel and accommodation costs when working away from home. This, combined with the huge drop in take home pay means that I will no longer be able to consider contracts away from home – which has been the majority of my working life in the past 22 years.

Furthermore, whilst working through the umbrella company, we have been told that we will have to pay things such as employers NI, the apprenticeship levy etc. Yet we get none of the benefits of being an employee. For example, if we wish to have holiday pay and pension, these will be take out of our take home pay. As an example, if a person were earning £20 per hour, £2 per hour would be withheld to be paid out when the person took holiday.

In summary, contractors, who are usually engaged on short term jobs away from home with all the risk and costs that implies, are to be taxed the same as permanent employees, yet without any of the benefits of genuine holiday pay, sick pay, pension etc.

Contractors provide a vital, flexible recourse to major engineering projects. This new legislation will drive many away from the industry and cause major shortages of skilled workers.

10 March 2020

David Leech

1. This evidence is submitted from a personal capacity.
2. For question 12:

   How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

3. Why is the government forcing through an IR35 change that taxes contractors like employees when contractors do not receive employee rights such as employer pension contributions, company sick pay and company holiday?
4. I believe that employment rights and employment tax need to go hand-in-hand as this is the only fair approach.

25 February 2020

Mark Levitt

I am a Chartered Safety and Health Practitioner (CMIOSH) and registered consultant (OSHCR) and have been successfully self-employed for approximately 17 years. My Health and Safety Consultancy has supported a variety of sectors over the years including: commercial, regulatory compliance, renewables, oil and gas and decommissioning. The diversity of my role has helped me gain my professional experience and inspires me to continue to work locally and in other parts of the U.K. and the world. My business pays all of its taxes and covers the following expenses too: training, holiday leave, sick leave, registrations, pension contributions, combined liability/professional indemnity insurances and travel costs. Despite all this my company is being persecuted by the new IR35 rules and I'm being treated like a criminal.

If these new IR35 rules are introduced in their current form and the trend by "end clients" to "blanket ban" PSC limited companies like mine continues unchecked, my business will no longer be viable and I will be forced into unemployment. This will result in the State and the economy having to cover the costs and remediate the situation. My circumstances are not unique and a significant number of other self-employed people face the same fate. The financial impact to the economy and the State will be considerable.

In order to redress the balance of the proposed IR35 rules I believe that they should be delayed until a full "Impact Assessment" involving all stakeholders has been undertaken. This will ensure that their effect on the fragile post-Brexit economy and business is properly understood. The output from this will help to ensure that everybody's views are considered before any new rules are allowed to proceed.

<u>Existing measures in the public sector</u>

1. What has been the experience of the new off-payroll rules in the public sector? What

lessons have been learned from this experience, and how have they affected the draft

Finance Bill proposals?

I have not worked as a consultant in the public sector and therefore do not feel that I can comment on the effect of the new off-payroll rules in that sector.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been

adequately assessed? In particular, is the assessment that has been made of the compliance

burden (including costs) of these new rules realistic? Has the right balance been struck in

the compliance burden on the taxpayer and on HMRC?

In my opinion the impact of the new off-payroll rules has not been adequately assessed. As companies across the UK prepare to implement the new rules they are struggling to interpret the requirements and, as a consequence, the vast majority of them are applying a "blanket ban" on engaging PSC limited companies. As this approach by many "end-client" companies begins to bite, PSC limited companies cannot find alternative contracts because they are virtually non-existent. This means that PSC limited companies are finding it easier to put their company's into voluntary liquidation and stop work altogether. These costs have not been anticipated by HMRC and the State will have the welfare costs to cover for some of those people and their families. There are also the unquantifiable mental health-related costs that will have to be borne by the State too because of the psychological damage that this situation has caused.

3. Is the exclusion of small organisations sufficiently robust, and how might small

organisations gain sufficient assurances that they fall within the exclusion?

No, I don't believe that the exclusion of small organisations is sufficiently robust. Clearer rules would help give these organisations greater assurances that they fall within the exclusion. A thorough "Impact Assessment" would help to address the issue.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

The effect of these new measures will be considerable on the chain of contractors and subcontractors because the pool of highly skilled and flexible workers that they rely on will disappear as more and more "end client" companies adopt a "blanket ban" on engaging PSC limited companies. This will mean a skills shortage for business in the UK with considerable consequences for the UK economy.

The work that I'm expected to undertake is project work (fixed term or flexible). "End client" companies expect me to engage with them and commit to a project assignment that could be anywhere between a month or several years in duration. The risk borne by my company is that the contract can be terminated with between a one to two week notice period and the contract duration is finite. I am employed as a consultant and am held liable for my professional expertise. I am therefore contractually required to hold combined liability and professional indemnity insurance. An employee is not exposed to the same risks. This situation is not accounted for by the new IR35 rules.

5. What scope might there be for simplifying or otherwise reducing the administrative

burden of these measures? What should HMRC do to help businesses understand the

new administrative rules?

In order to simplify the proposed IR35 rules I believe that they should be delayed until a full "Impact Assessment" involving all stakeholders has been undertaken. This will ensure that their effect on the fragile post-Brexit economy and business is properly understood by everyone. Simplification of the rules will be an output from this process.

<u>Determining tax status of workers</u>

6. Are the tests for determining employment for the purposes of these rules sufficiently clear

to both engager and worker? Do they reflect the reality of the contracting environment?

No, they are not clear and don't reflect the current reality of the contracting environment. As discussed earlier the trend is for "end client" companies to adopt a "blanket ban" on engaging PSC limited companies because they cannot interpret the new rules properly and feel too exposed to prosecution by HMRC. HMRC are the tax experts and even they are finding it hard to apply the new rules and prosecute those that they believe have violated them.

As mentioned earlier, the project assignments that I'm expected to undertake vary and can be either fixed term or flexible. "End client" companies expect me to engage with them and commit to a project assignment that could be anywhere between a month or several years in duration. The risk borne by my company is that the contract can be terminated with between a one to two week notice period and the contract duration is finite. I am employed as a consultant and am held liable for my professional expertise. I am therefore contractually required to hold combined liability and professional indemnity insurance. An employee is not exposed to the same risks. This situation is not accounted for by the new IR35 rules.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it

require improvement? If so, how might it be improved?

The CEST tool is not fit for purpose for the "Private Sector". I have assessed myself as being "off payroll" however my current "end client" has determined that I am "in payroll". This means that they will offer me a fixed term PAYE deal with no employee benefits etc. They are forcing myself and others into tax poverty and unemployment because of their "one size fits all" approach. How can this be fair?

As mentioned earlier, the project assignments that I'm expected to undertake vary and can be either fixed term or flexible. "End client" companies expect me to engage with them and commit to a project assignment that could be anywhere between a month or several years in duration. The risk borne by my company is that the contract can be terminated with between a one to two week notice period and the contract duration is finite. I am employed as a consultant and am held liable for my professional expertise. I am therefore contractually required to hold combined liability and professional indemnity insurance. An employee is not exposed to the same risks. This situation is not accounted for by the new IR35 rules.

I value the freedom, flexibility and autonomy that contracting gives me. Now my autonomy is being taken out of my hands – with no meaningful right of appeal – in a way that seriously undermines my business and disadvantages my family.

8. How effective will the status determination process be in resolving issues of employment

status? Are there adequate safeguards, allowing decisions to be challenged? If not, what

more is needed?

Status determination is not effective especially when an "end client" has adopted a "blanket ban" on engaging PSC limited companies; it's a fait accompli as far as they are concerned. Their attitude is take it or leave it.

In order to improve the effectiveness of the proposed IR35 rules I believe that they should be delayed until a full "Impact Assessment" involving all stakeholders has been undertaken. This will ensure that their effect on the fragile post-Brexit economy and business is properly understood by everyone. Improved effectiveness of the rules will be an output from this process.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

I believe there are but I'm not an expert. I'm sure simpler more effective ways of achieving the objectives of the new rules could be identified as an output from a full "Impact Assessment" involving all stakeholders. This would be a transparent and fairer way to address this issue.

10. Will the Bill, as drafted, achieve the Government's objectives?

No because the additional tax that HMRC believe that they can recover from PSC limited companies will not materialise. Companies and contractors are already moving work abroad. The trend for PSC limited companies is to go into voluntary liquidation. The additional revenue will not be realised. Chaos will ensue and the State will have to cover the costs.

11. What is your view of the role of umbrella companies in the context of these proposals?

I don't believe that they are relevant in terms of these proposals. They are just intermediaries taking more money from those people that work within them.

12. How do the new measures relate to the wider context of changes in working

arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

It's absolutely not fair! I've discussed and identified the trends in my earlier responses. It just means that the workforce that was originally autonomous and flexible is cornered into tax poverty forced on them

by unscrupulous "end client" companies. It certainly doesn't promote the post-Brexit philosophy that "Britain is now open for business"!

23 February 2020

Tom Lavery

Existing measures in the public sector
1. What has been the experience of the new off-payroll rules in the public sector? What
lessons have been learned from this experience, and how have they affected the draft
Finance Bill proposals?

- Much confusion for people who have chosen to maintain their PSC under the new rules
    - Differences between 'assignment rates' and 'contract' rates, where the fee payer passes on the cost of Employer's NI, Apprenticeship Levy and handling fees by reducing the headline contract rate cause enormous problems for the contractor trying to record their company income accurately
    - Although he reforms promise to make appropriate deductions at source, in reality all tax deductions are taken at the basic rate, leaving a mess of over/underpayments to be sorted out at the end of the tax year
    - Student loan deductions are not accounted for either, again leaving a large bill at the year end
    - Pensions cannot be salary sacrificed, placing contractors at a disadvantage compared to people paid via other mechanisms
    - All companies have operating costs (professional/legal/bank fees, insurances, etc.) for which no allowance is made. Having to pay all of the company income out as salary means that there are no funds to cover these expenses, meaning ever-increasing company losses from year to year
- Blanket decisions forcing genuine contractors out, or into umbrella companies
- No obvious lessons learned

2
Impact of new off-payroll rules on organisations
5. What scope might there be for simplifying or otherwise reducing the administrative
burden of these measures? What should HMRC do to help businesses understand the
new administrative rules?

- The obvious answer here is to make the end-client rather than the PSC responsible for making the in/out assessment – as proposed - but then

maintain the current IR35 deemed payment mechanism for implementing it

- Moving the liability and responsibility for collection up the chain is responsible for the mass of blanket decisions that will be so damaging to the economy and to innocent parties
- Very little consideration was given to how moving the responsibility for collection to the fee payer would impact payroll and accounting practices leading to a mass of fudges and workarounds being put in place to try and make it all hang together
- Assuming non-compliance and trying to combat it at the outset is wrong. Give the system a chance to work first: the issue with current regs is the difficulty in making the in/out decision and the end client is far better placed to make that determination as they are the ones instigating the engagement. Put a reporting mechanism in place to ensure that affected PSCs do make the correct payments in their self-assessment, and auditing to ensure that end clients are making the correct determinations.
- Alternatively, the main objective here is ensure that Employer's NI is pad as that's the bit of the puzzle that is missing from the tax system. Introduce an alternative employer tax on all contractors (PSCs and sole traders) that the medium/large clients are responsible for paying.
    - Maybe even combine the two – an employer payment on contractors and the PSC needing to pay sufficient employee's NI / tax on their contract income (rather than them having to pay the employer's NI too)

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

- See above

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

- The policy object is to make someone doing the same job pay the same taxes. This objective isn't met when the contractor has to pay far more tax than the same person who is employed or the sole trader doing the same job
    - This is because the PSC ends up paying the employer's NI, either directly through the deemed payment or indirectly via a reduced contract rate
- That seems even more unfair when that person has no employment rights

- And even more so when that person is still having to do the government's bidding in collecting (and managing) VAT if they exceed the threshold. When you combine the recent dividend tax and FRV changes with the fact that contractors collect VAT then there is really very little discrepancy between what they contribute and what anyone else does. The only gap is the employer's NI, which the end client is getting away with, not the PSC – why punish the PSC for that?

6 February 2020

Gary Lawson

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

The rules caused a behaviour that led to most roles being assessed as within IR35.

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed?

No

In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic?

No

Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

No

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

No and they should be able to obtain regular certification by HMRC, not simply left to self assess.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

Confusion and risk aversion

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures?

Withdraw the measures completely.

What should HMRC do to help businesses understand the new administrative rules?

Understanding is not an issue. Fear of being 'caught' is the issue which is driving wrong behaviour, i.e. many simply switching all contingent roles to within IR35 overnight. This cannot be right.

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

The *current tests* are clear and currently have a margin for interpretation which is good because one size does not fit all.

However, increasingly and ahead of the proposed changes, many organizations are switching all contract roles to within IR35 or recruiting into permanent roles. This cannot be right as it demonstrates that either:

They knew most of their 'outside IR35' contracts were not really outside but carried on recruiting anyway in order to attract the right talent because they were not accountable for the validity of assessment

Or

Simply they are avoiding any risk of getting one wrong, which would be a very perverse outcome of the proposed changes

7. What is your assessment of the Check Employment Status for Tax (CEST) tool?

It is weighted heavily in favour of deeming within IR35.

Does it require improvement? If so, how might it be improved?

No. It requires complete removal.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Don't know.

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Remove the proposal completely

10. Will the Bill, as drafted, achieve the Government's objectives?

Don't know what objectives are being referred to.

11. What is your view of the role of umbrella companies in the context of these proposals?

If the proposals go ahead, there will be a multitude of these companies springing up with the potential of non compliance, fraud and exploitation.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"?

They will stifle such arrangements, leading to more workers being 'controlled' and possibly exploited.

Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

No. Odd question.

Xx February 2020

Christopher Lindley

Summary

- Blanket assessments are happening despite the Government stating this would not occur
- The Status disagreement process is not fit for purpose and needs much stronger legal backing
- Jobs are being outsourced to other countries, so companies do not need to apply the regulations
- Large companies are forcing small companies to comply even though the law grants them an exemption
- Determinations are highly complex and the guidance available is inadequate.
- CEST is poorly implemented with no proof the outputs match tax case law
- HMRC will not stand behind CEST if they decide it is incorrect
- Umbrella companies are unregulated and there has not been any crackdown on the operators of non-compliant schemes.
- Employment law and tax law should be tied together so being inside the off-payroll rules results in that person being given the full rights of an employee under employment law.
- The outcome of the current consultation appears to have already been decided with HMRC already posting their guidance prior to it reporting back.
- Facts that contradict the Government or HMRC position are ignored

- The off-payroll public consultation should be re-run in light of the facts of the current roll out showing that it was flawed.

1. I am giving evidence as a contractor who will be affected by the proposed off-payroll changes that are being made and the impact I feel they will have on myself and the wider contracting sector. I am a chartered Chemical Engineer holding profession registration with the IChemE and the Engineering Council and have been contracting at various companies over the past six years within the chemicals manufacturing sector.

2. I do not feel that the impact of the extension of the off-payroll rules has been correctly assessed due to the cost differences between placing a contractor within the off-payroll rules or outside them. Due to the potential punitive penalties that HMRC can apply if a company states that a contract is outside the off-payroll rules and HMRC upon investigation decides that it should have actually been inside, a large number of companies are taking a blanket approach to the assessments and declaring everyone as being inside the regulations.

3. This was seen when the extension was applied to the public sector, but, during the public consultation for the extension to the private sector the Government stated that "there is no evidence of blanket determinations." - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822204/Off-payroll_working_rules_consultation_summary_of_responses.pdf Government response to point 5.9.

4. The touted 'Status disagreement process' is nothing more than an appeal to the same people who made the determination with a legal weight of making them responsible for tax and NIC liabilities if they get the status incorrect. As placing someone within the scope of the off-payroll rules results in no liability for tax or NICs as they will have to be paid at source, there is no penalty for companies making a blanket inside determination.

5. In a risk averse corporate culture this results in blanket determinations being made as there is no potential for HMRC to investigate the company. HMRC were aware that within the public sector blanket determinations were being made but have done very little to curb such actions and may have in fact encouraged them. This does raise the question of if the Government were aware of the blanket determinations during the public

consultation and if the response misleads the consultation by providing information known to be false.

6. The effect on the contractor and sub-contractor supply chain has been catastrophic with work being outsourced to other countries so that companies do not have to apply the regulations. There is also widespread blanket determinations occurring with virtually no right of appeal and in some cases the companies are charging for the right to appeal to offset their costs.

7. In addition to this large companies have been forcing small companies to put all their contractors inside the regulations. These companies should fall under the small organisations exemption but due to the large companies exhibiting an extreme risk averse approach and effectively using bully tactics due to their large size they are saying they will not deal with small companies who use contractors that are outside the off-payroll rules. As these companies have no legal protection against this with the extension regulations, they are either forced to comply, or lose the business which they had with that large organisation.

8. The tests around whether a person is inside or outside the scope of the regulation are highly complex and are very difficult that companies to perform correctly. At tribunal HMRC have won around 20% of the recent cases. If HMRC are only able to get the determination correct in such a small amount of cases this indicates that they themselves do not understand the regulations. As HMRC wrote the regulations and yet seem to be unable to understand them what hope do most companies have in applying them fairly?

9. The CEST tool even after the improvements were made by HMRC is still a very poor method for determining if the off-payroll rules apply or not. The main issue with the tool is the fact there is no check for Mutuality of Obligation. This is one of the key tests as to whether the off-payroll rules apply yet is not contained within CEST. HMRC have stated that if a contract exists then so does Mutuality of Obligation but this has not been the view of several tribunal cases and hence is a flawed assumption.

10. HMRC have also stated that they will stand behind the CEST tools determination if the correct information has been entered into it. In the tribunal case of RALC Consulting Ltd v HMRC RALC Consulting did enter the CEST tool into evidence showing an outside determination. HMRC objected to this being entered as evidence as "that the tool was "of no

assistance to the tribunal in determining the issue". They did not challenge the information entered but they were challenging the output of the tool which was against what HMRC claimed they would do. This shows that when they want to HMRC will ignore the tool in favour of what they believe despite the flaws as indicated in the previous paragraph. RALC Consulting win their case and if HMRC had stood by their own statements on the CEST tool they should never have taken the case up in the first place.

11. HMRC have also refused to release the details of any testing on the CEST tool or how it aligns with previously decided tribunal cases. They have stated that they plan to release this within the next twelve months but are expecting companies and individuals to use a tool with no indication as to if it gives correct results or simply outputs an inside determination every time it is used. This testing evidence should be submitted by HMRC to the committee to see if the tool is fit for purpose or if HMRC have created something that is not sufficiently robust.

12. The status determination process is currently highly flawed with an expectation that people without a background in tax law will be able to make the correct determination with very minimal guidance. The appeals process as written in law is very poor with the only appeal being to the same place as the determination was made. As my previous paragraphs have indicated with the risk averse approach of most companies there are very few downsides to placing people inside the regulations and lots of potential downsides if they place them outside. This leads to companies erring on the side of caution of placing people inside with the only recourse being asking for a reassessment which will be based on the same evidence with the same downsides to the company making the assessment.

13. The role of Umbrella companies has also not been fully risk assessed as there are many non-compliant Umbrella operators who claim to be compliant. These non-compliant operators are a large reason as to why the loan charge scandal occurred. There has been no crackdown on these operators, and it is likely they will further flourish as people attempt to minimise the economic impact that an inside determination results in. This has already started with companies offering a service based on annuities which they are claiming are compliant, but it is likely this is another loan charge in the making for people who believe they are getting sound financial advice.

14. It would be very simple to fix to most of these issues and that would be to tie the employment and tax regulations together so that being inside the off-payroll rules results in a person being considered employees and having all the rights of employees.

15. If this were to be done, then it would be much less likely that companies will blanket assess people inside the regulations, as they will then have to provide the appropriate rights under employment law.

16. The added benefit of this is that it would mean that companies are unable to place a person inside the regulations and hence strip them of their rights under employment law but still be able to offset all their tax burden onto the employee. These regulations as written effectively create an employee of the company who has no rights and potentially gives companies a means to circumvent employment law by nothing more than putting people inside the regulations.

17. This would also give the companies a downside if they determine a person as being inside as they would then have to provide the associated employment rights. This would result in companies having a reason to perform a correct determination rather than taking a blanket approach. This reason is currently missing from the draft of the law and hence has resulted in the current problems that contractors are facing.

18. It should also be noted that there is currently an ongoing consultation into these regulations yet HMRC accidently posted the guidance notes for the regulation prior to the outcome of this consultation, then immediately withdrew them. This indicates that HMRC are not going to make any changes as a result of the consultation and raises the question as to if the ongoing consultation is actually a consultation or just a sham orchestrated by the treasury and HMRC in an attempt to reduce complaints that have been raised.

19. The treasury has also ignored all the evidence provided indicating that blanket assessments are taking place instead stating that "blanket assessments will not occur". This can be seen in correspondence held between the MP for Wimbledon, Stephen Hammond, and the Financial Secretary to the Treasury, Jesse Norman. This suggests that the Treasury are not taking an evidence-based approach to the application of the rules and instead are going to implement the rules despite the potential damage that will be caused.

20. The extension of the off-payroll rules needs to be reassessed in light of the actual situation that is occurring. A further full public consultation should be held with the evidence of how companies are actually going to apply the rules rather than what the Government claimed would happen. What they claimed in the consultation of the rules can easily shown to be incorrect and it is vital that the public consultation process is upheld otherwise it shows they can give incorrect information to a consultation and not be held to account.

Jon Lobo

Summary

Extending the off-payroll working rules to the private sector is **already** having a disastrous impact on the banking and IT industry. The lack of communication from HMRC to inform businesses has led to blanket policy changes since December 2019 to stop using limited company contractors by many major businesses.

Companies are simply saying 'no more contractors' rather than spending time to understand the changes and risk being caught out by HMRC. These changes have already taken place so that payroll submission post March 2020 will not be caught by the upcoming changes.

These medium to large companies comprise the vast majority of freelance roles available in the UK, without them freelance contractors like myself have no more clients. Worryingly these companies are already looking to engage offshore resources rather than using UK based professionals for their projects post April. This would compound the impact of these rules on the economy and deliver a significantly reduced revenue for HMRC.

Personally, I have been out of work since early November 2019 when my OpenBanking contract expired. Despite applying for many permanent roles I am currently relying on my savings to pay my mortgage and support my family. As I explained to my local MP (**Dominic Raab**) this is a limited window before I am forced to claim universal credit... something I never thought I would have to do as a highly skilled hard working professional.

Whatever actions you take as a sub-committee, I implore you to use due diligence to independently validate the assumptions from HMRC on the off-payroll rules and non compliance.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic?

Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

JL Response:

2.1 No, the impact has been totally misunderstood for a number of years with little or no regard on how the rules will be perceived across many industries. The consultations which have been carried out cannot be used due to their lack of impartiality and limited focus. The parties impacted by the off-payroll rules do not appear to have been included in the consultations, highlighted by the knee jerk reaction across many industries in December to stop using limited company contractors ahead of the 6th April 2020.

Despite repeated requests to HMRC by various contracting groups to verify the assumptions on non compliance, no statistics have been provided.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

JL Response:

3.1 The exclusion is effectively meaningless as the vast majority of companies who engage with freelance contractors are the medium to large organisations such as HSBC, Lloyds, Nationwide Building Society, JP Morgan etc. Small organisations either do not have the resources to engage freelance contractors or only make up a minute fraction of the segment.

3.2 The lack of guidance and communication by HMRC (needed by mid 2019 at the latest) has meant that recruitment agencies are ill prepared and informed. Many are not stating whether the roles are inside IR35 or outside, hoping that these conversations can be had between the end client and the resource. Worse still, some are stating outside IR35 contracts based on the small size of the recruitment company. This is incorrect and is already introducing non compliance as regardless of the size of the intermediary it is the end client who defines the role.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

JL Response:

4.1 The effects have already taken place and are severely changing the availability of freelance work to thousands of professional freelance contractors. The rules are due to come into effect on 6th April 2020

however the majority of companies in the IT and banking industry plan ahead at least 3 months in advance to ensure they have sufficient resources in place for major projects. HSBC, Lloyds, Nationwide, Santander, Tesco Bank and many others announced that they would stop using ltd. company resources early in 2020 so any payments by April would not be caught by the new rules.

4.2 Many of the medium and large companies who relied on professional UK freelance resources are engaging offshore consultancy companies to carry out the work. The main reason for this is that they do not have the time to review individual contracts or the appetite to risk being caught out by HMRC. This is compounding the issue as not only are the roles no longer available to UK freelance resources but they are also moving out from the UK to be performed remotely in countries which are not subject to the off-payroll rules – This explains how little thought HMRC has given to the impact of the rules in the private sector and how drastic the effect will be on the economy.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

JL Response:

5.1 Immediately stop the off-payroll legislation before the economy is further weakened. Consider alternative transparent rules so that a freelance resource cannot remain with a company longer than 2 years after which the company should take them on as a permanent employee.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

JL Response:

6.1 No, there is a fundamental injustice in determining employment for tax purposes vs the tests for determining employment as an employee. Freelance contractors pay more than their fair share of tax however receive none of the benefits of employment or job security. This is in addition to shouldering the risk of being out of work when looking for a new contract which can often last several months. The tests do not factor this key part into the assessment and therefore do not reflect the reality of contracting.

6.2 Perversely, government departments rely on outside IR35 resources and 'ignore' the HMRC tests unofficially deeming them irrelevant for the work required by the freelance resource. HMRC have historically turned a blind eye to government freelance resources, instead focussing their

attention on the private sector under the perceived banner of non compliance.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

JL Response:

7.1 The CEST tool including the published updates to it do not take into account Mutuality of Obligation – if the end client does not have any obligation to pay a freelance resource when there is no work for them then they cannot be classed as an employee. Furthermore the current tests penalise resources if they have to use the end clients' equipment which in todays security conscious world is mandatory to protect banking and IT networks.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

JL Response:

8.1 The status determination is fundamentally flawed, giving a heavily weighted inside IR35 status based on outdated working practice questions which do not reflect the way modern businesses operate. There have been many recent court cases in which HMRC have ignored their own status determination when the result differs from their assumed non compliance investigation.

8.2 HMRC are keen to state that decisions can be challenged and that adequate safeguards are in place however freelance contractors who are incorrectly deemed inside IR35 would effectively be ending their chances of working with the end client if they chose to engage an employment tribunal. Many in this position have declined the inside IR35 role rather than accept the incorrect decision.

Policy objectives and wider context

10. Will the Bill, as drafted, achieve the Government's objectives?

JL Response:

10.1 No. Far from increasing compliance the bill will lead to increased non compliance as unregulated umbrella companies will take over management of freelance resourcing, often using illegal tax avoidance to remain below the HMRC thresholds.

10.2 No. The bill will effectively remove the current revenue from freelance contractors who pay VAT, Corporation tax, PAYE and NI

contributions on behalf of their own ltd company. HMRC receive more tax from a freelance contractor working outside IR35 than they do from a permanent employee or even a freelance contractor working inside IR35. This point has been frequently explained by employment accountants and MPs to HMRC however it is either ignored or discounted based on unverified HMRC statistics.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

JL Response:

12.1 Our modern economy needs short term skilled professionals to facilitate business transformation and innovation across the UK. This is critical when assessing how the UK will function post Brexit and remain attractive for investment. The majority of FinTechs and traditional companies work on a 'gig economy' basis for their innovation programmes – without access to short term resourcing they will not be able to compete with companies abroad who are actively removing barriers to encourage skilled resources.

12.2 Freelance contractors pay more than their fair share of tax however receive none of the benefits of employment or job security. This is in addition to shouldering the risk of being out of work when looking for a new contract which can often last several months.

12.3 HMRC often respond that freelance resources should pay the same as a permanent resource doing the same job, this is factually incorrect. A freelance resource actually pays more tax than a permanent employee doing the same job. However the freelance resource also bears the risk of being out of work with minimal notice, is responsible for insurance and accountancy costs but receives none of the benefits of a permanent employee (Pension, sick pay, holiday pay, training, job security). The comparison is not the same and therefore the full picture must be used when reviewing the financial merits of a freelance resource vs a permanent employee.

6 February 2020

Tim Loftus

Summary

S1) I have worked in the recruitment industry since the mid 1980's and since 1988 have been running my own recruitment business. I have dealt with many 'Limited Company' contractors over the years. I have taken an active interest in the developments of the law in this area. I have attended a number of Treasury 'round table' events and have also written on the subject.

S2) Every individual using a limited company as a payment vehicle that I have come across and who work as 'agency contractors' do the same work as other agency contractors who are being paid direct under PAYE. There is nothing entrepreneurial about what they do, and they are not small businesses in any way, shape or form. They expect to be paid their weekly 'wages', they do not make good work they may do wrong, they do not charge by the job, they have no realistic right of substituting themselves with anyone else and they do not carry any liability. Very few of those using limited companies really believe they are genuine businesses.

S3) Having said that, they and all temporary workers/agency contractors (including PAYE ones), get a pretty raw deal. They have little or no real employment rights, no permanence or stability but are increasingly expected to pay the same level of taxation as 'normal' employees. It is a myth that these individuals choose to work this way. They are often forced into it by the absence of any alternative. In many sectors they are at the mercy of unaccountable supply chains, where many notional employers exist only to 'mark-up' their time charge. These organisations are happy to take a direct cut of their wages but do not take responsibly or liability as employers.

S4) The ongoing efforts by HMRC to curb the tax arrangements in this area have on one hand caused the explosion in commercial tax avoidance providers and self-proclaimed experts. But is has also failed to recognise that in many cases these are workers who are engaged as second class employees. The original provisions of IR35 are flawed in that they sought to stop (or at least make pointless) the use of limited companies in 'disguised employment'. But in so doing they removed that benefit for workers engaged this way, who saw/see their 'limited' status as compensation for the poor quality of their engagements.

S5) Limited companies are not the right vehicle for working this way. But there should be a means to do so that acknowledges that while 'agency work' is not 'being in business on one's own account' it is riskier than normal employment. Moreover, enacting legislation to curb disguised employment via Limited companies is also catching genuine businesses who do take real entrepreneurial risk.

S6) The answer is to outlaw the use of limited companies by individuals in employment (in a much less complex and opaque way than the current proposals) but replace them with something that does work.

S7) Over the past few years HMRC has invented the 'Personal Service Company' but this has no statutory definition. Give it one or devise another means of categorisation of these kinds of workers. It needs to be recognised that the modern economy has at least three types of worker; those engaged in genuine business (be it via a limited company or as self-employed) those who are clearly employed in an old fashioned 'master and servant' relationship, and those who are engaged somewhere in between. These people could, if they

met certain criteria, be subject to a different and simpler tax regime that acknowledged the challenges they face.

S8) The final point I would make is that given everything that has been going on these complicated, radical and flawed proposals should be at the very least postponed for a year or so, to allow the debate to be had properly while not overshadowed by other events.

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

   1 (1) My experience of the public sector is now very limited.

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

   2 (1) No, it hasn't. There are, in my view, three fundamental flaws in the proposed legislation. The first is that the decision as to whether a particular individual falls 'inside' or 'outside' IR35 (i.e. is employed or self-employed) lies with the 'client' but the liability lies with the 'fee payer'. Thus, separating responsibility from liability. (Amendments to chapter 8 of Part 2 of ITEPA 2003)

   2 (2) The second is that the identity of the 'client' is not clear. In a supply chain situation, it depends on the specifics of the terms of contract between the various parties at the top of the chain as to who this may be. But there is no legislative way that information can be made available to the fee payer or the individual providing personal services via a limited company.

   2 (3) The third flaw is the late insertion of the small company exclusion. This is manifestly unfair. Why should a smaller business be able to hire staff who are allowed to work under a different tax regime from a large or medium one? Also see 3 below.

   3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

   3 (1) The status of smaller entities is defined by statute, so understanding it should be no harder than it is for any other purpose.

3 (2) But it creates the potential for a huge loophole. Tax avoiders will quickly form 'small entities' that have sham contracts with the real client giving them enough autonomy to claim they are the 'client'. All their staff will then be outside the scope of the new rules.

3 (3) These arrangements may not stand the test of a full investigation, but once again HMRC will find itself in the same situation as it does now. It cannot enforce the rules due to the volume of non-compliance.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

4 (1) The effects are already evident, the tax avoidance industry is planning ways round it (see Q3 above). Feepayers and clients are also simply withdrawing the option for an individual to provide personal service and be paid via limited company. Industry 'experts' are whipping themselves into a frenzy prophesising the new brain drain, a national strike and/or economic depression.

4 (2) Most 'limited company contractors' I know of have accepted that a loophole they have been able to exploit for the past twenty years is closing and they will just have to bite the bullet and work on PAYE. That is not to say the changes are popular.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

5 (1) As stated above these rules are fundamentally flawed. They are also ridiculously overly complicated. In 1988 the same problem with self-employed/sole traders working in employment was stopped in its tracks by s34 of ICTA (now S44-47 ITEPA).

5 (2) A simple amendment to the above, capturing intermediary companies being used this way and the same liability on the feepayer as was imposed by s34 would work as it did then.

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

6 (1) The test for employment has been developed by case law and in places by statute. Specifically, in this area by S44-47 of ITEPA. In its 2014 incarnation this is now so tight that it can apply to almost anyone, even the genuine self-employed.

6 (2) The original definitions laid out in Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497 still applies to virtually all of these people that are claiming they are outside IR35 and virtually all fail those tests. The Finance Act 2000 (Schedule 12 or IR35) removes the hurdle presented by the remote relationships with limited companies in payment chain in precisely the same way S34 of ICTA did for the self-employed. The flaw in the original IR35 was that liability was left with the individuals affected, not the people paying them.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

7 (1)I have tested it and it my experience it is accurate. There is a very vocal minority lead by tax avoidance industry claiming that there are significant numbers of people providing personal services who fall outside IR35. I do not believe there are. The vast majority of these individuals fail most or all of the tests for self-employment.

7 (2) Virtually all limited company contractors are subject to supervision direction or control. They never have subsitution rights. They are not subject to normal commercial credit terms. Few provide their own equipment or materials and most work in the client's premises. They are employees.

7 (3) Those that genuinely meet the criteria for self-employment, could just be self-employed. But they never are. They use limited companies. They have virtually no risk of incurring the kind of losses that require limited liability. And there is the lie with all this. They are limited only because the agencies and others who pay them will not take the very real risk of incurring the tax liabilities placed on them by s44-47 of ITEPA that would arise if they were self-employed individuals.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

8 (1) Employers challenging PAYE decisions by HMRC carry the burden of proof. Contractors using personal service companies who seek to challenge the decisions by HMRC should have the same burden placed on them and the same remedy via the tax tribunal service (which is after all free).

8 (2) This was the policy adopted after the implementation of s34 of ICTA. If in doubt; it's PAYE.

8 (3) However, it should also be noted that contractors or workers do not and should not have a 'right' to use a limited company in this way. An employer or agency has the right to require all its workers to operate through PAYE. Workers can and do choose to be 'on the books' even if their role could be treated as self-employed.

8 (4) Equally, no employer should make it a condition of employment that their workers are self-employed.

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

9 (1) Yes, see my answer to question 5.

10. Will the Bill, as drafted, achieve the Government's objectives?

10 (1) The provisions of IR35 proved to be ineffective for two reasons. It was impossible to police and the decision as to whether the worker was inside or outside lay with the worker. Inevitably workers (often aided by their accountants) could simply ignore the provisions of IR35.

10 (2) Plainly an unenforceable law should be scrapped or enforced. Transfer of liabilities will enforce it as it did in 1988 (see above question 5), but this could be achieved by a simple amendment to s44-47 of ITEPA or the sch 12 of the Finance Act 2000 rather than the complex and flawed proposal as laid out in the 2019 Finance Act.

11. What is your view of the role of umbrella companies in the context of these proposals?

11 (1) Umbrella companies appeared around fifteen years ago (as a direct response to HMRC closing in on composite companies, which had in turn appeared to avoid IR35 in its original form). Umbrella companies have always operated at the very edge of legality. Many employment agencies/businesses came to mutually beneficial arrangements where they outsourced their own payroll to the umbrella companies, forcing not only limited company but also PAYE contractors into the clutches of the umbrella's. This was often in exchange for direct financial incentives paid from the umbrellas to the agencies.

11 (2) Umbrellas specialism was complex pay structuring usually quoting employers national insurance within the contractors pay rate, charging workers for anything and everything, always with an expenses 'scam' based on travelling and subsistence allowances, and a fixed charge for processing. The 2016 Finance Act ended the expenses scams, but these organisations still charge for each payment they make. Usually between £20 and 30 per week.

11 (3) It is absolutely essential that this legislation also includes a prohibition on charging workers for processing wage payments as the legislation will inevitably force large numbers of workers into the hands of these organisations.

11 (4) My view is that it is often already unlawful under s13 (1) of the Employments Rights Act 1996 (unlawful deductions) if as is often the case the worker is presented with the prospect of an umbrella after the fact. However, faced with the prospect of not being paid and a slick sales pitch many workers sign up.

11 (5) If employers wish to use umbrella companies as external payroll providers, it must be the employers or agencies who pay their fees.

11 (6) Employment agents working as employment business's (i.e. supply temporary workers) find those workers and introduce them to the employers and are prevented by law from charging those workers a fee (Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003). However, under current rules the agent can contract with an umbrella company

that process weekly wages, who can charge workers a fee (and pay part of it to the agency). This has to change.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

12 (1) Temporary/contract/agency workers live in an insecure world. Getting mortgages, season tickets or even planning holidays are fraught with difficulty. Using a limited company forces them into a tax regime where they have to use a vehicle wholly unsuitable for employment and leads to tax avoidance by exploiting a tax regime designed for entrepreneurial activity and real risk.

12 (2) Forcing those same people into PAYE puts them in the same position as a secure permenant employee with pensions, holiday, long notice periods and other generous contractual benefits. But in reality, these workers enjoy few of those benefits.

12 (3) The gig economy is the other side of the same coin. Forcing low paid workers into 'self-employment' denies them employment rights and as they pay little income tax, they see no financial benefit.

12 (4) The answer is a third way. A tax arrangement that acknowledges that agency workers and casual workers do not benefit from PAYE but are not self-employed or in business for themselves. Government needs to rethink this whole area and design a robust system that provides a fair regime for these workers without leaving them to be duped and exploited by the commercial tax avoidance industry.

They certainly can't do this in the few short weeks now left before these proposals are supposed to become law.

17 February 2020

David Longe

This is my situation and some very serious points I have to consider for my future and that of my family and dependants:

My contract (engagement) can be terminated at anytime by the client, with some clients not obliged to provide any notice or reason;

I still cannot claim payment for Sickness or Holidays (public or personal time off);

We are being forced to operate as permanent employees without any benefits such as pension contribution scheme or other benefits, yet with all the risk of being unemployed at the client's needs;

We still need to pay either an Umbrella company fees or Accountant fees;

We still need to pay Insurance such as company and Limited Liability;

I will be severely restricted to where I can accept a contract due to higher expenses. For example, travel and hotel is part of the legitimate expenses I can claim for working away from home through my limited company before tax. I am severely limited on what I can claim under IR35;

I operate several companies and my business structure is that my service company is a subsidiary of my Holding company which I own. My holding company owns other subsidiaries (investments in Currency and property) and all earnings from my service company and these subsidiaries is fed into the Holding company to be disbursed into various investments. My service company also invest in currency trading and owns an online retail store that is expanding and reliant on income received from my service company. Falling within IR 35 means:

I cannot invest in my retail store which severely cripples my business growth;

I cannot invest in my property company which severely cripples my business growth;

I cannot invest in my Currency trading business which severely cripples my business growth

Not every company wants to employ permanent staff

A long list of companies start out as small businesses and then grow into large corporations employing hundreds to thousands of people. This Bill will severely limit this growth and expansion. This coming at a time when the UK has left the EU and needs more than ever enterprising individuals to galvanise the British economy. I will find it near impossible to expand my business if this Bill gets passed.

Fundamentally, we are being refused the right to make a choice one how we can setup and operate our companies.

This Bill is carpet Bombing everyone without consideration that we operate our businesses very differently from one another.

One Rule does not fit us all.

Please stop this bill and commit to a full consultation.

10 March 2020

Christopher Lopez-Smith

My submission for a call for written evidence has been set out under the corresponding clause headings.

Existing measures in the public sector

1. My experience of the introduction of the off-payroll rules in the public sector in 2017 was as follows : I was providing services to a Local Authority and upon the introduction of the change I was advised that my contract was to be terminated with immediate effect. I was offered the possibility of permanent employment but the cost of commuting on a long-term basis would not have made that option financially viable. I learnt that following my departure the Local Authority were unable to fill my vacated position for two years.

Impact of new off-payroll rules on organisations

2. I do not think that the impact of the extension of the off-payroll rules to the private sector been adequately assessed. In my opinion the assessment that has been made of the compliance burden (including costs) of these new rules is wholly unrealistic and this has already resulted in wholesale panic and knee-jerk reactions of many large private companies recently stating that they will not be engaging Contractors using a Limited Company in future. I think that the compliance burden, including the cost, is thought to be an additional operating cost which would be difficult to pass on to the end client. Furthermore the requirement for the organisation to pay the employers' NICs would very likely lead to corporate decisions being taken to not engage Contractors using a Limited Company due to the additional cost implication. I am currently providing my services to a private organisation and I have been given notice that my contract will be terminated on 31 March 2020. This is because the organisation has agreed on a blanket corporate decision to not use contractors with a Limited Company after the new rules are introduced in April 2020.

3. I think that the exclusion of small organisations is sufficiently robust, and the definitions and criteria to be met are clear.

4. In my opinion the effect these new measures will deter genuine contractors and subcontractors from continuing to work through a Limited Company. The

majority will decide to work on a permanent basis, take early retirement or take their skills overseas.

5. No comment.

Determining tax status of workers

6. In my opinion the tests for determining employment are sufficiently clear, however they do not reflect the reality of the contracting environment.

7. No comment

8. The status determination process is wholly ineffective in resolving issues of employment status because the majority of organisations are not using it from the outset. They are instead applying blanket corporate decisions to force the result to be within off-payroll working (IR35). I have heard of many decisions which were challenged by the contractor and there being no option for re-evaluation. Safeguards would be difficult to apply, and impractical to enforce, as organisations will always be able to make corporate decisions based on current commercial needs.

Policy objectives and wider context

9. In my opinion the new rules are unfair as the proposal is to treat contractors as employees, however without the benefits an employee enjoys.

10. I don't think that the Bill, as drafted, will achieve the Government's objectives. Many contractors will turn to permanent employment, early retirement or take their skills overseas.

11. My view of the role of umbrella companies in the context of these proposals is that there is a significant risk to both the contractor and the HMRC as these companies are, to date, unregulated and offer no legally enforceable guarantees that monies paid to them to pass to HRMC will be. There is generally huge scepticism and distrust of such companies within the contracting world.

12. I think that the new measures will have a significant negative impact on the labour market, making for a less flexible workforce. There will also be a wider negative impact on the insurance and accountancy firms who support contractors. From my experience of working through a Limited Company I know that organisations decide to use the services of contractors as their portfolio of work can be unpredictable, or it may just be for a specific project of a known duration. The implication of these changes is that contractors who are determined to be within scope of the off-payroll rules following a status determination by using the CEST tool are disguised employees and as such should pay the same tax and national insurance as employees. I think that this is grossly unfair. I do agree that upon walking into an office where both

company employees and contractors sit side by side there is no obvious difference in each type of worker. However a contractor does not enjoy employee benefits of training,holiday pay, sick pay, payment bonuses, private health cover,career progression within a company or a possibility of a company car. A contractor is typically on one week's notice period and incurs expenses such as Professional Indemnity and Employees Insurance, the services of a company accountant and training.

I am a Civil Engineer and have been contracting using a Limited Company for 26 years. This submission is made in a personal capacity.

24 February 2020

Alan Lowdell

One page summary

Pages 1 – 3 , copy of the content of a letter I have sent to my MP Paul Holmes

Pages 4 – 6 , Responses to each of the 12 questions within the area of interest

Off Payroll Rules (IR35)
In connection with IR35 and the implementation of the legislation to the off payroll rules in April 2020 to the private sector, I have a number of concerns. For information, I did participate in the round table reviews, which I will happily discuss with you.

My interest stems from my employment, for information I am the Finance Manager of the Gattaca Group of companies, which includes Matchtech, the UK's no.1 Engineering recruitment business and Networkers, a large global recruitment business specialising in Technology recruitment and services.
In particular, I wish to share information with you concerning the current position of our clients (which include many of the UK's most prominent engineering and technology companies) and our contractors with regard to their approach to, and readiness for, the changes, both of which are of serious concern.

In addition to my own concerns, and those of my employer, I would draw your attention to the large number of industry bodies and prominent organisations who are increasingly concerned about HMRC's approach to the changes. in particular, the lack of timely guidance and support provided to help businesses who are facing a difficult and costly transition to the new regime, and HMRC's interpretation of the relevant law, reflected in the latest release of its online CEST tool, which appears to be significantly at-odds with decided case law in the area.

For the reasons, which I have set out below, if the changes are implemented in their proposed form on 6 April 2020, it is likely to severely disrupt many of the most important engineering and technology companies and projects in the UK. Based on my employers research, is likely to lead to the flight of a significant proportion of the engineering and technology talent that represents the brightest and the best of the UK's workforce. Men and women who will be key to maintaining (and hopefully enhancing) the UK's status as a global leader in high-end Engineering and Technology sectors in the post-Brexit world.

I therefore implore you to work with your colleagues to encourage at least a delay in the implementation of these changes to April 2021, so that industry and contractors have sufficient time to prepare for the changes, and to allow time to review and correct the current flaws in HMRC's interpretation of the law prior to the implementation of the changes, or to stop this legislation completely.

Current readiness of clients

As you may be aware, the legislation which is due to implement these changes is still in draft form and I understand that this is unlikely to be finalised and receive Royal ascent until after the budget in March, resulting in only a few weeks between the legislation being confirmed and coming into force.

While our Group (and the recruitment industry generally) has urged clients to prepare for the changes and give contractors as much notice as possible of any changes to their tax status and working arrangements, we know from our close relationships with clients that many have adopted a 'wait-and-see' approach to the changes. As a result, they are yet to begin making assessments of their contractor workforces, or review and put in place contingency plans for how the likely flight of contractors and increase in costs will affect their key projects. In our experience, this approach has been driven by the un-confirmed nature of the legislation, the lack of HMRC or Government guidance on how to implement the changes and the promises of all of the major parties to review the changes prior to the recent General Election. The uncertainty over Brexit has also, inevitably, distracted businesses' attention away from these changes.

While the Government's recent announcement of a review and additional support for affected parties is welcome, the fact that this will not be concluded until mid-February will mean that any actions that follow it will inevitably arrive too late to be of any real use to businesses or contractors ahead of the changes coming into effect on 6 April 2020. It is also concerning to note that whilst it has been addressed as a review, it already states that it is a review of implementation, not the policy; that in my opinion is not a review and not what was promised.

Given the current, unconfirmed state of the legislation, the lack of official guidance and the stage that most businesses are at in their preparations, my

view is that the implementation of the changes will be anything but the smooth roll-out envisioned in the Government's most recent announcement. On the contrary, my view is that the changes are being rushed through by all parties (including HMRC) and that poor preparations will inevitably lead to chaotic and muddled implementation of the changes, which will have a hugely detrimental impact on the Engineering and Technology sectors of the economy, among others.

Feedback from contractors

In December 2019 my company surveyed the contractors who we engage with via Personal Service Companies (PSCs), who will potentially be impacted by these changes. Some of the results make for stark reading. For example, from the responses we received (from 3,156 of our contractors):

- 73% stated that they had had no communication from the client they are providing services to about IR35;
- 58% stated they were not sure whether the client would assess their status as 'inside' or 'outside' of IR35;
- Only 6% stated that they would accept the client's decision if they were assessed as being 'inside' of IR35; and
- 69% stated that they would require an increase in rates in order to operate 'inside' of IR35 (only 10% would not require any additional uplift or other changes to their arrangements).

Results from an earlier survey we conducted also indicated that a significant number of contractors would look to work abroad if they were classified as 'inside' IR35 and we have seen a significant up-turn in the number of UK-based contractors seeking engineering and technology assignments overseas, particularly in EU countries and the US.

These figures support our general impression of the situation; that contractors are largely in-the-dark about the end-clients' approach to IR35 and whether their working arrangements and income may change at shortnotice; that contractors who work via PSCs will not accept a change to their IR35 status without an increase in rates and are likely to seek opportunities with other end-clients (including clients outside of the UK).

As you will appreciate, these findings have been of great concern to our clients, who will either face significant turnover of their contractor workforce (many of whom are vital to key projects and will take their knowledge and skills to foreign competitors) or a significant increase in their costs to retain key contractors. It goes without saying that this will seriously impact major engineering and technology projects in the UK and make some of the UK's flagship engineering and technology companies less competitive in the international arena.

HMRC's interpretation of the law

Whilst I appreciate and agree with the overall aims of the changes; to improve compliance with tax legislation and ensure that people who work in the same manner as employees pay a similar level of tax, I consider that HMRC's interpretation of the law means that the changes will inevitably go far beyond these stated aims and penalise workers who (according to the law) operate in a genuinely self-employed manner.

It has become increasingly clear to those in the recruitment and contracting communities that HMRC's approach to IR35 status determinations is significantly out-of-step with the law and this erroneous approach appears to be reflected in the latest version of CEST, HMRC's online tax status tool. In particular, HMRC's contention is that Mutuality of Obligation (one of the three main determining factors of tax status) is present in a contracting situation simply by there being an exchange of labour for remuneration. This approach therefore presumes that this is present in all contracting situations (hence there being no questions concerning this factor in the CEST assessment process) – to put it bluntly, this is a perverse and self-serving interpretation of the law and the inevitable result is that a great number of genuinely self-employed contractors will be determined as being 'inside' of IR35.

This position was summed-up succinctly by Judge Rupert Jones in the recent case of Armitage Technical Design Services Ltd v HMRC:

"HMRC's case is that where one party agrees to work for the other in return for payment, then this satisfies mutuality of obligation between the two parties. That would be true of every contract, both employment and for services, otherwise the contract would not exist at all…the mere offer and acceptance of a piece of work do not amount to mutuality of obligation in the context of employment status."

I would also draw your attention to the fact that HMRC has a poor record in IR35-related cases (it has apparently lost around 85% of the cases it has litigated to a final hearing) and it would therefore seem that HMRC's approach to IR35 status is out-of-step with the law. Unfortunately, most contractors do not have the resources to litigate claims by HMRC and will simply have to pay the tax claimed, however flawed HMRC's interpretation of their status may be.

While the recent changes to CEST have improved it user-friendliness, HMRC has done nothing to address the flawed analysis in the tool. I understand that HMRC maintains that CEST reflects the law and decided legal cases; a position I consider to be disingenuous given the comments of the judiciary and the performance of its interpretations in court.

It is of great concern that this flawed approach will now be applied en-masse to contractors in the private sector and that skilled contractors, who take all of the financial risks associated with being genuinely selfemployed

and receive none of the protections given to employees, will be unfairly hit with employee tax. Nothing could be more out-of-step with the Government's stated aims to encourage flexibility and promote entrepreneurial spirit.

In summary, my view is that the circumstances outlined above have meant that both industry and contractors are unprepared for these changes and, consequently, key UK industries which rely on skilled and experienced contractors will face significant detriment if they are required to implement these changes in April 2020; a time when the UK most needs its flagship industries to have a stable and nurturing environment in which to take advantage of the opportunities afforded by Brexit.

~~The implementation also relates to a paid date, not a worked date, so effectively for any contractor under contract on 5th April and is not paid in accordance with that contract on a gross basis may have a claim for "unlawful deductions" , at least underpayment of the contract rate. This was also the same in the Public sector roll out in April 2017, which having implemented that was a huge challenge.~~ (Deleting this line now as this has been changed and is effective from the work date on or after 6th April)

When it was introduced in 2017 for the public sector it created an uneven playing field, we saw many contractors leave the public sector., at that time they had somewhere else to go. This implementation is again creating an uneven playing field as the legislation excludes "small companies". Part of the reason that the public sector is unable to fill its numerous vacancies is due to IR35.

I therefore implore you and your colleagues to encourage the Government to at least delay these changes until April 2021, so that the above issues can be addressed, although I would personally recommend they are cancelled, at least until such time as the Taylor review & the good work plan is finalised and the Government implements the outcomes.

There appears not to be a joined up approach to employment and taxation with HMRC view being they are separate matters, but they are very clearly interlinked.

Finally, in the position I hold in my company, I am can advise that I am seeing major large blue chip companies blanket banning the use of PSC's and determining all roles inside IR35. This is due to a number of factors but principally they cannot fall foul of law if they are not directly using or allowing the use in the supply chain of
PSC's and they do not have to implement any appeals procedure
You will no doubt have seen this in the national press as it is high profile in financial institutions / major banks. But this is also now the preferred outcome for many of our clients, and is again contrary to HMRC's view that this is not widespread. I can provide significant evidence for our own contractor

workforce affecting thousands of contractors, who are wrongfully being forced into false employment. That in itself also gives them a cause for concern for HMRC opening a case for previous years, even though they were (and are) legitimately self employed

To the specific questions

1. Existing measures in the public sector

Our experience was the loss of over 25% of contractors in the public sector. Many moved to the private sector, as, at that time, they had somewhere else to go to. The blanket banning was rife (as evidenced by TfL before they realised the impact) and the direction given to public sector bodies by HMRC / Gov. , their paymasters. We have also subsequently seen how flawed CEST is, the NHS having used it, and then fined over £4m by HMRC, who said they would stand by the determinations. I also see no point in one part of Gov fining another part and moving money around departments, at the end of the day the NHS needs more funds not less. There are still many vacancies unfilled, some of these due to IR35

Who is / was a public sector body was also challenging as many authorities operate Ltd companies as ALMO's

(Arm's Length Management Organisations) which are not covered in the definition of a public sector body HMRC have also changed the rules between implementation in 2017 and now, in connection with tax codes and individuals, much of which was not publicised

2. Impact of new off-payroll rules on an organisation

HMRC had already decided that the implementation was going to be on the basis of the public sector. That was evident in the round table events where decisions had already been made. The consultations were a tick box exercise and little has changed despite many individual and professional organisations advising HMRC (& The Treasury who attended) of the issues and flaws. The cost of implementation is vastly understated, not only for fee payers but client organisations who now have further added layers of compliance checking and requirements on top of a process that is already heavily subject to red tape, and as ever the punishment falls to the client or fee payer. HMRC have had the powers to manage IR35 since 2000, they have failed to carry out their duty, or apply law correctly, they are now passing that onerous task to unqualified people to make assessment on employment law

The cost of this implementation is not just software, it is contracts, recruiting a different level of expertise, compliance, risk analysis

The support and assistance offered by HMRC is fairly non-existent and for my own part I have sent 3 emails over a 2 ½ month period asking for one question to be answered. I have received an auto acknowledgment the email was received. I have had no response or guidance. I know I am not the only one

3. Small company exemption creates another unlevel playing field and again an exit route , similar to what happened in the Public to Private sector. There are now many new "consultancy" companies being created so they are the client and outside of the scope. This is also a burden on the supply

chain or client and clearly also needs an annual review., and monitoring if companies are acquired in the interim period by a larger organisation. If this is to be implemented, now or later, as is or revised, the small company exemption should be removed

4. HMRC view of a supply chain does not reflect reality. Supply chains can be long or short, can involve large and small entities. Some are master vendors where the client has outsourced the management of supply, but retain ownership. The master vendor is responsible for receiving all of the cost invoices and passing directly to a client or rebilling a client. Sometimes the clients pays the supply chain directly, in others they act as agent and settle on behalf of the principal. In construction there can be multiple suppliers in the chain for varying parts of the project. CIS may (or may not be) applicable , yet HMRC simply rules if IR35 applies then CIS cannot , but for sole-traders outside the scope of IR35 CIS can apply, same site, same role but different taxation if an intermediary is involved. Being able to pass a debt back up the chain to the first agency or client is unfair when client and first agency apply all of the rules. HMRC state they will not pursue debt for genuine business failure, but as ever, do not advise what that is

5. HMRC cannot tax a self-employed person (engaged via their own PSC) as an employee without giving them any benefits of an employee. So they do not get any holiday or statutory payments , no pension contribution. The self-employed owner director of their business is now also required to be a qualified accountant (or employ the services of one) due to the complexity of the accounting arrangements as a "deemed" employee with another party deducting tax at source. The fee payer being also responsible for the Employers NI and apprenticeship levy means renegotiating contracts and rates. No agency will be making a margin of 14.3% to cover the added costs, the client is not prepared to pay anymore, so the self-employed contractor is taking the burden. This will also impact then corporation tax and for those VAT registered and supplying services to non-VAT registered businesses (or businesses such as financial institutions who cannot recover full VAT) which will all be a loss to the Treasury. HMRC have always considered , in my opinion, the tax loss to be Employers NI, which is not factually correct because those inside IR35 now should be treating the income as income from employment , so to make it easy I would say they should ensure all directors / self – employed pay employers NI on turnover of their business. In deed I would go further to say all business & selfemployed should pay a turnover tax for income generated in the UK , and that way you also capture the big companies that have hit the headlines who pay no or relatively little UK tax. For me it is not rocket science, but as most things with HMRC they always want to use a sledge hammer to crack a nut. I would also make one further radical change and that would be no free NI to employers at all. That way the large retail companies and many other organisations will not have any benefits on zero hours / low hour contracts.

For all of the genuinely self-employed workers who are now being forced either into employment or false selfemployment they will have a significant reduction in pay and the consequences will be widespread.

6. Tax status is a complex area and does not just rely on what a contract says but the reality of how the work is delivered. CEST is not fit for purpose because it does not reflect case law. Employment status and tax status should be aligned. HMRC have lost c85% of the cases it has litigated to a final hearing. No one person can determine the status and any appeal process should never be back to the person who made the original decision

7. As above

8. The Status Determination process is flawed. A decision is made, it is challenged , 45 days to respond, what happens to pay in that period ? if the appeal is upheld if tax and NI have been deducted and employers NI and apprenticeship levy have been paid how is that recovered. This is why we have seen multiple blue chip clients simply blanketing the decisions , they cannot be held liable for tax or fines or penalties and there are no published penalties for applying blanket bans . But why would you ever ask the person who made a decision to review the appeal . In my area of business if an employee has an appeal against a decision made by their line manager it doesn't go back to them to review, it is considered by another person or department, with a fresh set of eyes and maybe a different perspective

9. Yes simpler ways by far, refer to 5

10. The Government objectives are to raise more tax. Yes this will achieve that objective in terms of PAYE income tax and National Insurance. It will not be anywhere near the levels predicted and that is already very evident from the NAO's review , there will also be tax losses from other areas, such as Corporation Tax, VAT and Dividend tax. HMRC have failed to properly identify the net gain from the public sector. The initial findings cannot be anywhere near true as they were published before the deadline for filing by the self-employed .

11. Umbrella companies should be regulated, but overall they offer a service and allow contractors / workers continuity of employment for those who move from job to job or to different agencies or intermediaries. The issue is that many agencies operate their own supplier lists and they vary as the standards required are variable . Rebates and entertaining / hospitality should be published

12. If you are taxed as an employee you should have the rights of an employee. What we have seen is people who have wanted the tax benefits of being self-employed but then also wanting the benefits of being an employee

when they are unable to work or going on holiday (and ordinarily sometime after the event, not during the engagement) . Many of the cases it is encouraged by lawyers on no win no fee basis, a number have been unsuccessful. The Taylor report and Good work Guide along with any tax or employment reforms should all be wrapped up in one legislative change. Remove the ambiguity. If the Gov / HMRC want everyone who supplies labour to be PAYE then say so, don't try and come up with difficult and hard to manage complex payrolls and accounting requirements. Where now companies can pay via a purchase ledger (+ Vat if applicable) they must now try and find a solution to receive an invoice, pay VAT (if applicable) on the gross element, but deduct PAYE tax and employee NI, account for Employer NI and apprenticeship levy (if applicable) and report to HMRC via RTI , those payroll solutions do not come cheap but also the fee payer now has to understand employee tax, which they would not have been required to do before, for the supply chain.

And in conclusion as well as all of this added complexity for 6th April we also have the implementation of a key information document, which again has not been properly detailed where there are multiple parties in a chain, and how the first agency can possibly know all of the details of how a worker will eventually be paid is still being worked out, and time running out
And as ever the end of a fiscal year (and the start of a new one) with all of the added work that brings at that time of the year

I regret that HMRC are not properly held to account, have used the same responses to queries and have not been open and honest with ministers. I recall being at a round table event for the public sector and directly asked the question about further implementation and when it will come to the private sector and was assured there was no intention for that to happen, when everyone in the room knew that was the case. They should have been open and honest in 2017, then we wouldn't still be on the back foot now and could have been having these debates and coming to a resolution

21 February 2020

Aaron Lynch

I feel compelled to write due to the incoming off-payroll rule changes coming in at the start of the new tax year. These rules are an exceptionally short sighted tax grab by the UK Government and HMRC, and do not see the loss of an flexible qualified and experienced group of people who are prepared to put their selves out and offer their services as a self-entity. These people enable their clients to complete tasks that they would not otherwise be able to complete with their employees. We are self-entity as we are not employees, and do not wish to be employees. We wish to offer our expertise to several

clients at any one time. This I have been doing for a number of years and started to build my business with 2 un-related and un-connected Directors with a common cause. Which is to aid the large companies who win the contracts, but are too large to move rapidly or do not have the relevant qualified and knowledgeable experience to complete the contracts they have won. Many of these tasks I have undertaken are for large defence companies who need outside knowledge as they are not capable of seeing the right solution due to their own internal processes. For this reason, they engage Small and Medium Enterprises (SMEs) to find the right solution.

The off-payroll rules are as such that even HMRC do not understand, and so to ask private business to review all the contractor they engage would take time that they do not have and is expensive. Time is money in the private sector and so like the public sector did in 2017, these companies are simply stating that all contractors are caught "inside". As these companies power the economy they do not want to risk having to pay the employees / employers tax / NI contributions. What they fail to see is that as the Government change the laws and in the case of the Loan Charge, initiate it retrospectively (how can anyone plan for tax law that does not exist? No, I did not involve myself in the area of "paying as Loans"), a contractor cannot continue in the contract in which they are engaged, to put it simply, HMRC and Government cannot be trusted to keep their word. As an example, BAe Systems have decided that the majority of contractors are to be deemed "inside", and so that majority of contractors I know at BAe are now terminating their contract so that they do not carry over in to the new tax year or simple just walking out the door not to return, as the change in contract allows them to submit no notice of termination as the client is changing the contract and they are simply not signing to the new conditions. A permanent employee cannot do this. This puts a few large defence contracts in worrying condition and I can tell you with complete confidence that the Type26 Global Combat Ship (a project that I have worked on) and the Dreadnought class will now face timescales that over-run.

If we, as independent workers (non-employees) are forced into this ridiculous position, then how and why should we work away from home have to cover our own Travel and Living costs, as employees get this covered by their employer. This has great affect on the "flexible labour market", which large companies will soon find out. This will also offer a cut to the exchequer by intendant contractors no longer working away and spreading their own companies money around the economy. I have already turned down several offers of "Inside IR35" roles as the client (in this case Babcock) are stating that the role is indie IR35 (and that the role is a disguised employee), but are not offering to pay travel and living costs. This loss of flexibility will have a slowing affect on the economy and productivity.

I was engaged on an assignment in the MoD at the time that the Off-Payroll rule were brought in back in 2017 and know what really happened, as to what was told to MPs. Our contracts and conditions were reviewed by independent

professionals, where mine and many others were deemed to be outside the rules. As the MoD (amongst others) had no interest in conducting individual reviews, we were all deemed to be caught inside and out contracts were simply re-written, with all the clauses that stated that we were outside, simply removed from the contract. I like over 70% of the contractors simply did not accept this and chose not to renew under these conditions, and so we simply left on the Friday afternoon, not to carry on. This is something a permanent employee cannot do. With over 70% of the contractor now gone form the MoD, this is the real reason why projects with the MoD started to over-run, or in worst case, cancelled since 2017. There simply was not the qualified and experienced people to carry out the work. In some cases, a team lost 90% of the people carrying out the work.

As luck would have it, I still receive emails for roles in the MoD and the role spec is written for a contractor as the spec is still requesting that the business insurance is held to cover up to £5M-10M in value. These roles are stated as being caught inside the off-payroll rules but I do not know of any staff member that is required to have Professional Indemnity and Employers Liability insurance. The rolls are only specified for a time period of 3-12 months and only pays for hours/days worked, which is something that a permanent employee does not have to worry about. The Inside decision is one of the worst decisions (of many) that the MoD has made (encouraged by the engineering consultancies) as all it has done is to increase engagement cost for contractors due to the consultancies and umbrella companies now in the loop taking money for doing nothing.

Due to the changes, we have recently had to reduce our head-count and are considering options for a way forward. This includes talks with a few foreign defence Ministries/Departments and international defence companies to look at sourcing work from and so taking our skills and (more importantly to HMRC) our money out of the country. If these talk bare fruits I shall be working out of the country and shall make sure that I am out long enough each year so that I am not classed as a tax resident on the UK. I would like to state at this point that I do want to leave my home country which is one I love and am proud of, but I am being forced to at least look at this option by an ill thought-out and greedy tax law that will treat me unfairly. As a freelance contractor, I accept that I do not have holiday pay, sick pay, redundancy, etc. and must arrange my for my own cover in legal and tax efficient way, as I must have money put aside for when I have no work. With my line of work, it is not a case of "if" but "when", and I remember when a colleague was out for 13 months in 2000, and did not receive a penny from the Government. This comes in at a time, now we have left the EU where flexibility and qualified & experienced skills are a key feature that the country needs to drive ourselves forward and make a success.

The big issue we have is not only do we have a government that has no idea how a business is run, we have a government that is anti-SME, and a parliament where most members have no idea what it is like to work and

struggle for a living, where we have to struggle to fill the vehicle with fuel and know that our vehicle is no depreciating faster than before because the government change their mind faster than Mark Carney to try to score political points and "stiff the poor fella who has to deal with the outcome". We have a government where most members grew up in a privileged upbringing and who class themselves as a political above the people who work to keep this great country running.

11 March 2020

Stephen Matthews

I am writing to provide a brief overview of the impact of the new IR35 rules coming into force on my business.

Essentially my business will cease to be. Although, when tested, I fall outside of IR35 because I enjoy no benefits of being an employee (no holiday/paternity/sick pay, no benefits, no pension), I have bought and own my own equipment (computer, software, etc.), I work almost exclusively from home deciding my own hours to best meet the clients requirements, and any travel costs are born by myself until I client pays the invoices for such costs. Additionally, I can even use a substitute should the client be happy with the substitute's credentials.

However, my client (like many organisations) has mitigated its financial and reputational risk by stating all contractors in the UK must be employed via an umbrella due to the new regulations.

This results is that EU workers making more money working remotely in another EU nation (resulting in loss of tax here), EU equivalents having a greater income than the UK thus attracting a higher calibre of candidates from abroad, and, specifically for me, means that should I try to move into a permanent role (for which there will be greater competition) the business I currently enjoy would move abroad.

I do not see the benefit of this legislation to either the contractor, the companies and organisations for which the work, or for the coffers of HMRC and I believe an urgent rethink is required.

10 March 2020

Mark McAleer, Talent Development Solutions Ltd

I have successfully operated as an independent Human Resources consultant for over twelve years, working across multiple clients and industry sectors.

The new changes to IR35 will simplify kill off my business model. I would like to respond to your questions in greater detail below.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

The result of the ill-conceived IR35 legislation is that companies such as BT are making blanket determinations. It's understandable that given HMRC's track record of hounding contractors, large corporates are not prepared to take on the compliance risk.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

The Tory party has always prided itself on being the champion of small businesses. The freelance contractor sector gives the UK a competitive advantage i.e. the 'gig economy', which has been heralded as key to stimulating the economy in a post Brexit world.

The unintended consequence of this perverse legislation is to create a new form of zero protection, zero benefits with zero job security class of professional worker. The beneficiaries of this new regime will be the big consulting firms (i.e. many like EY have been tasked with advising firms on the very rules which will give them a competitive advantage) and the offshore IT services firms i.e. replacing UK work.

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

The new IR35 rules will put me out of business. This means that I will no longer pay VAT, Corporation tax, dividend tax, as well as the normal income tax I contribute. As I also take a salary through my company, HMRC will also lose the NI/PAYE I contribute.

The knock on effect is that I will no longer require the services of an accountant or have the need for insurance (i.e. my professional indemnity and employer's liability)

The problem is that HMRC are using the wrong measures of success. They are looking at the net number of people paying NI/PAYE on contracts, which

misses the point entirely for those legitimately operating through a limited company.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

The assumption behind this question is that HMRC are going to plough on regardless of the long term vandalism they are causing to the 'gig economy'.

These rules have evolved like some Frankenstein monster over twenty years. The implicit assumption from HMRC is that everyone should understand these Byzantine rules, when rulings in the courts over the years reveal that HMRC officials are equally perplexed.

A complete fresh start with full and open consultation with business of all sizes would be the fairest way forward. The big 4 firms should not be given the advantage of marking their own homework.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No. The rules are ambiguous and are open to very wide interpretation. They favour the large firms to the detriment of the smaller niche providers. For example, I am engaged through having a reputation built up over 30 years working across eight industry sectors. Yet, at the same time I have to prove to HMRC that I have the ability to 'substitute' my services for another person. This rule presents the perfect paradox and attacks the very nature of competing with larger consulting firms on a level playing field.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Assuming that you have a good law degree and have passed the UK's tax exams, then I suppose it's not impossible to make sense of the CEST tool. HMRC keep 'gaming' the questions to get the results they are seeking. They keep investigating contractors and taking them to court to test the law; and on the whole losing. This to me suggests that the rules are too ambiguous and not fit for the modern post Brexit world.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

There are no safeguards whatsoever, as large organisations are imposing blanket bans.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

This is yet another complex patch overlaid on a complete Horlicks of a piece of legislation. The only option would be to delay and conduct a proper systemic review of the entire legislative framework.

10. Will the Bill, as drafted, achieve the Government's objectives?

If you mean by this question putting thousands of businesses into liquidation, then yes the Government will achieve its objectives. The real winners will be the large consulting firms and offshore IT firms.

The sad truth is that the real losers will be the UK taxpayers as this legislation will reduce the tax intake, force up costs in the public sector i.e. as only expensive consultancies will be able to provide niche skills at short notice for vital projects.

11. What is your view of the role of umbrella companies in the context of these proposals?

Essentially these companies will act like piranhas taking a fee for very little value add work. The unintended consequence of the IR35 changes is to create a new class of employment status. This is an asymmetric bet for umbrella companies as they make a healthy margin without any risk or having to pay any employee benefits.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

This legislation will kill the "gig economy" stone dead. Why should I take on all the risk associated with operating as a freelance contractor outside of a limited company framework? I would be better off taking a full time job with all the associated benefits and relative job security.
The alternative is that I'm looking for options to work overseas, which again would be a net loss to the UK economy.

Finally, I would argue that the impact of IR35 when introduced in the Public sector is well documented, however, HMRC has ignored the compelling evidence. Talented contractors were able to move into the private sector in 2017, however, these changes will have a seismic impact on the UK economy.

I would strongly urge the Government to halt these changes before they unleash even more chaos and detrimental impact on the UK's fragile economy.

24 February 2020

Mike McDonnell

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector?

1a. What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

1. Dis-spirting, causing confusion, delay and sleepless nights. HMRC are relient on everything being "on-line" so do not feel the need for a facility in which contractors can talk to them. I suspect, because 'they' would not know what to say, or would give out the wrong information.

1b. Lessons learnt, none. They are still pressing ahead with a flawed idea first started on Crane Operators in the mid-ninities and from Gordon Browns first roll out of IR35 in 1999. It was updated in 2000, left alone until July 2010 when the Govt. introduced the Office of Tax Simplification (OTS) to either improve or abolish IR35. The Govt. would not let it go, so IR35 would undergo eight major updates over the following ten years. The CEST tool itself has had over 30 updates. Surely something requiring this many updates is fundementally flawed.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed?

2a. In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic?

2b. Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

2. Their assessment for success will be gauged by how much more Tax Revenue the HMRC will claim to have brought into the Treasury. Fair means or foul, I don't think they care.

2a. No. I am 'captured' by IR35 because of the CEST tool as filled out by the Client. They have a different viewpoint of IR35 to me, so fill it in correctly from their viewpoint. Only two questions 'capture' me, to do with mileage and Indemnity Insurance. Both are required for other jobs I undertake, but not for any Local Authority work.

2b. No. The CEST tool / Manual is written in such a way that very few people are classed as 'outside' IR35. The result will be seen from within answer 2. above.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?
Scrap IR35. Its written to capture as many small organisations as possible, then hide behind a wall of information which try to give the impression of helpfullness, but is just to big to be fully understood.

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?
The option is to go PAYE, but the Agencies are cashing in here by offering a much reduced hourly rate, though still recharging the Client the same rate! Other option to go via an Umbrella Co. Some of these are HMRC approved, others are sharks. The approved FCSA companies offer around 63%-64% of salary, another type of U Co can offer up to 90% of salary, but can be doubious. HMRC also endorces a Professional Passport scheme, but that essentially them to gaining access to accounts to directly to take Tax revenues. Would you trust them in doing that ? Alternatively, I could work abroad, others are leaving work, a loss to the Client and country. The other knock on effect is on the accountancy services, they will not be needed.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures?
5a. What should HMRC do to help businesses understand the new administrative rules?
*5. I filled in the CEST form and from **MY** perspective, I was outside of IR35. You cannot build a tool to determine who 'should' be employed or not. If the full time job was there, its for the Client to engage a PAYE worker. The fact is, the Client wants the flexibility of hiring people with certain skill sets not available in the PAYE world. If they were they were available, I'd be working elsewhere.*

5a. Scrap IR35. The cost to the HMRC over the past 20+ years in trying to get this to work must be immense. Figures seen say for the five year window 2003-2007 IR35 brought in £10.9m. Just over £2m per year! Compare that with what they bring in total annually, then from a business viewpoint, IR35 just is not worth the effort.

<u>Determining tax status of workers</u>
6. Are the tests for determining employment for the purposes of these rules sufficiently clear
to both engager and worker? Do they reflect the reality of the contracting environment?
No, not really. I'd even go so far to add 'not fit for purpose'.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it
require improvement? If so, how might it be improved?
The CEST tool is simple enough, but when you have to look at the Manual, then the world get vastly more complicated. Somebody has spent a huge amout of time building this Manual and it in itself it needs to be drastically 'simplified'. If that cannot be done, then whats the point of the whole IR35 Project, if not just to 'capture' everybody into IR35 and increase the Tax take.

8. How effective will the status determination process be in resolving issues of employment
status? Are there adequate safeguards, allowing decisions to be challenged? If not, what
more is needed?
No. I challanged the findings of the Client when they determined I was captured. At that point I was advised there is no appeal process, this is what was found and that was that !
The Client was concerned over future Tax liabilities risk, so stuck to the findings of the CEST tool regardless. They were safe, I was looking at loosing between 20%-33% of salary. Is that fair ?

Policy objectives and wider context
9. Are there better or simpler ways in which the objective of the new rules might be
achieved? If so, what are they?
Leave the worker to determine their own IR35 on the CEST tool, or scrap IR35. Its an unnecessary burden on Client and Worker alike and is becoming a cause of friction in the workplace.

10. Will the Bill, as drafted, achieve the Government's objectives?
To increase the Tax take, how can it fail ? Its designed to – via statute – to just make an IR35 determination by capturing as many workers as possible to pay MORE taxes.
The Prime Minister said in December 2019 that nobody would be paying more Taxes. How does IR35 work with that comment ?

11. What is your view of the role of umbrella companies in the context of these proposals?
A necessary evil. A saving grace. An interesting dilemma. How is it that HMRC Umbrella Companies with the FCSA accredition say you will retain 63%-64% of salary with them, while HMRC Umbrella Companies with a Professional Passport scheme say you can retain 80% of salary with them ? All paying Tax directly to HMRC.
The role of Agencies also need scrunity. The one I was with offered to take me on at a standard lower PAYE pay scale, but also while charging me an hourly PAYE admin fee! They have also pushed other costs onto me should I go via Umbrella Co, such as the Employers NI (13%) and the Apprentice Levi (0.5%). From the Agency viewpoint IR35 is a financial windfall, something the IR35

designers did't expect. If they were any good, they would have seen that one coming.

12. How do the new measures relate to the wider context of changes in working arrangements including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

No, it is not fair. I have never moaned about not having annaul leave, sick leave, paternity leave, job security etc etc to list goes on. Also, when I was Called-Up for front line service in Iraq in Feb 2003, I found out my contract was NOT protected by UK Law and it was the Govt. of the day that put me in that position by calling me up. I had no choice then, the choices presented now are woeful at best.

The balance resent against all of that, is that my renumeration is higher than most.

I pay my Taxes, I have an Accountant that works out everything and can prove that going back 20+ years. And I do not mean my salary is set at £1 per hr above the National Minimum Wage either.

If this IR35 goes ahead I will have no option but to go via an Umbrella Co with all the pitfalls that may contain, or look at working overseas again.

As my take home pay will be reduced, so will my spending – along with hundreds of thousands of others – so I can see the wider economy slowing down.

Additionally, I will have to let my Accountant go as the new working parctise means I no longer have a use for his services. All the contractors I work with are having to do that, a colleugues accountant said approx a third of his clientel had left and if any more left, he would have to consider closing down his accountancy firm.

When explained in a calm and rational manner to PAYE workers, they can see the injustice of this system, why can't the Govt ? They are to blinded by how much Tax they can grab in the short term, no thought of the long term view.

It makes me wonder did the IR35 designers / Govt. of the day just not think or consider the ramifications of such a Draconian instrument would have on the working Contractors ?

If not, why not ?

<u>Summary</u>

For 20+ years each Govt. of the day has tried to make IR35 work. It's a failure.

This years attempt to make things "fairer" is only succeeding by making it virtually impossible to be deemed to be outside of IR35 and so all should pay the full 20% Tax but WITHOUT any of the entitlements given to PAYE staff. How is that fair ?

I don't mind paying the full 20% of Tax, but to make things fair – from my viewpoint - should all the PAYE workers loose all their paid leave and entitlements ? We all know that will never happen, but why should it be considered when things are reversed ?

Contractors are being pushed into a world of Umbrella Companies, where the 'Approved' ones remove around 33% of salary to the more dubious ones who take 10%-20% of salary. Some Contractors are going to get badly bitten by these sharks as this is a world we do not operate within.

My world is of Safety Engineering on the Highway, I'm good at it and have never needed the fallback of Insurance in over 30+ years. However, since 2017 it is a requirement of being with the Agency that I have this insurance. An additional £500 annual burden, which in the IR35 CEST has shown I do not need, as I can operate on the Clients insurance cover. There is still other work, but their comments specifically 'captured' me.

The IR35 project started with a small group of people, Crane Operators in the mid 1990's. It devastated them and put many out of work. I know this as I was a Royal Engineer based within a Plant Squadron (TA) with numerous Crane Operators that the Govt. made use of to operate Military equipment on weekends, but then during the week, put them out of work. Basically, such contract operators were outlawed, unless you owned your own crane. Not an option for the vast majority.

In 1999, Gordon Brown rolled out IR35. It was very poorly received and virtually ignored as unworkable. Spool forward 10 years, another revamp of IR35 still did not work for the Govt. In 2017 after input from an outside finance specilist (Deloitte?) – how were they employed ? – IR35 started to get teeth, but by now it did't just apply to Local Authorities, under advisement the Govt. now applied IR35 to "Public Bodies". This captured the NHS, BBC, MoD etc etc.

Contractors were targetted, as a consequence, those areas were not able to operate as efficently as they otherwise would be able to directly due to IR35. Now it's being inflicted onto the Public Sector.

At a time when this country needs ALL workers PAYE and Contract staff working to the max, this is wholly unachievable if IR35 is allowed to remain.

Let the workers fill the CEST form in as it stands, but under a vastly simplified Manual.

No system is perfect, neither the old contrator or the new IR35, but at least before we had clarity and certainty and it all worked. Now we do not have a decent part of anything, scrap it before serious damage is caused to the workforce and the economy.

Ends.

25 February 2020

Ian McGraw

SUMMARY

As a contractor working in the technology sector I have sold my specialist skills to private clients since 2000 operating in Defence, Telecommunications and National Security. I have provided answers to the Finance Bill Sub-Committee questions based on my current perspective during the Off Payroll reform roll out to the private sector.

ANSWERS TO SPECIFIC QUESTIONS

Impact of new off-payroll rules on organisations

Contracting historically meant I could provide my specialist skills to clients up and down the UK. For contracts that are Inside IR35 I cannot claim travel expenses. Due to the current implementation of Off Payroll for the private sector there a dwindling number of 'Outside IR35' contracts due to blanket assessing of contracts. There are now so few contracts available with 'Outside IR35' determination it is causing a real problem finding new work. I usually look for work in London and further afield outside the M25, sometimes travelling up to 40 miles out. Any 'Inside IR35' contracts I see at this sort of distance are now totally impractical as I would not be able to claim my usual travel and accommodation expenses. This is severely impacting my ability to work.

There is something deeply troubling about the way this is being rolled out when the Treasury can state in the House of Commons that “We [the Treasury] are not aware of blanket determinations being made". This statement can quickly be disproved.

With the current implementation clients still have the ability to define individually assessed ‘Outside IR35’ roles however they are choosing not to due to perceived risk of HMRC investigation and costs. If the Government were to legislate and put into statute a rule to prevent retrospective action from HMRC, it would encourage at least some contractors to remain in the sector and also ease the issue of blanket bans, thereby helping to protect many important projects.

In terms of an alternative to the current implementation being rolled out it seems that the creation a new ‘Flexible Worker’ tax entity which has its own tax implementation. This would be something that can be refined over time without affecting other areas of taxation. The current tax system only caters

for Employed or Self Employed, clearly there is now a need to define something to represent this new class of worker for the 21st century.

19 February 2020

James McDougall

1. I am a civil engineer working as a Resident Engineer on construction sites, mainly in the UK. The role usually involves supervising construction works and administering Contracts between clients and contractors on behalf of the client or their consulting engineers. I also provide short term technical consultancy on construction methods and testing.

2. Clients often lack my skill-set in-house and as they often carry out a single project over a defined period, and my roles often overlap between clients, it is not practical for me to be employed by any one client or consultancy. I therefore provide my services through a limited company.

3. I started my limited company nearly a decade ago, this was partially driven by clients who refused to contract me in any other way, presumably to reduce their risks. There are significant costs associated with running the company, accountancy, insurances, travel / accommodation and book-keeping. There are also significant risks.

4. My contracts are outside of IR35 by my assessment and that of the third party checks I have had carried out on them. Nonetheless, I hold insurance against an IR35 investigation by HMRC for the following reasons:

a. The rules for IR35 are incredibly woolly. I don't fully understand them, and neither do tax advisers / accountants, employment agencies, clients or HMRC. The online tool produced by HMRC for assessment is unreliable and does not assess many of the key elements which have determined tribunal decisions, such as Mutuality Of Obligation.

b. The use of IR35 as a threat / extra-judicial punishment by HMRC. It is evident from the fact that HMRC lose far more IR35 cases at tribunal than they win that they are willing to spend tax revenues on aggressively pursuing tax not owed as a way of putting pressure on others who they purport to be acting outside of the rules despite much evidence to the contrary. This places a constant concern at the back of my and many other contractor's minds – whilst my Contracts are outside of IR35 that won't stop HMRC putting me through the stress, cost and time of an investigation. I am surprised that government has allowed this to continue and that nobody at HMRC has been asked to account for this overreach.

5. I am currently in the middle of a Contract supervising construction of an important piece of UK infrastructure. Leaving in April would be damaging to

the project, its end-user and my client. My client is currently assessing their view of whether I am outside IR35. Due to the woolly nature of the rules and an understandable risk aversion, they may decide to treat me as inside IR35 even though I am not. If they assess me as inside or offer me an employed position I will terminate the Contract for several reasons:

a. I work outside IR35 and do not wish to be employed, I work flexibly so that I can use my skills for a project and then move on.

b. I need to be able to provide services to multiple clients concurrently.

c. If I should accept an inside determination, I open myself to an accusation from HMRC that my previous contracts were inside. Whilst I would expect to eventually win that case, I still have no desire to fight it against an adversary with bottomless tax-filled pockets and which does not act in good faith or remain within its remit.

HMRC have made a vague statement that they will not retrospectively chase earlier Contracts. I do not believe them. I might have more faith if this was written into the Finance Bill but, as noted elsewhere, HMRC appears to be a law unto itself.

d. If I cannot locate a Contract in the UK, I will be able to find one abroad, possibly in a location where I can become resident and subject to a more logical tax regime.

6. Anecdotally, I am aware of a great many other contractors who are in the same position as I and are also considering terminating their Contract(s) and either moving to others outside of IR35 or the UK, winding up their companies and retiring or taking time out to let the dust settle. Obviously all of these result in losses in tax revenue and UK productivity, not gains.

7. I am aware that I am relatively lucky. I have two current clients, one too small to fall foul of the new rules and one which is at least carrying out an assessment of my Contract with them. I also have alternative opportunities in the UK and abroad. From reading stories in the news and online forums it is apparent that there are many others who have received blanket assessments or simply had their Contracts terminated and are trying to find replacement Contracts at short notice in an uncertain environment. Many of these appear to be facing real hardship as a result. Some of them will be forced to accept being an employee for tax purposes (except they will be paying higher taxes) and being self-employed when it comes to employment rights (i.e. no rights). This does not appear to be fair.

8. I am also anecdotally aware that many Contracts are being off-shored as a result of the changes, particularly in IT. Cui bono? Companies specialising in off-shoring of IT roles, such as Infosys, major shareholders of which include

our current chancellor of the exchequer's wife. This seems a significant conflict of interest.

9. If a significant number of limited companies are wound up, there will be a correlated negative impact on those companies providing services to them. Principally banking, insurance and accountancy but I expect that there will be a noticeable effect on hospitality and transport.

10. I note that the UK government promised a review into the changes and that this review was to be published mid-February but does not appear to have been published. Perhaps they could be pressed on this. Whilst the government procrastinates, businesses cannot afford to wait and are making significant decisions in advance of the issue of their review, the Finance Bill or a budget.

11. My view is that the HMRC estimated total cost to client companies of £14.4M for the implementation of the new rules is laughable, I would be surprised if it was less than £150M and it could go much higher if many contractors challenge the statuses provided. I know that my client which is undertaking a review is making use of specialist consultants as they do not have the required skills in house. There will also be ongoing increased administration costs to be paid.

12. I believe that those of us with niche technical skills and who work flexibly contribute strongly to the economy and productivity of the UK. I also believe that these changes to the law will have a cost to the economy far higher than HMRC's estimated gains.

13. In my view the roll-out of these rules should be delayed and alternative tax structures explored. My view was that the previous dividend tax changes removed most of the inequity in the system. In the event that the rules are implemented, short-term damage to the economy in April caused by premature termination of valid contracts should be minimised by legislating an amnesty for investigation and enforcement of historic and ongoing contracts. There should also be an ongoing review of the impacts so that these can be mitigated promptly

10 March 2020

David Maclean, DA Maclean Consulting Ltd

This submission relates to the impact of the proposed introduction of IR-35 regulations into the private sector. I work as a freelance contractor operating under a Limited Company Services providing consultancy and management services to both private businesses and government agencies that were

excluded from the initial introduction of IR-35 into the Public Sector due to the nature of the work and protection of identities of contractors within that sector.

Existing measures in the public sector 1. As I work in the Public as well as Private sectors, I moved the company from direct contracting to Public agencies to delivery through an intermediate business that was a Prime framework supply partner. This was to ensure that exposing the identity of those supplying deliverables in this sector was minimised. The impact of doing this has been to inadvertently create a situation where contractors now are deemed to be insider IR-35. My experience of the off-payroll rules has been that although originally deemed as outside IR-35 by my intermediate company, that company has blanket assessed all contractors as inside IR-35.

Business, by definition, tends not accept risk of fines or reputational damage when there is no need to do so, therefore the mitigation is to blanket approach to assessing IR-35 – this has happened. It is not by individual or on circumstances or through appeal. The contractor can either accept it or move. I am moving despite being half-way through a significant upgrade to the agency I deliver for.

What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals? From a small business perspective, the impact is significant. IR-35 regulations are still not fully defined with amendments still being discussed. The tool to guide assessment of off-payroll is not sufficiently robust to cover such a wide range of circumstances and this has led to confusion. The primary effect is a lack of clarity leading to a situation that with just weeks to go, a blanket approach is the only viable option for many businesses using temporary freelance specialists.

I do not believe the impact of the extension of the off-payroll rules to the private sector been adequately assessed, delivered so that there is any confidence that it is, as specified, by individual rather than by blanket approach. Using a Blanket approach, while minimising any compliance burden (including costs) of these new rules the burden falls entirely on the contractor. This is unfair, though it is recognised that business is about minimising corporate risk, my view is that the burden falls heavily on the contractor, not the business carrying out the assessment.

The effect of these new measures on my business is to change the business model completely by not working where IR-35 is specified. This is disappointing as business, including Government, will be impacted as specialist consultants cannot be brought in for specific deliverables. Frequently, the reason business and government use this type of contractor is that the experience or speciality may not be viable within the hiring organisation, if only needed for short-term deliverables. This availability will be lost.

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? There is scope, but requiring the hiring company to be liable for a contractor tax status is not the way this

should be introduced. All it leads to is a blanket ban on off-payroll status. There are plenty of existing regulations impacting Limited company taxation that would prove less controversial be still effective.

What should HMRC do to help businesses understand the new administrative rules? HRMC should not continue refining / tinkering with the assessment tool when there is just weeks before implementation.

Determining tax status of workers 6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment? No the tests do not work as my experience is that a blanket assessment is in place so how can that be any form of test?

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved? The tool is unfit for purpose, has been updated just weeks before the regulations come into force, therefore it should be made fit for purpose and used as individual assessment – not just undertake a blanket assessment or by stopping all contracting that requires this assessment.

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed? Employment status is not being determined – blanket assessment or a complete stopping on using contractors where an assessment is needed.

Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they? I am not a specialist in tax, there has to be a better way than the dissolvement of an entire group of service providers.

Will the Bill, as drafted, achieve the Government's objectives? No, it is a worst case scenario, max tax take but no employee rights, no employers contribution to pension allowed, no holiday or sickness pay, no professional training or professional fees allowed etc. Just tax and no employment rights

What is your view of the role of umbrella companies in the context of these proposals? Their role is just to take a cut of the employees earnings. They just calculate tax, they do not provide anything like employee benefits or protections, just create another cost for contractors.

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees? This is what your creating, under IR-35 regulations the contractor pays all taxes, pays an umbrella company, still needs to pay an accountant as the Ltd Company does not just vanish, an agency and no rights what so ever, no pension rights, no sickness, no H&S, other than site specific, no occupational assistance (we are not really

employees), no access to real staff facilities or benefits so a brand new underclass that has high tax liabilities, can be fired without any process yet no rights / union or any other worker protection.

The website is not allowing the correct form to be filled in. In my opinion, that is not a reason to reject comment from those affected by this regulation.

20 February 2020

David Magee

I would like to submit the following evidence to your enquiry in regard to the Governments provision to extend the off-payroll working rules to large and medium-sized businesses in the private sector. As a company director of ten years, my company has turned over 1.2 million in business and paid over a quarter a million in taxes, I believe these provisions will adversely effect businesses in the private sector.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

The impact of the extension of the off-payroll rules to the private sector has not been adequately assessed. By moving this burden from the taxpayer's company, to medium and larger organisations in the supply chain (usually larger than the taxpayer's company), the compliance burden remains 100% with the medium and larger organisations, which will error on the side of caution and lift as much tax as possible from the smaller company. There will be no room for the smaller company to challenge, or make representations to medium and larger organisations (or HMRC) – HMRC will be under pressure from said organisations to accept their rulings. While such costs will reside with the medium and larger organisations, they will be passed down to the smaller organisations without any form of representations – totally unfair as the risk still reside with the smaller organisations.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

The exclusion of small organisations is not sufficiently robust. With the threat of a large tax burden, or change in legislation, they will stop hiring off-payroll workers.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

This effect of these new measures on a chain of contractors and subcontractors will be to break the chain. One cannot approach a business transaction if one does not know who or what they are dealing with: contractor, sub-contractors, on-payroll workers, off-payroll workers. We are already seeing some medium and larger organisations blanket ban contractors; removing both access and provision of such services as an effect of these measures.

British citizens going about their lawful employment, running their own companies, paying all taxes due to HMRC, are prevented from accessing and providing services to achieve these goals because they cannot be and retain, contractors and subcontractors because of these effects?

In business, the unknown can be just as dangerous as no business.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Business need simply, yet flexible clarification of what is and isn't, a contractor or a subcontractor for tax purposes to HMRC. In the modern age, to build an IT system my take 20 years (10 people working on a 2 year project) With contractors and subcontractors as necessary, for a part or whole project.

Once delivered these contractors and subcontractors are no longer needed; its not feasible for such determinations of scope to be made in all such cases, business need to engage contractors and subcontractors as the modern world of business dictates without this worry – this is in essence contracting market.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

The tests for determining employment for the purposes of these rules are <u>not</u> sufficiently clear to both engager and worker; the engager with whom the burden of tax resides, makes the decision for their own business, likewise contractors and subcontractors should do the same (but will <u>not</u> under these provisions). The whole point of the contracting environment, is to both access and provide specialized services without the encumberment of greater business involvement in obtaining completion of the tasks.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

CEST is neither legally binding nor a provision of guidance that HMRC has to follow, thus it is well meaning, but useless to business.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Every interested party, including HMRC, can ignore the status of determination process in resolving issues of employment status - it is thus useless to contractors and subcontractors, and the industry is already moving towards blanket determinations.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Allow contractors and subcontractors to register as such each year, provide evidence of tax compliance and company compliance with current legislation. (Could be run similar to business insurance).

10. Will the Bill, as drafted, achieve the Government's objectives?

The Bill, as drafted, will not achieve the Government's objectives. Unlike the off-payroll working rules for the public sector, the private sector will not be able to absorb these costs, uncertainties, and confusion. The contracting environment will deflate, along with HMRC taxes and the countries productivity and efficiency in the financial technology sector.

11. What is your view of the role of umbrella companies in the context of these proposals?

My view of the role of umbrella companies in the context of these proposals is that there is more room for tax evasion with such companies, rather than tax avoidance with independents. They will compete with themselves to the bottom of each and every tax haven / loophole avaiable.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

These new measures relate to the wider context of changes in working arrangements as a folly of the British government. Having set up rules for HMRC, contractors and subcontractors to follow (which for the most part they have) the British government now means to change the definition of fair and free enterprise, for men and woman, to form their own companies and sell their services to the highest bidder. While these provisions won't stop these tasks, it removes the fairness to run your own company, set your own wages, pay your own benefits and (legal) taxes within the law. Smaller contractors and subcontractors will be at the mercy of medium and larger organisations who might not always have the smaller companies best interests at heart.

10 February 2020

Richard Mann

- ***What has been the experience of the new off-payroll rules in the public sector? (Q1)***

Contractors, did you PM or work in a project office in the public sector after the 2017 IR35 reforms? If so, what impact did you see on projects? Did contractors and consultants leave mid-project? How long did it take to backfill? Do you think the same will happen in the private sector?

Answer

I have never worked in the public sector, but my brother in law who has run a NHS alarm business for 20 years told me that when IR35 was imposed on a hospitals IT department he worked in, they all walked out. No more IT department. The NHS cannot be bothered to manage the CEST tool so a blanket ban on PSC's is imposed.

- ***What will be the effect of these new measures on a chain of contractors and subcontractors?(Q4)***

Contractors, HSBC and Lloyds and others have banned PSCs throughout the entire supply chain. Small consultancy firms who should have been exempt from April's changes have been dragged into scope. Has this impacted you, and how? Has your PSC been banned indirectly and with what impact? Or perhaps you run a small consultancy firm that's been impacted; what does that impact look like?

Answer

IR35 has had a devastating effect (even before its implemented). I have been out of work for 5 months. Why? Because big banks and other businesses cannot be bothered to manage the CEST tool or the risk of IR35 determination, so 90% of them are putting a blanket ban on PSC's. Many contractors are businessman who have different businesses, acorns for British economic growth, IR35 stifles this creative and hard-working sector worth £00 billion to the UK economy.

The timing of the IR35 could not have been worse, with the UK economy in a fragile state, after Brexit, the imposition of IR35 is simply devastating.

Result:

- **Hiring ban on contractors**

- **Outsourcing of project work to foreign companies losing British jobs**
- **Sacking of contractors**
- **Existing contractors taking a 25% pay cut**
- **A large pool of contractors on the market means it is difficult to get a job = Unemployed contractors**
- **Unemployed contractors are a burden on the state**
- **Unemployed contractors are in a poor mental state [1]**
- **Unemployed contractors do not pay tax bills**
- **HMRC should now be seeing a huge <u>reduction in tax receipts for VAT, corporation tax and PAYE [2]</u>**
- **Accountants are seeing a reduction of income due to contractors shedding limited companies**

[1] Contractors poor mental state can lead to suicides if they cannot provide for their families. (seems to be a repeat of the loan charge, doesn't it?).

[2] I normally pay £5,000 per quarter in VAT, last quarter I paid only £400. My next VAT return will be zero.

<u>It is obvious HMRC have NOT done an impact analysis of IR35 (seems to be a repeat of the loan charge, doesn't it?).</u>

- ***What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved? (Q7)***

PSCs, many people have already submitted evidence about the technical shortcomings of CEST (such as it not explicitly testing for Mutuality). So instead of talking about this, why not tell the Lords about your experience of being assessed using CEST? Was it completed by someone who was suitably trained, and what happened? Were the questions clear enough or what were the issues encountered? Was it easy for the assessor to complete? If you disagreed with the answers, why?

Answer

I have no experience of the CEST tool but big businesses and contractors alike do not trust it.

- ***How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?(Q8)***

Contractors, assuming your client hasn't just banned PSCs, all contractors should be given a written SDS (Status Determination Statement). If you

disagree with the outcome, you should be able to appeal. Has this been your experience? Were you told you could appeal? If you appealed, do you think the process was fair? Did you feel listened to? Did anything you do change the initial determination? Have you had your contract terminated after appealing an SDS? Are you too worried to make an appeal?

- ***How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?(Q12)***

PSCs, if you've been determined inside IR35, it's likely that you're now paying employment taxes, but without full employment rights. Is that fair; what do your finances look like? How will it impact you? Why is this different to being outside IR35 using a PSC? Are you worried about what this means for future workers?

Answer

If we are taxed like employees then we should be treated like employees, and have pensions, sick pay, holiday pay etc. Shouldn't we?

HMRC cannot have their cake and eat it. HMRC have displayed a complete lack of understanding of the dynamic, professional and flexible workforce that is an engine of economic growth, contributing £300 bn annually to the UK economy. HMRC are damaging the UK economy.

If they left things as they were HMRC would be collecting MORE tax.

Myself and fellow colleagues are now in discussions with our MP for Bracknell, James Sunderland, about the devastating impact of IR35.

Simon Marshall

Q1

1. I was working as a contractor for a public sector organisation in 2017 and my contract was reviewed in relation to IR35 as part of an exercise carried out with all their contractors in the run up to April 2017. The public sector organisation engaged the services of an external specialist agency (Qdos) to carry out this exercise with input from me. My contract was assessed as being outside of IR35 and in April 2017 the fees continued to be paid gross to my Limited Company accordingly.
2. In August 2017 I was informed that my contract had been reassessed prior to being renewed and it was now considered to be inside of IR35. I was not involved in the reassessment process. I queried the assessment but there was no formal appeal process, independent or otherwise.
3. I informed the client that I was not prepared to renew my contract on these terms due to the reduction in income/inability to offset expenses before tax

and the risk of retrospective tax investigation due to moving from an outside IR35 to inside IR35 during the same contract.

4. The end client offered me a new contract at an increased rate, and I accepted this contract. There was a gap of six weeks between the two contracts when I was not managing the project I had been working on which lead to delays in the project.
5. Although the contract rate was increased, there was an adverse financial impact for me because Employers National Insurance was deducted by the Agency from the daily rate initially agreed with the end client. The expenses associated with running my Company and the expenses associated with carrying out my contract now must be paid out of income/fees that have already been taxed at source.
6. My contract was due to finish in December 2018 and I received formal n notification to this effect.
7. I was then approached by the end client to see if I would be prepared to manage a different project for them. I indicated that I would be prepared to carry out this new project and the project Senior Responsible Owner (SRO) managed to arrange this with the end client. The SRO did not want any delay and therefore the most expedient way to do this was to extend my existing contract this as done with a day to spare before my contract was due to finish.
8. Because of the lack of time available, an IR35 assessment was not carried out for the new project at the time. This was done some time later at my request and as it took some while to conclude, the final determination from the end client was not received until I had finished the contract in May 2019.
9. I was informed by the end client that they had assessed this part of the contract as being outside of IR35 and my accountant contacted HMRC for advice about how to proceed.
10. HMRC advised that the P60 that currently forms the basis of my return agrees with the information that they have and therefore my 2018-2019 must be based on this at this moment. For HMRC to acknowledge that the amount of income taxed under IR35 was overstated they would need my agency to update the information issued to HMRC. This means that my agency will need to issue an Earlier Year Update to amend the figures and issue me with an amended P60.
11. My agency has stated that they require further information from the end client and the end client's main Contingent Labour provider before they will consider providing an Earlier Year Update and amended P60 and that they may be a charge me for doing this.
12. Because I was unable to provide HMRC with an amended P60 by the 2018-19 Personal Tax Return deadline of 31 January 2020 I was unable to claim back any tax and actually had to pay over £3,000 on account for the next Tax Year based on the figures contained in my original P60.

13. **I currently have no guarantee that I will be able to recover this money or claim back any tax due to me for the portion of the contract that has been assessed as outside of IR35.**
14. I am currently considering whether it is financially viable to continue running my company.
15. I consider it to be highly likely that the issues that I have encountered in the public sector will occur in large numbers in the private sector.

Q7

16. My current contract is with another public sector organisation and as inside IR35 . Before I took the contract, I asked the agency why the contract had been assessed as inside. I as informed that the end client had stated that all contracts would be inside IR35.
17. After a few months working on this contract I queried this assessment with the end client. I asked several questions about the assessment process including whether an individual assessment had been carried out and if I could see this assessment.
18. I was asked to complete the CEST Tool for my contract and submit thus to the HR Department which I did. The CEST result was inconclusive and I was asked for some further information to HR which I did. The contact was in November 2019 from a manager of the Division I was providing my services to.
19. They informed me that the information I had provided in my CEST was incorrect, that they had informed HR of this fact and the decision had been made that the contract was still inside IR35. They expressed their disappointment that I had wasted senior people's time in this way.
20. They provided me with the feedback re my CEST that had given HR. This feedback contained factual errors and it was apparent that the person providing the feedback had little or no knowledge of CEST and IR35 and a lack of understanding about my working practices.
21. I had no way of challenging this apart from raising this with the Deputy Head of the Division. I was advised that a process would be introduced in the New Year to review IR35 statuses in preparation for April 2020 and my status would be looked at then.
22. This process has started but when I queried last week when my assessment would be done, I was informed that the exercise described above counts as my challenge. I was not given a Status Determination Statement and the appeal process was not made clear.
23. I will continue to press for this to be reviewed (particularly as I am working alongside colleagues who are currently outside of IR35 and are currently going through the SDS process with an expert brought in from outside) but I am very aware that I have very little protection against my contract being cancelled immediately or not renewed if I am considered to be causing trouble or rocking the boat.

24. For it to be meaningful and fair any assessment process for both the public and private sector needs to be carried out an individual basis, be undertaken by an independent third party with a suitable level of expertise and the person being assessed needs to be actively involved in this process. There needs to be a clear appeals process managed by an independent third party.

Q12

25. Please see my comments in paragraph 23. Although I am taxed as an employee, I do not have the same rights as an employee and can be let go immediately. I do not receive any other employee benefits such as sick pay, holiday pay, training etc.

End

25 February 2020

Chris Mattingly - Chief Executive, The Contractor Co-op

Capacity which made: Corporate (Payroll Umbrella)

SUMMARY

With draft legislation still not passed into law and less than 6 weeks until implementation, private sector businesses are not ready, and they have been too slow to issue Status Determination Statements to their workers, leaving many unprepared for the expected changes in April. At the very least, there should be a 12-month delay in implementation.

From dialogue with our clients and contractors, private sector companies caught by the proposed legislation have 4 principal concerns,

increased labour costs;
becoming the deemed employer for those assessed as Inside IR35;
losing their contingent workforce; and
the reputational damage that could occur if they implement the rules incorrectly.

The result being many private sector companies are choosing to avoid the legislation entirely by refusing to engage limited company contractors, offering engagements through agency payroll only. They are also choosing to reduce the rates they are paying the contractor to remain costneutral.

FACT: We have lost umbrella workers who have already self assessed as being Inside IR35 due to large corporates taking a view that the implementation of the new rules comes with too many risks. As a result, they have taken a policy decision not to engage limited company contractors or umbrella workers with many contracts being terminated 28th Feb or 31st March.

Contractors remain fearful that HMRC will open an inquiry into their employment status during previous tax years. Contractors deserve peace of mind that the implementation of the new rules will not lead to a tax inquiry.

The client led disagreement process is not fit for purpose and need to be scrapped or backed by a truly independent appeal process funded by the client.

Without proper regulation and oversight of umbrellas, tax avoidance schemes will continue to thrive.

ANSWERS TO SPECIFIC QUESTIONS

Impact of new off-payroll rules on organisations

It is beyond comprehension to think that costs incurred by businesses to become compliant with the new rules will be in line with £14.1m estimate given by HMRC. The true cost in time and money will be much, much higher.

The small company exemption rules are extremely difficult to interpret. The test needs to be a simplified based on turnover only.

Many private sector companies do not have the necessary expertise in house to comply with the proposed legislation. Those that do have the expertise are using that expertise to transfer the risk down the supply chain as well as renegotiating the commercials to remain cost neutral. The ultimate losers here will be the fee-payer and the worker at the bottom of the chain.

The rules should not require the expertise of a tax or legal specialist to determine how they should work. Complex and unclear rules also allow criminals the opportunity to exploit the less informed amongst us. The rules must be simplified.

Determining tax status of workers

No, the tests are not clear with both engagers and workers left confused. There are too many subjective questions.

CEST is not fit for purpose as it does not make a fair and accurate assessment and fails to use
reasonable care in its determination. Many assessments are being made without any consultation with the worker whatsoever.

The disagreement process is not robust and is unlikely to resolve any conflicts over the status assessment. There needs to be an independent appeal process funded by the client. Many workers are unlikely to challenge for fear of losing

their contract. The balance of power rests with the client and the worker will suffer as a result.

Policy objectives and wider context

There is no real evidence that the Public Sector reforms of 2107 have worked, so the Bill as drafted is unlikely to achieve the Governments objectives.

Umbrellas serve an important role, but they also need to be properly regulated and approved. Without this, many contractors will be drawn into tax avoidance schemes that they might have otherwise avoided. For legitimate umbrellas, the lack of oversight and regulation only serves to tar all umbrellas with the same brush.

If workers are going to be assessed as employees for tax purposes, they should also be afforded the same rights as permanent employees.

25th February 2020

Adrian May

Areas of interest

The Sub-Committee welcomes views on any of the following questions relating to the proposed extension of the off-payroll working rules to the private sector. The SubCommittee is interested to know about the real-life experiences of individuals and organisations, as well as more general responses—for example, relating to the impact of these (and predecessor) measures on the tax classification of workers and the broader impact on the labour market.

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No. The CEST tool is being used by the end-client, and frequently the answers are being provided by staff who have had no background training in this activity. Untrained staff seek guidance, and are typically given prescribed answers from their management, which are then being used across the board for multiple contractors, regardless of differences in engagement, contract and working practices.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The CEST tool seems distorted towards producing an 'Inside' result. There is little scope for providing peripheral information that might support of an 'Outside' determination.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Decisions may be challenged, but at the end-of-the-day, under the new legislation the End Client is responsible for making the final determination. There seems to be no requirement for the End Client to heed the advice of industry and legal third-party experts.

The determination goes thus:

If 'Inside' then the Employers' NI, Apprenticeship Levy, PAYE & Employees NI all get deducted from the contractor's rate, with no provision for expenses. VAT is payable either by an Umbrella Company or Agency. The net cost to the End Client is zero, the whole tax burden is subtracted from the contractor's rate, and the End-Client has no potential ongoing liability.

If 'Outside' it falls to the PSC to make the correct tax (Corporation Tax, PAYE & and Employers' NI payment) and the Contractor to pay Employees' NI, and Tax on Dividends. Operational expenses can be deducted appropriately in compliance with HMRC. The net cost to the End Client is zero, and the End-Client has no potential ongoing liability.

However, if there is a future challenge to the 'Inside/Outside' determination, resulting in some underpayment, interest and penalties – it is the End Client that the legislation holds responsible. As such, the End Client is **ALMOST ALWAYS** going to determine 'Inside', simply to remove this potential liability.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

If HM Government and HMRC believe that there is some 'leakage' in the tax revenues being collected at present, due to non-compliance and difficulty in enforcement, simply raise the VAT rate at the front-end for the services being provided in this way. Simple.

10. Will the Bill, as drafted, achieve the Government's objectives?

No. I think we will see a shrinking in the flexible working (contracting) sector, just at a time when the UK needs to be nimble and adaptive. Older, more experienced workers will find it hard to find suitable roles. Contract roles will start to disappear – being offered at less than current market rates as internal roles, and many of the remaining contract roles being off-shored to larger international service providers. The VAT and Corporation Tax returns will reduce, and the PAYE/NI on the internal salaries will not compensate for this reduction in tax receipts.

11. What is your view of the role of umbrella companies in the context of these proposals?

The Umbrella companies currently offer reasonable fees for their services. They are competitive in trying to on-board as many contract workers as they can at this juncture. However, I think we will see fees increasing over time, as they deliberately or subconsciously collaborate and distort the free market. They know that contract workers will have little option but to remain with one of them. This would need careful oversight by government to prevent.

12. How do the new measures relate to the wider context of changes in working

arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

I cannot comment on the 'gig' economy, but it doesn't seem right or fair that contract workers will be taxed by the same measures as employees who have many rights – notice period, redundancy, arbitration, union recognition, pension contributions, life insurance, maternity/paternity, sick leave and so on.

6 February 2020

James Maynard Lowe

Submission of James Maynard Lowe made in a personal capacity. I have worked as a contractor for six years. In this time:

- I have worked on six separate contracts with four organisations;
- Had a 10% rate decreased forced upon me (the choice was accept rate cut or leave);
- Had a four week 'furlough period' (unpaid) enforced each time a contract spanned the Christmas period; and
- Had a contract terminated due to budget constraints with one weeks notice, leading to a three month period without a contract.

1. Summary

The implementation of the rules by large organisations (e.g. Barclays, HSMC, RBS/NatWest, Aldermore Bank, Bank of America to name but a few) has meant that the contract/freelance employment market has changed/will change significant in April once the change in rules comes into effect. .All of the major banks have applied blanket inside IR35 assessments and have banned consultancies from sub-contracting to PSC contractors. Whilst I am aware of some cases where contractors have remained within organisations for years, the majority in y experience are engaged to deliver a project and then move on to a new role in a new organisation. The decisions made by the banks will force many contractors into permanent roles (the risks associated with contract work are taken to avoid being subjected to annual performance reviews and corporate politics) or zero rights employment as large companies offer roles where the contractor is deemed an employee for tax purposes only. I pause to implementation should be taken whilst implementation is thought through, I fear it is already too late as irrecoverable damage to the sector has already happened.

2. Existing measures in the public sector
   - What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?
     - I held discussions with the FCA regarding a six month contract to supply project management consultancy in the organisations change management function. When discussing the daily rate the HR contact advised that they recommended increasing the rate by c.£150 a day to allow for the fact that it was deemed inside IR35, the reason for the determination was that a blanket approach was in place. I continued through the tender process whilst my accountant looked into the net financial impact of being inside IR35. I was advised that I had successfully secured the contract and had to turn it down due to the travel costs that would need to be met in order to travel to the FCA offices.

3. Impact of new off-payroll rules on organisations
   - Has the impact been adequately assessed?
     - The impact has not be adequately assessed, many organisations rely on contract workers to fulfil roles on change projects that are often regulatory in nature. The organisations use contractors as the cost of maintaining a full time workforce to cover these requirements would be huge. Contractors are engaged, deliver the projects and then move to another role. This may be in the same organisation and is often elsewhere. Contractors often travel to work and the organisations in question will often be unable to attract sufficient project resource in the local area, driving up costs.
   - Is the exclusion of small organisations sufficiently robust?
     - The majority of contract work is for larger organisations who need a flexible workforce/to deliver change projects, I'm not sure the exclusion makes too much difference to the majority of contractors.
   - What will the effect on these new measures be on a chain of contractors/subcontractors?
     - Contractors employ and pay for the following services, this supply chain will suffer and the tax contributions will fall:
       - Accountants – Business Accounts, VAT payments, Self Assessment Tax returns
       - Accommodation – Hotels, B&Bs, private landlords, spare room rentals will reduce
       - Insurance – Contractors are required to hold Public and Products Liability, Professional indemnity, Employers Liability and Premises Insurance
       - Travel and subsistence costs - contractors often work away from their homes, local restaurants and shops will see a fall in sales, in addition to travel costs (fuel, parking and rail fares)
       - Equipment – Contractors are often required to provide and maintain their own technology, this will see a loss in revenue for retailers
   - What scope might there be for simplifying or otherwise reducing the administrative burden of these measures?
     - Review how the sector is taxed? Contractors pay Corporation Tax, VAT, National Insurance and Income Tax an increase in one of these areas would yield the required tax receipts without impacting business. The flat rate VAT scheme is sector specific, creating a PSC/Contractor code and adding 1-2% would easily meet the treasury's target.
   - What should HMRC do to help businesses understand the new administrative rules?

    - Provide clear guidance and provide a useful and consistent tool that reflects how contracting works. Businesses and contractors do not trust the Treasury following it's behaviour regarding the loan charge, clear guidance is a must, the ambiguity has lead to the banking sector adopting a blanket approach t avoid HMRC targeting them going forward.

4. Determining tax status of workers
   - Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and workers?
     - The tests are not clear and results can vary from user to user
   - Do they reflect the reality of the contracting environment?
     - No they don't. Contractors provide their own technology, have a finite contract length (until the end of the project) and have zero employee rights (no holiday pay, sick pay, notice period, pensions etc – these are funded from the day rate…) The tests should include/be weighted towards these facts
   - What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it me improved? See above
   - How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
     - The status determination process is cumbersome and the number of cases that go to court demonstrates that it is not clear cut. Many contractors purchase IR35 insurance and have all contracts checked for compliance, this is not a guarantee of being outside of IR35 though. There needs to be an independent review system, the Treasury marking it's own home work is a farce, as is the 'review'.
     - The large banks have implemented blanket assessments to avoid future cases being brought against them by the Treasury, the banks have access to massive funds and teams of lawyers, individual contractors have to fund everything related to this activity from their businesses.

5. Policy objective and wider context
   - Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
     - Yes – repurpose/create a new flat rate VAT code for PSC/contractors, increase this by 1-2% and get rid of IR35.
   - Will the Bill, as drafted, achieve the Government's objectives?
     - No, the large organisations have declared blanket bans, they will off shore activity or give the work to consultancies (showing it's

true consultancy work) who will off shore activity. The Government will not see the benefit, there are also knock on effects due to contractors not working away from home location as listed above.

- What is your view of the role of umbrella companies in the context of these proposals?
    - The umbrella companies charge for a payroll service, the large organisations have effectively outsourced this activity in order to pass the costs on to the contractor. I've heard very mixed views regarding practices.
- How do the new measures relate to the wider context of changes in working arrangements, including the 'gig economy' ? Is it fair that some individual are taxed as if they are employees, but do not have the rights of employees
    - Following the changes to the dividend tax there are not massive financial benefits in working as a contractor once corporation tax, operating costs, VAT, national insurance contributions and income tax are taken into account. My personal view is that contracting is a choice made based on the flexibility of location and role, in addition to receiving a day rate as a skilled supplier without having to become embroiled in office politics or the performance review system. If the client is dissatisfied with output/performance the contract is either not renewed or terminated with little to no notice period.
    - It is wholly unfair that individuals are treated as employees for tax purposes only, contractors operate on a risk (no rights) and reward basis and budget for periods without income whilst funding all of the benefits/rights received by an employee.

25 February 2020

Susan McNaughton

I'd like to outline the impact of IR35 on me.

I engage an IR35 assessment company to review all my contracts, I passed the assessment to my end client in October, they still have not come back to me with a response to the questions instead they terminated my contract early and the agent involved is of a view that none of this affects them!

Rates have dropped significantly since companies have taken this opportunity to grab the additional NIC due by the employer out of the contractor day rate, this means that I face having to accept work for which the end compensation will not cover my outgoings. The number of outside IR35 roles are few and far between due to there being a lack of clarity around the rules, which means businesses will not take the risk, the CEST tool being inadequate and there

being no trust in HMRC's statement saying they will not look at retrospective tax, the evidence of this is the Loan Charge.

I'm not sure how long I will be on the bench, I don't know if my next role will be in the UK and if I'm not able to meet my bills I'll have to look at renting out the forever home that I worked hard for years to be able to afford since the property market is depressed and selling it will probably realise a loss.

I feel completely blindsided by this, it's an extremely worrying time, I live alone so I don't have a partner to pick up the slack. With Brexit hitting the UK at the same time as IR35 it's an absolute perfect sh*tstorm which really makes me bewildered about what the UK Government is thinking - it's a massive act of self harm.

News reports today suggest that the new Chancellor will cut Entrepreneurs Tax in the budget, I've never heard of a Conservative Government being so anti small business, I really can't understand why the government are intent on damaging the vibrant self-employed workforce previous governments have encouraged it's quite bewildering!

There is a margin difference in tax take if you add in the Corporation Tax and VAT generation Contractors bring to the Treasury along with the NIC/PAYE and Self Assessment tax compared to us either not working at all and ending up claiming benefits or leaving the country for Europe and not paying any UK tax at all.

I feel so so let down by this legislation and those that are pushing this in without understanding the impact.

11 March 2020

Anita D. Millar

Summary remarks

Thank you for looking at the changes to the off-payroll working rules (i.e. IR35) in the draft finance bill. Brexit uncertainty has had a chilling effect on the market, but so have the incoming changes to IR35.

Small/micro businesses (which are part of the flexible workforce) need to be supported. Clearly, someone should not be taxed as an employee when they don't have the same employee rights and their contracts can be short-term in nature.

Requiring end-clients to determine a consultant's/contractor's IR35 status distracts them from their core business. Consequently, complex rules

encourage blanket bans on consultants/contractors working through personal service companies (PSCs).

This set of problems could be resolved by the cancellation of changes to IR35 and the introduction of a simplified tax regime. My preferred solution is a single consolidated tax for small/micro businesses that may work in conjunction other measures discussed under Section 6.

Background and related remarks

To provide you with a bit of background about myself:

Apart from 1-year, I have been self-employed since 2003. I started out as a sole-trader and incorporated my firm in 2005.

I embarked on a consulting career upon identifying that most permanent roles (in my field) were project roles with a 2-year horizon (or less). So consulting was a response to “disguised project work” (and not "disguised employment").

I formed ADM Risk, Regulation & Strategy Ltd when pitching for funding for a regtech software product.

While I didn’t manage to get the regtech product off the ground, incorporation provided access to business insurance as well as clients that could only engage with me through my company.

I obtained business insurance by joining the IPSE’s predecessor entity. Membership also gave me access to IR35 information and template contracts. (I am not currently a member of the IPSE, as I can now arrange business insurance without this membership. Depending on market developments, I may re-join this group or join Contractor Calculator).

I would also like to ask: is the freedom (for small/micro businesses) to contract (under English common law) at risk of being frustrated by the changes to IR35? I would be grateful if you might consider the following:

Up to now, when negotiating contracts with larger clients, my obligations under IR35 have been a helpful negotiation tool. I remind clients that while I carry the IR35 tax risk, my contract terms protect their reputation (in the event of an HMRC investigation). These terms include the scope to work for other clients in parallel. In fact, understanding IR35 has been central to my livelihood.

Changes to the off-payroll rules take this negotiation tool away and promote a view that small/micro business owners:

Are another type of employee to be managed□rather than professionals who deliver and manage projects that clients oversee.

Focus solely on a single client's project□when, in fact, they might be working (or seeking to work) on projects with other clients (while managing conflicts of interest and GDPR risks).

In essence, small/micro businesses (like my own) are asked to: solve problems, undertake projects where there is a skills shortage, and/or provide a perspective on how a role might be performed. Putting the burden of inside/outside IR35 determinations on end-clients, detracts from my business offering and adds to the list of business challenges my end-clients face.

Existing measures in the public sector

I offer no comment on the rollout of changes to IR35 in the public sector, as I have not worked in this sector (via my company or as an individual). Nonetheless, it is worth noting, that it is very difficult (if not impossible) for small/micro consulting firms to access public sector contracts.

One route might be to sub-contract through a larger consultancy. Sub-contracting has its place, but the public procurement process (including the process for appointing government advisers) needs to be more transparent and open to small/micro consulting firms.

Impact of new off-payroll rules on organisations

The impact of the extension of the off-payroll rules to the private sector has not been adequately assessed. Complex rules that put the onus of proof on end-clients have promoted simplistic responses and hampered business. So, in my view, the changes to IR35 should not be rolled out in the private sector.

Size exemption and blanket bans

The number of financial services firms willing to hire me directly (via my company) has plummeted with the application of blanket bans on consultants/contractors working through personal service companies (PSCs). These firms do not qualify for the small organisation exemption.

My client list includes trade associations (TAs) with members from large firms that have implemented blanket bans. Therefore, it is not unreasonable to conclude that these TAs will be sensitive about bringing me on board for a project (regardless of whether the size exemption applies or the project is outside of IR35).

Sub-contracting

Many end-clients are now disallowing larger consultancy firms from sub-contracting work to smaller firms (like my own) regardless of whether projects meet the outside IR35 criteria.

As a consequence, some of the larger consultancy firms are now abandoning the "associate (outside IR35) contract" model that they have historically used to create a "bench of experienced professionals". I know of two that are in the process of replacing associate contracts with confusing "casual worker" (or similar) contracts.

I have been offered one such "casual worker contract" (that disregards my limited company). It cites a gross day rate subject to all taxes and deductions (so presumably employer NI contributions) without guarantees that any work will be offered. Hence, in all likelihood, contractual promises relating to possible employee benefits will never be fulfilled. One such promise is the possibility of being enrolled in the company pension plan after 3-months of work. I have asked for the contract terms to be clarified (including the treatment of employer NI). However, it is unlikely that I will agree to these contract terms especially as the contract (quite severely) restricts the end-clients I can approach.

It is worth noting that many smaller consultancies believe that the larger consultancy firms (and law firms seeking to enter the consultancy business) will be the biggest beneficiaries of the changes to IR35. However, in view of the above, this may not be the case if they can't fill their bench with skilled/experienced sub-contractors.

Generally, sub-contracting for the larger consultancies can be a good business option for smaller players. Nonetheless, the relationship is not always an easy one, especially in view of the margins the largest consultancy firms take. A sub-contractor may only see a fraction of the day rate paid by the end-client. Moreover, some of the larger consultancy firms are not well known for their diversity (and, as reported in the press, are not female friendly).

Clearly there is scope for boutique/specialist consultancies (that offer sub-contractors a fair deal) to thrive. However, for this to occur end-clients must allow sub-contracting to small/micro businesses on an outside IR35 basis.

Determining the tax status of workers

As per the above, the upcoming changes to IR35 do not: reflect the reality of the contracting environment, or safeguard those of us who comply with the current IR35 framework.

Blanket bans point to a lack of faith in the CEST tool. Furthermore, requiring end-clients to determine a consultant's/contractor's IR35 status distracts them from their core business.

Possible alternatives for achieving policy objectives

Four possible alternatives to the changes in IR35 are listed below. Any final proposal might reflect some combination of these ideas (and/or other ideas submitted).

A Single Consolidated Tax

In May 2019 the Centre for Policy Studies published a report Think Small – A blueprint for supporting UK small business. It is an excellent report that covers a lot of territory. It argues that:

Companies with revenue of under £1 million should be given the option to replace corporation tax, business rates, VAT and Employer's National Insurance with a simple levy on turnover, charged on a cash basis: the Simple Consolidated Tax (SCT).

The SCT should be voluntary, i.e. a firm could apply the SCT or be taxed as they are currently.

Voter and small business polling show that a substantial majority believe that the Government is not currently on the side of small businesses.

The SCT idea is attractive. However, where small/micro businesses do not opt for the SCT, the changes to IR35 in the private sector should not be implemented.

Improve support for the current IR35 regime.

The current IR35 regime could be better supported if end-clients, as part of their governance framework, improve their general management of the people and firms providing services. They should:

Look out for disguised projects (i.e. project roles disguised as employment) as well as disguised employment (i.e. roles disguised as projects when they are permanent roles).

Respect self-employed professionals managing their businesses in accordance with IR35.

End-clients could also consider the term of any contract (including rollovers) as an indicator of disguised employment, but not a determining factor.

In fact, it would be helpful if this question of contract duration is discussed more widely and should not be restricted to services provided by small/micro businesses.

For instance, when dealing with my clients, once a contract reaches the 12-month mark (and we are discussing the possibility of rolling the contract over),

I suggest that we look ahead to the 18- and 24-month mark and consider their long-term requirements.

Where clients have been interested in me staying beyond 18-months or so, I am clear that the project should change. Furthermore, I always underline that any discussion of an employee contract is very different from that where I am acting as a consultant. Not only does the relationship change, but expectations (on both sides) might be quite different.

Perhaps unsurprisingly, I have not worked continuously at a client site for more than 18-months. This approach also means that my earnings have been volatile, so clarity on this question of contract duration would be helpful.

To provide further context, the biggest consultancies are often on client sites for much longer than 18-months (and sometimes years), show no concern about the length of time they are on site, are constantly pitching for new projects, and can easily field temporary staff (even though they may not be particularly experienced or skilled).

Merge National Insurance and income tax

As suggested in the 22 February 2020 Guardian article by Patrick Collinson A truly bold chancellor would scrap national insurance, merging NI and income tax would help to simplify the tax system. It might also help to address some, if not all, the NI issues behind the changes to IR35.

A low flat tax levied on every employee, consultant, contractor and paid by the end-client

To address the concern that end-clients are avoiding the payment of employers NI, all end-clients could be made liable for a flat tax for all employees, consultants and contractors.

How this approach applies to consultants supplied by the larger consultancies and law firms would need further consideration. For instance, how would they differentiate between their permanent staff and external sub-contractors for the purposes of this tax? And, more generally, what would be the impact on the sub-contracting model?

Taxing individuals who are not employees as if they are

On the question of whether it is fair for someone to be taxed as an employee, when they don’t have the same rights as an employee, the answer is no. This question overlooks the temporary nature of contract/consulting work and the risks that come with it.

An employee has employee rights and access to a range of perks. These range from gym memberships to maternity/paternity leave. A self-employed person (working through a PSC) does not have these benefits.

If an employee loses their job as a consequence of downsizing, he/she will normally receive a redundancy package. These packages can vary widely, but a self-employed person (working through a PSC) in the private sector are ineligible for such packages.

If bullied or facing harassment, an employee can make a complaint and initiate a human resource process. In the face of such conduct, a self-employed person remains silent or might reiterate their expectations around professional conduct. In fact, the self-employed can be quite vulnerable to such behaviour.

Employee pension benefits reliably accumulate over the years. While a self-employed person can also accumulate pension savings (via a SIPP), in reality this can be challenging where earnings are volatile and savings (including pension savings) get drawn down in difficult trading conditions.

An employee may also earn (sizeable) annual bonuses, but a consultant/contractor (working at the same firm) would be ineligible for anything similar.

Access to private healthcare is a key benefit included in many employee packages. A self-employed person pays for private healthcare out of their earnings (to cover in-contract as well as fallow periods). Moreover, a self-employed person must absorb the costs of being out of work if, for example, he/she undergoes an unexpected medical procedure involving a prolonged recovery period. (In fact, I have personal experience with this).

The self-employed (i.e. small/micro businesses) pay VAT, corporate tax, income tax, dividends tax, and NI. The total tax paid can be significant. Pension contributions (despite their tax benefits) are often limited by the need to build up a "rainy day fund".

Small/micro businesses are faced with a variety of expenses including: agency fees, business insurance, accountancy fees, travel expenses, website maintenance, and fees for various professional services.

Closing remarks

You might ask why I don’t look for a permanent role. That is easier said than done. My profile is project centric, so it attracts consultancy work. Firms seeking to fill permanent roles tend to look for more traditional profiles. IR35 will not solve this structural/cultural issue. In fact, the changes to IR35 endanger my capacity to earn a living when I wish to actively contribute to the UK’s post-Brexit success.

23 February 2020

Dean Miller

IR35 off-payroll tax and how it will damage my business

I wanted to raise with you my grave concerns about the government's plans to extend the controversial changes to the IR35 tax rules into the private sector.

I am worried that extending these changes to the private sector will seriously damage the smallest of businesses like mine. In fact, it would force me to move abroad on a full-time basis to continue my business.

The changes have already had a negative impact in the public sector. The Independent Healthcare Professionals Association warned that ongoing staff shortages will cause a decline in patient safety as 98 per cent of their members said they are considering leaving the NHS because of the changes. The government's own research shows that 51 per cent of public sector central bodies found that the off-payroll working reforms were not easy to comply with.

Even HMRC – who are meant to be tax experts – can't make accurate assessments, losing five the six IR35 cases that have come to light in the last year. So how are businesses, with little or no IR35 expertise, meant to accomplish the impossible task of determining which contractors do and do not fall within IR35?

HMRC may come back and say businesses can use their online CEST tool. Unfortunately, nearly all experts agree the tool is deeply flawed. In April this year, accountancy body ICAEW told the government that the tool is "not suitable for use in the private sector."

Many businesses will inevitably decide it's safer to say that everyone is caught by IR35, as to do otherwise would risk significant tax liability. This will mean that genuine contractors like me – who are just small businesses offering their services to other businesses – will end up paying employee taxes, the employers' National Insurance charge (an effective rate of around 50 per cent) and in some cases even the hirers' apprenticeship levy, without getting access to any employee benefits.

How is this an acceptable situation?

I value the freedom, flexibility, mobility and autonomy that contracting gives me. Now my autonomy is going to be taken out of my hands – with no meaningful right of appeal – in a way that seriously undermines my business.

I urge the Finance Bill Sub-Committee to do everything in its power to prevent a policy that would be a disaster both for self-employed people like me and for the wider economy.

12 February 2020

Chris Mitty

IR35 Evidence Submission: IT services provision to clients in the banking sector North West UK
Company: Which Item Technology

1.) **Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?**

a.) It is very clear there has been minimal consultation with contractors, agencies, or large companies on what the overall impact will be. This is now very apparent as many contractors are not willing to take on all the risk, for a 25-30% pay cut whilst being expected to pay the clients employment level NI and levy.

b.) Contracting inside large organisations is a very cut throat market. The organisations use contract services to balance their books and often try to impose extensive leave or rate reductions ad hoc. They cannot do this with permanent employment because regulations do not allow it. This will continue even as people are forced inside IR35 because they have to earn to live.

c.) Whilst the companies may have people willing to move inside IR35, everyone I know in this market is looking elsewhere and even if an inside role is taken, it will be a temporary measure until a better opportunity arises, at which point thousands of companies will face a significant walk out and projects will fail. I know of many projects already at risk in the banking sector that could make front page news.

d.) In my current project, I am delivering a new front of house website for a major bank which already has tight delivery timescales. This project is about to be delayed significantly and is already £200k overbudget due to delays. Multiple projects and day to day business support is at risk due to resource shortage, which is placing extra stress on existing permanent staff. Morale overall is poor.

e.) Contractors will not be working notice periods on their existing contracts, where organisations are taking blanket approaches. Contractors are seeking alternative business arrangements and will force the risk back on the large organisations as livelihoods are at stake.

2.) What will be the effect of these new measures on a chain of contractors and subcontractors?

a.) This is the first time in 10 years I have asked for a payment delay plan for my corporation tax as I need the cashflow in what is currently a stagnant market. This time of year is normally buoyant with new projects starting but outside of London the market is extremely quiet. I work in banking and there is an up front refusal to work with my Ltd company from April 2020. Over 90% of the work givers in the north west area are refusing to work with Ltd companies. I cannot even travel to London as the employment level taxes reduce my income to the extent I am unable to afford the travel expenses, which also cannot be claimed as business expenses. It's effectively putting me out of business.

b.) I have a mortgage that is aligned to my current market rate. Having been in business 10 years my home is now at risk because a permanent salary will not cover my mortgage and living expenses. I have no contract after March 2020, which has not happened in the last 10 years. My mortgage was assigned according to rules set by the PRA. It goes against reasonable care to enforce such drastic changes which directly place an individual in undue financial distress. Here are the PRA rules. https://www.bankofengland.co.uk/prudential-regulation/publication/2016/amendments-to-the-pras-rules-on-loan-to-income-ratios-in-mortgage-lending-november-2016

c.) I am supporting a family of 4 people, 2 of which are children aged 3 and 4.

d.) I have a £3000 holiday booked in May, which will now have to be cancelled as I cannot afford it. I will lose my deposit of £500

e.) I am cancelling household subscriptions to prepare for the rough year ahead

f.) From March I will SORN my car off the road until I can find new project work

g.) Late 2019 I was looking at a £1 million property development investment. This opportunity has now been cancelled for the foreseeable future. An estimated capital gains tax loss to the government of approximately £100,000

h.) If I take a permanent role for around 60-70k per year, I will pay less tax than I do now, when you take into consideration the VAT, Corporation and Personal Tax I pay annually and the money I am able to put back into the economy on other personal projects.

i.) Personal stress levels are at an all time high. I spend many nights away from family working to save my business, when most other permanent staff are relaxing. I cannot do this because I am facing an employment without rights situation, and a job which will not cover my monthly outgoings.

j.) If banks are regulated to apply strict lending criteria against the income of an applicant for loans or mortgages, how can HMRC legally and ethically then come along and take 25%-35% straight off our profit without there being a price to pay for people like myself who run businesses? How would the country bear up if this happened to current Permanent members of staff across the entire country? There would be a housing crisis and the problem extends far deeper than just personal finance.

k.) Being in business myself, why would I want to be taxed as an employee without any of the benefits, and not be able to claim my standard business expenses that every other Ltd company is able to claim in this country? Why should a client determine the status of how I operate my independent business?

3. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

a.) The legislation should be scrapped entirely, because whatever way the government may look to simplify the legislation, if the decision resides with the client to determine the status, it will never work as it was intended as the large organisations work to protect themselves unless a regulation disallows it.

b.) If the legislation cannot be scrapped, the government need to introduce mandatory regulation that clients assess their toles, not enforce blanket policies. This however will still not work, because clients will simply state they are making a business process change,

and choose not to work with Ltd company contractors. No regulatory enforcement can make a business work with a certain individual. They can only enforce how they engage. The companies will simply not engage and send work offshore as they are doing now. This is going to be a massive failure to the UK economy.

c.) According to the banking client I am currently working with, they have already had one to one consultations with HMRC on how best to implement the legislation, yet have not assessed any of their roles for IR status. This implies HMRC themselves are not following "reasonable care" when implementing their own policies. It's pretty much a free for all approach at the moment, as long as the tax grab is there, however small the tax grab may be.

4.) Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

a.) There is a lot of information available that would allow companies to sufficiently means test their roles, but using CEST is out of the question as it has been proven to have many flaws

b.) Independent companies are available to provide status determinations of roles

c.) Whilst there are options available other than CEST, over 90% of companies appear to be taking the approach to completely ban the use of Ltd company contractors. HMRC stated in their guidance that the legislation was not supposed to impact the genuinely self employed, however the result now has a massive wider economy issue.

5.) What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

a.) I 100% agree with the conclusions drawn in the following review of the CEST tool https://www.linkedin.com/pulse/cest-box-ticking-exercise-its-also-expert-dave-chaplin/

6.) How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

a.) In my case, the client is making a "no PSC" stance and labelling it as a process change, so there is nothing I can challenge. Other companies

who are stating roles are inside IR35 are saying there is no appeals process and decisions are final.

b.) Regulations introduced to mandate that the contractor must use a 3rd party to assess the role. This must not be managed by the client/work giver because as soon as you place risk on an organisation, they look to take the least risky approach and blanket ban

7.) Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they

a.) There may be scope to introduce a mandatory process for contractors to employ a 3rd party to determine their status, which is backed by insurance, at a cost to the contractor. It is not ethical or reasonable to have another business determine the status of your own business.

8.) Will the Bill, as drafted, achieve the Government's objectives?

a.) Knowing the market better than any HMRC executive, I would happily bet my home on this new tax grab not meeting the governments objectives. The amount of extra tax received by HMRC will be significantly lower as people will either:

- Go into permanent employment earning 50%+ less >> which means less tax
- No VAT being claimed by Ltd companies
- Reduction in PAYE workers as contractors do not want to be classed as employed
- Companies generally hiring less contract resource both inside and outside
- Older contractors taking early retirement
- Younger contractors looking to start alternative businesses
- Those frequent travelling contractors will not be spending heavily in the local economy

9.) What is your view of the role of umbrella companies in the context of these proposals?

a.) Umbrella companies claim to offer employment benefits such as paid holiday, pension contribution, however this is simply deducted from the contractors rate, so there are no benefits other than using them as a payment processor. We do not need payment processors as we have accountants. Then on the other hand contractors are forced to sign contracts stating full supervision direction and control, including lengthy notice periods to be given to the client of 1 month, yet they can

terminate at no notice. This is zero rights employment whilst taking 100% of the risk.

b.) Contractors are being informed they cannot use their Ltd companies to process payments because their process change enforces a blanket ban on them.

10.) How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

a.) It is not fair that any contracting business is taxed as if they are an employee and I state below the differences between myself as a contractor vs an typical employee

b.) Hours(number of) working are different. 40 plus (contract) vs 36.5 (permanent)

c.) Can work from any location I want including home office when I want

d.) Do not conduct staff training (apart from H&S and regulatory)

e.) Enforced Xmas Break always. Sometimes 2 or 3 weeks, and then on occasion has been extended to 6 weeks

f.) Enforced summer break notifications as and when the client decide they want no support

g.) Notification to cut rates mid-way through a delivery, and if not accepted told to leave

h.) Substitution clause in contract means I can bring in anyone else in to do the job providing they have the same skills

i.) Unable to use staff car parks

j.) No staff perks

k.) Any team meals (if invited) are to be paid by myself. Permanent staff are funded by the company

l.) No internal reviews, no set 1-2-1's, no task setting, just working with a Project manager.

m.) No client paid travel

n.) No requirement to go to internal staff meetings

o.) Clearly labelled contractor everywhere, badge, internal systems

p.) Use of own equipment apart from secure laptop.

q.) Different internal processes for contractors access to premises elapsed times and pass expires at end of assignment

r.) Different process times for system access

s.) Working on different projects in different locations.

t.) Client cannot demand I am onsite x number of days per week or when

u.) Dishonesty from management happens all the time because they can get away with it, unlike with permanent employees they cannot

v.) I am sat at my desk writing this over a weekend to protect my business interests, whilst permanent staff are likely enjoying time with their family

11.) How Have Ltd Company Contractors Been Treated

a.) Coop bank notified us that all ltd company contracts will terminate at the end of April regardless of whether you have a contract going into April. Due to IR35 the bank are implementing a so called "process change" to no longer use Ltd companies. For those with contracts into March, it will switch to umbrella.

b.) All roles have to use an umbrella moving forward, and retaining Ltd is not an option. Legislation is on the IR status, not the business structure so I find this an unreasonable stance

c.) There is no change to the daily rate payable to companies providing professional services as a result of the "process change"

d.) When I challenged about the "blanket approach" I was met with "this is only a process change, not a blanket approach and we are not assessing the roles for IR35"

e.) When others challenged about why this decision came about, the response was: "we have looked what other banks are doing in the market, and we want to remain compliant"

f.) Coop bank claim they have had one to one discussions with HMRC on how to best implement the new IR35 changes. This I found particularly

interesting as the bank are failing to implement the legislation as it was intended, and **HMRC will know that. Is this even legal?**

g.) I have not been offered any contract after March but I have been asked to confirm my intent to continue providing services at the same rate, which is reduced by 32%. I have informed the bank I cannot make any decision without seeing or understanding the contract terms. **The bank themselves do not engage with other companies without an exchange of contracts yet are expecting contractors to make decisions without seeing anything on paper.**

h.) Coop claim to be the ethical bank https://www.co-operativebank.co.uk/values-and-ethics yet there seems to be a mismatch between the written word, and the way we as businesses have been treated. My understanding is that the real reason behind the blanket ban of PSC's is: being wary of HMRC compliance fines, administration burden, cost control, to avoid having to offer any employee benefits, copying the market, and being generally risk averse.

i.) Coop Bank are simply not ready in time for April and the agencies are feeling the pressure too.

12.) What Is Likely To Happen (General Market)

a.) I already see many people moving into Permanent roles, but not necessarily at Coop bank.
b.) Perm employment may cover people for the difficult times ahead, or simply because they can no longer afford to travel 200-300 miles to provide services to clients.
c.) Big businesses have delayed projects and are not spending as much money
d.) Many businesses will be forced to close, some owing money to HMRC
e.) Many people are looking to pivot to new roles offshore or even new businesses altogether
f.) I know of people who have decided to retire as they have had enough
g.) I am looking to consolidate my expenses and take a low paying job where I do not have all the problems HMRC are causing me and my family.

23 February 2020

Aslam Mohammed

This is regarding the Call for Written evidence draft Finance Bill focusing on the extension of off-payroll working rules to large and medium sized businesses in the private sector.

On the onset I would like to submit to this esteemed committee that it is an extremely worrying situation which needs urgent action. The timing of this review is also critical as between the last day of submitting evidence to this committee and the Finance Secretary announcing the budget, there would be less than 2 weeks. Even the objective of ongoing review into this being carried by HMRC itself is far from what was promised by the Chancellor in the run up to the general elections in Dec 2019. Hence, there's a lack of confidence and hope of any meaningful output from HMRC's review itself. There's a lot of negative sentiment and lack of trust around in the contractor community, which is driving a lot of them to depression. The Chancellor in his interview said the proposed review would look into "if the proposed changes were still fit to go ahead".

Existing measures in Public

1) There has been enough said and evidenced about the damaging effect these rules have caused in the Public Sector which has caused significant delays to projects, rising costs due to contractors raising their rates, lowered confidence and a general sense of negativity towards the contingent workforce. HMRC has repeatedly ignored the multiple voices of concerns raised during the review of implementing these rules in the Public Sector even after mountains of evidence provided to them.

Impact of new off-payroll rules on organisations

2) All the information available in the public domain suggests the impact of upcoming changes in the private sector have not been fully and fairly done. A majority of large and medium sized organisations, which would be made responsible to assess the employment status and responsible for all taxes deducted at source and passed to HMRC, do not understand the legislation completely. In order to avoid any liability with HMRC, they are hence completely bypassing the legislation by either going for complete ban on contractors or forcing them to go PAYE or Umbrella by giving blanket or incorrect assessments. As in case of any appeal against such unfair and incorrect assessments, if they are proven to be actually outside of the IR35 legislation no refund is provided either by the client/ agency or HMRC to the contractor who may have either lost a considerable amount of money or the opportunity to work on that assignment altogether.
   This has already been demonstrated by the negative and unfair approach taken by a multitude of large and medium scale organisations e.g. HSBC, Barclays, IBM to name a few

3) The effect of these changes are far fetching from the Contractors, Subcontractors, Agencies, Clients, Accounting service provides to these, basically the whole of market would be impacted negatively.

In terms of actual working practice, there would a lot of confusion and paperwork required when a genuine contractor is forced to work inside IR35 and he provides his services to more than 1 client over a period of time with various client's with a number of P45s/ P60s/ Payslips issue by them and someone will have to maintain them. Apart from this there's another challenge if in between two inside IR35 contract someone gets a chance to work on a contract outside IR35 and then HMRC want to investigate, who has the onus of maintaining all the paperwork.
Apart from this, the reason for a lot of negativity in the contractor community is also driven by HMRC's aggressive approach towards contractor community as a whole even if they have been paying all their due taxes on time under the existing rules. This has also been driving a lot of entrepreneurship and encouraging people to work as freelancer which helps further maintain work-life balance for a lot of them.
There are organisations and agencies which are passing on the cost of employment as well on the contractor's income, making is even more less rewarding for the contractors.
In reality, this legislation is forcing contractors to be an "employee without rights" which will further increase abuse of such people due to lack of rights.
HMRC can also achieve its objective of raising additional revenue by increasing corporation taxes or tax on dividends etc. this also keeps the administrative cost associated with this new legislation to the minimum.

Determining tax status of workers

4) While HMRC guidelines say, the agency/ client must take reasonable care in determining the tax status of each contractor on an individual basis, the mounting evidence suggests otherwise.
Some of the questions in the CEST tool itself are either too generic or irrelevant for a lot contractors. It also relies too heavily in weightage to some of the questions and answering them in certain way makes it almost impossible to change the outcome whatever you answer to further questions.
The CEST tool treats every contractor working in any sector as same irrespective of actual working conditions, ways of working etc. For example they should not compare a contract builder to an contract driver or to an IT contractor or for that matter anyone else. Each one of the industry/ sectors would have their own conditions. You cannot expect a contract driver to buy a car or show any other cost of equipment as he's driving somebody's car as a contractor, so for him it's vital that he gets properly trained, gets accreditation, do networking to secure work and that should be allowed as a genuine cost to his business. He would not secure work without these whereas a driver who's actually hired as an employee may even be reimbursed costs for such training etc. There can

be numerous examples which prove the "one size fits all" approach in the CEST tool is unfair.
The specific questions "Will you have to buy equipment before your client pays you?" is irrelevant to many sectors specifically skills/ consulting based ones, eg. A software developer working on a client project, and due to client's security process having to use their computers will never be able to use his own equipment. Every sector doesn't need heavy machinery to justify a high cost of equipment.

"Will you have to fund any vehicle costs before your client pays you?" Any contractor looking to work locally and working on a piece of work for a long time would never be able to answer this question as "Yes", as it doesn't allow for commuting cost as a valid cost.

So, the bias of the tool becomes quite evident as to trying to work in HMRC's favour. HMRC would always make a case for additional taxes when the results show as inside but would not always stand by the CEST results when it's otherwise.

One suggestion to may be avoid this bias and mistrust on the results can be to outsource the task of determining the tax status to an independently regulated public body outside the control of HMRC and who's findings/ results are acceptable to all parties involved.

Policy Objectives and wider context

5) One of the objectives which HMRC want to achieve is to tax everyone working in similar jobs, roughly in the same way. This objective itself is flawed in its concept.
   It shows complete disregard to the following facts
   a) The contract has to maintain his skills and expertise on his own cost to remain an attractive option to engage for clients seeking specialist help, and this is not a one-time cost. They have to continuously invest in their own skills
   b) As a genuine contractor, they indemnify the client/ agency for any losses by providing agreed level of professional, public and employer's liability insurance out of their business
   c) Majority of the PSCs pay all taxes, employers' NIC, Corporation Taxes etc. The only advantage they have over, is to structure the company in a manner they can take out dividends. But, since the introduction of dividend taxes even this advantage has been minimised

d) Some Contractors' maintain a certain amount of retained profit in the company, after all the taxes have been paid and sufficient salary + dividends have been taken as needed by them. This retained profits in the company covers for lean business periods when the contractor is unable to work due to holidays, sickness, family etc.
e) After work on one contract finishes, there's no mutuality of obligation to provide further work, hence the contractor has to secure more work on his own
f) It would also be a big impact on the banking sector if the reforms go through as many of the contractors would be assessed incorrectly and forced to go PAYE or through an Umbrella company. This would lead to mass closure/ CVA of companies and hence the business bank accounts associated with them. Thereby on a larger picture, the banks would lose out important and huge reserves of cash in a shocking and quick move
g) In the absence of a single reliable body to vet the Umbrellas, there are already a number of rouge Umbrella companies in the market which fuel non-compliance and in future would risk unassuming genuine contractors to abuse and at risk of unpaid taxes to HMRC. The Government must form an independent body to check, validate and provide licence only to Umbrella companies working in a compliant manner, before any reform could be implemented in the huge Private sector

In conclusion, I would like to humbly submit before this committee that the proposed changes to the legislation are not fit for purpose to roll out. They lack the clarity, confidence and support of the people involved/ affected by these changes. So until a full, fair and independent review of these are conducted these changes should be called-off.

Looking forward to a response on my submission from the committee.

7 February 2020

Nigel Moore

1. I have been made aware that Lord Forsyth of Drumlean believes that the Loan Charge has been resolved, unfortunately nothing can be further from the truth.

2. The Loan Charge is still very real, impacting lives and cause grave consequences including lives.

3. The Loan Charge was always a misconceived patch-up to resolve the mess caused by the IR35 crisis which began in 1999. And to add insult to injury was retrospectively applied absolutely criminal behaviour. Therefore, the Loan Charge and the Loophole should be totally scraped.

4. Loan charge and IR35 are both short term quick fixes which have never resolved the longer term issues of fair taxation.

5. IR35 was also misconceived trying to resolve balance in the contractor market but instead swung the pendulum far too far the other way. Tax has to be fair and balanced, otherwise loop holes will be used, which store up even more issues later on for HMRC. Contractor staff don't get paid holidays, sickness or help during the periods they are not working.

6. For example, the recent IR35 off-payroll working rules is making things even worst as larger employers look to cheap oversea consultants for resources to reduce their risk. Which will mean less (not more) tax collected, as the money goes overseas rather than circulating within the UK. This reduces the skills in the UK population. Which the means the UK becomes more reliant on external market place, and growth slows.

7. Off-payroll unfortunately has the biggest impact on the lower paid as they have less flexibility/options and will therefore be manipulated by rogue employers who want to reduce their risk of fully employing anyone. This is because umbrellas opens them up zero-hour contracts or conversely forced to work all hours (as there is little job security, and they could sacked with ease). At least with PSC (personal service companies) they had more money to fall-back.

8. This is why both these short term patches/fixes to the UK tax system has to be abandoned as water under the bridge, whilst long term fair balanced taxation/risks are researched for a comprehensive new solution that addresses these issues of flexibility and gives control/money-back to the employees.

22 February 2020

Edward Moore

These changes are being introduced to improve fairness in the tax system by ensuring that individuals are not able to sidestep income tax or NICs liabilities by working through an intermediary.

Nobody is making an attempt to sidestep tax. This is a summary of the finances and taxation of REM Consulting (Halifax) Ltd over the last six years. Added up I am paying roughly 57% tax on salaries, obviously a portion of this

is VAT I collect, and accounting for that it works out at about 46%. I don't see a problem that justifies destroying an industry.

Category	2014 - 2015	2015 – 2016	2016 - 2017	2017 - 2018	2018 - 2019	2019 - 2020
Fees in	£158,994.59	£139,527.28	£225,546.44	£178,137.92	£125,208.17	£59,700.00
Salaries Out	-£50,295.40	-£108,715.23	-£85,868.51	-£88,926.00	-£43,917.01	-£24,067.87
Tax	-£48,952.72	-£35,051.55	-£46,740.69	-£56,958.89	-£33,757.49	-£10,667.18
Costs	-£38,490.80	-£28,535.49	-£103,583.94	-£48,850.39	-£37,212.60	-£15,692.22

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The CEST tool has never been able to make a determination on my contract, always returning "unable to make a determination".

The CEST tool is a multiple choice questionnaire that omits some very obvious and likely answers, for example:

Worker's financial risk

If the client was not happy with your work, would you have to put it right?

- ◯ Yes, unpaid and you would have extra costs that your client would not pay for
- ◯ Yes, unpaid but your only cost would be losing the opportunity to do other work
- ◯ Yes, you would fix it in your usual hours at your usual rate or fee
- ◯ No, the work is time-specific or for a single event
- ◯ No

In this question the most likely response for any contractor is "No, I would be immediately terminated without notice" but this is not an option.

What is your view of the role of umbrella companies in the context of these proposals?

Umbrella companies are not a viable option for many people. In my line of work I travel the country, and the world picking up complex IT contracts that require a specialised skill set. Under an umbrella company I would not be able to claim travel expenses. How can I operate if, as in 2016-2017 I incur

£65,000 of international travel expenses that I must pay from my own, personal pocket, and cannot claim from the Umbrella?

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

The proposed taxation is unfair in a number of ways:

Deducting NI and PAYE from expenses
Firstly, deducting NI and PAYE from a contractors day rate makes the assumption that *all* of that money would be taken as pay by the contractor. This is *never* the case.

I operate at a day rate of £500 / day, currently working in Leeds for Hitachi Capital PLC on a programme to decommission a data centre. I live in Canterbury, Kent to provide access to London and international markets. Previously I have worked in Sweden, France, Finland and the USA.

Earning around £10,000 per month PAYE and NI contributions under the proposals would be £2957.80 and around £530.

This takes no account of the operating costs of this contract and the amount I actually withdraw from the company as salary.

On a normal month, this is after the 2016-2018 period during which I managed to get myself into some financial difficulty due to the large amounts of money passing through the business, I take £3,500 as salary, make a pension contribution of £1500, I pay health insurance costs of £200, professional Indemnity insurance of £50, I make a provision for corporation tax of £1000 and incur £3000 of costs travelling to and from Leeds and living in a hotel during the week.

This adds up to some £6,200 in costs on a monthly basis that a permanent employee does not have to consider.

Why should I pay NI and PAYE on money that is not to be taken as salary? This is equivalent to sending a permanent employee to the USA for a few weeks and then deducting NI and PAYE from their overall pay based on the cost, *to the employer*, of that trip.

Jobs are not comparable
It is patently unfair to compare a permanent and contract employee and conclude that they are doing the "Same job".

It has been repeatedly stated that two people doing the same job should be taxed in the same way. I do not disagree with this proposition however what defines a job is more than just driving the keyboard.

What I do disagree with is the assumption that if you remove holiday entitlement, pension contributions, notice periods, sick pay, health insurance, car benefits, job security, training, compassionate leave and all the myriad other benefits permanent employees enjoy, you are left with the "same job".

The rail unions have been locked in industrial action for years over who presses a button. Can you imagine for one moment what they would do if these changes were imposed upon them? Would they accept that it was the "same job"?

14 February 2020

Frances Morris, Morris Business Consulting Ltd

1. No personal experience, other than friends working in the public sector. It is widely known that Scottish Government are often now forced to use a Consultancy rather than a PSC, and thus paying higher rates via the consultancy than if they would direct via the PSC. As a tax payer, this is irritating that my taxes are being used in this way when a more cost effective method is available.

Impact of new off-payroll rules on organisations

2. I do not believe the extension to private sector has been adequately assessed. The large number of workers via PSC in Scotland Financial Services means that the assessment burden on these companies is huge, when the guidance has been so vague and changeable so near to the deadline. This has led to fear from the larger, more prominent and risk-averse companies and an unwillingness to assess properly, which has led to the complete withdrawal of engagement via PSC companies. I also see a higher use of consultancies, again costing the end client more money. These companies rely on short term PSCs to facilitate short term projects without the burden of 'employing' people. This has effectively removed that option and I see a number of projects now struggling for resource and loss of knowledge and skills.
3. I have no experience of small organisations.
4. I see a large number of consultancies benefiting from the changes, and thus end clients having to pay more for the services they require on a short-term basis.
   The end contractors are suffering the loss of net income, whilst still having to save for periods of being out of work/ sickness/holidays. The contractors still have to take enforced furlows at Christmas, which has to come out of this reduced income.

5. A simpler way of assessing these contracts would be to put a time limit on them. i.e. If you provide a service to the same company and no other, for a set period, then you should be deemed an employee and move to payroll. Companies need the flexible workforce. By placing complex rules, which are open to interpretation, around the determination, leads to fear, assessment burden, legal costs and a general unwillingness to engage with the rules. Simplicity would be the key to resolving this in everyone's favour.

Determining tax status of workers

6. The tests are absolutely not reflective of the environment. Assuming Mutuality of Obligation just because a contract exists does not reflect my role. In high security companies, such as financial services, there is no way a substitute would ever be asked for due to the screening process required to allow access to necessary systems. Whilst most of us could provide a substitute to do our work, the reality is that they would need to be screened in advance and then have up to date knowledge of the project. This is an administrative burden and security risk that companies just cannot accept. It is not reflective of ANY short-term engagement other than via a consultancy.
7. Having taken the CEST questionnaire and receiving "Unable to Determine", it begs the question why it should be used if it can't give a clear answer that is reliable. The key question was substitution, and as stated in point 6, this is not fit for modern companies with security at the forefront of there values. My end client also used the CEST tool for me and received "Unable to Determine". They advised verbally that they were unwilling to take any risk, so have chosen to determine Inside IR35.
8. The status determination process in my experience is a checkbox exercise with no room for challenge, nor opportunity to adjust working practices to comply with the rules. All contracts have been brought in to end in February. If one would challenge the ongoing determination, a new contract is unlikely to be offered. I don't know anyone that has challenged the determination. Personally, I was told that due the fear of HMRC, they would not enter into any discussion about the determination, nor discuss how to change working practices to move to an outside determination.
   There are no adequate safeguards around this.

Policy objectives and wider context

9. A simpler rule, would be to set a time limit on short term contractors, who have only worked for that one client, after which they would be deemed to be employees, and then receive the FULL benefits of being an employee, such as sick pay, holiday pay and pension contributions. Provide an exemption application where projects have rolled on longer than expected and the key skills and knowledge are still required.
   The more complex the rules are, the more they are open to

interpretation and abuse. Genuine PSC providers will have no problem with this.

10. As far as I can see, the bill will force a number of genuine PSCs to pay PAYE and NIC, But the Treasury will lose Corporation Tax and dividend tax, BUT the contractor will receive no benefits of an employee paying PAYE. Win Win for the State.
Accountants will lose business, and the HMRC will see reduced tax payments and accountants going out of business.
Consultancies will reap the rewards of providing contractors under a Statement of Work, potentially paying more tax on profits.
Businesses will pay higher rates to consultancies, reducing their profit and thus tax to HMRC.
Businesses will not be able to be able afford to engage a short term workforce, and will lose competitiveness and business agility as a result.
Some projects have been moved offshore, removing any income for the HMRC.
If the objective is just to increase PAYE and NIC, that will be achieved, but at significant cost other areas of income to the Treasury.

11. Umbrella Companies are administering payroll, and charging a premium for what an accountant could do for the PSCs under their normal charges. By large companies refusing to engage at all via PSC, this is putting Accountants out of business and increasing the revenue of Umbrella Agencies. Unfortunately, Umbrella Agencies cannot apply for FCSC approval unless they have been trading for 12 months, which has meant that all the smaller agencies cannot sweep up the contractors, as Recruitment agencies are insisting that the umbrella be FCSS approved. It is also a point to note that FCSC approval provides no safeguard from HMRC queries. Begging the question, whether this is just FSA scheme providing no protection or assurance at all.

12. The new measures may advertise well with the general public who do not understand the need for short term workers by large technology businesses, nor that the higher earnings are eaten up with Corporation Tax, insurances, Pension contributions, training and costs of travelling to training, saving for non-working periods, sickness and holidays... All the benefits that an employee takes for granted.
It's very easy to simply state that we do not contribute PAYE or NIC! But we do pay our way, and most have private health care, and plan for periods of non-working, without claiming any benefits from the state.
It is wholly unfair to expect a half-way house of paying PAYE and NIC, but receive NONE of these benefits, and still be unable to claim any benefits should we be out o10f work or off sick for long period.
Deemed Employee but not an Employee. Pay tax as an employee but with no protection of an employee.

10 February 2020

Marta Morawska

1. Summary

I am an independent contractor that have been providing services to various clients, mostly large listed organizations, via my PSC since January 2011.

The upcoming changes to the off-payroll working rules in the private sector have negative effect on me and my family. I am currently considering my options for the future and I have started looking for work outside of the United Kingdom and I am planning to relocate to other European country with my family.

2. Evidence provided with reference to below questions:

Question 4: What will be the effect of these new measures on a chain of contractors and subcontractors?

New measures impacted me as my current client Reckitt Benckiser plc has taken a blank approach and banned any future engagements via PCS from 23rd March 2020- please refer to Question 8: evidence that I have provided below.

This means that I will finish my engagement earlier than originally planned and will not be able to complete the project.

I believe that the number of independent contractors will be also leaving or have already left their current projects. The flexible, highly qualified and experienced contractors are likely to either look for contract work outside UK, take permanent roles, retire early when/ if they can or find a client who properly asses the status- which is not a common practice at the moment.

This change has also negative impact on individuals' mental health.

Question 8: How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

In my situation the client- Reckitt Benckiser plc (RB)- has decided not to engage with any interim resource via Personal Service Company, umbrella or other intermediary only via a preferred supplier agency on a PAYE basis. This will be effective from 23rd March 2020 which means that the current terms of engagement will come to an end on 20th March 2020.

This blank approach to all contractors is taken without a written Status Determination Statement or any clarification, explanation for the reasons why such determination has been made.

I do not agree with the outcome of the determination and have asked the client (RB) to provide some clarification and justification why HRMC guidance has not been followed: employment status for each worker and the reasons for determination have not been provided.

Currently there is no appeal process in place at RB nor outside the company and the only choice available for independent contractor is either to engage with RB via their preferred agency on PAYE basis or leave. This is not a fair process as I have not had a chance to appeal as this option is not available.

I believe that all contractors should be given a written SDS (Status Determination Statement) including the reasons and justification for reaching such determination as well as clear process of appeal needs to be in place should a contractor disagree with SDS.

Question 12: How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

I strongly believe that the new measures are not fair when a contractor is determined as inside IR35 and is paying employment taxes but has no employment rights.

This change could also encourage organizations to engage in the future with interim workers via inside IR35 scenario as a great way of reducing the cost of employing an individual and no obligation to provide any employment rights like holiday or sick pay, training etc.

In long term this will also reduce the availability of flexible and highly skilled resources on the British market.

25 February 2020

Steve Morgan

What lessons have been learned from this experience, and how have they affected the Finance Bill proposals?

During long and complex programmes, in both the public sector and private sector, commonly the skills do not exist within the organisation to bring about transformational change and manage complex programmes of this nature.

Therefore, the organisation will typically turn to skilled and experience resource from the contract market to assist them. The lack of maturity in the procurement teams will often result in the organisation buying a contractor, as opposed to an outcomes-based contract, through the Crown Commercial Service frameworks.

Therefore, there is a critical dependence upon these resources to form the backbone of many large, complex change programmes.

Critically, these typically span 1-3 years in duration, and therefore require continuity of resources throughout the programme.

The advent of the proposed changes to contractor's IR35 status represents significant risk to organisations looking to embark on large change programmes, as key resources are unlikely to be able to see the programme from inception to completion.

In your opinion, are there better or simpler ways in which the objective of the new rules might be achieved?

I believe a pragmatic approach to the implementation of the rules must be taken. Where contractors are clearly employees, then the rules must stand. However, where the organisation can demonstrate that the contractor possesses unique or uncommon skills or experience which are not readily available, there must be some provision for organisations to employ contractors on this basis, particularly where they are contributing to the successful implementation of large programmes of work, which will ultimately improve the efficiency of our public sector bodies, or contribute positively to the economy in terms of private section organisation profitability.

25 February 2020

Dave Murphy

IR35 Off-Payroll Review
Thank you for the chance to provide a view on this appalling piece of legislation.

The concept of IR35 in general bares some scrutiny. The premise that you can be classed as a disguised employee and taxed accordingly when you receive no other fundamentals of employment is in itself flawed. That flexibility within a limited company to manage their tax affairs is a needed offset to the lack of sickness, holiday or pension provision.

The new rules place the onus on the "engager" to determine the tax status of another business. I think that HMRC have overestimated how companies will react to this and expect them just to say "oh well a bit more red tape". That's not my experience. In the finance sector where I work they are very risk averse so they will not take the chance that if they assess a contract outside

IR35 that at the end of the year or at some point in the future that HMRC could challenge it. Plus, why should they put the effort into doing this. My place has over 600 contractors. Do HMRC seriously believe that each one of those roles will be individually assessed? It's naive at best. That's why we are seeing bank after bank banning the use of PSC's and either offshoring the roles like they are doing at my place or only allowing contractors to operate through umbrella companies.

The general loss to the contractor from moving to an umbrella company from a PSC is around 18%. So still doing the same job, with the same security (i.e none), for 18% less.

From my personal situation I am being forced to change my umbrella company because the one that I have been using for the past 7 years (provided to me by the clients recruitment company) is not accredited with the FSCA. This is impacting me financially as well as the disruption with payment schedules etc etc.

So even though I should not be affected by IR35 at all because I do not have a PSC I am collateral damage.

Business does not want this, they want a flexible workforce that they can get in quickly and ditch just as quickly and most importantly they do not want financial risk. Recent court cases have shown that even HMRC find it difficult to determine inside or outside, what chance has a client got. The CEST tool is - and has been clearly proven to be - useless.

Just as the implementation of IR35 failed to deliver the additional tax that it was supposed to and in fact reduced the tax take as thousands shut down their PSC's and moved to mass markets schemes. This new version will have the same effect, Companies in the private sector will predominantly take one of 4 options
Blanket Inside - this will reduce the contractor willing to take the roles
Force Umbrella - A lot less money for HMRC as the Umbrella takes its "admin" fees
Not use contractors at all - offshore
Convert to permanent - this will not be common as it kinda defeats the flexible workforce model.

Very few companies will assess and those that do will generally be small with a small number on contract staff.

So for me even though it should not affect me it is - my role (one of the few not outsourced) is not certain and rather than being safe till the end of the year I am now only able to go up to September. At that point I could be unemployed. Many of the people that I am working with will be unemployed at the end of February.

Stewart Neville

SUMMARY
Received a flawed blanket inside IR35 determination using CEST with no consultation or discussion with regards to contract terms or working conditions.
An appeal process exists but there is no detail.
I fear for people being forced to become workers with no employment rights, the economy will suffer. I have ceased work until there is some clarity in the contracting market.
ANSWERS TO SPECIFIC QUESTIONS
Existing measures in the public sector
1.
Impact of new off-payroll rules on organisations
2.
3.
4.
5.
Determining tax status of workers
6.
The engagement with my current client (software development work on an MOD project for a major defence multinational) is due to end on 8th March 2020, before the new rules take effect. However, a future engagement (in this case, a new contract extension to continue work on the unfinished project) was assessed with the CEST tool on 17th February & determined to be inside IR35. There was no consultation with me with regards to current or future contract terms or working conditions. I received only a series of emails (on 17th October 2019, 5th December 2019 and 17th January 2020), explaining that the assessment would be happening at some future date. The answers given by the client on CEST do not correspond with my current contract or working conditions. Indeed, with 17 years contracting experience, I would not enter into an engagement under such circumstances for fear of being caught by the rules as they currently stand. The contract/role title entered by the client does not match the work I do, which suggests no real attempt to make a true individual determination. Interestingly, myself and the other contractor on the project both received our SDS emails at the same time with the same answers suggesting to me that it was a blanket decision. I then used CEST to check the result & the answers I gave resulted in an outside IR35 determination! Of course, how the client could give any accurate decision without an understanding of my work practises is a puzzle in itself. I believe the risk of making an assessment that HMRC might not like has scared them into blanket inside statements regardless of whether they are accurate of not. This is a risk we small scale contractors have been taking and mitigating with insurance for many years!
The client explained that to appeal a decision, one must write giving reasons and any documentary evidence within 21 days. There is no information as to how that appeal would proceed, what evidence they would accept or how that

might impact engaging with them in future. I have written back explaining why I believe the result is incorrect & simply received a robotic reply that my complaint was received and they will respond "in due course" . However, until such time a correct outside IR35 determination is received I will not perform any more work for the client & will not accept any new contract under falsely assessed inside IR35 terms. Whether the appeal has any real worth is unknown at this time.
Policy objectives and wider context
9.
10.
11.
12.I have already informed my current client that I will not continue work whilst they effectively falsely consider me to be a disguised employee. The cost to my business is £4,592.50 for missing the remaining days of the contract and approximately £49,500 for a likely 6 month contract extension. As an experienced contractor I maintain a "war chest" of funds to sustain myself and my family during periods between contracts. My wife is a full-time mature university student so I am the sole earner in our household at present. At this time, assuming nothing comes of my SDS appeal, I intend to take time off to ride out the storm of uncertainty. This won't be entirely worthless as downtime between contracts is a good opportunity to train in new skills & polish some rusty ones. I don't see any benefit to taking an inside IR35 contract: essentially to become an employee without any employee rights, a contractor that is unable to control their own affairs or reclaim business expenses. I will either stick with being an outside IR35 contractor, find a local permanent role, or emigrate to a country that values experienced software engineers. It seems ironic to me that the IR35 rules that were hailed as the means to stop disguised employees will simply become the mechanism by which there will no longer be any employees! Companies will simply take on "inside IR35 contractors" to whom they don't owe holiday, sick-pay, pensions or other rights. We will be fondly remembering the golden era of zero-hour contracts! It's worth noting that the reason myself and many other contractors in my profession work the way we do is in order to "remain technical". Typically, permanently employed software engineers are gradually promoted from technical roles to more management orientated positions.
Consequently, working as a contractor is an excellent way to remain technical, gain wide experience & earn a wage commensurate to your skills. Often I have seen companies take on contractors as they need experienced techinical people that they struggle to find in permanent employees. For example, my previous contract had been advertised for 2 years before I started. I fear that the IR35 changes will only cause a greater shortage in skilled and experienced software engineers who are willing to travel and work on projects when they are most in need.

25 February 2020

Dave Murray

Existing measures in the public sector
1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals? 2 Impact of new off-payroll rules on organisations
No comment, no knowledge.

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
No – all of the risk and cost has been put onto the end client, who, obviously, avoids unnecessary risk unless it could increase profit, in which instance they may take a calculated risk, but not in this instance. There is no upside in a client making an "outside IR35" determination.
With IR35, the majority of affected companies are really making blanket "inside assessments" or banning PSCs altogether, as the deemed risk of an HMRC challenge / investigation isn't worth the risk to them.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?
No comment, no knowledge.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?
With IR35, the majority of affected companies are alread making blanket "inside assessments" or banning PSCs altogether, as the deemed risk of an HMRC challenge / investigation isn't worth them taking.
The result of this is that the end contractor is seeing a substantial reduction in income, as the clients are NOT absorbing the Employers NI, instead they are expecting the existing contractors rate to be used and for the contractor to take all of the financial pain associated with this change.
The consequence of that will be a massive shrinking of the contractor pool – either by retirement, overseas contracts, or transfer to permanent employees on lower incomes, all of which will act to reduce the tax receipts, which have to include VAT and the consequential taxes on money that was spent by the contractors in the execution of the contracts previously.
I expect to see a corresponding contraction in agencies and accountants, with many seeing reduced profits or being forced to cease trading.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Make an immediate statement in the budget that IR35 is delayed for 2 years and make a concerted effort during that time to engage the clients in creating trust in the rules to remove the knee-jerk blanket "inside IR35" determinations.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No comment, insufficient / no knowledge.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

It appears to lean towards generating "inside IR35" determinations, which implies that HMRC have set it up to work in their favour. The simple fact that HMRC refuse to stand behind the CEST determinations should tell you that it is not fit for purpose.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

At this time, no company is going to allow a real challenge to their status determination – any contractor who really pushes it will simply have their contract terminated (evidence of this is already appearing). The risk to the client is too large – they are in business to make money, not to act as HMRCs tax collectors or employment status determinators.

HMRC want everyone classed as "inside IR35" and no company wants the distraction of an HMRC investigation into whether a contract places a contractor inside or outside, so they will (and have already) determined everyone inside, taking that risk away and leaving them free to concentrate on running their business and the contractor with significant income reduction – there is no scenario where the contractor impact is neutral or positive.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Creative thought could find many simpler ways to achieve any objective – if the objective is simply "generate more tax income from contractors", then dividend restrictions for PSCs would have been sufficient.

It has to be recognised that contractors are taking a risk, due to the nature of the contract – they can be let go with little or no notice, can be out of contract for extended periods, travel significant distances / stay away from home, all of which have an impact on the real income they have. Therefore you cannot simply tax employees and contractors in the same way – they are operate differently and have different challenges.

10. Will the Bill, as drafted, achieve the Government's objectives?

Unlikely – from a personal point of view I will no longer travel the distances I did for a contract, meaning less spent in the economy overall and will, most likely, take a permanent role, on a lower salary much closer to home, again reducing tax (inc Vat) receipts.
Due to the blanket assessments and refusal to engage with PSCs, many companies will simply offshore the work directly, or go to one of the large consultancies, who will simply offshore the work, with the client offsetting the (expected to be higher) cost of the contract against profit, reducing Corporation Tax income.. And, obviously, with the work being offshored, there will be reduced PAYE and NI as well. It's a lose-lose for all concerned, except the big consultancies, who have been lobbying for IR35 for many years.

11. What is your view of the role of umbrella companies in the context of these proposals?
They potentially see this as a golden opportunity to make more profit from a captive market – clients are choosing a handful that they will allow contractors to use, effectively reducing customer (contractor) choices.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
Contractors are not taxed "as if they are employees" – I don't know any permanent employees who have to pay Employers NI nor the Apprenticeship Levy nor have a compulsory 12.8% deduction for holiday pay.
It is manifestly unfair that contractors are now being taxed more than permanent employee, may still be required to run a company with the costs associated with that, yet have none of the benefits of employees – no employers contribution to pension, no holiday pay (unless already deducted from their rate), no sick pay, no access to other employer funded benefits (paternity / maternity leave, subsidised canteens etc…)

25 February 2020

Graham New

My Background
I have worked as an IT contractor for 22 years. All my roles have been 3months – 12 months in duration. I help on a project then move on. I work as a business and pay for my own training, tools, insurance and pension.

Existing measures in the public sector
What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience and how have they affected the draft Finance Bill proposals?

It would appear many in the public sector have altered the way they hire contractors and have become realistic with many roles advertised as outside IR35.

However, it would appear nothing has been learned in the private sector from the public sectors implementation. I can only describe the situation as mass panic.

Impact of new off-payroll rules on organisations
Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

No - there appears to be whole new departments springing up in corporations in order to try and comply. From what I have seen this is mostly the blanket approach in order to make things simple for the new department. Appeals processes are swamped. The costs must be huge.

Also, the potential for litigation on these corporations is the great unknown. I can imagine the demand for holiday pay, pensions and sick pay will start very soon.

Is the exclusion of small organisations sufficiently robust and how might small organisations gain sufficient assurances that they fall within the exclusion?

Don’t know

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

It has been described to me as a pass the parcel of a ticking time bomb, everyone in the chain wants to off load it as soon as possible with little thought or action along the way. As long as it ends up on someone else’s desk – job done!

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

The rules are unworkable. It would be far easier to pass some sort of test to say this individual is working like a freelancer. It is very easy to differentiate between a contractor and employee, e.g. employee does not buy insurance

Determining the tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

Just try reading the Inland Revenues guidance on this. There is nothing more to say. Clearly written for 19th century master – servant relationships.

I am seeing roles of 3 months being advertised as insider IR35 – how would anyone know without assessing the potential contractor as well. Clearly a nonsense.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Last time I looked it took no account of the worker being 'in business on your own account' – a principle long ago determined at tribunal as a key differentiator between employee and freelance. CEST has also been frequently changed but HMRC will not admit what they have changed – who would trust such a system?

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Having just challenged one myself, I would say no safeguards. It was done without my knowledge or input and was grotesquely wrong. I am still waiting for the appeal process to start. I can provide a clear example of this if so required.

Policy objectives and the wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

See 4, but also why not a 12 month rule? How easy would that be compared to this mess.

10. Will the Bill, as drafted, achieve the Government's objectives?

HMRC often states that it thinks 90% of people are failing to pay tax correctly under the existing ir35 system. Yet when push comes to shove at tribunals HMRC loses 88% of cases. Can't be both ways.

"In the last seventeen case decisions, since April 2010 they have only fully won 2 cases out of 17 - just a 12% win rate. This is against the backdrop of HMRC claiming that there is widespread non-compliance with the rules. If that's the case, then why aren't HMRC winning cases?"
https://www.contractorcalculator.co.uk/ir35_court_cases_judgments.aspx

11. What is your view of the role of umbrella companies in the context of these proposals?

Full of rogue operators ready to skim exorbitant fees

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Its creating a new environment of the no rights employee. All the tax burden and no protection. Fall sick? Tough no pay.

10 March 2020

Andrew Nichols

SUMMARY

Blanket banning of Ltd company contractors took place in 2017 and it's happening again but much worse this time with much bigger impacts
Assessments of the impacts to the private sector, the economy and organisations have not been carried out. The OBR report in 2018 gave the rollout an uncertainty factor of VERY HGH because they did not understand the behavioural effect
Small organisations and consultancies are being dictated to by their clients not to use Ltd company contractors
My contract with my financial sector client has been terminated early and I've been incorrectly placed inside the new off-payroll rules
HMRC should implement a blanket tax to organisations that engage Ltd company contractors instead of the complex IR35 legislation
CEST is heavily flawed and needs a lot of work doing to it
There needs to be an independent determination dispute process with legal backing to recover lost earnings for determinations that have not taken reasonable care
The government are going to lose tax revenue as they did not plan on blanket bans of Ltd company contractors or work being moved offshore
Umbrella companies need to be regulated to prevent tax evasion
If I'm to be taxed as an employee then I should be given employee rights, benefits and protections
The off-payroll changes taking place are providing me with a great deal of stress, worry and uncertainty on how to support and provide for my family

Answers to Specific Questions

Existing Measures in the Public Sector

When the off-payroll rules were introduced into the public sector in 2017 there were multiple cases of blanket banning of Ltd company contractors resulting in contractors moving from the public sector to the private sector. This was caused due to unfair treatment of contractors by their clients in the public sector. The same thing is happening again in private sector where there are widespread bans on organisations engaging with contractors via their Ltd company and therefore lessons have not been learnt from the rollout in 2017.

Impact of new off-payroll rules on organisations

The impact of the extension of the off-payroll rules into the private sector has not been adequately assessed as can be seen in the OBR report in October 2018. In the report the OBR gave it an uncertainty factor of VERY HIGH for the rollout to the private sector. The reason for this was because they did not understand what the behavioural effect was going to be as they had no data on it. This has been raised to HMRC and HM Treasury multiple times but has not been listened to and the landscape is no different today than it was in 2018 when the OBR issued their report. The burden on organisations to meet the "compliance" rules are unrealistic and far too costly. This is resulting in organisations banning the use of Ltd company contractors as it's much cheaper and easier for them to force contractors into umbrella or agency PAYE arrangements. In doing so they are reducing rates paid to contractors to cover the additional taxes associated with these arrangements whilst also leaving the contractors to cover the fees of being involved in these arrangements therefore reducing the contractor's earnings even further. Guidance from HMRC to organisations, agencies and contractors is severely lacking and the minimal amount that has been issued by HMRC is insufficient, confusing and constantly changing. For example, HMRC have always said that off-payroll rules would take affect against any payments received *after* 6th April 2020 regardless of when the work was carried out. This was then changed very recently by HMRC to state that the rules would only apply to *work* taken out after 6th April 2020 and not just payments received. This caused further confusion to organisations, agencies and contractors and in many cases was too late as organisations had already started terminating contractors.

Excluding small organisations from the off-payroll rules is a positive step. However, the exclusion is pointless when organisations dictate to these organisations that they cannot use Ltd company contractors on their account. For example, this has been publicly done by HSBC where they are dictating to all of their partner consultancies (big and small) that they cannot use Ltd company contractors on their account. This is because organisations do not understand the very complex rules and therefore dictate to their partner consultancies how they must operate on their account to ensure they don't fall fool of the off-payroll rules.

The effect on contractors of the off-payroll rollout into the private sector is already being seen and felt. Companies are banning the use of Ltd company

contractors to help deliver projects and are sending more and more work to the larger consultancies and offshore. I currently work on a contract with a client in the insurance sector and have witnessed this happen first-hand. My 12-month contract has been terminated early and will conclude on 20th March 2020 (6 months early) as the area I'm working within is banning the use of Ltd Company contractors. This is because the organisation and its managers do not understand the new rules and so are taking a risk averse approach and forcing contractors into either umbrella arrangements or leave. This is happening across the financial sector and is affecting thousands of contractors.

A much simpler approach would be for HMRC to issue a blanket tax for all Ltd company contractor arrangements of 15-20% (for example). This would allow Ltd company contractors to continue working within the existing rules whilst also increase the tax yield for HMRC. If HMRC are to stick with the current plan of rolling out the new rules, then they need to provide much clearer documentation and explanations of the rules for the whole supply chain to adhere to. HMRC also need to better under the case law of the rules as their guidance and explanations often conflict with case law leaving everyone confused as to what is right and what is wrong.

Determining tax status of workers

Tests for determining employment for the purpose of these rules are not clear at all. Questions are often expected to be answered in a very black and white way in order to reach a determination, but this is very seldom the case. As an example, substitution is a key status test, but the expectation is that if you can't substitute then you are pointing towards being an employee. However, there are many reasons as to why a substitution isn't feasible or the best option and so not being able to substitute should not be taken as a view that you're more and employee than a self-employed worker.

CEST is significantly flawed and needs to be updated significantly before it can be used reliably. It places far too much emphasis on substitution. For example, if you answer the substitution question as "yes" (stating that you can substitute) and that you will pay for the substitute then it doesn't really matter what you answer to the rest of the questionnaire as you will get a determination stating that the rules do not apply. This does not align with case law and HMRC would not stand behind this result if all other questions pointed to that of employment. Therefore, CEST needs to align more to case law such as Mutuality Of Obligation (MOO), Control and Financial Risk.

Challenging Status Determinations made by agencies or organisations is almost impossible. The current legislation that's due to be implemented in April, states that the dispute and resolution process is to be owned and managed by the client. However, if the client has (incorrectly) determined the contractor as inside the off-payroll rules and the contractor disputes this then it's the client who is left to take the decision of whether their original assessment was incorrect or not – effectively marking their own homework.

Moreover, clients are under no obligation to even take any dispute seriously as there is no legal or other route for the contractor to take. I have personally experienced this with my current Client. As stated above, they have stated that I fall within the new rules and as such my contract will be terminated on 20th March and moved inside IR35. I disagreed with the status determination ruling and asked to raise a dispute. The agency nor the client knew what their dispute process was and so have made it up as they have gone along. The agency asked me to submit my dispute via email. I submitted a 4 page dispute with evidence covering all areas where I was deemed inside the new off-payroll rules. The agency has yet to read or action my challenge but I have been effectively told by the "hiring manager" at my client's site that it's irrelevant what is written in my dispute as they won't be changing their stance as it's "easier to just place all contractors inside IR35". This is proof that the client led dispute process is not fit for purpose. There needs to be an independent dispute process that can override incorrect determinations and provide a true and unbiased view. Where disputes to determinations are ignored or determinations are falsely claimed there needs to be a legal route for contractors to recover lost revenue.

Policy objectives and wider context

A much simpler approach would be for HMRC to issue a blanket tax for all Ltd company contractor arrangements of 15-20% (for example). This would allow Ltd company contractors to continue working within the existing rules whilst also increase the tax yield for HMRC.

No, the bill will not achieve the governments objectives. The government did not plan on the whole financial sector (and many other organisations) banning the use of Ltd company contractors and sending work offshore. Where contractors are being forced into PAYE via agency payrolls and umbrella arrangements, rates are being significantly reduced so that the client is not paying any more than they are today and in many cases are paying less. Therefore, the approach being taken by agencies and clients will result in less tax being gained. The government are creating an environment for zero rights employment which will result in pension issues in the future when these contractors come to retire and will be looking for the state to help and support them as the clients they've been working for haven't paid into pensions for them and they have been taxed too much to put money away for retirement.

Umbrella companies need to regulated. Some umbrella companies offer rates and returns that are not realistically achievable resulting in further tax evasion. Some agencies are opening umbrella companies and forcing contractors to use their umbrella companies so that they can make additional revenue from the contractor. This practice needs to be stopped to ensure agencies are not giving a vested interest to provide inside IR35 determinations.

The Government, HMRC and HM Treasury always state that it's unfair that where two people doing the same job don't pay the same tax and that this

unfairness needs to be corrected. However, the Government, HMRC and HM Treasury do not think it's unfair to tax someone as an employee but give them zero employee benefits. If a person is to be taxed like and employee, then they should be given the rights and protections of an employee. It is unfair and discriminatory to tax a person "just like the person sat next to them" but not give them the same rights, benefits and protections as that same person "sitting next to them".

24 February 2020

Andrew Nickolls

Existing measures in the public sector

Q.1.

What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

A.1.

Public sector contracts are sometimes offered at two different day rates; one for those contractors operating from the contractor's own limited company and a higher rate for those contractors operating through an umbrella company. This difference in day rates is to offset the increased tax paid to those operating through an umbrella company.

Impact of new off-payroll rules on organisations

Q.2.

Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

A.2.

Discussions with public sector contractors shows the findings from these government impact assessments does not reflect the reality on the ground.

Q.3.

Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

A.3.

As an expert in the assessment and implementation of government regulation, companies, particularly large companies, will usually take the easiest and most risk-averse route. Blanket bans implemented by large organisations on contractors applying for contracts and those same companies ending existing contracts en-masse has been widely reported to me by my network of contractor and agent contacts. MPs have been made aware of the list of large organisations implementing blanket bans.

The Treasury minister's response has been to deny blanket bans exist (despite my contacts confirming they have handed lists of those companies to the minister in the preceding two weeks). The minister has then added that, even though denying these blanket bans exist, it is up to companies who they chose to work with.

The impact of such large-scale changes to the personal on projects and programmes has been grossly underestimated. The only way to cover the loss of so many contractors is to outsource the project/programme to large consultancies, therefore excluding small companies from tendering for these contracts. This is backed up by industry surveys in the last week showing many contractors will wait for the market to correct itself rather than accept 'inside IR35' contracts. This is largely due to the perceived risk that contractors will be subject to a retrospective evaluation of their previous 'outside IR35' contracts if they accept an 'inside IR35' contract with the same client and is backed by precedent from the loan charge scandal.

Claiming for travel and accommodation expenses before tax is not allowed for 'inside IR35' contracts as the main office of the client is treated as the main office of the contractor. The effect is London-based people will continue to apply for London roles while those outside London, irrespective of the expediency of transport links, will be unable to apply due to the cost of travel. The majority of my contracts over the last eleven years have been in London. I can no longer afford to apply for London roles unless the market rate is adjusted to compensate. The same is true for contracts that I have had to turn down in Newcastle, Edinburgh and Glasgow, that I was ideally suited for and where my knowledge and experience of the PSD2 regulation would have been a significant benefit to clients there. The overall affect is to the detriment of companies outside of London and to make the UK an even more London-centric economy, where living in London is required to work in the Finance industry and therefore further contribute to the overheating of the London housing market.

Q.4.

What will be the effect of these new measures on a chain of contractors and sub-contractors?

A.4.

Where I sub-contract through a primary consultancy contractor, the primary contractor would need to cover the cost of my expenses as well as additional taxes, or I would not be able to take on such a contract, especially where travel and accommodation costs are significant.

Q.5.

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

A.5.

HMRC should primarily test if someone is a disguised employee by checking if that 'employee' is in receipt of the standard employment benefits from the client, e.g. holiday pay, sick pay and maternity/paternity leave. If a person is not in receipt of these benefits then the client is either in contravention of employment laws, or the person is not a 'disguised employee' and is in fact a contractor outside of the IR35 rules.

HMRC should also not apply these tests for contracts that are 24 months or fewer. Anyone in a contract with the same client for over 24 months should be assessed against the criteria of a 'disguised employee'. Anyone at a client for up to 24 months should be counted as a contractor and not an employee. The duration of 24 months is the likely upper duration of a complex multi-workstream programme.

If HMRC implemented this as its fundamental test it would reverse the blanket bans that large numbers of companies are putting in place that are ending contracting in the UK. A simple test of, is this a contract equal to or less than 24 months in duration and does it offer the standard employment benefits would fix this immediately. Almost any real contract would meet these tests and any disguised employee would fail them.

The current tests used by HMRC, including risk and independence, do not easily apply to many contractors where they are brought in to work on complex IT/business/engineering changes. The contractor will need to work in tandem with the client's permanent staff and other contractors, often sat alongside them and using the client's IT equipment (due to the client's security policies), giving the impression to the uninformed casual observer that the contractor is the same as an employee of the client. The contractor though is only working for the client for a limited period, on the delivery of a specific scope of work, with (as above) none of the standard benefits of permanent employment (holiday pay, sick pay and maternity/paternity leave).

If the delivery of the scope of work is extended, the contractor does not face the same level of financial risk as a fixed price delivery as to do so would leave the contractor facing severe financial impact for changes outside of their control, e.g. impacts elsewhere in the project or wider client organisation, or

due to outside factors, such as the FCA's recent delays to PSD2 implementation deadlines. HMRC's tests therefore do not reflect the reality of how large-scale complex change is managed.

With regards to contractors being supplied with equipment, as above, the finance industry, amongst others, takes a highly cautious view of security risks. It is commonplace therefore that the client will provide the contractor with computer equipment for the course of the engagement. In many locations, a contractor cannot even bring in a small USB device due to the restrictions of the client's security policies, let along use the contractor's own computer equipment.

The HMRC guidance on this:

https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0540

defends this point by making reference to a legal case from 1990, thirty years ago. More over it is a legal case regarding a stone mason being an employee because his client provided him with a hammer and chisel. This is not the same as an encrypted computer system used to access restricted data. Time has moved on, the legal tests have not.

Determining tax status of workers

Q.6.

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

A.6.

CEST, HMRC's tool for guiding a client in determining IR35 status is significantly flawed. HMRC have refused to release details of scenarios used to test CEST so they can be independently assessed.

The fact that CEST requires a contract in place to test the status means the client, agent and contractor must progress through the initial engagement process on assumptions. This has influenced the decision by many companies to assume a contract will be 'inside IR35'. There are thirty-five guidance notes on the use of CEST (https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm11000), which must be understood by all parties to the contract.

The client (or their outsourcer for this decision) will have made a determination of the status of the contractor without the involvement of the contractor. The contractor must therefore accept the determination that is inside IR35 or challenge the decision. To challenge the decision is to ensure the agent will not put the contractor forward for the engagement. The contractor could

choose to progress through the engagement process with the view to challenging if they are successful in being selected. The safer option is to refuse to engage. Every agent I have spoken with, since these changes have begun to impact the market, has faced significant difficulty in getting candidate contractors to put forward for 'inside IR35' roles.

HMRC notes that use of CEST is not mandatory. The manual to guide the client through determining status is a huge number of articles to read through, including 'picture painting', which notes:

https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0556

'The right approach is to stand back and look at the picture as a whole to see if the overall effect is that of a person in business on his or her own account or a person working as an employee in someone else's business.'

Guidance cannot be considered 'sufficiently clear' when including such an instruction to step back and regard the conditions of work as if it is a work of art to be interpreted through a myriad lenses.

This section also seeks to invalidate CEST as it notes:

'it is not then just a question of undertaking a mechanical exercise of running through items on a check list to see whether they are present or not. Moreover, not all details are of equal weight or importance in any given situation and they may also vary in importance from one situation to another.'

Q.7.

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

A.7.

I entered the responses into CEST for a typical contract I have carried out many times. These responses would likely be the same for any other contractor project manager or similar role. The result from the CEST site was: 'Unable to make a determination' and stated I should call or email HMRC instead.

As the HMRC guidance on manual determination of a contract's off-payroll status notes (see A.6. above), a 'mechanical exercise' cannot make a clear determination. CEST's purpose seems to be to provide a response where there is a clearly 'disguised employee' in place. It cannot, however, provide an answer on the typical contractor, which number in the tens of thousands in the UK.

I have provided a copy of these CEST results in the appendix of this document.

The hiring client therefore must go through each contract with HMRC by phone or email for a response, or, as is the case with many large companies, take a blanket approach and refuse to engage contractors, instead insisting on engaging through PAYE, either fixed term contracts, which usually provide employee benefits, or day rate PAYE, which do not provide any employment protections. The latter of no employment protections seems the much more common judging by the job advertising sites I view.

This delay in gaining a determination multiplied up by the large number of contractors each company may employ creates a significant delay for all concerned, the hirer, the agent, the contractor and for HMRC. As contracts are short-term, perhaps a month to twelve months, this then becomes a regular exercise that all participants must go through, causing lost earnings and stress for the contractor.

In roles, where the contractor would have access to sensitive systems and/or information, for example in the banking industry, it is a common requirement for a Disclosure and Barring Service (DBS) check to take place. Hiring companies tend to take a pragmatic approach and generally do not allow a pending status (which can take two weeks even for a completely clear contractor) to delay the beginning of a contract. The contract will usually include a clause allowing the hiring company to end the contract immediately if the contractor fails the DBS check. This would not be possible with an off-payroll check where the determination would need to be confirmed before the contractor and hiring company sign the contract, as it covers the fundamental of the amount the contractor will be paid for the work. CEST and any manual process attached to it therefore poses a significant risk in delaying the commencement of a contract and the knock-on impact to key projects and programmes being successfully completed. Delays in beginning a contract also have a financial impact to the contractor who may have to wait perhaps an extra two weeks to begin, hence two weeks lost income (and lost tax to The Treasury).

Q.8.

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

A.8.

HMRC note on the first page of CEST that 'HMRC will also not stand by results achieved through contrived arrangements, designed to get a particular outcome from the service. This would be treated as evidence of deliberate non-compliance, which can attract higher associated penalties.'

This is vague and therefore raises a risk for the hiring company, which is then multiplied up for larger companies hiring more contractors. What is the appeals process for challenging HMRC where HMRC determine the hirer has 'contrived arrangements' but this is disputed? How often do HMRC estimate

they would draw this conclusion and therefore create further delays in any contracts beginning while the dispute process for a previous contract is on-going?

Policy objectives and wider context

Q.9.

Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

A.9.

In 2010/11 the Conservative led government determined, after a review, that they would replace IR35 with something more appropriate. This did not happen.

The changes in the draft finance bill have not been aligned with employment protections, in the purview of BEIS. The creation of PAYE 'employees' who have none of the standard employment protections and benefits is a clear sign that these changes must be paused and clear guidance given in the interim while a proper review of how to replace IR35 is carried out.

Q.10.

Will the Bill, as drafted, achieve the Government's objectives?

A.10.

The government's principle objective, as set out in the recent election, was to boost the economies of the Midlands and the North and to generate tax income from a boosted economy to invest in public services.

These proposed changes have caused severe damage to contractors (their income, their lives and the mental health of them and their families), the UK's companies' ability to deliver change, the UK's economy and the UK's international reputation as a place to do business.

The government's longer-term objective of being re-elected has also been severely damaged, with many contractors, naturally life-long conservative voters, saying (as reported in the press) that they will not vote for the Conservative party ever again.

The government's objectives have therefore been severely harmed by this gross incompetence.

Q.11.

What is your view of the role of umbrella companies in the context of these proposals?

A.11.

Umbrella companies serve only to insert themselves into the hirer/contractor relationship at their own profit. Why should a self-employed business person have to engage through an intermediary? It evokes the issue faced by Tesla in the USA where legislation in some states is mandating that cars must be sold through dealership intermediaries, who get their own cut of the profit, and car companies are barred from engaging in a sale with the customer directly. The legislation's existence in the USA is solely down to lobbying by vested interests in the car industry who have been slow to understand the demand, which has led to Tesla's success. Similarly, in the UK this off-payroll legislation benefits umbrella companies and large consultancies, some of which are the very same companies who are being hired to determine that large numbers of contracts are 'inside IR35', the definition of a 'vested interest'.

Q.12.

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

A.12.

The question highlights the issue that HMRC is conflating anyone who is 'not an employee' as being a potential 'disguised employee'. This is the same logic as identifying what a fisherman is allowed to catch by beginning with 'what is a fish?' It swims in the sea. It has a tail. It has fins. Now apply those tests to other sea creatures. Does it swim in the sea? Does it have a tail? Does it have fins? You have just caught whales and porpoises in the same net, even though that was never the intention.

You can slow down the implementation to help communicate the tests. You can offer a phone line for people to call so they can speak with an expert on the tests. Fundamentally the tests are wrong because they begin by determining what an employee is and therefore anything that meets those tests must be an employee.

Trying to make a determination of their status based on what they are not is extremely unhelpful and certainly not something CEST seems capable of achieving.

Many contractors do not want to be employees. They are contractors in order to be their own boss. I went back into permanent work for a year or so after the Brexit referendum as the uncertainty had caused the contract market to stagnate. After a year or so I quit, returned to contracting and determined to never go back into permanent work. The 'career ladder', 'annual assessment' 'networking' culture was the antithesis of what I wanted. I take the downside

of having to cover my own healthcare costs, the lack of sick pay and holiday pay, the accountancy fees and insurance costs, in order to be free of the employee downsides. I turn up, I engage with the hirer, I deliver the project and then I move on to the next contract somewhere else, perhaps delivering the same changes for a different client, or delivering something excitingly new. I get to be at the forefront of change in the finance industry by hopping from one company to the next. I bring expertise from each contract to the next. At least I would if this government let me.

Contractors spread those learnings like a beneficial virus, making the body of the UK economy better able to progress, to develop, to withstand the competition of the international challenges.

20 February 2020

Stephen O'Brien

1. I'd like to submit my thoughts and concerns over the extension of the off-payroll working rules which takes effect from April 2020.

2. I have been a 'contractor' for over 20 years both in the UK and abroad. I usually work away from home and so have significant costs associated with that i.e. home rental, travel etc which I have been able to offset against tax as I believe I work outside IR35. HMRC have a very blinkered opinion here and state that all of these additional costs are not relevant as is the fact that we get no employee type benefits. A holistic view must be taken for the works that this affects.

3. The company I'm currently working for and have been work for for over 4 years and recently decided I'm inside IR35 – even though the they had previously agreed to my contract which clearly showed I was Outside IR35. So from April I wont be able to offset my costs and I will be taxed like an employee without any of the employee benefits.

4. This affects a large number of people where I work (BAE Systems in Barrow) – we are working on a project on national security and importance – moral was never high here but has taken a major dip. There are a very large number of contractors here that travel to work here through the week from all over the country – almost all of these people are now looking for work closer to home.

5. Places like Barrow-in-Furness will suffer significantly if people stop travelling here for work.

6. I have done my own assessment using the CEST tool and find myself to be Outside IR35 – however the companies that are now doing the assessments haven't consulted individuals and generally don't have a clue what they are

doing but since they are scared that the company could be liable for tax etc they are just finding everyone inside IR35.

7. Project like Dreadnought nuclear submarine will significantly suffer without the travelling contractors which will delay the project and have massive financial implications not to mention the impact on our Naval capability.

7 February 2020

Jon Oliver

Existing measures in the public sector

What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

1.1 I was engaged at a Central Government Department during the period in which the new off-payroll rules were introduced. These changes caused a great deal of disruption, both in terms of abstracting middle- and senior-managers from their daily jobs, and also in terms of catastrophic impact on the delivery of projects.

1.2 Throughout the process, there was a dearth of coherent guidance for contractors, agencies and the hiring organisation. Whilst all were led to believe that CEST tool determinations were gospel and would be honoured under all circumstances, HMRC have subsequently repudiated the tool's findings at tribunal. The client Department took a diligent approach and requested all PSC contractors to complete a CEST tool determination and also to complete a structured IR35 questionnaire from a commercial partner, QDOS. Senior managers then reviewed the outputs of these tests , face-to-face, with each contractor and made a recommendation to the relevant corporate function. This episode led to many key resources leaving the organisation pre-emptively (due to scaremongering, and the perception that the private sector would be immune to this development) and also due to receiving an 'unfavourable' status determination.

1.3 HMRC have hailed the policy and its implementation as an unmitigated success; however, the costs associated with processing contractors as above and the costs associated with stalled projects due to loss of key resources must have been significant.

Impact of new off-payroll rules on organisations

2. *Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been*

made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

2.1 From my perspective, whether the impact has been adequately assessed and by whom is something of a moot point in light of the 'blanket' policy issued by many companies who have already laid off PSC contractors rather than face any compliance burden, or the financial risk associated with 'getting an IR35 assessment wrong'. It must be noted here that it would appear to be the case that even HMRC are ill equipped to predict which contractors would be determined as being 'caught by IR35' given their track record with cases. In light of this, it is unsurprising that firms are unwilling to chance their hand at guessing either.

3. *Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?*

3.1 No observations to make here.

4. *What will be the effect of these new measures on a chain of contractors and sub-contractors?*

4.1 No observations to make here.

5. *What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?*

5.1 The optimum solution would be for the Government to 'grasp the nettle' that has been avoided since 1999 and replace the whole of IR35 with a sensible set of regulations. In doing so, it would be best to implement a set of 'employment tests' which are more concrete and less open to interpretation, vexatious or otherwise. For example, it is difficult to argue that a contractor has not become 'part and parcel' of an organisation once they have been there for longer than 3 years, etc.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

6.1 Clear tests for determining employment have not been articulated in this context. The tribunal system has eschewed the traditional tests of Mutuality of Obligation, Substitution and Direction/Supervision in favour of a 'big picture' determination. As an independent contractor, this means that I am unable to assess a contract role and working conditions and make a confident statement

that it will not fall foul of HMRC's *interpretation* of the regulations. Further to this, I have no way of knowing by which arguments a tribunal judge would swayed. Hence, this creates a huge unmanageable financial risk to my limited company. The net result of this is that I must retain a large cash balance within the company accounts to meet any payments resulting from an unfavourable determination of IR35 status. This means that my company is unable to progress its strategy to expand and create jobs in the under-privileged region in which we are located.

7. *What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?*

7.1 As an independent contractor, in business on my own account, the CEST tool is not only unfit for purpose, its determinations are predicated on a warped and inaccurate understanding of the regulations and case law. CEST does not adequately consider Mutuality of Obligation; it makes 'point' judgements rather than consider the big picture (as per the requirements under Hall v Lorimer); it returns incorrect determinations when inputting the details of court cases that have been successfully appealed by tax payers; and, HMRC have not published any evidence to prove that CEST is accurate.

7.2 Without first establishing a clear, incontrovertible definition of what employment looks like, it is inadvisable to try to create an algorithm to provide employment status determinations. In my view, any tool will be fallible and thereby create unacceptable business risk unless it is based on deterministic factors rather than using some stochastic approach based on interpretation of divergent case law.

8. *How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?*

8.1 The appeals process as outlined is woefully inadequate. I would be able to raise a dispute with the engager but the status dispute process rests entirely with them and at their discretion. Effectively, I become an employee with no employment rights. I have encountered one payroll company who are charging £150 to process a dispute (payable by the contractor) and it did not escape me that an 'inside IR35' outcome would result in the contractor ending up on their payroll service.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

9.1 As above, it would be best to implement a set of 'employment tests' which are more concrete and less open to interpretation, vexatious or otherwise. For example, it is difficult to argue that a contractor has not become 'part and

parcel' of an organisation once they have been there for longer than 3 years, etc.

10. *Will the Bill, as drafted, achieve the Government's objectives?*

10.1 The Bill fails to implement safeguards to ensure that Organisations conduct a 'fair' assessment of each role - a practice embraced by the Public Sector - and as a direct result, firms have summarily shut down their use of contractors to avoid financial and business risk using 'blanket' assessments. This is already causing damage to the UK economy.

10.2 I think it will continue to cause immense damage to the UK's flexible workforce at a crucial time when it is needed most. Large corporations are already using overseas talent instead of risking using UK contractors in order to avoid risk from the poorly articulated regulations. Conversely, overseas agencies are already canvassing UK contractors with opportunities.

11. *What is your view of the role of umbrella companies in the context of these proposals?*

11.1 These entities add yet another layer, welcomed by no-one, between the client and the individual delivering the work purely to work around poorly articulated tax regulation. In the current situation, this creates scope for the proliferation of 'questionable practices' which would need to be addressed at a later date.

12. *How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?*

12.1 Successive Governments and HMRC have failed to identify and address the change in flexible working arrangements which now exists. As a result, the tax system is failing everyone. Whilst my personal view is that 'Zero Hours Employment' is immoral, the impending situation with 'No Rights, No Recourse Employees' is equally undesirable.

12.2 Whilst previous claims by contractors 'deemed' to be employees by HMRC against their 'deemed employer' for employment rights/benefits have failed, HMRC are implicitly changing the situation so that the hirer is now doing the 'deeming' and is *also* withholding employment benefits. This is something of a different story, and the latitude for a successful claim may be greater.

10 March 2020

John Openshaw

Submission in respect of the Finance Bill and the impacts of IR35
This submission is made on behalf of Infinite Precision Ltd. (IPL) by Dr John Openshaw. IPL has been contracting as a Microbusiness for 23 years. It's provided specialised technical expertise with high level involvement in Civil and Defence systems, MoD research projects and development of cyber-security products.

This submission contains comments on theoretical and actual engagements by various companies other than IPL. This is entirely for illustration and is not meant in any sense to be pejorative. No confidential material is included in this submission.

Summary

The new version of IR35 creates a situation whereby Contractees are incentivised, at no cost to themselves, to inflict a tax regime on Contractors that favours the HMRC. Failing to place Contractors under IR35 risks the costs of investigation to the Contractees. The Contractor has no right of response and the Contractee's (not the HMRC's) decision is final.

There is no incentive in the HMRCs IR35 system to provide a correct determination of IR35 liability. Contractees should undertake a case-by-case evidenced approach to determining IR35 applicability. However, a multitude of large companies (including the entire banking sector) has applied a blanket determination to avoid both cost and potential liability.

A simple solution to resolve the above would be to ensure that if an assignment is deemed as falling within IR35 then the Contractee must hire a permanent employee.

The HMRC approach is not 'do-the-right-thing' but 'come to the correct conclusion'. Failing to come to the correct conclusion risks investigation against a vague set of rules. This is akin to a jury being told that if the defendant is found not guilty they themselves will be charged and investigated!

The IR35 legislation is confused, vague, fails to address its supposed purpose and has been consistently tinkered with, Certainly it appears as a vindictive pursuit of specialist small businesses. The HMRCs CEST tool is widely regarded as unfit for purpose and fails to reflect the true legal position of IR35, most notably in the exclusion of consideration of 'mutuality of obligation'. However, Contractees will necessarily use this tool as it is the HMRC tool and HMRC control the IR35 tax legislation and willingness to undertake expensive audits.

IR35 has established a new class of worker; taxed as an employee yet with no statutory legal employee protection or rights. It is untenable that a Contractor is taxed as an employee yet given no protection (against, bullying or racism) or standard benefits (holiday / sick pay) under employment legislation. Microbusinesses are now unable to claim for travel and subsistence making working out of area uneconomic.

The absence of any employee rights whatsoever must surely be a cast-iron indicator that a contractor is not employed and cannot be classed as such!

UK PLC is a dynamic and innovative nation that requires a thriving pool of mobile expertise. IR35 will decimate this pool, cutting innovation and significantly increasing costs.

Background
HMRC has coined the term Personal Services Company (PSC) in order to classify Microbusinesses as liable for IR35 and infer that they act as personal intermediaries. However. 'PSC' has no legal meaning and does not not affect the liabilities or operation of the company. IT Contractors are employed by a company. This company, is no different from any other (eg CSC, Price Waterhouse Coopers, Leidos, et al) bar the scale. All exist as separate legal entities.

The rationale for IR35 is unclear. The problem it is attempting to remedy is unclear. The policy and advice is unclear. Notably the advice provided in the CEST tool does not match the legal position and rulings (such as mutuality of obligation). With regard to any aspect of IR35 it is difficult to view the HMRC as competent and fit for purpose.

There is a general perception that IT Contractors are overpaid so it is 'ok' to impose a punitive tax regime. This is irrelevant. The issues are whether IR35 is fair, proportionate, effective and consistent. There is a false perception that Microbusinesses are 'paid' similarly to an employee. This is incorrect. It is the charge-out rate of expertise, not a pseudo-wage. This is exactly the same whether a Microbusiness is providing expertise or Deloitte, Ernst and Young, KPMG, etc.

The HMRC has manufactured a situation that enforces an unjustified tax regime on Microbusinesses. Contractee companies are incentivised to place a Contractor 'within' IR35 or the HMRC will inflict the expense and inconvenience of an audit. Significantly, there is no incentive for determining the correct IR35 status. As the entire cost of IR35 falls on the Microbusiness the HMRC are creating an artificial situation whereby one company decides the tax status of another whilst having an incentive to provide the 'correct' answer to HMRC. The IR35 legislation is not fit for purpose in this regard.

A Microbusiness has no right of appeal to HMRC for an IR35 determination. The Contractee determines the tax regime under which the Microbusiness Contractor has to operate. The Contracting company is incentivised by the HMRC to give a biased analysis and rule in the favour of a punitive tax regime on behalf of the HMRC. However, as the Contractee will not be (and should not need to be) an expert in IR35 legislation (the HMRC itself is unclear itself on the legislation) they are ill qualified to make an objective judgement,

There is suspicion in the Microbusiness community that IR35 legislation has been devised by large Consultancies that have a vested interest in damaging and/or destroying the Micro-business community. As a result of a lack of a mobile pool of expertise, they can profit handsomely. This will drive up costs are large consultancies have charge-out rates 2 to 3 times that of Microbusinesses and demand considerably greater engagement of personnel and duration.

Considering the UKs reputation for technical innovation, it is unclear why decimating a highly qualified, specialised, mobile and motivated pool of expertise is of benefit to UK PLC and why the HMRC is relentlessly pursuing this artificially defined section of the business community. It is unclear whether any stakeholders have a vested interest in ensuring the HMRC pushes ahead with IR35.

There is concern in the Microbusiness community that companies providing advice to Contractees do not understand IR35 legislation. Furthermore there is a vested interest in suggesting a blanket approach as the advisor can then offer ongoing support in dealing with Contractors 'inside' IR35.

The HMRC has continuously tinkered with the CEST tool, not to provide an accurate determination but to ensure Microbusiness engagements are shown to be within IR35. The CEST tool is widely regarded in the industry to be unreliable, uninformed, biased and unfit for purpose. Mutuality of Obligation (MOO) is currently the most dominant of many factors suggesting employment, however, the CEST tool (so far) takes no account of MOO.

Informally, I have worked in teams alongside contracted personnel from 'large' consultancies such as Babcock, Thales, Pwc, Leidos. Everyone, without exception, has some degree of supervision to ensure that the deliverables are as stated. This is true of contracted expertise be it from Infinite Precision or PwC. It is also true of a builder or plumber. However, none of these are being pursued under the HMRC legislation.
Lack of clarity regarding why IT Microbusinesses get punitive treatement
The HMRC IR35 regulations vindictively target IT Microbusinesses. It is unclear why, but an appearance of having money yet without the resources to mount significant legal challenges and undertake effective tax avoidance strategies may be motivating. This re-enforces the perception that tax legislation and HMRC operations favour the rich.

Microbusinesses already pay a significant percentage of their turnover in taxation. IR35 introduces an immediate rate of circa 65% on turnover. It is quite frankly galling that the HMRC is pursuing IR35 in an industry sector that provides significant benefit to UK PLCs technological expertise, yet freely allows the following:
Facebook's UK tax bill totalling just 0.62% of revenue (just one-hundreth of the rate for a Microbusiness under IR35)
Amazon, (with a revenue of £8.7billion) paid UK tax of £4.5M.

In 2017, Ocado (with a revenue of £1.4 billion) claimed a profit of £1 million and paid no UK tax.
In 2017, Royal Mail (with a revenue of £10.1 billion) claimed a profit of £212 million yet received tax credits of £93 million.
In 2017, BP (with a revenue of £190 billion) claimed a profit of £5.6 billion yet received tax credits of £134 million.
In 2017, AstraZeneca (with a revenue of £17.2 billion) claimed a profit of £1.7 billion yet paid no UK tax.

Plumbers and builders work on the premises of, and are directed by, the employer. However, they are not considered within IR35. Using the mindset of the HMRC it is difficult to understand why this is.

At a larger scale, take the example of a Defence Contractor undertaking a large project for the MoD. A recent example (and this is just one of many similar) would be General Dynamics (GD) supplying the EvO project for the MoD. GD bill and provide engineers to the MoD at a specified day-rate. The MoD directs and guides the EvO project. Why are the GD engineers not caught in the IR35 legislation and the GD charge out rate taxed accordingly?

There has been concern that long-term Contractor engagement is masking pseudo employment. However, service contracts are frequently in the 5-7 year range. The MoD itself has a 27 year service contract with a company called AirTanker (Voyager). AirTanker provides military flights. The flights must have a flight crew, ground crew and engineers which are paid for by the MoD. Why are these roles not considered masked employment by proxy and the payment for these roles subject to the IR35 regime? The tasking of the flights is under the full direction of the MoD. The MoD contracts via AirTanker long-term employees to repeatedly undertake their business.

It is common for Microbusiness Contractors to work side by side with staff from large consultancies and businesses. However there is no indication that their daily charge-out rates will fall within IR35 and considered employment.

PriceWaterhouseCoopers (PwC) is currently assisting the HMRC to deliver the Customs Grant Schemes. It is reported that this is due to HMRC being unable to fully resource this program. As the program was designed by the HMRC, run by the HMRC, monitored and given oversight by the HMRC, how is it possible to claim that the PwC resource are not HMRC stand-ins? Why is the day-rate for the PwC staff undertaking the HMRC work not liable for IR35?

Bizarreness of being employed yet not employed
It is simply untenable that an individual is classed as employed (for tax purposes) yet not have any employee rights. This includes: employment rights (the right not to be abused, discriminated against or readily dismissed), not being expected to find your next paid assignment, holiday, sickness and paternity pay, pension contributions, ongoing employment as an employers obligation, redundancy pay and any training or professional development.

The absence of employee rights must surely be a cast iron indicator that an individual CANNOT be considered as employed!

It is also untenable that an individual is classed as employed (for tax purposes) yet still be required to provide public liability, employers and professional indemnity insurance, file business accounts and be held liable for their actions over and above the manner of an employee.

Microbusinesses provide an essential mobile pool of technical expertise. However being deemed within IR35 means travel and subsistence (T&S) expenses can no longer be claimed. This means it is economically unviable to work out of area. Companies requiring expertise will only have the local pool of talent. Future innovation will be severely hampered in regions where support doesn't exist.

It is a significant anomaly that for instance, a Microbusiness may provide technical expertise to say a Prime Contractor working for the Government. The Prime Contractor can charge T&S. The Prime Contractor is not deemed to be providing employees to the Government and will charge T&S. The Microbusiness providing expertise into the Prime Contractor is deemed to be and cannot charge T&S.

Microbusinesses are classed as employees, yet have to have continuously find further paid engagements on their own behalf.
Impact on UK PLC
UK PLC is a highly dynamic and technically innovative environment. As a result of IR35 the damaged availability of specialist talent will impact competitiveness and innovation.

Microbusinesses provide essential cross fertilisation of the latest technical knowledge and distribution of best practice improving UK wide knowledge. IR35 will reduce the rate at which UK technology can develop and innovate.

IR35 will increase costs. The alternative to using Microbusiness expertise is the need to lock talent into permanent employment or to utilise a larger consultancy (doing the same work) that HMRC will not consider as falling within IR35. It should be noted that larger consultancies have a charge rate in the region of 3 times that of a Microbusiness and will insist on a significant team size.

IR35 will result in an inability to support technical programmes outside of areas where a pool of technical expertise exists. Classing a Contractor as an employee prevents T&S to be charged as an expense.

Innovation and new products are often funded by contracting out technical expertise. Microbusinesses are now unable to build cash reserves to fund

innovative products. This puts small businesses at a complete disadvantage to larger businesses who for some reason are completely exempt from IR35.

It is an informal observation that Microbusiness Contractors are motivated by completing a project successfully as this is the biggest factor in garnering future business. If a Microbusiness does not deliver then they will rapidly be removed and go out of business. This is not necessarily the case of the larger Consultancies that will necessarily replace Microbusinesses.

There will now be an inability to 'surge' source skills for large projects. It is unclear where the mobile pool of talent to fulfil this work come from. Microbusinesses are more agile and can respond quickly to demand, maintaining UK competitiveness.

There is significant widespread concern that IR35 opens up a mechanism to abuse workers. A company can now insist on using contract workers all within IR35. It may even set-up a subsidiary company to handle this. This has no cost impact on the company but the HMRC has enabled contract workers to be considered employees but have no employment rights. This is untenable in 2020.

Andy Ong

1. Firstly thank you for taking the time to hear our voice as up till now it felt as if it has fallen on deaf or biased ears. I have worked as an IT contractor for nearly 10 years in all sorts of different industries spread over public and private sector.

2. Prior to the ir35 changes being rolled out to the public sector I had been working on a large public sector defence project. It involved upwards of 150 contractors at its peak and we were all there explicitly to work on this project that spanned over 2 years. At the end when most of the work was done we all had our contracts terminated and we moved on to other things.

3. In this example there are a few key points to note. Every contractor that came through the door was highly skilled in their field, and for those that weren't up to standard they were let go at a week or two's notice. This helped keep the project appropriately resourced with the ability to rapidly scale up and down as required. There were no complaints or tribunals when we were let go in swathes as this is part of the risk we accept living the life of a contractor, in that we forego our employment rights/benefits, such as holiday pay, sick pay, paid maternity/paternity leave, pension, bonus, company healthcare schemes, right to strike, right to training/professional development, unfair dismissal, etc. for the single purpose of being able to take home more money while we are in contract (of which we often spend months out of contract depending on market conditions with no income or help).

4. Essentially contractors typically work with a different mindset where we come to work on a contract and are focussed on the work at hand, not taking a lot of holidays, climbing the ladder for promotion, personal/professional development, etc. which means we focus and deliver faster than the average permanent employee which is important to project work, rather than steady state running of legacy products.

5. When I finished this contract in 2016, and knowing about the public sector ir35 shake up, I immediately discounted any public sector inside ir35 contracts as at the time the rates were comparable to private however there would be a significant take home reduction. I was essentially unemployed for 3 months before I found my next private contract and have never even considered other public sector contracts, though I have noticed organisations have since started paying higher rates in compensation or taken on additional risk by advertising some outside ir35 contracts.

6. While I'm happy to see the market rate adjustments I can't help but feel disheartened that all those projects being paid for by the public purse are becoming that much more expensive which either means some projects don't go ahead at all, the projects that do go ahead are budgeted to be carried out by a reduced and potentially more stressed headcount, and for no benefit other than to pass back a bit more money to hmrc. And if fewer contractors have jobs and are in work inside ir35 contracts how much extra money are they really collecting (instead of getting a little of a lot, has it become a lot of much less)?

7. I have spoken to many friends I've worked with in the past and the feeling is the same and that people will only consider an inside ir35 contract if they are desperate and have been out of work for more than 3 months, hardly conducive to attracting good talent to deliver important projects successfully.

8. Now that the changes are being rolled out to private sector too the knee jerk reactions of companies have been terrible with huge swathes of contractors being dropped out into unemployment. Not many of us would register as unemployed and collect benefits but with a market flooded with supply and limited demand perhaps it could come to that for some. The client I currently work with has said it cannot accept any financial responsibility of the impending changes, and are not prepared to take on risk so have flagged almost all their contractors inside ir35. So while losing the benefits of working through a Ltd company structure and paying more income tax and employees NI, we are also being passed the 13.8% employers NI to pay either via a rate reduction, or being forced through an umbrella company who will take the 13.8% or what we receive. Trust me I'd rather not have to work through a ltd company as it's a pain to manage, but it is just one thing to make our choice as contractors worthwhile, however even that is being taken away from us.

9. On a side note I've tried running through the CEST tool for status determination a number of times and most of the time I receive a response where my status cannot be determined by the CEST tool which most companies are taking the risk averse approach of saying in that case we are declaring you inside ir35.

10. Looking at the current situation if things continue as they are we would be earning similar to employees, but not getting any of the vast employee benefits, and in no way does that put us on the same level as "working as employees". The alternative is to employ us as employees but while that makes sense for smaller numbers what happens in the situation of large projects (like the example described in para. 2-3) where 150+ contractors are made employees and then the project comes to an end? Large projects like this don't come around that often so it would mean big rounds of redundancies which are costly, time consuming, and stressful for all parties involved.

11. Alternatively contractors can continue being used inside ir35 but to get good talent rates will need to be adjusted in the market which brings us back to the pitfalls mentioned in para. 6.

12. Given that the UK is largely a service oriented economy I can't help but feel we are cutting our nose off to spite our face as companies having to work with significantly higher percentages of employees means we lose our agile ability to scale up and down for projects quickly, and those that can scale by using inside ir35 contractors inherently will become more expensive, or slower to delivery due to reduced headcount budget. If this comes to pass all this will contribute in a significant reduction in our competitiveness on the European and global market to provide services and bids will be lost to other countries which I fear could lead to a downward spiral in jobs, exodus of skilled labour to other countries, and a reduction in desirability of multinationals to stay/setup operations in the UK, which is where we get a lot of our work. All this at a time when Brexit is already severely testing our competitiveness in the global services market.

13. I don't have any suggestions for how this could be done better and more fairly as I feel the whole concept of ir35 is inherently unfair as its whole argument is to try and classify contractors as working like employees when we are clearly different and serve a different purpose in our economy, but if the government's goals are to generate more money from the contingent work force then I think their efforts would be better directed at trying to encourage growth instead of stifling it. Again a bit of something is better than a lot of nothing.

8 February 2020

Tim Orme

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Yes, the dividend tax changes that took place a few years ago have already reduced the advantage of working through a limited company versus being employed.

In return for the risk of running their own business the freelancer was able to structure a remuneration package through salary and dividends and usually achieve a slight tax advantage (just like any other business) over an employee. The Treasury had countered this by introducing, effectively, new thresholds in 2016/17 whereby the first £5,000 of dividends beyond the personal allowance were tax free and then dividends were taxed at 7.5%, 32.5% or 38.1% depending on your level of income. Freelancers paid more tax and the gap between freelancer paid tax and employment tax reduced from 2016/17. In 2018/19 the £5,000 was reduced to £2,000 reducing the tax gap further. The perceived 'tax gap' issue was therefore addressed, and the actions are working.

10. Will the Bill, as drafted, achieve the Government's objectives?

No, the Government's objectives are to ensure that contractors/freelancers who fall within IR35 definition are treated as employed and pay employment taxes.

The way in which the Bill is drafted and is being implemented, will result in contractors who should fall outside the scope of IR35 falling into IR35 and being treated as employees. So it will achieve the opposite objective.

This is because most large companies have responded to the upcoming legislative changes by deciding that it is too complicated or risky for them to assess the status of individual contractors. Therefore, they are deeming all contractors as inside IR35 without proper consultation and without the full facts.

For example, in my own situation, I provide training consultancy services through a limited company to a range of large clients and business schools. I am confident that I satisfy the HMRC tests to be considered as outside IR35. Yet one of my clients (one of the largest oil/ energy companies) recently announced that it will no longer engage any contractors through a limited company. Instead all contractors will need to be employed by an agency or umbrella company. This results in an approximately 25% loss of income.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Not effective. As noted above my client and many other large companies are bypassing the status determination process entirely and training all contractors as employees and allowing no challenge whatsoever.

11. What is your view of the role of umbrella companies in the context of these proposals?

This change will enrich umbrella companies, who charge commission on each payroll they process, because of the massive increase in contractors treated as employees as large companies require contractors to be employed by agencies or umbrella companies instead of employing them directly.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Contractors, like me, who set up a limited company bear significant risks and expenses:

- Accountancy & tax fees
- Home office, computer, software costs
- Having to fund your own car, holiday pay, life insurance, health insurance, illness insurance, public liability insurance and professional indemnity insurance and, very significantly, pension
- The most significant risk, however, comes from the very simple fact that no work means no pay. Caring for children, elderly parents or coping with bereavement is all at your own cost. In employment scenarios the employer, generally speaking, can provide significant support and sometimes well beyond whatever an employment contract may stipulate (i.e. compassionate leave).
- Finally, the risk of no parachute on losing your position with limited notice rights and no redundancy. And remember if no work lands in your lap you have to market, network, advertise and promote yourself and this takes time and money just like any other business.

This flexible resource provides massive benefits to the fast-moving project driven world where flexibility of resource is key.

If contractors also have to bear additional employment taxes without gaining full employment rights, I predict that many thousands, perhaps millions, will simply retire or switch to a full-time job instead. This will result in a major dislocation to companies who use contractors for flexibility and to a dramatic reduction in this growing sector of the economy. It will also lead to a reduction in total tax collected due to retirement of people in their 50s and 60s who hoped to carry on working.

My own situation

I have used the Check Employment Status for Tax (CEST) tool and the result is that I should not be treated as an employee. I run a genuinely independent consultancy providing services to a range of clients. For example, I retain control of my work and can provide substitute staff.

If this legislation goes ahead in this form, I will be treated and taxed as an employee by some of my current and potential clients, who in response to HMRC's plans have decided to implement a blanket ban on using freelance contractors, instead of accepting the risk of carrying out the status assessment. I am seriously considering winding up my limited company and retiring much earlier than I planned.

Addendum 17 March re Coronavirus

Since I drafted my submission above, the Coronavirus crisis has resulted in the postponement of 80% of my existing contact work for April to June (training events) until September onwards. My remaining contract work is with a client who is blanket banning contractors due to IR35 as mentioned above. So, I either have to accept forced employment with an agency/umbrella with reduced rates and no employment rights - or I will have virtually no work for 6 months. This is the worst possible time to go ahead with IR35!

Bernard Osbourne

I am writing in a personal capacity to submit my recent experience and views for your investigation of the off-payroll working rules.

1. IR35 Blanketing

1.1 Since January 2018 I have been working freelance through my limited company.
1.2 Current client is a multinational drinks company that is taking a blanket approach to IR35 status determinations. Instruction from their solicitors on the use of CEST puts everyone in IR35. To appeal would be futile given that legal council is sure to prevail.
1.3 Resignation is the only significant means to protest. The project may suffer and so too will my standing.
1.4 Adding credence to the widely publicised blanket in-IR35 rulings, my accountants are sending mailshots to advertise their umbrella services and suggesting disincorporation.

2. Financial Impact

2.1 My line of work predominantly requires site presence, thus incurring expenses for travel, subsistence and sometimes accommodation. Despite this, almost all contracts are offered exclusively at an all-inclusive rate.
2.2 Being deemed in IR35 means all expenses will be subject to income tax and NI contributions. This compares unfavourably with employees of larger

organisations who are asked to travel or work away from home - no such taxes would apply. Consequently, accepting work in other regions will become prohibitively expensive and opportunities diminish.
2.3 Employability is dependent on knowledge. Training courses cost thousands. Small businesses will struggle to keep pace if all invoices are taxed as income. Procurement of equipment and tools similarly affected.
2.4 Reforms as planned will force closure of my company. Aspirations to employ and train others will end.
2.5 Working for a competitor, my earning potential is half the amount for which I am currently invoicing, ergo my overall tax contributions will also be reduced.

3. Observations & Questions
3.1 The right of substitution favours an outside IR35 determination from CEST. Substitution is commercial suicide in the context of a business deliberately introducing direct competitors to their clients.
3.2 Why does CEST place such emphasis on financial risk when avoiding risk is good business practice? It is the perceived financial risk that is driving clients to blanket ban PSCs.
3.3 Agency workers shall be entitled to equal treatment after 12 weeks. How is this fair to people working smaller contracts who will receive no benefits but still have their invoices cut?
3.4 Wiping out freelance contractors will reduce competition in the marketplace.
xx February 2020

Andrew Padley, Lorand Design Ltd

I would like to submit my views to the above name sub-committee relating to the proposed extension to the off-payroll working rules to the private sector.

As a bit of background; I am a Chartered Engineer and run my own small, two-person consulting company specialising in data centre migration and technical transformation, primarily to the finance sector (banking, hedge funds, insurance companies).

I graduated in Electronic Engineering from University of Sussex and worked full time at a consulting company called Atos/KPMG, which merged in 2002. After five years, I took the opportunity to start my own company and go it alone. My skillset is fairly unique but due to the size and duration of most of these projects (2-3 years), the role is not usually one of a permanent employee (the project is undertaken by most banks once every 20 years or so).

Based on the proposed changes to the finance bill, I was notified in December that my current client, a US payments bank, was terminating all contractors unless they became employees of an umbrella company – essentially an employee without any of the benefits. Obviously, this was not my career goal.

They felt it was too time consuming and too risky to try to assess all their contractors in time.

I've taken a long time to build up my company and to create a network of organisations and I now find myself in the position that as of March 1st 2020, my services will no longer be required, through no fault of my own., because my client is fearful of an HMRC investigation and the associated uncertainty.

Below are some of my comments relating to the call for written evidence:

Impact of new off-payroll rules on organisations

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

My experience is that professional contractors are being forced into pseudo-employment routes via Umbrella companies, that provide none of the rights of an employee, none of the advantages of a contractor. My contract is due to end on Feb 28th, before I will be able to complete my assigned work. As the rules apply to the whole sector, nobody is hiring and I will be forced to live off my reserved income until the market stabilises. This could take up to six months. Any longer and I will forced back into permanent employment again.

Determining tax status of workers

6.Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

From my experience, the client simply does not have enough time to assess every worker. As such, most of the banking industry is just not assessing the worker – they are forcing them to go to Umbrella companies. The tests themselves are biased toward HMRC. It's HMRC's job to collect as much tax as possible and so the CEST test is effectively asking only the questions that will demonstrate that a contractor is a disguised employee, and not those that show they are an independent contractor. From my experience, no contractor wants employment rights; they chose this lifestyle for a reason.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

This test should be owned by the Department of Work and Pensions and NOT by HMRC. The test should attempt to show that a person is 'not' employed and only in the most obvious case, should a disguised employment relationship exist. That was what the original IR35 legislation was meant to achieve. To prevent greedy employers forcing employees into limited companies to save on tax. In my experience, no real contractor wants to be an employee.

10 Will the Bill, as drafted, achieve the Government's objectives?

The bill, as drafted, will cause considerable volitility and hardship in the contractor market with many professional contractors either forced to join umbrella companies, and put aside their dream of an independent existence, or will be forced to wait it out and rely on the savings they've set aside in their company. I will certainly be forced to do the latter. Contractors put these reserves there for market volatility, not for government interference.

11 What is your view of the role of umbrella companies in the context of these proposals?

Umbrella companies are simply a mechanism for HMRC to maximise their tax take, but take away the independence that a contractor set up in business for. They serve no purpose other than to provide a payroll function to a worker – and offer none of the long term stability an employee enjoys. Umbrella companies are a good example of a 'disguised employer'.

20 February 2020

Adrian Palmer

Introduction

I have been contracting for over 15 years within the manufacturing industry in the private sector, where the length of contracts has ranged between 1 month and 2 years. My previous contract completed 2 weeks ago and in the last month I have seen no assignments deemed to be outside IR35, due to the pending legislation, yet I have had to turn down 3 contracts due to them being inside IR35, where the cost of servicing them was not financially viable due to the additional expense of being away from home and family during the week. In approximately 6 months, with no outside IR35 contracts, I will be in a situation where I will need to close my business and take decisions whether to go permanent or leave the country. I refuse to work inside IR35 under zero rights employment given I am a bonafide contractor who has had their working practices professionally assessed as such. My preference is to leave the country as I am furious this government has put me and my family in this position for a set of ill-conceived IR35 changes that lack real scrutiny of the HMRC bogus claims as to the benefits of the changes. For the Government to state there is no evidence of businesses being damaged by this smacks of incompetence, lack of correct scrutiny or denial / lies.

I am also sick of feeling demonised by HMRC rhetoric in their pushing through of these changes, using contractors as the scapegoat to obtain the employers NICs which they are wanting. It is not so much the flexible workforce avoiding tax, rather it is the employers.

The many loan charge victims, where 7 suicides have been linked, are a product of IR35. In many cases this is through no fault of their own having myself been on the end of some extremely convincing phone calls to enter into such schemes. I have been stunned reading the loan charge APPG reports of the HMRC treatment of contractors and the absolute lies HMRC have spouted. This, despite my being a genuine contractor, leaves me feeling there is a retrospective HMRC IR35 dark cloud following me, where HMRC will look at companies who have made inside determinations and hunt down all previous contractors with threatening letters.

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals? – I have not worked in the private sector, but I hear stories of NHS delaying treatments outside of the main cities and defence projects being delayed. It seems not much has been learned as the changes are pushing ahead.

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC? - No, it has not been adequately assessed. This is clear by the continued denial from Jesse Norman amongst others, that blanket rulings by companies are being carried out. HMRC repeatedly state that non-compliance is widespread, yet when challenged hide behind statements like "it is not in the public's interest". This is a slap in the face for the freelance market.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion? - No comment other than based on HMRC logic, it is probably only a matter of time before they are brought into these irresponsible rules.

4. What will be the effect of these new measures on a chain of contractors and sub- contractors? - The effect of these changes is causing clients to take the risk averse route and not entertain PSCs such as mine. My business will not survive lengthy periods of no work, which is what I am starting to see (I do not earn huge sums). There are less roles on the market due to this risk averse stance. This will mean I will end closing my business which will mean less business for my local accountant, less income for B&Bs / hotels when staying away during the week on assignments etc. If I was to take a permanent role this would ultimately mean less tax to the treasury due to the lower salary.

I will not be able to afford inside IR35 assignments that involve my having overnight accommodation expenses, and will be unable to service such clients. These clients will now be missing out on the valued flexible talent due to relying on a local reduced talent pool. This shortage will have a negative

impact on UKplc and could drive some out of the country as we become less competitive.

I am strongly considering selling up and taking my family to Australia or New Zealand due to having Australian citizenship / passport, that will be even less tax going to HMT. I know of 2 others in my small network where 1 has already thrown the towel in and has decided to move to Portugal and the other taking steps to move to Denmark where they previously contracted.

There will be many instances where contractors are unable to accept inside IR35 assignments due to the inability to offset expenses and likewise companies in remote locations will struggle to attract anyone outside a small radius.
Pushing contractors inside IR35 will result in many seeking permanent employment, which will lead to a reduction in work for recruitment agencies.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules? - I have little faith that HMRC actually care about the burden and cost they have placed upon the market with these costly cumbersome changes, or indeed if contractors are put out of business, given they ignore the blanket rulings that are being made. Perhaps HMRC could help by reflecting on the court cases they have lost and explain why they thought they would win these cases in the first place followed by an explanation of why they think they lost, this may (if they took it seriously) help them understand the complexities of their IR35 rules which are difficult for the various sectors to understand. After all, if HMRC can't win the majority of court cases doesn't this give some indication of how unclear this all is to everyone if HMRC lose at tribunals regards their own rules?

HMRC should also give more recognition to Mutuality of Obligation given it is a key test. However, the best thing they can do is to scrap this entire antiquated folly and remove all the aggravation and costly additional work of trying to determine if someone is in or out of IR35 and put in place a simple tax shared between the employer and the contactor in a way that will encourage entrepreneurial spirits to flourish and businesses the ability to switch on and off the flexible workforce as and when required.

<u>Determining tax status of workers</u>

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment? - No, there too many nuances and different working environments to have such a simple test. It’s not even clear to HMRC, who waste tax payer’s money with all the lost court cases. It is said that the CEST tool is deeply flawed, not based on case law, omits MOO and is only 85% accurate and unsurprisingly HMRC will not stand by its results. The only true

test for making these determinations is for it to be based on employment laws through the courts, which clearly is not feasible.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved? You only need to have the right of substitution and you are getting an outside determination. You may as well not bother answering the other questions because it all seems to pivot on this test. The only improvement would be to scrap IR35 and come up with a modern tax system to accommodate the flexible workforce, not kill it off and hold back UK plc in a post Brexit uncertain world.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed? Complete waste of time challenging an inside determination other than if one wants to take the company to court for not taking reasonable care. One may as well just walk away. A former colleague has had their working practices deemed to be outside, yet their client has given, what I can make out to be, blanket inside determinations and have ignored his evidence in this process.

The challenge process may take too long with its 45 days limit. This could see the contractor sat waiting for the determination only to see the same inside result repeated. For lower paid contractors, sitting on the side-lines for 45 days without income will prove difficult and may result in them accepting the zero rights employment inside determination out of desperation (some will have mortgages and families to provide for).

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they. If the objective is to raise the false figure of £1.3 billion by 2023 then no, because that figure is fundamentally flawed. If the objective is to curb the 90% non-compliance then that is also fundamentally flawed. Pause the changes and discuss this properly is the sensible solution where a simplified modern tax system is MUTUALLY AGREED by ALL INTERESTED PARTIES, and not just by HMRC who to be honest have become out of control, damaging to the economy and need their wings clipping before they sink us.

10. Will the Bill, as drafted, achieve the Government's objectives? - No. HMRC think that when inside IR35 determinations are being handed out that habits will not change. Work will be (and already is) offshored, some as I've mentioned are leaving the country, some will only look for clients outside the UK, some will retire early and others will seek permanent employment with all the perks that it has over zero rights employment.

11. What is your view of the role of umbrella companies in the context of these proposals? This unregulated industry has caused enough damage to contractors with the loan charge scandal. Already we are seeing umbrella companies advising both end clients and recruitment agencies with regards to making determinations. A huge conflict of interest. We are also hearing of some contractors being charged £150 to process a determination dispute. Many recruitment agencies are limiting the choice of permitted umbrella companies they will allow a contractor to use, can this be viewed as a cartel?

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees? - These changes will starve the market of much needed flexible skills, and rather than moving with the times and helping the UK be competitive, they will hinder its prosperity. Companies may avoid setting up in remote areas if they cannot attract the flexible talent pool, leaving remote areas to struggle. I am puzzled how a company who may temporarily lose a skilled employee due to maternity leave or long-term sick, will be able to cover this position with a contractor outside IR35 given it is the same job as an employee. How is this benefitting those managers then left having to pick up the slack, the company or the UK?

Zero rights employment is a scandal and is just inviting abuse in the way that zero-hour contracts have been abused. The utter rubbish being dished out by HMRC / HMT / Chancellor(s) that this is in the interests of fairness and that non-compliance is widespread without any hard evidence.

Companies will use and exploit this "zero rights employment" loophole that this legislation is about to create to relieve them of, for example, redundancy disputes. Companies who assess workers who they want as an employee, in law should be made to hire them as one and not deny them their deserved employee rights. Is it fair that someone doing the same job as an employee does not receive the same employment rights? Is it fair that someone doing the same job as an employee can be fired at will? Is it fair that companies in remote locations will suffer a skills shortage due to a quite simply pathetic HMRC tax system out of step with the modern world?

Finally, can I just add that I am not in this to reduce my taxes which seems to be a misplaced conception no doubt encouraged by HMRC to push through their agenda. I enjoy the flexibility this brings to my working / family life balance, servicing different clients, meeting new people, helping businesses to overcome difficult periods putting them back on a sound footing, crossing over into different industry sectors and commodities every 6 months or so, visiting different parts of the country, facing fresh challenges in which I am able to influence, being in control and the sense that in some small part I am helping businesses to grow in the UK encouraging future investment. I have a young family who use public services including schools. I am not a tax dodger or any other term that gets banded around and I am increasingly appalled at the

behaviour of HMRC and their inability to look outside their bubble, think outside the box just a little and deliver us a tax system that benefits, not hinders, the modern day working reality of business.

11 March 2020

Ben Parkes

I felt it important to add my views to the proposed changes to ir35 being proposed by the government. I work for a growing recruitment company in the construction sector, we have grown year on year for the past decade offering temporary and permanent recruitment solutions nationwide. I work closely with a large number of "PSC contractors" and place them on various assignments within the industry. Through this I have gained a good understanding of ir35 over a long period of time.

I have been warning my employers, workers, clients and even 3 MP's about the damage these changes will cause. Until recently those warnings seemed to be ignored but over the last 3-4 months the damage I predicted is even worse than I thought. I thought I would make a list of the evidence I have seen first-hand;

- Uncertainty – the changes are circa 6 weeks away, we have no final legislation to go on and uncertainty with when the budget will actually happen. This has massively effected the freelance market, companies desperately need resource but are too scared to hire freelance. I am seeing hard working contractors that I usually find assignments for within a week or two, sitting on the side-lines for 3 months plus and counting. These people are never out of work – Purely because of these changes they are now.
- Blanket bans – I hadn't seen many of these in the construction sector but they were everywhere in other industries. Last week 2 top tier national main contractors have announced a complete ban on PSC workers . One has also extended the ban on sole traders and CIS. They are only allowing workers to operate PAYE/Umbrella. The company in question has confirmed they **WILL NOT** increase rates to pay for employers NI/Apprenticeship levy. This is a huge pay cut for many hard working and legitimate freelance businesses.
- "zero rights employees" – These changes are forcing freelance business in to employment without any of the benefits – job security, pension, healthcare, holidays, sick pay. In 2020 we should not be creating an environment where thousands of workers are being forced in to this situation
- HMRC do not understand ir35 – they lose the majority of court cases they think they have a good chance of winning. Surely this is all the evidence you need not to extend this legislation now. How can thousands of businesses manage a law that the lawmaker is misguided on.

- Sajid Javid announced a review in to this legislation during the election. Politicians should be held to account – This was misleading at best and to be honest was the main reason the tories got my vote. Turns out it was just a vote spinner and we are now in the middle of a sham review.
- CEST – I'm sure you have had a lot of comments on this – It gives "inside" statuses when they should be "outside" and gives "outside" statuses when they should be "inside". It ignores key case law regarding ir35 in particular Mutuality of Obligation.
- "Genuinely self-employed aren't effected" – This is 100% not true. Every freelance contractor I know is affected. Whether it be a blanket ban, a reduction in interim roles or just pure uncertainty. I don't know anyone not affected.
- 15% of my freelance contractors are approaching or at retirement age. They have a wealth of knowledge and offer a valued freelance service – 2 people who work through me are in their 70's – They have told me they will retire. How many other people will choose to take their pension and call it a day?

My employer have been a growing business for a decade, we have gone from 1 office in Stafford to 6 nationally. We have plans to grow our workforce to 150 staff – this will not be possible if the freelance market is destroyed.

This legislation must be delayed, ir35 needs to be binned. A clear status criteria for "self employment" needs to be given. Private sector firms will not take the risk on a legislation that not even HMRC understands.

If you want any further input from a recruiter I would be happy to help.

24 February 2020

Bipin Parmar

The extension of the "off-payroll" working rules to the private sector
This is a personal submission to highlight my experience with the "off-payroll" rules being applied to the private sector.
I have been a contractor for over 25 years and have mostly had contracts in the private sector delivering IT projects. I had planned to continue working as a contractor for the next 10-12 years after which my wife and I had hoped to retire. These plans will now have to be altered.
I have had contracts with various large organisations across different types of businesses including manufacturing, telecommunications and finance. My current contract is through an intermediary company with the end client being a major financial company.
During the last 25 years I have had several contracts with this major financial company and have built an excellent relationship hence the repeat business. With the introduction of the "off-payroll" rules in the private section this relationship has taken a different view. The end client does not want to

engage with personal service companies but still want to use our knowledge and experience to delivery IT projects. The intermediary company to keep a good relationship with the end client has asked all contractors that they must now work through an umbrella company. Effectively, considering all contractors as "Inside IR35".
There was no assessment!!
There was no discussion between contractors and the intermediary company to assess each individual on case by case basis. It appears to be a blanket assessment.
Having spoken to friends and ex-colleagues this seems to be the same for many large organisations.
Previously I have had my contract with the same intermediary company assessed by an independent body who determined that the contract was "Outside IR35".
Basically contractors through this intermediary company have been told "this is the only offer, take it or leave". Therefore my good relationship with the end client built over several years will be impacted.
I went further and used the government tool Check Employment Status for Tax (CEST) to assess my employment status and it came back with no determination, it required further information. The CEST tool is very vague and I believe does not ask enough or the correct questions. The independent body that assessed my last contract were very thorough. I believe there should be more discussions between the government and companies who specialize in these types of contracts.
My concern is that the intermediary companies and agencies who act as the link between the end clients and the contractors are allowed to act as what is best for them. As mentioned earlier the intermediary company have given all contractors through them the option of only one umbrella company. This seems to be unacceptable but as the intermediary company have stated "take it or leave" there is not much we can do. I enquired with various bodies and they all said they were within their rights to do that.

Working through my limited company I had many choices including the following:
Being independent, being paid reasonably well gave me the option to work when and where I wanted to work
Pay for my own training
Choose my own pension provider
Manage the risks. Having no holiday pay, sick pay, having periods without contracts, but the option to manage my own money allowed me to plan for unfortunate scenarios ☐ Better placed to negotiate daily rate
Working through an umbrella company, I now face the following:
Employers National Contributions deducted from my daily
Apprentice levy deducted from my daily rate
Umbrella company margin deducted from the daily rate
Pension contributions can only be made to a pension provider nominated by the umbrella company
No training

No employee benefits
Notice period of one week, when the general period is one month

Although most umbrella companies advertise that you will become an "employee" of the umbrella company the reality is that this not the case. All the costs incurred by a normal employer, for example Employers National Insurance Contributions, Apprentice levy and holiday pay are deducted from the daily rate. The 3% pension contribution the employer has to make I believe is also deducted from the daily rate.

Again I spoke to the government bodies and was told the umbrella companies are well within their rights to deduct Employers National Insurance Contributions from the daily rate.

The reality is that working through an umbrella company I do not have the rights of an employee!!

Having spoken to most contractors they seem to be willing to pay the extra Income Tax and Employees National Insurance contributions, but thing it's unfair to also pay the costs that a normal employer would incur, i.e. Employers National Insurance Contributions, Apprentice levy and holiday pay.
For me, the main concern is that with the reduction in my income I will be unable to manage the risks, i.e. when there are periods without contracts or if I am unfortunate to be sick for a long period.
With major companies outsourcing their IT departments abroad the likelihood of being out of contract is becoming increasingly common.
Although I have no evidence I am hearing through several people that when the "off-payroll" was introduced in the public sector they lost many contractors and were unable to deliver IT projects. Those same public sectors are again working in the public sector where the contracts are deemed "Outside IR35".
It appears to me there have been several discussions between several parties about the "off-payroll" but not many discussions have been held with the people that it will affect.

23 February 2020

David Parr

I watched yesterday some of the Finance Bill Sub-committee meeting. I am unsure on the practice when wanting to contact members of the House of Lords but felt compelled to after watching some of the live stream yesterday.

From what I saw, apart from Lord Desai, it appeared you understand some of the impacts of these unnecessary reforms.

It may have been that Lord Desai was playing devil's advocate rather than giving an indication on his thoughts.

I have just read an exert form an email sent by HMRC in which they said there is no fear being created by these reforms. HMRC are so far from the truth.

I am fearful that my business may not exist come the 7th of April. I am fearful that if the business does survive then the business is being forced to take on financial liability for any decision HMRC makes on the status of a contract for the next 4/6 years.

I run a micro recruitment company supplying specialist Technology contractors. I set the business up in 2010. I am a believer that we should pay the correct amount of tax and NI and that we should. To demonstrate this I pay myself a salary and pay PAYE tax and Ni on this salary. This is rather than take dividends and work tax rules in my favour.

There are so many grey areas and HMRC have proven since the introduction of IR35 their inability to understand the legislation. Demonstrated by their success rate in IR35 tribunals and their inability to recognise reasonable prospects of success. End clients / end users are understandably untrusting of HMRC and risk adverse so are introducing 'blanket banning' of LTD company contractors.

This has a huge impact on me personally as it may put me out of business over night. This is the first piece of legislation I can recall in my lifetime that has such detrimental consequences on my life.

Removing me from the scenarios there are other injustices I am sure you are more than aware of;

- Recruitment agencies are being forced, as fee-payers, to be liable for deductions when we are not the ones making decisions on whether the contract falls inside or outside of IR35. It cannot be right for HMRC to be able to chance us for monies owed when an end client has made an outside determination and HMRC then deem that to be wrongly determined.
- It cannot be right for somebody to be considered as an employee for tax purposes and not for employment benefits.
- It cannot be right that a contractor is forced to pay employers NI
- CEST tool is not fit for purpose!!

These are some brief thoughts and real impacts these reforms are having and will continue to have.

26 February 2020

Clive Parry

Question 1 – no comment, I have only contracted in the Private sector.

Question 2 – How can the rules have been adequately assessed when they have not been passed and are still under review, 6 weeks before implantation. Clients and contractors are second guessing what the outcome will be, and it is no wonder clients are trying to protect themselves, as they are not fully aware of the final bill, as it has not been passed yet, although the Clients final decision will determine and affect the contractor and the client's chance of delivering his project to cost and schedule; if he determines his contractor inside, then he is likely to receive the following

- Contractor terminates the contract, therefore lost continuity of work, additional cost for recruitment, etc. increasing the final clients cost.
- Contractor increases his rate to offset the loss of earnings, therefore increasing the Clients final cost.
- Contractor continues earning less, but reduces output in line with loss of earning, therefore increasing the Clients final cost.

All in all, the contractor and the client loose, with final cost going up.

Question 3 – No experience of working with small companies.

Question 4 – the likely hood will be that contractors will be forced to close Companies as they will no longer be able to trade due to clients refusing to take on small consultants to cover their peaks and troughs. These contractors will then be forced to go staff or take a 10-30% pay cut, potentially losing their home and livelihood. Most contractors employ their spouse/partner, as secretary. If the company is forced to close due the contract being determined as inside IR35, the secretaries and employees of the contractor will be dismissed and be forced to look for other employment or seek job seekers allowance.

Question 5 – to simplify the procedure, my understanding of one of the objectives is to get contractors to pay a similar amount of tax as an employee. Then surely a fairer way would be for the contractor to work as a limited company and the client determine what equivalent salary an employee would be paid I.e. the client should determine that if the contractor were to be an employee they would be paid £X/month, as a contractor they should make that their salary for the term of that specific contract, or a % of the amount due to the fact they will receive no benefits or pension. Therefore, paying the same tax as an employee, not paying double the tax of an employee as would be the case if they are caught by IR35.

Question 6 – No the test is not clear for determining the status of employment. From experience clients are not using the CEST tool and are using they're own tool which could leave the contractor open to future investigations. Due to the fact there are many different types of contracts and industries, one tool is simply not enough to cover all the options. This may be why clients are choosing to create their own tool. Or they are looking to case law and protecting themselves from the outcome of previous cases.

Question 7 – As stated previously the tool is not sufficient for all the various types of contract. From experience clients are cautious of it. To improve the tool, you should be allowed to give comment on answers, and store evidence when making the determination.

Question 8 – I have only a small experience of challenging a decision. Although the challenge was accepted the client can still discard the challenge if they want to protect themselves by rejecting the claim. The contractor has limited resource compared to a large company, so therefore are unlikely to be in a position to challenge the client's decision in a court of law, they are just left to accept it or move on.

Question 9 – as stated in question 5.

Question 10 – Yes, the Bill will raise taxes, but has the following been considered,

- How many secretaries from contractors will be forced into unemployment, (taking jobseekers allowance)?
- How many accountants will lose business, due to companies closing
- How much corporation tax will be lost through companies closing?
- How much VAT will be lost due to companies closing?
- How much insurance tax will be lost due to companies closing

Question 11 – I am still unsure of what the purpose of an umbrella company is, they will take money from a contractor who has been determined inside and further reduce their income. They will process tax payments for the government, therefore employing the person but giving them no benefits that an employee would get.

Question 12 - No, it is not fair, and it will be exacerbated further when a contractor is deemed caught as they will be paying more tax than the employee with absolutely no benefits. When it comes down to it, contractors pay the taxes that are due, personnel tax, corporation tax, divided tax and take the risk of not being employed, for times. If they were not paying their Limited company taxes, then they would be closed down. Why change something that works.

17 February 2020

Mark Parsons

1.

I can't comment as I haven't worked in the Public Sector.

And sorry, I know it isn't pertinent to this question, but sadly if you haven't received many of these forms it is because the Contracting work force have lost all faith in the headstrong HMRC and Government that IR35 will be implemented regardless in its current guise to the Private Sector in April, IR35 is economically damaging!

I also apologise that I don't write as eloquently as others, I didn't' find this request until a few days before the submission date.

2.

No, I don't believe they have. Talking to colleagues we are in agreement that HMRC are implying that PSC/ Ltd companies don't pay sufficient contributions. So, I compared a Permanent staff member whose gross salary was equal to the gross sales paid into my company account and assessed the contributions to the Treasury. My total contribution was £3,000 more than that of a Permanent staff member. After talking to my father, he mentioned the British Brain Drain of the early to mid 70's. After some reading it seems HMRC want to proceed down this avenue again, why?

3.

I have worked for SMEs and after talking to some of the Managing Directors their perspective of utilising PSC/ Contractor's post IR35 is very concerning. They are anxious about employing contractors' period, in-case HMRC investigate and are found liable for an unexpected Tax Bill. Nor do SMEs want to be involved in a HMRC court case, which are financially damaging, time consuming and present a bad image to their clients. So, like 'Ambulance Chasers', companies are being offered insurance policies to protect against HMRC IR35 investigations. So, if Insurance Policies are available, the consequences must be severe.

They are unsure how they will accommodate peaks and troughs in work load. Employing Permanent staff is a time-consuming process due to interviewing, mutual agreement of the T&Cs and notice periods. Many SMEs (and Medium to Large Enterprises) employ contractors directly due to having crossed paths before and the client is confident of their capability to 'hit the ground running' at a fair price. A contractor working through an umbrella company increases costs, which many SMEs see as a non-value adding. SMEs don't have the profit margins to accommodate that additional cost.

Employing additional Permanent staff isn't always feasible when a reduction in work load is forecasted due to legislation. I do feel that Permanent staff could end up being subjected to hire & fire situations, this would impact employer/ employee relationships. During periods of growth, more pressure is placed on staff to work longer hours to fulfil deadlines to cover the loss of Contractors, work-life balance is eroded. As the trough approaches, they will be concerned for their job security. Permanent staff have told me before contractor(s) also provide them with job security as they act as the sacrificial buffer.

4.

Unemployment for UK residents, increase in taxation. I have read that the City Banks have 'laid off' their PSC/ Contracting work force, citing they may employ non-UK residents to by-pass any possible payments to HMRC. What if more UK

companies follow suit as a two-finger sign to HMRC, thus generating zero revenue for the Treasury?

Where I currently work, 4 contractors within a 10 foot radius of myself have stated to the Client they will terminate their contract if they are put Inside IR35, they work away from home and if they can't claim expenses it isn't financially viable for them. Consequently, the hotels and B&B's that contractors use can expect an increase in bed availability.

I also believe there is an additional "Butterfly Effect", if PSC/ Ltd Companies, collapse, switch to Umbrella Companies or close their companies what happens to the Accountants which only manage self-employed accounts? Unemployment may loom!

Contractors purchase magazine subscriptions, website domains employing people to support these services. Purchase Laptops and specialised software (at marked up prices due to single usage), through their companies to manage their accounts. Self-employed contractor may no longer require IT equipment, a loss of revenue to small companies who offer IT equipment. Contractor's may also use a Client's PC equipment due to Intellectually Property and/ or they know the work that The Contractor is performing is backed-up to The Client's server, how long will it before HMRC use this against Contractors?

5.

Not enforcing IR35 in its current form to the Private Sector and make changes to Public Sector also. IR35 reeks of spite again PSC/ Ltd Companies. HMRC should have had clearly defined rules for Contractors to adhere to, but they left the rules ambiguous, for people to read between the lines. Now HMRC are exploiting the mess they created. As a Manging Director of PSC/Ltd Company who only employs myself, which pays;

6.

No, they are not, I don't think that was HMRC's intention either as per generic/ sweeping questions on the CEST tool. The CEST tool provides zero information, I spent over 90 minutes completing the assessment at home as I was reading from the Internet about the content of each question. When I performed the assessment with the HR Manager at my Client's premises, the assessment consumed at total of 1 hour 30 minutes of the business's time (2 x 45 minutes) and my client doesn't employ anywhere near the number of contractors as BAE Systems do, so it is of little wonder why they aren't conducting individual assessment and resorting to blanket Inside IR 35.

7.

The tool certainly requires improving or deleting! It is heavily biased, steering the applicant assessment towards 'Inside IR35' status. Many people were unsure with the second question "What do you want to do?". Many I work with (including the HR manager) didn't fully understand the difference between

"make or check a determination" and the "SME, and proposed new rules", unless you researched the terminology, instead they asked "does it make a difference?"

The overall question about "Does the client have the right to decide how the work is done?" is very subjective and a low blow from HMRC. Ultimately yes, but to what extent you may have to battle in court if investigated by HMRC. Your current client may have processes adopted from British Standards or ISO Standards, does that mean the Contractor is directed, I personally think not. Or like many UK engineering firms they may have an existing, proven baseline design 'A' which may require modifications. The modifications may be transferred from another proven design 'B'. Presenting new ideas not be beneficial or meet the contractual delivery date, therefore, the client is providing direction and governance over the design, but the client doesn't have the future work load to employ a Permanent staff member. Therefore, the 3-month contract you are currently fulfilling, you may be directed for a percentage of the time, how does HMRC then quantify this? As a Contractor you may have developed/ seen a design where sections could be incorporated and beneficial to the design and advantageous to your current client, possibly supporting your chance of repeat business, is that something a Contractor should be penalised for when businesses and the economy is fundamentally based on what is termed "bread & butter" business.

Other broad sweeping questions from the CEST tool;

- "Have you had a previous contract with this client?": You may answer yes, but it was 5 years ago, so it doesn't consider if there was a break, completely unfair. It requires a time period.
- Fund any other cost (business premises). But coincidently it doesn't offer Accountancy fees, Business Insurance as examples. Would HMRC accept Business Insurance in court? If not, why not? Permanent staff members don't require it, but I pay over £1,500 combined P.A.
- "Management Responsibilities": Again the Client may have a won a contract with a 3 month deadline, they recruit a Permanent staff member with a specific skill set in time and to supervise their existing team, so contact a known, suitable qualified Contractor. This may could then have to substantiated in court if HMRC receive a 'tip-off' from a disgruntled staff member, this just damages relations between Client and Contractors.

8.

How can decisions be challenged if medium to large organisations automatically enforcing blanket Inside 35 status, which HMRC will deem a victory, but at what cost? If for example we consider BAE Systems, Lockheed Martin & Rolls-Royce, which are awarded multi-billion pound Government Defence contracts, the resource bill consumes majority of the cost. But these

companies I imagine will be requesting additional funding to cover the conversion of PSC to Umbrella companies at a cost to the UK tax payer well beyond the expected £1.2 billion recuperation the HMRC advertising to the government. That is just sub-standard book keeping (at best) and "robbing Peter to pay Paul", but HMRC will claim it to be a triumph.

9.

Yes, there are, but depends on the intention of HMRC, which I believe IR35 is due to spite and saving face after their significant loss of court cases.

Implement via The Client a fixed employment period similar to the current 24 month HMRC guide lines for expenses. This would apply if a Contractor conducted work for a Client which has multiple sites within acceptable, stipulated radius of each other. If within the stipulated radius the Contractor would have to take a break from that Client for a fixed percentage of time, but could work for other Clients within the same market sector. I'm sure statistically most Permanent staff wouldn't want to work away 5 days a week for long periods of time, whereas a Contractors accepts this. This means the UK still has a flexible work force whilst also adhering to HMRC initial control of PSC/ Ltd Companies. As a MD of a Ltd Company I have only worked at a company for a maximum of 2 years and then moved on, due to;

Gain further experience,

I thought it was safe in-case I was investigated by HMRC,

To maintain claiming expenses.

If HMRC want to tax PSC/ Ltd Companies why not do it in a way that the PSC/ Ltd Companies see a benefit, here goes;

Family Private Health Insurance, which isn't classed as a BIK, an offset to the already burdened NHS system. At least the PSC/Ltd Company see a visible benefit when required.

Re-introduce company cars for Contractors which are fairly taxed. I state these to generate work for UK residents, we desperately need to get this country more self-sufficient, enable a Contractor to lease a car which is either Manufactured or assembled in the UK. All of the Automotive companies within the UK could be forced to use more metals (steel/ aluminium) from UK mills., this way more of the materials (i.e. steel/ aluminium) used to produce automotive components could be made

Having recently produced Steel Processing equipment for UK mills and processing i.e Tata and SMEs I know first-hand this would be welcomed.

I could probably think of more but the submission cut-off is fast approaching and also want to spend time with my family.

10.

With respect to the Government's achieving it objectives relating to IR35, what are they? A prosperous Country, no! I understand the Government and HMRC are separate departments. HMRC are offering the Government £1.2 billion of additional revenue per annum no matter what the overall cost is to Country and Tax Payers.

In the current Tory Government manifesto and Priti Patel recent comments regarding the introduction of a points system to control immigration to the UK, IR35 will encourage our own technicians, scientists and skilled work force to leave the UK like the 70's Brain Drain and may repel this possible skilled work force from Overseas. With refence to Butler. 2011. British Brain Drain Strikes Again. [Online]. [24 February 2020]. Available from: https://www.harriman-house.com/press/full/327/ "An exodus is clearly under way in the finance sector, which in 2009 accounted for 10% of British GDP and a £40 billion trade surplus. The sector then employed a million people and contributed £66 billion in tax. A recent YouGov survey of financial managers found that 43% of them have considered leaving the U.K. Many have left already. Some 1,379 U.K. citizens moved to Switzerland in 2010, up 29% over the previous year. Around 80 of Britain's 650 hedge funds have gone too, taking along 500 top managers? Losing the Treasury £1.5 billion on their earnings alone." And then there was also nom-dom tax " The non-dom tax raised £162 million in its first year; but according to an Adam Smith Institute report published today, the exodus of those 16,000 cost the Treasury £800 million.". After reading this shortened post, I think we are heading down the same path.

11.

Working through an Umbrella Company, I believe this is just a way for a Company to make more money from my Service without it being passed onto me for my efforts and portions of this money will be diverted away from HMRC.

12.

I am convinced IR35 will induce a stagnant work force. I was led to believe that a transient work force was something the Government wanted? Clearly the money HMRC are wafting in front of the Government with proposal is swaying their judgement?

The new measures are absolutely absurd, MD's of PSC/ Ltd Companies that I have spoken to aren't opposed to paying PAYE/ NI at a reasonable rate, but surely wasn't the recently imposed Self-Assessment tax supposedly for, and now HMRC believe it is acceptable to tax the self-employed again? Why is a Permanent staff member taxed against their Gross salary and a PSC/ Ltd is to taxed against their Gross income and not salary?

So HMRC are preparing to rape and pillage a vital section of the money generating system within this once great nation before any Trade Deals have been contractually accepted. Brexit isn't finalised and yet HMRC are prepared to weaken the UK's global position for what, spite. This is purely nothing but spite due to the number of legal cases they have lost over the years.

Companies within the Private Sector with non-Government contracts are going to suffer, stunted by IR35. The Private Sector is a delicate system unable to ask the Government for additional funding like the Public Sector. Engineering & Manufacturing especially (are un-appreciated), the British Industrial Revolution catapulted the UK's global financial position, let's not forget that.

When I changed from being a Permanent staff member to a Self-employed contractor, I was relieved to have left internal politics behind, allowed to concentrate and the task in front of me and have greater control on what I wanted to do, professionally. For this I forgo the rights given previously, Private medical care, company card, free training, annual allowance for a course of my choice. I worked extra hours to ensure that I generated some 'fat' in-case there was an illness, but I have never looked back. I believe I receive a fairer wage for somebody who is classed has having a Professional Career something I would have never of received as staff member.

HMRC are taking away my liberty to work freelance and I feel HMRC's IR35 has come from the Fourth Reich….

25 February 2020

Marc Pattman

Introduction
The consultee is an Information Technology Infrastructure Architect providing specialist services to clients for IT projects, through his own PSC, working on full time assignments between normally six months to eighteen months with some exceptions, normally staying away from home during the week near the client site.
I completely fail to understand the point of holding this review now – tens of thousands of genuine freelancers are being dismissed and replaced NOW, no one is waiting around for your review or the budget, March 11th is less than the month notice period normally required.
This has caused my family and me untold stress, sleepless nights in addition to the research required to understand what this means.
The Aspiration Tax MUST be stopped.
Existing measures in the public sector (Q1) (no comment)
Impact of new off-payroll rules on organisations (Q2)
2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
Mass Release of 100,000s of Contractors To "Offshore" Ongoing
NO, ALL the contractors (20+) at my client are currently handing over to an Offshore based company's employees who have 100s of workers in the UK at my client's office alone "on secondment" from a large overseas outsourcing

company (Like Infosys owned by the Chancellor's Father-In-Law) We have, thanks to IR35, been identified either as a flight risk, or an expensive liability to be removed.
IR35 will result in the complete and permanent collapse of the UK IT contract market and the flexibility and international competitiveness required and the mass retrenchment of IT Contractors, Agency and Accountancy staff and possible bankruptcy of specialist banks and the closure of 10,000s of PSCs, this will not happen,
IT IS HAPPENING NOW.
I am struggling to understand how forcing clients to release 100,000s of UK based contractors to replace them with Offshore or large consultancy workers, which pay no or little UK tax, is going to bring in more tax or do anything other than cost businesses business. I am working on a bid by a large UK company that if lost will be catastrophic to it. This absolutely insane, particularly in the context of Brexit.
Any outside IR35 contractor found inside IR35 must terminate their current contract immediately or risk a retrospective HMRC investigation NOBODY believes the HMRC assurances given to the contrary. What is particularly galling is that agencies who provided IR35 friendly contracts are now stating, in fact, the contract is inside now they are liable, this in turn will lead to a mass exodus.
In addition to the above, security, credit checks, longer engagement approval processes (this has gone from 24 hours in the 1990s to six weeks in 2020, which is six weeks lost income), higher professional insurance, MTD are in any case imposing bigger burdens on the ability of small businesses like my own to continue to operate, put simply, it is less and less worth continuing.
Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion? (No Comment)
What will be the effect of these new measures on a chain of contractors and sub- contractors?
Disastrous - See Response To Q2, Q10
What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules? (No Comment)
Determining tax status of workers (Q6)
Rules are Arbitrary, Self-contradictory and Subject to Interpretation (Q6)
Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
The rules are arbitrary, self-contradictory, subject to interpretation, and above all are changed or enforced retrospectively according to the whim of HMRC, genuine consultants should not need to live in fear of the tap on the shoulder years after they have finished an engagement. This is a third world environment that deeply discourages good economic behaviour – hard work, free spirited, entrepreneurial, get up and go to the benefit of all. I have spent hours trying to understand what the rules actually are and am none the wiser.

The tightening of the rules means we offer far less. Previously we could work for one client with one project and be moved to another for the same client if we had performed well, but with the increased focus on "compliance" it is no longer possible to stay with a client over the time required to deliver a solution reducing our flexibility and value.
See response to Q8
What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
See response to Q8
How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
Return to Bosses and Workers – Back to the pre-Victorian Era (Q6,7,8)
The language used in the question is OFFENSIVE and illustrate the problem. We just tax dodging, malingering "workers" in "employment", a typical British entrenched class attitude - the worker works and operates under one set of rules and the big important corporates, it goes without saying, operate under different ones, this is accepted as normal – why?
You then have the hide to state that this "reform" is being brought in on the grounds of "fairness!" After decades of social and economic advancement and increased opportunity for ordinary people to be able to better themselves via PSCs you now decide we need to be shoved back into our box, doff our caps to our superiors, and know our place.
Status Determination Conducted by Parties with Vested Interests Unfairly (Q6,7,8)
No end client or agent is going to declare someone outside IR35 if there is modicum of doubt regarding their status and they foot the bill, for this reason blanket and unfair determinations have been made.
Further, the agencies have worked out that it is financially advantageous for them to place all freelancers inside IR35 as it reduces their legal costs (contract drafting/negotiation) AND instead of getting a commission only for the length of the contract from the end client, they can get one for many years from their referral fee from Umbrella companies like Parasol.
Although former freelancers may choose to switch Umbrellas, like bank accounts or utility companies, it is unlikely.
As all costs of being inside IR35 are paid for by the Freelancer, and all gains are made by the determiners, very few are declared outside IR35.
The agency I work for will get a commission from the Parasol Umbrella company, it uses QDOS to determine IR35 status, and QDOS and Parasol are sister companies, hence the entire determination and appeals process appears to be a total sham.
Further, when I asked to engage my legal insurance company in the determination process, I was simply handed a form and asked to fill it out, basically the result is predetermined.
The determination is made by the end client with NO appeal, and then goes to the agency, where following a determination I then appeal, not to the end client, but the agency, although the end client understands the exact nature of the engagement, this is fundamentally flawed.

The agency is further stating I MUST use their Umbrella although it is against employment regulations to do so.
It is perfectly legal to use a LTD company even if inside IR35 – I may have three engagements of which two are outside and one inside IR35.
Using the CEST tool I determined myself to be outside IR35, the Client returned "indeterminate" largely as the contract they had with my agency was NOT parallel with the one I had with the agency and had different conditions in a contract I was not privy nor party to.
Further, the Client stated that if I were not definitely outside IR35, I would be treated as inside, meaning that even if actually outside, I would be treated as inside. This is clearly illegal, as rights cannot be removed from citizens arbitrarily by third parties to which they are entitled to, this has already happened to all bank freelancers.
IR35 Status Determination Solution – Independent Assessment Agency (Q6,7,8)
It is a fundamental principle of Law than a determination should not be made by an interested party with vested interest.
The IR35 reform CAN NOT go ahead until status determinations are made by INDEPENDENT non-government licenced agencies/companies in a matter similar to Identity Verification. This should be a fee-based service where a review and determination are made, say every 12 months during an engagement and provide binding certainty to all parties.
Policy objectives and wider context
9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
As above
LTD Companies Should Pay More Tax (Q9)
It would be more effective to simply raise tax on all Limited Companies – I am happy to pay more tax as long as I can keep my integrity as a wild animal. We don't pay enough and it is fair we support public services more.
Huge Reduction in Tax Revenue Assured (Q9)
10. Will the Bill, as drafted, achieve the Government's objectives?
NO. No client is going to engage freelancers when it costs £100s more Per Diem than before with reduced flexibility (which is core to our offer), and no freelancer is going to work away from home in insecure assignments when 50% is being deducted. (not 20% as often quoted), damaging UK businesses that rely on flexible, highly skilled specialists but can not justify them permanently.
Further, no end client is going to risk engaging rightless UK slaves via umbrella companies when there is a high likelihood that this will be challenged in a Court of Law where the judge will rule, correctly, that Umbrella companies are a meaningless fiction and scam and declare those working for them have rights from their end clients.
I don't mind competition and accept that it is the way of world, but all Outsourcing companies (Cap Gemini, Infosys, Accucentre, HCL) continue to enjoy LTD company tax status we do not. One wonders how much the Tory party donations were from these?

Once we have been eliminated by HM Government via IR35, the rates will go back up and a PSC contractor who earnt £700 a day on a direct engagement will be charged out at £2200 to the client as an employee of an outsourcing company which (s)he will now
be forced to be - hitting UK Clients hard, and transferring profits to overseas shareholders – This is total madness.
My company pays VAT, Corporation TAX, Airbnb hosts, hospitality, Accountants, Insurance companies and a Midlands based small specialist bank, in addition to personal expenditure in the UK, all this will be lost as I am forced into early retirement.
The tax received from those inside IR35 will be minimal, they will earn less and there will be many less still employed in the UK.
Aspirations Killed (Q9)
A longer-term effect is the destruction of the entrepreneurial spirit, the current system encourages risk taking, self-improvement and self-sufficiency, the IR35 reform destroys this forever, it will no longer be possible for a one-man-band to start a company and then engage others as it expands as it will always be at a tax disadvantage to overseas and larger companies.
11. What is your view of the role of umbrella companies in the context of these proposals?
Umbrella Companies Are An Exploitive, Meaningless Scam (Q9)
Umbrella companies shield the end client from having to give rights to the former freelancers on the grounds they are inside IR35, odd it is then that they are still expected to pay personal and professional liability insurance?
As payment is entirely contingent on the former freelancer's income, (s)he does not have genuine employment status as all "holiday" pay, insurances, both NI for employer and employee are all deducted from the former freelancer, this is simply an exploitive fiction that the government is encouraging.
Destruction of ALL Employee Rights (Q12)
12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
Currently there are two basic "social contracts" or models for gainful activity:
Employment, with sickness, training, pension and employment rights – secure employment where a long-term relationship exists between the employee and employer, but income is limited, and tax is high, with less immediate pressure to perform
Freelancing – none of above, all risks are borne by the contractor, who pays personal and professional liability insurance, manages a company, engages an accountant, works long hours, is under more pressure to perform, and stays away from home, can be dismissed with a very short notice period and is incentivised not only by low tax, but the joy of independence and constant challenges from one engagement to the next
Both models are valid, and socially useful, fulfil different functions, and are clearly differentiated and citizens should be able to choose between them.
The first provides stability, the second flexibility, for all parties, where in the

latter case, specialists such as myself can supply, and share, skills to multiple clients on demand.
THE IR35 CHANGES WILL DESTROY ALL TRADITIONAL EMPLOYMENT – Once freelancers are declared so called "workers" and forced into sham Umbrella arrangements paying NI and PAYE, with no rights whatever employers will soon get rid of employees and simply use staff from Umbrella companies as they are effectively cheaper, rightless and disposable. Good companies will follow bad in a race to the bottom either through choice or necessity.
THIS AFFECTS ALL WHO WORK IN THE UK, IT WILL PROFOUNDLY CHANGE THE SOCIETY WE LIVE IN THIS IS NOT JUST ABOUT FREELANCING
We will return to class-based society of capitalists and slaves, the latter of which can never rise as it is impossible to compete against LTD companies who will have huge tax advantages.
IR35 reforms must be delayed until there is a clear association between NI, PAYE and rights and the elimination of exploitive sham Umbrella companies that exist only to disguise true employment status – PSCs are not the enemy, but Umbrella companies the government is now supporting.

Pertech Associates

This evidence is provided on behalf of the company, Pertech Associates, who as part of the business provide personal services of a contractor to the defence industry.

We would like to make the following written submission under the following sub-headings as follows:

Re **Clause 6** - We do not feel that the rules adequately reflect the reality of the contracting environment. Engagers are able to use different commercial tools to assess the tax status and choosing to ignore the results derived by using CEST. Very little time is available to appeal decisions as engagers are taking a long time to come to their assessment. We feel it is unfair that the April 2020 deadline was so short when the tools and advice were slow to be provided by HMRC. Companies need time to appeal, seek financial advice and fully evaluate the impact to their business.

Re **Clause 7** - The CEST tool is easy to understand, clear and easy to use. However, if an engager can simply choose to use another commercial tool instead and will not accept the CEST determination from the contractor as part of an appeal, then it does not have true value. Why could this not be mandated to be the sole tool to be used by both parties?

Re **Clause 8** is being requested in the appeal process to challenge the assessed high degree of control over work. If a PSC challenges the lack of control on a day to day basis, it is very hard to prove the absence of something. There is no workable definition given of what constitutes 'control' which is applicable across very different private sector industries.

Re **Clause 10** - Our feeling is that the bill as drafted will lead to severe skill shortages in some industries and lead to an economic impact at a time when the UK is trying to make external trade deals. For example, in the defence industry, there is already a significant shortage of suitably qualified engineers with security clearance. Contractors have been the only way to manage this skill gap to date. Contracting often attracts highly experienced people who are prepared to travel long distances and take the risk of working on short term contracts, often well into normal retirement age. We feel this is very short sighted in the Brexit era when it will be much harder to recruit people from overseas to fill these skill shortages.

Re **Clause 12** - If individuals are taxed as employees, we feel it is extremely unfair that contractors would not gain the same worker's rights and benefits. The UK has evolved a very flexible private sector system that allows for companies to plan for downturns as well as upturns in the economy. This new regime does not reduce the significant employment risks for a contractor, whilst providing no rights to pensions, sick pay etc.

In the certain private sector industries, especially the defence industry, security is paramount and leads to different working practices to other industries, for example, it would not be permissible to perform the work elsewhere, even though the nature of the work itself does not necessitate being on-site, it is purely the security implications. We do not feel the different requirement of the private sector have been taken into account.

12 March 2010

Daniel Perry, Metagility Ltd

1. About the author

1.1 I am a specialist IT project manager with expertise in Microsoft products and I have been working both inside and outside IR35 over the past few years. Six months ago I submitted a reclaim for income tax paid over following the incorrect determination of status by a public body to HMRC; to date (Feb 2020) I have had no response from HMRC other than a holding email last December.

1.2 I am giving this evidence to the enquiry in a personal capacity

1.3 I respond below to each of the questions to which I have experience or insight and have avoided comment on those on which I have no particular comment to make. I have not put in client names to preserve confidentiality, though I can submit this as formal evidence to you and I am happy to do so if required. However I cannot voluntarily supply this information without any such formal request, without breaching terms of client confidentiality to which I am bound as I am sure you will understand

2. RE: 1) "What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals"

2.1 I have had two public sector clients; both of whom have made incorrect assessments of my position via the "CEST " tool by means of submission of blanket responses for all contractors despite the specific terms and working practices of my engagement. In neither case was the business "deliberately" producing a blanket response, but those carrying out the process had been given guidelines which had that effect.
The first of my clients refused to put a correct response in, despite this entailing putting information into the CEST tool which they knew to be inaccurate, with the result that I am now pursuing HMRC to recover overpaid income tax at great personal cost and inconvenience. The second revised their assessment when the facts were pointed out to them and this changed the determination from inside to outside.

2.2 One of my clients attempted to make unilateral change to contract terms and conditions in order to withdraw an unfettered right to substitution to try and achieve an "inside" status even though it made no difference to the balance of the assessment; I would suggest this is indicative of the extent to which businesses are prepared to go to avoid tax risk.

2.3 One recruitment agency I worked for has forced me to indemnify them against any error in the IR35 status assessment by the End Client, thus forcing a tax risk onto me for a decision I did not take

2.4 One of my clients evolved a dual-band pricing structure for contractors, offering a lower "outside" or a higher "inside" rate for the same work, even though this is logically precluded by the legislation given the absence of differing working practice.

2.5 The public sector rules have made my own relationship with my end clients more complicated than they need to be. I rely on these organisations – without the safety net of an employment relationship – for recommendations and references, which is difficult when I am also required to pursue them for tax errors caused by the complexity and obfuscation of HMRC policy and the aggressive manner in which it is pursued by HMRC

3. RE: 7) What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

3.1 The CEST tool is the subject of what have been effectively blanket responses for both the public bodies I have worked for since the rules were brought in, despite HMRC's statement that this should not be the case and each that each engagement should be considered on its own terms. An individual output from the tool was produced in each case but this is on basis of set responses which the admin staff were told to fill in.

3.2 By relying on internal guidance as to what the responses should be, End Clients have made significant errors of fact in completing the CEST tool each time and these have in one case materially altered their determination and in the other, had the potential to do so when rectified, which matter is the subject of present reconsideration by HMRC.

3.4 In such circumstance and the effective blanket responses and a refusal to provide a factually accurate response into the CEST tool, a contractor has the following options:-

i) to terminate the relationship/decline the contract;

ii) to bring litigation proceedings against one's own client, which is obviously disastrous given the reputational impact not to mention the wildly differing resource and risk appetites between a personal service company and a major corporation;

iii) to accept significant loss of income; or

iv) or as I have done, to pursue H via a the refund/tax tribunal system retrospectively

3.5 Has HMRC factored into its benefit analysis of IR35, the risk of retrospective claims by contractors? HMRC's record in IR35 cases is not good and it stands to reason, particularly in view of the malpractice around the CEST tool that I have witnessed, that it will lose a sizeable proportion of these. It seems evident that HMRC is storing up heavy liabilities that are yet to appear from the public sector rollout, given the extremely slow response to refund requests and the duration of such activities. Is HMRC rushing this through in the public sector before the scale of this risk becomes known?

I believe it is inevitable that the volume of tax refund demands will increase hugely as contractors discover that they can issue a reclaim and force HMRC to review each case in appropriate detail. This could cost a phenomenal amount in administration, refund and interest payments and this scale of this problem is as yet unknown.

3.4 In respect of the elements of cost and financial risk, the boxes on the CEST tool do not allow input of the following cost and risk factors:-

3.4.1 A requirement to hold EL/PI/PL insurances are costs which employees do not have, yet which are routinely demanded of contractors; they represent substantial expenses and surely a clear indicator against employment, no employee is asked for these. They also cannot be funded save through our businesses, and our businesses have no source of funding when all payments

are source-deducted and funnelled straight to our personal accounts via umbrella companies.

3.4.2 The provision of Intellectual Property (in the form of training materials, software configurations and so on) by the Contractor's company to the End Client has been a universal feature of my work and this cannot be reflected in the CEST tool.

3.4.3 The provision/loan/usage of software, code components and otherassets belonging to the Contractor's company to the End Client has been a universal feature of my work and this cannot be reflected in the CEST tool

3.4.5 Clients derive substantial benefit from the provision of such services and intellectual property , and I derive significant financial risk associated with clients' usage of such materials. This is significant in terms determining the IR35 status per the legislation and case law. yet ignored by the CEST tool

4. RE: 9) Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

4.1 It seems to me obvious that the solution is simple, namely to move away from the complex and entirely artificial notion of a hypothetical contract and base the assessment purely and simply on the existence or otherwise of employee benefits.

4.2 The genuine relationship between the professionally self-employed contractor and his End Client is a commercial B2B relationship; and that contractor is the owner of a legitimate business which operates commercial risks that are not present in an employment relationship. If, however, the contractor enjoys pension rights, sick pay, holiday pay, and a right to work, then he/she is enjoying the benefits of an employee and should be taxed as one – that is fair.

4.3 It is in creating this artificial third way that the problems arise because the reality is that I run a business which takes significant risk, and I'm not an employee who is insulated from these.

4.4 It seems to me that the problems of the public sector rollout of the legislation could be avoided if those who deem their contractors to be employees were required by law to extend employee benefits to those individuals, required to pay employers' NI contributions themselves, and banned from requiring indemnification of tax risk from their own contractors, thus avoiding rendering the position of "Inside IR35" contractor an attractive one to businesses, unlike the present situation which is designed not to establish the true nature of the relationship between the parties, but instead incentivises End Clients to seek to find as many contractors as possible to be "inside IR35" so as to avoid tax risk.

5. RE: What is your view of the role of umbrella companies in the context of these proposals?

5.1 In one case, although I was personally deemed outside IR35, so I wasn't personally affected, contractors were told that they by their recruitment agency that they had to use the recruitment agency's own umbrella service (rather than an umbrella organisation of their own choosing), and that there would be an administration fee levied against them as well for doing so. I was required to sign up on the basis that if in future my status changed, that I would then have to use the same agency.

5.2 When "inside" IR35 I've been required to pay an "administration fee" out of my day rate for using umbrella services, along with deductions for employers' NI as well as the standard deduction for income taxes. HMRC may struggle to indicate instances of employment where employees' pay is docked from the advertised rate so as to pay for their employers' NI and payroll costs?

6. RE: 12) How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

6.1 Per my remarks in s4.4 above, it seems to me obviously unfair that people can be taxed as employees without having the benefits of being one, and that the tax system is colluding with employers to facilitate this is nothing short of disgraceful.

6.2 It also seems ill-advised at best, that businesses should be able to avoid tax risk AND paying proper employee benefits by the expedient of declaring people to be contractors outside IR35 and I am gravely concerned about the implications of this for the victims of so-called "zero hours" contracts.

6.3 It seems to me that many of the problems of the public sector rollout of the legislation could be avoided if those who deem their contractors to be employees were required by law to extend employee benefits to their contractors and banned from requiring indemnification of the associated tax risk. This would avoid the present moral hazard of an End Client determining all his contractors to be "inside IR35", neatly avoiding tax risk but yet also avoiding having to grant employee benefits to the individual concerned; and also at the other end of the scale, avoiding a situation where businesses try and force people to work for them as contractors to avoid having to offer them employment benefits.

6.4 I also would like to express grave concern about the potential for abuse in the present proposals whereby Employers are able to recruit individuals, determine them to be "inside IR35" thus offsetting their own tax risks, whilst also failing to extend basic employment protections to those individuals. What is HMRC doing to protect against exploitation of the rules by Employers who will be so empowered by the proposed changes?

I trust that the inquiry will take full account of these views and the opinions of thousands of others in my position.

Mike Pettigrew

IR35 introduction to the private sector – IMPACT to my Limited Company, personal situation and view on general UK industry impact:

This is the first time in 33 years of working in the IT industry, since leaving University in 1987 with an IT qualification, working 10 years full time then taking the big step and risk to set up my own IT business back in 1996 that I am now in the position of being out of work. I expect to be relying on state benefits for the first time in my life shortly and am having to consider leaving my own country for work, as state benefit would simply not be enough to maintain my families current way of life and what we aworked so hard to get to. If we stay with no ability to secure work and the IT market being so overrun and in chaos, it could leave us heading towards bankruptcy and huge debt, no longer contributing to the economy but needing to live from the state, which I never thought would ever happen in my working life given how strong and important the Technology sector is seen as, well at least by the rest of the world given what we are doing here!

Many thousands of others will be put in the same position and that is already evident from many of the forums and lobbying groups who have been campaigning against this. Rumours of mental health impacts and even suicides have also been mentioned by some of the people I have spoken with because of the immense pressure this has put people under with losing their businesses and life literally overnight and being completely uncertain of their future now. We are being given little or no choices because of the complete lack of due diligence by the government in the implementation of this to the private sector, along with the complete lack of detailed assessment of it by businesses, hence their blanket approach of terminating all their existing contracts via PSC/Limited company routes, which will no doubt impact them also and the country in due course. This is also affecting my family, my and their mental and general health.

The blanket approach being taken by private sector companies as above, such as financial organisations and banks, forcing anyone wanting to do work to use umbrella companies that are not regulated and take huge pay cuts and leave their companies high and dry, is unfathomable and a kick in the teeth to all of the small business that have helped Britain prosper and get through austerity for decades now. Many cannot use the umbrella route without closing their businesses or will not be able to and lose the ability work like myself already or simply will not be get further work with the clients any other way. Closing down a business and reverting to full time roles may also be fruitless for foreseeable future due to the flood and chaos of the resource market and these clients are not increasing their FT employment accordingly. Not to mention the

rates on offer are unchanged in most cases for the same jobs. No employee status, benefits or rights are afforded to anyone working via an umbrella company or direct "payroll only" routes and they would still have to cover all of the various insurances and overheads that I have to cover for example for my cpmapny and myself, its just ridiculous, short sited and a complete shambles. Even Brexit has had about 3 years to prepare for it and that's not going well, so how can this be happening so quickly across all of small business when the economy is already exposed. Small Businesses are a huge part of the U.K. economy and this is being done without proper due diligence and impact assessment.

Through the crisis of Banking and other crisis in the economy, in the Technology sector we (small businesses, Limited Companies and sole traders) have helped along with all other sectors impacted keep an underlying strength and resource pool of experienced and skilled resource and providing those services to the larger clients, which has helped prop up \nd recover the economy, no doubt. IT is just one there are many from oil workers, truck drivers, taxi drivers, firemen/woman subcontracted and every small business who subcontract their services into larger clients etc. No doubt we aided hugely in the recovery but rates have not changed much in my industry in 15 years for the majority of IT interim assignments that clients get our companies and us in to help them deliver their services, changes and transformations. Also given that just about all industries have a reliance on the technology sector and now more than ever this is suicide for the U.K's Tech sector and economy. Many of these small businesses (not saying all of course) look to grow from perhaps one employee to many or can go on to be the larger companies themselves but that will be halted in its tracks for most now. So where will the future Tech innovators and growing companies come from to help this economy prosper going forward, as it will not likely be here now in this environment!

It is a kick in the teeth to all of those who run small businesses in this country, that we have worked so hard all our careers and this is impacting our and other industries massively, degrading the UK's standing trying to build itself as a Technology leader. Especially now after Brexit when it is important to invest and build this industry and others more to help lead in them alongside our allies and new trading relationships we will undoubtedly need. We will lead the world in NOTHING if this draconian measure goes in and there will be a brain drain of our country. Not only that but the clients will ultimately find it difficult to meet their deliverables without enough experienced staff to do the work. It could also put our security and economic future at risk, as we all know just about everything depends on Technology and Computers nowadays. Ultimately the objective of these rules may not be met and the government will simply deal the countries technology industry a fatal blow and in the short term gain very little in tax revenue or even a negative figure, as it is off-shored more by companies who can no longer get the resources on-shore that they need to carry out critical work or do not have enough permanent resource available to do it.

It needs to be stopped in its tracks and small businesses be allowed to flourish in this country or I fear it will end up reliant on few large corporates getting away with not paying their fair share, holding the economy to ransom, leading to a purely service consuming economy with low GDP and massive debts = recession and worse austerity than ever seen in this country in our and our children's life times. If they would want to live in such a country of course!

24 February 2020

Paul Phillips

Introduction
I am a contractor of 12 years standing and have worked in the Information Technology industry for 30 years. I am currently a Technology Programme Manager within the global life and pensions organisation <redacted>.

1. Impact of new off-payroll rules on organisations
Five financial sector organisations that I have contracted with have now stated that they will not engage with Personal Service Companies (PSCs). This means the contractors within those companies including myself will be given notice of termination at the end of February 2020. This termination will mean that those organisations will avoid a requirement to assess contractors using CEST and therefore avoid the risk of incorrectly assessing status and being pursued by HMRC. It is expected that these organisations will undergo severe disruption to their projects and programmes as contractors are either not replaced or fail to re-engage under umbrella arrangements.

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed?
Within <redacted>, and indeed multiple financial sector organisations, the extension of the off-payroll rules to the private sector has been assessed as posing an unacceptable level of financial risk and therefore the rules have been avoided by pushing contractors out of the door or onto umbrella based arrangements that don't require the use of CEST. Also <redacted>, along with many other financial organisations, are pushing the cost of employers deductions onto the contractor (Employers NI and the Apprenticeship Levy). Day rates are not being increased to compensate therefore the financial impact on organisations is cost neutral and the impact on the contractor is burdensome (a 25% reduction in income).

4. What will be the effect of these new measures on a chain of contractors and subcontractors? I along with thousands of other contractors have received, or will receive, notice of termination. The UK contract market has dramatically shrunk in the last 6 months with the number of posted vacancies reducing to a trickle. Anecdotally hundreds of contractors are now applying for each vacancy. Organisations are ramping up offshoring of work and the use of consultancies which are straightforward to procure and

have no IR35 risk. The historic ability to expense travel, accommodation and subsistence costs through a contractors PSC has now been removed for contractors working under umbrella arrangements and this will mean that the remaining contractor workforce will become less flexible as working away from home becomes particularly punitive. From my perspective I have worked in multiple cities within Scotland and England in my career and I will no longer contemplate working away from home. This skilled flexible pool will become a smaller and less flexible pool.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures?
I refer to the FCSA (Freelancer & Contractor Services Association) proposal in its response to the IR35 consultation, the FCSA proposed a solution of "Enhanced Reporting and Enforcement" as an alternative to a straight roll-out of the off-payroll IR35 rules to the private sector. If this was adopted PSCs would continue to be responsible for their IR35 status but they would have an extra obligation of reasonable care. The proposal also tightens up compliance with a requirement for end hirers to secure their labour supply chains and for PSCs, fee payers and intermediaries to share information up the supply chain. Information would be reported quarterly to HMRC allowing them to make targeted, intelligence led activity.

What should HMRC do to help businesses understand the new administrative rules? Businesses understand the rules well enough to determine that they don't want to follow them - hence terminating contractors or moving them under umbrella arrangements. Given that HMRC themselves have failed to win multiple court cases pertaining to IR35 the rules are clearly complex, difficult to apply and problematic even for HMRC.

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker?
Unfortunately no. I used the CEST tool as a test using my <redacted> contract assignment and the response I received was 'Unable to Determine Status' after I entered all criteria. The questions asked of me were clear enough but the rational for the CEST tool providing that ambiguous assessment was completely unclear.

Do they reflect the reality of the contracting environment?
No the reality of the contracting is straightforward. By the governments own definition employed workers are entitled to certain employment rights including:

- getting the National Minimum Wage
- protection against unlawful deductions from wages
- the statutory minimum level of paid holiday

- the statutory minimum length of rest breaks
- to not work more than 48 hours on average per week or to opt out of this right if they choose
- protection against unlawful discrimination
- protection for 'whistleblowing' - reporting wrongdoing in the workplace
- to not be treated less favourably if they work part-time

- Statutory Sick Pay
- Statutory Maternity Pay
- Statutory Paternity Pay
- Statutory Adoption Pay
- Shared Parental Pay

If you are not entitled to those rights then you are not employed as employment involves the employer having these obligations towards the employee.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
CEST should reflect the reality of the contracting environment and should ask questions regarding the entitlement of employment rights as outlined above.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
The status determination process is now not applicable for the majority of contractors in the financial sector as CEST is being avoided en masse.

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
Yes place status determination back onto the contractor along (as per FCSA proposal) with CEST questions modified to align with a determination of what employment rights have been granted to the contractor. I would also venture that contracting should be transitory in nature and therefore the introduction of a time bar in addition to the rights based assessment would help prevent abuse of the system eg. limit engagements to 2 years. This time limit would encourage flexible resourcing and avoid 'permtractors'.

10. Will the Bill, as drafted, achieve the Government's objectives?
Im afraid not. The private sector has responded very differently to the public sector to the proposed Bill, and is seeking to avoid CEST and future IR35 liabilities. As a result the contractor population is dramatically shrinking with multiple redundancies and offshoring now occurring. The overall tax take will now reduce. It would have been perhaps more sensible and straightforward to increase the dividend tax rate to gain further funds.

11. What is your view of the role of umbrella companies in the context of these proposals? Umbrellas provide a way to secure resources but they pose difficulties. They don't support working from home financially in the way that a limited company does and also those that are FCSA approved place employer contributions on the contractor which is inherently unfair and of questionable legality. I understand that a number of non-FCSA approved umbrella companies support tax avoidance measures - which would be problematic for HMRC.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
Not taxing individuals as employees allows them to personally fund the benefits they would have otherwise received from an employer. As a contractor my day rate covers my employer pension contributions, my holiday pay, my sick pay, my paternity pay, my training, my accommodation, my subsistence, my computer equipment. I am also highly incentivised to work and be productive given I lack the protection an employee would typically receive. I would strongly suggest that if the IR35 rules cannot be changed to remove the additional tax burden that obligations be place on employers to firstly pay employer contributions and secondly compensate for the non-supply of employee rights.

20 February 2020

Craig Phipps

Capacity which made: Co Director of Fleet Search and Selection Limited (Banking recruitment) and Fleet Oil Limited (Oil and Gas recruitment predominantly contract).

Dear Sir/Madam,

1 Summary remarks
1.1 Thank you for looking at the changes to the off-payroll working rules (i.e. IR35) in the draft finance bill. The incoming changes to IR35 are starting to cause stagnation in both our markets in the Banking and Oil sectors due to the

lack of understanding of IR35 and the inconsistencies of the CEST tool determinations.

1.2 The flexible workforce needs to be supported particularly where there is a distinct requirement for contractors in niche industry disciplines (ie offshore oil chemists) to support existing employees – these contracts tend to be short to medium term in nature. Clearly, someone should not be taxed as an employee when they don't have the same employee rights.

1.3 From our experience so far, end-clients are leaving the determination of a consultant's/contractor's IR35 status to line managers who have no tax expertise and are distracted by carrying out their normal business. This has become problematic and risky for recruiters who are reliant on inexperienced individuals to make accurate determinations – inaccurate determinations leave either the end user client with a significantly larger on balance sheet cost or the recruiter exposed with now being responsible for recovering the tax shortfall where they weren't part of the determination process in the first place. Consequently, complex rules encourage blanket bans on consultants/contractors working through personal service companies (PSCs) and these inaccuracies leave recruitment firms unfairly exposed to determinations made by inexperienced line managers from end user clients.

1.4 We are increasingly seeing inaccurate IR35 determinations after using the CEST tool. For example, a contractor was recently determined to be within IR35 when they were being viewed for a 6-9 month assignment and the contractor had never worked for the organisation. Nowhere in the CEST Tool is there any question regarding the contract duration or the last time the contractor was engaged with the end-user client.

1.5 This set of problems could be resolved by the cancellation of changes to IR35 and the introduction of a simplified tax regime or by delaying the implementation of the new rules until a significant change to the CEST tool be made and a thorough review and structural change made to the process of IR35 determination.

2 Background and related remarks
2.1 To provide you with a bit of background about our organisations:
Fleet Search (established in 2009) focuses on both permanent and contract market within Internal Audit, Regulatory and Risk disciplines within Banking and Financial Services
Fleet Oil focuses predominately on placing contract rotation and ad-hoc Oil Chemists onto oil platforms in the North Sea

2.2.1 I possess circa 25 years recruitment experience in the banking sector and have been working extensively within the Oil sector for over 6 years.

3 Existing measures in the public sector

I offer no additional comment on the rollout of changes to IR35 in the public sector, as I have not worked in this sector. However, it is of great concern to me that a review of the impact of the changes to IR35 in the public sector has only recently been carried out with only a month to conduct the review – for such an important change in taxation that will impact industry across the UK, I would have expected a longer review carried out earlier or an assessment conducted from its inception within the public sector. Any findings will be next to impossible to change before 6th April.

4 Impact of new off-payroll rules on organisations
4.1 The impact of the extension of the off-payroll rules to the private sector has not been adequately assessed. Complex rules that put the onus of proof on end-clients have promoted simplistic responses and hampered business as well as inaccurate IR35 determinations. If we look at the wider impact on the economy, contractors are integral part of a fluid workforce – they allow businesses to react quickly and reallocate resources efficiently, without the contract market businesses will become less agile. The follow on effects will be projects taking longer to deliver, business inefficiencies, costs to business will increase leading to increased prices for the consumer/business. With contractors out of work and personal service companies (PSC's) closing down, the unemployment figures will rise and less corporation tax and VAT recovered by HMRC. Im already seeing the contract market drying up in the financial services sector and, in my view, the changes to IR35 should not be rolled out in the private sector – certainly not without more information on the impact to the economy.

Size exemption and blanket bans
4.2 The number of financial services firms willing to hire contractors directly (via recruiters through a PSC structure) has plummeted with the application of blanket bans on consultants/contractors working through PSC's. These firms do not qualify for the small organisation exemption.

Sub-contracting
4.4 Many end-clients are now disallowing larger consultancy firms from sub-contracting work to smaller firms regardless of whether projects meet the outside IR35 criteria.

4.5 As a consequence, some of the larger consultancy firms are now abandoning the "associate (outside IR35) contract" model that they have historically used to create a "bench of experienced professionals". I know of two that are in the process of replacing associate contracts with confusing "casual worker" (or similar) contracts.

4.6 "Casual worker contracts" effectively put all the risk on the contractor as they essentially don't have the same rights as employees however will have to pay the same tax. These contracts cite a gross day rate subject to all taxes and deductions (so presumably employer NI contributions) without guarantees

that any work will be offered. Hence, in all likelihood, contractual promises relating to possible employee benefits will never be fulfilled. One such promise is the possibility of being enrolled in the company pension plan after 3-months of work.

4.7 It is worth noting that many smaller consultancies believe that the larger consultancy firms (and law firms seeking to enter the consultancy business) will be the biggest beneficiaries of the changes to IR35. However, in view of the above, this may not be the case if they can't fill their bench with skilled/experienced sub-contractors.

4.8 Generally, sub-contracting for the larger consultancies can be a good business option for smaller players. Nonetheless, the relationship is not always an easy one, especially in view of the margins the largest consultancy firms take. A sub-contractor may only see a fraction of the day rate paid by the end-client.

4.9 Clearly there is scope for boutique/specialist consultancies (that offer sub-contractors a fair deal) to thrive. However, for this to occur end-clients must allow sub-contracting to smaller businesses on an outside IR35 basis.

5 Determining the tax status of workers

5.1 As per the above, the upcoming changes to IR35 do not: reflect the reality of the contracting environment, or safeguard those who comply with the current IR35 framework.

5.2 Blanket bans point to a lack of faith in the CEST tool. Furthermore, requiring end-clients to determine a consultant's/contractor's IR35 status distracts them from their core business.

6 Possible alternatives for achieving policy objectives

6.1 Four possible alternatives to the changes in IR35 are listed below. Any final proposal might reflect some combination of these ideas (and/or other ideas submitted).

A Single Consolidated Tax
6.2 In May 2019 the Centre for Policy Studies published a report Think Small – A blueprint for supporting UK small business. It is an excellent report that covers a lot of territory. It argues that:
6.3 Companies with revenue of under £1 million should be given the option to replace corporation tax, business rates, VAT and Employer's National Insurance with a simple levy on turnover, charged on a cash basis: the Simple Consolidated Tax (SCT).
– The SCT should be voluntary, i.e. a firm could apply the SCT or be taxed as they are currently. – Voter and small business polling show that a substantial

majority believe that the Government is not currently on the side of small businesses.

6.4 The SCT idea is attractive. However, where small/micro businesses do not opt for the SCT, the changes to IR35 in the private sector should not be implemented.

Improve support for the current IR35 regime.
6.5 The current IR35 regime could be better supported if end-clients, as part of their governance framework, improve their general management of the people and firms providing services. They should:
– Look out for disguised projects (i.e. project roles disguised as employment) as well as disguised employment (i.e. roles disguised as projects when they are permanent roles).
– Respect self-employed professionals managing their businesses in accordance with IR35.

6.6 End-clients could also consider the term of any contract (including rollovers) as an indicator of disguised employment, but not a determining factor.

6.7 In fact, it would be helpful if this question of contract duration is discussed more widely and should not be restricted to services provided by PSC's.

6.7.1 There is a risk associated with contracting, most of the contractors we work with in the Oil sector do not work for the whole year making earnings volatile, so clarity on this question of contract duration would be helpful.

6.7.2 To provide further context, the biggest consultancies are often on client sites for much longer than 18-months (and sometimes years beyond), show no concern about the length of time they are on site, are constantly pitching for new projects, and can easily field temporary staff (even though they may not be particularly experienced or skilled).

Merge National Insurance and income tax
6.8 As suggested in the 22 February 2020 Guardian article by Patrick Collinson A truly bold chancellor would scrap national insurance, merging NI and income tax would help to simplify the tax system. It might also help to address some, if not all, the NI issues behind the changes to IR35.

A low flat tax levied on every employee, consultant, contractor and paid by the end-client
6.9 To address the concern that end-clients are avoiding the payment of employers NI, all end-clients could be made liable for a flat tax for all employees, consultants and contractors.

6.10 How this approach applies to consultants supplied by the larger consultancies and law firms would need further consideration. For instance,

how would they differentiate between their permanent staff and external sub-contractors for the purposes of this tax? And, more generally, what would be the impact on the sub-contracting model?

7 Taxing contractors who are not employees as if they are employed

7.1 On the question of whether it is fair for someone to be taxed as an employee, when they don't have the same rights as an employee, the answer is no. This question overlooks the temporary nature of contract/consulting work and the risks associated with temporary work.

7.2 An employee has employee rights and access to a range of perks. These range from gym memberships, maternity/paternity leave, to non-contributary pensions. A self-employed person (working through a PSC) does not have these benefits.

7.3 If an employee loses their job as a consequence of downsizing, he/she will normally receive a redundancy package. These packages can vary widely, but a self-employed person (working through a PSC) in the private sector are ineligible for such packages.

7.4 If bullied or facing harassment, an employee can make a complaint and initiate a human resource process. In the face of such conduct, a self-employed person remains silent or might reiterate their expectations around professional conduct. In fact, the self-employed can be quite vulnerable to such behaviour.

7.5 Employee pension benefits reliably accumulate over the years. While a self-employed person can also accumulate pension savings (via a SIPP), in reality this can be challenging where earnings are volatile and savings (including pension savings) get drawn down in difficult trading conditions.

7.6 An employee may also earn (sizeable) annual bonuses, but a consultant/contractor (working at the same firm) would be ineligible for anything similar.

7.7 Access to private healthcare is a key benefit included in many employee packages. A selfemployed person pays for private healthcare out of their earnings (to cover in-contract as well as fallow periods). Moreover, a self-employed person must absorb the costs of being out of work if, for example, he/she undergoes an unexpected medical procedure involving a prolonged recovery period.

7.8 The self-employed (PSC's) pay VAT, corporate tax, income tax, dividends tax, and NI. The total tax paid can be significant. Pension contributions (despite their tax benefits) are often limited by the need to build up a "rainy day fund".

7.9 PSC businesses are faced with a variety of expenses including: business insurance, accountancy fees, travel expenses, website maintenance, and fees for various professional services.

8 Closing remarks

As it currently stands the new changes to IR35 are not fit for purpose:
Asking inexperienced line managers to make an assessment of a contractor's tax situation risks significant inaccuracies and should not be their responsibility. Determinations should be the domain of HMRC;
The CEST Tool in it's current capacity is inaccurate and does not take into consideration the term of the contract or whether the contract is being extended, adding to the inaccuracies on determination of IR35 status;
A stronger, more transparent framework around IR35 adoption needs to be implemented;
If the new rules for IR35 are to be implemented, a longer, more detailed review of it's effects within the public sector should be conducted before implementation;
Alternative more simplistic tax structures should also be considered as part of an overall IR35 review;
Contractors are a large, fluid and essential part of the economy – any impact on this fluidity risks the future of the British economy;

24 February 2020

Robert James Piers-Leake, Softly Does It Limited

1.0 Summary

My current end user client is QinetiQ at Malvern, where my services are supplied via my PSC as an SC cleared Navigation Systems Engineer, via my current Agent, Experis.

Due to my PSC's turnover, it is VAT registered.

My current day rate is £625.00 plus VAT, consisting of four days per week at the client's premises in Malvern.

I travel to the client's site Monday mornings from my home and registered company address in Cheadle, Staffordshire, arriving between 09:30 and 10:00.

I work at the client's site four days per week, Mondays through Thursdays, travelling back to my home and registered company address on Thursday evenings.

During the week whilst away from home and the registered company address, I pay for overnight accommodation for three nights, Mondays, Tuesdays and Wednesdays.

My PSC's weekly outgoings currently claimed back from that which it invoices for are:

- 200 miles mileage to and from home and company registered office and the client's site and between the overnight accommodation and the client's site,
- three night's accommodation and
- lunch/evening meals for the week.

all totalling around £300/week, but does vary slightly from week to week.

The following pages will now sympathetically reflect the sections, 1 through 12 detailed in "CALL FOR WRITTEN EVIDENCE" hyperlinked in your EMAIL, as subsections **2.0 Written Submission** from page 2 of this document.
2.0 Written Submission

Existing measures in the public sector

2.1
It has been reported that by Spring 2018, some 38% of IT contractors had left the public sector, due to the huge financial impact of those contractors.

Impact of new off-payroll rules on organisations

2.2
No comment

2.3
No comment

2.4
In addition to the vastly increased tax burden experienced by contractors in the public sector and now to be experienced by contractors in the private sector, there is the additional impact of not being able to reclaim expenses involved in providing services to an end client, especially when having to be away from home for weekly or sometime monthly durations.

Not being able to reclaim such expenses will incur a combination of the following:

- decline contracts that incur high expenses, i.e. only accept contracts that have a reasonable daily commute and

- have to negotiate an inflationary rate on contracts requiring extended periods away from home.

2.5
To reduce the financial impact on contractors (they're NOT employees, as they do NOT receive:

- holiday pay,
- sickness pay,
- pension contributions,
- as a limited company PSC, pay both employers and employees NI,
- pay ACT and
- depending upon turnover, have to process VAT returns),

allow the reclaiming of reasonable expenses.

Determining tax status of workers

2.6
Being deemed outside or inside IR35 and for the latter, whether effectively deemed to be an employee, do not take into account the additional costs of working via a PSC, as detailed in **2.5** above

2.7
My experience of CEST is poor, as it could not ascertain whether I was inside of or outside of IR35.

2.8

Policy objectives and wider context

2.9
No comment

2.10
No comment

2.11
Effectively, jointly operating within a cartel, i.e. constrained by the FCSA.
There are non-FCSA compliant umbrella companies that advise they are HMRC compliant and promise improved retained earnings.

2.12
See comments against **2.5** and **2.6**.

22 February 2020

Vladislav Piscunov

The Government fails to realise the contracting market is going to be largely forced to die off, due to the continuous efforts of HMRC to prevent normal day to day business activities of contractors from being conducted.

In essence, contractors at large are consultants, who hold a much higher level of experience and expertise in their particular field of work, and although some industries (gardening) require very short term assignments to be completed, in other industries (such as software development sector) has the predicament of requiring in-depth understanding of the clients projects, which in majority of cases require the contractor to spend significant amounts of time on-site at their clients offices, and working together with their other members of the team, to both liaise the best routes of action (to ensure the projects delivered by the contractor is integrate-able into the clients existing project) as well as to ensure a smooth development flow.

Note however the contractors in this sector are not being directed nor controlled by the client - contractor is invited to provide his/her consultings services, in order to help the client's business achieve more efficient results - this in turn produces higher, more efficient output of the client, resulting in a higher economic activity, as a result of direct impact from the contractors consultancy engagement.

The impact of the new rules being extended to the private sector can be seen already: the market for contractors in the aforementioned, development sector - has already decreased by a vast 70%. The large companies using the services of talented and experienced contractors have already submitted notices to those contractors, stating they would either have to become permanent employees (which doesn't make sense given the average contractor engagement lasts 3-6 months), or stop working for that client entirely - therefore those contractors would struggle to find any clients.

The contractors are already taking significant, major risks in their assignments - which makes up for the benefits (such as higher rates they receive) - by working with multiple clients at the same time, and having between 0 and 7 days notice periods for the termination of their engagements, as well as having no payout should the client no longer require any work done on the project (without notice).

They also have to manage their businesses accounting and administration, which also adds on to the risks.

Furthermore, they take large risks at having no assignments at certain times, and due to the fact potential clients are now as it stands, significantly afraid of any IR35 related inquiries, they simply shut the market down - decreasing opportunities even further.

There are countless reasons why those contractors are also taking risks as well as incurring costs
- they have to provide all the equipment used for the clients work. This means between £3,000£10,000 for just the equipment.

The difference for contractors should they be deemed inside IR35 or be forced by lack of market, to become permanent employees - they would still use their equipment, however normally the employer would provide employees with that.

Consider this: a contractor invests £10k into their contracting business, by means of purchasing equipment etc. - however after the IR35 the market is disrupted, clients are not willing to offer any contracts (due to the lack of understanding and unwillingness to take the burden of ensuring & proving the contract is deemed outside IR35, which is currently done by contractors themselves) - the contractor is forced to lose value in the equipment purchased, and take short jobs with companies who are unable to reward their high skill and excellence to the appropriate level of consultants - which means a person completing university & working in a job for 5 years, would get the same salary as a contractor consultant, who has been renowned for their work, invited to be a speaker on-stage at conferences, and who is usually invited to provide highgrowth strategies for the clients needs.

This would surely, apart from making the contractor miserable - force the contractor to think about other opportunities, the primary of which, would be relocating outside of the UK, in order to not be chased by unreasoned, hugely volatile tax and market changes done by HMRC.

They would also consider other countries in Europe, where in some there are even 0% tax rates for their particular industries - further ensuring the contractors would leave.

This would indeed produce the result mentioned previously - of prohibiting innovation & achievement for the UK businesses (those who would normally hire contractors) - reducing the amount of economy’s output (and therefore tax paid to HMRC), as well as the disappearance of the tax paid by those contractors - as they were forced to stop contracting or move abroad.

There are approximately 1.77 million active contractors in the UK according to the research. Should any proportion of those stop contracting or leave the country, this would have a major negative impact on the UK economy overall.

Therefore it would be self-harm and ill-advised for the government to implement the changes to IR35 as it stands - by doing so, they would suffocate the innovation and economic development of the country.

25 February 2020

Jeremy Place

1. I am an IT consultant who lives and runs a Personal Services Company (PSC) in North Herefordshire, and I would like to bring to your attention the impact of the Off-Payroll Working Rules (IR35) for those of us who live in rural areas.

2. While I have no issue with the Rules as they stand, this change has had the unintended consequence that risk-averse clients have taken a blanket approach to not make Employment Status determinations on the roles and to simply stop hiring PSCs.

3. For over twenty years I have been providing independent IT consultancy to numerous clients, including various HMG departments, the Financial Services sector and SMEs. My primary client, currently, is a Financial Services company in Edinburgh that provides pensions and investment services. I also have two secondary clients who use my Chauffeuring IT platform to provide services to the automotive sector, and a number of smaller local clients to whom I provide more ad-hoc IT services.

4. My primary client has responded to the upcoming changes in Off-Payroll Working Rules by terminating my current contract with them and insisting that if I want to continue providing my services it has to be done through an 'Umbrella' company (the blanket approach, ie not making status determinations). If I was to do that, it would mean that I would essentially be taking up a full-time job in Edinburgh.

5. There are obviously a number of reasons why that would not work in my situation. However, I wanted to point out the disproportionate impact to those of us who live and work in rural areas but have to travel to meet clients. In the past I have taken on clients from all across the country (and internationally) and have been able to 'deduct' travelling costs as business expenses. If I was to take an 'Umbrella' gig that would mean I would lose the ability to claim travel as tax-deductible thus (yet again) benefitting those who live in town and putting those of us who live in places such as North Herefordshire at a disadvantage.

6. Again, I have no issue with the sentiment of the Rules, just the unintended consequence of the 'cartel-like' approach to hiring practices which has been adopted by companies in the Financial Services sector (amongst others).

12 February 2020

Nic Plum, Eclectica

Please find below my submission to the House of Lords Finance Bill Sub-Committee into the draft Finance Bill 2019–20.

Introduction

I have been working for 40 years. For the last 20 years I have been an independent engineering professional providing systems-thinking and systems-engineering expertise . Although based in Cambridgeshire I spend almost all of my time away - mostly in the UK but have spent considerable time in Belfast, Austria, New York with short term contracts in Switzerland and Kuwait. Although my permanent career was in defence my independent work has covered nuclear, rail, government, electricity transmission, space. The companies I deal with range from small start-ups to large multi-nationals.

I value my independence highly and the reason I work this way is because it allows me to test my skills in a wide variety of domains and gain experience of not only the technical domains but the ways in which organisations design and develop their products. My journey to a workplace ranges from 120 to 270 miles driving in the UK and beyond that commuting weekly on a plane.

The new legislation represents an existential threat to PSCs. This is by direct design of the HMRC in the exploitation of the behaviours of large companies to achieve what they've failed to do in the courts over the last 20 years against a poorly written and overly complex legislation. Not only will I not be able to compete on an equitable basis but PSCs will soon become extinct to the benefit of medium and large consultancies. This is deeply unfair and punitive out of all proportion to the problem alleged by HMRC.

CEST Tool Questions / Basis / Accuracy

The CEST tool is is supposed to provide a measure of assurance to those who use it. It therefore has to accurately reflect the law. The tool takes no recognition of any circumstances outside the specific contract being assessed. It excludes mutuality of obligation[1] [2] and at best seems to be the result of an ad hoc development and verification process[3].

Process

The HMRC guidance states that a contract must be in place[4]. This isn't practical – there's no way any PSC (or Client) is going to accept a contract and then some time later make an assessment. All parties will want to understand the contractual and tax basis beforehand. The guidance also requires the client to have 'details of the contract'. This never happens. Most medium to large companies employ either their own or an outsourced HR team or a single "head" agency and the hirers have no visibility of the head contract between the client and the head agency let alone the contract between the agency and the PSC. Contract roles are advanced as being inside or outside IR35 before anyone has even approached any agency involved. Even the HMRC seem to

acknowledge that the client will lack the information needed to make an "accurate determination"[5].

Assurance

It must also be independent of any stakeholder who serves to benefit from skewing the algorithms. The HMRC has a clear interest in maximising its tax take and therefore cannot be responsible for any tool that is used for assurance.

Any algorithm or logic used must also be visible to the users so that the workings of the tool can be challenged and the rationale for any decision can be validated against the logic. We cannot be held to ransom by "the computer says no". As an independent worker if I am to be tested against it I need the means to challenge the decision. Without the logic used for the result it's like playing battleships.

Arbitration

Currently if the HMRC challenge my status I have an independent means of decision-making / arbitration provided by the courts. The judge is independent of both parties. This is not the case under the new regime – I have no mechanism to force the decision to be assessed independently – my only mechanism is to walk away from the contract. Not only is this wrong but the company applying the determination never gets to be corrected and this reinforces their belief that they are correct.

Under the off-payroll legislation if I accept an inside IR35 contract for a public sector client I cannot claim the expenses of running a limited company. HMRC seem to believe that under the new regime this isn't a problem because I won't need to run a company. This isn't the case – even if forced under duress to accept a contract within IR35 I still need to run my company because the next contract or indeed other parallel contracts might require it. Am I then supposed to switch my company in and out of dormancy?

If, however, I accept an inside IR35 contract for a private sector client I can claim 5% of the deemed value as expenses (excluding travel and subsistence). What has the end client domain or indeed expenses got to do with IR35? There is no discernible logic or consistency.

Effects & Behaviours

The net effect of the legislation is that it reduces income, increases costs and reduces the market available to me. I cannot compete on an equal basis with even medium-sized consultancies.

Client Behaviours

There is no doubt that the HRMC objective of basing tax take on behaviours is working. Large companies are risk adverse and it must be more efficient to frighten a few large companies than a much larger set of small companies. Equally it neatly avoids any ability to challenge the determination in court (mostly lost by the HMRC) which saves money. What is never addressed, however, is whether the legislation is good legislation in the first place? All that seems to be being done is to patch what is a poor set of requirements that cannot be held up in court. This is the latest attempt to deal with the symptoms rather than the cause.

I am currently undergoing the determination process with General Electric (GE) Renewables. I've had no communication about the process to be followed. The

first thing I saw was an email containing the output of the CEST tool. No one has asked for any information so how can a client answer any question about the right to substitute? This is a breach of 'reasonable care'[6]. There is no requirement to provide evidence to support the claims made but I have to provide evidence to support any challenge. Neither myself nor the client know what the reason for the CEST determination is (see earlier point on lack of transparency).

Potential clients are advertising contracts as inside or outside IR35. How is this even possible in advance? A proper assessment can only be based on an individual's circumstances which includes more than the current (or to-be) contract. This looks like blanket determination irrespective of any window-dressing to make it subsequently look like individual assessment.

Inability to Compete on Level Playing Field

Under the off-payroll legislation if I accept a contract deemed to be inside IR35 I can no longer claim travel and subsistence expenses. This is a significant cost because I have to work away from home owing to the distances involved. Meanwhile the staff from larger consultancy companies alongside me can claim their expenses. There is no logical difference in the reason for claiming expenses. The HMRC are in effect using this as a means to penalise the employee of the PSC in comparison with any other company's staff.

There is little choice to the PSC in terms of how they structure their business. Most agencies will not deal with a PSC unless they are either a limited company or within an umbrella company. Large clients will only deal with companies on an approved company list. It is very difficult to get on such lists because they are designed for large companies and require an amount of detail and history that is difficult for a small company to meet. Although willing to compete and obtain work through the client procurement route they will not entertain this – also partly because they typically have an arrangement with a large "head" managing agency who have an interest in preventing the PSC from using a route that bypasses them and reduces the income stream on which they take a percentage.

How can I use my advantages of lower costs and agility if I have a higher cost base and cannot get equal access to the work? I can't.

Market

Owing to the off-payroll legislation there are an increasing number of companies (e.g. Deutsche Bank) who will no longer deal with PSCs like myself [7] [8]. The market available to me is now shrinking. It's not so much IR35 determination as IR35 extermination.

The legislation is also increasing the number who work under an umbrella company – at the insistence of the client who will not engage PSCs themselves. This offers no benefits to the worker (still unable to claim expenses etc.) other than possibly providing a higher income. Many have been set up by agencies and by accounting firms making it almost impossible to get support in challenging determinations because of the vested interests.

From personal experience I know that my current end client, General Electric Renewables, has approached medium size consultancies to make good any shortfall in engineers as a result of the off-payroll legislation. There aren't any more engineers – unless more work is off-shored. These consultancies are able

to charge much higher day rates – often using the very same PSCs – and hence the cost increases probably by 30% to the client. It has to be said that the implementation and drafting of legislation has no doubt been done by the large consultancies who stand to profit from the removal of PSCs from the market. Yours sincerely
23 February 2020.

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Arvind Poduval

Refers to the questions being asked here:

https://www.parliament.uk/documents/lords-committees/economic-affairs-finance-bill/DraftFinanceBill2019/FinanceBill2019CfE.pdf

Existing measures in the public sector

- I do not have any experience of working in the public sector

Impact of new off-payroll rules on organisations

- A large number of organisations, such as my current client, are blanket banning PSC's based on a lack of understanding of the proposed legislation but also based on concern of the ongoing administrative burden - i.e. the need to re-visit at the point of each contract renewal. Details of these companies can be obtained online on websites such as LinkedIn
- The timing of the legislation appears to be too short for organisations to be able to put work with suitable providers/support functions and forcing rushed decision
- I believe that there should be significant effort and time put in by HMRC to create training material and then deliver them to companies BEFORE rollout of the legislation

Determining tax status of workers

- On a recent use of the CEST tool, it was unable to provide me with a clear result, which causes confusion. There was no opportunity to reach out for support or clarity on why the result was unclear. Having input what I believe to be factual answers I can't see how carrying out the test again would be beneficial as my results should remain as they were

Policy objectives and wider context

- This does not feel like the desired outcome for HMRC as this is leading to the conclusion of contracts and a number of contractors preferring to be out of work awaiting a new client rather than move onto PAYE - this will not lead to the desired tax income HMRC intends to obtain and increases unemployment numbers (thousands have completed contracts)
- I cannot see how paying an equivalent amount of tax as a contractor vs permanent is fair - the contractor has NO ACCESS to company benefits such as pension, insurance, holiday pay, sick pay and other benefits. In addition a contractor notice is much shorter, and by nature if funding for projects is difficult the contractor will be released. There is no comparison to say that the rights are equivalent
- Companies leading projects will always want the option to have a flexible workspace, else this forces employers into pushing staff into meaningless activities to keep them occupied

- Projects are likely to suffer due to the new legislation as I think the number of people remaining out of work has been underestimated, and will mean that companies are short of the required resource to deliver projects on time or cost

13 March 2020

Charlotte Poynton, Proto Consulting

I would like to supply evidence based on my own experience as an independent contractor currently working outside IR35. I support a specific project within an oil and gas enterprise, and I have been working there less than 12 months at time of writing. I work hours of my choosing from my home office, coming onsite with my client no more than a day a week on average for meetings or workshops. My client has blanket banned all contractors to sidestep the need to assess contracts, meaning that my options are now very limited.

For ease, I will directly address questions outlined in the "call for evidence" document and give my answers beneath.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

My client has banned contractors from all levels of their supply chain, rather than go through the pain and risk of individually assessing thousands of people. All contracts will be terminated, with contractors choosing between leaving, finding permanent roles in the business, or going onto a PAYE model through an agency. There are three main impacts to the contractors that I see:

1) Since my client is not willing to cover employer tax contributions for those temporary staff moving to PAYE, they are passing it down to the agencies. The agencies won't pay it either, so they are "renegotiating" rates down with temporary staff like myself, continuing to charge the clients the same, and using the difference to pay the employer's tax. In essence this means the tax burden for both employee and employer will fall to the contractor – this represents anywhere between 30-40% deficit on current earnings, depending on day rate. On top of this, because no benefits will be due to the contractor, they must continue to pay for insurance, holiday, sick leave, expenses etc from whatever is left.

2) Independent business owners are being forced into unstable employment arrangements where they lose their independence, and receive no benefits or assurances whilst continuing to face all the risks of a temporary role.

3) Contractors are nervous about moving within IR35 for their current clients, due to threat of investigation and retrospective tax demands from HMRC for previous time worked at that client.

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

In my case, my client has felt unable to make any assessments, and has sidestepped them completely by issuing a blanket ban on contractors. I am clearly operating outside IR35 in both practice and contract, but this will have no bearing.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

I do not consider the CEST tool to be reasonable or accurate. For example, attending team meetings is taken as a sign of employment, but when embedded in a short term project it is often necessary to attend team meetings in order to understand the context of the environment in which you are operating. In my view it should be a very simple test – does the client have a right of control, is there mutuality of obligation, does the contractor have the right to substitute? The legal contract is the only objective evidence available, all else appears merely hypothesis. The CEST tool seems overly complex.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed? Policy objectives and wider context

My client has blanket banned all contractors, so there will be no determination process, no safeguards, no appeals and no rate increases.

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
10. Will the Bill, as drafted, achieve the Government's objectives?

Personally I believe that the objectives of the new rules are misguided. The idea that somebody doing the same work should pay the same tax is theoretically laudable, but a permanent worker and a contract worker doing roles with the same title are not necessarily in the same situation. A contractor deals with significantly more risk and personal expense (insurance, maternity pay, holiday pay etc). They take on assignments that a permanent employee might not be able to fulfil in the same way, bringing rich experience from multiple clients.

These rules will make tax less fair, not more fair. The contractor will now pay more tax than a permanent employee because they will be beholden for both employee and employer tax. Contractors who are forced out will be replaced

with expensive consultancy workers, who are paid a moderate salary whilst big bosses charge a high day rate to end clients. HMRC are taking money out of independent workers' hands and giving it to the execs at these big consultancies. Contract talent will flow out of the UK and move abroad where these regulations don't apply. Important projects will be cancelled or put on hold as British companies struggle to find the talent they need. In my view, the government should revoke the proposed changes permanently and save the self-employed sector.

11. What is your view of the role of umbrella companies in the context of these proposals?

It makes me very uncomfortable that self-employed business owners will be forced into employee status with largely unregulated umbrella companies. The balance of power is completely unequal as these companies know contractors have limited options, so they have carte blanche when setting rates and terms.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

The costs associated with being a contractor (travel and expenses, insurance, holiday, parental leave, sick pay etc) when combined with the PAYE tax burden, and the employer's portion of the tax contribution, will be prohibitive and will kill the gig economy. A contractor chooses to forego traditional employment benefits in order to gain independence and flexibility – in my opinion this right to choose ways of working is fundamental to our economy. At a time when we should be encouraging innovation and entrepreneurship, the government will kill off small businesses with these regulations. These rules have had the - perhaps unintended - consequences of shutting self-employed workers out of businesses, who are refusing to engage them.

5 February 2020

Dave Prichard

Please find below my written evidence in response to your public request to support your inquiry in to the IR35 Off Payroll Working Rules Extension legislation being proposed within the coming Finance Bill.

Having used your 12 point "Areas of Interest" as the framework for my responses, I have responded where I have direct experience or opinion in each of those point areas.

Existing measures in the public sector

No direct experience of the new off-payroll rules in the public sector, only relayed verbal experience from individuals who operated in the public sector at the time and departed the roles.

Impact of new off-payroll rules on organisations

No, I do not believe that a proper assessment has been carried out. Impacts would need to have been made to understand costs of staff training, investments in changes to HR systems, changes to payroll systems, changes to engagements contract, hiring processes, determination processes.

I run a small organisation, we are a small niche boutique consultancy, specialising in large scale, complex digital transformation programs at business and technology level. We have a turnover under £3M, 3 staff of four, we rely heavily on a trusted network of professional and skilled contractors/associates, that we engage on a demand basis as we fulfil on our customer engagements. We have operated all of the globe for some large global brands. There is such confusion around the whole IR35 off-payroll, driven by the complexity of the legislation, determination, and risk around getting it all wrong, that after 5 years of building up our business, and beginning to expand, our clients are now being forced to walk away from us, purely down to IR35. The risk is to great for them. This is a job and business killer, simply put.
Work is already drying up. There are blanket bans from many large organisations, as said above I have now lost all of my clients, despite having a 10 year working relationship with them, and continuing to have worked with each of them continually over the past 10 years. This will destroy the flexible workforce, some will switch to permanent roles, most will either reject the switch to perm or on-payroll/umbrella. Any switch to on-payroll is also coming with a 30-40% take home hit, caused by 25% drop in "day rate" and loss of ability to offset expenses. The fear of HMRC also pursuing individuals who go from outside to inside, is also driving us to the exit door with customers.

The simplest way is to remove the whole determination process of engaging with contractors/freelancers/self-employed. Employment status is difficult enough, tying it into taxation status, just kills the entire flexibility model that businesses crave. That's why they engage with us. Apply a simple 3% (both sides) engager/contractor, hiring tax. Problem solved, businesses get the skills they need on tap, self-employed get the freedom to engage as they need/want to, and the whole uncertainty that is driving this current risk averse approach both sides, vanishes.

Determining tax status of workers

The tests themselves are subjective and wide open to interpretation, and tends to be mechanistic and simplistic, at it lacks the fuller picture which is driven by the nature of the engager/contractor relationship. The 3 main tests are Control and Direction, Substitution, Mutuality of Obligation. These are water mark criteria, however the incidental, supply of equipment, financial risk, basis of

payment, exclusivity of service. Establishing these key factors, there is a huge difference across organisations around their understanding of the nuances of these. The tests themselves try to apply a "one size fits all" approach to a complex labour market that has evolved over the past 15-20 years. In truth it is trying to force 20th century tax rules against a dynamic employment landscape that is operating in a 21st century economy, that is both socially and digitally mobile.

CEST is not Fit For Purpose. It fails to genuinely cater for modern working practices, and fails to accommodate for case law and Mutuality of Obligation. It should be scrapped simply put. No tool can apply that level of nuanced interpretation of the nature of a working engagement and relationship.
It will have zero effect. Simply put if the contractor feels he has been incorrectly assessed they will just walk, there is no confidence in challenging a status determination, no point staying.

Policy objectives and wider context

Scrap IR35, replace it with a hirers or engagement tax, 3% both sides, problem solved, simple and clean.
No it won't, 50% of businesses are not engaging with the self-employed. Work is being off-shored. Self-employed are leaving the UK. Tax take will be down, compliance will not be improved, as thee was nothing wrong with compliance on the first place, it was just HMRC's distorted view of compliance. Business investment in the UK will drop and is dropping. This will seize up the wheels of the UK economy at a time when they need a flexible, dynamic and skilled workforce. Massive own goal. My view is the government is so blind to what HMRC/HMT say, they aren't prepared to listen to the real voices of experience outside in the industry.

Umbrella companies are a huge risk, it is difficult to recognise and understand which are the genuine and honest ones, they all claim to be HMRC compliant. This is one of the biggest risk areas of the whole industry. Umbrella and Payroll companies are regulated, leaving plenty of room for the unscrupulous and dishonest operators, as the recent Loan Charge has proven.

There is no alignment of the working regulations and employment tax regulations. You can be taxed (heavily) as an deemed employee, yet receive no employee rights. The greater concern here is that this leave the door open for zero rights employment, whereby companies can switch current employees, in to engagements permissible under the off-payroll, and remove any employer liability and burden for employment rights and taxes. Well done to the UK government, a huge financial risk and employment uncertainty has now been placed on the individual.

I would like to thank you for granting me the opportunity to present my evidence, and for taking the time to read my responses and to inquire in to this facet of the Finance Bill. There are a lot of worried people right now,

worried about their future, providing for the family, and keeping a roof over their head. For myself, I am now actively considering a future for myself and my young family outside of the UK, this is after 38 years of gainful and productive employment in the UK, as to me this is the final nail in the coffin of UK plc.

9 March 2020

Vineet Rai

I wanted to raise with you my grave concerns about the government's plans to extend the controversial changes to the IR35 tax rules into the private sector. An EDM has been tabled on this topic (#2379) and I would be grateful if you would sign it in order to put pressure on the government to change this anti-business, economically damaging proposal.

I am worried that extending these changes to the private sector will seriously damage the smallest of businesses like mine. In fact, it would/could put me out of business/force me to retire early/force me to move abroad to continue my business/force me to raise a legal challenge, at considerable personal cost/result in a pay cut for me of up to £14,000 per year.

The changes have already had a negative impact in the public sector. The Independent Healthcare Professionals Association warned that ongoing staff shortages will cause a decline in patient safety as 98 per cent of their members said they are considering leaving the NHS because of the changes. The government's own research shows that 51 per cent of public sector central bodies found that the off- payroll working reforms were not easy to comply with.

Even HMRC – who are meant to be tax experts – can't make accurate assessments, losing five the six IR35 cases that have come to light in the last year. So how are businesses, with little or no IR35 expertise, meant to accomplish the impossible task of determining which contractors do and do not fall within IR35?

HMRC may come back and say businesses can use their online CEST tool. Unfortunately, nearly all experts agree the tool is deeply flawed. In April this year, accountancy body ICAEW told the government that the tool is "not suitable for use in the private sector."

Many businesses will inevitably decide it's safer to say that everyone is caught by IR35, as to do otherwise would risk significant tax liability. This will mean that genuine contractors like me – who are just small businesses offering their services to other businesses – will end up paying employee taxes, the employers' National Insurance charge (an effective rate of around 50 per cent)

and in some cases even the hirers' apprenticeship levy, without getting access to any employee benefits. How is this an acceptable situation?

I value the freedom, flexibility and autonomy that contracting gives me. Now my autonomy is going to be taken out of my hands – with no meaningful right of appeal – in a way that seriously undermines my business.
IF YOUR MP IS A CONSERVATIVE – The Conservative Party is supposed to be the party of business and lower taxation. Why then is the government seeking to introduce a measure which will unfairly penalize compliant businesses?

I urge you to raise my concerns with the Treasury and do everything in your power to prevent a policy that would be a disaster both for self-employed people like me and for the wider economy.

6 February 2020

Fred Rayers

I am concerned that the announced changes to the implementation of IR35 will finally destroy the UK IT Contracting industry, by effectively meaning UK companies will not make any use of UK based IT contractors.

Although I was personally a contractor well over 20 years ago, hence am not personally impacted by the changes, I do have a particular interest in the matter.

For my previous employer a large IT Consultancy, I was the company representative for development of apprentice standards (Trailblazers), hence have a long standing interest and understanding of the health of the UK IT industry. In my current employment I am a Vice-President Solution Architect for the mobile applications department for a large UK Bank, where we use make use of many flexibly supplied resources.

Over the last 20 years the situation has changed from much of the flexible resource need for IT companies being supplied by UK nationals via small limited companies, to the use of the large "Systems Integrators". These SI "partners" are almost entirely resourced by non UK staff, who inevitably take the knowledge they gain away from the UK, once they eventually leave. The use of UK based IT contractors has reduced to just a small proportion of the total demand for flexible resources.

People working in IT do not become contractors just because of perceived financial benefits in how their companies are structured. There are many reasons why they wish to work as IT contractors, such as:

- They want to work on projects for shorter periods of time to obtain more varied experience and to improve their knowledge and skills. Such

contractors tend to be hard working and able people who are confident that is worthwhile a company making use of there companies services.
- Working permanently for a large company does not make sense unless you stay for many years, for example due to bonus's not paid proportionately if you happen to leave at the wrong time of the year.
- An umbrella company is in many ways the worst option, with no job security and also unable to offset what are genuine company expenses.
- They want to avoid the politics of working for large company and avoid a large companies (often arbitrary), HR and people management processes.
- Whilst willing to be flexible in work location they are often not prepared to work for one of the large IT consultancies who make people sign up to work anywhere literally anywhere in the UK at any time, often at very short notice. As a contractor they can chose exactly where they work on a per contract basis.

Any small limited company where the owner has full control is able to arrange their tax position to their best advantage. This equally applies to small companies that do not provide personal services and hence are not included in IR35. It is fundamentally inconsistent that a particular small company is treated completely differently just because it provides a service to one larger company at a time.

It is also bizzare that people working for such companies would be taxed as if they were permanet employees, without any of the benefts such as sick pay, holiday pay etc. Umbrella companies are not a useful solution, instead they just add additional coss to avoid a badly written tax rule.

The solution is to ensure that operating as a small services company is possible, indeed encouraged, but does not such companies to abuse their tax position. This can be done without treating people as permanent staff of another company.

One example would be to tax all dividend payments paid by small companies as income, another is just to actively enforce the existing rules that company expenses have to be genuinely incurred as a real cost for the business.

IR35 is already having an major negative impact on the UK IT Industry. I urge the review to recomend a complete change to how these small companies are taxed, not just tinkering around the edge.

23 February 2020

Adrian Redman

Background

I am an IT Contractor who has been providing specialist consultancy services to various industries and organisations as an interim Project Manager for the

last 15 years through a Personal Services Company (PSC) and I will be impacted by the introduction of these rules. All of my engagements during the last 15 years have been to deliver discrete, self-contained, projects for various end clients where the client required the services of a specialist flexible contractor who could be engaged on a short term basis to deliver key critical projects in line with corporate strategic targets/deliverables.

The option to work via a PSC on a flexible basis as and when demands of clients dictates it provides me with flexibility to move into many more organisations to build upon my breadth of experience and offer a broader level of skills to my end clients. This also provides my end clients with a much more skilled and experienced resource and by extension the extra level of exposure to different challenges at different clients enhances my ability to deal with difficult circumstances more easily to the benefit of my clients. As a result of providing my services via my Limited Company I also do not receive any benefits from end clients in the form of training, holiday pay, sick pay, paternity pay, or any other corporate benefits offered to their employees.

My Limited Company also pays the full raft of taxes and levies as required by law such as Corporation Tax, VAT, PAYE, Employers NI and Employees NI where necessary. The services I supply are provided on a national basis and as such can result in many weeks working away from at non-commutable distances from where I reside. Contracts normally dictate that my company has a limited period of notice for termination of engagements ranging from zero notice to, more commonly, 2 weeks notice.

None of the clients I engage with are obliged to provide me with any work during the period of the contract and similarly there is no obligation to my company to accept work offered as such there is no mutuality of obligation between my end clients and my company. In addition to the above my limited company also engages professional accountants to ensure my business accounts are compiled and submitted correctly, provides support to local businesses (hotels, restaurants, etc) when working away from home on engagements which preclude commuting from where I reside and has in place the required set of business insurances for my type of company.

I will now provide answers to some of the questions from the Call to Evidence document:

Impact of new off-payroll rules on organisations

As an impacted contractor currently engaged at an organisation within the private sector, I can see first-hand the impact on private businesses by these new rules and how they are being interpreted.

In terms of the impact at my current client there appears to have been some effort to assess workers individually but unfortunately client behaviour and

status determinations appear to be resulting in anything but individual assessments.

The approach taken by my end client, which I suspect is common place at many organisations large and medium sized, is to be as 'risk adverse' as possible in their determinations. In essence they are approaching the assessment of workers with a predisposition to place them within IR35 in order to avoid draconian fines and pursuit by HMRC. This has led the client to, en masse, place most, if not all, contractors inside IR35.

In my personal case, as with others at my organisation, this simply is not accurate. Various contractual clauses within my Limited company contract support substitution, absence of mutuality of obligation and my companies right to supply services to other clients during any period of engagement all of which would support my supply of services to be outside of IR35.

All of these assessments have been made by the end client without any discussions with myself, the Programme Manager upon the Programme I am engaged or without any review of my contract through which I provide my services.

I am sure you will hear from others who provide testimony to this committee that other organisations are taking even more drastic action and banning PSC's completely whilst other organisations are 'off-shoring' whole project teams to address this issue.

The end result to contractors to the above approaches will be varied, some will accept permanent employment, some will reluctantly accept inside IR35 roles with a view to moving on at the earliest opportunity, some will look for work overseas and some will just exit the market all together. What is clear is the imposition of this legislation will result in large numbers of small limited companies being closed down.

It should also be mentioned that a number of workers who are being placed within IR35 or forced into using Umbrella companies are now expected to fund Employers NIC's and Apprenticeship Levies from their day rate therefore placing a much higher and unfair burden on the contractor.

My end client is still making a determination with regards their approach in this area, but my fear is my end client will expect me to fund this extra cost and thereby reduce the rate at which I supply my services even further.

Determining tax status of workers

In terms of my end client and their assessment of workers it is clear I believe they are not fulfilling their responsibilities properly although I suspect this isn't necessarily intentional but through a result of their wish to avoid any repercussions as a result of status determinations from HMRC.

In terms of the suitability of the CEST tool I don't honestly believe it is fit for purpose. The varying sets of circumstances within the flexible labour marketplace is such that to write a tool to cover all scenarios is nigh on impossible. Unfortunately, this has resulted in HMRC producing a blunt tool which is, in my opinion, designed to capture as many within IR35 as possible due to the ambiguity of questions asked and the deliberate omission of mutuality of obligation within the tool itself. In fact, it seems that the tool is heavily weighted to place a contractor either inside or outside of IR35 purely based upon certain key questions (substitution being the main one).

In terms of whether the tool can be improved? Making sure it is more aligned with case law and including specific questions around mutuality of obligation would be a positive move. One wonders why HMRC has deliberately avoided including these types of questions and one can only conclude it is designed to drive determinations in a certain direction.

In terms of resolving issues and dealing with appeals against status determinations. It cannot be correct that the body assessing an appeal is the same body who arrived at the assessment in the first place - end clients should not be asked to review their own status determinations or, at the least, there should be a second level of appeal in place which is independent. Further a 45 day period to respond to appeals is too long and there appears to be no guidance with regards what happens to the contractor in the interim and what their interim employment status is?

Policy objectives and wider context

The whole subject or employment status and how people are taxed needs to be addressed more fundamentally. The old statuses and method of taxation are simply no longer suitable for the modern world where workers who wish to provide their specialised services in a flexible manner but happy to do so with an extra level of risk and where organisations have a demand for this highly skilled and flexible resource in order to respond to regulatory and commercial changes within their industries without having under-utilised resources employed as permanent employees and therefore impacting efficiency and profitability of the UK economy. This type of worker should come with its own set of benefits (not employment benefits) which rewards the extra level of risk taken.

Efforts should be made to move to a taxation model where permanent workers provide services under a tax regime which reflects their employment benefits received and security of role with a less specialised skill-set versus flexible highly specialised and skilled workers who have invested time, effort and money in improving their skills, taken on board extra risks to work in a flexible manner in line with the demands of modern day companies and organisations without expectation of employment benefits.

There should be no issue with recognising the different statuses of these two very different types of workers. The UK should be encouraging people to improve their skill sets and by extension should not penalise people for doing so (which is what is legislation will do).

It is demonstrably unfair that through these changes there will, in effect, be created a new type of employee. One who is taxed the same as a permanent employee (in some cases at a higher rate if they are expected to pay Employers NI and App Levy from their day rate) but receives zero benefits. How long before unscrupulous businesses see this as a way to reduce their legal employment responsibilities and start to move in this direction of engagement for all their resourcing needs?

Another unintended impact of these changes is we are likely to see a number of nefarious scheme providers who will suck individuals into schemes, not dissimilar to the Loan Charge schemes, where people are promised unrealistic take home percentages of their rates through Umbrella companies. Until this sector is properly regulated and policed it is massively irresponsible to roll out legislation which will create a Loan Charge 2.0 type situation and the problems that will create - including further burden on HMRC in where it then has to deal with another issue of its own making.

One final point I would like to address is the perceived benefit of this legislation. HMRC has quoted a figure, £1.3Bn I believe, which it says will be saved through extra taxes being collected. This figure bears some further scrutiny.

This may well be the expected increase in NI and PAYE tax collected by HMRC but where is the calculation of the impact on other taxes and drivers within the economy?

- How much will Corporation Tax drop when high numbers of small Ltd companies are closing down and no longer providing this revenue stream.
- What is the impact on VAT receipts when this is no longer being collected for services provided by contractors through Limited companies?
- How many small accountant firms will either see a much reduced profit or close completely as thousands of limited companies no longer need their services?
- Given the changes to allowable expenses when working within IR35, or via an Umbrella company, contractors working away from home will be significantly reduced. As a result, contractors using hotels and restaurants will drop thereby impacting those sectors.
- Limited companies being shutdown will no longer need business insurances. What will the impact be to these businesses?
- Offshoring of work takes all revenues for that work outside of the UK. Has this complete loss of income to the UK economy been factored into the cost impact analysis?

So, it's clear in my opinion that the changes will result in massive impacts across a number of service sectors - impacts which I do not believe HMRC have considered within their own figures.

11 February 2020

Elaine Richardson

I wish to make you aware how the advertised current proposals for the Off-Payroll tax (IR35) amendments will affect my Limited company, me personally and my (albeit small) impact on the economy. Multiply this up by a significant percentage of freelancers, and this will not have a good impact on the economy at this complicated time for our country.

ECR Consulting is currently under contract to HSBC, working on a project that the company have signed an NDA (non disclosure agreement) not to discuss. But it's a state of the art, high level technology finance programme.

Unfortunately HSBC have decided not to engage with the new regulations at all, so have made a determination that from the end of Feb 2020, no freelancers will be contracted via PSCs. I can provide written evidence of this is necessary. It's hard to blame them, they have been asked to do significant additional admin and then take the risk of tax investigation by HMRC. I might have done the same in their circumstances.

As a long term freelancer, I will not work under the "Inside IR35" regulations, nor the "fake employee" contracts being offered where that "employee" pays all taxes, including the hirers. As such I have decided to withdraw from the working environment entirely. This is years earlier than I wanted to, as I feel I and my company still have significant skills to offer, but these skills are such that they are not appropriate for "permanent" work. Nor do I want such, I don't have the tact to deal with people who would be able to control me. Telling truth to power is a consultant capability, not one appreciated in permanent staff, but it's a valuable thing.

The bank may not notice ECR Consulting Ltd ceasing to provide analysis, but I know that many of the individuals I am working with will feel the loss. Of course, no-one is indispensable, but the loss of many of the more highly skilled UK freelancers is likely to impact on budget, delivery timescales or (of more harm to the UK economy) the offshoring of skilled work. I see evidence of work going offshore to Poland and India at an increasingly rapid rate.

For me personally, it will mean closing down a limited company that has operated since 1993, paid all of the tax that has been due, has employed accountants and lawyers, paid for full commercial insurance, including liability cover, used accommodation away from home base, paid significant amounts of money for travel, and contributed to my own pension. This will now cease and this expenditure will stop. Including the taxes.

I find it very sad that the Conservative party have (despite promises to the contrary) are continuing and even worsening the attack on the UK's freelance economy that was started by the Labour Government in 1998. So much for the party of Small Business.

I sincerely hope that you listen to the submissions being made by me and and many others, and at a minimum delay the implementation of this poorly considered legislation for at least a year. This delay will allow the review currently in hand to be a genuine review, and to consider better ways of generating taxes that will not damage the skills economy, of which the UK has been justifiably proud.

25 February 2020

Dave Rigler

Introduction

1. This written evidence is provided on behalf of a small company called Shift Left Group (expected turnover this financial year is £3.5m). The written evidence is in relation to the impact of new off-payroll rules on organisations and is based on the questions in https://www.parliament.uk/documents/lords-committees/economic-affairs-finance-bill/DraftFinanceBill2019/FinanceBill2019CfE.pdf and are referenced by the question number.

2. Shift Left Group is a small but successful business and our voice should be heard because we use more than 30 PSC based resources. We do this so that we can provide the right resource as opposed to who is on the bench. We operate in the IT space and influence in excess of £500m of IT spending in the UK. Our clients are large organisations which means that IR35 is applicable to a high proportion of our contracts. Typically 80% of our business is repeat business and it is often desirable to maintain the same company in place to provide continuity, which means that the CEST tool questions about length and continuity of engagement have a big influence on the output of the tool for our associates.

In response to question 2

3. Compliance represents a significant overhead and risk for Shift Left Group. We supply consultants to help improve the quality of software. We work at the more senior end of the project teams so are not intending to supply large numbers of resources. This means that the number of support staff is low to maintain profits. However, all of our associates presently operate through limited service companies. We employ these companies to access senior talent that is capable of leading

projects through the challenges of implementing IT change. The work we are involved in is typically multi-year programmes. Our associates often get asked to be extended by the clients due to the value that they bring. Our ability to accept these extensions will depend entirely on compliance with the off-payroll rules. The administration of the compliance will have a big impact on our business. We estimate that this would be a 2 to 5 days per week for an administrator as we grow from using a headcount of 30 to a headcount of 100 over the next 3 years. This would have an associated cost of up to £18,000 per annum.

4. It appears that the cost to small businesses has been deemed non-existent but because our end clients are large organisations we are caught with the need to comply and will damage the relationships with our clients as associates have to be rotated in and out on a regular basis.

5. The need to rotate resources on large programmes comes with a significant risk. Normally when we substitute resources, we mitigate the risk for our end client by providing 5 days shadowing. This is an expense which we invariably pick up and equates to a cost that is typically greater than £2,500. With 100 resources we would expect to be rotating at least 30 resources every year. This will equate to a cost of £75,000 per annum.

6. There appears to be little compliance burden on the taxpayer or HMRC. The burden is all on the end client and any intermediaries.

In response to question 3

7. Small organisations that work for medium or large business are not excluded from IR35 so there is no robustness.

In response to question 4

8. We are already seeing all contracts being reviewed and new clauses being added. We expect this complication to continue for the next few years as the chain of contractors and subcontractors game the precise wording of the bill.

In response to question 5

9. They should either be scrapped in their entirety or if the CEST tool can be issued as a final version then the bill should be delayed for a year to let businesses prepare a more strategic approach.

In response to question 6

10. There are problems with determining how the rules apply. For example, we have seen roles advertised as outside of IR35 but it depends not just on the role but who is fulfilling it as well.

11. The rules do not accurately reflect the reality of the IT contracting market in which Shift Left Group is engaged. We typically work on multi-year programmes and our success leads to extensions but then we will be penalised as a business if we do not substitute our resources. The ability for Shift Left Group to take senior resources on a permanent basis is limited due to the high cost of any bench time when they are not working. The reality of the IT contracting market is that projects and programmes can be stopped very quickly if there is a downturn in a market or the whole economy. It is our ability to scale up and down that means we can exist through managing the risk of bench costs.

12. Our business model is predicated on providing the right resource and not just the person who is on the bench. The use of limited company associated provides this flexibility and benefits UK PLC.

In response to question 7

13. The one-size-fits-all-badly nature of the tool means that the questions and outcomes are wrong for many business areas and especially for the IT world. The questions about buying equipment are inappropriate for most business. For example, the business that supplies time served joiners or the business that supplies experienced consultants are trading on skills and knowledge; not on who has spent the most money on tools. As an additional point about tools for the IT sector - pretty much the only ones you could buy are laptops, tablets and phones and these are excluded.

14. The CEST question regarding length of engagement is also flawed. In the IT world, we would not deem someone to be running a successful company if they lost their client every 6 months as IT programmes can last many years and a company that has demonstrated value on one project should be able to build the business by rolling onto another project. A company that can achieve that should be viewed as a successful business.

In response to question 8

15. This is unclear, it appears that some organisations are already taking blanket approaches to determination. They clearly feel that the risk and compliance issues are such that is easier to stop the use of a flexible work force and rely on resources that are not sufficiently capable to trade independently on their own knowledge and skills.

16. There is no clear approach as to how to challenge a blanket ban on contract resource. However, we are sure that over time shareholders will start to question why problems are compounding and issues are taking longer to resolve.

In response to question 9

17. We would be supportive of increasing corporation tax so that organisations can self-determine whether they are in business or are merely chasing tax efficiencies.

In response to question 10

18. The bill will not achieve the objectives. Instead, we believe it will push small organisations into accepting higher risk contracts that will have consequences in the future in terms of greater project failure and higher litigation.

21 February 2020

Geoff Robbins

IR35 was created as a lie, in the year 2000. It was claimed by the government that people were leaving a permanent job on Friday to be taken on by the same employer as a contractor on the following Monday. It was said that contractors created a limited company to operate under as a way of avoiding tax. The truth was that employers and the agencies that they used, insisted that this was the only way to employ contractors as they did not want to be caught having to argue that someone was self-employed when accused by HMRC of using self-employment as a way of avoiding paying tax and National Insurance. Operating within a limited company eliminated that risk for the client and increased the costs for the self-employed.

Due to the poor way that the legislation was conceived and delivered, it was doomed to failure. HMRC claimed that IR35 would raise £500,000,000 per year. Something it still claims today but never achieved.

From its introduction the Conservative Party promised that if they were returned to power they would revoke IR35. This promise was never kept and was made worse by the government revision under Theresa May and Philip Hammond.

Under this revision of IR35, it was decided that employers should be responsible for deciding if contractors were inside or outside of the regulation. To assist them in that decision, HMRC produced the CEST tests. Unfortunately, whether by accident or design, these tests are flawed, as

they are biased towards a situation where contractors are caught inside IR35. To do this, they excluded legal precedents that have been hard fought in the courts that would have put the contractor outside the regulations. These include the right of substitution and mutuality of obligation.

Also under the revision, employers can be punitively punished if a contractor who is deemed by the employer as outside IR35 is found to be inside the regulations. A clear indicator of this is the £4.3 million pound tax bill recently handed to NHS Digital, who used the CEST test to deem that contractors were outside IR35. Conversely, if someone can prove they are outside IR35 and the employer decides they are caught, there is no reciprocal punishment. As with the use of limited companies in the 1990s, engagers will always attempt to mitigate their risk and take the easier option, especially as there is no financial penalty for doing otherwise. Forcing contractors into positive IR35 judgements is only reinforced by the NHS Digital decision. As ContractorCalculator CEO Dave Chaplin says:

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

Under these circumstances, how can contractors believe that it is in any way just or proportionate when HMRC do not even follow their own advice?

As the market was slow and a contract was available close to home, I accepted a role with a local county council. By default, the contract is considered to be inside the IR35 regulations. This is despite the fact that mutuality of obligation is a clear clause in the contract. It was an obligation of accepting the role that my engagement required me to operate through what is called an umbrella company.

The enforced use of a 'brolly', as it is known, instead of using our limited company, is a punitive punishment where no crime has been committed. The money is paid to the umbrella company, who then deduct their fee, employers and employees National Insurance, both employers and employees pension contributions, the Apprentice Levy and Income Tax from my pay. This amounts to a deduction of approximately 43% from gross. I do not receive paid holiday, so as a result, I've not taken a break in three years. There is no contribution by the umbrella company towards my pension. I cannot claim out of pocket expenses for travel or sundry costs such as parking, etc. I receive no training that is not paid for by me, which I cannot deduct from tax and, of course, I lose pay when I take time off to train. As a result, my skills are atrophying, in an industry where constant re-skilling is not just necessary but essential. I also receive no pay if I am ill. As my earning potential is severely reduced, I can no longer put aside profits to cover me when I have lean periods between contracts, as I did when I operated under our limited

company. So in future I will have to rely on state benefits when between contracts, something I have successfully avoided for 25 years. I am also having to keep our limited company running, in case the next contract should be outside IR35. If that were the case, I would not have time to set up a new company and get it running within the limited time that a new client would be willing to wait. Our company is now in serious debt to us, as it has overheads to ensure that it is ready to roll at short notice, including phones for communication, broadband, web sites, server and workstations, printers, etc. However, my company secretary, my wife, has lost her job and is also dependent on my income.

Whereas I used to travel around the country to find work, I will no longer be able to, as I cannot afford to find accommodation, vehicle costs, meals, etc., as I can no longer claim them as an expense if inside IR35. I am therefore forced into working for less than I'm worth in Cheshire instead of in the South East, or wherever in the UK, where my skills are at a premium.

Compare this to an employee, who sits opposite me. He has free subsidised parking, a non-contributory pension, free training, four weeks paid holiday, sickness benefit if ill, provision of broadband, work fewer hours. He does not pay employers NI, or the Apprentice Levy. He has protection of employment, and redundancy if laid off.
HMRC claims that contractors are "disguised employees" and work for years for the same client. This is something that be easily remedied without the heavy handed introduction of IR35 and can be easily policed by examining the returns of the company. The assumption is also made that expenses are needed for the same reason. If you are taking a new permanent job you may well need to move house to live closer to your place of work. With a contract, how can you move house for 6 months, 12 months or even 2 years and then move again, ad nauseam? It could take 12 months to complete moving house. If your partner works she may have to get a new job, the children would have to move school and leave relatives and friends behind. How can this be correct, when the premise is so absurd?

Unfortunately, the changes that are proposed has already had a chilling effect on the contract market. Clients are waiting to see what happens. This is at a time when the market has been badly affected by the indecision over Brexit instigated by the farrago caused by MPs inability to understand (by accident or design) the will of the people since Article 50 was triggered. This caused clients to not know which projects to fund and therefore reduce their contractor head count. Now they are waiting to see what the costs are going to be to take on contractors due to IR35.

Whilst the number of contractor roles are currently in free fall (as of today, the number of new roles for my skills has dropped to 254, this was at 680 before Article 50, and 450 immediately before the announcement of the change in IR35 status) and seems to be continuing. This is causing immense long-term damage to what is an essential market that was thriving.

Whilst this is having an easily observed effect upon the contract market, the damage is rippling out. Contractors are no longer booking hotels and other accommodation like bed and breakfasts. Restaurant bookings will drop, accountants are preparing to close their doors because their client base will plummet once there is no need to have limited companies. Insurance brokers, business banks, business internet, business mobile packages, payroll and pension software, ledger software, phone line, vehicle lease, purchase and service. All these services pay tax and NI that will be reduced by a drop in clients.

Our company no longer requires insurance policies that cover on site legal liability, personal cover or business insurance for cars. We had started a second business, which was beginning to thrive but is now suffocating from lack of investment and will soon have to be closed. Our purchases of equipment, sundries, web hosting and other promotional activities have also stopped. Finally, and regrettably, we have had to stop our support for our local hospice and an anti-bullying campaign in schools that is very close to our hearts. Something that we bitterly regret.

The best way to solve this awfully destructive legislation is to remove all of it, both public and private sector. It is inequitable by forcing self-employed contractors to pay more tax, National Insurance, Apprentice Levy than employed personnel without any of the benefits that they accrue, as I've previously indicated. Many contractors will end up on benefits between contracts as they will not be able to fall back on the savings they previously had, removing any perceived benefits that the tax brings in to the Exchequer. No action without reaction.

Additionally, if the current system used in the Public Sector is not replicated into the Private Sector, no matter how badly implemented it is, the Public Sector will not be allowed to compete on a level playing field, resulting in a severe decline in contractors available to them which will, in turn, result in massively impeded delivery in an area that desperately needs high quality contractors to not only get us through the changes introduced by Brexit, but also to upgrade and replaced software and hardware so old that they are already over 15 years out of date.

Finally, having worked under IR35 in local government, I have seen the effect that the previous change made to their ability to recruit contractors and complete projects. HMRC claims that it has collected increased revenue by this measure, when in fact this is fundamentally untrue. The latest lie. Councils throughout the country are now having to pay higher fees to recruitment and umbrella companies. This is having to be paid from Council Tax and Business Rates. The umbrella companies are collecting Council Tax and Business Rates to pass on as Income Tax and NI. As a result one tax is being sucked into another. This is not increasing tax take, it is merely moving the money around to no benefit. Councils are then having to cut services to keep in budget.

In summary then, these ham-fisted changes proposed by an organisation, HMRC, so out of control that it seems that the tail is wagging the dog, are as ill-conceived and damaging, if not more so, as the introduction of the original in 2000. This organisation has continued to dangle pots of money under the noses of the Treasury that never turns up. They continue to damage the contractor economy with increasingly punitive revisions in a desperate hope that their ineptitude in proposing IR35 in the first place will not be revealed. Hailed as a success by HMRC, without any empirical evidence, the original IR35 proposals were a complete failure. Instead of trying to buttress their reputations at the cost of a thriving industry, they should revoke the original IR35 legislation and allow this discredited mockery to die the death it deserves, allowing the contractors we desperately need to make the changes that will need to be made to allow industry to thrive post Brexit and succeed unhindered.

9 March 2020

S Robson, Charcoal Hills

Answers to Specific Questions
Existing measures in the public sector
"1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?"
1. I have no significant personal experience of contracts/assignments with the public sector so cannot answer.

Impact of new off-payroll rules on organisations
"2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?"
It is evident that the impact has not been adequately assessed. I have met with my MP twice in the past 12 months: initially to share my concerns and more recently to share my personal experience of being impacted by the proposed new measures despite assurances from both herself and the Chancellor of Exchequer I and my clients would not be. This is not an isolated example, it's happening almost everywhere.
"3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?"
This is one part of the draft legislation that appears relative clear, however I must note that I was contacted by a personal friend of mine who co-owns one such small business to ask for advice and although I was able to point him at the relevant section of the draft legislation and he was able to confirm his

company met the conditions it describes and therefore was exempt from the proposed legislation, he told me he and his co-owner have actually been told by their legal advisors that their company did not meet the necessary criteria, so there is certainly confusion out there.
"4. What will be the effect of these new measures on a chain of contractors and subcontractors?"
Clearly when any link in a chain fails, the whole chain falls. The impact of the new measures, especially when they take advice from HMRC and the big vested-interest accountancy firms (NB: not lawyers as arguably should be the case), spooks clients into making incorrect determinations on the understanding that these are 'safe' and therefore terminating contracts, thereby dropping any such chains of contractors and subcontractors.
"5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?"
The Government and HMRC must delay the implementation of the new measures as they are illthought through and it's evident that the country is unprepared.
HMRC should perform a full review of: the impact to the UK economy; the chances of making the best possible success of Brexit if large proportions of a highly skilled workforce are unable to commute (e.g. if they accept and "inside" assignment) or if they are unable to contribute to the
(i.e. if they refuse to accept such determinations); the tax take from businesses large and small as projects fail, work moves offshore, and genuine contractors down tools.
The assessment must be thorough enough that the financial forecasts produced by the Treasury are more robust and – I forget the exact terminology – are no longer considered to be highly volatile and untested and subject to potentially huge errors. I firmly believe the proposed new measures are being pursued because the forecast figures claim huge additional revenue will be created for the Treasury – in reality it is unlikely to be so significant and many factors suggest revenue may actually decrease.
Determining tax status of workers
"6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
It's clear from case law examples that there is no clear cut test for employment for the purposes of tax/IR35. Apart from in a handful of black/white examples, there seems to take a huge gulf of grey in-between the two extremes and this can only be navigated by tax law experts and judges. The situation is horrible for all sides.
"7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?"
Whilst I understand that – if the new legislation is to be thrust upon the world – there has to be 'something' to assist clients when they are making status determinations, given the fact that this area of law is extremely complex and open to interpretation, no mechanistic tool can ever be accurate. CEST should never have ben allowed to go live, it is clearly weighted in two ways – the

questions lead clients to give incorrect, what they believe to be 'safe', answers and for the tool to tend towards giving an 'inside' outcome. In both aspects, this may attempt to support HMRC's stated objective to "maximise" the revenue they bring in – but not to ensure the correct revenue is collected. CEST has been tested against case law examples and only gives the correct status determination in about half of cases – and where it is aligned it appears to be more through coincidence than the basis of the CEST assessment.
"8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?"
There are no meaningful safeguards as large clients are making determination statuses they believe are safe, rather than accurate. Evidence is rejected as in these cases the client's mind is made up before they even make an assessment of an individual contractor. A clients decision final – any appeal is received at the client's prerogative and in any case is allowed 45 days to be reviewed, during which time the contractor is unable to ruin their business with any confidence or be paid if ultimately it is agreed that the engagement is 'inside IR35' with that ongoing engagement in such a scenario. If client and contractor never agree, they will part ways in dispute and speaking from personal experience this situation is extremely damaging.
Policy objectives and wider context
"9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?"
The objectives of the new rules are to tax a contractor who is in reality engaged as if they are an employee, like an employee (and to allow genuine contractors to legitimately run their own businesses as such). Attempting to do this via tax legislation that requires a decision that – evidently, as HMRC takes contractors to court where there are status disputes – can only be decided by a judge, is simply ridiculous. The new measures will kill contracting in the UK – the work, and the genuine contractor workers, will move offshore – this is a lose:lose:lose situation for Treasury:businesses/employers:individual contractors and their families.
A simpler approach would be to revoke IR35 and simplify the tax system – contractors are already paying more tax as a % of earnings than they would if they could earn the same amount as an employee, but are generally paid slightly more than an employee may as they are taking financial risks and are not entitled to any of the rights of employment. If this apparently fair situation is not what the Government wants, remove all ambiguity introduced by IR35 and change the tax instead, so that we can all get on with our business, professional and personal activities and continue to enjoy the flexibility delivered and enjoyed by our contractors and which is vital to UK businesses and employers throughout the UK.
"10. Will the Bill, as drafted, achieve the Government's objectives?"
On the assumption that the Government wants to ensure everyone is taxed correctly: no, never. I provide advice to businesses and one tool I use is to write a list of objectives on a whiteboard and a list of planned initiatives on the other, and to draw lines that represent where there are any links. These new measures will inevitably force a number of contractors to take 'inside IR35'

work (some genuine contractors who don't have reserves to decline work, plus some who should have been declaring themselves as inside IR35 all along) but in reality they also change the way these contractors are paid – instead of running a business they become zero rights employees.
On the assumption that the Government wants to see an increased tax take to the Treasury, and that is wants to ensure that genuine contractors are not caught out by these new measures: no never.
Many contractors will (or already have) closed their businesses, as a result will no longer require insurance or accountancy services meaning further businesses will be affected.
Genuine contractors such as myself will find getting work for our businesses many orders of magnitude more difficult as the majority of clients are unable or unwilling to make fair assessments, we will be unable to earn money therefore tax revenues for the Treasury will fall.
I have already had a contract terminated by a contract because of the new measures which resulted in my business losing £40k loss of earnings to date and ongoing and a collapse in the delivery of the software part of my now ex-client's £150M value aviation project which only I had the necessary skills and experience to lead.
Personally this is taking a toll on my family life as I worry for our future: as I am genuinely worried that a business I've spent 8 years building up, which always looks to and has previously taken opportunity to directly employ other individuals and to subcontract work we're unable to perform directly, will ultimately be forced to close. This is an incredibly stressful period and is directly affecting mental wellbeing as well as financial security.
"11. What is your view of the role of umbrella companies in the context of these proposals?"
Bad ones will make money out of exploiting clients and contractors alike, as they advise clients to assesses assignments as 'inside' yet push the resulting employers' financial responsibilities onto the individual contractors.

"12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?"
It's clearly not fair to create a situation where there can be a situation whereby a person is considered "employed" for tax purposes but not entitled to employment rights and I do not know how to state that in strong enough terms to emphasise this point. It is inevitably, ultimately, going to be bad news for "permanent" employees and "contractor employees" (i..e zero-rights employment) alike, as the former starts to look expensive compared to the latter and the latter is taking considerable risks without sufficient compensation (pension, holiday, employment rights) and with reduced earnings when compared to an otherwise identical assignment that was considered "outside" IR35.

25 February 2020

Dominic Roberts and Liza Roberts

1. **Has the impact of the extension of the rules to the Private sector been adequately assessed?**

1.1
It is abundantly clear that little assessment of the impact has been carried out at all. Responses from Jesse Norman and HMT to questions on the subject repeatedly refer to a very, limited research survey that was performed after the 2017 implementation. All correspondence on the matter from HMT has been of the same ilk, they refer to their beliefs of what has happened after 2017 and give no reference to the events currently unfolding. The reaction from the Private Sector to the implementation has been entirely different and is changing on an almost daily basis. To repeatedly refer to limited and dated evidence is wholly unacceptable. The impact on hundreds of thousands of small businesses and their supply chains is totally unknown to HMT. The damage that is being caused can only be fully appreciated by talking with Consultants, Accountants and Hiring firms now and assessing based on current evidence rather than very dated information. Feedback that is coming out of the current review suggests that more of the same is occurring. This consultation process should have occurred 12 months ago and not be set to complete merely 1 month before the full implementation.

2. **Is the exclusion of small businesses sufficiently robust?**

2.1
The exclusion is horrifically unclear and is causing more panic in the sector. Those consulting for a small company believe themselves to be even more exposed to investigation due to their smaller numbers. The fear is that HMT now have a far smaller pool to target in their efforts to bully in to declaring themselves Inside IR35. The net result is that Consultants are unwilling to work for smaller companies for fear of being targeted. Even if they are considered Outside of IR35, the stress that caused by the threat of a lengthy investigation from HMRC induces means that it is not worth the effort to continue with the smaller clients. For many it is also unclear as to what constitutes a small business. I have been quoted different things from different people. One person I spoke to believed the threshold was a £50M turnover, whereas others have stated a 50 employee limit. The size of the business needs to be clarified however that also leads on to a major blocker for the growth of a company. If the small company is successful on the back of being able to hire the best available Consultant talent then what happens when they hit the threshold? The company is incentivised to stay small or find some way of circumventing reporting their change in status or face losing their stronger position in with the Consultants. IT may even result in companies “yo-yoing” between either side of the threshold. The small business exclusion simply adds an additional layer of complexity on top of an already ludicrously complex legislation.

3. **What effect will these new measures have on a chain of contractors and sub-contractor?**

3.1

The new measures have already taken an enormous toll on the IT industry and the subsequent industries that rely on them. There are already thousands of small businesses that have decided to close in order to move to a permanent position. The effect on the Accounting Industry can already be seen. Speaking to a local accountant I was informed that he had "never seen anything like it. Highly qualified Accountants are looking for work in January, the traditionally busiest period of the year". Small Accountancy firms cannot support themselves any longer due to the loss of business from Consultancies being moved into PAYE, Umbrella and permanent positions. Personally, I have worked with clients who are expecting to lose as many as 70% of their Contingent work force before April 6th.

I have been consulting for one of the most profitable investment banks in the world and from talking to other consultants who are currently there, very few are prepared to stay when considered Inside IR35. They don't consider themselves to be employees but more crucially many of them have been drawn to the UK from abroad to flood the UK talent pool. These people don't see the point in remaining in the UK to be classified as employees with no right to be assessed and are leaving in huge numbers. Some of the teams I work with will be losing 75% of all members once they are hit by IR35. The bank will no longer be able to support their key trading platforms within the UK. That will mean that major projects are cancelled or simply moved off-shore where they are able to access the flexible work pool without any constraints. The government is basically destroying the British flexible workforce much to the benefit of the rest of the world. Contractors and Sub-Contractors in the UK are losing their livelihoods to companies closing down development teams in the UK to move to other countries that are not purposefully damaging their own economies.

3.2

The measures are a blocker for growth of small businesses and for the deskilling of the tech industry in the UK. Under the current legislation a Consultancy firm is allowed to provide training for its employees, whether this takes the form of purchasing books or attending courses. When forced in to a PAYE or Umbrella structure then this is no longer tax deductible and more difficult to warrant from the much reduced company income. This will undoubtedly lead to the UK tech industry falling behind the rest of the world. Personally, I used previous years income to fund a 2 year course in Artificial Intelligence in order to make my business more attractive to potential clients. My intention was to further this by pursuing a PhD in Quantum Computing a skill that is very much in short supply in the UK. However, I no longer have the budget to afford that and will need to use any spare time that I have to undertake additional work to help minimise the loss in income that the new legislation has brought about.

4. **What should HMRC do to help businesses understand the new administrative rules?**

4.1
How on earth is it possible for the UK government to continue to pursue a legislative change that requires a court case to resolve every single dispute of its implementation?
There is simply no need for a taxation policy so inherently complex that an entire industry has sprung up around it. It shouldn't need to explain any of its policies to the public in anything more than a very brief description. The IR35 changes require volumes of documentation and court precedent along with a team of legal experts for every single dispute. The government and HMRC are opening themselves up to decades of legal cases in order to enforce this legislation whereas an adjust to the base rate of dividends would achieve the same level of increase in taxation. If there are concerns about how the taxation policy can be explained to companies who already hire Accountants and Legal experts to advise on this then that legislation is far too complex to be workable.

5. **In your opinion are there better or simpler ways in which the objectives of the new rules might be achieved?**

5.1
Is the objective to ensure that more people are compliant with an incredibly complex set of taxation legislation without the need for HMRC to take each individual case to court? If that is so then it has achieved nothing. It will still require each case to be argued individually requiring enormous amounts of cost to the Tax payers to reap a small amount of benefit.

5.2
Is the objective to increase the Employers NI being received from companies making use of PSCs? Then the result that has occurred is that those companies are still not making any additional payments for Employers NI but instead passing it on to their perceived Employees. A simpler and more efficient way to have achieved the same thing would be to not concentrate on how much of each tax type is being received but instead on the wholistic approach to taxation. A PSC will generate a large amount of VAT, Corporation Tax and Income Tax each year. In many cases this exceeds the amount of revenue that will be generated through enforced use of PAYE systems. If HMT would like to assess fairly the tax generated by each PSC rather than make the false assumption that a Self-employed persons NI should exactly match an employed persons NI then they would see that a PSC generates far more tax for the nation that the equivalent person under PAYE.

5.3
The better way to implement an increased revenue and a balancing of the tax benefit of being self employed against employed is to simply raise the base rate for dividends. It would vastly increase the tax take whilst having no detrimental effect on the rest of the economy at all. The whole of IR35 should be scrapped and the role of flexible workforce encouraged in a modern

economy. The revenue that would be generated by being a world class hub of tech talent would far outstrip the meagre amount they will achieve by measures that will effectively kill of the Tech sector in the UK. The UK continues to self-immolate and once again will look to destroy one of the few sectors that are thriving and generating wealth in this country.

12 February 2020

Martin Roll

Existing measures in the public sector

1. I have no experience of this

Impact of new off-payroll rules on organisations

2. The new rules only slightly differ from those currently available. Many Off-Payroll staff
are on long term assignments. Any assignment that is not temporary should be considered as on-payroll. This is what HMRC are trying to establish.

3. Is the exclusion of small organisations sufficiently robust, and how might small
organisations gain sufficient assurances that they fall within the exclusion?

No Comment.

4. What will be the effect of these new measures on a chain of contractors and sub-
contractors?

<u>The new rules should make life simpler for all concerned. VAT will no longer be collected anywhere along the supply chain, meaning a massive loss of income to HMRC.Also, if Contractors are On-Payroll FTE's then they will be entitled to paid sick leave and holidays.</u>

5. What scope might there be for simplifying or otherwise reducing the administrative
burden of these measures? What should HMRC do to help businesses understand the
new administrative rules?

I don't feel that there is any need to simplify the rules.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear

to both engager and worker? Do they reflect the reality of the contracting environment?

The tests for determining the status of a worker aren't really changing, the method of doing so is changing. If a contractor is on a temporary assignment, then they should be outside of the rules, if they a filling a position that is preventing a full time employee being engaged then they are within the scope of On-Payroll.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it
require improvement? If so, how might it be improved?

CEST needs modifying to ensure that the nature of the role being filled is either FTE or Temporary.

8. How effective will the status determination process be in resolving issues of employment
status? Are there adequate safeguards, allowing decisions to be challenged? If not, what
more is needed?

If contractors are determined to be on-payroll, then they will have extra rights to employment protection, preventing unsolicited terminations of contracts. This needs to be firmly stated so that everyone is aware of the extra rights thet will be being granted by the change in status and reduction in fees.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be
achieved? If so, what are they?

There are some very worrying side effects to this change. By changing the status of the contractor to on-payroll, the VAT collection carried out by the contractor will cease, as there will be no point in them operating as a LTD company or being VAT Registered, this will directly rapidly reduce the income stream to HMRC by a huge unanticipated sum. It will also dramatically affect the Accounting & Recruitment industries that have grown up around the Contracting Industry, again massively reducing income to HMRC.

10. Will the Bill, as drafted, achieve the Government's objectives?

NO!

There are some very worrying side effects to this change. By changing the status of the contractor to on-payroll, the VAT collection carried

out by the contractor will cease, as there will be no point in them operating as a LTD company or being VAT Registered, this will directly rapidly reduce the income stream to HMRC by a huge unanticipated sum. It will also dramatically affect the Accounting & Recruitment industries that have grown up around the Contracting Industry, again massively reducing income to HMRC.

11. What is your view of the role of umbrella companies in the context of these proposals?

The proposals will make Umbrella companies along with many Accountants, redundant, as the tax payable will be on the Fees, not on the "Salary" paid to the contractor.

12. How do the new measures relate to the wider context of changes in working
arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if
they are employees, but do not have the rights of employees?

Under Current law's if you are on-payroll, you get the "Employee" Rights, so, these new rules do actually grant the Employee Rights to the contractor, as the contractor will no longer be independent, but will be a TEMPORARY EMPLOYEE….If yo tax OFF-PAYROLL contractors as ON-PAYROLL staff, then you automatically give them the same rights as the Contract will by implication, be for Services no SERVICE.

There are some very worrying side effects to this change. By changing the status of the contractor to on-payroll, the VAT collection carried out by the contractor will cease, as there will be no point in them operating as a LTD company or being VAT Registered, this will directly rapidly reduce the income stream to HMRC by a huge unanticipated sum. It will also dramatically affect the Accounting & Recruitment industries that have grown up around the Contracting Industry, again massively reducing income to HMRC.

Not enough consideration has been given to how changing the TAXATION STATUS of a contract changes the EMPLOYMENT STATUS of the supplier. If the Supplier is to be taxed as STAFF, then there is no sense in operation as a Contractor, and therefore the "Contracting" industry will no longer exist. Any associated TAX collected by the Contracting Industry will be lost.

18 February 2020

Steve Rollins

<u>Question 3 - Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?</u>

1. In short no. Due to the actions of large organisations banning the use of PSCs throughout the supply chain, small consultancies that would typically engage with contractors with specific skills for short engagements are now unable to do this. As an example, I was talking to a consultancy regarding a short-term piece of work for a Japanese bank based in London, this work was initially identified as being outside IR35, but the bank then banned the use of PSCs both internally and throughout their supply chain. One would question whether this practice should be allowed given that larger organisations should not be allowed to dictate how a supplier operates.

Question 4 - What will be the effect of these new measures on a chain of contractors and subcontractors?

2. I personally have been affected by large organisations banning PSCs throughout their supply chain and enforcing this ban on small boutique IT consultancies who should have been exempt from this legislation. Roles that are now available are either through an umbrella company linked to the recruitment agency or roles are being designated as PAYE and you become an employee of the agency in most cases on a zero-hour contract. Due to this arrangement all contracts now have an effective lower day rate due to the additional costs that are being incurred, in the case of PAYE roles you are being designated as an employee without any of the normal employee benefits and based on my experience also being held responsible for non-employee costs such as Employers NI and the apprenticeship levy.

3. The current situation is that most large organisations are taking the approach of banning PSCs and in most cases stipulating that all roles should be engaged as PAYE as they believe this is a legitimate way to bypass the off-payroll legislation. Their view appears to be that by doing this they are no longer required to complete assessments to determine the correct status. The issue in doing this is that recruitment agencies that are now expected to operate the PAYE payroll do not appear to have the skills and ability to take on this responsibility and do not appear to understand the basics of operating a payroll legally.

4. For example, I have recently discussed two PAYE roles with two different agencies, as part of these discussions they have provided a summary of what my take home pay will be under PAYE. In both cases their figures showed full deductions for Employers NI and in one case a deduction for the apprenticeship levy. Online HMRC guidance around operating PAYE clearly shows that these are the responsibility of the employer, this was also confirmed verbally via the HMRC helpline. When challenged on this both agencies view is that what they are doing is perfectly legally and

you either accept this or the offer of work is withdrawn despite both admitting I would be an employee of the agency.

5. Based on the investigations that I have done and the conversations that I have had with HMRC, accountants and umbrella companies these agencies are operating as hidden umbrella companies in that they are advertising the role as a PAYE role in line with the requirements from the end customers but then applying the same payment terms that would apply if operated as a umbrella company. These are not one of experiences, this is being reported by other contractors and seems to be common practice through agencies that are being asked to operate PAYE schemes. Ultimately, they have a profit margin to maintain and are passing their additional costs onto contractors to keep this.

Question 12 - How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

6. In the instances where you are either determined to be inside IR35 or your role requires you to become an employee of an agency and have your payments processed under PAYE you are legally for tax purposes being recognised as an employee. However, unlike a traditional employee you do not receive full employment rights. Out of my day rate I must cover Salary, holiday pay, sick pay, pension, training, these are all things that traditional employees receive. Due to the additional costs that are being passed on to contractors most see their take home pay reduced to the equivalent of what a permanent employee would receive but the expectation is that they still must cover these things. Where your day rate is essentially being cut in half it is impossible to do this.

7. Operating previously under my PSC I would pay dividend tax, NIC contributions, employment tax, VAT whilst also leaving money in my business to cover holiday, sick pay etc. At the end of each year corporation tax would be paid on everything that went through the business.

8. The biggest issue in allowing these rules to be implemented in the private sector is that there is nothing stopping big business operating all roles in this way and moving all employees onto this model of working practice.

25 February 2020

Will Roney

SUMMARY

•	CEST Tool is not fit for purpose – does not reflect the reality and subtlety of flexible working
•	There is an incorrect perception that Contractors pay less tax than permanent employees that IR35 does not address
•	The current use of 'Inside IR35' will create No-Rights Employees, and may also threaten the benefits currently enjoyed by Permanent Employees as well
•	Micro Limited Companies (i.e. Non-VAT registered) need to be exempted from this legislation

ANSWERS TO SPECIFIC QUESTIONS

Existing measures in the public sector

What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

N/a – all experience is in the private sector

Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

No. In my personal experience, the relevant organisations & people (Contractor, Agency, Client) are running around like headless chickens, terrified of making the wrong decision and exposing themselves to inordinate amounts of risk that could destroy their businesses.

My agency (with five weeks to go until Compliance Day) is not releasing even sample terms and conditions to their contractors. This has had two effects – 1), my client is terminating my contract on 27th March expecting that my projects will be complete by then. My projects still have significant life left at this point, 2), there is little comparable work in the marketplace to replace my contract role. All roles appear to be permanent or Inside IR35, which is not why I became a contractor.

There has been so little concrete information in the run-up to this that I believe the firm I engage with is panicking (they have a relatively large contractor contingent), and the agencies are sensing opportunity to take advantage. With my current contract I've started to read all the clauses, which is a problem, but

it highlights that it's everyone for themselves as no-one knows what the answer is right now.

Impact of new off-payroll rules on organisations

Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion? Assurances should be that there will be no retrospective assessments, in statute. Other assurances should be that non-VAT registered, single-person Limited Companies to be exempt.

What will be the effect of these new measures on a chain of contractors and subcontractors?

The current changes being implemented are modifying the risk of tax status from the individual contractor, to the End User. There are multiple effects of this:

By making an assessment of the contractor there is a practical and realised risk that the End User does not know enough about each contract to make an assessment. Therefore blanket assessments will be made about where they think tax risk is. For my own situation, as a contractor in an Engineering firm I am at risk of having a tax status imposed by others who have no effective control over my contracting business, or have any knowledge on how I run my business.
There is also a realised risk that to protect the End User from future HMRC claims, they will assess contractors as being 'inside IR35' creating a type of worker who effectively becomes a normal employee, but without any employment rights, a zombie employee.
Contractors who are assessed as 'inside IR35' also have the risk (seen by me with a colleague), where agencies are illegally deducting Employer NI contributions under the guise of 'Assessment Fees', further increasing the burden onto the contractor.
Reviewing of the employment adverts reveals little or no contracts outside IR35, offering any contractor three options; i) accepting a zombie (inside IR35) employee job, ii) reverting back to a permanent position, iii) unemployment
The consequences of 4.1.4 are that all three options are unacceptable to me as a contractor who became a contractor to have the freedom to manage my own business and not be squeezed by both the HMRC and the risk-management policies of the End User.

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Primarily is to stop this perception that contractors are somehow not paying due taxes, either by evading them or by employing legal 'tricks' to minimize bills. I pay approx. £15-20k/yr in PAYE, NI, Corporation Tax, Employer NI and

Dividend Taxes – this is equivalent to a person making the same amount of 'profit' as income.

We may spread the tax revenue around, but it still gets paid.

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

If you follow the CEST tool flow chart, there is a heavy reliance on the substitution of talent to determine an assessment; the lack of substitution being a hard mark against an 'outside IR35' assessment. There is no importance attached to Mutuality of Obligation, which is a key factor in contractor life. This is not reflected in the CEST tool.

As most contractors are 'one-man-bands', the emphasis on what makes a freelance role is wrong. The use of substitution is often not an option, yet we are freelancers in the spirit of the industry – providing a unique service that companies require, talent that in some cases cannot be replicated or substituted for.

Since freelancing I have none of the benefits, I operate on a one-week notice period, with no certainty that if the workload reduces I will retain my contract with my engaging firm. The risk of work is wholly mine, and is a risk I've signed up to since becoming a freelancer. I see no balance in the IR35 rules surrounding 'employment' that takes into consideration the balanced risk of unemployment vs higher rates of labour pay.

Determining tax status of workers

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

In my opinion (and others, which include HM Courts) is that the CEST tool is not fit for purpose. The CEST tool is a broad brush that attempts to effectively categorise millions of freelance contractor roles against a fairly crude measurement that doesn't acknowledge many key characteristics of freelance work.

For instance, though I work in an office environment alongside other contractors, I also work with permanent people who income aside, get the normal benefits of being in a permanent role such as (list not exhaustive):

Table of differences between Employees and Contractors (not in CEST Tool)

	Employee	Contractor
Salary every month	Yes	No
Minimal risk of not being paid	Yes	No

Protection against unlawful deductions	Yes	No
Profit share/share options/Bonus	Yes	No
Pension contributions	Yes	No
Social security contributions by employer	Yes	No
Death in service insurance	Yes	No
Season ticket loan	Yes	No
Training and development	Yes	No
Paid holiday + bank holidays	Yes	No
Compassionate leave	Yes	No
Sick pay	Yes	No
Statutory minimum notice period	Yes	No
Redundancy pay	Yes	No
Rights preventing unfair dismissal	Yes	No
Maximum hours (Working Time Directive)	Yes	No
Job seeker allowance between jobs	Yes	No
Freedom to contract (status cannot be overruled)	Yes	No

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Blanket assessments in other companies threaten the flexible nature of the contractor market. It also demonstrates that companies are not taking due care about assessing contractors properly. The current HMRC status determination tool is unfit for purpose, and those challenges that are being responded to with a termination of contract (such as at BAE SYSTEMS) is as unfair as the HMRC CEST tool.

Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

From what I understand the policy objective is false. I have seen calculations comparing the total tax take from a permanent employee versus a contractor operating via a Personal Service Company, and there is no significant variation in revenue until the contractor starts earning more than £700-£800/day. £800/day equates to turnover of approx. £208,000 per annum which is a fairly high threshold to achieve as a single contractor.

If the policy objective is to increase the tax take, then modification of the tax rules that apply to larger companies, particularly those with more than a single employee is likely to be more effective

Policy objectives and wider context

Will the Bill, as drafted, achieve the Government's objectives?

No. Contractors pay equivalent levels of taxation to permanent employees, just through different routes (Corporation Tax, Employer NI, Expenses-related expenditure e.g. accountants, dividend tax). It's a shame that the current government, one that seems to set themselves up as the champion of business would want to destroy the contractor generation.

What is your view of the role of umbrella companies in the context of these proposals?

If the alternative is to use Umbrella Companies, then they will need robust regulation to stop them passing undefined taxes onto the contractor as they decide to offload their risk. They will also need to stop passing on their Employer NI obligations (illegal, but widespread) if they want contractors to engage with them. I work with a contractor colleague who has discovered this 'arrangement' with his agency who had outsourced the payroll. He's potentially owed over £10,000 for monies extracted in this illegal manner. There are quite a few cowboys in the Umbrella company marketplace at the moment.

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

If implemented there will be five types of worker:
Unemployed
Permanent
Inside IR35
Outside IR35
Entrepreneur

Most people will fall into categories 12.1.2, 12.1.3, 12.1.4

12.1.2 is often not an option. Companies are reluctant to increase permanent headcount in times of drought / recession, particularly if they're obligated to find them work to do and they ultimately are entitled to benefits.

12.1.4 is why most contractors became contractors. Either by necessity or design, the true contractor appreciates the risk involved in limited notice periods, and not having a right to work if the workload dries up. They will happily balance this against the extra pay that companies will provide, knowing that they can be 'switched off' as quickly as being 'switched on'

12.1.3 is the worst option – none of the flexibility of contract life, all of the taxation obligation (though this is not too dissimilar to taxation in option d), and none of the benefits. There is a further danger with option c as it promotes

the idea that companies can move all their employees onto this option, and remove benefits. After all, if contractors are happy to pay PAYE and have no benefits, why can't the current lot of permanent people work like this. In answer to the question it isn't fair that these 'zombie' employees are proposed, and it also threatens the benefits already accrued by permanent employees. If their benefits are removed as an unseen consequence of IR35 legislation changes, there will be revolt across the country. Option 12.1.3 is effectively a no-rights employee.

12.1.1 has been added for completeness, and 12.1.5 is for those who don't need an income right now, and can manage whilst building a business. Not all of us contractors are able to do that.

Mark Rowland

ONE PAGE SUMMARY

OFF-PAYROLL RULES PROPOSED PROVISIONS

1. I attach my response to the proposals as set out in the relevant draft legislation. I have made comments on three areas. However, my main focus for this submission is to provide an example to show what is actually happening and why the proposed legislation creates a mess.
2. My submission is set out as follows
    a. The fundamental change to the ability of the "worker" for their tax status to be assessed by others without them having any meaningful input into their own tax status. (Paras 5- 14)
    b. The proposed legislation shows no understanding of how businesses actually operate (paras 15-16)
    c. The process for making status determination statements (paras 17 – 18)
    d. a typical example of what actually is happening at the moment and an analysis as to why the legislation is deficient (paras 19 – 54)

What needs to happen

3. The legislation dealing with the SDS is fundamentally flawed. It needs to be rewritten and fully understood by all parties before it takes effect. What is needed is -
    a. For the system to apply only in relation to the deductions being made to the tax payments made to the "Worker" without negating the ability of the "Worker" to assess their own tax status. Regardless of the determination by a "Client" the "worker" should be allowed to self assess in their own returns – just like everyone else.
    b. For a system of pro-forma forms/returns to be made available so as to enable the "Client" and the "worker" to be able to make SDSs and

deal with SDSs effectively. At a minimum there should be a proforma 2 or 3 page return/form that needs to be sent to the "worker" by the "engager". This should at a minimum state to whom the form is being sent (ie the "worker") the name of the "Client", the name of, and authority that the person has, who is making the determination on behalf of the "Client", and include the words required by the proposed legislation to be made to the contractor by the "Client" (ie the words required by 61NA).

c. HMRC should ensure that it drafts and implements legislation to ensure that there are adequate safe guards so that the "engager" and the "worker" are clear that a determination has been made, who it impacts upon and what redress the parties have. The current proposals are not sufficient.
d. For the relationship between the "worker" and the "Engager" to be evaluated in the context of a group and not by reference to separate legal entities.

4. These should all be fully understood and introduced before amended legislation is put forward to be dealt with in a future finance bill.
5. This submission is being made on 25 Feb 2020 and is being made in a personal capacity

Mark Rowland FCA ATII

DETERMING TAX STATUS OF WORKERS – Fundamental change to assessment process

1. The effect of the proposed measures is to remove the ability of a "worker" to self assess their own tax liabilities and to instead impose a system on them that the "engager" determines their tax status.
2. At present both "workers" and indeed those actually employed by an "engager" have the opportunity to self assess their tax status by making appropriate tax returns. If the proposed rules are introduced then the "worker" will have no effective means to self assess their own position. This is because the proposed legislation deems the income to be employment income irrespective of the true position. This compares to those individuals actually employed by an "engager". They will still receive income but whether it is "employment income" or not will be a question of fact and the individual will be able to self assess their tax position.

NO ADEQUATE MEANS FOR WORKER TO ASSESS THEIR OWN TAX POSITION OR DISPUTE THE DECISION BY THE "ENGAGER"

3. *Current system for "workers"* - Currently a contact is drawn up between the "worker" and the "engager". The legislation then allows for deeming provisions to be made. It is largely up to the "worker" to "self asses" their tax status and to make appropriate returns. HMRC then can choose to challenge these returns and if there continues to be a dispute this could be taken to the commissioners etc. ie the current system is ***Current system - Contractual – Self assessment by the "worker" – subject to challenge by HMRC – disputes settled by commissioners.***
4. *Proposed system for "engagers"* - Under the new system the contractor is effectively removed from the process and the "engager" decides the tax status of the "worker" without the "worker" having any effective means of recourse. This is regardless of whether the "engager" acts responsibly or not. There is no recourse for the "worker" if an "engager":

    incorrectly decides that an engager is deemed to be an employee for the purposes of tax; does not inform the "worker";fails to provide a "status determination statement"; fails to provide the reasons; does not take reasonable care in making a determination;does not adequately consider any representation made by a "worker".
5. In relation to the above, the conduct of the "engager" can only be challenged by HMRC. The "worker" has no effective means to challenge the conduct of the "Engager".
6. HMRC is and has been for some time informing "engagers" of what HMRC will consider reasonable etc – for example if the "engager" uses CEST and provides honest answers then HMRC will not challenge the outcome of CEST. I suggest that if a "worker" is deemed to be an employee and tax and NIC are paid over to HMRC it is unlikely that HMRC will challenge whether the determination has been made correctly.
7. Thus for example if an "engager" purports to make a "status determination statement" which does not fulfil the legislation and they start to deduct tax and NIC from the payments being made under the relevant contracts there appears to be nothing the "worker" can do stop the engager from doing so under the proposed legislation. So under the proposed legislation the system is ***Proposed system - Contractual – assessment by the "engager" – no effective means of challenge by the "worker" – no independent dispute mechanism***
8. The "worker" has NO effective way of challenging the deeming provisions that are fundamental to their tax position. This is an unprecedented change to how the tax system is to operate. I cannot think of a single area of tax legislation which allows a 3rd party to decide the income tax

status of an individual without a means by which the individual can disagree with that decision, put forward their own view to HMRC and ultimately seek to allow the court system determine the true position.

9. However, because of the deeming provisions within the new proposals once the "engager" has reached a determination that the income is "employment income" of a "worker" then it becomes employment income regardless of the facts and the "worker" has no effective means to challenge that deeming position.

10. The proposed legislation should be changed to allow the "worker" to submit their own tax returns on the basis that they believe to be correct (regardless of any determinations by the "engager") with the tax and NIC that has been deducted from the receipts that they have received to be able to be reclaimed by the "worker".

THE PROPOSED LEGISLATION SHOWS NO UNDERSTANDING OF CORPORATE STRUCTURES OR WAYS IN WHICH BUSINESSES OPERATE

11. The proposed legislation is set up to deal with a "worker" providing services to a "Client". At its heart is that the "worker" has a contract by reference to a single entity and provides services to that single entity.

12. However, businesses are not normally set up in such a simple structure. Thus under the proposed legislation it will need to be decided which company in a group is ACTUALLY receiving services from the worker. This will normally not be the company which is referred to on the contract with the external contractor. In many if not all cases where there are more than 2 companies in a group it will be a struggle to identify which company in the group is the "Client". Once the "Client" has been identified it is unlikely that it itself will have the tax expertise to make a status determination and if a member of the tax department makes the determination it is unlikely that they will actually have the express authority to make the status determination on behalf of the "Client".

DETERMINATION OF TAX STATUS OF PERSONS - Process for making status determinations

13. When making assessments of UK tax positions, HMRC normally insist on some basic information and a form to be filled in. For example, they normally require the name of the person to whom the information relates, the name of the person making the return of information, a tax reference number, the date a return was made. There are then normally deadlines put in place by which the recipients can lodge disagreements etc otherwise the position becomes final. If disagreements are not resolved then the court system is referred to.

14. The proposed system does not have any of these characteristics are safeguards. However, HMRC have been seeking to make the system as painless and easy as possible from the perspective of the "engager". They have paid little if any attention to ensuring that the "worker" has the ability to take effective recourse.

EXAMPLE OF THE IMPACT OF THE PROPOSED LEGISLATION

15. Take a relatively simple example for a simple structure. I stress that this example is based on simple structures being operated in the real world and the kind of thing that some companies are actually doing at the moment.
16. "Big Co" is a consists of a group of companies. "Big Co" Plc is quoted on the stock market and only holds shares in subsidiaries. "Big co" services Ltd looks after the head office and deals with all the services etc for the head office. "Big co" services employee Ltd enters into all of the employment contracts with staff at the head office. "Big co" retail Ltd deals with all of the retail operations of "Big co" including running is chain of supermarkets. The employees of the "supermarkets" are employed by "Big co" retail ltd. "Big co" logistics Ltd deals with all of the logistics operations including running the groups leased lorries and employing the employees for the logistical operations.
17. "Big co" actually runs its operations largely on a cost centre basis (ie management accounting) rather then a legal entity basis.
18. "Big Co" decided to introduce a new IT system in 2019 and project manages this internally. The project is ongoing. It engages third party contractors to assist with this change management. IT staff from the logistical, retail and head office are also being used along with external contractors. A cost centre is set up to capture and control the costs for this new project and a cost share agreement is devised for statutory accounts purposes. All the costs for this project are to be shared on a statutory basis between "Big co" retail Ltd and "Big co" logistics ltd.
19. The external third party contractors are engaged with contracts which have the name "Big Co" plc upon them. Payments are being made to those contractors through agencies.
20. The new legislation is introduced.
21. Under the new legislation the first question should be to look at each individual third party contractor to find out which company in the group is the "Client". Given that the project is being run through a cost centre this is not straight forward
22. "Big Co" Plc – the contractors have contracts by reference to "Big Co" Plc, but this company is not running the project – indeed apart from holding shares it is doing very little – so it is hard to see how the

contractors on an IT project are actually providing services to this company and thus this company is unlikely to the Client.

23. The cost centre approach means that a single legal entity is not in itself responsible for the project and thus this does not allow us to conclude who the "Client" is.

24. The contractors work within the project team and this is being run by a member of the "head office staff" project leader (who is an employee of "Big Co" services employees Ltd). It may be said that the contractors are providing services to that individual. However even though that individual is an employee of "Big co" services employees ltd all that company does is provide staff to "Big co" services ltd. It appears unlikely that "big Co" services employees ltd is the Client.

25. "Big Co" Services ltd may be the client as the project leader for the project. However, the costs of this project are being shared by two other members of the group and "Big Co" services ltd is therefore not sharing any costs of the project and thus it looks unlikely that "Big Co" services Ltd is the client.

26. That leaves "Big Co" Retail ltd and "Big co" Logistics ltd. Both of these companies are sharing the costs for the project however whilst they are supplying staff to the project neither of them controls the project. It is difficult to see how either of these companies is the Client.

27. So for this example it is not clear which of the statutory legal entities is the "Client" for the purposes of this new legislation.

28. This also highlights another problem with the legislation. Suppose one was to conclude that "big co" services ltd was the "Client" for the puposes of this legislation because an employee who normally works for the head office was in charge of the project. Further suppose that individual goes on maternity leave and is replaced for the maternity leave by an employee of "Big Co" Retail Ltd. Does this mean that at that point the "Client" has changed and "Big Co" Retail Ltd must now carry out the obligations under the proposed legislation?

29. In real life under this example the tax department of "Big Co" are told to figure out what needs to happen.

30. "Big Co" staff in the tax department (which mainly focuses on Corporate tax and VAT) take on board the issue of the Determination of status for the external third party contractors.

31. They follow the advice given by HMRC and send an email to the agency for the external contractors in Feb 2020 as follows:

32. "In light of the April 2020 changes to off-payroll working rules, Big co has carried out a Check Employment Status for Tax (CEST) assessment on the role your worker is performing.

We are formally advising you of the outcome of this determination. The outcome of this assessment is that the Off-Payroll Working Rules (IR35) applies to this worker, and therefore, the appropriate level of PAYE deductions will be made by the fee payer to comply with the 6th April 2020 date. Please find attached a PDF copy of the CEST assessment outcome for your records. If your worker wishes to appeal this assessment decision, please do this in writing ***after*** *1 March 2020. Your appeal should be sent to fred@agents.com and frank@agents.com detailing the reasons for the appeal. Please ensure your worker does not appeal directly to the client or their hiring manager. Mark Brown*
HR EMEA Big co"

33. The agent then forwards this email to the appropriate contractor.
34. The tax department of "Big Co" believe they are fulfilling the guidance given by HMRC and have completed the CEST with honest answers. They believe they have done everything right.

ANALYSIS OF TAX POSITION OF THE EXAMPLE ABOVE BASED ON THE PROPOSED LEGISLATION *(references below ,where made, are to the proposed legislation unless otherwise stated)*

Has a status determination actually been made?

35. **61NA** gives the meaning of status determination statement (SDS). It requires a statement to be made by the client, states what the statement should say, states that the statement should include the reasons for the conclusions etc.
36. In the above example
    a. Nowhere in the email has the "Client" been identified.
    b. The email does not use the words required by 61NA ie it actually has to state "has concluded that the condition in section 61M(1)(d) is met in the case of the engagement."
    c. Section 61M(1)(d) does not actually currently exist (as this is proposed legislation) thus the statement at present could not actually conclude on the matter or refer to the relevant legislation. It is only when the legislation becomes law could a statement confirming a condition in the legislation could actually be made
    d. No reasons are being provided in the email, let alone explained. The email merely refers to the outcome and attaches a copy of a printout from CEST.

37. Each of the above facts stops the email from being an SDS. So ***NO determination has actually been made.***

Would the email be capable of being a SDS irrespective of the above?

38. **61NA** provides that a statement is not an SDS if the "Client" fails to take reasonable care in coming to the conclusion mentioned in it.

39. There is no evidence that the "Client" has been identified it is therefore difficult to conclude any care has been taken by it.

40. Even if the Client has been identified then in order for it to have taken reasonable care it will needed to have asked someone to carry out the determination on its behalf. We have no evidence in the email that that has happened or indeed who actually carried out the determination.

41. Given the above it would be reasonable to conclude that the "client" has failed to take reasonable care in coming to the conclusion. Therefore by virtue of per 61NA(2) ***NO determination has actually been made.***

Irrespective of the above what would the effect of the email be even if it was an SDS?

42. **61N(5)** deals with the position when a SDS is given to the "worker". Note the mere making of the SDS has no practical impact under the proposed legislation. It is only when the Client gives the SDS to the "worker" is there any meaningful impact.

43. In this example, the email has been sent to an intermediary by a "Mark Brown" who works for "Big Co". Thus, the SDS has not been given to the "worker". Instead it has been sent to an agent. Mark Brown has signed off the email on behalf of the group rather than a specific legal entity. The proposed legislation requires a specific legal entity to be identified. We have no evidence that "Mark Brown" has any authority to act on behalf of or bind any specific legal entity. Again the "Client" has not been identified.

44. Each of the above is sufficient to conclude ***that the SDS has not been given to the "worker" by the "Client" thus the SDS would be ineffective.***

Irrespective of the above, what would the effect of the email be even if it was found to be an SDS that the "Client" had made to the "worker"? Do the "workers" representations need to be considered with care?

45. **61T** deals with the situations if the worker disagrees with the conclusions reached in the SDS. In the example the "Mark Brown" has specifically barred the "worker" from appealing to the client or their hiring manager. Thus if the "worker" follows the email they will not make any representations to the client – instead they will make them to the agent. ***Any representations made by the "worker" to the agent will not be covered by the provisions of 61T as they were not made to the Client.***

46. Irrespective of the above, if representations were made to the Client by the worker such that these would need to be considered under 61T what would the Client need to do satisfy 61T?

47. Incredibly, unlike the care needed to be taken by the "client" when making the original SDS there is no duty placed upon the "Client" to take reasonable care when considering any representations by the "Worker" against an SDS. The provisions governing an SDS explicitly state that the statement is not an SDS unless the client takes reasonable care. There is no equivalent explicit rule when considering representations by the "worker".

48. All the "Client" needs to do is to consider the representations and to give the "Clients" reasons for deciding that the original conclusion is correct (61T(3)). Thus, as an extreme example, the "client" could under the legislation respond to the "Worker" by confirming they have considered the representations made by the "worker" and decided that the conclusion originally made is correct and that their reason is that the "client" knows more about tax than the "worker". This would appear to satisfy the provisions of the proposed legislation. ***Thus the "worker" has no effective means of appeal against a valid SDS.***

Summary of impact on this example

49. "Big Co" thinks they are abiding by the legislation on a timely basis and following the guidance provided by HMRC. Given the statements made by HMRC it appears unlikely there will be any way HMRC could challenge what "Big Co" has done and the conclusions that have been reached by "Big Co".

50. However, given the analysis it is also clear that the legislation has not been adhered to and that as such the "worker" could file their own tax returns on the basis that no SDS had been made. They could also file on the basis that their tax lability had been transferred to "Big Co" because "Big Co" had not made an SDS. This could lead to the extraordinary position where the "worker" in effect has no tax liability for the work they under took for "Big Co" and they were able to effectively reclaim the tax and NIC "Big Co" had deducted from their payments. Meanwhile HMRC could not collect the tax and NIC from "Big Co" because "Big Co" had followed the guidance provided by HMRC. This of course would be a mess.

25 February 2020

Garry Scott Rayner

ANSWERS TO SPECIFIC QUESTIONS
Existing measures in the public sector
1. Not applicable to myself.

Impact of new off-payroll rules on organisations
2. The impact of the extension has not been adequately assessed, many companies are risk averse, which is leading to wide scale blanket determinations.

3. Very few small organisations engage contract resource, hence this will have minimal impact.

4. The blanket determinations has resulted many UK based flexible resources having their contracts cancelled prematurely. The proposed legislation is already impacting many thousands of individuals and reducing the services they buy such as Accountancy, Legal & Insurance. The proposed legislation also restricts the business agility of those wealth generating companies who used to use our services. Given the uncertain times we live in, many large organisations are off-shoring their flexible resources requirements, engaging large numbers of contractors in the Republic of Ireland and Switzerland in particular but also elsewhere throughout Europe and Asia. Many agencies and end clients are offering free / reduced flights back to the UK at weekends.

5. The proposed legislation is largely unnecessary and should not be implemented, with the perhaps exception of limiting the duration that a flexible resource could work for a single client before being deemed a disguised employee and subject to PAYE and National Insurance. See point 9.

6. The current rules are not sufficiently clear, nor have they been impact assessed, neither from the client / contractor perspective, nor that of HMRC. My annual tax payments would reduce from an approximate £40k tax per annum (Corporation tax and dividend tax) to £23k tax per annum if I was forced into a permanent role on £60k pa. And there would be no £26k in VAT, hence a £47k 'lost' to HMRC and an event bigger loss for me and my family.

Determining tax status of workers
7. The CEST tool is fundamentally flawed, this has been demonstrated many times.

8. There are minimal safeguards due to the uncertainty caused and the very tight time frame for implementation, large organisations simply do not have the time to individually assess all of the flexible resources, hence the blanket determinations.

9. A much better approach would be allow flexible resources to worth within their Personal Service Companies for a fixed period, with a single client, perhaps a year or eighteen months before deeming the flexible resources as a disguised employee and subject to PAYE and National Insurance.

Policy objectives and wider context
10. No, the proposed legislation is bad for the individual, bad for the companies and bad for the economy as a whole.

11. Umbrella companies add additional complexity and the fee structure often lacks transparency.

12. For the past 10 years, I have provided a high-quality services to many major corporations (Barclays, BT, AstraZenca, CGI, DXC and others) and I work all around the UK, I incur legitimate costs as an integral part of my business, yet under the prosed legislation. these costs would no longer be tax deductible, hence I could not afford to work beyond my locality, severely restricting the service I could offer and adversely impacting my income.

In addition, a disguised employee, subject to PAYE and National Insurance yet without job security, pension, holidays, training, bonuses and the many other benefits obtained by true employees is fundamentally unfair.

18 February 2020

Gianni Sawyer

ANSWERS TO SPECIFIC QUESTIONS

1. Response to Question 1

What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

1.1. Large amounts of contractors being blanket-assessed which is being incorrectly interpreted as a successful identification of disguised employees.

1.2. In-flight projects were delayed and in some cases scrapped.

1.3. Specific departments of the public sector are now unable to hire contractors directly because of their risk appetite, instead I saw, and was part of a large consultancy that under the new reforms would be classed as outside IR35 because of the commercial arrangements between the public body and consultancy

1.4. Because of the above, rates went up to attract new talent and therefore costs to the public sector went up.

1.5. These consultancies are now so entrenched into the system and business architecture of these public sector areas that they now cost more to remove from the change process than to stick with them.

1.6. I do not believe that any lessons have been learnt from this experience because the results used to prove non-compliance are flawed, and there has been a clear disregard for the events that truly unfolded.

2. Response to Question 2

Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

2.1. I do not believe that the off-payroll rules extension to the private sector has been adequately assessed. This has been created in a turbulent time in British politics and all of the delays to the final detail and equally the review which will be completed within weeks of the implementation date.

2.2. The review in progress has been stated to only review the implementation of the reforms, and not the actual details of the legislation itself.

3. Response to Question 6

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

3.1. The tests are not clear, as they do not reflect case law. HMRC themselves have been shown that on a large majority of court cases they also have failed to apply their own tests to find the correct outcome.

3.2. Because this is so subjective, you can easily call out lots of factors that can contribute to a determination but it is not easy to answer each of those factors with a standardised method. Becaue of the detail and nuance for each worker, assignment and relationship, it is extremely difficult for any kind of test to get this right with any level of certainty.

4. Response to Question 7

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

4.1. My assessment of the CEST is that it is a tool that has been created but serves no purpose as it is the incorrect approach from the outset. There is no way that a a decision tree with fixed weightings for responses can be used for individual assessments. This view has been backed up by case law.

4.2. In the limited times that CEST can actually give a determination, it's only correct by coincidence. This means that it gets it right but by the wrong reasons.

4.3. CEST actually has different wording when you use it as a Worker, and as an End Client – this results in more conflict between the contractor and client because the questions aren't asked in the same way and different answers can be reached.

4.4. The NHS has just been fined £4.3million because HMRC state that they incorrectly determined their workers' status even though they used their own CEST tool. This is public money, and is lost because of the incompetence of the tool, and also the inability for HMRC to stand by their own tool.

END OF STATEMENT

25 February 2020

Matthew Searle

<u>Submission Summary</u>

The proposal to extend the off-payroll working rules to private businesses from April 2020 will be deeply damaging. This damage will extend across the spectrum from the contractor companies, through the supply chain of employment agencies, to the end-clients and the economy as a whole. The legislation will heap significant cost onto businesses as well as restricting access to specialist, flexible skills that clients need.

I fully support the idea that everyone should pay the correct amount of tax, but the measure will force more and more contractors out of business and into forced employment with much lower rights than an employee would expect.

Already we are seeing clients refusing to work with the self-employed rather than make an accurate assessment of the IR35 status of the contractor, forcing them to use umbrella companies to provide a payroll service while offering little to no protection to the individual. As a consequence, dubious avoidance schemes are already starting to appear whereby the worker is

promised a loan or other form of remuneration to retain a higher percentage of their take-home pay. This is how the Loan Charge scandal started, and if Government pursues this implementation then we will be in a similar situation in the next ten years when HMRC start to pursue these providers.

For clients who will make an assessment of the status of the contract, the implementation relies heavily on the flawed CEST tool. Despite new versions being released, CEST relies heavily on the question of substitution while not including any logic relating to Mutuality of Obligation because of HMRC interpretation of Mutuality. HMRC have lost recent cases at tribunals, when one would presume that they used CEST to determine the status before proceeding to tribunal – either HMRC used CEST and got the wrong outcome from the tool, or they did not use CEST to determine the status at all.

A client-led dispute resolution process will rarely, if ever, lead to a client overturning their decision, and hinges on clients making the determination rather than blanket refusal to engage limited company contractors. There is no appeals mechanism against a large client forcing everyone to use an umbrella company.

There are alternative solutions to the perceived problem that HMRC have identified, such as an Engager's Tax, but these suggestions were ruled to be out of scope of the consultation so have not been considered. I would urge the committee to consider whether these would be better than the sledgehammer approach to crush the IR35 walnut.

Background and Introduction

1. My name is Matthew Searle. I am an independent professional IT consultant, providing my services to a range of clients via a limited company. I have a rare and occasionally valuable skillset, which means that the projects and clients that need my services are also rare and geographically spread. I have no option but to travel long distances and stay close to my client's premises so that I can provide services to them.
2. My work is dedicated to short- and medium-term IT systems design and implementation, each engagement typically lasts for between six and eighteen months, although some will last for longer than that. When my role is complete, I then look for a new client to work with, who are likely to be in yet another location.
3. I am responding to the call for written submissions in an individual capacity, drawing on my direct experience as someone who has run their own limited company since 2006 and also on discussions I have had with friends and colleagues who have experience running their own company.
4. I can be contacted via email at matt@rainbowsheep.co.uk, post at 9 Park Avenue, Burnley, Lancashire, BB11 4RH, or by phone on 07886900203.

Answers to questions posed

Q1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

5. One of the impacts on the implementation in the public sector was that projects became delayed, contractors left projects, and there was an impact on delivery. HMRC's state that 42% of central bodies and 30% of sites reported that there had been a change in their ability to fill off-payroll vacancies (source: Off-payroll working in the private sector Consultation document).
6. The primary lesson learnt from the public sector implementation appears to be that where the client attempted to force what the contractor perceived to be an incorrect determination on them, the worker would leave that role and seek alternative projects elsewhere.
7. As a result of the issues in resourcing the public sector (37% of central bodies and 22% of sites reported changes in contractor rates as a result of the implementation), the draft Finance Bill seeks to remove the possibility of working in an environment which is more conducive to fair assessment of the IR35 status by those who are more knowledgeable as they are directly impacted by getting the status correct.

Q2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has

been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

8. No. There has been significant impact in advance of the legislation being passed which was not mentioned in any documentation released by HMT or HMRC.
9. The main impact that has not been included in any assessment is the probability that clients will simply opt out of the assessment process and remove the self-employed worker from their supply chain.
10. Whether the client is in the financial sector like HSBC, Lloyds, Barclays or Deutsche Bank, oil and gas such as Shell or BP, pharmaceuticals like GSK, or retail such as Tesco and Selfridges, clients are refusing to engage with the self-employed and insisting that work is performed by employees of the client, agency or an umbrella company.
11. When the legislation was announced, HMRC assured politicians and the public alike that the genuine self-employed would not be impacted by changing who is making the determination. Even before the legislation has been passed, this can be seen to be false as client after client announce that they will not need to make IR35 determinations because they will not work with a contractor via their own limited company.
12. Given that clients are preferring to remove the self-employed from their supply chain rather than make an IR35 assessment, it follows that the impact assessment of the burden on clients to make a fair assessment was inaccurate.

Q4. What will be the effect of these new measures on a chain of contractors and subcontractors?

13. In the past, my company has always had the ability to engage a subcontractor to perform work on a contract. This has been hassle free and there has not been any significant burden on my business of engaging others.
14. If I am working on a contract where the client has determined that IR35 applies, my company becomes the fee payer. In order to engage a subcontractor, my company will need to deduct PAYE and National Insurance from their invoices by running my own payroll for any subcontractors, or forcing them to use an umbrella company and become falsely employed.
15. Neither of these options is attractive and incur significant costs and administrative burden. In all likelihood I would cease to engage a subcontractor.

Q7. What is your assessment of the Check Employment Status for Text (CEST) tool? Does it require improvement? If so, how might it be improved?

16. CEST is unfit for purpose as it does not reflect case law, puts an undue weighting on certain criteria, while ignoring the question of Mutuality of Obligation (MOO).
17. Determinations carried out using CEST have also been defeated at tribunal. In *RALC Consulting v HMRC [2019] UKFTT 703 (TC)*, HMRC pushed to dismiss a determination from CEST as being included as evidence, arguing "The form, content and application of CEST to the appellant's arrangements is irrelevant to the issues to be determined by the tribunal". Third-party tools from providers such as Qdos Contractor, IR35 Shield and Kingsbridge Insurance have a higher reputation in the marketplace and have been proven to give more reliable results because they rely on case law rather than HMRC's blinkered views.
18. The biggest question for concern is the Mutuality of Obligation test, and what HMRC have ignored in developing the algorithm.
19. HMRC's Employment Status Manual states that there "must be an irreducible minimum of mutual obligation for there to be a contract of service. That irreducible minimum is that the engager must be obliged to pay a wage or other remuneration, and that the worker must be obliged to provide his or her own work or skill. However, the irreducible minimum could be present in either a contract of service or a contract for services and therefore, by itself, it will not determine the nature of a contract."
20. The Employment Status Manual, therefore, indicates that all contracts include some form of mutuality of obligation, and even in cases where a self-employed worker is not caught by IR35, their client is obliged to pay them for performing their service. CEST does not look at the question of mutuality of obligation to determine whether the obligation extends beyond the irreducible minimum.
21. In the employment tribunal case of *Hafal Ltd v Miss Lane-Angell*, the employment tribunal ruled that Miss Lane-Angell was an employee which was then overturned on appeal because there were no minimum hours that the client were required to offer and Miss Lane-Angell only needed to provide services when she was available, which indicated that there was no mutuality of obligation between the parties.
22. With every client I have been engaged by since I started working for myself, my contracts have never specified or guaranteed any minimum number of hours, and I have only provided services when I was available. I have had concurrent clients which means that I am sometimes unavailable to work with one or the other, yet CEST does not consider the question of whether I work with concurrent clients or not.
23. The way that CEST has been used by clients is also a grave concern. Where an agency is being used, the person completing CEST for the client is unlikely to have knowledge of the terms of the contract between contractor and agency, and between agency and end-user. Client contacts rarely have any insight into IR35 or the contractual relationship but are making

determinations based on their limited knowledge which have huge implications for the client and for the contractor.

24. Under the draft legislation, "reasonable care" must be exercised in assessing a contract. Using CEST, particularly if the manager is assessing a role rather than the individual contract, does not demonstrate reasonable care is being used.
25. CEST should undergo a fundamental, independent review to ensure that all case law applying to IR35 is reflected in the algorithm. Earlier iterations of CEST have been tested against IR35 tribunal decisions and in many cases gave an incorrect determination. A Freedom of Information Act request revealed the 24 key employment status cases that were used to develop CEST (including 18 IR35 cases). When Contractor Calculator ran the cases through CEST, the determination provided was correct in 58% of the cases and three further cases gave "false positives" (source: https://www.contractorcalculator.co.uk/cest_exposed_hopelessly_unreliable_hmrcs_foi_543610_news.aspx)
26. The following improvements should be made to CEST
    a. Include all employment case law factors together. By assessing each factor in isolation, a user could receive a determination based on a very limited set of questions.
    b. Expand the questions asked to match those typically used in an HMRC enquiry. An inspector will typically ask over 50 questions during an investigation, often over 100. CEST asks under 30 questions to make an automated assessment, yet a seasoned professional needs to ask significantly more to form their expert opinion.
    c. Include all parties in the assessment. Client staff rarely know the contractual terms that they are operating under, those who work in procurement (and have sight of the upper contract) rarely know how the relationship works. The client, contractor, and agency should all provide input to the assessment.
    d. Save assessments, determinations, and the questions asked and answered. HMRC does not retain any details of the questions asked, or even if a determination has been completed, for CEST. This would be an essential requirement of traceability and reduce any administrative burden on those conducting assessments. Additionally it would ensure that HMRC stood by the completed assessments made in good faith, regardless of whether CEST has been amended in later version.

Q8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

27. It is important to recognise that the tests for IR35 only recognise employment status for tax purposes and not for employment purposes. One can be assessed as being inside IR35 and therefore taxed like an employee,

while at the same time being assessed as self-employed for employment purposes.

28. The draft legislation effectively delivers a workforce that is taxed for employment purposes without providing any rights. This may become a standard operating model for clients to adopt, because it removes their obligations with little impact on them.
29. The legislation already in force in the public sector, which bestows no worker or employment rights on the individual while taxing them as an employee, makes the UK Government the largest abuser of worker's rights in the western world.
30. The proposed legislation allows for a determination to be challenged through a client-led appeals process. Without being able to turn to the courts or to an independent appeals panel, I do not believe that clients will overturn their initial assessment of a role being inside IR35 merely because the contractor presents evidence that contradicts their view.
31. Additionally, many contractors may prefer to stay silent, accept a false declaration of being inside IR35, and keep the contract rather than appealing the decision and risk having the contract terminated anyway.

Q9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

32. When a contractor is engaged by a client, the client does not pay employers National Insurance because there is no contract of employment between contractor and client. In order to close this revenue gap, the government could introduce a flat-rate engager's tax where the clients are taxed at a separate rate rather than National Insurance applying. This rate could be adjusted separately in future Finance Acts as necessary.

Q11. What is your view of the role of umbrella companies in the context of these proposals?

33. Umbrella companies provide clients who do not wish to perform an IR35 status determination (whether because they perceive a risk in doing so, or they believe there is an undue administrative burden on them) a way to engage employees with no employment rights.
34. When working through an umbrella company, the worker pays for the employer's National Insurance, the employee's National Insurance, the umbrella Apprenticeship Levy, an umbrella fee, and income tax themselves while the client becomes removed from the liability of payment. The worker pays the taxes that their "employer" should be paying as they must pay for both employer's and employee's National Insurance.
35. Umbrella companies will withhold a percentage of the invoice value, which can then be paid to the contractor as sick pay or holiday pay if they need it. The worker is paying for their own rights.
36. When IR35 was introduced, loan scheme providers targeted the self-employed with ways to reduce their tax burden by promising unrealistic

returns and ways to maximise their income. Already, there are providers in the marketplace who are promising "creative" ways to work through their company and to avoid tax. We are seeing the repercussions of the loan charge scandal presently. In future years, we will see a similar scandal caused by companies promoting dubious schemes to evade tax.

Q12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

37. It is fundamentally unfair that someone is taxed as an employee but receives no employment rights. It is fundamentally unfair that someone is taxed as an employee but if they want holiday or sick pay from their umbrella company, they must fund it themselves.
38. The push into false employment, whether as an umbrella employee or being forced onto the payroll of an agency or client, that the draft legislation is already creating will have a significant impact on the flexible economy and the five million self-employed workers in the country.
39. The public sector legislation has led to workers being denied employment rights and extending this to the entire workforce will result in the UK becoming a dominant force in denying the rights that employees have and expect.

25 February 2020

Mohan Seenippandian

Summary:

- The new IR35 rules are unfair and impacts the flexible workforce in the UK.
- It affects Jobs in the UK and as companies are moving the jobs to offshore location or to other metro locations in the US and Canada.
- Personally, it has affected my mental health due to the uncertainty it has created and put me under a lot pressure recently.
- It has affected my job prospects in the UK, has huge financial impact to me and my young family.

Existing measures in the public sector:

1. Existing measure in public sector is unsuccessful, has led to significant waste of public fund as lot of skilled consultants moved out of public sector.

Impact of new off-payroll rules on organisations:

2. Companies are rolling out blanket assessment, cutting down flexible workforce in the UK. And are moving jobs to offshore locations, scaling down IT Budget.
3. Rules are complex and unclear for small organisations to implement
4. It has affected my mental health as I will not have any job in my current customer projects. Roles from this project is moved to offshore and some are moved to other metro locations in the US.
5. Govt and HMRC must delay the rollout to private sector for a proper impact assessment and review.

Determining tax status of workers

6. The tests are, unclear and does not reflect the reality of contracting
7. Inadequate and require review
8. Ineffective, no adequate measure to challenge the decisions.

Policy objectives and wider context

9. Allow the flexible workforce to continue the way it is as it makes significant contribution to UK economy. Alternatively, simply introduce increase corp taxes or higher dividend taxes for flexible workforces.
10. No, it will affect jobs in the UK. It will impact the highly skilled flexible workforce and will lead to significant loss to UK economy.
11. It another way to tax hard working flexible workforce without providing any significant benefits of permanent employment.
12. It is unfair to be taxed and treated this way without having and benefits of permanent employment, it affects the flexible workforce and innovation that these highly skilled consultants bring to organisation.

19 February 2020

Jo Sellars

Capacity which made: Personal (Director of a PSC)

SUMMARY:
Unintended consequences that are skewing the business case for IR35 / Off Payroll.
Ignoring the lessons learned from the public sector or failure to identify impacts had a get out clause and many moved to the private sector: options to continue contracting outside IR35 are minimal.
David and Goliath struggle against large corporations (Clients and Agencies).
Contractors have had to put up with oppressive contractual clauses taking away contractors ownership rights to work.

No recognition that Clients are purchasing a service not hiring an employee: a constant battle to get people to understand that contractors have fewer workers rights but this can be balanced out by working through a PSC.
Continued misrepresentation and misunderstanding by Clients and Agencies of contracting, how contractors operate through a PSC and how they are different in work terms to an employee.
Whichever way a contractor turns, there is discrimination in how they work, how they work, how much legal jeopardy of other parties (Client and Agency) they have to bear.
Significantly reduced income.
New deductions taken from gross rate.
Local economy will suffer
I will no longer be using public transport for long journeys as I will work locally.
I will not be booking hotels, B&Bs or Airbnb as I wont be working away from home.
PSC no longer needs anyone to undertake financial reporting, so the company will be closed.
No longer require company insurances.
Less financial flexibility means less work mobility, so I can only take contracts close to home.
CEST tool skewed for inside IR35 and not fit for purpose.
IR35 / Off Payroll are impacting on my right to work.

ANSWERS TO SPECIFIC QUESTIONS
Existing measures in the public sector
QUESTION 1
Part a: What has been the experience of the new off-payroll rules in the public sector?
N/A
Part b: What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals
N/A

Impact of new off-payroll rules on organisations
QUESTION 2
Part a: Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed?
In my opinion, No
Lots of unintended consequences are now emerging and being reported on in social media that were never identified when the business case was defined.
Part b: In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic?
Answer - No
Representation to the House of Lords Economic Affairs committee on Off Payroll on Monday 24th February, those within the room could not work out if figures provided by HMRC were NET and what NET meant. An action had to be taken for this to be worked out and passed back to the committee.

Look at unintended consequences
Work being off shored
Blanket decisions
Part c: Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

QUESTION 3.
Part a: Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

QUESTION 4.
Part a: What will be the effect of these new measures on a chain of contractors and subcontractors?
It is decimating the industry. Clients are running scared and making blanket decisions or off shoring work.
People are sharing on social media their particular circumstances such as retiring before they planned to because IR35 is too onerous; PSC not being used by Clients', increased stress as cliff edge income drop now that more details on gross income impacts are coming to light; people out of work for longer between contracts because they are reluctant to work on an inside IR35 contract.

QUESTION 5
Part a: What scope might there be for simplifying or otherwise reducing the administrative burden of these measures?
Part b: What should HMRC do to help businesses understand the new administrative rules?

Determining tax status of workers
QUESTION 6
Part a: Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker?
Answer – No
Not enough clarity from HMRC of what is required.
Clients are making decisions which are a fait of complit.
Clients and Agencies have for years have not recognised purchasing a service and not hiring an individual.
Part b: Do they reflect the reality of the contracting environment?

QUESTION 7
Part a: What is your assessment of the Check Employment Status for Tax (CEST) tool?
Built to deliver a specific outcome – Inside IR35
Some scenarios have been deemed not applicable by HMRC which leaves only answers relevant to an employee situation.
CEST questions focussed on employee – the questions in CEST look to have been specifically selected because on face value they provide the least

differentiation to an employee whereas the nuanced answer clearly demonstrates non-employee status. HMRC have ensure CEST answers are not nuanced enough.
Collaboration - It's very rare for a contractor to work in isolation, you are usually brought into a collaboration environment where there are a mix of resources i.e employee, off shore, managed services, third party supplier and contractor.
Working frameworks and agreed approaches – no collaboration can work effectively without an agreed set of frameworks or approaches. These set the boundaries for which all individuals operate but necessarily are under direct command and control. As a contractor I would define how I would deliver within these frameworks and agree the outcomes to be delivered
Working hours – with such a mix of resource a collaboration has to agree what are core hours and this usually aligns to the Clients office where the project is initiated from. If a mixed resource pool does not have guidance on core hours then people would work in isolation and it would be virtually impossible to hold meetings and workshops or progress work effectively. An example, off shore workers quite often will have in their contracts they will operate to UK hours in their client is based in the UK, this to allow for collaborative working and ensuring people are contactable within a set of core hours.
Missing questions Mutuality of Obligation (MoO) – this significantly differentiates contractors from employees. If a contractor doesn't work they don't receive payment from a client and have to rely on "war chest", money set aside to cover non-working days within a year.
Furlough enforced – operated by a number of companies across a number of industries. In financial services, furlough is enforced at Christmas for contractors with few exceptions. For a number of reasons this suits the Client, very little progress is made in project work in December as resource levels reduce due to Xmas parties, time off to shop, holidays etc; money on contractor costs are saved on budgets during furlough. Employees has a CHOICE take time off during this period the opposite is applied for a contractor.
Furlough period payments – contractors do NOT get paid during furlough for not working. If an employee has time off they are paid: whether that is holiday or sickness or people policy special leave.
Unplanned non-working time – Clients are quite within their rights to state that work is not available at any point in time: that includes in IT service down situations where nobody can work because of lack of IT, a contractor can be asked to leave for the day or longer.
CEST is being misused – I have recently received my Status Determination Statement which declared me inside IR35. I had to be persistent to with the Client to find out how the assessment was conducted as I was not included in the process.
Part b: Does it require improvement? If so, how might it be improved?
Answer – Yes to improvement. The best one is to remove the tool but if we have to keep it a significant overall is required.
Include MoO.

Accept that some questions are not binary and there is a grey area that all resources operate in: there is an overlap with employee working practices that have a nuanced answer that explains why there is an overlap but how the contractor, managed service or consultancy still deliver a service within these constraints.
You will have had submissions from individuals who have effectively "tested" the CEST tool and found it lacking. I would take this opportunity for you to consider their feedback as well.

QUESTION 8
Part a: How effective will the status determination process be in resolving issues of employment status?
Stress and uncertainty - Created more uncertainty and highlights how little direct hiring managers and above know about the way contractors work within the Client organisation
Agency only supported the Client – the agency I worked through, Sanderson's, told me when I signed my contract that the agency solicitors had confirmed it was IR35 compliant, once the SDS came through all that went out the window. The agency switched to saving their profit line, isolating me as a contractor by passing me around various people, taking too long to answer emails, I am dealing with people who do not have the first clue about IR35 or the agency processes.
Client assessment process is closed door to the contractor and its like extracting teeth to understand how it was completed. It is very obvious the wrong people are involved in the process and knowledge of IR35 overall is lacking.
The client is assessing a generic BA role profile (sounds like blanket assessment which is not permitted in the regulations), claiming additional information is also taken account of (still uncertain what this additional information is as the assessment process has not been shared with me: mushroom management comes to mind (kept in the dark and "dumped" on from a height).
I have spoken to my hiring manager and he confirmed he sat in on the assessment process using CEST. So I could confirm his thinking, I asked if he would elaborate on why he chose answers to specific CEST questions. As we talked through the answers he actually confirmed on more than one occasion he was not aware of the points I was making from a contractors perspective. For example, CEST question "'Will the worker have to fund any other costs before your organisation pays them?' or 'Will you have to fund any other costs before your client pays you?' I have to have insurances in place as part of operating through a PSC, these insurances are checked as part of company screening; I hire someone to undertake my book keeping and to file financial submissions to HMRC and companies house; my PSC pays corporation tax and collects VAT.
Assessment process is causing friction – using HMRC's guidance (which is skewed to absolutely proving inside IR35) and the Client's need to protect themselves means that "honest and open" answers are not possible. Overlay

decades of Senior Managers thinking they are hiring resource and not procuring services leads to lack of understanding.
Highlights oppressive clauses in contract – the CEST questions around ownership rights and buying ownership rights. All rights for the work are claimed by the Client through the Agency contract.
I have tried on a few occasions to have these amended or removed without much luck.
If I don't agree to them they will offer the work to someone else who will sign for those clauses: In financial services I have not seen or aware of any contracts without these clauses.
My right to work is severely restricted by contracts as they are agreed between the Agency and the Client with no room for the PSC/contractor to make changes.
It's a David and Goliath battle on contracts.
If I hired legal support to push the changes with the Agency, the Agency would take the path of least resistance and withdraw the offer as they know they can go out get another contractor
Part b: Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
Answer – no. The decision will not be changed regardless of the information / evidence provided.
When the Client is on point to be responsible for the challenge process there is a conflict of interest and they will protect their business at all costs.
Client has not shared the challenge process – I have asked the question on sharing the process at least 4 times in a skype chat with the Client's Recruitment Business Partner.
I still haven't had sight of a documented process.
Reading in between the lines, the Client has decided an approach to IR35 / Off Payroll and it does not include outside IR35 decisions.
I am told to email across my challenge but I am also told the decision will not be changed.
My hiring manager is open to discussing the SDS outcome but also told me the decision won't be changed.

Policy objectives and wider context
QUESTION 9
Part a: Are there better or simpler ways in which the objective of the new rules might be achieved?
Part b: If so, what are they?

QUESTION 10.
Part a: Will the Bill, as drafted, achieve the Government's objectives?
Answer: Probably not because of unintended consequences and blinkered objectives
Increase in tax revenue – additional NI and PAYE revenue will be seen to increase but this will be offset with the loss of other taxation (corporation tax, VAT and dividend tax): it is likely that the government will see a net loss of tax revenue.

Unintended consequences – a combination of factors is leading to hiring organisations adopting a risk averse stance to implementation of off payroll. This has resulted in hiring organisations doing one or more of the following:
PSC engagement no longer an option – change in hiring company policy how they will engage with contractors. This is a disingenuous attempt not to be seen to blanket ban
Undertaking status determination assessment - based on hiring an employee and not procuring a service to deliver an agreed set of tasks
Off shoring UK based roles – the onset of off payroll implementation has forced hiring organisations to look at other options of delivery and a number are now sending roles off shore with an impact to the UK economy and employment. This decision to send so many roles off shore would not have been taken off roll payroll was not being implemented.
the lack of detailed guidance and the delay in finalising legislation has meant that businesses are

QUESTION 11.
Part a: What is your view of the role of umbrella companies in the context of these proposals?
Another layer of cost and bureaucracy – most contracts will still be managed through an agency and umbrella's will effectively be used for PAYE purposes. Still working through the process with my current contract but it looks like I will need to sign contracts with agency and umbrella companies. I will be imposed on not negotiated with for many of the clauses because I am a lone individual facing the machinery of large organisations: unfair negotiations.
Unregulated - Umbrella companies are unregulated and there are some out there that are offering payment schemes that are similar to ones where people are now being pursued under the loan charge. The umbrella's will not work in the interest of the deemed employee and will always be looking to maximise their own profit. There is a worry that umbrella's and agency relationships over time become mutually beneficial to the extent of
Legal Jeopardy - In effect three large organisations, client, agency and umbrella, will determine a set of legal contracts that will suit the organisations and will be forced on the deemed employee who will not be able to represent their needs. Statements are filtering through that indicate more clauses are being dictated by organisations in contracts that put additional legal and liability onus on the deemed employee to protect organisations in case of an HMRC investigation.

QUESTION 12
Part a: How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"?
Payments for work – at the current time it is difficult to say with certainty what my employment income will be.
The Agency hasn't provided a clear breakdown, when they tried to I pointed out it looked like secondary Class 1 NIC was being taken out of employment income which is not legal: I haven't had a response to my feedback from the Agency.

Closing down PSC – it looks less attractive to operate through the PSC anymore and incur the running costs of the PSC on less income.
Flexibility has gone – I will have less flexibility on decision making on financials and how I operate going forward. The use of an umbrella company will remove that flexibility
There is no such thing as a "war chest" savings within the PSC account anymore as employment income has to be paid directly to the employee, whereas currently a portion of the retained profits are left in the PSC accounts to cover non-working days, unplanned expenses, training, memberships etc
No mobile workforce – due to the loss of income under off payroll, I will be looking for contracts nearer home.
Working away from home is a thing of the past. Travel and hotels are no longer allowable as expenses (home to Client office which is not in my local area). These expenses would be a significant amount of money out of the employment income if I were to incur them.
Unless you have niche skills, Client's will not increase rates to take account of employers NIC
Part b: Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
Answer: No, it is creating an underclass of worker that is discriminated against.
Can I turn that question around and ask, "Would it be fair for a current employee to be told to sign an inside IR35 contract?"
Paying employers NICs (secondary class 1 NICs)
Paying employee NIC
PAYE
No security of tenure – in order to ride the highs and lows of contract work you need to be able to set aside funds aside to draw on: this becomes ever more difficult with the rates being reduced.
And NO benefits – even if you discount these from the discussion the above still provide significant demands on employment income.
The only winner is the Client.
New employee status – as it currently stands a new status of "no rights worker" has been created. The terminology of employee automatically conjures up the associated benefits of being an employee which are not available to deemed employee:
Statutory payments – "no rights worker" has no way to access sick
Pension sign up
Company benefits

25 February 2020

Nik Sen

Please find below information regarding the implementation of IR35 at one of our customers – this is based on a letter already sent to our MP with some additions to cover the points raised in your 'Call for Written Evidence' paper.

We (myself, wife and son) run a small IT business that, amongst other things, provides highly specialised consultancy services to major retailers in the areas of card payment and pharmacy IT systems – we have been in business for 35 years.

The tax loophole that IR35 is trying to close is not something we have ever taken advantage of - we have always paid tax as a partnership and therefore pay substantially more tax than most contractors do – so, we are very much in favour of removing that loophole. However, my experience so far has convinced me that the impending legislation is ill conceived and will cause economic damage to the contracting sector and their client companies.

As part of the changes to IR35 rules we expected that our UK customers would provide an assessment to us and fully expected this to confirm our outside IR35 status (which the results from the HMRC CEST tool also confirm). However, one of our customers, a large pharmaceutical retailer, has taken a different approach whereby they have not undertaken individual assessments of contractors but have instead decided on a 'blanket' ruling to force all consultants and contractors to be paid via PAYE and use a nominated umbrella company rather than using their own existing companies. This seems to be completely at odds with the approach expected by HMRC and has some unfortunate consequences:

1. Our situation is this – if we accepted the proposal we would end up with approximately half our work being inside IR35 and half outside at the same time. There seems to be no guidance from HMRC about how this should work and it will place a considerable burden on our business as we will need to spend time and resources trying to find out how to proceed. It would also undoubtedly impact our ability to provide independent, impartial advice to multiple clients if I am seen as being employed by one of them. At this point we have issued notice to terminate the contract as this seems to be our only viable option, and will look for additional work to fill the gap or, perhaps, opt for semi-retirement – either case will, of course, substantially reduce our income in the short term and subsequently the amount of tax we pay.

2. Perhaps even more worrying is the following which will affect most contractors who follow the blanket requirements being implemented by many companies – the forced use of an umbrella company will mean that contractors will no longer have a need to maintain a company of their own – this will mean having to change pension and accountancy arrangements with the likely consequence that many small businesses, including accountants and financial advisors, will lose much of their existing client base.

A few additional points:

i. A quick poll of a number of other contractors I work with has shown that at least half will leave before 31st March and this will undoubtedly impact the ability of companies to deliver projects that are badly needed to keep them competitive and, in the case of our pharmacy retail customer, to provide improvements in terms of patient safety and the provision of health services to customers.
ii. As I used the HMRC CEST tool for my current contracts in order to confirm my status I feel that there should be a mechanism for it to be mandatory for the client company to take notice of this and provide a written submission to HMRC that they have done so.
iii. The overall impact of the impending legislation seems to be overwhelmingly negative for both business and the economy – delivery of projects will falter or stop altogether and the overall tax revenue from contractors is likely to decrease in the short term and may never recover if companies scale back on operations, and no longer hire contractors, as a result of the changes.
iv. The proposition being put forward that contractors should be taxed as if employees without receiving any of the benefits that other employees receive (no sick pay, pensions, corporate benefits) cannot be deemed to be fair or anything that the majority of truly self-employed contractors would accept.

My conclusion is that we need:

a) A review of the legislation itself (increasing the tax rate on dividend payments for contractors would surely be a better approach).
b) Some action to prevent client companies from implementing the changes in ways that were not intended by HMRC.
c) A consideration of the knock on effect to accountants, financial advisors and other specialist firms who provide services to consultants and contractors.

20 February 2020

Isabel Serval

I am a freelance senior creative copywriter and brand consultant - this is my career, not a stop-gap job. I trade through my own Limited company, mostly contracting for large creative agencies, sometimes directly for clients, and sporadically I work remotely on smaller NGO or charity projects. I charge £400-475 per day, and my accountants take care of all my admin, payroll and company tax returns. Needless to say, I pay my taxes, my pension, my insurance etc. I earn between £35-55k per year (pre-tax), it varies. Also perhaps needless to say: I rent in London, I can't afford to buy anywhere I'd enjoy living. I have chosen this because I get to work on a great variety of projects, with interesting people and I get the freedom to travel or take time for my own projects.

I never know when work comes along - and that's fine. Some contracts last for a few months, some for a few days or weeks.

If my work is deemed within IR35 I will have to trade under an umbrella company. Firstly, this is a nonsense business construct and a nonsense industry that shouldn't exist - but the umbrella company fees aren't my biggest issue. The biggest cost will be that I myself will have to cough up employees *plus* employer's NI contributions. This is extremely costly, and insanely unreasonable. Combined with not being able to expense reasonable contractor expenses such as travel, meals, overnight stays, professional events, office supplies etc and thus paying higher taxes, I have worked out that I would have to charge 25% on top of my normal day rate to maintain the same income. I promise you that businesses will refuse, and will seek to squeeze the freelancers who don't have the courage to hold firm, pushing down earnings, spending power and the quality of the work delivered. If the hiring company does take responsibility for the class 1 NICs, they will try to drive down the freelancer's day rate. We aren't unionised, it's a recipe for disaster. Many currently happy freelancers will feel forced to take permanent positions which they don't want, resulting in a sulky and less productive workforce. Contractors won't travel to different regions because the cost is too high - unless the hiring business pays for trains, time, hotels etc.

All this while freelancers like me don't get any of the perks that a perm employee would enjoy and take all the risk of earning an income upon ourselves and offer the greatest amount of flexibility to the industry.

Added note: some jobs would still be outside of IR35, so I will need to keep my Ltd running as well, with all the costs that incurs.

The tech and creative industries will suffer greatly under these measures I'm sure, while we already have Brexit to brace for and these industries are on the rise in other European cities. Safe to say that if an advertising agency offers a copywriter £700/day rather than the going London rate which is almost half that, we're all getting on the Eurostar sooner or later - no matter the colour of passports.

10 March 2020

Nazim Shan

SUMMARY

- No independent detailed impact assessment has been performed of these changes on the private sector economy. As such the effects on this reform are unknown and unintended consequences e.g. creation of "no rights employees" have not been adequately considered;

- At the heart of IR35 is a complex employment status test that requires the expertise of a tax barrister to make accurate determinations. To expect companies to train their HR departments to perform these assessments accurately is not credible;

- Each and every individual contract must be assessed in order to accurately determine its status. This imposes significant time and cost burden on organisations and potentially carries a significant tax liability with it if HMRC later deem an engagement that was assessed to be outside IR35 to be caught;

- CEST is simply not fit for purpose since it omits mutuality of obligation from the question set. Large numbers of self-employed workers are being incorrectly classed as inside IR35 due to its inherent bias. In some cases, organisations are circumventing the risks by refusing to engage PSCs or simply performing blanket assessments that find all PSCs to be inside IR35;

- The reforms should be delayed to allow a detailed independent review of the freelance economy in order to identify a solution that is simple to implement, that provides certainty for all parties, that raises revenue but which does not harm the flexible workforce e.g. introduction of a flat levy on all freelance engagements.

ANSWERS TO SPECIFIC QUESTIONS

Existing measures in the public sector

1. As far as I know there has been no detailed study carried out (independent of HMRC/ HMT) into the impact of these rules on the public sector. An early IFF Research study (Off-Payroll Reform in the Public Sector – HMRC Research Report 487) is referenced by HMT; however, this research was carried out very early on once the rules were implemented, it was limited in scope and not fully independent of HMRC / HMT. Furthermore, early draft versions of this report have never been published by HMRC despite FOI requests for this. I would like to see these earlier drafts be released.

Impact of new off-payroll rules on organisations

2. I don't believe any independent detailed impact assessment of these changes on the private sector has been performed. The compliance burden is more onerous than most realise. The employment status test is extremely complex and requires a picture to be painted from detailed questions (some assessments ask up to 100 questions). This requires each and every engagement to be assessed on an individual basis since some aspects of the status test are specific to each individual e.g. does the personal service company have other clients elsewhere or carry out fixed price work for instance? As such large organisations with many contractors (this can be over 1000 for some large organisations) will need to perform large numbers of individual assessments. These will need to be monitored periodically e.g. every 6 months to ensure the working arrangements have not changed since the initial assessment was performed. Therefore, this represents a significant time and cost burden to organisations.

3. HMRC has struggled to police this due to the complexity of IR35 and is effectively now pushing the compliance burden onto organisations to perform the assessments and collect the revenue for them. HMRC should be enforcing this and not relying on organisations to do it on their behalf. If they cannot do this, it suggests this is a law that is not only difficult to comply with due to complexity, but is also difficult to enforce. How much revenue has been raised and how much has it cost the taxpayer to pursue cases etc.?

4. The small companies' exemption will be removed in time I expect to "level the playing field". Will this lead to a situation where individuals will need to assess the IR35 status of a builder/ painter/ decorator/ plumber etc.?

5. Increased red tape and cost for organisations is inevitable unless the adopt a policy to no longer engage PSCs or they carry out blanket assessments of large groups of workers. Status assessment is complex and due to risk of getting it wrong (and potential significant tax liability), companies are performing blanket assessments or refusing to engage with PSCs. My previous client has done this and refused to increase rates to cover the Employers' NI. I cannot offset the cost of travel and accommodation against tax if I was to accept an Inside IR35 contract. As such I will suffer a decrease in take-home pay of 26%. This makes working away from home non-viable. Taking a pay cut and obtaining a permanent employee position for a company close to home makes more sense financially. As such companies that cannot access the skills needed from within the local area will struggle to resource projects or will suffer cost increases to attract those from further afield. This will reduce workforce flexibility in my view.

6. At the heart of IR35 is a very complex employment status test. The IR35 test is the test of employment and it would normally need the expertise of a tax barrister or tribunal judge to reliably determine the status of an engagement. In order to carry out accurate assessment each and every individual contract must be assessed separately as some key aspects of the test requires input of information specific to individuals. As such this is a significant red tape burden and in turn a costly exercise to not only initially set up the administrative systems but also to continually perform assessments in the future. Companies will often need to seek external expertise from compliance specialists as CEST is simply not fit for purpose.

7. I think the use of a simple flat levy (call it a freelancer levy) imposed on every engagement (or invoice), that was set at some kind of sensible level (say 5 %), would be far simpler to implement and raise the same level of revenue with fewer unintended consequences or harmful effects to the freelance sector.

8. HMRC guidance is simply posted on a web page without any notification. I'm not even sure if organisations are aware of its existence. Communication of the administrative aspects could be improved by use of an awareness campaign.

Determining tax status of workers

9. The status test is extremely complex. I don't think organisations realise that the IR35 test is the test of employment and that when they say an engagement is inside of IR35, they are effectively stating that the position is one of employment. I expect many organisations view their contractor workforce as self-employed (transient labour that can be turned on and off at will) and not employees of the hirer. Reliable determination is only truly achievable by a tribunal judgement. Anything else is simply an opinion. To expect organisations to train up their employees to perform these assessments is simply not credible. External compliance specialists can be engaged but this can be both time consuming and costly.

10. I think the contracting environment has changed in that the number of self-employed has increased and encompasses a wider variety of workers than previous e.g. Deliveroo drivers at the lower end of the income scale to specialist consultants such as myself further up the income scale. The tax regime has failed to keep up with the changing ways of working. At the lower end of the income scale workers may prefer greater security and employment rights etc. From my perspective, I do not wish to have these. Perhaps self-employed status could be defined more clearly in law?

11. CEST fails to consider mutuality of obligation. This is a key pillar of the test of employment and without this CEST cannot provide accurate determinations. No test data has ever been published to demonstrate its level of accuracy against historic tribunal cases either. Large percentages of workers are being found inside of IR35 when it is used. This is at odds with the win: loss ratio for HMRC in tribunal cases and also of HMRC forecasts of around 30% of workers to be inside of IR35 and 70% outside. There is false employment of genuine self-employed in large numbers. CEST needs to be totally re vamped to align with case law and robust independent testing is needed to verify its accuracy.

12. The client led appeals process is not fit for purpose. An independent third party, that understands IR35 compliance (not HMRC) must be involved to resolve any dispute. Even then the hirer can simply refuse to accept the view of an independent body and the contractor faces a take it or leave it decision. The 45-day timeframe for providing status determination statements to workers is far too long and must be reduced to a minimum. Without a truly independent arbitration process the appeals process is flawed. There is no access to justice here. The client may not demonstrate reasonable care and there is nothing much the contractor can do. HMRC will have already received tax deductions at source and therefore has little incentive to challenge organisations that have failed to take reasonable care in carrying out status determinations.

13. No obvious mechanism is available to the worker to claim back taxes that are considered to not be due. If I have a legal opinion that indicates the engagement was incorrectly assessed as inside IR35, I should be able to claim back over paid tax without suffering a full blown HMRC enquiry.

Policy objectives and wider context

14. Legally define more clearly self-employed status and make this much clearer such that someone of average intelligence can perform assessments and get them right with confidence. Alternatively I think the use of a simple flat levy (call it a freelancer levy) imposed on every engagement (or invoice), that was set at some kind of sensible level, would be far simpler to implement and raise the same level of revenue with fewer unintended consequences or harmful effects to the freelance sector. Alternatively merge NI with income tax i.e. get rid of NI entirely.

15. I do not believe this measure will raise the revenue forecast. Organisations are taking a risk averse approach and simply refusing to engage PSCs or stating everyone is inside IR35. Coupled with the use of CEST large numbers of workers are placed inside IR35, in many cases incorrectly in my view. There is no independent appeals process.

16. Organisations seem to pushing their new tax bill (ER NI of 14%) onto contractors by reducing rates for example or deducting it from the rate (unlawfully) thus reducing the forecasted tax revenue. Loss of expenses means a loss of income of over 20% as a minimum for many that travel and work in remote locations. This makes remote working non-viable for many.

17. The tax increases are so punitive they will lead to behavioural changes e.g. many will take up a permanent staff position (myself included) close to home or retire early or work abroad etc. The OBR has attached a high level of uncertainty against the revenue forecast since behavioural changes have not been considered. In my case (and in many others) I will no longer need the services of an accountant or recruitment agent, business insurance, no longer pay for hotel accommodation etc. There is a loss of economic activity here that has not been considered. I will earn less money as a permanent employee. As such I will pay substantially less tax than I am currently doing.

18. They must be regulated otherwise there exists a substantial risk of non-compliant organisations entering supply chains. These may be aggressive avoidance schemes as seen previously with the Loan Charge. I would not be in the least bit surprised to hear about another Loan Charge scandal in years to come. The tax changes are extremely punitive and as such will lead to aggressive avoidance schemes becoming attractive to some.

19. The tax system has failed to keep up with the gig economy. I recognise the governments concern that there is increasing non-compliance in relation to the use of these rules. However, this policy is a blunt instrument that is adversely impacting the genuine self-employed and failing to protect those at the lower end of the income scale since they will be taxed as employees without any of the employment rights. I do not believe it is fair to be classed as deemed employee for tax purposes only (no rights employee). If placed inside of IR35 by a hirer and taxed as an employee, I consider it only fair and proper that

workers should also receive employment rights. Otherwise a new underclass of no rights employee will be created and potentially exploited by organisations that will have all the flexibility that comes with hiring a freelancer without any of the obligations. I predict companies will stop hiring permanent staff in time and only offer these Off-Payroll contracts. In time why not convert existing permanent staff onto these arrangements?

21 February 2020

Raj Sharma

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

My experience as a contractor is that as soon as all public sector roles became inside IR35 by default I stopped searching and applying for these roles. I understand from news reports that Transport for London, Ministry of Defence, HS2, NHS have been adversely impacted by labour shortages. Although the link below is a published article, I think it should be reconsidered as part of this review process for public sector impact.
http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/finance-bill-subcommittee/draft-finance-bill-2018/written/92374.html

2.1 Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed?

The impact assessment only appears to look at the NIC/tax generated equation and not the corresponding loss of corporation tax and loss of labour flexibility, which inevitably will lead to lower company productivity. It also hands further labour shortages to offshore suppliers depriving the UK of further technical skills and tax revenue.

2.2 In particular, is the assessment that has been made of the compliance burden(including costs)of these new rules realistic?

I have been contracting at a major airline and they have brought in outside tax experts to help with the understanding and risk of the new rules. This is placing significant demand on their compliance operations.

2.3 Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

The impact so far is that every role advertised is now de facto inside IR35 with no chance of challenging the decision. The compliance burden should not lie with end client in my opinion as they are risk adverse, hence they should not advertise any inside IR35 roles. This burden should remain with the end contractor, or agency, who should be forced to have the correct working practices and contract by the end client, and the contractor should also have tax insurance to cover any liability should it fall due. A contract should not be awarded without this tax insurance (i.e. similar principle to motor insurance).

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

The major banks have banned contractors from working there outside IR35. However they have also banned smaller consultancies who may also need to use contractors to fill a technical niche from also using these contractors. These consultancies are now at risk of going bankrupt.

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

In the IT contracting business I am already ignoring inside IR35 contracts which will inevitably impact the recruitment agencies and end clients. Smaller consultancy point already made in #3

5.1 What scope might there be for simplifying or otherwise reducing the administrative burden of these measures?

I have already mentioned in #2 the payment liability should lie with the contractor or agency and not the risk adverse end client. With appropriate insurances HMRC are guaranteed payment should an assessment be deemed incorrect and is actually disguised employment. Some insurance examples are below

https://www.qdoscontractor.com/ir35/ir35-insurance

https://www.markeltax.co.uk/tax-consultancy/contractor-solutions/ir35

It would then be in the insurance company's interest to ensure compliance with the legislation. This would then mitigate the risk averse approach taken by end Clients.

5.2 What should HMRC do to help businesses understand the new administrative rules?

HMRC should find a way stop end clients from being afraid and hence making them adopt a risk adverse position. E.g. blanket banning and

default inside IR35 or umbrella solutions are not necessary or mandatory.

6.1 Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker?

These are not clear hence the blanket assessments or outright banning. I however understand them and am able to use the CEST tool.

6.2 Do they reflect the reality of the contracting environment?

The reality is that contractors are being assessed as inside IR35 when in fact we are investing in office space, liability insurance, stationery, advertising. We also have a network of substitutes that can be vetted by the end client. I have completed the CEST assessment with the Lead at a major airline and I was determined as outside IR35. Yet my understanding is the major airline currently intend to advertise future roles as inside IR35.

7.1 What is your assessment of the Check Employment Status for Tax (CEST) tool?

It seems to be about 60% ok in terms of the right questions

7.2 Does it require improvement?

Definitely

7.3 If so, how might it be improved?

Mutuality of Obligation definitely needs to be considered in CEST. Some questions are vague and need to be made clearer. Using examples of plasterer are not helpful when I am working in the IT industry and team working is essential. Evidence should also be published transparently by the HMRC where the test cases decided in court have also been put through the CEST tool to generate the same court result. Otherwise confidence in the tool will always be low and suspicion will remain that it is deliberately weighted against the tax payer. Questions used by the Judges in the court cases should form part of the CEST questioning since the Judges understand the employment and self-employment law in great detail.

8.How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged?

See #7. Not effective at all because most, if not all, roles are now inside IR35 with no option to challenge rendering it meaningless.

If not, what more is needed?

A way needs to be found to stop all roles now being de facto inside IR35.

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Please see #5, #7 comments

10. Will the Bill, as drafted, achieve the Government's objectives?

I can only speak for myself. I am going to avoid inside IR35 contracts entirely and suspect any outside IR35 contracts will be heavily in demand. If there are only inside IR35 contracts then I will tighten my belt, sit at home and see if I can make my savings last until I get my pension (I am 50). I would like to run my own business in a prudent, legal and confident manner and pay all my business taxes but I don't think I can now. Inside IR35 is very unfair as no employment benefits are given yet the contractor bears all the risk. This is not being implemented in the spirit of the recommendations from the Taylor review.

11. What is your view of the role of umbrella companies in the context of these proposals?

I have been asked by other contractors about umbrella companies and I have shrugged my shoulders as I don't know. This lack of knowledge is causing risks. I suspect there will new be dodgy schemes cropping up now with another Loan Charge or fraudulent scheme about to emerge, as well as umbrellas that will operate using illegal methods.

12.1 How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"?

In the case of couriers, or plumbers, where they are being directed minute by minute with no employment rights then this looks like disguised employment. However to tar all self employed contractors, especially highly skilled, with the same brush is unfair because we have the right to work the way we want and for multiple clients. In

summary, we don't want employment rights and we don't want to pay NIC and income tax. We want to run a business and be self-employed. Yet we are being forced to pay the tax when our working practices are different to a plumber or courier. We pay our fair share of corporation tax and just like all businesses, we are rewarded for the risk we take. Now we will be punished for the risk we take so there is no longer any incentive to do it.

12.2 Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

It is not fair and was acknowledged in the Taylor review that the 2 things went together

10 February 2020

Brian Sheen

The below submissions are made by me on a personal basis through my personal experience and understanding of IR35 legislation.

1. IR35 changes have been an absolute disaster in the public sector despite any spin HMRC may put on it. They have attacked the NHS demanding £4.3m despite the NHS trying to do the right thing by using the CEST tool HMRC created, which produced outside IR35 determinations (https://www.qdoscontractor.com/news/2019/10/30/nhs-handed-4.3m-ir35-bill).

2. The effect of this change on contractors is that they will be forced into lower paid permanent roles, seek work abroad or live on state benefits. All of these will result in a significantly lower tax take for the UK. Already, many large, traditional engagers of contractors, such as financial institutions, are making blanket decisions that they will not engage any contractors through limited companies solely due to this legislation. The effect on these companies will be that projects will simply grind to a halt or be delivered to a very poor standard as highly skilled contractors will refuse to work for them. Personally, I have felt the need to take on a lower paid permanent role in the short term to continue supporting myself while I await a resolution to this mess.

3. With respect to the CEST tool created by HMRC, it is not fit for purpose. The tool ignores key factors such as mutuality of obligation. It has also been proven that the tool does not give the correct result based on previous case law. HMRC themselves have no faith in the accuracy of the tool. They have refused to accept the CEST tool determinations in tribunals calling it 'irrelevant' (https://www.contractorcalculator.co.uk/hmrc_refuses_stand_irrelevant_cest_ir35_551410_news.aspx). If HMRC have no faith in their own

ability to determine IR35 status how can they legitimately expect any other company to do so? This is one of the reasons most private sector organisations are now refusing to engage genuine contractors as HMRC simply cannot be trusted. These organisations, including most financial companies, are now avoiding the IR35 issue entirely by refusing to engage contractors at all, making blanket decisions to say everyone is inside IR35 (without using any determination tool) or outsourcing roles to large consultancies who inevitably offshore the work (meaning even more tax is lost). This link shows the approach taken by many of the biggest clients that previously used contractors (https://www.offpayroll.org.uk/). HMRC have lost the vast majority of cases they have brought to tribunal after their disastrous changes to IR35 legislation showing that they themselves do not understand IR35 (https://www.simplybusiness.co.uk/knowledge/articles/2019/05/celebrities-win-IR35-cases-against-HMRC/).

4. The IR35 legislation is unfair to genuine contractors who face being taxed like employees despite receiving no benefits whatsoever (including sick pay, health insurance, bonus, pensions, life assurance, income protection, holidays, training, redundancy payments etc). If a contractor required any of these it would be at their own expense. Contractors work in completely different ways from employees. They are highly skilled, flexible resources that are engaged to complete short-term project work for clients which can last anywhere from a few weeks to a year or two. When this work is completed the resource is no longer required and they are offered no further work. This is a business risk to contractors as they don't know where or when their next role may be and are provided with no state benefits between contracts. Contractors take on risk such as having their contract terminated with little or no notice. This can happen for reasons out with their control such as a client cutting their budget. Of course, this cannot happen to an employee. Contractors are sent home when there is no work (e.g. when a computer system is down etc). Contractor furloughs are also very common, especially in the financial sector. Throughout this period the contractor is making no income whereas an employee is still on site and still being paid. I have personally experienced gaps between my contracts, early contract termination and contractor furloughs. Contractors have many additional expenses. For example, business insurance, corporation tax, VAT, training courses, websites, stationery, computers, telephones. An employee would be provided with any items required to do their job. Contractors have many other duties that an employee would not have. For example, creating timesheets and invoices, finding and meeting with potential new clients and completing company paperwork.

5. It is disingenuous of anyone to suggest that a contractor and employee work in the same way. In fact, the IR35 changes are a cynical ploy to create a 3rd class of 'employee'. An 'employee' who has no entitlement

to any employment rights or benefits but is forced to pay all the same taxes. If this legislation is allowed to stand there will be serious repercussions for the UK economy. Many jobs and skilled people will be lost to other countries. Employee rights will be completely eroded as there is nothing to prevent companies replacing existing employees with this new (inside IR35) sub-class of employee who they do not have to pay any benefits to.

7 February 2020

D. Shetty

The below submission is based on personal capacity through my experience with a large private sector UK bank which has decided to extend the off-payroll PAYE to all the freelancers without running any deterministic criteria for inside or outside IR35 review.

Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

The extension of off-payroll to private sector has not been adequately assessed and the complexity of IR35 has prompted private sector to be risk averse . Large financial institutions and Banks in the city have announced blanket PAYE (off-payroll) extension to all the self-employed or contractor staff. My client has not even considered an objective assessment of the contractor role applied a blanket PAYE. The same course has been applied by other Banks. Subjective off-payroll extension means tax deduction as employee with no employment rights and leaving myself open to HMRC Ir35 investigation for my past role. Clients have proposed deduction of holiday , sick pay and other PAYE benefits from the contractor daily rate with a 2 week lay-off notice at any point. The maximum tenure for the contract has been capped to 45 weeks. As a limited PSC(personal service company) I create products ,certificate and seek other consultancy clients .The off payroll extension has categories all PSC self-employed entrepreneurs as a PAYE employee with no employment rights.

Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

Small organisations are forced to ban PSC(Personal Service Companies) as large clients will not accept service from small organisations .The end client is responsible for the PAYE if small organisations in the chain employed any PSC who might be deemed inside IR35(i.e. in-scope for PAYE deduction with no employment rights).

What will be the effect of these new measures on a chain of contractors and sub- contractors?

Contractors and sub-contractors cannot apply or bid for contracts in the private sector as they are no longer considered self-employed or independent directors. They are considered virtual PAYE employees with higher tax burden and no employment rights with maximum contract term as 45 weeks(10 months) .This has impacted the freelancer ability to deliver speaclised and professional service wherever the demands exist and have type-casted them to a PAYE role.

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

HMRC need to provide a matured and well-developed assessment tool for Clients and large organisation to determine the IR35 status of contractors. A proper review on the existing IR35 legislation is equally important.Determining tax status of workers

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

The Tax status are currently unclear for large Clients or the Engager and hence the widespread blanket off-payroll extension in the private sectors by major financial organisations such as Barclays, Lloyds Bank,HSBC , RBS etc. As the tax liability of IR35 is now shifted to end client , there is low appetite to run a deterministic test and face compliance failure.Hence large clients have adopted easier approach to apply blanket off- payroll.

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The current CEST tool needs considerable improvement as it seems to be subjective . The CEST tool clearly did not work in the Public sector where it was introduced in 2017 .A proper review of the CEST tool is needed.

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Currently , one cannot challenge the PAYE status with the Client or employer and may face termination if appealed.Policy objectives and wider context needs further clarification.

Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

—-No comments-

Will the Bill, as drafted, achieve the Government's objectives?

Its unlikely the current bill will achieve Governments objective of securing 1.1billion£ through PAYE conversion. Most of the large organisations have turned to offshoring and reduced contractor headcount minimise exposure.The freelancer/contractor workforce provides specialised skills to the UK industry by providing a flexible and elastic workforce and has helped to reduce the unemployment rate . The slight premium offered to the freelancer/contractor helps to offset the risk associated with zero employment rights and no job security.

What is your view of the role of umbrella companies in the context of these proposals? Umbrella company tends to deduct all the PAYE tax and the holiday pay from the Contractors day rate and introduces tremendous administrative overhead.How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Freelancers are now taxed as employees by large organisation by default without using any determination tool. However , the process also eliminates any employment rights associated with termination notice, pension, holidays , sick pay . My client has provided a 2 week termination notice with no employment rights and at the same time providing applying PAYE tax . There is clear discrimination between employees and the freelancers despite both contributing the same tax amount with freelancersbeinx offered no employment rights.

15 February 2020

Philip Shore

1. I am a freelancer working via a PSC. You will hear much about the intricacies of how HMRC decide who is a hidden employee and who isn't and the arguments are as convoluted as the legislation they seek to inflict on the nation.

2. One thing that infuriates me about the debate around IR35 is the repeated – and yet unchallenged – assertion that there are two sets of workers who differ only in the way they are taxed, this being patently unfair to the standard (PAYE) worker. However, this suggests that both sets of workers are treat in the same manner, in practice and under the

Law. This is demonstrably false but it is this falsehood with which the Government seeks to railroad a vital part of the workforce into an inequitable tax limbo.

3. As a PSC, I offer my services as a company (i.e. a thing) so that the fee-payer can treat me as a (ruthlessly) dispatchable resource. If I offered my services as an employee (i.e. a person) I would enjoy the benefits of employment – paid holidays, paid sick leave, pension provision, training, career progression and more. If I offered my services as an employee, I would enjoy legal protections for my employment – notice periods, protection from unfair dismissal, disciplinary procedures, redundancy provision, professional indemnity and more. Most workers do not think that the loss of such is worth the risk and instead enjoy the benefits described above, working as employees rather than service-providing limited companies.

4. I offer my services as a limited company and my clients can then move flexibly in the global marketplace. Clients using PSC's are able to bid for large projects in the knowledge that if they fail in their bid, they will not be crippled by the costs (not to mention the pariah status) of dismissing a large workforce. They can resource quickly and efficiently. If work is taken off them (or they need to turn down the wick in order to regroup their efforts) they can ditch unaffordable resources. They can act boldly knowing that the resource they are using has made a moral agreement to accept the risks inherent in the contract. No modern economy can operate without the ability to turn on and turn off the resources needed as the fortunes of business dictate. The PSC community provides (with a degree of recompense via the benefits of being taxed as a company) this highly skilled yet disposable resource so that we can, as a nation, flourish. PSC's allow our economy's champions to risk failure, so that they can create our national fortune.

5. The way in which U.K. freelancers are being punished by the new legislation (made much worse by the haphazard game-playing of HMRC and the fee-payers) is an ethical disgrace. People who are willing to take the work (and risk) that others shy away from should not be gouged for their enterprise. Being the most independent of people, they will not be gouged for long. A country which decides that it can stamp on its most flexible, most industrious, technical workers is in for a great deal of pain. Cheated people do not add anything to society except bitter resentment. One wonders on whose side the architects of this policy stand.

6. The depth of feeling (little communicated even by the industry specialists who have stated their professional opinions) is rooted in the truth that PSC freelancers cannot be hidden employees unless they enjoy the benefits and protections of employees and they do not now and will not under the new legislation. That the Government thinks this is what the economy needs, at this special time, is insane. Their plan (slave of

foolish spreadsheet-economics) to embody in Law a blatant lie is very, very wrong. It speaks volumes that the Government, having failed to make its IR35 misdirection work for it through the Courts, decided to subvert the operation of the Law by menacing the fee-payers into doing its dirty work for it.

7. I humbly ask for your support in demanding that the Government either fix the IR35 issue in an equitable fashion or rescind the imposition of IR35 assessment by the fee-payer.

25 February 2020

Kiri Shukla

Thank you for requested feeback

I am 56 years, I am affected by unfair IR35 legislation and client blanket decision not to use PSCs. I wish my name to be confidential. I am providing me impact statement in a series of question and answers as below:

1. Why do I contract?
    a. Having faced redundancy and unable to secure permanent employment I started contracting around 2001 and took on a 6 months piece of work. I have gone form one contract to another and have never been offered a permanent opportunity for my services.

2. Where do I contract?
    a. I have worked in many industries (telecoms, banking, health, government, pharmaceutical and more) so both public and private sectors.
    b. Currently I provide a service to a large pharmaceutical company.

3. How do I contract?
    a. From 2000 I provided my service via an umbrella company but now realise I was paid part salary and part loan so I am potentially subject to Loan Charge 2019. I am still subject to the loans charge even after the Independent Review outcome issues Dec 2019. I still do not know my liability if any.
    b. Since 2014 I set up a Personal Service Company (PSC) so be able to provide my services.
    c. QDOS have assessed the working practice for the current contract services. QDOS have given an 'Outside IR35' determination and this determination is with the end client.

4. How is my client responding?

a. The client had commissioned Earnest Young to help determine individual assessments or at least that what we were told.
b. Late 2019, the client made a blanket decision and stated post April 2020 they will not work with any PSCs as they do not want to take on the risk of making an incorrect IR35 determination.
c. Client options given to all PSCs (if they want to continue to provide services) is PAYE via agent or umbrella company or leave.
d. With the PAYE option we are required to absorb Client's national insurance, charged apprenticeship levy and are charged 28 holidays. No employee protection, benefits or rights are being given.
e. Offer is be taxed like an employee but not be an employee of the end client
f. My contract ends March 2020.

5. What is the impact for me and my PSC?
    a. My current client and general market place are not working with PSCs post April 2020
    b. My PSC is redundant as I am unable to continue providing my service post April 2020
    c. Looks like I will not be able to secure a new contract post April 2020 with my existing Outside IR35 Contract
    d. I worry I will not be able to pay my current level of bills

6. What are your options post April 2020?
    a. PAYE via preferred agent
    b. PAYE via preferred umbrella company. I would not trust an umbrella company ever again since being a Loan Charge victim.
    c. Both agent and umbrella are taking the current contract Outside IR35 day rate and charging me end client costs such as National Insurance (NI) and apprenticeship level (AL). They are also charging me holiday and bank holidays.
    d. PAYE package taxes me as an employee but provides me with no employment rights. This would place me in false employment with the agent or umbrella company.
    e. The PAYE take home pay is reduced be 45% and from this I would have to adjust for my business running cost. It would not worth me running my PSC so I will close it down.
    f. There a lot of umbrella companies offering above 70% return. I am shocked that umbrella companies are still operating in this was and not policed. To those that are new to umbrella companies, there is zero protection for tax payers and a retrospective loan charge tax bill will be issued in years to come.
    g. I am very stressed and feel like taking early retirement.

7. How will the changes impact my client?

a. Current my pharmaceutical client has made a blanket decision not to use PSCs post 2020 as they do not want to take the risk of incorrect IR35 determinations
b. Client are losing PSCs who do not want to take the risk of retrospective taxation.
c. Even though I have had my working practice assessed and am 'Outside IR35' I would not want the battle with HMRC should they open an enquiry. I am forced to leave in fear of retrospective taxation.
d. Client is currently looking to consultancies to fill services. This could be both UK based and Offshore.
e. Client is positioning PSCs offshore where they have an office in other countries to avoid UK IR35 legislation

8. The impact beyond my client?
    a. Programmes and projects will be delayed
    b. Permanent employees will need to take on more workload
    c. Client will not be able to secure the right skill set in time
    d. Client will look knowledge as there will be a lack of resources to handover to
    e. Client needs help with joint IR35 determinations and not be penalised by HMRC if they get to an incorrect determination for any reason.
    f. If HMRC disagree with any joint IR35 determination status then they should intervene to aid a correct determination and take any risk away for retrospective taxation or penalty on any party
    g. Client needs to determine which roles within the organisation are permanent and which ones need to be contracted out.
    h. If a client role is truly a permanent role then client needs to increase headcount and provide employee benefits and rights as part of a PAYE package

9. Status Checking History & trial of CEST
    a. I have commission QDOS to undertake an assessment of my working practice and it is clearly 'Outside IR35'
    b. I have no experience of CEST. I would not use a tool that is not fully fit for purpose
    c. A tool is just that 'a tool' for guiding a determination. The true working practice IR35 determination can only be assessed by both the PSC and the Client through a joint assessment.

10. Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
    a. I think that it goes against our human rights to only be offered a PAYE solution that only taxes us like an employee but does not give us the same rights, benefits and protection and other employees.

I urge you to recommend an Independent IR35 review be held and IR35 legislation be placed on hold will this is underway. Clients are just not ready for this change and the tools are not fit for purpose. Client need support and joint (client and PSC) assessments need to the way forward

Thank you for reading my feedback

18 February 2020

Richard Shuttlewood, Erintech Ltd

Summary

About us

Erintech Ltd incorporated in 1992 with two director/employees trades under the following names:

EIT Business solutions www.eit-uk.co.uk

- Partner for IBM, Dell, Oracle, Talend. Selling licences and hardware
- Consultancy services to major clients
- We have engaged sub-contractors to help us meet customer consultancy requirements
- Training

Carepathplus™ http://www.carepathplus.co.uk/

Proprietary telehealth application developed and owned by ourselves.

EIT Application Express Solutions http://applicationexpress.co.uk

Complete development, support and training services for the Oracle Application Express product

We consider we are not a one man band using disguised employment and should not be caught by "PSC" IR35 restrictions. But we are.

For 28 years we have worked long days and weekends to develop the company, but its survival is threatened by this poorly thought out initiative.

Impact of IR35 on our company

We are severely impacted by the over-reaction of our customers to the IR35 reforms. One, a Global online retailer, is terminating all "contractors"

without exception. The other, a major energy company, has made a blanket "inside IR35" decision.

Our proposals to fix IR35

Rules should only apply to Personal Service Companies (PSC) but there is no legal definition so small consultancies are caught up as well as disguised employees/one man bands.

➔ We need a legal definition of PSC which clearly identifies disguised employees and leaves small consultancies to get on with their business

➔ Then only apply the CEST test to actual PSC's and make the test simple and unambiguous. Non-PSC's can carry on trading as normal Limited Companies, outside IR35

➔ The CEST tool is difficult to use, ambiguous and may give wrong results. Using CEST and debating the outcome with contractors is likely to be a big overhead. Many client companies are refusing to use it. The CEST test must be much simpler and clearer.

➔ Force clients to use the new CEST test, and not apply a blanket decision

The disadvantages of being deemed to be within IR35

Even when in an "inside IR35" contract, consultants must absorb all the costs and overheads of continuing to run a Limited Company in anticipation of future contracts which are outside IR35.

Umbrella companies take an unwelcome extra slice of contractor income and apply Apprenticeship Levy which should not apply to small companies

But there are many other drawbacks:

- No redundancy pay
- No sick pay
- No training
- No holiday pay
- No stability (zero/short notice period – almost as bad as Zero hour contracts)
- No expenses (e.g. staying away from home), paying for own training

Why do contractors operate via Limited Companies rather than being self employed?

Self Employed workers pay tax and a reduced rate of NI. Very simple and straightforward with relatively low NI and overheads and the ability to charge expenses. HMRC regards this as completely legitimate.

Contractors operating via **Limited companies** have a variety of overheads: Employers NI in addition to employees NI; Accountants costs; additional insurance costs etc. Not to mention the red tape of running a company. These are big overheads for a PSC/one man band

The reason contractors operate via a Limited Company is simply that **they are forced to** by the clients and agencies, who perceive that engaging with Limited Companies is a lower commercial risk than employing self employed individuals.

The impact of IR35 rules on the UK economy

An agile contractor community proves an enormous economic benefit to UK companies and the UK economy.

A project can easily engage contractors with specialist skills within days for as long as needed and then release them. The exact skill in the exact numbers at the exact time. The team can easily be expanded and contracted with no long term employment liabilities.

The impact of the new rules:

- Adverse impact on projects – slowing innovation and economic activity within the economy
- Many contractors will retire or otherwise leave the industry – tax hit to the economy
- <u>Many contractors are from overseas and will leave the UK</u> – skills and tax will be lost to the UK economy
- International companies will move work/projects/divisions to overseas subsidiaries - skills and tax will be lost to the UK economy
- Projects will be offshored - skills and tax will be lost to the UK economy
- We see evidence that some contractors are taking permanent roles under duress "to pay the mortgage". They will probably not remain in the long term, causing further disruption to companies and the economy

Answers to the questionnaire

1. Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

We offer no evidence

2. Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed?

No. The decision appears to be driven by a very simplistic calculation based on recouping perceived "missing tax" with no consideration for the unintended consequences identified elsewhere in this document which include damaging innovation, damage to companies, damage to the economy, loss of skills (especially overseas) and loss of taxes. The sum total of these negatives will swamp any perceived recoupling of lost tax.

In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

Hiring (client) organisations:

We have two major clients, both of which are household names. Neither has incurred a compliance burden because each has completely avoided it.

- One, a Global online retailer, is terminating all contractors without exception. This will result in significant stress on the business and remaining employees. We believe it is likely that some of the workload will be offshored. Some work will go to company subsidiaries outside the UK. The UK will lose tax revenues accordingly.

- The other, a major energy company, has made a blanket "inside IR35" decision. We expect discontent will result in some EU/overseas contractors to seek contracts in their home country or otherwise outside the UK. The UK will suffer erosion of specialist skills and lose tax revenue accordingly.

Supplier (Contractor) organisation

We don't believe HMRC intended the legislation to apply to companies such as ours, but in the absence of a legal definition of PSC we have been caught up in the fallout. We will suffer significant financial disruption and the viability of

our company, which has been operating since 1992, will be threatened. Either way, our future tax contributions will be significantly less than hitherto.

3. Is the exclusion of small organisations sufficiently robust
and how might small organisations gain sufficient assurances that they fall within the exclusion?

n/a

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?
Chaos. We have previously engaged subcontractors to meet the requirements of our customers, but could not easily contemplate that under the new rules.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

1. Make a tight legal definition of what a PSC is so only PSC's are assessed for IR35. There is a general assumption that a PSC is an employee who resigns on a Friday and returns to the same role as a contractor on the Monday and is a "one man band". Significantly more complex genuine Consultancies with more than one employee and multiple business interests are also caught up by the same rules at present, and a distinction must be made

2. The CEST is difficult to use. Many questions are ambiguous/difficult to interpret and could be challenged/appealed. We believe this is why many client organisations are making a blanket decision

3. If HMRC sees fit to move the burden of assessment to the hiring company, then it cannot be right that the hiring company can have the discretion to refuse to assess and make a blanket decision. Make the CEST tool simple (e.g. right of substitution or some other easy and unambiguous test) and then make it a legal requirement to actually do the assessment. But also close any loopholes that may arise from this.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

Artificial/idealised tests are not useful in the real world environment. As mentioned, in our experience client organisation aren't even bothering to apply tests of any sort and are making blanket decisions.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The CEST is difficult to use. Many questions are ambiguous/difficult to interpret and could be challenged/appealed. We believe this is why many client organisations are making a blanket decision

Improvement: The CEST tool should be abandoned. Define legally what a PSC is and non-PSC's are excluded from assessment completely. Apply a very simple unambiguous test to PSC's – e.g. a substitution clause. Make the test completely black and white and simple to assess.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

In the companies mentioned <u>there is no status determination process</u>. Decision cannot be challenged

Legislation must be introduced to force hiring companies to make correct determinations and not apply blanket decisions

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

We are unclear whether there is a unified understanding of what the objective of the new rules is – that is part of the problem!

As already stated: The CEST tool should be abandoned. Define legally what a PSC is and non-PSC's are excluded from assessment completely. Apply a very simple unambiguous test to PSC's – e.g. a substitution clause. Make the test completely black and white and simple to assess.

10. Will the Bill, as drafted, achieve the Government's objectives?

No. The legislation is clumsy and imprecise. Hiring companies are taking damaging blanket decisions, thereby ignoring the intent of the legislation. Lack of consideration of damaging unintended consequences, such as forcing Tax/revenue generating activities to disappear or go overseas

- Destroy an agile workforce that gives the UK as a whole and UK companies in particular a key competitive edge

- Many contractors are from overseas and may return home, damaging the UK skills base and losing tax revenue

- Tax income lost due to projects moving to overseas subsidiaries or being offshored to low cost economies

- Impact on the UK economy of reduced flexibility, especially during the Brexit process

- Catching legitimate companies that are not disguised employment/one man bands

11. What is your view of the role of umbrella companies in the context of these proposals?

Umbrella companies offer an effective solution where employees must be paid under PAYE but there are problems:

- Another mouth to feed. The umbrella company charges a fee with is deducted from the contractors income, in addition to the deduction already made by the intermediary agency

- Contractors are forced to pay apprenticeship levy at 0.5% of their gross fee even though this should only apply to employers with an income in excess of £3M. This charge is passed on by the umbrella pro-rata.

- The position on expenses is ambiguous. It seems that many/most contractors will not be able to claim expenses

    - Contractors currently deemed within IR35, whether by a blanket decision or not, may move within months to another contract which is deemed outside IR35. Contactors therefore cannot contemplate winding up their limited companies and have to absorb running costs in the interim. Basic running costs such at accountancy, insurance, website costs, email and phone services etc can run to thousands of pounds and may have to be paid out of taxed income.

    - Contractors frequently have to live away from home during the week but under the new model may have the pay overnight and travel expenses out of taxed income

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Contractors take a risk by adopting a flexible/contract working model.

This is hugely beneficial to the client company and the UK economy because resources can be engaged with specific skills for specific projects and then be terminated with minimal notice (e.g. 1 week or immediate). There is no training, holiday, sickness, maternity, HR or management liability on the client company.

The contractor benefits are as follows:

- Fee income greater than a normal salary (but see below) – but due to supply and demand this has not kept up with inflation over the last decade or more

- Flexibility to diversify the service offerings of their limited company, especially when "between contracts"

- Through frequent changes of client and project the contractor acquires a diverse range of marketable skills more quickly than a permanent employee – and this is a key selling point to the client companies

Disadvantages, previously mitigated by higher remuneration but adversely impacted by IR35:

- No tenure. Can be terminated with no notice or redundancy payment
- Potential for long gaps between engagements
- No sick pay
- No maternity pay
- Holiday pay has to be generated within the contractors company
- Training costs covered by the contractors company
- Expenses such as accountant, insurance, office equipment, marketing all reduce apparent income

So to answer the question – no, it is not fair that some individuals are taxed as if they are employees, but do not have the rights of employee

8 February 2020

Geoff Sibbald

Existing measures in the public sector:

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?
Answer: I have always worked for clients in the private sector so have no experience in this area.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
Answer: My current client (a major UK Telco) is blanket assessing all of its PSC contractors as inside IR35. This is despite my (and others) taking the HMRC CEST assessment and passing it comfortably. I will be leaving this client at the end of my engagement as a consequence of this decision. My client will be left with work that cannot be completed by existing staff due to its specialist nature. I am not alone in taking this stance.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?
Answer: I tend to work directly with for larger organisations so have no specific information to add here to this question.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?
Answer: Going forwards, if I am forced into an umbrella arrangement to work inside IR35 I will:

a. lay off the company accountant (also small independent business) with whom I've had a 20-year relationship.
b. cease my relationship with an Independent Financial Advisor who has advised my company on finance and pension planning etc.
c. stop paying for business insurances which I've had for my 20 years in business
d. stop paying for administrative and research support
e. stop investing in equipment, research and training necessary for me to perform my work

Furthermore, the proposed rules hold no benefit whatsoever for my business. It represents a questionable tax increase to HMRC which may be largely cancelled out by lost revenue to my suppliers, work being sent offshore, experienced business owners taking their skills elsewhere. In my case I am actively considering partial retirement.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Answer: Requiring large organisations to accept the finding of the CEST tool would be a good start. A 'root and branch' review of the tax system would be a longer-term goal. Today's work environment is significantly different to when tax rules were written. In my opinion they are no longer fit for purpose.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
Answer: The (HMRC CEST) tests are being ignored by my current client.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
Answer: My clients are paying no attention at all to the CEST tool and instead have made a single blanket decision.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
Answer: My clients are paying no attention at all to the CEST tool so this is a moot point.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
Answer: Making large organisations accept the findings of the CEST tool would be a good start. Organisations could also be required to make individual decisions. I am a highly specialised worker with a skillset that my client does not possess – if my client had my skillset amongst its own workforce then I wouldn't be working with them.

10. Will the Bill, as drafted, achieve the Government's objectives?
Answer: No. In trying to avoid the 25-30% decrease in revenue independent contractors will look to the more dubious offerings being touted as being able to circumvent the new rules. At best this will take businesses, who have to date operated within the rules move to operating outside of HMRC guidance and denying HMRC of due taxation. At worst such schemes will give rise to HMRC expending large amounts of resource chasing down and investigation such schemes – much like the current Loan Charge investigations.
I further note that my current client, a major telco, despite making its blanket decision will continue to pay what remains of its contractor workforce from its offshore procurement company in Luxembourg with all its incumbent tax advantages.

11. What is your view of the role of umbrella companies in the context of these proposals?

Answer: The umbrella adds no advantage or protections to me at all. I will continue to work with little or no notice period (something I accept as part of my way of working). Under the proposed new rules, I will pay more in personal taxation as I would be treated as an employee. I will not however be rewarded with any employee benefits: holiday/sickness pay, pension contribution, healthcare, other benefits normally offered by employers such as discounts, gym memberships, subsidised products etc.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
Answer: I have been an independent IT and Management Consultant specialising in secure networks and telecoms for 20 years. During that time, I have worked with all of the major UK mobile telco operators (Vodafone, Orange, O2, 3, etc), plus a variety of other 'blue chip' organisations in the UK, Europe and North America. I accept the risks and uncertainties of working independently and manage my business affairs accordingly to plan for unforeseen risks etc. I agree that a reform of our tax rules is long overdue as working practices have changed.
The term 'gig economy' was unheard of even 5 years ago; some larger organisations take unfair advantage of its lower paid workers as a consequence.
The zero hours contract is a good example of this mis-use: As a specialist worker in control of my own affairs I recognise that my end client is under no obligation to provide me with work other than that which we have agreed upon. To a low paid worker who relies on a regular income stream this is an entirely different equation.
The new rules and resulting forced move to umbrella companies adds no advantage or protections to me at all. I will continue to work with little or no notice period (something I accept as part of my way of working).
Under the proposed new rules, I will pay more in personal taxation as I would be treated as an employee. I will not however be rewarded with any employee benefits: holiday/sickness pay, pension contribution, healthcare, other benefits normally offered by employers such as discounts, gym memberships, subsidised products etc. I fail to see how this is in any way 'fair' – all the risk remains mine but there is no 'reward' to compensate me in return.

23 February 2020

Nigel Simmons

Review of new IR35 off-payroll working rules

Introduction
As Director of an accounting practice that specialises in advising technology companies, I have first-hand experience of the way in which the new rules are

impacting the market. Although contractors represent a minority of our clients, we have hard evidence of how damaging the new rules will be if implemented in their current form.
I have categorised my comments in accordance with the specific areas of interest contained within the 'Call for Written Evidence' document
Existing Measures in the Public Sector
No comment to make as we have no experience

Impact of new off-payroll rules on organisations
Para 4. Our experience is that large engagers are placing blanket bans on PSCs AND on PSCs contracting to the main engagers own subcontractors.
Determining tax status of workers
Para 7. It is well documented that the CEST tool does NOT reflect the various underlying case law in particular with reference to the third main strand of status determination, Mutuality of Obligation (MOO) . HMRC are well aware of this but have left unchanged.
Para 8. The ability to challenge has been sidestepped by many large engagers banning the use of PSCs to avoid having to issue Status Determination Statements and the consequent ability for these to be challenged.
HSBC - will "cease engaging limited company contractors from this September".
Barclays - won't be engaging "contractors who provide their services via a personal services company, limited company or other intermediary" and contracts won't be extended beyond February 2020.But contractors can continue working for Barclays "on a PAYE basis (via the agencies and managed services providers they currently use)."
Tesco Bank "won't be renewing contracts beyond March 2020. And if limited company contractors have already agreed to go beyond March 2020 Tesco Bank will be 'blanket assessing' them as inside IR35".
RBS 'will stop engaging contractors working through personal service companies outside IR35 from 28th February 2020.

To name but a few.

Policy Objectives and wider context
Non Compliance under current rules
HMRC's rationale, apparently, for introducing the new rules is that they believe that there is only an estimated 10% compliance to IR35 under the existing rules. No evidence has been produced as to how the '10%' has been calculated. If they know 90% are not complying, then why haven't they pursued those 90% for the tax due as it is easy enough for HMRC to identify personal service companies?
Our own experience is that when HMRC have enquired into our own PSC clients they have found that all complied with the legislation and were quite rightly found to be outside of the IR35 legislation. If one was to extend our experience to the entire contractor market, then it would suggest a very different and much lower rate of non-compliance.

The inevitable conclusion is that the implementation of the new rules is simply an expedient means of raising additional tax revenue.

The level of taxation associated with being deemed to be INSIDE IR35 after April

The absurdity of the regime under which large numbers of contractors will be forced to work when deemed inside IR35 beggars belief. The fact that a contractor has been deemed to be an 'employee' by their client you would think would mean that the client would then employ them with all the attendant benefits and promotion prospects that accompany employment. But this is not how the market works. Instead the contractor is asked to use an 'umbrella company' (managed services provider) to provide their services. The umbrella company forms no purpose other than to remove employment responsibility from the client and will mean the contractor is left in 'no mans land' where the umbrella company treats them as employees for tax purposes but they have none of the perks, job security or promotion prospects associated with being a genuine employee. One of the consequences of which is that the contractor suffers not only Income Tax, Employees National Insurance but also ,effectively, through the manipulation of daily rates Employers National Insurance on top of which the umbrella company charges the 'employee' for the privilege of processing their pay.

To be clear a contractor will pay tax at a marginal rate of 45.8% on earnings over the level of the Personal Allowance of £12,500 per annum (made up of 20% income tax, 12% Employees National Insurance and 13.8% Employers National Insurance). The above calculations take no account of the mark-up that employment agencies make on placing contractors with clients or the umbrella company charges.

In numerous cases our contractor clients have been told that their clients are not increasing daily rates to accommodate this increased taxation.

Migration of contractors away from the UK

We have hard evidence of contractors actively looking for overseas work now in order to avoid the new rules and the significant reduction in income and flexibility that the new rules bring. Our contractor clients are typically graduate-educated with several years' experience in technologies and skills that will form the foundation of the country's future economy. Post Brexit we need to retain our talent and attract more like-minded individuals. We should be incentivising this talent to come and work in the UK. Instead we are in danger of losing our best talent to work abroad directly as a result of adopting the new rules.

The negative impact on entrepreneurship

Our practice specialises in helping young technology businesses grow and succeed. A large proportion of these businesses start as contractors who see an opportunity to build a business around their skills that can (and have) turned in to multi-million-pound businesses exporting worldwide. In many cases these businesses start by employees leaving employment and contracting with their ex employer in a consulting role while they seek additional clients and build their business. In the new regime there will be a massive barrier to this form of start-up as the ex-employee turned contractor

won't be able to engage with their former employer by being forced to work through an umbrella arrangement thereby stopping them from growing and diversifying. Please see our website for case studies of just such businesses at https://www.acconomy.co.uk/case-studies. This will, I think, demonstrate to you that this threat is real, not theoretical.
This short termism could have a devastating effect on the modern economy in the UK, both in terms of the disincentive to entrepreneurship and the subsequent 'brain drain' of talented and skilled workers. If there was ever the potential to shoot our own economy in the foot when we most need to incentivise and help it this is it!
I would of course be very happy to provide detailed evidence to back up the assertions made above.

21 February 2020

Jag Singh

Having personally been affected by this I feel compelled to share my experience, which I believe would be echoed by very many colleagues of mine.

I am currently engaged in a consultant role in the private sector but servicing public sector projects. I therefore have a unique perspective of both sides having seen the detriment that the off-payroll legislation has caused and is now causing in the private sector despite the legislation only being draft at this stage.

My personal experience is that my contract is determined outside IR35, my working practice is clearly outside (eg. working on more than one project simultaneously), the CEST tool states that I am outside and a colleague of mine has recently won a tribunal case against HMRC for the same type of consultancy services, the Client even agrees that it seems that I am outside of IR35 but is risk adverse and therefore is indicating that they will put us Inside IR35 just incase. They admit to the fact that they do not really know what they are doing as they haven't been given clear guidance. An example of this is Mutuality of Obligation which they do not understand that once a project is complete a contractor/freelance is let go. Another seemingly consistent message being broadcast from major corporations is that the role is assessed, not the individual. The guidance and law is not clear enough, simply put. Another trend is to blanket assess/ban PSCs completely. This is clearly against the spirit of what was promised that wouldn't happen yet entire workforces and projects are being annihilated by this approach. How can some of the worlds key projects be delivered without skilled contractors that are flexible to go to where projects require resources immediately. Tying everybody down into staff positions ensures that resources are locked into companies who may not win the projects and therefore projects suffer with "do with what we have". This is has a knock on effect to the projects being delivered that will be over budget, poor quality and very late.

Inside IR35 seems very unethical and I believe will be a "PPI Version 2.0" as essentially classification (incorrectly or otherwise) into this newly created class of worker gets paid a PAYE salary with none of the benefits of sick pay, statutory pension, annual leave, redundancy, stress leave, notice period, training and development etc. The legality of this must be reviewed in detail as it may well result in claims for statutory benefits due under employment. Also what is there to stop all future STAFF roles to be Inside IR35 – an employers dream, PAYE salary but with none of the overhead business costs or worries of providing the above. In the end all work arrangements may become inside IR35.

I myself along with approx. 50 of my immediate colleagues and a further 200+ that I know of indirectly are looking to either relocate abroad (no more tax from us), retire (skills and knowledge shortage!) or sit out for the next 6 months to a year at which point they can re-engage once its realised that this is a huge mistake and contractors are engaged once again except on much higher rates. This is just in my workplace.

I have already started to hear about the knock on effects to accountants, recruitment agencies, the IT infrastructure (most are contractors in this sector), IT security (most are contractors), engineering (globally important projects not delivered), energy (keeping the lights on!), scientific technology (highly skilled specialists go abroad), medical (11,000 of the best and brightest doctors have already left! The remaining will follow) and the list goes on!

Please see specific responses below:

Existing measures in the public sector

- What has been the experience of the new rules in the public sector?

Chaos and disaster not only were major projects like HS2 affected, highly skilled british citizens have left the UK.

The NHS responded to IR35 with a ban in certain areas on using certain types of contractor.
The Independent Health Professionals Association (IHPA) claimed that the number of self-employed doctors "plummeted by 20,000". As a result, there were "11,000 fewer doctors" following the application of IR35.
The IHPA thought this was a sledgehammer to crack a nut. "The only IR35 tribunal case concerning a medical doctor that ever occurred was that of a junior doctor assisting in surgery and he was found to be outside IR35, yet 100% of health workers have found themselves blanketed inside the legislation."
Locum nurses were also held to fall within IR35, leading to a significant fall in numbers.
Applying IR35 to locum nurses was contentious. One of the tenets of being inside IR35 is that the organisation exerts significant control over the work of the individual.
"When a new mother begins haemorrhaging after birth, the nurse doesn't consult a manual to find out what to do. They have to decide which of many

options to take, who to call and when to alert the theatres," says Dave Chaplin of Contractor Calculator.
One of the consequences of the changes is that workers can no longer claim travel expenses. This has further serious impacts in our locum nurses example, as overnight stays now have to be borne by the worker instead of being claimable.

- What lessons have been learned from this experience, and how have they affected the Finance Bill proposals?

Seems no lessons have and the public sector outfall has been largely ignored/not addressed. Major projects such as HS2 have had the contracting community walk out on the project. I personally know of someone involved in the exodus and it seems this was a contributing factor to the stifling of the project.

Impact of the new rules on organisations

- Has the impact of the extension of the rules to the private sector been adequately assessed?

No. Again it seems a blind eye has been turned. It has been stated on many occasions that companies will not blanket assess but that is what is happening now and PSCs banned outright in some cases.

- Is the exclusion of small organisations sufficiently robust?

No. IR35 should not exist for all sized companies.

- What effect will these new measures have on a chain of contractors and sub-contractors?

Please see my above personal experience. This en-mass across the UK i.e destruction of entire supply chains meaning less tax for the treasury and less spending back into the economy. This is before considering that following BREXIT the UK needs the contractor flexible work force.

- What should HMRC do to help businesses understand the new administrative rules?

Educating businesses is futile as, regardless of the rules, businesses would rather put everybody inside IR35 regardless to ensure that they are not at risk.

Determining tax status of workers

- Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker?

No. When my colleagues and I have completed the CEST assessment we are all clearly outside and when we assess working practices we are outside. However, when the Client completes CEST we are inside. They effectively have "fudged" the questions to make it so we are Inside and they are not at risk.

CEST doesn't take into account Mutuality of Obligation for which HMRC allegedly lose majority of cases at tribunal. This is not fair.

- What is your assessment of the Check Employment Status for Tax (CEST) tool?

It seems as though it is continually changed to capture as many people inside as possible. It is not fit for purpose and should be treated with suspicion. If somebody creates a questionnaire to be completed with a vested interest of collecting money on the result of it, what would you think the outcome will be steered towards. This is obviously why many of the leading institutions were calling for an independent review. A review of IR35 was promised pre election and instead we are getting a review of how to implement it not what is being implemented. CEST should be an independently created tool under extreme scrutiny backed by case law which it clearly isn't.
https://www.contractorcalculator.co.uk/nhs_digital_hit_43m_tax_bill_cest_553910_news.aspx

- Does the CEST require improvement? If so, how might it be improved?

Key questions to be included are does the worker get a 1. Pension, 2. Annual leave, 3. A notice period of longer than a week, 4. Redundancy pay, 5. Sick pay, 6. Paternity/maternity leave. To which a result is clearly outside IR35. How can somebody be an employee when we don't get any of those rights but to be taxed the same? In my opinion highly unethical and perhaps unlawful.

Policy objectives

- In your opinion, are there better or simpler ways in which the objective of the new rules might be achieved?

Yes – the whole point was to stop people leaving on a Friday and re-joining the same company on the same project on a Monday. The essence of this has been lost. This should be the basis. A time restriction of re-joining a company and/or a project and a time restriction of services on a project/company (3 yrs).

- Will the Bill, as drafted, achieve the Government's objectives?

Absolutley not – this will crash the UK economy, open up risk, drive the best resources into retirement or abroad and will actually produce a lower tax revenue stream as contractors gross more and thus pay more tax into the system. There are numerous examples of this.

10 February 2020

Evan Skuthorpe

My client is in the Financial Services sector. I provide user experience design, both knowledge and skills, for a specific project. I have previously done the same via another contract with them for another project.

October 2019, the company undertook blanket ban assessment of all contractors and decided to use offshore service providers. Contractors would be terminated by end of February 2020.

My direct experience is thus: the market is no longer healthy. Having spoken with several job recruiters as part of my hunt for new work, their average Outside IR35 contract in the design field has upwards of 50 applicants. Over the last 9 years of contracting I would be contending with around 5 other contractors by comparison.

I have a family of 3 children and my wife to provide for. I pay a mortgage and rent/service charge on a shared ownership flat in London. I generate VAT, Corporation tax and I pay PAYE, NI and Dividend Tax on any income I then draw. I choose this way of life because I can earn more by taking on and managing the risks involved in endeavouring to start a business and not be protected by employment law. By doing so, I can prepare and provide for my own and my families future. Once this ceases, I will not be able to do so – all my income (based on permanent salary offerings) would go to cost of living and savings would need to be used.

Of the Inside IR35 contracts around, the rates being offered have not increased to cover the lost income, and as such, few applicants are applying, myself included. This has a direct effect on Outside IR35 contracts as highlighted. It also means a severe loss of income which is not reflective of the risks that contractors undertake – i.e. purchase and upkeep of computer hardware, software subscriptions, training, no sick pay, no holiday pay, no pension contribution etc.

The proposed changes are prohibitive, interfering and directly affect my ability to self-determine, as is my right.

My wife and I are now looking to leave the country and her spousal visa for Australia (I am a dual national) is currently underway.

My direct observations are thus: large clients, who traditionally rely on contractors as a highly skilled and knowledgeable 'work force' are ceasing to do so. This directly affects the nations tech and design sector. Skills and knowledge are leaving the country, some from the EU, this being their final straw. Others are going to permanent jobs as a short-term stop gap in the hope that the market resolves itself in time (or that the policy is rightly stopped).
The effect of Inside IR35 has created a 'no-rights' kind of employment – where contractors are incorrectly taxed as if permanent employees of another company, yet without the protection of employment law. Despite still needing to pay Corporation Tax, Dividend tax, NI and company upkeep costs with Companies House. It is truly unjust.

To summarise: no longer will there be enough contracts for those that choose (as is their right) to start their own businesses as companies that take advantage of the skills and knowledge-based contractors fear the financial consequences. There are not enough permanent jobs, let alone paying sufficient salaries, to sustain life expenses, as is my case. There are Inside IR35 contracts around, but without sufficient uplift in rates to compensate, these are unsuited to all but the desperate contractor and are treated as short-term solutions. Wealth generation will end through this misguided policy.

Rather ironically, the Treasury will suffer as no longer will VAT, Corporation Tax and Dividend Tax be generated by my endeavours, or those of all other contractors. Pointedly – as a contractor, I pay more in Corporation Tax alone than I ever did in PAYE Tax and NI contributions combined when a full-time employee.

If the point of the Treasury was to reduce revenue, raise unemployment, increase burden on the state through social welfare, cause anxiety and decrease my mental health, than this would be the policy to pursue.

18 February 2020

Alan Smith FCA

1. I am a Fellow of the Institute of Chartered Accountants and, amongst other matters, advise freelancers on starting up and related tax. IR35 was introduced twenty years ago in 2000. Essentially it is a piece of anti-avoidance tax legislation intending to tax independent and risk taking business freelancers in the same way as employees. I have seen numerous reviews of IR35 by Governments over the last 20 years and all have promised much and delivered little as IR35 is flawed in its intentions.

2. I believe that the freelance sector may be devastated and the economy may be damaged. I explain the 'big picture' as I see it and a different solution under your policy heading 9 and 12 and hope my submission helps your considerations.

> ***Policy objectives and wider context***
> ***9.Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?***
> ***12.How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees.***

The Basics Part One- the economic reward from freelancers.

3. Let's start with an example: freelancing work in research and development in the pharmaceutical sector- a golden goose in the UK economy as it keeps laying golden eggs and helps drive UK plc.

4. The business dynamics of this sector are driven by the limited timescale profit window from exploiting a patent. Remember the timescale is already shortened due to extended and necessary time expended on passing safety hoops and proving they work prior to widespread product release and marketing. This, in turn, necessitates a fast moving and rapid personnel resource deployment in the area of R&D. Therefore, a percentage of freelancers in the organisations resourcing are retained to provide this flexibility (maybe 15% to 30% of parts of the relevant R&D headcount).

5. In the last month most of my freelance clients who work in this sector have been presented by fait-accompli outcomes dictated by agencies/procuring companies where their independent freelance status may be removed by April 2020. This is because the 'tax risk' of IR35 is being shifted from the freelancer to the finance directors of large companies by new tax rules being implemented from 6 April. The finance directors are at the poker table and hold all the cards and want a 'no tax risk' outcome for themselves and their company.

6. With this mind-set processes have been developed which result in freelancers being 'deemed' by the agency/pharma company as inside the scope of IR35. The February edition of Taxline the magazine for the Institute of Chartered Accountants' Tax Faculty casts an ominous cloud over the end game explaining that companies "*might decide that only their most valued and skilled contractors whose (self) employed status is beyond doubt will continue to be hired individually via their PSCs, preferring instead to bring the general body of contractors onto payroll or onto an agency-run payroll or other arrangements*". Get the gist? In reality and over the last two weeks I have witnessed a process that has repeatedly churned through a process that is deeming freelancers through a 'status determination statement' (SDS) issued by their client that is finding them inside IR35 and the freelancer is then presented with two options: work for an umbrella company or an agency (both paye and both appear to have fairly limited benefit packages attached). On every occasion (to date) the freelancer was not offered an opportunity to contribute to this view. The processes seem unfair and one-sided from the outset. Whilst appeals are possible it seems that participating in the processes may also jeopardise the freelancers insurance that they had taken out to protect themselves on tax loss from IR35.

The Basics Part Two. The freelancer carries significant risks just like any other business owner including (in my experience) but not limited to:

7. Being 'forced' by most HR procurement functions to trade as a limited company rather than a self-employed sole trader as HR seems to perceive sole traders as a 'risk' if they hang around for a long period. This fear has

perhaps been triggered several years ago by a few sole traders successfully claiming employment type rights after some long term service. In the last 10 years my sole trader/company client ratio in the pharma freelance sector has shifted from about 50:50 to 5:95 so that sole traders in the sector are heading for extinction at this rate of decline.

8. Having to fund accountancy and tax specialist help as running a company is not straightforward. This comes at a professional fee cost to which further costs of equipment, giving up part of the home as a 'home office' and funding your own ongoing training and development is added.

9. Additionally having to fund your own car, holiday pay, life insurance, health insurance, illness insurance, public liability insurance and perhaps professional indemnity insurance and, very significantly, pensions and all this carries significant costs to cover off the risk. BUPA alone can be x4 the cost of a typical employee's benefit in kind 'cost'.

10. The most significant risk, however, comes from the very simple fact that no work means no pay. I have dealt with too many cases to underestimate this risk where caring for children, elderly parents or coping with bereavement is all at your own cost. In employment scenarios the employer, generally speaking, can provide significant support and sometimes well beyond whatever an employment contract may stipulate (i.e. compassionate leave).

11. Finally the risk of no parachute on losing your position with limited notice rights and no redundancy. And remember if no work lands in your lap you have to market, network, advertise and promote yourself and this takes time and money just like any other business. It's worth repeating again- this flexible resource provides massive benefits to the fast moving project driven world where flexibility of resource is key and as already illustrated.

12. In return for this risk freelancers, in turn, benefit from flexibility. They are free to try and organise work around their priorities; don't have to get involved in office politics and can keep fresh by moving from client project to client project. If they end up with a nightmare project/ nightmare office they can extract themselves more easily.

The Basics Part Three. The solution and tax and "Keep it simple. Stupid!"

13. In return for the risk of running their own business the freelancer was able to structure a remuneration package through salary and dividends and usually achieve a slight tax advantage (just like any other business) over an employee. The Treasury had countered this by introducing, effectively, new thresholds in 2016/17 whereby the first £5,000 of dividends beyond the personal allowance were tax free and then dividends were taxed at 7.5%,

32.5% or 38.1% depending on your level of income. Across my client base I saw my freelance clients paying more tax and the gap between freelancer paid tax and employment tax reduced from 2016/17. In 2018/19 the £5,000 was reduced to £2,000 reducing the tax gap further with my clients paying more tax. The perceived 'tax gap' issue was therefore being addressed and the actions were working.

14. I believe the dividend tax approach potentially solves the tax gap and that proper consideration may not have been given to solving the tax gap by the simple lever of dividend tax. It is simple, easily understood and adaptable and should be left to work its course and IR35. The 20 year journey of IR35 and failed reviews should be buried and forgotten. The IR35 reviews by Government also seem to have forgotten about the Golden Goose and the simple economic fact that fast moving business scenarios such as R&D need a bright, flexible and rapidly deployable resource and that's where 'the freelancer' comes in. IR35 reviews have also ignored the reality of the risk that freelancers bear. So to borrow an old US Navy saying "KISS" 'Keep it simple. Stupid!' I believe the solution to the tax gap is the dividend tax lever and that it's currently set at about right at the moment but can, of course, be kept under review. It should be left alone to do its job. Freelancers can then continue to be rapidly deployed to help UK plc.

21 February 2020

Mark Lawless

Please find attached my completed submission for written evidence to the inquiry on the draft Finance Bill 2020.
I am a director of a limited company working in the engineering and construction industry. Just to give some clarity on the nature of reality in the workplace today - it is 24th February 2020 and my end client has not even given me written acknowledgement that they are conducting a status determination of my role, let alone an actual determination itself. The questions have therefore been answered with knowledge of what my agent has provided in advance of written clarification from the client.
Most of the questions have been answered with my knowledge of the labour market in construction so please bear this in mind. With the ensuing changes due to Brexit and the early signals of the government's intent to invest positively in infrastructure (HS2), the new rules could really hinder the flexibility and diversity of the UK workforce in my opinion.
Most construction projects rely on peaks and troughs of staff, therefore relying heavily on PSC's during times of heavy workload. The new rules jeopardise this dependence immensely. As my answers will demonstrate, I am very apprehensive whether detailed analysis has been carried out in relation to how

the rules will affect each industry specifically. At present the rules just seem to apply to the selfemployed workforce of the UK in general.
Please see my answers below:
Existing measures in the public sector
1. I do not work in the public sector so cannot comment.
Impact of new off payroll rules on organisations
This question would be better answered by end client's HR/Finance departments. I suspect however that it has not. I feel that historically the Contractors themselves have selfeducated themselves on complying with IR35 legislation. End clients have therefore traditionally just paid their contract staff without concern for future tax liability.

The new rules appear to have shocked the majority of end clients into knee jerk blanket 'inside IR35' assessments. Please refer to Offpayroll.org to see the exact scale of blanket assessments being undertaken. Blanket assessments to me, indicate clients unwillingly to educate themselves on the legislation and implement it properly.

I cannot answer this question as I don't have great knowledge of smaller organisations.
My end client, and countless others, are getting around the new rules by simply not engaging with PSC's beyond April 6th 2020. Instead our roles will be changed to umbrella positions or PAYE instead. These are essentially employment positions with no benefits.
This type of arrangement induces a 20% pay cut on my company. As such I will seek work elsewhere in neighbouring EU countries which can offer greater opportunity.
Most other contractors I know are considering their positions. Many contractors work away from home, prioritising working in remote locations on infrastructure-critical projects in the energy and utility sectors. As we cannot claim expenses under these new rules then it will not be feasible for such contractors to work away from home anymore. Someone really needs to think about how the likes of HS2 and Wylfa power station will be done for affordable prices with such disruption to the natural workforce.
I don't know what advice HMRC has provided to such companies therefore I cannot answer.
Determining tax status of workers
My end client's HR department has not contacted me once in this entire process so whether they have clarity or not, is for them to confirm.
Considering they are likely to not engage with PSC's post April 2020, then I would suggest that guidance has not been clear.
I think the newer version of CEST is accurate as when I fill out the form it declares that my role is outside IR35, which it is. It could however by improved by diversifying into industryspecific roles which would provide greater levels of accuracy.
As of today, 24th February, my client still has not declared my status determination. It is clear however from liaising with my agent that they will not

be engaging with PSC's after April and roles will only be offered via umbrella or PAYE.

Even though they cannot issue blanket assessments and we should all be entitled to appeals I'm not even sure I am entitled to an appeal considering that legally they can just terminate my contract within a week if necessary. They can then just revise it as an umbrella role thereafter and they are seen to be complying with the legislation. Meanwhile the years of skilled experience that I have acquired and built up working as self-employed individual are ignored. How can CEST determine that I'm outside IR35 whilst my client determines I am not? So I would say that there are no safeguards in place for such contractors.

Reading various reports on Offpayroll.org it is clear that clients in these cases have historically ignored/misunderstood key employment triggers such as substitution, control and mutuality of obligation. This is what is primarily causing them to inaccurately input data into CEST and come out with inaccurate status determinations.
Policy objectives and wider context
It is clear that HMRC are concerned by the magnitude of contractors not complying with the rules across the UK, and quite rightly so. But it also clear that the new proposals are not fair on the self-employed as they tax the individual the same as employees but without any benefits.

Therefore I would suggest HMRC need to convene with self-employed industry bodies and propose new tax rules which provide compromise for both parties. If contractors are not entitled to employee benefits then we should be allowed greater tax incentives (or otherwise) to help make it a worthwhile occupation to pursue and flourish within. Perhaps a revision to umbrella tax rules would be a starting point.

This question is difficult to answer due to the sheer diversity of contracting in the UK. Whilst there is a clear shift to umbrella companies emerging, some of the more astute end clients are recognising that they should be engaging with contractors to maintain access to a highly skilled talent pool.

I think there may be an initial increase in revenue due to the rules. This however could be at the detriment to other areas. I can foresee a lot of turbulence in the construction sector as a result of these changes. Please refer to the latest edition of construction weekly below demonstrating the scale of firms going out of business in January of this year alone.

https://www.constructionnews.co.uk/financial/revealed-22-firms-went-under-in-january17-02-2020/

Umbrella companies may work for contractors who can find work close to their work site. They do not favour those working away from home as you cannot claim expenses under such arrangements.

It is fair to say that a high percentage of individuals will now be taxed as employees but prevented from having any rights or benefits. These new rules completely legitimise this for the end clients.

This concludes my responses to the questionnaire.

24 February 2020

Tom Smith

Please find attached a summary of my experience with the off-payroll reforms so far. I am a contractor myself and work in Talent Acquisition, so I am seeing the challenges for myself personally, my clients and the wider market in the UK.

I have broken down my personal experience and also some specific details for the Areas of interest highlighted by the Sub-Committee.

My Experience:

- I currently work a contractor engaged on an assignment in a large Consulting firm but I am due to be terminated at the end of this month due to IR35 concerns, not because I have completed my assignment.
- They are using the CEST tool and this is regularly providing inside IR35 determinations even for contractors who are clearly outside according to employment law. As a result many contractors are leaving. Some are taking permanent jobs (and paying less tax than they were as contractors, even once employer NI is taken into account). I know more than 10 contractors personally who are leaving the country or have already left, specifically citing the off payroll reforms.
- Numerous client projects are now at risk and the business is confused as to how to engage the right flexible talent due to complexity of IR35, despite the planning for off payroll reforms beginning nearly a year ago. This does not suggest that guidance is either clear, easy to follow or unbiased.
- There are multiple blanket bans for ltd company contractors across the market. https://www.contractoruk.com/private_sector_ir35_reform/company_positions_ir and this is reflected in every conversation I'm having - companies are extremely fearful of hiring contractors.
- I speak to other contractors, senior clients and resourcing teams every day and there is a fear and frustration across the entire market. Contractors being assessed as inside IR35 are having to take such a significant hit (there are numerous cases of the rate being cut to make up for employer NI, plus they can no longer claim expenses so the flexibility to travel at short notice to different locations is severely impacted).

- For me personally, I am having to consider leaving the country with my family. I don't have the luxury of benching myself for a few months to see how the market pans out. I am risking severe financial consequences by remaining in the UK at the moment.

It is hugely frustrating and upsetting to hear HMRC, HMT and the Chancellor talk about fairness and this not affecting the genuinely self employed, when these reforms are destroying the market itself (surely not the intended consequence) and pushing those deemed to be on payroll into no rights employment. How long before companies take advantage of this and start using no rights inside IR35 contract employment much more widely?

The human impact here is severe. The mental health impact has been growing over the last year to the point where 1/3 of contractors say their mental health is suffering because of the pending reforms. I'd certainly include mine in that. The uncertainty and complexity is crippling and I see many in my network suffering.

Impact of the new off-payroll rules on organisations:

- It seems HMRC are happy to take advantage of the fear narrative. Since they have only won 12% of the IR35 cases they have taken to court they have instead decided to rely on companies to make blanket or risk averse decisions to put people on payroll, regardless of whether they really are or not and regardless of the economic and human impact. Most clients I speak with feel the issue is too complex to do individual assessments and so either blanket bans, terminations to avoid the risk or outsourcing the work either abroad or to consultancies to bypass the problem means that they are spending taking a huge administrative burden but still don't end up with anything like the flexible workforce they have had.

Determining tax status of workers:

- None of these tests really reflect the nature of contract work. The bias towards substitution might make some sense if you're running a plumbing business, but for highly skilled IT contractors or people in my area of Talent Acquisition the individual's particular knowledge or network are really key to delivering on assignments so its very difficult to have substitutions. Control is much more relevant to the contract market but even then there are practicalities around delivery that should always be agreed between the contractor and client.
- The CEST tool is not fit for purpose. It still doesn't have a recognition of Mutuality of Obligation, insisting that the contract itself implies MOO. This is not the case in employment law, but seems to suit HMRC as it make the tool more biased towards inside IR35 determinations. Whilst this wouldn't hold up in court companies are going ahead with whatever the CEST tool says.
- The effect on the supply chain is complex, client, agencies and contractors are all blaming each other and clients are regularly trying to avoid

accountability. The effect currently is a smaller, less flexible, lower skilled workforce available to deliver key projects across the UK. In my personal remit there are several transformation projects that are being delayed because of these reforms.

- Including Mutuality of Obligation in the CEST tool would be a start, but it is truly concerning that the HMRC, who consistently lose in court on IR35 cases, are the ones to design and build a tool which the market is expected to use but without it being a true reflection of law.
- Status determination disagreements so far have been frankly a waste of time. I haven't seen any decision changed because clients are too scared.

Policy objectives and wider context:

- The bill seems to be about raising more tax and ensuring "fairness". It will fail, and is already failing.
- Given the number of contractors who are happy to either bench themselves or leave the country entirely (c. 50% of my network) , the numbers of projects I have seen where the client would prefer to use contractors but have gone to offshore or outsourced options due to their concern around the risk of IR35, it seems raising more tax is fairly unlikely. Whilst there will undoubtedly be an increase in PAYE and NI which will be held up as a victory for HMRC they would need to compare this to the corporation and dividends taxes that will be missed out on due to previous Ltd company contractors no longer running their companies. It feels like it will be easy to make it "look" like a success when the reality is very different.
- A better and simpler way would be to look at a small increase in the taxes contractors pay, and perhaps a levy for companies who use contractors. I understand that the government feels it is missing out on the NI because companies have definitely used contractors in cases where they should use an employee, but this reform is completely killing the freelance market and strangling the agility of businesses.
- It is completely and utterly unfair that anyone being taxed as an employee does not have the rights of an employee, and the Treasury have said to me several times that these are two separate things. Given they also keep talking about this bill being about fairness this seems incredibly unfair. This also seems to contradict the Government's Good Work Program. Clearly there will be companies who exploit this and hire more and more people as "no rights employees" rather than permanent staff with all the responsibilities that come with that.

Conclusion:

Businesses, contractors, agencies and professional bodies are all in agreement that these are the wrong reforms to make. It is akin to going after a fly with a bazooka. I am at the coal face watching businesses suffer, trying to work out how they keep something like the flexible workforce they have been used to. Mental health is suffering, income levels are taking a huge hit and the contract

market is a shadow of its former self, not because companies don't need their expertise but they're scared to engage it. And understandably most contractors are not happy to take a 30% pay cut to do the same thing, particularly if leaving the country is an option. The people the country will be losing are IT Specialists, Engineers, Energy Consultants, Telecoms Experts and Business Consultants amongst others - these are key skillsets particularly in a post-Brexit, Digital Britain.

There are so many questions unanswered and so much frustration that this being pitched as being about "fairness" it feels like the HMRC, HMT and the Government are so far removed from what the flexible workforce does for this country that it will only realise when it is far too late. The only sensible thing to do at this stage is delay and conduct a genuine independent review to work out how to do this without destroying the market or leading to a "no rights employment" situation being the norm. Businesses may have known about this for 18 months in principal but since the final legislation isn't even in place yet and tweaks are still being made the reality is they will have weeks between the Budget and implementation. This is unnecessarily reckless. Whilst everyone understands that companies should not be able to able to just hire "disguised employees" to avoid paying the NI, the reality is my significant experience in the recruitment world is that this is a very small problem, and even in these cases freelancers are paid a premium so end up benefitting the Treasury because they pay more tax than a permanent member of staff doing the "essentially the same" kind of role.

24 February 2020

Robert Smith

1. As an individual contractor based in the North East of England, I'm grateful for the opportunity to contribute to your research with regards the proposed extension of the Off-Payroll working rules to the Private sector and have attempted to answer only those questions with which I can speak from first-hand experience.

Context

2. I was made redundant at the start of 2014 from a permanent position I'd held for a little over 9 years. While I'd started at a relatively junior level I'd progressed quickly and at the point of redundancy found myself with a useful, but relatively niche set of IT skills.

3. In the weeks which followed my consultation for redundancy it became apparent that jobs in the North East that would allow my career to progress (and provide for my young family) were few and far between. The contract market, however, would allow for such progression. It's typically the case that skill sets such as my own are project focused and few companies have an enduring need for someone on their payroll.

4. The shift to contracting allowed me to pursue other entrepreneurial endeavours, some of which have been successful and others not so much. In the 6 years I've been in business I'd like to think I've positively impacted the economy around me and have engaged with other contractors to complete larger pieces of work, employ a local accountant and have helped to provide a competitive edge to the companies around me.

5. I'm sad to say that the Off-Payroll rules have, in general, done nothing but repeatedly *pump the brakes* on my efforts to further the success of my business.

What will be the effect of these new measures on a chain of contractors and subcontractors?

6. In simple terms I believe the evidence points towards;

- A reduction in viable contract opportunities
- A severe reduction in the take-home pay for workers
- A marketplace for workers with no rights and no benefits
- A Significant amount of work being moved offshore

7. However, in my view to understand the reason for these symptoms it's necessary to gain a full understanding of the *disease* itself which, sadly, is much more complicated and multi-faceted.

8. In my view HMRC have created a culture of complexity and misinformation. Much of the guidance offered to companies in the past has been proven to be inaccurate and it has generated an incredibly worrisome and uncertain undercurrent to everything they do in this area.

9. Investigations performed by HMRC have been harshly implemented, there's no perceived room for common sense and companies which I've worked with a genuinely fearful of them. Muddy the water with an ever-changing legislation and guidance which is hugely open to interpretation and companies are being driven towards the least-risk option. We see this come to life in a number of ways, such as the blanket bans of limited company contractors we've seen from sectors such as banking.

10. When companies take the least risk option, they force the sector towards 'inside-IR35' working, or towards larger professional services outfits such as PriceWaterhouseCoopers, Accenture or IBM.

11. The market has already reacted to this in some worrying ways, such as deducting 'employer' contributions from the workers rate and moving to less favourable terms such as enforcing onsite work which stifles the entrepreneurial spirit which so many of us have.

12. In my own case, an inside-IR35 contract would see me lose a 20% of my rate immediately and would prevent me from making good use of my limited

company to build my pension. When I must purchase equipment to support a new contract, I can no longer reclaim the VAT (on what is a genuine purchase) nor can I claim relief on expenses to get me to / from my client site.

13. From what is left I must put money away to cover holidays and illness and most likely fail to keep my other entrepreneurial endeavours alive.

14. Of course, the more worrying side to this is that I will be unable to find work and must move further afield or accept a more junior role which sees my own career stagnate or forces me to spend far less time with my wife who struggles with a chronic condition and children.

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

15. In short, no.

16. In fact, the CEST tool holds in staggering disregard the realities of a temporary worker and has been over-simplified to the point of it being broadly useless. It has a laser focus on items such as substitution yet very little regard for mutuality of obligation and in general represents the nuanced sector incredibly poorly.

17. The business logic of a tool that deems anyone 'outside' of IR35 by sheer virtue of the fact they once provided a substitute, yet then allows that contractor to receive company benefits, be supervised and such seems indicative of just how poor the tool is.

18. It may seem flippant, but I believe the current situation to be *too far gone* and requires a wholesale, independent review with real, meaningful engagement before more damage is done. The lip service paid to the legislation by the government is, in my view, woeful.

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

19. I remain firmly against the so-called gig economy which has allowed some of my own friends and relatives to be driven into temporary work on 0-hour contracts with no provision for their future and accept that putting measures in place to prevent this is absolutely necessary. But the legislation put forward is completely inadequate at achieving this.

20. It's ironic, therefore that by simply assessing a worker to be 'inside' IR35 that HMRC have now fostered an environment where not only is it legal to create workers without benefits, it was the government's own idea.

21. There should be a focus on accurately establishing those who are in business for themselves vs those who are forced into off-payroll situations. To tar both camps with the same brush has demonstrably been a poor idea and I believe that support for those of us who take risks and push the envelope of self-employment should be celebrated in the post-Brexit world we find ourselves in.

In Summary

22. Much of what I've read of late, especially from the new Chancellor has been around fairness. Fairness of taxation of those doing the same jobs, ensuring the NHS is funded and such. Yet I've seen very little credit given to the unfairness of a worker forced to be taxed the same as a permanent employee but without the benefits of a permanent employee.

23. Many of us within the contractor community are not simply looking for this to go away, many of us are socially responsible and have campaigned for worker's rights and equality. We're simply looking for a fair and common-sense approach to be taken. The days of HMRC riding roughshod across successive governments must come to an end.

24. If I can be of any further service, please don't hesitate to get in touch.

9 February 2020

Thomas Sproston

Existing Measures in the Public Sector

1.
    1. Experience from the public sector is that change will cause significant delays and cost overruns to projects at all levels
    2. Lessons do not appear to have been learned from this experience in crafting the proposed 2020 Finance Bill
    3. The changes being proposed stand to decimate private industry at a time when growth is desired.

Impact of New Off-Payroll Rules on Organisations

2.
    1. The impact of the extension of the rules has not been appropriately assessed.
    2. The compliance burden has been under estimated significantly. Note that for the avoidance of doubt, engagers may opt to use independent assessments of status, which the engaged PSC is expected to cover the costs there of. The cost of this is not new to a PSC who has been complying with their onus for reasonable care but is a new cost to the

engager, who **should** take this cost alone. Regardless it is substantially greater than the cost estimated by HMRC.

3. Where engagers opt for blanket assessments, these are likely to incure a significant compliance burden on both the HMRC and the taxpayer (in ascertaining true status) – a requirement for independent assessment in statute is recommended. Note, I have no interests in this, but feel it is truly devoid of bias.

3.
   1. The exclusion of small firms appears robust and clear enough to be used
   2. Assurances could be difficult determine a future need (for contractors and thus IR35 relevance) off previous years performance if said firm is in a growth phase.

4. The effect of the measures is multiple fold:
   1. Immediate financial hardship on the part of the end-subcontracting PSC where caught Inside IR35 due to poor assessment (CEST or blanketing with no consultation) due to less turnover.
   2. As above but with workers taking permanent jobs
   3. Probable 'worker gaps' as disgruntled PSCs leave contracts and engagers cannot fill due to a niche skill base.
   4. A 'brain drain' as workers move abroad rather than take Inside IR35 contracts
   5. Lower tax take for the HMRC as permanent workers generally contribute less Income Tax for positions filled by PSCs.
   6. As above but due to Corporation Tax takes from PSCs
   7. As above but for Employers and Employees National Insurance Contributions
   8. Projects will overrun due to resource shortages
   9. Projects will exceed costings due to requirements to offshore work or use less preferable larger firms to provide the services the PSCs would provide.

5.
   1. The administrative burden of measures could be simplified thus:
      1. An explicit tax on engagers in high level secondary legislation– 5% has been touted informally
      2. An explicit tax on PSCs in high level secondary legislation – 5%? Note the impact on a PSC 'working away' has been shown to be up to 55%
      3. Abandon the measures totally
   2. HMRC have done little to support businesses in applying the new administrative rules. This is indicative that they do not understand them themselves – a clear set of guidance regularly updated in light of case law is required, that must detail status determination procedures, dispute procedures at minimum.

Determining tax status of workers

6.
    1. The tests for determining status as written by HMRC are not sufficiently clear, they are only clarified by direct experience of case law. I am of the opinion that they cannot be fully applied by a lay person, and may only be fully interpreted by an appropriately experienced lawyer – hence my call for mandatory independent assessment.
    2. The tests only partially reflect the contracting environment. The tests reflect the environment from a 'managers' viewpoint, but not the softer factors that the PSC has, such as:
        1. The risk of taking on short term contracts
        2. The lack of any employment rights (note this **continues** if found Inside IR35)
        3. The ability of the PSC contractor to take other engagements alongside any contract.

7.
    1. My assessment of CEST is that it is written by HMRC to reflect their desired views only.
        1. CEST misses the key tests of Supervision, Direction and Control to the granularity required to adequately rule the factor as relevant
        2. CEST misses the Mutuality of Obligation tests completely.
    2. CEST requires improvement as above.
    3. CEST requires improvement to address the above. It is also only one sided – it should include a means of the other contracting party to put in their aspect of an assessment, and a means of having disputes mediated by an external independent party.

8.
    1. The Status determination process will be effective in determining status **provided it is balanced**. In its current form there is **no requirement for balance**, unless an engager opts to use an independent assessment or build it into their own processes.
    2. The safeguards within the process are inadequate. As the dispute resolution aspect is engager led, unless the engager builds independence into their processes or uses an independent assessment it will always be loaded to the engager's favour. I know of numerous PSCs who have been told that their appears against Inside IR35 determinations 'will fail'.
    3. The dispute resolution process needs to be wholly independent from the engager and PSC.

Policy Objectives and Wider Context

9.
    1. There are simpler ways of achieving the objectives of the new rules.

2. Methods include an explicit tax on Engagers or PSCs (at less than that touted through the 'deemed payment' strategy) or abandonment of the reform wholesale.

10.
1. The bill as drafted will not achieve HMG's objectives in my viewpoint.

11.
1. Umbrella companies appear to be taking approaches to maximise return on rate that would be considered 'close to the knuckle' by many PSCs – one illustrated me for an 82% return on rate using a loan that would be repaid such as to avoid the Loan Charge (which is a particular point of contention for HMRC). A reasonable return from previous experience is 60%, even from a PSC.
2. Umbrella companies must be regulated to ensure fairness in charging and compliance to regulation.

12.
1. The changes are a retrograde step with regard working arrangements and stand to reduce worker mobility and the country's prosperity as a whole. The changes also remove any impetus for entrepreneurial behaviour within Contracting PSCs – and personally at least stifles the 'grander plan' I had to create a business independent of myself, but which requires funding (acquired through contracting) to grow.
2. It is fundamentally unfair (and also against the intent of the changes - 'Equal Tax for Equal Work') to create a class of workers taxed as employees but without employee's rights.

23 February 2020

Vincent Stacey, Shaun Barton, Nick Bowman, Jonathan Forsythe, Lee McMichael, Mick Cameron, Mark Battry, Siddique Meah and Rajesh Mahay

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

   I/We have no experience of the new off-payroll rules in the public sector, apart from hearing stories of avoidance and impacted projects.

   The public sector is dependent on services provided from the private sector.

   If the implementation has negative impact on the public sector it will affect BREXIT, the NHS, the MoD and other CPNI Projects.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

HMRC acknowledge the industry in not prepared, the suppliers who are now burdened with the decision to classify their PSC's under IR35 have poor awareness of the legislation.

https://www.contractoruk.com/news/0014450delay_aprils_payroll_rules_taxmans_own_figures_make_case.html

PSC Companies are often prepared to work significant hours beyond the 37.5 hours expected from an FTE with the transfer to permanent employment A number of the signatories to this evidence have worked continuously (week and weekend days) since 20th January 2020, this will not continue and the PSC's will work less hours and earn less if he becomes an employee.

CPNI projects will be delayed since a large proportion of the work is provided by the PSC's during unsociable hours - evenings and weekends. These delays add additional costs to the government projects.

PSC's are generally risk adverse and this is an underlying reason why the complete invoice from their customer is not converted immediately into salary. This enables them to cover pensions, sickness or lack of work instead of seeking unemployment benefits or Statutory Sick Pay thus currently offering a saving to the economy.

The government have just implemented the NEST Pension scheme and many PSC's participate in this scheme. If there is a large-scale transfer from PSC style employment, then this is likely to cause a shortfall in contributions to the NEST pension scheme.

If HMRC's prediction is correct and they are able to increase the amount of revenue associated with income, they are also likely to see a reduction in other taxes such as VAT, Corporation and Dividend Tax. Both the Ltd Company and its employee would have less income and consequently less ability to spend. Furthermore if the PSC is treated as an employee instead of a business then they will work less hours and the perceived gain in income might not be achieved.

An assessment as inside of IR35 will prevent PSC's from developing or employing more individuals and expanding as evidenced in the links contained in answer to question 3.

The implementation of IR35 has increased the probability that large organisations will outsource functions removing money from the economy. If this proved cost effective those organisations might also then investigate migrating permanent roles to an offshore outsourced supplier.

Companies who already have BREXIT concerns may decide that they should leave the UK and provide their service or capability from elsewhere.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

   Banks and large PLC's are forcing small companies, who are exempt from determining their workers IR35 status, to place their freelance workers Inside IR35 or employ them on a PAYE basis by insisting there are no PSC Limited Companies in their supply chain.

   This contrary to and sidesteps the IR35 legislation and is forcing small consultancies into closure affecting all workers and their families.

   Further details are provided in the link(s) below.

   https://www.contractoruk.com/news/0014424fidelity_joins_lloyds_and_hsbc_halting_pscs_its_consultancies.html

   https://www.contractoruk.com/news/0014401lloyds_follows_hsbc_banning_consultancies_limited_company_contractors_ahead_ir35_reform.html

   https://www.contractoruk.com/news/0014399hsbc_bans_consultancies_supplying_limited_company_contractors.html

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

   PSC's generally use other service companies (Accountants, Pension advisers, Solicitors…) to support their businesses. Moving PSC capability to PAYE would have a negative impact on these small service companies and they may go out of business.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

HMRC need to instruct engagers to consult with the target of the test against their working practices. The current approach will become a burden if the "blanket inside" approach is not ceased because this will result in an extensive amount of appeals. It is more efficient to get the answer right than to have to follow the appeals process.

21 years of failed implementation prove that this legislation is flawed and should not continue. If HMRC had a good history or the process was simple then there would be a case with it continuing.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

   Engagers have been using older versions (1.5) of the tool and are advising that they see no difference between that version and the current version (2.4). The questions in the current tool still remain vague but the 2.4 tool seems to be a step in the right direction.

   Due to cross sector impact (a one fits all tool is flawed) HMRC could spend a significant amount of Tax Payers money developing the tool using the latest technologies but that could still fail to achieve the end goal of the legislation.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

   A simple tool like this is never going to satisfy all users because it is a very simple tool that cannot cater for the complexity of every situation. The cost of making a tool which would assess everyone accurately would be prohibitive.

   The tool should be part of the answer but not the answer. During this process the engagers are not interacting with their supplier to understand the actual ways of working. Thus making it easier to place the individual PSC inside of IR35 because they have not had any interaction with the PSC.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

   The status determination process has problems of its own. The PSC classified as inside of IR35 does not become an employee and benefit from the statutory benefits of an employee. This essentially creates another type of employee obliged to pay additional taxes without any benefit.

Due to the simple nature of the tool it is easy for the engager or their end client to decide on the answers submitted to produce the outcome they want. Large organisations are being very risk avert because they perceive HMRC is keen to bring all workers inside of IR35 and therefore are biased towards that decision to avoid investigation from HMRC.

The chancellor has asserted in his speech (see video in response to point 10) that he has discussed with HMRC (The Chancellor's job since being appointed as Chief Secretary to the Treasury would be to discuss with HMRC) and agreed that this will be a soft implementation. HMRC have made such promises previously in relation to soft implementation, where they performed historic investigations breaking these promises and pursued individuals.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

This legislation has been a disaster since inception in 1999. HMRC has lost a number of cases in court and settled out of court because the legislation is flawed and inherently not fair. PSC companies have operated successfully for years and despite HMRC's assertion that the goal of the policy is to increase revenue, HMRC's assertion is subjective and not supported by facts. The National Statistics Office does not specifically record the earnings of PSCs however from experience the costs of operating a PSC yield more underlying costs and only slightly less tax than those reported by the National Statistics Office when combining Corporation and Income Tax. Subsequently VAT will be lost as employees convert to full time employees.

PSC organisations form a significant amount of "highly skilled, highly motivated" workers and this is usually one of the differentials between the operator of a PSC and full time employees. In my experience the PSC's generally support out of hours working and are usually prepared to go the extra mile. The PSC's take on responsibility for their own welfare and therefore presenting less sick days and not claiming benefits). This legislation does not make any attempt to compensate the PSC alongside raising their costs.

After almost 21 years of attempting to implement this legislation, HMRC are still not prepared because the legislation does not make sense.

Other Tax options should be investigated,

- *Online Purchase Tax*
  1 % Tax on all online purchases would recover far more money and be easier to implement.
- *AI / Robot Tax*
  Jobs are being replaced by technology across almost all sectors of the economy. We should encourage this growth however with leisure time set to increase due to automation it is important to understand where revenue will come from in the future.
- *International Tax,*
  Numerous international tax loopholes including inheritance tax exist where much larger sums of money are lost.
- *Cannabis Tax,*
  There is a general perception worldwide that Cannabis has become more acceptable. If the UK were to legalise the use of Cannabis it could easily be sold, governed and taxed in a similar manor to tobacco. Since this tax would combine with

the legalisation it would be readily accepted. Different tax schemes could be imposed for Medicinal vs Recreational use.

- *Recovering taxes from Large Company Corporation Tax.*
  HMRC still seem to have differing rules for large global organisations while focusing a disproportionate amount of effort on smaller companies.

10. Will the Bill, as drafted, achieve the Government's objectives?

Although the government asserts the objective of the legislation is to level working earnings this appears to be at odds with that of the current agenda from the Chancellor (Rishi Sunak)

(see Video https://twitter.com/hmrconi/status/1231348668344696834?s=21)

This speech comes across as contrived and the legislation will continue pre-decision regardless of any intervention from the Lords. It is clear the underlying objective is to increase revenue in relation to tax. HMRC and HMG have no vested interest in levelling the workplace status. This legislation still faces issues and risks of not achieving the goal of the Bill despite it being 21 years old,

- *The combined Tax revenue is comparable to a PAYE Employee. This legislation is making large companies afraid of HMRC and will be risk adverse at the point of implementing the legislation to avoid large scale fines. This will destroy independent consultancies because these large companies are now deciding NOT to engage with Ltd Company PSC's.*

- *If the legislation has a large scale negative impact on this industry then the UK will continue to decline in technology status, Governments of Saudi Aribia and Israel are encouraging technology and they are all investing. Russia, China, Japan, Korea and USA already have huge footprints and we should not forget the developments occurring within Europe. This legislation is likely to make the UK a third world country in the tech race.*

- *UK Based PLC's already outsource large portions of their capabilities, Off-shore outsourcing increases the likelihood of services that are delivered within the UK from being off-shored. This will support the development of technology outside of the UK.*

- *It should be noted that the chancellor (Rishi Sunak) should not form any part of this legislation as he has a conflict of interest here since his father-in-Law is N. R. Narayana Murthy founder of Infosys. Infosys are an outsource company specifically focused towards offshore outsourcing. Infosys are highly likely to be one of the beneficiaries from this legislation. Narayana Murthy has two children, Rishi Sunak is husband to Narayana's daughter and therefore Rishi Sunak is likely to benefit from Narayana's 2.5 Billion USD Estate.* ***There is no mention of this relationship in the "Register of Members Financial Interests"****.*

Rishi Sunak has already in his small time in office indicated that he is going deliver the bill and has assumed the outcome of this process and the Lords will support his views (see Video in response to question 10). Rishi should have already declared this conflict of interest and he should ***not have involvement with UK Employment Laws*** *since this conflict is not resolvable and any decision could be questioned against this relationship.*

- *HMRC have already delivered the changes in the public sector. After significant harm to projects, the public sector has started just offering contracts outside of IR35 because they cannot resource the projects following HMRC's Guidance.*

- *This legislation is likely to have a negative impact to the economy because of reduced spending of PSCs.*

- *The UK has historically had great leadership and innovation. This legislation will stop future innovation because the individuals will be employees of a larger organisation and all their IPR Automatically becomes the property of their employer.*

- *This legislation is likely to take diversity out of the market and will support the growth of large PLC's. What size do outsourcing companies need to grow to before they have an unfair advantage where they should be referred to the Monopolies and Mergers commission.*

11. What is your view of the role of umbrella companies in the context of these proposals?

Umbrella Companies are the main beneficiaries of the legislation alongside recruitment agencies and outsource organisations. Large PLC umbrella and recruiting companies already profit by acting as intermediaries. They have now started to suggest PSC's should either use the recruiting agency as the employer (umbrella) or one of their preferred umbrella companies.

Off-shore outsource companies are essentially umbrella organisations. This legislation makes it simpler to use an offshore service instead of a UK Ltd company.

These intermediary organisations will profit by enduring charges to their clients and suppliers, for their assistance through and in the execution of IR35 and their relationship with their preferred umbrella companies.

The role of recruiting companies is reducing and being replaced because of the "gig economy" where advances in automated selection using AI and other technology advances has reduced dependency on this industry with many companies running their own online recruitment. This legislation seems to achieve the goal of rewarding the umbrella industry for their previous tax avoidance and propping up both the recruitment and umbrella industries.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

This legislation places PSC companies in a disadvantaged position. *Combining the PSC's Corporation and Income Tax and adding the passthrough VAT presents a significant amount of revenue to HMRC while leaving the burden of sickness, pension, unemployment etc. with the PSC.*

The legislation does not provide any provision for the PSC to earn income and all the money paid by the customer is subject to Income Tax and National Insurance. This prevents the PSC using their Ltd Company to provide support. However, as the only income is to the individual and no income is provided to the Ltd company, they are unable to provide such support services or any other commitments such as leases, service rentals or premises. How is the individual supposed to transfer their individual funds back to the PSC since they are different legal entities and this money will have already incurred tax?

This legislation does not even tackle the problems presented by the "gig economy" The PSC's targeted by this legislation are already tax payers and they are being targeted because they are easy to manipulate since the customers of the PSC are automatically afraid of investigation. It should be noted that the majority of PSC's already comply with tax law and this Legislation forces these PSC's to change their way of working with no benefit.

The "gig economy" poses a much bigger problem because HMRC will not be aware of most of the transactions. It is very hard to find the fringe areas of the economy (either the trader of malicious goods on the internet using bitcoin or the gardener who uses cash). PSC's contribute a large amount of money to the economy.

The implementation of IR35 will prevent PSC's from funding their development or investing in other areas of technology. This will lead to a skills shortage through migration, retirement if the PSC cannot fund their

future development and likely retard the UK's position in the "gig economy".

The "gig economy" is migrating towards a services base where individuals and businesses will connect directly for an actual service. This fledgling industry is already forming with services like peopleperhour, upworks, taskrabbit. These services are currently only a small part of the economy however this is a sector that is likely to grow.

This legislation is totally counterintuitive to grow the world of the "Gig Economy" The UK has a small population and a lot of the targets of this legislation are those that will make the "Gig Economy" work. The concept of an employee working a 37.5 hr only has a limited life and the HMG should embrace the dynamic nature of the PSC instead of penalising them.

BREXIT is going to be a difficult process and this legislation will demotivate the people that will enable BEXIT and the "Gig Economy".

HMRC should consider the potential consequences if PSCs are subject to this legislation are classified as inside of IR35 such as:-.

- *Leaving the tech sector and looking for alternative employment,*
- *Leaving the UK and providing their skills elsewhere,*
- *Retire from the workforce,*
- *Take sickness because he has struggled to run a company for years and is now depressed because HMG/HMRC have introduced this legislation and the PSC needs to close the company and go on benefits.*
- *Becoming a permanent employee of an organisation (This employee will be less motivated because he will earn less that previously and will be less likely to go the extra mile).*
- *When their inside contract finishes claim unemployment benefit.*

The above outcomes are not positive, the only possible positive outcome would be HMRC's increase of taxes, if achieved.

Gareth Stanton

Capacity which made: Personal

SUMMARY

- Extension of off-payroll rules to the private sector has caused key, highly skilled aerospace work to be taken off-shore from the UK economy eliminating any tax revenue from it.

- New off-payroll rules for the public sector caused nurses to leave the profession.

- Extension of off-payroll rules to the private sector will create a new class of 'zero-rights employee' that is wide open to exploitation from unscrupulous businesses.

ANSWERS TO SPECIFIC QUESTIONS

Existing measures in the public sector

1. Prior to the implementation of the new off-payroll rules to the public sector my fiancée was a Mental Health Nurse providing services for various NHS trusts. She loved nursing and was using the flexibility of working through an agency to work around family commitments and more importantly gain a wider experience of working at different hospitals. When the off-payroll rules were applied in 2017 the agencies passed all the costs of the change onto the nurses and made them use rogue umbrella companies (some paying via loan schemes). This reduced income by approx. 30% overnight.
As a direct result of the off-payroll rule change in 2017 my fiancée left nursing to retrain, starting from scratch, as a software tester. It was heart-breaking to see her forced out of an industry she had trained for for many years and loved.

Impact of new off-payroll rules on organisation

2. From my experience the impact of the extension of the off-payroll rules to the private sector has not been adequately assessed. The impact of the extension of the off-payroll rules to the private sector at the organisation I am currently engaged with is to offshore projects that were being worked on in the UK to other parts of the global organisation. This is highly skilled aerospace work removed from the UK economy, along with any tax revenue it would generate.

3. N/A

4. In my experience and industry it has led to the off-shoring of key highly skilled aerospace work-packages that may never return to the UK. This has impacted contractors who are having to close PSCs as well as the supply chain of accountants, bookkeepers, hotels, indemnity insurance providers etc.
My finance has left Mental Health nursing purely because of the off-payroll rules to the private sector. The impact was to force her to leave a vital industry in which she previously loved working.

5. Full, clear alignment of employment of tax purposes with employment rights.

Determining tax status of workers

6. From my experience companies find these rules very unclear and have gone down the zero-risk route of not engaging with PSCs altogether instead of attempting to navigate these tests.

7. CEST in its current form, though improved, is still not fit for purpose.

8. Organisations are circumnavigating the status determination process by announcing blanket company policies to either not engage with PSCs at all or that all assignments are deemed 'inside IR35' regardless of the work performed and all the other key attributes.

Policy objectives and wider context

9. Full, clear alignment of employment of tax purposes with employment rights.

10. From my experience so far it is a resounding 'No'. At the company I am currently engaged, and the wider aerospace industry, the work currently performed by UK Limited PSCs will after April be performed by offshore entities of the global companies. All tax income currently collected from those contractors will now be removed the UK economy entirely.

11. Through my fiancée's experiences in the public sector I have witnessed the predatory role of several umbrella companies. Certain NHS trusts forced her to go via certain umbrella companies and having seen their proposals I was appalled by the, often hidden, fees involved and even several paying nurses via a loan scheme arrangement. This was well after the infamous loan charge scandal emerged.

12. It is totally unfair and discriminate for an individual to be classified as 'employed for tax purposes' but not recognise as employed for any other purpose. It is not morally right to create a new class of zero rights 'employed for tax purposes' individuals.

Many small businesses started as a single person PSCs, employed a few people and have grown into much larger companies with hundreds of employees. The extension of the off-payroll rules to the private sector removes the potential for small businesses to start-up in this way. This is of crucial importance and a backward step in the global digital information age. Over time this will increase barriers to entry to many industries and lead to less competitive markets.

There are very bleak implications of the extension of the off-payroll rules to the private sector for all employees and individual. This creates a new class of 'zero rights employee'. What CEO or business owner isn't going to see this as a great opportunity to slash employment costs by placing all employees on to an 'inside IR35' contract.

END OF STATEMENT

24 February 2020

Richard Stephenson

The following responses to the call for written evidence to the Finance Bill Sub-Committee are made in a personal capacity. Where evidence has been based on external sources of information, references are listed.

What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

Although I don't have direct experience of the public sector reform in 2017, I have been advised by contractors that were affected that this was a very disruptive change that resulted in large numbers of contractors terminating or not renewing contracts because of initial blanket 'inside IR35' status determinations. I understand that projects suffered from lack of specialist skills and knowledge as a direct result of this and that the contract market in the public sector did not stabilise for over 12 months. My current experience of the changes in the private sector indicate that the same disruption is about to occur and that lessons do not appear to have been learned.

Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

The effect of the extension of the off-payroll rules to the private sector is significant. As we have seen in high profile news reports from the banking sector, clients are choosing to avoid the legislation entirely by discontinuing their use of contractors rather than take on the burden of making individual status determinations. This will result in severe skills shortages and delays to projects as the very nature of a specialist contractor is to supply a service that is not available within an organisation.

Those clients who do take on the burden of assessing status are making blanket determinations by role in order to avoid the workload involved in assessing each contractor individually. It is not possible to accurately make determinations without knowledge of individual working practices so I would expect any contractor whose status has been determined in this way to appeal, leading to further administrative burden.

https://www.simplybusiness.co.uk/knowledge/articles/2019/10/how-big-businesses-are-responding-to-IR35-reform/
https://www.theregister.co.uk/2020/02/24/bae_puts_all_contractors_inside_ir35/

What will be the effect of these new measures on a chain of contractors and sub- contractors?

In my experience this has caused confusion over where the responsibility lies for making a determination. News articles have highlighted the approach taken by banks in disallowing their suppliers from using contractors, presumably to avoid any potential liability if they were deemed to be the end client.

https://www.contractoruk.com/news/0014399hsbc_bans_consultancies_supplying_limited_company_contractors.html

What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

The IR35 rules are not simple and I don't believe it to be possible to reduce the administrative burden on organisations. Ideally there would be an independent legal advisory service available to businesses to ensure that their understanding of the tax rules is accurate.

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

The rules for determining status are clear to most contractors as they have been responsible for making determinations until now. Contractors providing a genuine business to business service will have had their contracts and working practices independently reviewed and will have used the CEST tool to provide additional clarity.

I do not believe however that the rules are sufficiently clear yet to clients as they haven't needed to understand them until now. My experience is that determinations are being made without any knowledge of the individuals involved or their working practices.

If there was an expectation of a dialogue between the engager and contractor during the completion of the assessment then I believe that this would greatly streamline the process, improve understanding and the accuracy of the determination.

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

If the tool could be relied upon to give an unbiased status determination then it would provide clarity to all involved at the beginning of a contractual relationship. Unfortunately I don't think it is able to deliver this currently.

I believe that some of the questions asked by CEST could be interpreted differently by different individuals and may lead to different answers being provided depending on how risk averse a client is and how familiar they are with the day to day working arrangements. There is a useful reference guide supplied, but this does not easily enable the questions to be applied to all situations. In addition, there is currently no direct link from a question to the relevant supporting guidance.

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

There is to be a mechanism of challenging status determinations, however it is not clear how clients will have the resources to do this if a significant proportion are challenged. In reality, I would expect contractors to find new contracts after April if they do not agree with the determination. Indeed all of the contractors that I have spoken to after receiving 'inside IR35' status determinations have rejected the determination on the basis that they were blanket assessed and chosen not to accept contract renewals for April.

Given the ambiguity of some of the CEST questions, I would be surprised if a determination could easily be overturned because of the potential liability involved. I have been advised that one large organisation has agreed to consider evidence that contractors are outside the scope of the rules, but that the bar has been set so incredibly high that no 'outside' determinations have been made.

Will the Bill, as drafted, achieve the Government's objectives?

I do not believe that the Bill, as drafted, will achieve the Government's objectives. There are certainly contractors working as 'disguised employees' who are incorrectly determining their status currently, but I do not believe that the numbers are as high as stated. Contractors who are genuinely in business will not accept being falsely classed as employees of their clients and will look to diversify and adapt their business plans.

In addition, there is the potential impact that the changes will have on the UK economy and investor confidence.

https://www.proactiveinvestors.co.uk/companies/news/913349/imminent-ir35-tax-changes-could-cost-uk-22bn-in-lost-productivity-913349.html

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

I do not believe that it is fair for individuals to be taxed as employees but not receive employment rights.

There have already been successful cases in the public sector demonstrating the right to holiday pay for workers in scope of IR35 so I would expect to see an increasing number of cases brought against engagers at employment tribunal. This is perhaps another reason why so many engagers are choosing to discontinue their use of contractors entirely.

https://www.icpa.org.uk/portal/payroll_employment/hmrc_ir35_holiday_pay

9 March 2020

Andy Stokes, (Andy Stokes Consulting Limited)

1 - Background

I am the sole owner, director and employee of my company, which is defined to be a Personal Service Company (PSC). The company is 'in business on its own behalf', an ongoing concern and supplies consultancy and technical services to medium to large legal ('law firm') organisations on a business-to-business basis, primarily in the UK but also in Europe and the rest or the world. 'Export' work accounts for approximately 20% of work undertaken. The company invests in training, marketing and event sponsorship activities, and is a member of specific user groups and partner membership programs with 3rd parties.

The work undertaken is project, as opposed to role, based and largely relies upon 'statements of work'. At any point in time the company is engaged with multiple projects, splitting time between various client projects as required.

Whilst there is a long and troublesome background to HMRC and its IR35 legislation interpretations, it is assumed that the Sub-Committee is well versed with this history.

2 - Answers to the specific questions raised

A - Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

Whilst I do not engage in the public sector, I believe that the experience in the public sector has not been at all as harmless or positive as HMRC continually insists, and that HMRC have learned no lessons from the issues – which I am sure will be documented by others- caused by the public sector roll out. Also, despite the 2018 'Off-payroll working in the private sector' consultation (to which I responded, including with alternate proposal ideas), it seemed apparent that HMRC were determined to ignore the 2018 consultation and to

push ahead with their own flawed and pre-determined, public sector based, methodology.

B - Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

In my opinion they have not. The financially risk adverse corporate level 'blanket decisions' and refusal to engage with PSCs via Agencies which is happening within the market at present were unforeseen and not assessed and therefore planned for. As documented elsewhere, even before legislation is passed, this is leading to:

- *Individual hardships for contractors, both financial and emotional.*
- *Offshoring of 'contractor' appointments and projects with a commensurate impact on the UK economy.*
- *Project delays at a time when infrastructure projects are required to be implemented for the UK.*

With respect to the compliance burden, I am aware that many of my clients (who are in the medium/large sectors) have yet to fully understand or engage with the proposals. Due to the delay to the 2019 Finance Bill being passed then client engagement will be rushed, leading to errors in determinations and an increased burden of administrative costs.

I believe the compliance burden is falling much too heavily on both corporate and individual taxpayers and that HMRC are merely espousing their own poorly developed methodologies without adequate or timely communication and are 'waiting for the money to roll in' without taking any burden upon themselves.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

I believe it is robust enough, and that no additional assurances are required.

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

Not applicable, as I do not engage via 'chains'.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Take as many 'gig-economy' workers as possible from inside the scope of the measures. Replace and/or enhance the current proposals with a pre-approval system whereby vetted PSCs can be completely pre-opted out of IR35, although paying a commensurate amount of National Insurance in line with the reduced statutory benefits which they receive.

HMRC should produce more 'plain English' publications to assist with understanding. At present you have to be an employment or tax lawyer to understand a word of it!

C - Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

They are not. They do not reflect the reality of the contracting environment and tests often produce 'false positives' as at least a small element of an engagement may fail a particular Yes/No type test, even though that element has no bearing on employment status; for example on Control or Use of Equipment.

The tests certainly do not take any account of the subtleties, complexities and realities of the varied 'gig-economy' as it apples in the 21st century.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Having assessed both the previous and current versions of CEST, then my observations are that the latest changes are an improvement - though only to the extent that they are 'a Parsons Egg'. However as Mutuality of Obligation (MOO) is always assumed to be the case and excluded from CEST, then its absence still renders CEST largely invalid. Its tests are also too simplified (see item 6 above) and can still lead to too many 'false positives'.

MOO must be included. MOO and other questions should be more nuanced and worded in a manner to indicate if the answer to any question has bearing on employment status or not. Questions regarding Control and Substitution should take into account the nature of the service actually provided and working practices involved.

- *In all my, and anyone else's engagements, there is always a degree of MOO. However, the mutual obligation is merely that "I do the specified work and the client pays my company" - there is never any aspect of a continuing obligation for further work. But because any degree of obligation exists, then even though it has no impact at all on employment status, then full 'employment status' MOO is always assumed by HMRC.*

- *Direction and Control. In all my engagements, there is always a degree of 'Control'. However the 'control' relates merely to things such as Health and Safety, security and non-disclosure obligations, rather than day to day management of my work or working practices. However because there is a degree of 'control', any honest answering of the simplistic CEST questions will lead to a 'false positive' result, even though the 'control' elements in question have no impact on employment status.*
- *Use of Equipment. As an IT Consultant I often 'use' my clients' equipment. However this is the clients virtualised computer equipment (i.e. non-physical) but accessed physically only via my own computer. So whose equipment is really being used? In this, and in any other ways, HMRCs definitions, questions and assumptions make no sense in such real world situations.*
- *Substitution. With due respect, I am not a plumber! As an acknowledged expert in my field, my clients engage me through my company for my unique skills and experience and once a project has commenced would not accept a substitute for me, even if one were to be available at short notice. Once again HMRCs simplistic approaches do not take into account such real world situations.*

I would not enter into any engagement where a client only used CEST to make a determination, as I would consider its use to be an indication of a client not taking sufficient care with respect to a determination.

Finally, CEST results are often contrary to, and do not reflect, decisions from actual Tax Tribunals.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

The process will be mostly irrelevant as clients are already using blanket decisions and refusal to engage with PSCs via Agencies due to the nature of the proposals and them being financially risk averse. Where clients do engage then the process is better than no notification at all.

However I foresee that any challenges made to clients may result in 'back door' loss of contract and black listing, and provision should be made in order to ensure that this does not happen.

D - Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Yes, there are. Many alternative ways were proposed during the 2018 'Off-payroll working in the private sector' consultation (to which I responded with alternate proposal ideas). However it seemed apparent that HMRC were determined to ignore the 2018 consultation ideas and to push ahead with their own pre-determined methodology. The alternative methods proposed by many parties during the 2018 consultation should be independently re-assessed and reviewed.

10. Will the Bill, as drafted, achieve the Government's objectives?

With respect to Governments objectives, then an issue with the drafting of the Bill and its predecessor is that H.M. Government and H.M. Treasury are 'allowing' HMRC to draft legislation for them, rather than drafting legislation in a non-partisan and fair manner for HMRC to then implement. Given HMRCs own objectives to meet targets concerning tax avoidance and evasion, then their drafting is biased, based on false assumptions, lazy and burdensome to others, whilst applying to far too many individuals than should be the case.

However, yes - It will potentially result in more 'tax take' revenue, particularly NI, from contractors forced into 'on payroll' working through blanket decisions etc.. However I believe the actual net 'tax take' will be reduced because jobs will be offshored and the UK economy will suffer overall.

11. What is your view of the role of umbrella companies in the context of these proposals?

No applicable, as I do not engage via umbrella companies.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

The new measures potentially affect a large number of people, and will complicate their business and personal lives to the extent that they will lose income and quite possibly their careers as jobs are outsourced. The burdensome methodology will be a drain on productivity.

The 'gig economy' is large and very nuanced, ranging from zero-hours contract to highly paid consultancy work, and the 'one size fits all' approach adopted by HMRC is overly simplistic in its assumptions and approach, while at the same time being overly complex in its execution.

It would be highly unfair, and against a sense of natural justice, if individuals are forced to be taxed as employees whilst at the same time not having the rights and statutory benefits of such employees.

3 – Summary

A - Conclusions

- The proposed timescale for implementation of the Finance Bill 2019 with respect to IR35 changes is now untenable. This is because of:
    - Uncertainty introduced due to the delayed passing of the Finance Bill 2019.
    - Uncertainty due to poor communication by HMRC of overly complex procedural measures.
    - Unforeseen consequences happening in preparation for the expected changes, namely:
        - Financially risk adverse corporate level 'blanket decisions' and refusal to engage with PSCs via agencies, leading to:
            - Offshoring of contractor appointments.
            - Delays to crucial private sector projects.
            - Adverse impact to individual workers.

- While improved, HMRC CEST is still largely unfit for purpose.
    - It assumes MOO completely and fully applies, rather than assessing its relevance to employment status.
    - Its questions are still 'too blunt a tool' and take no account of the realities of working

- With respect to 'employees' tax vs. benefits, then the implementation will result, and is already resulting, in an inequitable treatment of a potentially very large number of workers.

- Whilst IR35 legislation laudably attempts to address the issue of <u>actual</u> disguised employment, the broad net cast by HMRC, based as it is on outdated and outmoded understandings of the realities of working in the 'gig-economy' in the 21st century, is now unfit for purpose and is affecting too many workers who should not fall into categories covered by such legislation.

B - Recommendations

A - That the implementation of the Finance Bill 2019 with respect to IR35 changes be abandoned or most certainly postponed, at least for 1 year.

That while the implementation is postponed, the following actions should take place:

B – Because the alternative methods proposed by many parties and put forward during the 'Off-payroll working in the private sector' 2018 consultation were dismissed out of hand by HMRC, then these proposals should be independently re-assessed and reviewed in order to examine the potential for solutions in respect to question 9.

Specifically, ways should be sought that will remove as large a number of 'gig-economy' workers as possible from inside the scope of the measures. This would replace and/or enhance the current proposals with a pre-approval system whereby vetted PSCs can be completely pre-opted out of IR35, although paying a commensurate amount of National Insurance in line with the reduced statutory benefits to which they are entitled.

C – If continued, then CEST should be made fit for purpose and brought into line with Tax Tribunal findings

D – That IR35 private sector changes should not be implemented until such a time as the inequity of individuals being taxed as employees whilst at the same time not receiving the rights and statutory benefits of such employees are addressed. Such changes must also be applied to those in the public sector who have suffered under this inequity for several years.

E – HMRC drafting of legislation of behalf of H.M Government should be subject to independent oversight.

10 February 2020

Lucie Stokoe

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

Answer: No. The impact has not been assessed. For starters, the rules only consider the tax implications and do not consider the employment status in the context of employment law and the rights of employees.

HMRC's estimates of the revenue it expects to raise by this tax raid does not take into account the loss expected in corporation taxes, dividends paid, VAT (for certain sectors) and other income taxes, through people being forced into PAYE or being made jobless from these new rules.

At my current client, rather than face the administrative burden of assessing everyone and for fear of getting the assessment wrong, they have already announced a blanket ban on all contractors operating via limited companies.

Our only option is to accept a PAYE role/working via an umbrella or leave. This is going to invite future tribunals from disgruntled

professionals who have been forced into PAYE/umbrella companies by clients, but have not been offered any benefits. Worse still for us true self-employed, we will be unfairly paying extra tax when we should not be. This also invites future law suits to claim back the additional tax that we have unfairly been forced to pay.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

Answer: As above, at my current client, our only option is to accept a PAYE role/working via an umbrella or leave. This is going to invite future tribunals from disgruntled professionals who have been forced into PAYE/umbrella companies by clients, but have not been offered any benefits. Worse still for us true self-employed, we will be unfairly paying extra tax when we should not be. This also invites future law suits to claim back the additional tax that we have unfairly been forced to pay.

For my mental health, I fear that if I do accept an umbrella role, HMRC will open an investigation into my previous earnings. Whilst I am confident and have evidence to support that I am truly self-employed, this will cause serious damage to my wellbeing.

The only other option I have is to take up a role outside IR35 – there are such roles out there for my profession, but they are few and far between, given the widespread fear from clients of getting assessments wrong, they are opting for blanket bans on limited liability companies. Again, opting for this route, I fear further scrutiny from HMRC as they believe that 95% of all self-employed should be inside IR35.

This leaves the only safest option for me, which is currently my preference of leaving the employment market and taking some time out to wait and see what happens. (In which case, HMRC ironically will lose out from me. I currently pay around £100k a year in taxes through my company and self- assessment. I feel that I definitely pay my fair share already and am right to be assessed as truly self-employed.)

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Answer: From the conversations I have had with my current client, it is clear that the level of understanding of the rules is not high. My client has told me that they have received misleading and contradictory advice from HMRC and the managers that would be responsible for

performing such an assessment do not have adequate knowledge and understanding of the rules.

This, combined with the fear and risk to a big corporate of getting the assessments wrong has led them to blanket ban all limited liability contractors.

HMRC's advice and factsheets are poor and contain little/no helpful information to contractors. For example, suggesting that true self-employed individuals need not do anything to prepare. Yet, how can this be the case where companies are applying blanket bans on self-employed contractors?

To help businesses, for starters, they need to be very prescriptive on what they mean by each of the questions on say CEST tool. i.e. Does your client have the right to decide how the work is done? And they need to give consistent advice when speaking to companies about interpretation. (For example, my client has said, "HMRC doesn't mean that in reference to a point of interpretation in their employment manual, they told us at a meeting that it means this…"). This is not helpful if firms are expected to use say CEST to perform any assessments.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

Answer: No, as above. CEST is not fit for purpose – it does not consider the Mutuality of Obligation (MOO) point. Our contracts clearly stipulate that "no party wishes to create or imply an mutuality of obligation between themselves either in the course of or between any performance of the services or during any notice period…."

At present, I work for my client on a Brexit project as a regulatory SME. After the Brexit deal and with the announcement of an implementation period to the end of the year, at least 5 of my colleagues were served notice under their current contracts on the basis that there is no longer any work for them. This again supports the no MOO point in our contract.

From reading previous IR35 cases that have failed in court, I understand that many of these have ruled in favour of the self – employed where there is no MOO. However, even in those cases that a court of law has upheld to be clearly outside of IR35, CEST would still assess these individuals as being inside IR35 as it assumes MOO.

CEST needs to consider MOO for starters.

CEST is ambiguous re the points on substitution, control and financial risk. It needs to be more prescriptive over examples of what are in and out. For example, my client was told by HMRC that in response to the question "will you have to fund any other costs before your client pays you" – individuals would not be able to include travel abroad where say an individual would be out of pocket for up to £2k for 2 months – as they would get this back from the client. It would also not consider professional fees i.e. subscriptions and insurances where the self-employed would never get these costs back as true costs.

CEST does not ask enough relevant questions. For example, if the limited company is used for other work, not similar, but other work, why is this not relevant if it means that an individual has multiple clients.

Other tools that third parties provide ask about 50 questions to gain a true assessment. These are much more likely to reflect the reality of the arrangements and result in a more accurate assessment.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Answer: As above, it is not fit for purpose and omits MOO as the key point.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

Answer: As above. Also, in cases that have gone to court and found in favour of the self-employed individual, if the CEST tool was used to assess their status after the court rulings, these individuals would still be deemed inside IR35. This is a clear failing of the tool.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Answer: The increase in dividend tax I believed helped reduce the disparity. I would propose to increase this tax a few more percent to meet the proposed objective. This would raise taxes, whilst also having very little administrative burden on companies.

10. Will the Bill, as drafted, achieve the Government's objectives?

Answer: No. Some true self-employed individuals who fear retrospective assessments from HMRC will retire early, stop working or look to work abroad. This will reduce tax revenues.

As above, the changes will directly reduce corporate tax revenues and dividend tax revenues, so difficult to assess the actual impact.

Companies are trying to make the change cost neutral so are pushing employer NI onto the self-employed, not renewing contracts or are also outsourcing abroad.

The mental welfare of the self-employed will be massively impacted – there are likely to be more self-employed workings going on long term sick, becoming depressed or even worse contemplating suicide.

11. What is your view of the role of umbrella companies in the context of these proposals?

Answer: Umbrella companies that individuals are being forced to work under are increasing fees and offering poor service. Umbrella companies also claim to include business insurance as standard. However, as an Actuary this is not true. I am being asked to pay my own Insurances and professional fees if I wish to continue employment with my current client. This is not fair.

I fear these companies are largely unregulated and will look to take advantage of individuals being forced into this kind of employment.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Answer: As above, this legislation is create a new type of employee – the no rights employee. If I want to continue to operate for my current client, I will have to fork out £3k of professional fees, insurances and the like before I even do a day's work.

Working on a Brexit programme, I will be working with little certainty – any change in the regulations will directly affect my clients demand for resource. Any further delay in implementation will mean I will be served notice of potentially 2 weeks.

I will receive no other benefits, no holiday, sick pay, expenses etc.

Yet, I will be taxed as an employee.

This is not right and will have serious implications for my mental welfare.

Craig Studholme

Please consider the points below when considering the draft Finance Bill 2019-2020.

I would like to highlight what is supposed to happen regarding worker assessments and what is actually happening in the workplace.

I work for a large engineering company carrying out upgrades to facilities and equipment at HMNB Clyde in preparation for the arrival of the next generation of our nuclear deterrent. The company is a huge employer and operates worldwide.

Determining Tax Status of Workers

1. The company have decided to carry out blanket role-based assessments. It is unlawful to carry out blanket role-based assessments as they breach a requirement of section 61T(6)(c) of the Off-Payroll legislation, specifically reasonable care.
2. The company are using the Check Employment Status for Tax (CEST) tool. This tool has been proven in the courts to be inadequate. The questions are very broad and open to interpretation. We need a more detailed assessment such as IR35 Shield available for Contractor Calculator.
3. The resulting unlawful determination from the company using CEST finding everybody to be inside IR35. This is the same as saying two people living on the same street and driving the same car will have the same insurance premium. It does NOT take individual circumstances into account.

What Effect Will These New Measures Have on a Chain of Contractors & Sub-Contractors?

4. The options available as a result of the unlawful determination are:
   (i) Convert to a staff role.
   (ii) Move over to an umbrella service and carry on working in the same role.

   Option (i) is not tenable, I am a contractor for a reason.

   Option (ii) penalises the contractor substantially. Under an umbrella arrangement, it is the contractor that pays Employers NI and the Apprenticeship Levy. The misconception is that the employer or the umbrella will pay this. Also, under an umbrella company you can’t claim expenses (legislation in 2016). Therefore, contractor’s can no longer work away from their local area.

Transferring to an umbrella company working in the same role will open the contractor to investigation by HMRC. They will state that if you are working under an umbrella and your tax status is PAYE, then you must have always been PAYE with this role and they will back-tax the contractor. This is already happening in the public sector.

As stated above, I work at HMNB Clyde and the projects are on a very tight timescale and budget. There are numerous contractors working at HMNB Clyde and the disruption to the programme when the contractors leave will be devastating and unrecoverable.

6 February 2020

Peter Surgett

Existing measures in the public sector 1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?
Contractors can no longer afford to fund their own specialist training as no tax relief is available and cost too high. It can't be claimed back as a company expense as can be via Ltd company. A skills shortage will manifest, and IT systems will become unsustainable.

Impact of new off-payroll rules on organisations 2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
HMRC just say look at the HMRC website. Upon saying I have done and asking a question the response was "that's all we know at the moment". This has to point to poorly conceived legislation!

Companies are blanket banning as they have not sort compliance consultancy properly. But as HMRC don't understand it what chance do they have?

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

Many small companies rely on agencies to source work for their specialist skills. In that respect it would be sensible to say if the Ltd company has a turnover of under £250,000 they sould be exempt from IR35. There little or no information on this.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?
*Contractor will move away, and overseas labour used that is of low quality. I have worked on many project and seen this. *00% of government IT projects (eg the prisoner release employment system Billions and they were told to go to the job centre that costs nothing!) Contractors will no longer be able to be flexible as to the location of working away from their registered company address. This will be due to being unable to claim VAT and relief on working as an independent entity. This will create "Black Spots" for skills geographically. As contractors we don't get sick pay or get benefits if we are out of work. We also read the market and invest in our own skills to accommodate accordingly at our own expense. The tax relief will be lost on this.*
Contractors are not part of the end client's organisation and do not receive any benefits as such. Having deductions of Employees National Insurance AND Employees NI by a third party is paramount to fraud and money laundering by HMRC and the treasury. We pay vast Corporation Tax as companies, NI & Dividend TAX. Other industries supplying training and say lodgings away will be severely hit.
5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?
Scrap IR35 It will cost more to administer that it will gain revenues. All contract scan get unemployment benefit after they fall within. However IR35 is money for no employment rights which is fraud at best.

Determining tax status of workers
6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

They are not clear or Fair. 2000 cases we appealed by contractor and only 10 were wone by HMRC. Under the freedom of information act it will be interesting to know the cost to the public purse.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
Improve it by Scrapping IR35 and its costs.
8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
They are not clear or Fair. 2000 cases we appealed by contractor and only 10 were wone by HMRC. Under the freedom of information act it will be interesting to know the cost to the public purse.

Policy objectives and wider context
9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
Only apply to ltd companies with turn over above £250,00

10. Will the Bill, as drafted, achieve the Government's objectives?

No as it will not way up the big picture costs and just be another government project that costs more to the economy than it gains. The consulting services used in IR35 no doubt will be tendering for outsource!

11. What is your view of the role of umbrella companies in the context of these proposals?

They are middle men money laundering for HMRC.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

It's a complete Joke as specified in my previous answers.

24 February 2020

Simon Taylor

1. I am writing to you as a Director of SPT Development Ltd. SPT Development Ltd provides development, architecture and consultancy services within the IT industry and using HMRCs terminology would be described as a Personal Services Company (PSC). By answering some of your questions, I hope to be able to give you insight into how the proposed extension to off-payroll working rules are *already* impacting small companies like mine, the affect this is having or is likely to have on me and my company, and how I believe the Government could meet their objectives with a much lower impact.

2. *Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed?…* The 'Impact on individuals, households and families' section of the draft finance bill states, "Those who are complying with the existing rules should feel little impact. The measure is targeted at individuals who are not compliant with the current rules." I argued with other contractors 12 months ago that I had nothing to worry about with the proposed changes because I already complied with the existing rules and the rules to determine an individuals status for tax purposes weren't changing. What I had failed to take into account and has clearly not been taken into account when assessing the potential impact of these proposals, was the risk averse approach that clients would take - either no longer engaging with Ltd company contractors or blanket determining all contractors inside IR35. If I am no longer able to to engage with clients as I currently am, the financial impact to myself and my young family will be devastating.

3. *What will be the effect of these new measures on a chain of contractors and sub-contractors?* In theory the effect on contractors should be negligible, however this doesn't take into consideration the risk-averse stance many engagers, including my current client, are taking. The number of large organisations refusing to engage directly with Ltd company contractors and forcing them to either become permanent employees or work through an umbrella company is well documented and ever increasing. My current customer who engages with around 2000 contractors, is making blanket determinations that determine all contractors to be inside IR35. The primary reason for this outcome is that the client has said that they would not accept substitutions when completing CEST; this is despite all contractor's contracts containing substitution clauses allowing the contractor to provide adequately qualified substitutes, as well as examples of substitutes being provided. The effect of this on my company is that I will no longer engage with my current client and will have to find a new client in a market where the number of potential clients has vastly reduced.

4. *Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?* I believe that

the tests for determining the employment status are clear. I have always ensured that any contracts I have signed contain clear substitution clauses etc and also had my accountant review new contracts to ensure they are IR35 compliant. The problem seems to be that contracts are being torn up by both HMRC and engagers like my current customer. If contracts are ignored the question of things such as substitution become subjective and using a tool such as CEST, you are able to manipulate in such a way as to get the outcome you desire - for the same engagement I am able to find myself outside IR35 whilst my client is able to find me inside, simply by answering the question of substitution differently. If we both had to answer the question based on what is written in the contract between us (possibly having to reference relevant sections of the contract) this could go someway to help work around some of the deficiencies of CEST, and would certainly remove some of the subjectivity from the process. However, unless HMRC also only take into account what is written into a legally binding contract between two parties, then clients will still be left open to litigation and risk averse ones will no longer engage directly with Ltd company contractors.

5. *What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?* IR35 is complex, I don't believe anyone can argue honestly that it isn't. It *may* be possible to develop a tool to automate the process of determining an individuals IR35 status, but in my opinion it would have to be an extremely complex piece of software making use of cutting edge AI and machine learning technologies, even then there probably wouldn't be enough data available to train such a tool to make accurate determinations. A simple rule based application such as the CEST tool certainly isn't the answer. It is very simple to see from the tools publicly available configuration files, that there is far too much emphasis placed on the question of substitution (see https://github.com/hmrc/off-payroll-decision/blob/master/conf/tables/2.4/personal-service.csv for example) and not enough on direction and control and the absence of mutuality of obligation. Case law would suggest that all three of these pillars of IR35 must be in place to be classed as an employee.

6. *Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?* I believe that these objectives can be fulfilled quite simply by mandating that PSCs must take out IR35 insurance in much the same way as companies who employ people must have in place employer's liability cover. Many contractors already have such insurance in place therefore the cost should not be prohibitive, in fact if it became law the cost is likely to come down. The insurance companies would act as an independent body when determining the IR35 status of an engagement rather than it being down to the engager or the contractor, both of which have a vested interest. Generally, these insurance companies provide an in depth review of both the contract and working practices when insuring a contractor which is a much more reliable way of determining employment status for a given engagement, than a simplistic tool such as CEST.

7. *How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?*
Anyone working inside IR35 in my opinion is treated as a second class citizen. How can it possibly be fair that an individual is taxed as an employee but receives no holiday pay, no sick pay, no pension contributions and who's contract can be terminated at a moments notice? The approach to the IR35 changes that my current customer has taken would never be tolerated if they were treating their employees this way. On a business to business basis, I accept that my customer has no duty of care towards me as an individual, but don't then tell me that for the purposes of tax I'm not a bonafide business and I must be taxed as an employee.

8. I hope you find the answers I have provided to some of your questions helpful.

8 February 2020

Vicky Taylor

I am writing to provide the Committee evidence of my personal experience from just the last few weeks regarding the confusion/new corporate mindset around the proposed IR35 tax legislation changes for the private sector.

I am a single employee, owner, Director, of Taylor Clinical Solutions Ltd which has for the last 5 years provided freelance clinical research services to the pharmaceutical industry. I have worked in this industry for over 20 years, working my way up from junior positions to senior clinical operation posts and have found that the freelancing world has allowed me, as a working mother, to both keep my 'hand-in' within the industry and to balance family life.

I am currently awaiting a final status determination from an End Client in relation to a role I am already engaged in and for which I undertook my own due diligence with respect to IR35 by seeking a contract/working practices review.

The End Client recently saw fit to advise that an internal review of their own had been completed for all contractor roles and I along with a large group of contractors were now found to be inside the scope of IR35! The options presented were to appeal (at own cost but through a reviewer provided by the End Client) or not to appeal and wait further instruction regarding taking up PAYE or working via an Umbrella company –information regarding this is still to materialise.

I have appealed and am still awaiting further feedback on my final status determination (was expected first week in March – *update: now 10-Mar-2020*

and still no final status determination), but not nearly enough time for me to make informed plans about my future work prospects before the April 6th deadline. I have been presented with a *fait-accompli* where my independent freelance status is being removed. I am livid and totally helpless in all of this. I believe this is primarily due to larger organisations and in particular their finance directors mitigating against any risk and simply applying a 'no tax risk' outcome across the board. I believe this is due to misunderstanding about the process and the longer-term impact with respect to HMRC.

My experiences I suspect are not unique and probably being replicated across many other sectors where there is often a need for rapid deployment of contractor services based on immediate R & D requirements. The dynamics of pharmaceutical industry resourcing are fast-moving and freelancers provide the flexibility around this for many organisations – I believe some 15 – 30% of parts of the relevant R & D headcount. The pharmaceutical industry is one of the UK's most successful sectors and in a post Brexit economy one that should be supported to continue to drive the UK economy forward.

I would strongly argue that the flexibility offered by freelancers is the benefit they receive from the undue risks they take in the working set-up – including the following:

1. No work equals no pay – in most employed scenarios there is often some paid support for caring roles for children, elderly or even the bereaved. A freelancer covers this all at own cost.
2. Having to fund own car, holiday pay, life insurance, illness insurance, public liability insurance, professional indemnity insurance, pension.
3. To secure a freelance role via HR recruitment often requires a Ltd Company set-up with all that this entails in respect of accountancy fees and the running costs of a business.

Fundamentally I do not know where this will lead me in the next few weeks – it is unlikely I can remain in the role I have just signed for as this would not be viable for me with all of the above to consider and the very fact the End Client have advised that my current rate cannot in any way be re-negociated as part of the upcoming changes.

I would ask that the Chancellor puts on hold his decision to implement this latest change and seeks a deeper and more wide-ranging review of the current tax system in respect of freelancers. One that is fair and that still recognises the very great benefits a freelancing workforce offers UK plc.

24 February 2020

Dr Andrew Tekle-Cadman

As a senior IT consultant, I wish to submit evidence to the Finance sub-committee regarding changes to off payroll tax legislation under the following headings under the following defined areas of interest:

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

As your Lordships are no doubt aware, originally IR35 was brought in by the then Chancellor Gordon Brown in April 2000. Let me begin by saying I accept that some tightening of legislation was needed: contractors working for a single employer for several years without a break are plainly not consultants in the accepted sense of that term. However, Brown's scheme was far too complicated, confusing and clumsy to be workable, and it remains so today. As a result, now IR35 compliance is being transferred to the end client, we are seeing mass blanket bans and offshoring of many contracting roles by major corporations. Tens of thousands of contractors are affected. None of this was foreseen by the Inland Revenue.

Many others will have written to you detailing the injustice and anxiety this is causing to contractors so I will not repeat those arguments here.

Instead, I wish to concentrate on the colossal and irreparable damage this is doing to the entire UK IT ecosystem. If the legislation is not suspended before April, then even repeal at a later date will come too late.

It is very clear that the Inland Revenue simply do not understand how the IT industry and the contractor market actually works. Contrary to what the Inland Revenue believe, there is not widespread non-compliance amongst IT contractors - as witnessed by the fact that the Inland Revenue have lost around 80% of cases for non-compliance brought to the courts. However, even if non-compliance was as widespread as the Inland Revenue believes, the medium to long term cost of IR35 as it stands would still not be worth it.

Rather than being engaged in "concealed employment", most IT contractors are in the main very highly skilled, self-driven dynamic individuals: they spend a great deal of their own time constantly re-skilling and training in order to keep themselves in demand going forward. The high rates of pay and previous tax regime allowed them to take entrepreneurial risks simply not possible when engaged in permanent employment.

When between roles contractors not only retrain using their own capital in cutting edge skillsets but often contribute free code libraries to the Open Source movement that can be used by others free of charge (indeed evidence of having done so is necessary to get many roles). They often present their work at London's thriving IT evening "meet up" scene, creating rich and highly productive networks in the process. Others use their accrued savings to start their own start-up ventures between contract roles. It is simply not possible to do this to anything like the same degree when engaged in full-time permanent employment.

All this creates a very dynamic but very delicate ecosystem. After being in the shadow of Silicon Valley for decades, London, precisely because of its relatively low level of regulation, has now managed to forge a dominant niche for itself, particularly in the "FinTech" (financial technology) space, providing a huge service to and symbiotic industry with the financial services of the City of London.

It is no exaggeration to say that all this is now in very serious risk: many extremely highly skilled and experienced consultants are downing tools. The disruptive damage to existing live project work is already catastrophic.

Even worse, as IT skills are, of course, internationally transferable, many others are moving to rival IT centres abroad such as Berlin. It is highly likely that once gone many will never return. At the time when the City of London and the UK generally is gearing up for the post Brexit world, we are about to permanently hobble one the UK's greatest strengths.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Yes, originally the system was designed to target the worst abuses where people were working for several years for one company at one stretch.

It would be much better to put in place the following rules.

- Contractors to be automatically converted to PAYE after, say, two years continuously working for a client.
- Contractors to be judged as PAYE if they spent say 60% of their time working for a given client in a 5 year period.

Such a scheme would be much simpler to administer, be regarded as fair and just by contracting community and business and would preserve the dynamism and flexibility of the UK IT eco-system.

10. Will the Bill, as drafted, achieve the Government’s objectives?

No, it is proving highly detrimental. The loss of revenue has already made a complete mockery of the Inland Revenue's calculations:

see here: https://www.cbronline.com/news/ir35-research-demonstration

However far worse is the long-term damage that is underway to the IT ecosystem in general: we will never know how many start-ups will never start that could have become world beating British companies one day, or how much the future profits of City of London may be affected.

I therefore beseech your Lordships to stop the rollout of IR35 for at least a year and look at replacing it with a simpler scheme.

25 February 2020

Daniel Thiel

I am impacted by the extension of off-payroll working rules.

I have been a self-employed contract worker since January 2017.

My current client, a very large bank in London, has blanket banned all contractors who work via their own Limited company, and are terminating those still under contract, early.

My client has offered me a new Fixed Term Contract (FTC) contract on a Pay As You Earn (PAYE) basis, due to start on 2 March 2020, but with a 25% rate cut.

My issue with the above is as follows:

1. The new contract arrangement provides none of the following statutory benefits:
- Paid sick leave, maternity, paternity or adoption leave
- Holiday pay
- A maximum work week of 48 hours.
- Antenatal care.
- The ability to apply for flexible working hours.
- Access to grievance procedures.
- Job security/entitlement to redundancy.

2. My contracted day rate is being reduced by 25% to cover all of my Client's tax obligations re: me now being PAYE:
- Employers tax contribution: 13.80%

- Employers statutory pension contribution: 3.0%
- Apprenticeship levy: 0.5%

The above means that I will be taxed as an "employee" without receiving any statutory employee benefits or entitlements, and I am responsible for the funding the client's tax obligations.

The stress of the above is having a detrimental impact on my mental health, but there are very little jobs available in the market due to the chaos that the off-payroll legislation is causing.

The above also means that I will close my Ltd company and no longer need to services of a local accountant, solicitor, financial advisor, and insurance broker, so the small business sector will also suffer as a consequences of this ill-thought-out and 'anti-business' legislation.

11 March 2020

Mark J Thomas

Firstly, I should say that I am an independent IT consultant operating through my own limited company along with my wife, we jointly own the business and have done for over 23 years. We have provided Business services, Project Management and Testing consultancy for many clients, predominantly in the private sector.

My broad view with regard to the extension of Off Payroll Working to the private sector in April 2020 is that it will prove to be an unmitigated disaster for UK Plc with the possible destruction of large parts of the flexible workforce which will severely impact on projects which are crucial to the UK's future particularly in a post Brexit landscape.

There are many specific questions that you are seeking views & evidence on but I opted to answer Question 4 'What will be the effect of these new measures on a chain of contractors and subcontractors?' as this is of most relevant to my company.

From personal experience I have not been able to find a client since the turn of the year. After speaking with many agencies and direct contacts in companies that I have previously supplied services to it is obvious that companies are already delaying or curtailing project work. Also, there is evidence in the public domain that large organisations such as Banks, Energy companies and others are blanket 'banning' any freelancers. Basically, they are not taking any account of individual assessments or are even prepared to carry them out. Examples of these include HSBC, Lloyds, Nat Grid & BAE. I can say with absolute certainty that Nat Grid (where I consulted in a senior capacity in 2017) for one

will not be able to run projects without a flexible freelance base supporting them. Not good for helping them to meet zero carbon energy balancing!

What is the knock on effect of me not working? Well I won't be generating revenue so there will be zero corporation tax to pay - which rather dispels the HMRC theory that they will raise more revenue from this ill thought out move. Also, no VAT will be generated for as long as I am not working - so a loss loss to the Treasury. In terms of our options I know of many consultants who will either:-

a. Retire
b. Accept an IR35 determined contract - meaning a significant drop in income
c. Wait for the market to stabilise - hoping that the legislation is changed when the true fiasco is revealed.
d. Work overseas

In my personal case I will probably choose option (c) as I am not ready to retire, personal circumstances prevent me working overseas and I am not prepared to accept an Inside IR35 contract. However, as I mentioned already my wife also works through our PSC as a contractor. An example of how badly this proposed legislation is being applied is illustrated in her case. She currently has a 6-month contract with a client that straddles the April 2020 start date. Her contract has been independently assessed (at cost to us) through QDOS who provide all our business insurances e.g Professional Indemnity. The QDOS review puts her Outside IR35 **but** her end client chose to use CEST to review it (with all its flaws) and puts her Inside. So, she is appealing but with 3 weeks to go she has been told she faces either contracting through an Umbrella arrangement, accept the Inside determination and carry on using our PSC or leave.The Umbrella companies recommended by the intermediary agency that the client uses all quote Employers NI as part of the deductions from her current rate along with the apprenticeship levy. Added to Employee NI/PAYE she faces deductions of approximately 40% straight away and that is before she starts paying travel costs which are considerable. What ‘employment rights’ does she get? I am still trying to work that out!

We are not alone in our views, there are thousands of consultants/contractors who only want to operate independently acting as true freelancers through our own companies. We pay our taxes, Corporation, Dividend tax, VAT - all of this will be lost if we cease to exist (as will be the case). By the way I do not expect employment rights - I have not been permanently employed since 1996 and I accept the risks that working as a freelancer entails. However, It seems to me HMRC want to impose PAYE on me without bestowing any of the normal 'rights'!. I understand the argument about employer NI but it is coloured and confused by the way that IR35 is set up and this enforcement across the board is not 'fair' indeed it is quite the opposite.

One last point in terms of projected tax revenue generated (which I have not seen widely aired) is that HMRC seem to make a direct comparison between a contractor rate and an equivalent permanent salary. I can tell you from experience that this is erroneous. As an example, a typical daily rate for a Project Manager in the South East would be around £500 per day. An equivalent permanent position would be around £70k - there is plenty of evidence to support this on job sites currently. So the point is that there is a 'premium' paid by clients who want the flexibility of a freelancer. If I extrapolate the daily rate over an annual period of say 46 weeks (no paid holidays!) that's £115k generated net plus VAT. Therefore, I will pay corporation tax on £115k less deductions which will vary depending on my travel circumstances etc. In previous years I have calculated that my MCT bill was actually higher than the PAYE/NIC that I would have paid if I had been permanently employed so the HMRC logic is flawed. They will not generate the additional £1.2 Billion or whatever they project from extending Off Payroll, in fact they may end causing the Treasury to lose money!

I really hope that you can persuade the government to at least delay this legislation so that a proper review can take place and all parties can arrive at a workable solution.

10 March 2020

Adam Timberley, ACMTIX LTD

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

I have undertaken several contracts in the public sector pre-2017 and I was able to operate outside of IR35 quite successfully. I found that as soon as the IR35 came into effect contracts were all advertised as inside IR35 in the NHS and the day rate plummetted. I heard from friends working within the NHS and other public sector organisations that they could not get staff to work for them and any contracts offered were not worth considering.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

I don't think compliance is clear and the associated costs as a result of the confusion are spiralling out of control. There are lots of companies springing up charging huge amounts to verify IR35 status. HMRC themselves do not seem clear on the rules.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

Small organisations are confused about the rules and as such I have seen no contracts offered by smaller organisations because they are not willing to take the risk of employing a contractor.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

HMRC need to replace the CEST tool with something much more specific as at this time it is completely unfit for purpose. There are so many other factors that HMRC should take into account when determining whether a company is a true company and not a disguised employee.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No completely unclear. The rules do not reflect the burden that the ltd company contractor has to take on to run a company and to work for his / her customers at the same time.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

As mentioned in point 5, CEST is completely unfit for purpose. Contractors feel that even if they fill this tool in HMRC will come after them for unpaid taxes despite having an outside IR35 result. The questions should be much more detailed and examining to determine the nature of the business and the contractor’s day to day work and company operational procedures.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

No companies are blanket banning contractors. Challenges are simply being disregarded as being too risky.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Yes, I would be happy to pay slightly more corporation tax and more income tax if required so raise these taxes rather than unfairly persecuting individuals who run companies and taking away their rights to operate as a company while also having no employee benefits.

10. Will the Bill, as drafted, achieve the Government's objectives?

No already companies are confused, sacking contractors and issuing blanket bans. This is a total disaster.

11. What is your view of the role of umbrella companies in the context of these proposals?

Umbrella companies appear as corrupt organisations offering charging contractors fees while also charging hirers fees too. They do not offer any employee benefits and do not do anything for the money they collect.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

No, it is completely unfair. I am happy to work in the gig economy, but I want to feel valued. IR35 devalues my skills and my companies worth. IR35 is also having a negative effect on many of the contractors I work with mentally.

23 February 2020

Mark J Thomas

Firstly, I should say that I am an independent IT consultant operating through my own limited company along with my wife, we jointly own the business and have done for over 23 years. We have provided Business services, Project Management and Testing consultancy for many clients, predominantly in the private sector.

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There are many specific questions that you are seeking views & evidence on but I opted to answer Question 4 'What will be the effect of these new measures on a chain of contractors and subcontractors?' as this is of most relevant to my company.

From personal experience I have not been able to find a client since the turn of the year. After speaking with many agencies and direct contacts in companies that I have previously supplied services to it is obvious that companies are already delaying or curtailing project work. Also, there is evidence in the public domain that large organisations such as Banks, Energy companies and others are blanket 'banning' any freelancers. Basically, they are not taking any account of individual assessments or are even prepared to carry them out. Examples of these include HSBC, Lloyds, Nat Grid & BAE. I can say with absolute certainty that Nat Grid (where I consulted in a senior capacity in 2017) for one will not be able to run projects without a flexible freelance base supporting them. Not good for helping them to meet zero carbon energy balancing!

What is the knock on effect of me not working? Well I won't be generating revenue so there will be zero corporation tax to pay - which rather dispels the HMRC theory that they will raise more revenue from this ill thought out move. Also, no VAT will be generated for as long as I am not working - so a loss loss to the Treasury. In terms of our options I know of many consultants who will either:-

a. Retire
b. Accept an IR35 determined contract - meaning a significant drop in income
c. Wait for the market to stabilise - hoping that the legislation is changed when the true fiasco is revealed.
d. Work overseas

In my personal case I will probably choose option (c) as I am not ready to retire, personal circumstances prevent me working overseas and I am not prepared to accept an Inside IR35 contract. However, as I mentioned already my wife also works through our PSC as a contractor. An example of how badly this proposed legislation is being applied is illustrated in her case. She currently has a 6-month contract with a client that straddles the April 2020 start date. Her contract has been independently assessed (at cost to us) through QDOS who provide all our business insurances e.g Professional Indemnity. The QDOS review puts her Outside IR35 **but** her end client chose to use CEST to review it (with all its flaws) and puts her Inside. So, she is appealing but with 3 weeks to go she has been told she faces either contracting through an Umbrella arrangement, accept the Inside determination and carry on using our PSC or leave.The Umbrella companies recommended by the intermediary agency that the client uses all quote Employers NI as part of the deductions from her current rate along with the apprenticeship levy. Added to Employee NI/PAYE she faces deductions of approximately 40% straight away and that is before she starts

paying travel costs which are considerable. What ‘employment rights’ does she get? I am still trying to work that out!

We are not alone in our views, there are thousands of consultants/contractors who only want to operate independently acting as true freelancers through our own companies. We pay our taxes, Corporation, Dividend tax, VAT - all of this will be lost if we cease to exist (as will be the case). By the way I do not expect employment rights - I have not been permanently employed since 1996 and I accept the risks that working as a freelancer entails. However, It seems to me HMRC want to impose PAYE on me without bestowing any of the normal 'rights'!. I understand the argument about employer NI but it is coloured and confused by the way that IR35 is set up and this enforcement across the board is not 'fair' indeed it is quite the opposite.

One last point in terms of projected tax revenue generated (which I have not seen widely aired) is that HMRC seem to make a direct comparison between a contractor rate and an equivalent permanent salary. I can tell you from experience that this is erroneous. As an example, a typical daily rate for a Project Manager in the South East would be around £500 per day. An equivalent permanent position would be around £70k - there is plenty of evidence to support this on job sites currently. So the point is that there is a 'premium' paid by clients who want the flexibility of a freelancer. If I extrapolate the daily rate over an annual period of say 46 weeks (no paid holidays!) that's £115k generated net plus VAT. Therefore, I will pay corporation tax on £115k less deductions which will vary depending on my travel circumstances etc. In previous years I have calculated that my MCT bill was actually higher than the PAYE/NIC that I would have paid if I had been permanently employed so the HMRC logic is flawed. They will not generate the additional £1.2 Billion or whatever they project from extending Off Payroll, in fact they may end causing the Treasury to lose money!

I really hope that you can persuade the government to at least delay this legislation so that a proper review can take place and all parties can arrive at a workable solution.

10 March 2020

Anthony Thorne

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

No experience as yet however it has been suggested that the public sector entities are not operating the rules correctly and therefore incorrectly classifying indiduals as employees when they are clearly a bona-fide service supplier.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

a. No
b. No and there has been no consideration of the reality of the situation.
c. No and again there has been consideration given to the short and long term effects on the economy.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

No and there needs to be a full review and consultation with the sector plus consideration of the services provided by the contractors.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

In the short term I believe many companies will lose the benefit of highly skilled and technically competent individuals and the project completion will be delayed.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

There is a need to rethink the policy and create a system which reflects reality rather than the hypothetical position that the Revenue takes.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No and No

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The CEST is flawed as it fails to recognise that in many cases it contradicts case law and fails in looking at the reality of the use of contractors

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

No and the tool, if still considered a solution, needs to be totally re-thought out but I believe as all cases are different it will not be able to consider all the relevant facts and perhaps we should be able to consider the intentions of the parties as substantive factor in the determination of status.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Yes and by changing the basis on which small companies are taxed by having some form of look through similar to LLP's but with the ability to move profits in to non-distributable reserves which can be release when company does not have a contract.

10. Will the Bill, as drafted, achieve the Government's objectives?

Doubtful as predicted results fails to recognise all the factors for example loss of Corporation Tax and VAT along with the opportunity costs. It could also put projects at risk in failing to meet deadline and completion dates. It also fails to recognise modern business practices and the need for flexibility in the labour market.

11. What is your view of the role of umbrella companies in the context of these proposals?

An unnecessary expense as contractors should be able to operate with simple rules confirming status.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Tax should not be used as a tool in employment and contract law.

In fact this shows that the UK Income Tax system is not fit for purpose and needs complete and total reform.

Neil Tofrik

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

Unknown – work in private sector

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

N/A

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

N/A

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

N/A – Don't have subcontractors

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules? Determining tax status of workers

The administrative burden has been a problem in the sense that the tool has been changing on a monthly basis which has left some employers to wait until the last minute to make judgements on status of workers and make arrangements with umbrella companies.

It is too easy for the 'employer' to just blanket declare everyone outside rather than spend the time assessing workers individually and there is no real comeback on them for taking this approach.

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

Possibly more clear now, however guidance and tool has not left engager or worker with sufficient confidence as a result of changes to be able to commit to the results.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

In my case the question "Does your client have the right to decide how the work is done?" needs to be broken down further. On our project we are reviewing past advice on defined benefit pensions transfers. We work to agreed guidance from the client as well as regulatory guidance and therefore it is prescriptive for particular circumstances, however as financial services professions we require a particular level of qualification (G60/AF3 transfer specialists) and will bring our skills and experience to the role in making judgement calls in certain areas. Although some will be subject to a level of checking, we have autonomy to make these calls ourselves. It is therefore not clear from the CEST tool what answer would be most appropriate as it is not as clear cut as the questions suggest.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed? Policy objectives and wider context

Despite contractors having the right to appeal the decision, we were never made aware of this by the engager and were told their decision was final in this area.

Ultimately the right to appeal means very little if they are able to end the contract as is at with the relevant notice and therefore there is essentially nothing left to appeal since the role does not exist. As noted above, there is no comeback on the engager for blanketly declaring contractors to be inside and as there is nothing for them to lose in doing so and a lot of risk to avoid, they are naturally going to take this option from a risk vs reward standpoint. Albeit that in the long term they may find it difficult to compete with other firms where they are assessing more fairly.

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Unsure

10. Will the Bill, as drafted, achieve the Government's objectives?

From HMRC's webpage 'Understanding off payroll working' objective is "*The rules make sure that workers, who would have been an employee if they were providing their services directly to the client, pay broadly the same tax and National Insurance contributions as employees.*"

It most cases the only option for a contractor if they wish to be retained is to work through an umbrella company – not only does this mean they pay extra costs and a levy for doing so, but they also have to pay employer's NI – clearly this would not be the case if they were actually employed.

I don't believe this was the government's main motivation in changing the legislation and expect this was primarily to increase tax revenues rather than insure fairness. I'm not aware of the kind of modelling they did around this issue in terms of the expected attrition of contractors (either stopping work completely or moving to much lower paying jobs) but I suspect this was hugely underestimated. The demographic of contractors is weighted towards those approaching retirement and those that stay on inside may well be in a position to maximise pension contributions (£40k p.a.) in the knowledge that they can get this back via pension freedoms in a matter of years anyway. In summary I suspect any increase in coffers for the treasury will be negligible and there is a good chance that this could actually reduce tax revenues.

11. What is your view of the role of umbrella companies in the context of these proposals?

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

No – this is clearly not fair. Workers who were contracting were previously doing so in the knowledge that whilst they had no employment rights (or benefits of any kind), the (now only slightly) favourable tax treatment made up for this fact. This decision on off-payroll working is hugely weighted in the direction of the employer as they have no additional costs or responsibility for those working under an umbrella company whilst the contractor has to suck up all the extra tax/NI for no improvement in working conditions.

10 March 2020

Sayvai Tosu

Summary

Unjust blanket determination of contracts
Scarcity of contracts roles available in the specialist IT industry
Inside IR35? Then why aren't all the rights / benefits of a permanent employee not applied?

Answers To Specific Questions

Existing measures in public sector?

1. No comment.

Impact of new off-payroll rules on organisations?

1. From my perspective and outlook of the industry, it seems there appears to be numerous, and growing number of cases of organisations taking the easiest route of pushing out / banning their flexible workforce, the contractors.

The consequence of this is that this unjust blanket determination without much due diligence to individual cases is harming the freelance market, whereby contractors like myself will be looking at a market, especially in the IT engineering sector, will find much reduced demand for contractors like myself, putting most of us at risk of being out of a job, thereby negatively impacting families, and thereby add to a greater cost to the national economy in terms of health and wellbeing of hardworking contract individuals.

Determining tax status of workers?

1. No comment.

Policy objectives and wider context?

1. If contractors are deemed to be working like a "permanent" employee, thereby deemed to be inside IR35, then how could that be the case if the contractor is not receiving all the typical perks and benefits a permanent member of staff in an organisation would?

Such perks / benefits typically include paid leave, paid sick leave, paid training, pension contributions, and other organisation specific perks.

Also, the termination notice periods are generally not in the favour of contract workers, where we are treated much more as disposable / flexible resources.

All those points mentioned above are differences to permanent contracts to which contractors generally find.

As you can tell, there is a clear distinction between "permanent" and "contract" workers, and so for a contractor to be deemed working as a disguised permanent employee based solely on the tasks carried out without considering the vast majority of differences, as stated above, is seriously way-off the mark, absolutely unfair, and shows the governments' lack of competence in area of off-payroll rules.

19 February 2020

Ian Treharne

This letter is in response to your request for evidence related to the government's plans to extend the controversial IR35 tax rules into the private sector.

If the change does proceed, currently allowable business costs such as those associated with operating away from home (typically accommodation costs) will no longer be allowed on either a business or personal taxation basis. The Company would have ZERO income (funds received from client work are treated as funds payable to Directors).

Our Company would no longer be able to operate in a manner of its choosing. Unless it had other non-IR35 income sources, it would not be able to fund even mandatory insurance costs, and would therefore not be a viable 'going concern', which in turn would cause it to be shutdown.

The IR35 approach discriminates against small businesses, leaving the big firms in an advantageous position – which seems to run contrary to Government procurement policy.

Another consequence is that our business will have to seek alternative clients located outside the UK, as it will not be possible to service UK clients in a financially viable manner. This will remove a substantial number of flexible and highly skilled people from the workforce needed to delivery large scale IT challenges such as Brexit. Having worked in several sectors (including HMRC Central Policy Unit), I am particularly aware of the IT and business process difficulties we face on Brexit. Thankfully our staff have the skills and experience required to take overseas opportunities.

Our business arrangements are such that our staff are paid reasonable salaries, from which normal levels of tax and NI deductions are being paid. If the business delivers a profit (and it has experienced bad years), we do pay moderate dividends to shareholders. We routinely accept client contracts that

allow our services to be cancelled, i.e. we carry business risk. Clients (including DWP) have cancelled projects on several occasions, leaving us with unexpected costs to bear until other work has been secured.

This IR35 change is therefore hitting businesses that are not 'disguised employment' targets. It is very poorly defined, not understood by those that need to handle it, impossible to fairly implement, and damaging to the UK economy, certainly compared to the anticipated revenue that the measure is attempting to achieve.

17 February 2020

Dean Turney

This submission is made by me, Dean Turney, on behalf of my company, Six Days Limited.

Part I, on this and the next page, is my personal experience of the impact of the new off-payroll rules.
Part II, on pages 2-3, is my answers to the Sub-Committee's "Areas of interest" in its call for written evidence.

Part I

The impact of the proposed extension of
the off-payroll working rules on my business

I am a self-employed ("freelance") copywriter, working through Six Days Ltd. Apart from myself, we have only one other employee, Elizabeth Turney, who is my wife and company secretary.

As a result of Brexit uncertainty, Six Days has experienced a 30% drop in income. This year, on top of that continuing uncertainty, we also face the extra uncertainty and loss of income from IR35 rules. These rules shouldn't affect Six Days, but, as you will see, they are certain to impact negatively on my business.

I work for agencies and direct to my own clients, and have done so since 2001. My job is helping brand marketers and organisations promote their products, services, and public service messages, by writing communications. After the introduction of IR35 in 2000, my agencies and clients forced me to change my status from sole trader to limited company; I needed to do this in order for them to hire me.

Based on the reactions of my clients to the new IR35 rules, I am concerned about the indirect negative impact IR35 is likely to have on my business. Why

am I concerned? Because HMRC's CEST tool is flawed, and it has led one of my biggest clients to determine that I work for them as one of their employees, which, as I will show you, I clearly do not. As a result, I will have to pay more tax when I work for this client, and I fear this will be the case with many of my other clients in future. So, due to various clients incorrectly determining my employment status, IR35 will probably significantly reduce my income and make it more difficult for me to find work.

Here's why HMRC's CEST tool is flawed and why its determination of my status is wrong: I work for many different agencies and clients. In 2019, I invoiced 13 different companies; their numbers and names vary from year to year. All of the projects they contract me for are of short duration, mostly less than two weeks and occasionally up to one-two months at the most. I sometimes charge a project rate, but more often a day rate, as clients usually prefer the latter. I collect VAT for HMRC, charging my agencies/clients 20% VAT and giving 16.5% of it to the HMRC, as agreed. I do my work on my own equipment, sometimes remotely from my own office, at other times on site. Also, I normally use my own email address and have no access to my agencies'/clients' networks. I receive no holiday pay or staff benefits from the companies I work for. Like most of my fellow freelancers, I have extended periods of unemployment between projects, and no guarantee that any of the clients/agencies I've worked for will hire me again – in other words, I have zero job security.

Based on the above, I hope you'll agree that I am clearly not working for any of my clients/agencies as one of their employees. Yet one of my biggest clients, a well-known British technology company, has used the CEST tool to determine that I am "employed for tax purposes". I completed three separate projects for this client in 2019, which took up a total of 13 weeks. There was no promise at the end of one project that my client would hire me for another. Reacting to HMRC, this client has decided that I won't be able to work for them in future as a PSC/limited company, but will instead have to be paid PAYE through an umbrella company.

This is wrong and unfair. If other potential clients of mine adopt this approach to freelance workers, as they seem to be doing, I face the prospect of a much reduced income. Also, what is bound to be a self-defeating consequence of the extension of the off-payroll working rules is this: the small gain to HMRC from employer's NI under IR35 will be cancelled out by the loss to H M Customs & Excise when I no longer pay VAT.

Part II

Areas of interest

Existing measures in the public sector
N/A

Impact of new off-payroll rules on organisations

Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

As a contractor, I don't believe the impact has been adequately assessed. My existing and prospective clients have made incorrect determinations with the CEST tool. They are erring on the side of caution, and have decided either to stop using freelance workers like me altogether, or to pay us through umbrella companies, which would reduce our income.

N/A

What will be the effect of these new measures on a chain of contractors and sub-contractors?
See my answer to 2

N/A

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No, they do not reflect the reality of the contracting environment. The CEST tool's questions lead to answers that give an inaccurate picture of freelance workers.

Take the rule which classifies someone as being under IR 35 if the company can't send another person along to do the job. This is unfair to companies like mine with few employees. Other freelance copywriters could do the jobs I do, but my company can't send another copywriter to the client because I am the only copywriter in my business.

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The CEST tool is faulty. Its questions are simplistic and ambiguous. They need to be clearer, more specific and allow for more detailed answers so that HMRC makes accurate determinations.

N/A

Policy objectives and wider context
N/A

N/A

What is your view of the role of umbrella companies in the context of these proposals?
Going by my clients' reactions to the new IR35 rules, it's looking like I will have to be paid for many or most of my projects through an umbrella company. I don't want to have to do this as it will mean my income will be reduced. Also, the small gain to HMRC from employer's NI under IR35 will be cancelled out by the loss to H M Customs & Excise when I no longer pay VAT.

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

Of course it's not fair. When the Government boasts about employment figures, it never mentions the u nderemployment of the vast number of us freelance/gig workers. We have no job security and many of us experience long periods of unemployment between gigs. With clients insisting that, in future, we must be paid according to PAYE through umbrella companies, not only will we have no employee rights, we'll also take home less pay. That's not fair, is it?

23 February 2020

Kevin Urquhart

1. I am writing in response to your acceptance of contributions to your enquiry on the draft Finance Bill 2019-2020.

2. Firstly, I would like to note that I am a contractor who has been affected directly by these proposed changes, even though they are not even law yet, and therefore I will be offering my viewpoint from the position of the directly affected.

3. The contractor market is one that is heavily represented by recruitment agents who place and glean commission from contractor positions. Having spoken to numerous agencies over the last couple of months the overwhelming feeling is that the introduction of the new IR35 regulations into the public sector caused major issues with staffing. Many contractors simply moved to the private sector and, as a direct result, the public sector suffered badly and is still struggling to tempt the highly skilled.

4. In the case of IT (and also, I imagine other fields), the purpose of a contractor is to be one of the most highly skilled in their field and therefore be able to enter a company, hit the ground running, and help firms complete projects for which they otherwise wouldn't have the staff

or skillset. As with the public sector, these new rules have had an immediate impact on the private sector, causing an incredible number of layoffs, the removal of highly skilled contractors from firms, and therefore the halting of many costly and, in many cases, regulatory based projects. This is having a huge impact on banks and other large firms but also, critically, small firms as well.

5. There are exclusions, but these are only for the very smallest of firms. My contract (prior to it being cancelled through fear of the new regulations) was in one such small firm. It had never made a profit but was hoping to this year, but it had 60 employees and a large turnover as it was a startup and money was flowing, though not yet into profit. They had just 2 contractors and were desperate to finish a project and simply could not afford to hire the same level of skillset as a full-time employee and, if they did, would have no work for said employee going forward once the project completed. They are now struggling having had to cancel the contracts prematurely due to the regulations.

6. The other worry from a contractor perspective is that these rules as a whole are forcing contractors back into the permanent market which is effectively punishing workers for putting time and money into becoming the best in their field and encouraging laziness, just to plod along and stagnate in a permanent role.

7. Therefore, genuine contractors are now being forced to take the same roles but with dramatic pay cuts, yet despite being classified as PAYE are entitled to none of the benefits such as pension contributions, holiday and sick pay etc. This lack of freedom also means fixed hours, limited flexibility around holidays and time off, and working at the beck and call of managers, again with zero employee benefits to counteract these situations.

8. The most baffling piece of this puzzle is why, in one of the defining moments of several generations, a government would push to leave the European Union and then promptly stifle industry, stopping large financial institutions from pushing forward and taking the economy to new heights.

9. In regard to the tests, these are definitely not clear otherwise companies would be willing to abide by them. No matter what the claims of HMRC, the fact that numerous banks have, very publicly, ousted all contractors stating IR35 as the categorical reason should show just how wary of the rules the banks are, let alone any other firms. In addition, the claims that each business should individually assess each contractor are ludicrous at best. Many banks and other large firms who, at any one time, have many projects running, were employing thousands and simply don’t have the resource or confidence in a confusing set of guidelines to spend tens of thousands of pounds making individual assessments.

10. The CEST tool itself is also a mass of confusion. The leading factor seems to be "substitution" and nothing else. Any other selection of options tends to result in "Uncertain" which is as clear as mud to all concerned. Also, substitution is a poor gauge anyway as, in regard to substitution, wouldn't a self-employed electrician be in a similar boat? I may want a specific guy I know is good. I don't want or will accept a substitution as it's his skillset I need. Therefore, am I now causing him to also be inside IR35 for the job I ask him to do? Just because someone is hired for their individual abilities should not mean they are instantly not a contractor.

11. The reasons behind the changes also seem muddled and confusing. I believe the main driver is more the fact that numerous call centres, and other roles, started to ask employees to quit but come back on Monday as a contractor. This reduced the costs for the employer and increased the take home for the employee. But this is NOT the same as the IT contract world (or many other fields). We are a genuine flexible workforce who simply work on projects across several companies who need a specific skillset to achieve their aim and then we move on.

12. Note - I presume the driver cannot be simply taxation as if I took a permanent role I would pay less in total than I was doing via my limited company (considering VAT, dividends tax, corporation tax etc). Also, a higher take home incites higher spend which pushes the economy. In addition, simply getting large firms such as Amazon and Google to increase their tax from 0.1% (how on Earth is IR35 more important than addressing this?) to 0.2% would cover the entire proposed increase from the IR35 regulations and surely be more easily achieved.

13. An alternate proposition could be to regulate the employ of contractors not the definition of a contractor itself. Taking the call centre example, if a company had a limit of a maximum of 5% contract workforce this would be impossible to pull off. A percentage contractor policy would also be a lot easier and clearer to enforce and would lead to a cycle of change as contractors would no longer be able to linger in a company for 2-3 years doing non-project work as after a 6 month project has completed a contractor may need to vacate to enable fresh contractors coming in on newer projects.

14. Another option would be for contractors to register with HMRC for their area of expertise and therefore be allowed employment under a contract basis. This would promote specialisation and stop call centre employees from abusing the system. Almost along the lines of being VAT registered, this would be a number that people can quote to a hiring company in order to be accepted as a genuine contractor. This could even come with a fixed tax rate (for example, corporation tax increase of 5%

for genuine contractors) if a simple tax increase is the main driving force behind this clamp down.

15. Either of the above options would be much clearer and simpler to enforce and monitor in comparison to the confusion and pain surrounding the current plans and implementation.

16. Far too often we are told that tax should be simple and clear, and inevitably this is followed by another layer of complication and fluff in order to trap, bill, and punish the unsuspecting public.

17. With all the above in mind, I implore you to request a delay to the bill and for other options to be investigated in order to stop the damage this will do to our economy at a time when we desperately need the country to flourish in our new world outside of the EU.

18 February 2020

Hitendra Varsani

Brief overview of the impact of IR35 on me

1. I have been an IT Contractor for over 10 years and have operated through my limited company. Due to the way I operate at my client sites, I have been outside of IR35 for all of my engagements. My most recent client was an Investment bank and when the changes to extend the off payroll rules to the private sector were announced, it was clear there was a lack of clarity and confusion on how they would approach these changes.
2. A lot of the big companies will not want to assess each contractor individually due to the admin work involved and the significant number of contractors they will have to assess. My previous client took the more straightforward approach of stating they will no longer work with PSCs (Personal Service Companies). From what I have seen a lot of organisations are taking this approach too.
3. The current market is in favour of employers rather than job seekers due to the number of people looking for employment. What this has led to is lower salaries or PAYE daily rates being offered. If contractors are taking these options, how will it lead to the generation of more tax revenue for HMRC? I know contractors who were generating £100k or more in revenue through their LTD companies who have now gone for permanent employment roles where the salaries are £40k per year. How will this be beneficial to the UK economy?
4. Contractors will either end up out of work (as I currently am), move abroad which will drain skills within the UK or take up lower salaries or rates due to these changes.

5. HMRC are introducing this legislation due to the fact that they believe most contractors are disguised employees and are not paying sufficient tax when compared to normal employees. However, I believe this has been misrepresented to the general public. Yes contractors may end up paying less NI contributions than an employee due to the way they structure their salary and dividends. **HOWEVER**, the full picture is often not represented. As a limited company, I will pay corporation tax, VAT and personal tax. The corporation tax paid by my limited company on average is above 20k each financial year (based on a turnover of approx. £140k). VAT payments tend to be around £32k per financial year and then my personal tax bill can be between £8k to £11k a year.
6. If I was to be lucky enough to find permanent employment with a salary paying £70k (ambitious in the current market), with a standard tax code of 1260L, I would pay approximately £21k in taxes (inc NI). Through my limited company, I tend to pay £20k per year just on corporation tax alone.
7. The real primary issue is the way tax revenue is managed and allocated within the UK. A simpler model is required which will ensure tax reaches the right public sector services. I do not believe that taking up a permanent role will benefit the country as I will be paying less tax that I was when I was working as an IT Contractor.
8. To resolve the disguised employee issue, why not set a time limit on how long a contractor can remain in the same company for (e.g. 2 years)

Impact of new off-payroll rules on organisations

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

I am seeing a higher rate of unemployed contractors due to the fact companies have either stopped projects or moved the work outside of the UK to consultancy companies like Infosys, Cap Gemini etc. Also there are very few outside of IR35 contracts (due to companies taking a blanket ban on PSCs), therefore you will see a lot of LTD companies owned by contractors going out of business and being shut down.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be

achieved? If so, what are they?

I believe a more straightforward rule to determine employment is required. Would it not be more effective to say a contractor cannot operate for the same client for a fixed time period (e.g. 2 years). If the project they are working on will take longer than that and they remain working for the client then they will be deemed as a disguised employee and taxed as such.

10. Will the Bill, as drafted, achieve the Government's objectives? Yes and No. Yes - because there will be very little work for contractors outside of IR35 so less complications for HMRC in terms of investigations. No - because there will be a higher rate of unemployment for IT contractors and less tax revenue will be generated.

11. What is your view of the role of umbrella companies in the context of these proposals? I am sure that in time you will see more unscrupulous umbrella companies opening up offering PAYE contractors an opportunity to take home more pay though Tax schemes similar to Loan charges etc.

12. How do the new measures relate to the wider context of changes in working

arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if

they are employees, but do not have the rights of employees?

The HMRC and government have failed to move on and adapt with the change in working practices that people undertake. Freelancers/Contractors no longer want to be tied down to a particular company and try to climb a corporate ladder. They are tired of the bureaucracy and broken promises (pay rises, bonuses etc.) that come with being a permanent employee. They much prefer to go to a client work on a project and get the job done. In return for not having the benefits provided to permanent employees they are happy to be compensated with a higher rate of pay. However, due to the IR35 off payroll changes taking place in the private sector, the landscape has changed. Some have had to accept cuts in their daily rate (approx. 20%) in order to compensate the client they contract for (as the client now has to pay Employers NI for the PAYE contractor). On top of this they now get taxed as a permanent employee yet do not receive the same benefits. From a financial point of view, this now means they have to weigh up the benefits of being a contractor vs being a permanent employee. A significant number of contractors I know have taken up permanent employment as it now outweighs the benefits of being a

contractor/freelancer. Susan Winchester case which she won against HMRC for the failure to provide holiday pay once after she was deemed inside IR35 and had to go through agency payroll is an example of the complications regarding PAYE contractors. It will not surprise me in the least if there are more cases filed in future by PAYE contractors/freelancers for the lack of benefits and rights provided to them.

14 February 2020

Mohammed Vaseem

Responses are in line with references on document

Existing measures in the public sector
1. N/A as I've never worked in the public sector.

Impact of new off-payroll rules on organisations
2. No, and this goes back to impacts for public sector. Whilst I wasn't personally impacted by public sector blanket banning of contractors, I was told contractors in my space survived it in some respect as they moved to working in Private Sector. However, with this impacting private sector too now, this effectively impacts everyone now.

3. The exclusion of small organisations criteria is in fact very small, as it is for a 50 employees' business, not many opportunities for contractors would exist in this space, this ideally should be much higher to not make so many companies fall into medium to large organisations bracket

4. I have mainly worked in the finance sector, so far all banks have investment banks have confirmed they will not take on contractors and will now need to operate via PAYE with no employment rights. Additionally, HSBC, the bank i worked for previously have now reduced the day rate by 25% for the new PAYE rate on offer to recoup their employer NI losses and more. I also have to now accept all travel and accommodation expenses that i previously was able to cover via the ltd company which would leave me close to 40% worse off than I was before and yet still have no employee rights. I've been out of work for nearly 5 months now, i am unable to secure a permanent role that will allow me to cover my living expenses in the long run and will need to think of downsizing house/area to be able to afford the closest annual salary in a permanent role. I have been applying for permanent roles too, but companies don't trust that I will remain in the role for long and will jump ship for the first contracting opportunity I find.

If I am unable to secure work soon I will need to close the ltd company too, which is costing me with accountancy fees, insurances, payroll services, Making Tax Digital VAT solution services, banking fees

5. HMRC needs to reverse the changes made to public sector and cancel the changes to private sector as this will not bring in the revenues they predict. Looking at my example, a 25% reduction in my date rate is proof that they will not recoup the additional tax revenues. The HMRC would have thought the day rate would remain the same and contracts would simply be inside or outside IR35, however, this is not what we are seeing. More work at HSBC is moving to India and Poland, which means reduced taxes for reduced rates and loss of work.

The HMRC talk of having notified and updated guidance in relation to the new rules but the truth is they are not seeing what is happening in the market and being ignorant of it. What is the point of having a section on 'reasonable care' when the market is just sidestepping this all and moving contractors onto PAYE roles with zero employment rights. The HMRC cannot stop them in doing this and are failing to see the bigger picture and impact.

Determining tax status of workers

6. It don't apply if banks aren't taking contractors anymore. Organisations are instead finding alternative solutions abroad than run the risk of HMRC taking them to court.

7. It doesn't appear to work and so many contractors who have been taken to court as a result of CEST outcome that HMRC have determined have been successful over the failed tool. Organisations are taking more comfort in using IR35 shield or QDOS's tool. CEST has proven to fail on so many occasions and it is atrocious that the HMRC can hand the NHS a bill for following CEST for it's determinations.

8. No, not if organisations can just bypass the over burdening process by only recruiting via PAYE system

Policy objectives and wider context

9. It just seems like the treasury are desperate for taking more tax, which in reality isn't going to happen and will instead cripple and destroy a flexible working market. I would rather pay more corporation tax than face what is happening and feel that is a better approach to tackle deficit in being able to run the economy. I doubt that the contractor market on the whole is evading taxes and this bullish, scaremongering attitude of taking people to court for IR35 whilst losing 9 out of 10 cases is just proof of the HMRC being in the wrong.

10. No it won't achieve what the government expect, due to reasons explained above of work moving abroad, contractors moving abroad, contracting industry

being demolished, people forced into zero contract employment with no employment rights.

The other aspect which hasn't been thought of is the knock on effects of how money earned is passed on in the economy and how some contractor expenses help fund other businesses. For example, it is common for contractors to stay in hotels during the week whilst working at client sites far away from home, I will not be doing that anymore for an inside IR35 role or for a PAYE role as I cannot afford to swallow that loss. The Subsistence for staying away from home spent at restaurants will no longer be paid. So other businesses, hotels, restaurants will feel the repercussions. It will also impact how people spend, we will need to be more careful with spending on holidays, day trips with family, meals out etc to ensure we can still afford the house we live in etc.

11. Just an increased revenue stream and unnecessary middle men

12. Absolutely not fair, especially after seeing what is happening to the paid rate being dropped by organisations too, bringing the benefit from this market closely comparable to that of a permanent employee. The problem with that is that there will never be so many permanent roles so more people will be forced down the PAYE route with zero employment rights. It will mean that people will be left more exposed to scenarios where anything life/health threatening could leave someone who was once a successful businessman onto the streets.

20 February 2020

Frank Vernor, Last Throw Ltd & Centaur Quest Ltd

RE: Consultation on impact to organisations, in relation to the proposed IR35 amendments, within the (Draft) Finance Bill 2019

I am the owner and director of a Ltd company registered in England & Wales, which has provided personal services to the Financial Services industry across the UK for the past 10 years. I am writing to share the impact which the (at time of writing) proposed IR35 regulatory changes, included in the draft Finance Bill 2019, are having right now, and how they will impact my company if ratified in their current state.

Current Situation

In the past 10 years, I have provided specialist services specialising in merger and acquisition integration projects predominantly in Scotland to the following clients:

- Standard Life Investments
- JP Morgan Chase

- AEGON
- HSBC Security Services
- Citibank
- Aberdeen Standard Investments

Throughout this time, I have provided a specialist knowledge of accountancy and investment systems and end to end investment operations, to allow these companies to integrate new business, drive procedural efficiencies and to merge both operational teams and financial data. I've worked on some of the UKs biggest programs of work. All of this work has been temporary in nature, and is specialist in the sense that these companies would not have the skillset I provide within their permanent staff. Without going into too much detail, these multinationals operate at such scale, they are entirely process driven. By that I mean that each operational area knows how their small piece of the process works, but there isn't anybody on staff that is an expert in the end to end management of the product. That is where my company comes in. We provide that end to end specialist knowledge to allow strategic decision making for clients.

What has been the impact of the proposed changes to IR35?

We are currently providing services to Aberdeen Standard Investments, working on their merger of Standard Life and Aberdeen Asset Management. Along with most of the other major financial asset managers and service providers in Scotland, ASI has taken a stance of a defacto ban on using PSC Ltd companies.

Some companies have enacted an outright ban (HSBC & Lloyds), whereas others have gone through a process of 'determination'. However, these determinations are, in my experience, predetermined paper exercises. It is usually made clear by senior management that there is no intention of employing PSCs outside of IR35. Due to this, I decided not to take a determination at all and instead state my intention to run down a short term contract extension offered on my existing terms. This was in December last year, and the date the contract expires is the 28th February – as companies view this date as the last point at which work can be paid before the end of the financial year.

Likewise, many companies are refusing to take a determination and are breaking their current client contracts, for fear of HMRC retrospectively investigating past contracts as a result of determinations made by the client now. HMRC have provided very loose guidance to say they will not 'automatically' investigate people who are determined to be inside at their existing client. Believe me when I say that not a single PSC I have spoken to believes this in anyway mitigates the risk. Trust in HMRC competence and honesty is at an all-time low.

Effectively the legislation has prevented me from continuing my contract or finding work

Before the legislation has even been debated in the Commons, the timescales proposed in the draft have already meant my company has lost work, and currently due to the total confusion in the UK market arising from the uncertainty of what is and isn't coming in, I have been unable to secure any further work beyond February at the time of writing.

What actions have I and other PSCs taken already to mitigate against the legislation?

The team I have been running in ASI, which is also made up of PSC contractors, have already left to take roles in Dublin. Commuting during the week from Edinburgh. This side-steps the legislation entirely, and there will likely be a healthy move of work to Dublin offices and entities or, we are also seeing clients planning to offshore parts of their business abroad to be able to attract the talent they require.

I have been actively looking and been in discussion with clients in Dublin and the United States myself, although the social impact will be heavy, as I have a wife and 3 young children who are happily settled in Scotland. They will have to look forward to extended periods without me over the coming year – or be forced to up sticks entirely if the situation isn't better resolved in the UK.

The previous (current) legislation meant that I as the liable entity for my tax status, took care to ensure that my contractual and working arrangements were operating within the law as HMRC set-out. I used 3rd party companies (at not insignificant expense) to review and amend every contract I signed up to, and to assess me independently as being 'outside IR35'. All of this, is in my opinion a market distortion – effectively paying people to smash windows – it adds no value whatsoever to the economy, indeed taking smart people away from actually doing something worthwhile.

This legislation links subjective opinion to massive financial liability, and then forces risk averse multinationals if they're happy to roll the dice

However, even then the rules set out by HMRC are entirely subjective (as has been seen by HMRC consistently losing cases in the courts for misapplying them). Surely if a set of legislative tests are not clear and easy to understand, and do not enable a simple YES/NO answer, then any proposed legislative amendments should be about fixing them, rather than passing the liability for understanding them to companies who are in the business of being entirely risk averse?

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The CEST tool provided by HMRC has been shown to set the bar way to high, and not reflect the test cases in the courts. For example, say a roof tiler or a Plumber was providing a service to you for some work on your house. It would be quite reasonable and common for you to dictate the following:

- That the plumber you spoke to and trust is the one doing the work, and that as a one man band may not be able to provide a substitute without subcontracting. It many cases you – as the client – would not accept any substitute to provide the work as you have trust in this particular persons skill. **APPLIED TO A PSC using CEST = FAIL – Inside IR35, as you haven't proven in practise that you can provide a substitute**

- That the plumber or tiler is on site to do the work, and you dictate when it is to be carried out, and provide explicit input into how it is to be carried out. I.e. I prefer you to use copper piping instead of uPVC, and less joins etc. etc. **APPLIED TO A PSC using CEST = FAIL – Inside IR35, as you have taken direction from the client on how to carry out your work**

- The plumber or tiler has provided a quote for work (defacto contract / statement of work), however, during the work she/he discovers that it is going to cost more than he expected because of poor judgement of materials use or the work being harder than anticipated. She / He informs you of this and determines that the work will cost more than expected. **APPLIED TO A PSC using CEST = FAIL – Inside IR35, as you haven't taken on Financial Risk even though it is outside your control**

It works both ways too. It is frequent for clients to force contractors to take a furlough at an in determined length of time over Xmas at short notice. This proves a lack of Mutuality of Obligation to provide work, yet is ignored by HMRC. I could go on and on, but if you were to answer any of these using the CEST tool, you would fail and be deemed inside IR35. It is not fit for purpose.

So what will the potential impact be to the UK Jobs market?

Employer NICs as well as Employee NICs are being passed onto the contractors costs. Quite disgracefully, yet unsurprisingly, clients who are forcing (at risk of financial ruin) their contractors to work within IR35 via umbrella companies are transferring their existing NET client rates (rates paid to clients less VAT) into gross rates paid to the Umbrella companies (including Employer AND Employee NICs, PAYE Income Tax, Umbrella Admin fee), which are all deducted before the contractor gets paid. This results in no impact to the client – indeed it actually works out cheaper – and the contractor suffers up to a 20 – 40% decrease (depending on their expenses and shareholdings arrangement) versus their previous set-up.

Also, you'd think that the impact, however severe, would be limited to contractors and clients. This is very unlikely to be the case. Clients are already talking with glee about the new employee status which will be created by this legislation: "Employee, without employee benefits". As permanent employees will find as they look to move jobs, or are made redundant. Those permanent jobs being offered in the market will quickly turn into FTC (fixed term contracts), which offer the same salary, but without any Holidays, Pensions or paternity / maternity rights.

Why is HMRC above government oversight?

Ultimately, this entire debacle is due to a constitutional oddity. HMRC has no government oversight like other departments of government. It is a CROWN controlled entity, dating back to the constitutional arrangement when parliament took control of how taxes were spent, but left the collecting of taxes under the control of the monarchy. This oddity has meant that HMRC is utterly without the necessary scrutiny and oversight that should be expected in a modern government.

Policy objectives and wider context

> **9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?**

The simple answer to this is to scrap the IR35 legislation outright. Ultimately the 'Jobs Miracle' since 2008, has in large part been due to the contractor market and more modern ways of working. HMRC will need to understand that – however convenient it is to tax at source – PAYE is in and of itself, a massive drag on economic growth and productivity. It is not a sustainable device in the long term, and they could mitigate a nightmare by pivoting to taxing capital and specifically unutilised capital instead of income and trade.

If government wants PSCs to pay a higher rate of tax, then they can do this through dividend taxation. The fairest type of taxation there is in the current evolving climate is a tax on unutilised capital. A gradual move to align Dividend

and Income taxation whilst reducing Corporation tax would achieve the stated goals, and incentivise investment and growth of companies reinvesting profit.

In closing, I find it staggering that in the current climate of scare stories about Brexit and the fear of jobs being lost to the EU and of unemployment going up, the government is pressing ahead with ill though out legislation which will do just that. Hiding behind the big Brexit Risk on every project planning board, has been a little post it note for IR35 – That little, unnoticed, post it note is about to sink everybody.

7 February 2020

David Vinas

I am writing to give evidence in the IR35 inquiry.

I started my business in the UK in 2007, after years of success consulting abroad. I was attracted by the large market for my services, as well as the dynamic culture of London. I have successfully operated my consulting business here for over 12 years, turning a profit from the very first year. My business pays taxes, and I pay my personal taxes as well, always according to the law.

My method of business operation is to implement major IT transformation projects for financial-services clients, usually lasting anywhere from six months to two years (depending on the nature of the project). Projects like this usually go through a planning phase of 1-3 months, and then require a period of execution, followed by handover to the client's internal teams for maintenance. This work must not be rushed, in order to be delivered accurately and reliably.

That said, I have no interest in being an employee of a client, on either a short- or long-term basis. I am a 20-year-veteran consultant, and prefer to run my own company and be my own boss. I enjoy the variety of work, as I tended to stagnate when working a desk job. You can, thus, imagine my distress at being told by Her Majesty's Government that I am no longer allowed to operate my business as I have for many years.

Anticipation of the Off-Payroll changes has already decimated the market for my services. Far from using "reasonable care", as prescribed by HMRC, clients are now so risk averse that they are: 1) Issuing blanket bans on independent consultants; 2) Flagging all consultants as falling under IR35; or 3) Using such onerous criteria that most (>95%) of contractors end up being flagged. The latter example is still far above HMRC's own estimate of the number of non-compliant contractors. Examples of firms exhibiting the above behaviours include HSBC, Lloyds Bank, Barclays, Deutsche Bank, and Thompson Reuters, all of whom have been in the news recently:

https://www.contractoruk.com/news/0014399hsbc_bans_consultancies_supplying_limited_company_contractors.html

https://www.contractoruk.com/news/0014401lloyds_follows_hsbc_banning_consultancies_limited_company_contractors_ahead_ir35_reform.html

https://www.ft.com/content/5b3a782e-4cc2-11ea-95a0-43d18ec715f5

https://www.ft.com/content/e2427c26-4f3e-11ea-95a0-43d18ec715f5

https://www.theregister.co.uk/2019/10/01/ir35_barclays_to_halt_offpayroll_contractors_goes_directly_to_paye/

Although there are significant penalties for client firms failing to correctly evaluate consultants who should fall under IR35, there are no penalties whatsoever for over-aggressive "inside" classification. Hence, any reasonable firm would simply err on the side of caution, resulting in the scenarios above. This is hardly any surprise, and yet the government seems to show little concern, or awareness even, that this is happening. HMRC continually refuses to acknowledge that it is creating an entire workforce that will be forced to accept all of the drawbacks of permanent employment, without any of the associated benefits.

It is true that, as a consultant, I appear to pay a lower amount of effective personal tax than if 100% of my company's revenues were subject to income tax and National Insurance. However, these revenues do not reflect my own personal income. I must reinvest some of the revenue into building and marketing the business, so that I can find new clients. I have overhead expenses as well, and some of the revenue remains in the company so that I can draw a salary at times when I am not engaged in a project. If I am deemed to be working inside IR35, I would be taxed at an annualised rate, even if, for example, a project only lasted 9 months out of 12. This would result in my being over-taxed for 9 months, and then without income for a further 3 months (the typical time it takes me to find and start a new project). While I could reclaim the amount that I was over-taxed, I would not be able to do this until the following year when my self-assessment tax return was due. This would result in a period of insolvency while the government held onto funds that should never have been taken in the first place. There is simply no effective way to account for this in real-time, and the guidance for how to apply the Off-Payroll Rules in such circumstances is woefully inadequate.

It must be noted that when confronted by forecasts of imminent damage to the workforce, HMRC usually falls back on the study, performed by IFF Research and Frontier Economics, of the effects the previous roll-out had on the public sector.
(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/

attachment_data/file/704931/Off-Payroll_Reform_in_the_Public_Sector.pdf) Yet, this study, conducted between August and October 2017, only took into account the immediate aftermath of the changes which had been put into place the previous April. Some of the effects are only now being felt, and HMRC is turning a blind eye. For example, there have been extensive shortages in labour in the public sector as a result, and many projects have been put on hold. Further surveys, such as the one performed by Harvey Nash, have revealed many disturbing statistics, including increased rates resulting in higher costs to public institutions. (https://www.harveynash.co.uk/latest-news/2019-6/ir35highlydestructive)

Some consultancies have spoken out in favour of the new rules, but many of these same companies have a vested interest in causing market turmoil for smaller competitors (http://www.itcontractor.com/big-consultancies-advise-public-bodies-to-make-contractors-ir35-then-cash-in/). If they are able to rid the market of smaller consultancies, they will have a tremendous competitive advantage, while simultaneously creating a surplus of workers with nowhere else to turn but to be employed by these self-same consultancies, at lower salaries, and hence much higher profit for the consultancies. That these same consulting companies are being allowed to influence HMRC is an appalling conflict-of-interest. It was revealed just this week that our new Chancellor of the Exchequer is, himself, the son-in-law of the co-founder of InfoSys, one of the biggest potential beneficiaries of this new policy. (http://www.forbesindia.com/article/special/rishi-sunak-soninlaw-of-infosys-founder-narayana-murthy-named-britain039s-finance-minister/57713/1)

The net result of these changes is that I will likely be forced to close my successful small business, due to my client base drying up. I will be faced with a choice of either taking a permanent position (at a lower salary), or moving myself and my business abroad. Either of these options will result in HMRC losing tax revenue. My daughter was planning to attend university in London in the autumn, but this has also put my ability to fund her education at risk. Other family members who rely on me for financial assistance will also be impacted. In short, our financial solvency is at extreme risk, and my mental health has suffered greatly as a result.

I would ask you to please recommend to Her Majesty's Government that they urgently reverse course on this extremely damaging rule change. There is nothing in the original IR35 legislation that mandates this change; it is purely a result of short-sighted greed and hubris. It will not result in any of the purported benefits, but rather cause incalculable damage to the economy and global standing of the United Kingdom. At this time of uncertainty, it simply does not make sense to undermine small businesses and the flexible workforce.

Thank you for the opportunity to offer my personal experiences and views on this matter. I hope that they will help you to reach the proper conclusion. Please do not hesitate to contact me if I can be of further assistance.

10 March 2020

Paul Vincent

Regarding my submission related to the implementation of the forthcoming IR35.

Summary;

My submission will concentrate on the HMRC instructions for determining tax status of workers, in particular

- Section 6 - Determining tax status of workers
- Section 7 - What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
- Section 8 - How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed.

The tax status of my Ltd company is determined by my Client using the HMRC CEST tool. HMRC will stand behind my Client's determination if in HMRC's opinion the CEST tool has been completed with integrity.

In my case the integrity of my Client's (without reference to either myself as a contractor or the actual contract between the Client and my Ltd company) produced the blanket answer my Client stated to all contractors working at my Clients location. Therefore, based on my Client's dubious answers submitted into the HMRC CEST tool, my assessment of being inside IR35 is also dubious.

While I understand that HMRC will assess the end Client IR35 assessments and decide if they are accurate (i.e the ltd company has been declared outside IR35 and then HMRC review and say no they are inside) will HMRC also assess inside IR35 declarations to make sure they are correct?

Background

1. My Ltd company was contracted to fulfil a contract at the Clients premises. My contract was signed by both the Client and myself.
   The various clauses in my contract firmly puts me outside IR35 so I was very confident that I would remain outside IR35 after the 6th April.
   My Client have not declared a blanket inside IR35 declaration, but have completed a CEST tool assessment for each contractor and generated the answers which has given an identical outcome.

2. The assessment by my Client using the CEST tool was bordering on the farcical for the following reasons;
   On the 7th Jan 2020 the agency my Ltd company was employed through stated ALL of the Clients contractors are declared as inside IR35 as from 6th April 2020.
   On the 8th Jan 2020 the agency my Ltd company was employed through stated "The Client is in the process of completing the CEST assessment and will be completed by 17th Jan 2020.
   On the 9th Jan 2020 the Client declared every contractor was inside IR35. The only difference between every email sent was the name of the contractor.
   The Client performing the CEST assessment did not interact with me nor did they refer to my contract since a number of the CEST answers given by Client were factually incorrect.

3. The HMRC website https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm11010 states *"HMRC will stand by the result produced by the service provided the information is accurate and it is used in accordance with our guidance. HMRC will not stand by results achieved through contrived arrangements that have been deliberately created or designed to get a particular outcome. We would see this as deliberate non-compliance, and you risk financial penalties"*

   Based on the above HMRC statement, HMRC cannot possible stand by my Client's CEST answers in fact I would go further and say that since my Client appears to have deliberately set out to generate the CEST answers required to ensure all contractors were inside IR35 then HMRC should investigate this deliberate non-compliance and where appropriate instigate financial penalties against my Client.

My evidence only relates to Determining tax status of workers

Section 6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

Answer - while the rules are sufficiently clear to me personally, they obviously were not clear enough (or require clarification) to the Engager to ensure they understand the obligation to complete the CEST tool in a fair manner by referring to the workers contract and discussing what the role of the worker actually is. The engager and also the worker should both have to sign the CEST tool to confirm the answers given are an accurate and true reflection of the workers contract.

Section 7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

Answer - I believe the CEST tool requires the following improvements;

There should be an additional two questions added and in addition the signatures of both the Engager completing the CEST tool and also the worker should be added as this will confirm the Engager has discussed the topics with the worker.

- Has the CEST tool been completed after discussions with the contractor? YES/NO
- Are the CEST tool answers given in line with the wording in the workers contract? YES/NO

Engager position	Engager signature (confirming reference has been made to the workers contract wording)
Worker (Ltd company)	Worker signature (confirming he has been engaged throughout this process)

Section 8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed

Answer - While on the face of it, if a determination is incorrect the worker can appeal the result.

In the case of my Client, the following statement was issued on 28th Jan 2020 "We understand that your Client have reviewed your appeal and your determination remains in scope for IR35. Your Client has advised that no further CEST details will be shared with you and the clients decision is final on this matter"

I therefore suggest the following improvement.

- If a worker disagrees with the outcome of the CEST assessment, then the worker can appeal and should identify the answers in dispute and provide evidence as to why the answers are wrong. This is exactly what I and many other workers did!

- The Client must then reassess the disputed answers and if the Client maintains the original answer is correct must provide evidence supporting that conclusion or provide evidence as to why the workers evidence is not valid.

- If the Client cannot provide any evidence to support the original answer or prove the workers evidence is invalid then the answer should be changed

Chris Wain

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?
Since the rules have come in, I have been offered but refused all contracts in the public sector as they have all been stated as inside IR35. Therefore, assuming that other self-employed contractors have behaved in the same way, that has reduced the pool of talent available to public sector organisations

Impact of new off-payroll rules on organisations
2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
No, there as been no adequate assessment. As the public sector by definition does not have to act in a commercial way, there have not been any closures of organisations. The limited company contractors have been able to escape to the

private sector which they cannot repeat under the new roll out, so many limited companies will close. The compliance burden is unfairly put on the taxpayer, or more correctly it has been removed from them and placed on the hiring organisations, who are afraid of it and implementing blanket bans on limited companies.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?
I think it is, but due to their size, the small companies will not engage many contractors.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?
HMRC have said that the new rules do not affect genuinely self-employed contractors, but this is obviously false, because many large organisations are blanket banning contractors from working for them. This is causing huge amounts of fear and stress for the self-employed who will not have any available contracts in the future and will be forced to retire, taking their skills out of the workforce, or going abroad, as I will, increasing skills shortages.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?
The best thing would be to scrap the new measures as they will cause irreparable damage to the economy.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
No, there is little understanding of the rules. There is a widespread misunderstanding that if you sit at a desk next to other workers then you cannot be self-employed, but this does not preclude genuine self-employment.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
The tool takes no account of the test for mutuality of obligation. For example, there is no question which says, after the current project is complete, is there an obligation on the hirer to find more work, or on the contractor to accept it. Saying no to this would point towards being outside IR35.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

The main issue is the lack of ability to challenge a blanket ban with no assessment at all. Blanket bans should be blanket banned themselves by HMRC and companies should be prosecuted for non-compliance for doing them. The banks in particular seem to be acting as a cartel to force contractors inside IR35 so that they can reduce costs, especially to avoid the 20% VAT charge which they cannot recover. How many times are the banks going to have these cosy cartels over the years. They all get exposed in the end, like the LIBOR scandal. This is just another in the list.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
I don't think the objectives can be achieved because I think the premise of mass abuse of the system is false.

10. Will the Bill, as drafted, achieve the Government's objectives?
The objective is based on a false assumption that the majority of limited company contractors are disguised employees. They are not. Yes, it will move a few disguised employees onto the payroll but the overall tax take will be lower as it will force many genuinely self-employed contractors to close their businesses and take lower paid permanent roles closer to home, because of the fall in the number of available contracts. It will be extremely damaging to the national, and especially local economies. For example, self-employment allows me to work anywhere in the country, to find contracts which exactly match my skill set, so I can charge the going rate, and offset my travel and accommodation against tax. I can then take the higher revenue back to my home area, which has high unemployment and spend it with local builders etc. in renovating my house, which all attracts 20% VAT. Due to the forthcoming lack of contracts, due to blanket bans, I will either have to move abroad, move my family into an area with more opportunities, or take a lower paid permanent job in my local area, pushing out someone lower down the line, earning less, paying less tax and not spending as much on local services. If I am forced abroad the country will lose not only my skills, but my high performing children's future skills, and all of the taxes from me and also my wife.

11. What is your view of the role of umbrella companies in the context of these proposals?
They are trying to attract business from this and are offering impossibly high take home pay rates, which are either false or involve an aggressive tax avoidance scheme which will later be trapped by something like the loan charge. It is a free for all for cowboy organisations to exploit vulnerable people in a time of high stress.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that

some individuals are taxed as if they are employees, but do not have the rights of employees?
Regarding the wider gig economy, you have low skilled workers who want paid holidays and employee benefits but want to be limited companies. That is wrong. If they want to act as employees but not pay tax as employees. But these rules are unfairly impacting people who have no interest in being employees and having those benefits.

The new rules have allowed the creation of a new class of worker, the no rights employee, who have all the taxes to pay, with no pension, sick pay, maternity pay, redundancy rights or other employee benefits. There is a danger that organisations start to actively convert new vacancies from permanent to no rights contracts and this really takes off. It is not fair.

22 February 2020

Ian Waite

Thank you in advance for welcoming the inclusion of this feedback for your Sub Committee Review. I trust this will be recorded and incorporated.

Who I Am
As a genuine, honest and hardworking consultant for the past 15 years I have worked compliantly, according to the rules and paid all my taxes. I consistently meet the criteria for outside IR35 – off payroll status. I am the Director and employee of my Limited Company, set up in 2007 after leaving a career 'employed' in Financial Services. I am a Member of the Chartered Quality Institute – Chartered Quality Professional. I work primarily in Transformation and Change programmes making businesses better and improving their service, functional and growth capability – consulting for a set period of time until the contract ends, business success criteria is met and/or the business can maintain and sustain the change. I am a consultant with specific skills and intellectual property delivering an independent service to clients through Business Change and Transformation, Quality Frameworks and Operational Excellence.

The following is feedback and evidence of my deep concern about the impending Reform and personal impact.

Meeting my MP
I met my MP for Tewkesbury Constituency (Laurence Robertson) after attending the 'Stop The Off Payroll Tax' demonstration on Wednesday 12 February. We had a 30-minute meeting in the Drop-In session at Portcullis House specifically to talk about this.

I raised my personal concerns about the Reform and explained issues and personal impacts.

I shared an example of how I would pay less tax if I was pushed inside IR35 as the basis of a like-for-like comparison (and employment rights and benefits) is fundamentally inappropriate. I put to Laurence that I correctly pay up to c.£50k in taxes each year through a combination of e.g. Corporation Tax, Employers tax, PAYE, NICs and personal tax etc. Yet employed on a same earning basis I would pay less tax of around £9 - £11k, when applying existing tapered employee tax rates.

This is reduced further IF my day rate is decreased by a company to avoid the cost of NICs
(13.8% + Apprentice Levy). The more my rate diminishes, the less overall tax will be paid. If I don't work, there is no tax generated at all. Note that the likelihood of decreased day rates is well reported in social media and on the internet due to adverse reactions by Medium and Large companies to this tax Reform.

As explained to my MP:

I also take responsibility for my future retirement now and make annual contributions of c.£12k. I will stop this if I cannot operate my limited company profitably i.e. outside of IR35.

I support local causes and my local school, sponsored/donations via my business, this will also stop if I cannot operate my limited company profitably i.e. outside of IR35.

I will also sever my business relationship with my accountants as they will not be needed, losing them c.£980 pa. I will stop this if I cannot operate my limited company profitably i.e. outside of IR35. I have already spoken to my accountant about this distinct possibility. My accountant advises there are 15 – 20 other companies operating like me, many intend to wind up their companies and this is a significant loss of income for them. They have told me that they will not have the money to employ and grow their own business or invest in training.

I will also stop all expenditure on my company website and close this as it will not be required. I will not engage again with my local website developer and will not purchase business branded stationary printed business materials. I will stop this if I cannot operate my limited company profitably i.e. outside of IR35.

I will also stop purchasing business services and equipment such as internet services and Microsoft Office products and my website Wix subscription. I will stop this if I cannot operate my limited company profitably i.e. outside of IR35.

I will also not require the level of business insurance I purchase to operate as a Director and employee of my limited company e.g. Professional Indemnity and

Public Liability. It will not be needed if I am on a company payroll as their employee. My current provider will lose my annual premium of c.£450.

You must recognise that whilst I have not yet received my current contract determination, there is a distinct likelihood of being forced inside IR35. So, even if not now, after this contract, if the market continues to react and companies (prospective clients) offer only inside IR35 contracts then the above will just happen later (but still too soon).

I am one of hundreds of thousands of genuine, honest and hard-working independent contractors / consultants so multiply that by say a million (like me) and it's a massive market and economic impact, much wider than just trying to generate a simple increase in tax.

I told my MP that I simply do not believe the statement made by Jesse Norman MP that "non-compliance is widespread" and that "there is only about a 10% compliance rate with proper tax payable in this sector". This is not my experience and I have a network of over 500 people. How can this be correct when comparing to commentary indicating HMRC have only won 18% of cases in 10 years, even when selecting the business for litigation.

Another Government / Treasury statement causes considerable alarm. It was stated publicly on Parliament tv (Feb 2020) Parliamentary question by Jessica Morden, where in response, Jesse Norman MP (Financial Secretary to the Treasury) said "We are not aware of blanket determinations being made". Information clearly recorded on social media, the internet, in the Press and at offpayroll.org.uk. shows otherwise. I request that the Sub Committee calls for evidence from Jesse Norman MP who is accountable for this public statement. I believe this statement to be incorrect unless otherwise proven.

I summarised to my MP that I see and fear because of everything happening, this will have a significant impact on me. I will (if the option is made available by the company) contest an inside IR35 determination – especially if it is a blanket determination – as the principle set out by Jesse Norman is that case by case / individual assessments are the expected business practice. An inside IR35 determination means I cannot maintain my business as a profitable legal entity and so I feel I have no other choice but be forced to leave. This will impact my clients' global transformation programme delivery I am working on. I will then be not working and not generating any taxable income.

My Stance on Reform

I am not against Reform if this is done objectively, intelligently, correctly and fairly. What I am against is the seemingly rushed approach by Government to force in this Reform despite overwhelming negativity commentary and evidential damage. It is not acceptable to say businesses have had "18 months to prepare" as that is not what companies and supply chain companies are evidencing. It is my opinion that all things considered, the Government /

Treasury and HMRC is handling this extremely poorly – due to varying understanding of the rules and implementation, confusing statements by 'officials' and I personally feel a disregard for the importance of the contractor workforce to the economy. It feels like there is little appreciation of the market risks associated with the eventual outcomes of this Reform.

If Government / Treasury and HMRC reform drivers are the reported £3.1bn of 'new tax revenue' and the belief that only 10% of 'self-employed' are compliant, then the factual data, evidence and analysis must be made publicly available – before the Reform is put into practice. If only 10% is compliant within such a large workforce, and earnings from them are relatively high, is this really £3.1 bn of new tax? The Sub Committee MUST satisfy itself with evidence that this will actually happen as otherwise it is accountable too.

The risks and issues are too significant to get this Reform wrong, at any level. There is already clear proof of knee-jerk decisions by many medium and large businesses and inappropriate behaviour such as blanket bans. This is damaging the market right now.

Growth and prosperity are not a friend of instability. Now is not the time (our post-Brexit environment) for such a critical change, even if it were delivered on time with absolute perfection.

[Article Lora Jones, BBC 30 Jul 2018] Self-employed workers account for around 15% of the working population. Office for National Statistics (ONS) reports that in the UK, selfemployment has risen rapidly over the last two decades. From 3.3 million in 2001 to 4.8 million in 2017, of which a large proportion [c.1.77 million estimated in 2018] across sectors will be self-employed 'contractors'. I am perplexed as to how this Reform may achieve improved compliance without critically damaging a workforce that is so essential.

My Primary Concerns

Time – all commentary I read leads to my opinion that this is all being rushed at and implementation appears an unsuitable and inappropriate means to an end – by the Government / Treasury and HMRC. Surely now is not the time to force it through. The reviews conclude around 19 February (albeit only looking at the implementation element), then the planned Budget, then it's applied from 6 April 2020. Only 6 or 7 weeks!

FACTS – it is my balanced opinion that the facts have not been presented publicly and where statistics have been quoted, they have not been substantially proven. Any form of subjectivity here is extremely high risk. For example, where are the facts to evidence the tax take expected will be generated from moving 'disguised employment' to a better level of compliance?

What is the calculated basis for the £3.1 bn of new tax being generated?

What is the validated evidence that "non-compliance is widespread"?
What is the factual data to prove correctly that "only about 10% are compliant in this sector"?

Can the Sub Committee answer this?

Review Process – is this comprehensive and independent as you would expect from any formal review. The Sub Committee must satisfy themselves that the Review is itself compliant with expected review standards and principles.

Unclear and Contradictory Statements and Information – there is much confusion, even for MP's. At the MP Drop-In session at Portcullis House, several MP's I witnessed were themselves unaware of the detail and impacts of this Reform! My MP agreed to take away actions to find out more information on the classification of 'self-employed' and the breakdown of the reported £3.1bn new tax. My MP did not fully comprehend the impact this Reform has on people like myself.

The following statement must be part of the Sub Committee review as absolute clarity for all concerned is needed:

Parliamentary question by Jessica Morden Feb 2020
Response - Jesse Norman MP (Financial Secretary to the Treasury) "We are not aware of blanket determinations being made, although it must be said that many firms are choosing to acknowledge disguised employment and bring those contractors in-house."

I believe this to be wrong. The Lords review must prove this is happening and by which companies. Clear proof is available, and no doubt being submitted by impacted persons to the Sub Committee Review.

Government statement by Jesse Norman Jan 2020 "The off-payroll working rules do not affect the self-employed, as only those working like employees are in scope".
say this statement must be clarified by the Sub Committee Review. It causes much confusion for contractors, businesses and MP's alike.

Parliamentary statement Jul 2019 from Jesse Norman "HMRC data shows non-compliance with these rules is widespread."
say this needs to be factually and demonstrably proven and the data set and analysis made available. For such a considerable level of reform, I personally expect HMRC to make this available and be published. I ask that the Sub Committee request the data.

Parliamentary exchange Jul 2018 Martyn Day (SNP) "It is only correct that contractors pay their fair share of tax ..... Will the Minister join me in urging

the Chancellor to ensure that the 2019 Budget and Finance Bill improve the rule or scraps it altogether?
Response - Jesse Norman MP (Financial Secretary to the Treasury) "I am sure the Hon. Gentleman will be aware that there is only about a 10% compliance rate with proper tax payable in this sector. He should therefore be applauding, as I am, the means to raise the level of compliance. In many ways, this is a simplification of the rules, which is being carefully and deliberately handled."
I say this needs to be factually and demonstrably proven and the data set and analysis made available. I believe this pivotal statement has caused companies to blanket ban and de-risk themselves from being liable. I take this as some personal criticism too.

Parliamentary question Martyn Day (SNP) 22 Jan 2018 to Mel Stride
Response - Mel Stride "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".
I say this statement must be clarified by the Sub Committee Review.
It causes much confusion for contractors, businesses and MP's alike.

Blanket Reviews – these are happening and proven! offpayroll.org.uk

Not being listened too – there is very little media coverage of this issue considering the significant level of change expected. There are so many stories on social media and the internet of company closures and deep personal impact, including mental health issues. Is this being recorded and considered?

I joined the 'Stop The Off Payroll Tax' protest in February. I follow the campaign on social media (twitter and LinkedIn) and contribute to this. For all the damage and detriment being reported by individuals I do not see the Government listening or worse still, not responding. This gives the perception that IR35 Reform is a done deal and the Government will simply press ahead regardless. My perception is this is dangerous now and for the long-term wellbeing of many individuals, business and the UK economy.

▪ CEST – widespread cynicism is reported about this tool and particularly as it is often not accepted by companies who over-ride individual tool assessment by applying blanket bans anyway. This must be addressed. I am being personally advised by my current client that I must pay for an independent assessment via a third party (Qdos) as this removes the liability from the client. They categorically will not accept the online HMRC CEST assessment.

HMRC
As reported by Government itself, there is a recognition that HMRC is not well staffed to cope with the level of change expected, and its mandatory responsibilities to audit and assure tax compliance.

Either this Reform causes too much administration demand or capacity is so low that HMRC cannot undertake the audits it is obliged and responsible for performing. Is it not more effective to support HMRC with the necessary funding and staffing levels to instead ramp up it's audits to identify, investigate and prosecute 'disguised employment'. Passing the responsibility to private sector companies to assure compliance is not appropriate and has immediately damaged this sector of the economy.

I feel HMRC have not taken responsibility and have influenced a situation with the Government to pass the burden of responsibility for IR35 reform.

Would HMRC and the Government consider a proposal here A) to instead adopt a Hiring Tax which is simpler to implement and is easier to manage and maintain. Such a Hiring Tax would be predictable, measurable for tax generation and for compliance monitoring purposes.

Would HMRC and the Government consider my proposal here B):

Contracts remain as they are in operation now
When a contract is newly issued at the point of renewal or for new work, the company employing is responsible for completing a new 'contract data sheet'
A new 'contract data sheet' becomes a legal responsibility and captures all the necessary information about the contract, contractor and the company – in line with CEST questions. The new data sheet is then electronically submitted to HMRC.
Data submissions then build big data sources for HMRC to efficiently analyse and identify both companies and contractors to audit. HMRC can also identify repeated contract extensions and also select returns for broader sampling.

This makes the contractor and the company liable but gives HMRC a wealth of evidence and information, with which to direct mandatory audit and assurance activities.

Conservative Policy / Manifesto
The Conservative Government election manifesto promises to do right by hard working families, a strong economy, investment and prosperity. I am exactly that (the main earner in our hard working family) but IR35 changes negatively affect me.

The Prime Minister agreed on Radio 4 to review the planned legislation changes for IR35 - which I feel now appears pointless - despite all the highly critical and negative commentary about applying IR35 in the private sector, it's still seemingly (and without broad industry support) going ahead. I have no faith that the Conservative Government and Treasury Review will stop / delay / change the off-payroll tax reform. This has an impact for me, future business prospects, earnings and family lifestyle.

I should be being supported by this Conservative Government to be the best I can be and do my bit for the economy and the future security of my family.

Everyone I speak with (business owners, employers, individuals, consultants, associations and professional bodies) all see, feel and evidence this reform is commercially damaging. They commentate it is crude, nonsensical (given the damage in public sector) and lacks proper professional understanding and wisdom. It concerns me greatly that Government is dictating how private sector should operate and manage their own businesses, growth strategy, skills and development. I understand the need in the Public Sector (ultimately public money) and I appreciate Employment Law and Tax applies regardless of sector but this Reform is clearly doing more damage than good.

It appears to me that Conservatives are not acting like a party of business – when it come to this matter and independent consultants like me.

I am concerned when hearing constantly contractors are closing their businesses because of IR35. I really fear this may happen to me also.

I trust the new Chancellor has this Reform issue at the top of a priority list. On the Chancellors own website I note a public article dated 15 Aug 2018 stating "… I firmly believe lower taxes create incentives and drive growth. We cannot as a country tax our way to prosperity."

Finally, I trust the House of Lords Finance Bill Sub Committee justly scrutinise the draft bill and account for all the broad range of feedback from people and organisations about this Reform. I request that the Committee operate truly objectively, with command of the facts and do the right thing, in the right way and for the right reason.

The fate of hundreds of thousands of genuine, honest, hard-working and legitimate individuals and businesses are at stake. The impact of getting this wrong for people and the country as a whole is almost immeasurable.

See below causation summary ……..

IR35 Reform

triggering
Blanket Bans and Market shrinks

causing
Less Work / Lower Rates

forcing
Businesses to close

equals
Low / No tax generation

demonstrates
Failed Strategy and Bad Treasury

generates
Less revenue for public spending

produces
Less growth and prosperity

increases
Individual and state burden

demonstrates
Failed Policy / Manifesto and Bad Government

causing
Deficient Society

21 February 2020

Garie Walsh, Gew Solutions Limited

1. I currently own GEW Solutions Ltd - providing large organisations with Finance department improvement and transformation advice, planning, methodologies and tools.

2. I write to you to communicate the adverse impact the proposed legislation has already caused and what it may cause in the future under the heading of the evidence request relating to "Policy Objectives and Wider Context".

3. Firstly, it is hard to understand how by switching the of determination of status of employees from the contractor to the client will increase the HMRC's ability to uncover "disguised employees". As the owner of my business it is clear that I will be the best place to collect and provide evidence of providing services outside of IR35.

4. From a wider context, the nature of the services my company provide are delivered in phases: Assess, Design, Build, Test, Go-live, Improve. Projects range from 6 months - 18 months to cover these phases. I have a set of deliverables agreed with clients which enable me to contract for each phase or multiple phases. All contracts are

independently checked to ensure the services are provided outside IR35 (currently at my cost and risk).

5. I had an outside IR35 contract to December 2019 which dealt with Assess and Design of an improvement project for a client. The client was pleased and therefore asked my company to provide services for the remining phased: Build, Test, Go-live and Improve, planned to be delivered by May 2020.

6. My client has decided to shorten the offer to March 2020 taking us to go-live, thus de-scoping the Improve phase. Purely because of their risk appetite based on advice received by them directly arising from the proposed changes to IR35 legislation.

7. The impact on my business is that I now have less earnings from this piece of work. I have less time to find a new opportunity and face a period of zero income until the market picks up again. I will not be able to draw as much money from the business to live on as planned.

8. The impact for my client is that, though they will have a solution which is live, they will not have the services from my company to enable all the improvement initiatives they have. They will have to recruit somebody who will not have built the knowledge around those improvements which causes delay and increases risk that the solutions will be less effective. The type of person my client needs is not normally a permanent resource expecting their workload to be guaranteed and managed by the client; so, the talent pool is smaller so they may struggle to procure the necessary skills.

9. The impact on HMRC is that my company will earn less revenue (less CT and less VAT). I will draw less from the business (less IT). I will have less disposable income (less VAT).

10. The emotional impact is also very severe, for the financial and continuous work reasons cited above, but also because of the following general comments. Contractors are used to being treated like a commodity (which is fine as we are not employees and should not expect to be motivated, treated and rewarded as such - our resilience is actually a key attribute our clients look for and need). However, the feeling of being less human is more tangible than before; the rigour with which the IR35 is being discussed indicates to the uneducated that the majority of contractors are only in it to save tax and are greedy self-centred capitalists.

11. On the contrary, in 2018/19 the combined take for HMRC on the business revenue (VAT) and profit (CT), plus the IT I personally paid on dividends was approx. £60k. If I were to be a permanent Finance Director

(which based on my skills and experience would get me a salary of approx. £100k pa) - the HMRC would have collected just £52k (PAYE IT+ emp'ee NI + emp'er NI). A combined loss to HMRC revenues of £8k for that year.

12. For every **month** that I remain out of work the HMRC will lose £6.6k throughout 2020/21.

13. I personally have no reason for the essence of the law to be changed from what it is now as I am happy to take the business risk of operating outside of IR35 because, of course, the business model operates precisely outside the regulations.

14. I also agree that those individuals contracting outside of IR35 but executing their services within IR35 are a problem - and that it needs to be addressed - I'd be happy to consult/advise on potential solutions, but obviously the HMRC would need to ensure our engagement was compliant (ironic eh?).

15. The current proposals are counter-intuitive - they are counter-productive - they are a loss maker for HMRC coffers. Conversely there are lots of scaremongering "consultants" advising businesses on what they should and should not do and making a tidy profit from the proposed changes, so I guess there are some winners (I just hope those consulting practices are UK registered businesses and are paying CT on their supernormal revenues they are currently experiencing).

20 February 2020

Justin Walters

I hope that you can bear in mind my experience and opinion on the impact that the impending changes to the Finance Bill will have, not just on myself but also my colleagues and the wider economy, as considered here.

I have been contracting for nearly 15 years as a functional consultant involved in the design, implementation and continuous improvement of SAP systems (an Enterprise Resource Planning computer system used by large companies). This allows me to control the location where I work, minimising the amount of travel away from home. As a contractor, I have to manage all the risks and costs that this entails, such as; gaps between contracts, ending of contracts, pension, illness, holidays, insurance, accountancy fees, equipment, corporation tax, dividend tax.

As a contractor, I provide companies with significant experience, at short notice and in a flexible way, in support of their projects which may be small, medium

or large and may last weeks, months or years. Once the project is completed, the company would not need the same number of people or the same skillset to support their system once the project is complete.

How will companies find the skills and experience required to implement not just SAP projects but any other project where they require specialist skills or additional resources, e.g. to back fill business resources needed to support the project. From talking to other contractors and the results of the recent IPSE survey, it is obvious that many contractors have already been seriously impacted by the impending change to the IR35 regulations. With a significant percentage of contractors looking to retire or work abroad, this will reduce availability and access to the highly skilled flexible workforce in the UK.

Many companies have already stopped using contractors or imposed a blanket directive that all contractors will work inside IR35. Many companies will not take the risks involved in assessing IR35 status due to the complexity, lack of clarity, costs of a HMRC review or financial risk that they may be exposed to. It appears that some companies have placed their projects at risk due to this. Being forced to work inside IR35 is expected to cost contractors who operate their own company with all the risks and expenses involved, around 20% of their income and the clients will not pay more than they already pay. Nor will contractors gain any employment related benefits as they are not employees.

How will companies resource projects in the future? Since many contractors will not work inside IR35, it is likely that companies will have to turn to consultancy companies to provide the complete set of resources and skills. This is likely to cost more. In addition, since the consultancies will no longer be able to flex their UK workforce with contractors, they are likely to utilise even more offshore resources than they already do. Not only will that move more work and money offshore, but will provide even less incentive for the companies to invest in UK learning and development.

Some companies, including consultancies, are offering contractors a permanent position to safeguard projects that are in progress. There is no guarantee that these are long term positions, e.g. consultancies cannot support all client work without flexing their workforce size and skillset or risk having too many members of staff sitting on the ‘bench’ awaiting their next project.

How will this reduction in the contractor market impact on other areas? There are a significant number of people reliant on the contracting market; accountants, agencies, insurance brokers and insurance companies. How much do all of these companies contribute to the economy and how badly will they be impacted by these changes to IR35?

What will happen to me? In the short term, like many other contractors, I will try to stay in my current project even with the reduced income that is likely to entail. This will ensure that I have some money to support my family and pay

my mortgage, but will impact significantly on such areas as my pension. Once the impact of these changes and those of Brexit, are more fully understood, in 6 to 12 months, I will have to assess my position. One option that I will seriously have to consider is working overseas even though this will have a significant impact on my family life, I have to hope that it will not affect my children too much, especially with their impending A-Level and GCSE exams.

9 March 2020

Maria Wareham

The legislation upon which we find ourselves commenting on, was poorly resourced and researched from conception, poorly drafted, and is now being poorly patched.

There is an entire sector of the work force who will be affected by this legislation and therefore due diligence must be applied.

The judiciary have been required to exert their wisdom upon the legislation since its inception, and more often than not have ruled against HMRC. It is hard to see that findings of the judiciary have been incorporated in the legislation. HMRC has one interpretation of the legislation and the judiciary has another. Surely this means that the legislation is not fit for purpose.

Inevitably there is a need to prevent disguised renumeration, but whether shifting the onus to the end client be it small, medium or large, will achieve this has not been adequately researched.

The crucial element of determination under the proposed legislation is the CEST test as published by HMRC, which is at no point referred to in the legislation.

Addressing your document:

Existing Measures in the Public Sector

> Some IT contractors previously operating through PSC's have been employed by Public Sector organisations at a salary far higher than what the PSC had previously charged in order to have access to the specific skill set required. A daily fee of £25 is payable by the employee to an umbrella company plus a payroll charge of £18 per week. How can this be construed as employment, when permanent staff do not have similar deductions made, especially the cost of processing the payroll?

Contractors with a specific skill set e.g. a marine surveyor, have enough work in the private sector. They consider their private sector contracts make them outside the scope of IR35 using the CEST test, and therefore are turning down work in the public sector.

GP locums currently operating as self-employed have been sent letters asking them to form a PSC.

In conclusion, the public sector is being hit hard, not only with ER NI costs but also higher salary costs, not to mention the potential costs of employee's rights which in some cases are being settled by HMRC out of court. They are being restricted in their pool of resources. Confusion reigns and in the case of GP's they are clearly being issued with incorrect advice.

Impact of new off-payroll rules on organisations

1. Private sector impact

   Contractors and consultants need to be distinguished in the legislation.

   A consultant:

   - Professional
   - Experienced
   - Has expertise in a specific area suitable to share with other organisations
   - Works alone for a host of reasons which makes them not suitable for employment -takes control and responsibility for their own work, not suitable for team culture, organisational politics, nor HR management, has a genuine business with a wide client base
   - Works either as self-employed, or through their own company -may or may not obtain engagements via an agent
   - Geographically mobile
   - Deadline and delivery focused
   - Fulfils a short and specific need for an organisation where the organisations own employees do not possess the expertise
   - The organisation does not need to retain the services of the consultant once the task has been completed or the deadline met

The legislation needs to be drafted such that the consultant is not precluded from obtaining work in their own right. The proposed legislation would limit organisations access to this skill set and limit the consultants desirability to the end client who may be reluctant to expend time verifying the consultant and even if the consultant/client relationship under the CEST test falls outside IR35, will the end client be prepared to take the risk.

Consequences of the proposed legislation

- Organisations will suffer the costs of employment or the costs of verification
- A geographically isolated workforce
- Organisations lose access to the qualified consultants that they need
- Work could be outsourced to other countries

A contractor:

- Is a resource
- Works in a team of resources
- Has experience in a specific field
- Has no managerial influence
- Is geographically mobile

A team of contractors is useful to an organisation

- One off pieces of work spanning a defined time period
- No costs nor management of an employee relationship where dealing with an agent who controls and assumes responsibility for the contractors

Consequences of the proposed legislation

- If contractors are working via an agent and are being paid via payroll by the agency, then there should be little impact.

- Regarding a "chain of contractors and subcontractors" there is already a verification system in place through the HMRC CIS system which could be extended to all self-employed contractors. It should be noted that a company that has been verified and certified under CIS, has no deduction of tax made at source and can continue as a business in its own right and can deduct expenses. The contractor could be on one particular site for 12-18 months. For the CIS sub-contractor who is self-employed, HMRC does the verification and certification. The contractor will deduct at source, tax at 20% from the invoiced labour cost. The CEST test has no application here.

Surely there must be some consistency across industries.

Medium and Large Organisations

Should the Bill stand, perhaps Charities and Not for Profit organisations should be excluded from Medium and Large Organisations.

Policy objectives and wider context

Adam Smith, The Wealth of Nations (1776) "The administration of tax collection should not negatively affect the allocation and use of resources in the economy, and certainly shouldn't cost more than the taxes themselves."

24 February 2020

David Watkins

I have operated a Private Limited Company in the domain of aircraft maintenance and industrial gas turbine maintenance since around 1987.

In that time with the blessing of the Inland Revenue (because they refunded the vat) I have purchased a company vehicle and on the grounds that I do not live

where I undertake my contracts the travel, subsistence, accommodation costs have been considered extra and as such tax deductible.

Under the pretext that they are providing a level playing field for the employed, the Inland Revenue may well now apply IR35 to my contracts and I feel that in so doing the Inland Revenue have failed to consider that 90% of those that are employed live where they work and do not have these extra costs.

This of course being the fundamental principle on which all of our MP's that may vote in this finance bill are allowed to claim expenses for their accommodation in London. Surely sauce for the goose should be sauce for the gander.

The Inland Revenue claim that employed staff pay more tax and national insurance than contractors, however what they don't say is that employed staff receive premium rates ranging from time and a third to double time for overtime meaning that they are effectively paid more than contractors making their tax burden easier to bear.

Presumably then when end users decide that a contractor is subject to IR35 , they will comply with the European Agency Workers Act 2008 and pay contractors premium rates, holiday pay, sickness pay, protection from dismissal etc. because it is apparently an offence to discriminate against the people that by virtue of IR35 have become "agency workers" by no longer being employed by their own Limited Companies, which must also be a transgression of their right to incorporate.

The Inland Revenue have stated that IR35 will raise £1.3 billion in revenue, however I do not believe they have considered what happens when, if there is not the possibility to operate a Limited Company, then there is no need for that Company to collect VAT or pay Corporation tax and whilst the individual contractor's tax and national insurance liability will increase, the net gain to the Inland Revenue will not be what they claim.

There are many other issues on which the Inland Revenue are just not giving any guidance at all, for example,

(1). Having purchased a company vehicle, I may now have to pay tax because I will be deemed to be using a company vehicle for an employed position.

(2). There are rumours that Umbrella Companies will be paid a higher rate in order to pay Employers National Insurance, yet if I continue to operate a payroll through a Limited Company I will not be paid any more but I will still have to pay Employers National Insurance.

(3). I have a potential contract arising in May and despite there being a requirement for the end user to establish the status of their contractors with an appeal process, the end user in this case has already stated that every contractor must go P.A.Y.E., demonstrating that medium to large companies will

not become embroiled in the administration of making a determination and simply introduce a blanket rule making the requirement for a determination farcical.

The Government have stated that they are committed to addressing the unfairness of the present position, however in fact this ill thought and poorly organised system which is IR35 has simply tipped the balance of fairness in completely the opposite direction, turning contractors into employees without rights which cannot be just and exactly why The Agency Workers Act was introduced in the first place.

Robin Welch

Background
1.1 I am a freelance systems architect and programmer providing services to the financial services sector, specialising in financial systems connectivity.
1.2 I have operated on a freelance basis for 13 years following redundancy in 2006.
1.3 I chose to go freelance to escape office politics and to seek a better work-life balance. I believe that I have largely achieved this.
1.4 I run a limited company (PSC) to provide my services, which up until recently was a *mandatory* requirement from all my clients. I did not create this arrangement to avoid paying taxes and have always paid my personal and corporate tax bills on time and in full.
1.5 Since the company set up, it has contributed over half a million pounds in tax to the exchequer. This is in addition to considerable personal taxes.
1.6 I am not an employee of the clients I work with. I seek to provide services on a business-to-businesses basis and am content to manage the risks that come with that.
1.7 I have experienced many of those risks (unpaid time between contracts, late payment by clients, threat of nonpayment, enforced rate drops, short notice contract termination etc) while freelance.
Answers to Selected questions asked by the Committee
2.1 Has the impact of the off-payroll rule to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
2.1.1 I do not believe the impact and unintended consequences have been properly assessed and mitigated.
2.1.2 A domino effect of clients adopting a highly risk averse approach by simply working around the issue by banning PSCs altogether has taken place.
2.1.3 My current client, a large investment bank, has chosen to do this as have practically all other organisations in the financial services industry.

2.1.4 This has disadvantages for clients (potential increase in rates, potential of claims under employment legislation) but more severely penalises legitimate freelancers.
2.1.5 Clients are seeking to make these changes cost-neutral by pushing the employers NI and apprentice levy down the chain onto freelancers without increasing their rates.
2.1.6 While not as disadvantageous to clients as it is to freelancers, it clearly demonstrates that the burden of compliance, the risk of misunderstanding it and the risk of penalties (which incidentally freelancers have been living with for 20 years) is considered great enough merit avoiding it completely.
2.2 What will be the effect of these new measures on a chain of contractors and sub-contractors?
2.2.1 From what I have observed it is already catastrophic with many freelancers being forced out of business or having to accept deeply unfavourable rate reductions or limitations on their abilities to do business.
2.2.2 In my own case, my current contract has been cancelled because the client has felt the burden of having to convert some to permanent positions and of moving to PAYE contract, so has cut back on project work.
2.2.3 I am also aware that many support industries such as accountants, insurance providers, agencies, specialist support services etc, including those who I deal with directly, are feeling great strain as their clients are freelancers who will no longer use their services. I would expect some not to survive.
2.3 What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help business understand the new administrative rules?
2.3.1 There is currently a lack of transparency of the various contracts between different parties. This leads to differing understandings of whether an engagement is inside or outside IR35.
2.3.2 Most freelancers seek to engage on business-to-business terms though clients often naïvely assume that they can treat freelancers like employees or freelancers depending on what suits them.
2.3.3 The disparity in size between freelancers and their clients often leads to clients effectively bullying freelancers into unacceptable situations. HMRC needs to stop vilifying freelancers and start helping clients to engage appropriately with freelancers
2.3.4 Additionally, the approach to determinations between different companies seems highly inconsistent. Some using legal teams, others using independent experts and others using their own managers – often without much training.
2.3.5 Independent oversight of determinations (i.e. not clients, workers or HMRC) and arbitration of appeals would be a better way forward.
2.4 Are the tests for determining employment for the purposes of these rules sufficiently clear to both engagement and worker? Do they reflect the reality of the contracting environment?
2.4.1 No. This situation has been ongoing for 20 years, since IR35 was introduced. HMRC have persistently maintained a position on employment determination which is not aligned either to the reality of contracting or case law.

2.4.2 While the CEST tool has improved recently, it still does not adequately account for mutuality of obligation due to HMRCs differing stance on this important factor.
2.4.3 Equally, other aspects such as substitution are far more likely to be relevant in some sectors than in others, for various reasons (i.e. regulatory, security etc)
2.4.4 In short, the one-size-fits-all approach to evaluating engagements is insufficient.
2.5 What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
2.5.1 HMRC have said they will accept the results of CEST, but with caveats and then fined the NHS even though they used it; so most freelancers I have encountered regard CEST with suspicion.
2.5.2 In my view, a tool developed by an organisation with a clear conflict of interest and who selectively recognise case law, will always be regarded with scepticism. This accounts for why so many freelancers and organisations do not trust it and are using alternatives.
2.5.3 A marked improvement would be if this tool and process were owned and overseen by an independent party who had no vested interest in a particular result other than a fair outcome.
2.6 How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
2.6.1 I have not received a status determination because my client has simply banned PSCs, though I have heard from many freelancers who are clearly outside IR35 based on working conditions and contractual terms, but who have simply been told by their clients that they are deemed inside.
2.6.2 While the client can be penalised for getting an 'outside' determination wrong, there is no such penalty for incorrectly assessing 'inside', so there would appear to be a very strong incentive for a client to determine inside.
2.6.3 Therefore, the status determination process, where clients have chosen not to avoid it entirely, is both biased and flawed and is resulting in very large numbers of 'inside' determinations which are demonstrably incorrect.
2.6.4 The appeals process seems very poorly thought through. There does not appear to be any independent arbitration or
oversight for example, nor is there any incentive for clients to change their initial view or consider evidence from the worker, but merely to provide their decision and reasons for it within 45 days. All in all, little better than a rubberstamping exercise.
2.7 Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
2.7.1 Yes, very much so, a number of thoroughly researched and well evidenced proposals have been put forward which would fully address the tax concerns of HMRC while allowing freelancers the freedom to run their own businesses and support the economy. Thus far HMRC have inexplicably rejected them all.

2.7.2 For example, allowing a worker to operate through a PSC but only receive remuneration by salary (i.e. no or limited dividends) but allowing expenses for travelling, working away etc to be claimed.
2.7.3 Companies also need to be much clearer about what type of engagement they are procuring and should not be allowed to abuse workers' rights to mitigate their own risks. In my opinion, this is a significant abuse that HMRC has chosen to ignore for decades and if addressed would realise the objective of
2.8 Will the bill, as drafted, achieve the governments objectives?
2.8.1 Clearly not. In my own case, I will be losing a substantial income and, in turn will no longer be paying part of that to HMRC.
2.8.2 When I do eventually obtain work, it is highly likely to be at a fraction of the income I previously earned and, even with employers NI, the tax take for HMRC will be a net loss.
2.8.3 My own situation would appear to be very typical of the outlook for many freelancers, from what I hear.
2.8.4 Clearly also, the bill will create several unintended and detrimental consequences such as restraining the competitiveness of British industry at a time when there has never been more need for it to be dynamic and flexible.
2.8.5 A significant concern that I also have is that expenses will no longer be allowed at all for 'inside' contracts meaning that freelancers who travel will be a thing of the past. This will cause significant disruption in many key British industries who rely on the mobility freelancers.
2.9 What is your view of umbrella companies in the context of these proposals?
2.9.1 I am disappointed by the so-called "employment contracts" being offered by umbrella companies which seem no more than a sham.
2.9.2 My request for a sample contract from even the largest umbrellas has been ignored.
2.9.3 When I asked, for example, how I would request annual leave, what my working hours would be and who I would report to, in each case the umbrellas I talked to (Giant, JSA, Brookson etc) referred me to the client.
2.9.4 It seems that the client would be the one actually making the decisions. Doesn't that make them the 'real' employer?
2.9.5 When I asked what happened if the client no longer needed my services, I was told that I probably would leave although they could not confirm whether I was being made redundant or dismissed.
2.10 How do the new measures relate to the wider context of change in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees.
2.10.1 These measures send employment policy in quite the wrong direction and are only likely to encourage poor employment practice.
2.10.2 Many workers are consequently being wrongly forced into 'contracting' when they do not want to and would rather be employees.
2.10.3 In doing do they lose many rights which they clearly should have, which is unfair.

2.10.4 Companies have tended to push workers into contracting since it avoids many obligations on their part (employment rights, employers NI etc) and this legislation will make things worse.
2.10.5 Some companies have been misusing the law for years to deny workers their employment rights and avoid their own tax and employment law responsibilities, with barely a complaint from HMRC.
2.10.6 If companies are allowed to push people into contracts that offer no employment law protection, we will see many more roles being advertised this way in the future and many more abuses of these kinds of gig-economy workers.
2.10.7 A backlash is likely from the big unions once they appreciate that hard won rights are being eroded.
2.10.8 From my perspective, these new measures unfairly punish 'real' freelancers like myself, who've made a choice to work
in the way they have and already do pay large amounts of tax. We are seeing our careers and financial security ruined.
2.10.9 In my view, HMRC should concentrate on taking action against companies who bend the rules by forcing workers into dubious working practices for their own benefit (including tax avoidance) rather than penalising legitimate freelance workers.

21 February 2020

Dr Martin Wheatman

Summary:

Resume – who I am

The ways IR35 affects me

Why I believe I operate outside of IR35

Some of your questions, answered

Conclusion

Resume – who *I* am

I live in the North West of England with my long-time partner, who is a Civil Servant as a Factory Inspector with the HSE, and with whom I have 4 children, who are at—or about to go to— university.

I am 56. I graduated in 1986 with a BSc (Hons) in Computer Science from the Hatfield Polytechnic. My main interests, then and now, are in compilers and programming languages – the technology which defines algorithms. After a few graduate programming jobs, I became the Test Manager and then a Consultant

for a small software house in Macclesfield, which produced MetaCASE Toolsets (Computer Aided Software Engineering) used by very large organisations such as BAE Systems. I was made redundant in December 1991.

After several months of unemployment (during the 'Double Dip' recession) I found a programming position through a friend whose company wanted some software writing, but didn't want to take on another permanent member of staff. This software drove a Mass Spectrometer, which that company went on to sell around the world. I had returned to the skill which I love and am good at—writing software—and I moved onto my next contract. The nature of the Informatics industry is that it takes a lot of skill and effort to create a computer program, but that program can be copied with virtually zero cost, and virtually zero skill, as many times as you like. The programmer's job is done—they don't get to share in the profits of their creation, they sell the copyright. This, I believe, makes IT an ideal example of a services industry. An employee might want to progress their career by working their way up the structure of a company (as the Test Manager or a Consultant) as servants of the company; however, the true computer programmer provide a service which the company can exploit. It goes without saying that there is a shortage of programmers in this country, and this method of short term contracts allows programmers to share their skills around. It is of benefit to "UK Plc".

Over the past 28 years I have worked for 12-15 clients around the North-West of England, both Blue Chip and SME alike. I formed my own company on my first contract and have used the same accountant—Lawrence Kershaw of Brody, Lee, Kershaw and Co, in Manchester—in all that time. He has always played a 'straight bat' when dealing with my tax affairs: I believe in paying my taxes, and I do not court any of the get-rich-quick schemes which can be found in the trade media. It is heartbreaking to see people losing their homes, for example over the loans scheme which the HMRC approved and then condemned retrospectively, but I feel that paying my taxes are part of living in a civil society.

I believe that hard work and self-improvement is the key to success. At one contract, for Barclays, in 1993, I developed a web generating tool, similar in some respects to Wikipedia (but which preceded it by 8 years). From this, I was inspired to enroll on an M.Phil at Lancaster University in 1993, graduating in 1999, to design an Object-Oriented database system. The problem with such a cognitively-based database is that the languages used to manipulate them were not appropriate, being designed for the database systems of the 1970s. After a few years of quiet research, I came upon an obscure philosophical approach, Semiotics, as a basis for computing, which the Informatics Research Centre at Reading University was also developing. I enrolled there on a PhD in 2005, graduating in 2011. In 2008-9, I had returned to the idea of database interface languages using the software engineering research I developed for my PhD—we should be talking to databases in Natural Language interfaces (this was 5 years before Amazon released Alexa). I took 2 years off in 2013 to develop this as an

app, with which I have since published about 20 conference and journal papers and won the 2016 British Computer Society's Machine Intelligence Competition. This is who I am.

Finally, I also believe I am a moral person. Since my PhD I have become a Trustee of several charities, and remain as a Trustee of the Shepherd Street Trust (as joint vice-chair) I have been a school governor since 2002, but have recently resigned as I am now learning to become a Listening Volunteer at the Samaritans.

The ways IR35 Affects Me

IR35 has increasingly affected me over the past 20 years.

I have been careful to take advice over my IR35 status, and have used QDos to provide contract reviews, and IR35 insurance to cover what they see would be my liability if a judgement went against me. This costs around £750 a year. It does help me sleep better!.

One point worth making is that IR35 is orientated towards the contract; however, my pattern of working shows, for example, time between contracts where I am training, or developing my own software, but where I am still employed by my company. The IR35 legislation doesn't look at this whole picture, it is solely bases on a contract-by-contract basis. Is HMRC suggesting that I'm a disguised employee and that I keep getting made redundant every 3 or 6 months? If my tax affairs are such that they need to be determined by a tax tribunal, is this possible every 3 – 6 months? Does this help the flow of business in the 21st Century? It is quite possible that you could have two concurrent contracts, one being in and one being out. Surely this would be a conflict of interest.

Another issue is that software is not a physical item; it is data, specified in an exact syntax. Thus, creating it is a highly skilled process, but copying it once written is trivial. It is a creative process more akin to writing laws than constructing boxes. Unfortunately, my clients often refer to hiring a builder to do some work on you home, the subtleties of physical units and ephemeral data structures is completely missed, and we end up with a desire for a 'fixed price contract'. The latest version of the HMRC CEST tool takes this into account—I put down that I get paid by the hour and still 'passed'. Fixed price contracts are there to hurry-along the programmer, which will result in shoddy work and errors in its coding.

Further, it is not simply a skill like driving a lorry (w.r.t. Ready Mixed Concrete vs Minister of Pensions) it is a cognitive process. You may be skilled if you play the guitar, it takes practice and possibly some innate talent, and you may be paid for your time as you learn a piece and then play it at a concert. However, software engineering is more like writing the music that the guitarist plays—it is

a creative process, not just learning how to operate a device (guitar or truck). Personally, I rather think theis inability to understand the difference between information and things is why the UK has Ready Mixed Concrete and the US has Google, Microsoft, Apple and Facebook. The point is that highly skilled, for which there is a free market, but this is ignored when reviewing a contract, the issue is whether the contract is one of service, or for services.
I am also trying to progress my own PhD research. Mainly through publishing papers, please see researchgate.net/ or academia.com, and videos such as https://www.youtube.com/watch?v=5ra3P3DcpwY I am running a workshop at the BCS HCI conference at Keele University (and hopefully presenting my latest findings, if my paper is accepted!) on 7th July. Getting funding for technology, which should revolutionise the way people interact with computers, particularly for people with difficulties with keyboards and screens, is difficult. But again this research role is inadmissible to IR35.

Why I believe I operate Outside of IR35

I initially believed I should be operating outside of IR35 solely because I am in business on my own account: I operate through a limited company; I use a reputable accountant; I am VAT registered; I hold Professional Indemnity, Public Liability and Employers Liability insurance; and, in the 28 years or so that I have been operating, I have been financially self-sustaining—I provide my own sick pay, holidays and time between contracts. As a responsible company director, I don't claim social security benefits. And my relationship with my clients is purely professional—I take no perks or corporate benefits, I simply get paid for the services I provide.

In the first instance—when the legislation was supposedly there to stop unscrupulous companies setting up bogus companies—for example a call centre, where a young and poorly paid workforce are forced to start their own companies for the call centre to avoid NI. It is quite wrong that people are exploited in this way, when they ought to be employed and receive all the benefits that go along with employment. I receive all the benefits I need through my own company. Because there is an open market for people with my skills, I can sustain the support I need to work on contract.

However, over the past few years HMRC has supposedly begun to start targeting contractors as simply tax dodgers. But, I still am reasonably confident that I'm outside of IR35, although an investigation would put a severe strain on me.

In that I take advice, I get my contracts reviewed which have indicated that I am either outside that the contract is watertight, or I have been borderline meaning that an inspection decision would revert to my working practices. My current contract, as deemed to be Outside by QDos.

I now pay more attention to the 'relevant' parts of my contracts, trying to equate the meaning of substitution and mutuality of obligation (MOO) to the services I provide. I have no MoO with my clients – the end of the contract is the end of the contract. I take no perks, nor corporate benefits; I simply get paid for the work I do, and this is the way I want it – I am not being coerced in any way. I do admit my claim to being able to supply substitutes is thin, given that there is a shortage of people with my skills, and that I am not a recruitment agency; however, the project managers at my current client have stated that they'd be interested in engaging substitutes as well as the contractors they already have – the have so much work to do. I have used substitutes in the past, in very particular cases but which might simply have seemed contrived—more like paying for training in particular roles.

You may think, I hope, that I have shown that I'm outside of IR35, and that I simply need to show this to potential clients, but this is not the case. In preparation for the new regime, I have recently had to pay their engaged IR35 consultancy for their review of my contract, they're not going to use my independent assessment, nor the HMRC CEST tool of which they were quite dismissive. Being a business expense, this should in itself show that I'm operating on a business-to-business relationship with my client: my company is paying for their liability. But this shows the power a client has over individuals.

Some of your questions answered:

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

The current tests for determining IR35 status are confusing and highly subjective, as contractors have been suggesting since its inception; however, they are preferable to awarding the responsibility of determination to the client, who has a clear conflict of interest. It is in the client's interest to limit the cost of contractors who operate in a free market. I have had to undertake my current client's IR35 determination, ignoring my independent assessments by HMRC and QDos, which was modified by the client and then deemed to be inside, swiftly followed by a call from the client's IR35 determination sub-contractor to be engaged by their own umbrella company: another conflict of interest.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

I have recently returned to using the HMRC CEST tool, and have been happy with it: it is quick and easy to use, it confirmed my belief that I am operating

outside of IR35, and HMRC state on the front that they will abide by the decision if it has been used in good faith. I think that one of the key points in this was that the my current contract requires that I have adequate Professional Indemnity insurance before my services were engaged. I seem to remember there was a ruling where the judge commented in his summing up that it would be unacceptable for an employee to have to pay to be employed.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

While the current system is often seen as confusing and complex; putting the determination in the hands of private companies, which have their own agenda, now means that you have no recourse to independent determination—what your client says (which typically starts with, 'we've got legal experts') goes. If that means there's a blanket ban, as has been found with the Banks, you're caught. There are no safeguards, the only alternative is to end your contract: a *lose-lose* result.

My current client's review does not pay much attention to MOO, which is one of my main defences, it puts too much emphasis on substitution—like I'm shovelling a hole in the road. It finds no major weaknesses in my contract, most things are positive or neutral, with a few things being minor weaknesses (including the substitution issues). This review has been modified by an (unnamed) client employee, who presumably doesn't know me, and is therefore making comments not on my working practices, but on the relationship that my client has with my agency. This must therefore essentially be a <u>blanket judgement</u> – not a judgement on <u>my</u> working practices.

I have no control over this, surely legislation should be independent of private company control.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

The UK should be managed with financial probity. Politicians should determine what are essential public services and the Treasury should raise enough tax to pay for them. I completely agree that tax 'loop-holes' should be shut—I don't want company dividends to be exempt from NI—but no effort has been made to close this one. Since NI is not a ring-fenced tax item, it could be reduced to 0% and income tax (the only moral tax) should be raised to make a tax neutral contribution (say for the median wage) Thus my taxes would go up, to the delight of the Treasury and public at large, but I wouldn't have to pay for IR35 insurance and contract reviews, and I could sleep and night. This could be sold,

politically, as raising money for the NHS or simply giving tax-dodgers one less place to hide! And, the national well-being would rise.

10. Will the Bill, as drafted, achieve the Government's objectives?

The impression I get, with the run-up to the new regime, is that the free market for transferable skills is being shut down. What are the Government's objectives – a cynical grab for more tax, which could be better achieved by closing the NI/dividends loophole. If I have been operating my limited company, with little or no dividend and so the tax implications are negligible or non-existent, this has no bearing on my IR35 status. I may be less likely to be pursued by HMRC, however, I am now still being dragged into the clutches of an umbrella company.

11. What is your view of the role of umbrella companies in the context of these proposals?

I am trying to avoid the use of an umbrella company. They offer the worst of both worlds—not being truly employed by the end-client means limited rewards/benefits, but without the rewards of Entrepreneurship of being self-employed. I would go from being a self-sustaining Entrepreneur to merely being the servant of a sub-contractor. I would receive a rate-cut (my current client has stated that the move to an umbrella company will be revenue-neutral to them), and as my master the umbrella company could (and would) place me at the highest bidder, wherever this might be. This used to happen in the 1980s and was called 'body shopping', where people were sent to the umbrella's clients to provide services. If I am providing 'services', independent of the end-client, I should not be self-employed and reap the benefits? I simply do not want to be 'employed' by these people.

On a more personal note, I produce independent research into the Human-Computer Interface; however, many employment contracts stipulate that all work produced *while in employment* is owned by the employer. This, at best, muddies the ownership of my own creative work.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

No it is not fair, and pushing contractors to the control of umbrellas is doing exactly this. Gig-economy workers should be employees of the app providers if they are in a precarious situation.

<u>Conclusion</u>

I am at my wits end. The current state is that my client still needs my services, to I still may be engaged on and outside basis, so I now have to redo their IR35 review with their own pre-determined answers; however, they're now looking for fixed price contracts which they seem to think is key to freelancing. I can't see this having any realistic meaning with software. Hopefully, the free market which I currently work within will come to my aid, and that they will resume engaging me for services not 'units'.

I hope you find this submission of use. It has been a bit hastily put together with one eye on your closing date for submissions—I hope it makes sense and shows the passion I have for my career. Not bad for one who failed his 12+

I am happy share any evidence I have with you. The project I provide my services to uses an industry standard Agile system to develop their software and it is most convenient to interact with my client at that level. This does not, however, make me part-and-parcel of their *employment* structure.

Please feel free to contact me, email is probably best as I am currently working in a secure area where phones are inadmissible. After April, just call me on the number below.

12 March 2020

Phil Wheeler

I would like to submit the following responses in relation to questions 4, 11 and 12 of the select committee inquiry into the draft finance bill 2019-20:

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

1) I'm sure many people have already explained how unfair this change is as large organisations are all using it as a mechanism to cut rates by forcing everyone inside IR35, regardless of their role. Over time, market pressure will force roles outside IR35 or rates back up to compensate, but large organisations will take advantage of small business people in the meantime and this is forcing many of my colleagues and associates to take lower paid permanent roles, sell cars, downsize their properties etc. All of this will have a damaging impact on the economy is the short to medium term.

11. What is your view of the role of umbrella companies in the context of these proposals?

2) Everyone I know is being pushed to work inside IR35 and use umbrella companies as large companies see no benefit in taking on any risk and aren't prepared to spend time assessing roles individually. This then

means more business to large corporates at the expense of small business. Surely this removes any value to the government of these changes and gives business a new loop hole to exploit workers with, by allowing them to avoid employment rights and HR legislation that has been hard fought over the last 20 years.

3) The thing that really gets me is the destruction of entrepreneurial opportunities for small business. I've been working as an independent management consultant for 13 years and most of the time, I've worked on my own. In recent years, I finally managed to win larger projects and had steadily built up my business with three more consultants working for me. These changes have now meant that all four of us are being forced to work through umbrella companies inside IR35 and the green shoots of a growing business have been destroyed. So, this rule is now gifting large business all the work and removing any power and opportunity from small companies struggling to build an independent future.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

4) These tax changes have created a new loop hole for large business to exploit people. Why employ anyone when you have to commit to sick pay, holiday pay and redundancy legislation? With this change, companies can avoid all of that and terminate people with no compensation at the drop of a hat. Why would anyone company take the risk of actually hiring staff? I can see the value in making large organisations liable for extra taxes if they use contract staff as employees, but why not leave it at that? In effect, all contract staff would have to meet the rules to be outside of IR35, or they should be employed with all the protection that gives individuals. Creating this anomaly of being a contractor, but inside IR35, gives business the opportunity to avoid all the risk and commitments of employing people and the individual worker suffers the consequences with no upside. The balance of risk and reward is weighted entirely towards large organisations and the hard-working contractor population are all penalised.

8 February 2020

David Whistler

SUMMARY

IR35 is a blunt tool that does not resolve the many problems faced by a modern economy and workforce.

IR35 is an extremely complex piece of tax law that HMRC itself does not understand. It is unrealistic to expect the laws to be applied accurately as proposed.

The IR35 changes will result in vulnerable workers being legally exploited by way of reduced rights.

Highly skilled professional contractors will be falsely categorised as payroll workers. This will reduce the effectiveness of the flexible workforce and innovation. It will lead to offshoring due to skills shortages and overall reduction in tax receipts.

ANSWERS TO SPECIFIC QUESTIONS

Existing measures in the public sector

1. I have no experience of the public sector

Impact of new off-payroll rules on organisations

2. It is difficult to believe the impact of the off-payroll extension into the private sector has been adequately assessed. Recent statements from HMRC and ministers still state that no blanket determinations are being made or that there is any confusion or disruption being identified. Clearly that is not the case and many examples have been publicly provided to them. Many organisations have made blanket bans or blanket assessments and an even bigger number have yet to make any assessment at all. There is total confusion being seen in both the workers and the engagers – clients and intermediaries.

3. Generally I think the small business exclusion is understood.

4. I'm confused by situations where there are multiple contractors/sub-contractors. I'm unclear to how the responsibilities and liabilities apply.

5. I don't believe IR35 can be simplified sufficiently. I fully support the aim of IR35. However, it's a blunt instrument that tries to resolve many different issues and in doing so fails comprehensively. For example:

Some organisations engage contractors to avoid providing employments rights and reduce employer's national insurance payments. IR35 makes it easier for organisations to avoid employing workers and paying employers national insurance. In fact, IR35 increases the problem for the worker as agencies and umbrella companies are taking the employers national insurance contribution

from workers' pay. Forcing the worker to pay employers NI and apprenticeship levy is not levelling the tax between employed and contractors.

Genuine professional contractors who operate with full respect of the legislation are now being falsely declared as employed workers for tax. This is simply because the fee payer either does not understand the law, is taking a risk averse approach or has been advised by 3rd party advisors with a vested interested in providing outsourced services themselves instead. Those organisations are not extending their assessments of "employed worker" to include additional workers' rights such as sick pay, holiday pay and pension contributions.

Determining tax status of workers

6. The tests for determining employment is not clear at all. The whole situation is ridiculous. HMRC believes that most off-payroll workers should in fact be on-payroll. They continue to disregard the law even though they have been challenged many times since IR35 was introduced in tax tribunals and lost most cases. The CEST tool provided by HMRC continues to disregard the law and the results of this tool have often been rejected by tax tribunal judges. HMRC refuse to even stand by the output of the CEST tool if they later disagree with how it was completed. Therefore, the tool offers no confidence of the true tax status even if it returns an outside IR35 result. NHS digital were fined a huge sum of money because HMRC refused to stand by the result of CEST. Private sector organisations simply cannot assess the tax status with any level of certainty unless they answer inside IR35 or blanket ban the engagement of off-payroll workers. Any other option will leave them open to investigation and punitive fines by HMRC or at best a costly defence case.

7. The CEST tool is not fit for purpose. It disregards areas of case law that HMRC disagrees with such as Mutuality of Obligation. IR35 is an extremely complex tax law that HMRC, contractors and tax tribunal judges have been grappling to get to grips with for 20 years. It is unrealistic to expect a tool to ask a few basic questions and determine the correct tax status. This is supported by the fact that HMRC refuses to accept the results if it disagrees and will later challenge its own tool results.

8. In my personal experience the status determination is fundamentally flawed. The process relies upon the fee payer to be judge and jury of the tax status of the engagement. Ignoring the fact that a lot of engagers simply don't have the knowledge or skills to understand tax law, but they are also understandably biased. In some cases, they can be looking to reduce employment rights or reduce their own employer NI costs. They will most certainly be looking to reduce the risk of future investigations by HMRC.

My current client determined my contract status as inside IR35. The contract is to deliver a specific IT project, with specific deliverables, within a specific

duration of approximately 9 months and requires skills and expertise that the client's employees do not have. In reaching their conclusion the client has not spoken with me. No one has spoken to the head of the department that I provide services to. My actual engagement – contract and working practices – were reviewed by an IR35 specialist organisation with the result declared outside IR35. The head of department was involved in that external assessment and no answers were contrived. I've been told the clients status determination is final. I informed them that I would be terminating the contract at the end of March.

However, the project was cancelled shortly after due to genuine business reasons and the client terminated the contract. The client is clearly displaying no Mutuality of Obligation i.e. no project, no contract, yet they still declared the engagement as inside IR35. Their status determination was made to protect their own interests and did not reflect the facts of the engagement. Their decision would certainly not be upheld at a tax tribunal.

I am now out of contract and due to the uncertainty in the country – the proposed IR35 changes, Brexit, Coronavirus and the financial markets - I am likely to be out of contract for a period of many weeks and likely a few months. Market demand has fallen through the floor even in my area of expertise which is Cyber Security. This is the risk that professional contractors accept and is why it's critical for my business to have reserves. Being forced to close the business and into PAYE schemes is genuinely going to impact my ability to provide flexible and skilled temporary resource.

Policy objectives and wider context

9. IR35 is simply not fit for purpose to deal with the issues faced. IR35 is designed to prevent the loss of tax and NI receipts. However, the cause of the loss of tax and NI receipts are numerous. Modern ways of working have changed, some employers are exploiting vulnerable workers to reduce costs, tax and employment law is not aligned. The whole situation needs comprehensive review and modernisation. It is too simplistic to say how do we make IR35 work. IR35 has not been working since its introduction 20 years ago and these changes will not make it work either. It may increase NI receipts, but many people will be falsely categorised as employed workers, there will be massive impact to the flexible workforce, there will be a loss in other tax receipts.

10. Is the governments objective to kill the flexible workforce? Is the objective to increase the number of workers who have no employment rights? Is the objective to reduce protection for the most vulnerable workers? Is the objective to decrease total tax receipts but increase NI by a smaller margin? Is the objective to stifle small businesses?

If yes, the government's objectives will be achieved.

11. I am strongly opposed to Umbrella companies and will absolutely refuse to undertake any contract that enforces their use. Many umbrellas continue to offer improved take home pay by using payment schemes that is going to cause misery for many workers in the next few years when HMRC starts applying tax and penalty charges. It seems the memory of the Loan Charge debacle is extremely short! In addition, how is it right that the umbrella companies pass on to the worker the burden of employers NI and the apprenticeship levy. It is simply unacceptable that employers' costs are taken from workers' wages!

12. As already stated, it is completely unfair that workers receive a HIGHER tax burden due to the employer's costs being passed on with no employment rights. The situation is not sustainable. If as expected the government and HMRC push forward with the current IR35 proposals, then it won't be long before there will be a review and significant changes. But the problem is, what will be the cost of the damage in the meantime?

10 March 2020

Andrea Wilkinson Leith, AWL Purchasing Consultancy LTD

This is my written submission on how the recent IR35 changes due in April 2020 have already affected me and how my future is absolutely at risk of zero earnings.

I have lived in France for 6 years and earn my income through interim contracts as a Purchasing professional with large FMCG businesses who require back-fill for maternity cover, sickness, extra resource for additional cost saving projects, leadership in assisting with procurement tools to develop their department's maturity ete etc.

I have a UK Limited Company and am registered in France with a Microentreprise i.e. self-employed small business.

The change in IR35 rules has already affected me getting my next role since I finished my last in September 2019 as the clients who would normally have given me a contract either directly or through a recruitment agency are terrified of the new rule, not understanding it fully and unprepared to take the risk of a fine from HMRC.

In addition, as I am French tax resident, even if they would employ me, I cannot pay NI in UK as I pay it in France and you can't pay it in 2 countries as it's illegal.

The rules around the CEST test also make no sense as some of the criteria for staying outside the IR35 rule are not possible and don't align with the reasons I have been able to work for companies before i.e. a company cannot specify the

hours, the location or the work you will carry out for them and cannot provide you with benefits which would include use of a laptop or phone provided by them to do the work. This is absolute nonsense – of course the company needs to be able to specify – even through mutual discussion and agreement – all of the above. They usually want to provide the IT tools to control security and to allow access to their systems. The phone is used purely for that business- not for personal use.

I am pleading with you to review the proposal to enable me to continue as before otherwise I will have to close my business, my house is at risk of being repossessed and I don't have the right to financial aid in France due to self-employed status.

A better solution would be to raise Corporation Tax to achieve the target.

13 February 2020

Davina Wilkinson

My first concern is the creation of "no-rights employees" with no rights to claim holidays, sick pay, pension, redundancy, maternity / paternity leave etc. If an objective of this extension is to level the playing field then it should also address equal rights. This could also incentivise companies to contract with more no-rights employees than regular employees, given the cost savings, which would have a big impact on the UK job market.

My second concern is the confusion around CEST. The criteria are not clear and are very much open to interpretation. As a result, businesses will determine many contractors to be inside IR35 incorrectly, as most business are risk averse.

My final concern (although I have many others than I have noted here) regards the mental health of the many contractors I know who have suffered stress and anxiety for many months due to the uncertainty of this extension and the future job market. I include myself in this.

10 March 2020

Andy Williams, New Technologies Limited

<u>Existing measures in the public sector</u>

1. What has been the experience of the new off-payroll rules in the public sector? What

lessons have been learned from this experience, and how have they affected the draft
Finance Bill proposals?

AW: I have no strong opinion on this particular point because my Company has never worked in the Public Sector – I have only worked with companies in the Private Sector.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been
adequately assessed? In particular, is the assessment that has been made of the compliance
burden (including costs) of these new rules realistic? Has the right balance been struck in
the compliance burden on the taxpayer and on HMRC?

AW: I do not believe there has been adequate consideration given to the implementation of off-payroll rules within the private sector. Undue burden is being placed on to contractors.

3. Is the exclusion of small organisations sufficiently robust, and how might small
organisations gain sufficient assurances that they fall within the exclusion?

AW: The exclusion is welcomed for smaller organisations. However such exclusion does not affect me as a contractor since most of my clients would be major blue-chip companies.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

AW: As a Freelance Systems Engineer working in the UK Aerospace and Defence industry with several high-profile multi-national companies, the effects are likely to be devastating for the company I have worked so hard to build over the last eight years. Doubtless there has been some abuse of the PSC structure by individuals in the past – but the measures being implemented by HMRC to tackle that issue are wholly disproportionate and 'tar' all genuine contractors with the same brush as being 'tax avoiders'. My projections if I were to succumb to the legislation and taxed as a perceived 'employee' would be to likely see around a 30% fall in take-home pay each month. Yet I would not receive the benefits afforded to permanent members of staff – i.e. holiday pay, sick pay, pension contributions etc, and would still be expected to shoulder all the financial risks being a self-employed contractor brings.

5. What scope might there be for simplifying or otherwise reducing the administrative
burden of these measures? What should HMRC do to help businesses understand the
new administrative rules?

AW: HMRC should concentrate on ensuring compliance of contractors with the existing rules, rather than try to invent new ones that will lead to a massive disruption in the marketplace and likely to the promotion by unscrupulous organisations of dishonest evasion schemes.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

AW: No. The 'rules' appear to be designed to be deliberately ambiguous and open to interpretation. It makes it extremely difficult for both contractors and end-clients to clearly make a sound legal determination of their perceived employment status. The rules unfairly penalise the fledging small business and open the door to larger consultancies stealing work who have the resources to hire legal expertise to protect their business interests. It is not creating a fair and level playing field nor encouraging new business enterprise.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it
require improvement? If so, how might it be improved?

AW: Poor. The CEST tool is clearly not fit for purpose. It does not appear to accurately reflect the legislation due to be implemented in April, any recent case law/judgements, nor is there any evidence it has been adequately/rigorously tested for compliance with the new law. HMRC won't even certify its results and still continue to challenge 'outside' determinations.

8. How effective will the status determination process be in resolving issues of employment
status? Are there adequate safeguards, allowing decisions to be challenged? If not, what
more is needed?

AW: The Status Determination process would seem to be fundamentally flawed. By forcing the end-client to make such a determination and given the aforementioned ambiguity of the IR35 regulations, a highly risk-adverse culture is being created where 'blanket' decisions are being taken by end-clients not to engage with PSCs, or to force all contractors into an 'Inside' IR35 determination with no fair assessment or right of appeal.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be
achieved? If so, what are they?

AW: We all accept that there is a requirement to pay more tax. Recent budget changes to the taxation of share dividends has attempted to close some of that gap. The new IR35 rules for private sector themselves are not necessarily unfair – but active consideration should be given to adding a 12 or 18 month 'exclusion' rule to avoid penalising those contractors (such as myself) who typically work very short contracts (average of 9 months). There should be a legal requirement for the fair assessment by end-clients of contractor working practices – i.e. the 'blanket' banning of PSC engagements should be outlawed.

There could be changes introduced to ensure that Company Directors of PSCs pay themselves at least the National Minimum Wage – thereby ensuring payment of both Employer and Employee NI contributions is realised. This in itself would close off one of the common loopholes where Directors could 'pay' themselves below the NI threshold.

Lastly, consider the option of creating a new legal entity to better reflect modern working practices of PSCs. One that still afforded a contractor the legal protection associated with limited liabilities companies but allowed a more focused application of taxation law, rather than attempting to cover all Limited company constructs with one set of rules.

10. Will the Bill, as drafted, achieve the Government's objectives?

AW: No. I already know of several individuals who will abandon contracting – either return to permanent employment or retire early. Both of these situations will adversely damage the vibrant contractor economy and the essential skill sets we need post Brexit in this country.

11. What is your view of the role of umbrella companies in the context of these proposals?

AW: Pointless. It is just another overhead that a contractor will have to cover from their 'net' earnings if 'inside' IR35 rather than be able to deduct as a recognised business expense.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if
they are employees, but do not have the rights of employees?

AW: I think there is a big mis-perception that people are being forced to work in the 'gig economy'. It is often very difficult for people in permanent employment or outside the industry to appreciate the flexibility that many people enjoy over receipt of employee benefits.

I absolutely value my true independence – the right to self-determination that contracting brings to my life and career. It has allowed me to retain the technical role of problem solving of systems engineering that I love and enjoy whilst offering the pursuit of new opportunities and ventures. Something that cannot be realised in permanent employment.

I would say that until recently I had felt more 'secure' in my role as a self-employed contractor than when I was working for 23 years as a permanent employee. The proposed IR35 changes into the private sector have shattered that confidence.

5 February 2020

D J Williams

I write in a personal capacity. I was for many years a permanent staff employee in an oil & gas industry service company, and had responsibility for a team which included contractors. Since retiring I have been doing part-time consultancy, and thus have experience on both sides of the fence. I have comments on some of the questions as follows.
Response to Qn 2. As team leader I aimed for a 50/50 staff/contractor split. Since our workload varied a lot, manpower flexibility was important. Taking on a new contractor was quick and simple. That simplicity will be lost with the requirement for a Status Determination Statement. It can be regained by insisting - as many companies are now doing - that all contractors go agency PAYE. However travel and accommodation must then be paid from post-tax income, so contractors cannot afford to travel far afield and contractor availability will be seriously reduced.
Response to Qn 3. Enforcing the rules requires HMRC to have a database of all large/medium enterprises to be policed. Surely HMRC can write to such enterprises to remind them that they fall within the scope. Where no such reminder is received, the enterprise should be entitled to assume that the small-company exclusion applies.
Response to Qn 6. Testing employment status is a difficult subject, but I feel there has been over-emphasis on the Right of Substitution. Many (perhaps most) off-payroll contractors have relied on a dubious substitution clause to excuse them from IR35. Some would ask a friend to stand in for them very briefly, for no real reason other than to escape IR35. This seems very artificial.

Response to Qn 9. The off-payroll working rules are intended to increase tax revenue, but an outside-IR35 contractor taking remuneration as dividends pays both 19% corporation tax and 7.5% dividend tax (at basic-rate), seemingly unattractive compared to paying 20% basic rate income tax. The balance is tipped by National Insurance, and in particular the 13.8% employer's 'secondary' contribution. This is essentially an employment tax, entitling neither employer nor employee to any benefits: it has been increasing steadily over the years and is now the principal cause of tax revenue divergence. If this were cut, and corporation tax / dividend tax increased, the incentive for disguised employment could be eliminated, off-payroll rules thus becoming unnecessary.

23 February 2020

Tyrone Williams

PSC contractor since 1995 within the private sector.

Answers to Specific Questions

Existing measures in the public sector

Not applicable
Impact of new off-payroll rules on organizations
Not in my view, large organization cannot assess in time.
No assurance have been given, based on turnover, so company status could change mid-way thru project.
Refusal to take on projects, or additional costs to be added.
Simple- remove the burden. Remove IR35.
Determining Tax Status Of Workers
Not clear, test is deliberately vague and coercive to assess people as inside IR35. Questions do not reflect the reality on the ground.
CEST tool is not fit for purpose, requires complete overhaul from industry experienced PSC contractors who are aware of the true reality within industry.
No safeguards, if you do not accept the determination you either reject the contract of work and go elsewhere, or accept it and appeal thru the civil courts at cost to both parties.
Policy objectives and wider context.
Base it on turnover similar to VAT thresholds. If your turnover is less than £85,000 then you are outside IR35. This way if a PSC is near their threshold they can abstain from further projects until the next financial year. This threshold can increase each year under a defined percentage. This would be linked to the individual to stop multiple companies being run.
If the objectives are to increase tax revenue, then no. Major blue chip companies in the UK I have worked for are already planning to off-shore work

outside the UK to avoid these rules. So UK PSC tax payers who go overseas will no longer pay their taxes inc corporation tax/VAT/NI, and pay for other professional services such as business insurance or accountancy fees. Unfortunately, there will be unscrupulous umbrella companies who will other unrealistic net returns for PSC contractors, creating problems later on. Plus, adds additional cost to the contractor for no benefit.
Being on an inside IR35 contract means I will be sat next to direct employee paying same rate of tax with NO employment rights for sickness/pension/holidays/company benefits/mental health support. We are creating a situation where this type of employment will be the norm and create the worse employment conditions in Europe.

18 February 2020

Austin Williamson

I am an experienced IT consultant with specialised knowledge of both the Finance Industry financial markets and understanding highly complex systems designed to trade, settle and regulate financial products in a global marketplace.

I have gained this knowledge over 35 years of continuous development in the UK, Europe, USA and Asia in some of the world's leading financial organisations.

Most of that was spent as a permanent employee but over the last few years I concluded that my experience was such that I could provide contract services on short term (3-6 month) contracts.

Below are my experiences and thoughts relating to the upcoming IR35 Finance Bill.

Real life experience relating to IR35 regulations:

Contract with a Tier 1 bank terminated early (unexpectedly) end of September.

My experience was that ALL contracts were being terminated in the bank IT areas with the reasons given as a) budget constraints b) IR35 even for incomplete projects following actions from other corporations

In this case the contracts had all been for specific time limited tasks (e.g. Ring Fence Regulation, Brexit European bank creation, Swaps margin methodology switch)

To my knowledge an unofficial (but real) blanket ban has been made on hiring contractors.

Contract advertisement stated as 'inside IR35'.

When asked what that meant in terms of the rate being offered neither the agent or the prospective employer seemed to know who would be responsible for paying the additional amounts required by being inside IR35 or how much it was.

It is questionable what the motivations of an 'inside IR35 contract' actually are.

It seems like an avoidance of general employment responsibilities (sick pay/holiday pay/pension) by those firms with the ability to

a) show costs in a different part of their accounts (Capex vs Opex)
b) avoid any scrutiny under dismissal regulations.

Rules do not apply to 'small organisations'

What does this mean exactly…? How is a 'small organisation' defined.

What happens if a small business becomes a larger business? Does it have to change its operating model or suck up additional cost? Would such costs be backdated?

What if a 'small organisation' does work for a big organisation? Is it still exempt?

If the small organisations only purpose was to provide capabilities to larger organisations (such as contract workers) would HMRC target the large organisation for using the small organisation?

Are all organisations caught by the HMRC rules or only those offering high net worth services (IT, Legal, Pharma, etc)…

If I do a contract for a small business am I exempt or only the firm itself?

The regulations are a gift to the Big Consultancy firms (no doubt rubbing their hands in glee) and their fat-cat investors…

What they expect/hope is that they can charge their corporate clients to body shop skilled staff in, pay those staff considerably less than they would get on a direct contract, operate fixed term contracts for those staff, avoid paying or contributing to any training costs, and immediately end 'employment' for staff who cannot be placed. In other words, a posh version of the Sports Direct model.

This really shows that HMRC is promoting the law of 'preferential-attachment' identified by Barabasi (Graph Theory – essentially that 'the rich get richer', in this case as tax laws are devised to produce such an outcome for large corporate consultancies and their kin)… Not exactly an endorsement of encouraging small business or entrepreneurship…

IR35 does not increase tax take from individual contractors in fact it reduces it, I am proof as HMRC is getting zero VAT and zero tax from me at the moment as the market is now essentially broken and you have highly skilled people, who were working, now earning nothing.

The losers are the independent contractors.

Big corporations are not going to risk future costs based on having to make a tax assessment of every contractor they employ.

For them it is much safer (and wiser) to avoid the problem by moving their development and innovation departments to a less onerous jurisdiction. I am sure global banks such as HSBC, Pharmas, insurance companies, etc will do just that.

Corporations operate on reducing risk, IR35 increases their risk, so they will take all steps to avoid and mitigate that. What they won't do is just hand over whatever the deluded HMRC dreams they will pay.
Whoever has calculated that this will increase the tax take needs to understand that the real world is a complex system, not an excel spreadsheet!

The other thing the corporations will not do is hire all the contract staff as permanent as it really messes up their balance sheet.

Contractors fill a key role providing specialised skills, experience and knowledge often in high risk, large capital programmes IR35 is breaking that flexible model and UK PLC will be much poorer intellectually and less flexible as a result.

It is inaccurate to suggest that contractors pay less tax than permanent employees.

The same responsibilities for Corporation tax, VAT, and dividend tax exist for contractors as for any other firm.

The dividend tax has been greatly modified over the last few years resulting in the differences in taxes paid on earnings being negligible, certainly not the reason for offering contract services. So HMRC was already getting its money.

This feels like a quite naive politically motivated tax change not one that will either increase tax receipts. It is designed to limit aspiration of individuals – do not try to be independent, do as you are told and go work at the mill…

Umbrella Companies

For a long time Umbrella Companies, agencies and other bottom-feeders have taken money for little or no effort.

On a contract they typically make 20-30% of the daily rate. They are the estate agents of the recruitment world adding little value other than supplying a CV to the interested party abetted by 'Preferred Supplier' lists.

Corporations use them out of convenience and they could most likely be replaced by a few automated systems.

That market has been driven by the use of 'Preferred Supplier Lists' (PSL) and lack of transparency by those companies about what cut they are taking on any given contract.

They are under no obligation to tell the contractor parties about the breakdown and most don't mention it. These two things drive up the costs of contracts and stifle competition (PSL and lack of transparency).

Umbrella companies do not protect individuals from responsibility for any tax 'errors' so they have no risk themselves so provide no protection, it is a sham with no productive purpose from an economic or legal perspective.

Why should a contract for a single person be treated differently from a contract involving two or three or ten people. Surely a contract is an agreement to provide a specified service for a fixed amount of time for a given task.
HMRC is essentially challenging the legal meaning of a contract. By not making clear what it defines as a contract it is avoiding responsibility and causing chaos as a result. It is essentially saying… you might think this is a contract to buy a service but we might come along in three years and say differently … (imp. threat "And IF WE DO … ")

Calling a contract 'Inside IR35' or 'Outside IR35' is nonsense. Either the contract is legitimate or it is not a contract… I assume HMRC would like to say all Ltd companies with less than three employees are not legitimate… In which case change the company law to state that ALL companies must have a t least three employees (it would be nonsensical but no more than is already being done!)…

HMRC have stated that some work undertaken by a Ltd company could be "inside IR35" and some other work could be "Outside IR35"… So does that mean if a builder builds an extension that is "Outside IR35" but if he agrees to a

maintenance contract that is inside IR35 or does it depend on how many extensions he builds in a year, or how many people help him?

I remember years ago the Conservative Govt wanted to simplify the Tax system … Way to go !!!

Summary:

The HMRC rules are having a dramatic and negative impact on contactor engagements and these are not being replaced by permanent roles

The determination of 'Inside/Outside' is not clear and firms are avoiding the risk by cancelling contracts en-masse.

This will benefit a few fat-cat consultancies and moves towards a Sports Direct agency model

Global Corporations will move Innovation projects outside the UK they will not (as HMRC seems to believe) transform contracts into PAYE employment

The market is already responding… Contract related HMRC tax take reductions will begin filtering through this month…

Use of 'consultancies' (we call them body shops), preferred supplier lists and agencies fees should be addressed as this reduces competitiveness in the market and skews the market

Ritchie Williamson

My Name is Ritchie Williamson and I am freelance contractor and I am writing regarding IR35: The off-payroll tax draft legislation

I am extremely concerned by the devastation already being caused by the forthcoming IR35 legislation, due to hit the private sector in April. I have never written to the Government before for anything, but I feel this is too important not for my voice to be heard.

I am writing to you now to urge you to suspend the April roll-out,
The draft legislation is already having a catastrophic impact, which you and the Treasury must surely now be aware of. Many large companies including, Vodafone and Telefonica O2 who I provide services for have announced they will no longer engage contractors out of fear they will fall foul of the notoriously complex legislation. Since then more companies have followed suit.

This means genuinely self-employed people are losing work opportunities, while clients themselves are losing vital, flexible expertise.

At a time when the UK needs a strong economy this is causing massive uncertainty for people around the UK.

Hiring organisations find the IR35 rules just as bewildering as everyone else. That is why they are terminating all their contractor engagements. The simply do not want any involvement in the new IR35 regime. Other organisations have correctly assessed that the only way to avoid a huge tax liability, is to declare that all engagements are inside IR35.

Already many contractors at O2 are reporting that they have lost their roles, others are now finding it difficult to find new roles. Many are also facing huge cuts in pay and even HMRC own estimates acknowledge that 153,000 people will see lower pay. This will cause hardship for some, especially as by its nature, contracting and freelancing already means periods without a stable income.
I have just seen a report today that this is putting Defense project at risk.

What is most worrying of all is that many contract and freelancer workers are effectively being forced into a status of 'zero rights employment', where they will be taxed as employees, via PAYE, but without any of the security or benefits of employment, no sick, holiday or maternity/paternity and no pension contribution. This is grossly unfair and must not be allowed to happen. I urge you to ensure that no-one pays taxes as an employee unless they have the rights and benefits of employment.

It is now absolutely clear that the impact of this ill-considered legislation is very different from the impact predicted by the Treasury and HMRC. With so many unexpected consequences already coming to light, it is now, in our view, essential that the government pauses this legislation before it is too late.

You personally promised a review of IR35 legislation during the election (as part of the proposed Government review of self-employment) so it was deeply disappointing when the new Government announced that the roll-out was going ahead anyway. Instead of the review of the law, all we have had is a rushed consultation of the implementation of the roll-out, which is clearly not what you committed to. We urge you now to have as proper review of the IR35 legislation as promised and halt the April roll-out to allow this to happen.

I don't think the Government understand the impact to the supply chain with accountants, housing, small and large business, Childcare, will all be effected.

The Government needs to understand how best to recognise contracting and freelancing in the tax system, to encourage A dynamic, flexible working and providing skills needed by many UK businesses. Before it is too late and the sector – and UK economy – are damaged.

25 February 2020

Dr Jessica Wilson

1)I am writing to submit personal written evidence regarding the new off payroll rules that are being extended to the private sector. I would have liked to have been able to submit a more polished submission however I was only informed about this committee yesterday as it has not been widely publicised within my industry.

2)Like many of my colleagues I currently work as a locum in the Veterinary industry. I have previously worked as a permanent employee and as a locum in this industry depending on the changing needs of my life. Veterinary locums don't seem to be easily defined by the IR35 tests, as I found out when I recently used the CEST tool, which unhelpfully could not decide my status. Despite this, I believe that most of us do fall outside the intentions of IR35. We are generally truly self employed. We work for multiple companies, both large corporations and small independent clinics. We can choose who we work for, what dates we work for and both ourselves and the clinics can end contracts with one weeks notice. If we were to fall sick we could certainly suggest an alternative for cover if we knew of anyone suitable, it would be up to the clinic whether they accepted them or not. We cannot set our own hours but that is because the clinics we work for have set opening hours that must be staffed, it is a limitation of our industry, not an indication that we are permanent employees. We have no employee benefits as a locum. We get no paid holiday or sick leave, no company benefits. We must self fund our industry required continuing education. We have to pay for our own indemnity cover and veterinary council registration. We can have jobs cancelled on us at short notice with no compensation.

3)We are now finding ourselves being given ultimatums by the larger corporations in a knee jerk reaction to the Governments rule changes. Many of the large corporates, who combined own hundreds of veterinary clinics around the UK, are now telling us that they will no longer accept locums who work through limited companies or as sole traders as the time and cost it will take to consider each individuals status is prohibitive. This is having a huge effect on the locums within the veterinary industry as we faced with having to choose between keeping our limited companies and losing a large proportion of work opportunities or switching to umbrella companies or zero hour contracts with the larger companies. Either way, this is going to significantly affect our earnings though reduced job opportunities or larger tax bills that give us no increased benefits or job security. In order to compensate for the increased tax costs we would need to increase our rates by at least 15%-20% but there is no guarantee that the corporations will accept those new rates. I have calculated that for my own business, without a rate increase I will be at least £700-£1000 per month worse off if I change to an Umbrella company. This is a significant amount of money which would cover many people's rents or mortgages.

4)I do not believe that this bill will achieve the Governments objectives, I believe it will just create a new problem of a vast increase in zero hour contracts which I understand the Government is already trying to tackle.

5)I do not believe that the new measures are fair for the majority of us within the veterinary industry who are using limited companies as they were intended to be used, for truly self employed people and not as a way of dodging taxes. Many of us decided to locum as a last attempt to stay within an industry that is already rife with problems including disproportionately high burnout and suicide rates. Returning to permanent employment is not a healthy long term solution for many of us and the new rule changes are going to mean that neither is self employed locum work. I suspect that a significant proportion of us will take this as a sign to leave the industry entirely if this rule change is upheld which will have serious effects on an industry already struggling with recruitment and retention.

6)I urge you to reconsider the intended changes. They have not even been enforced yet and the locums within the veterinary industry are already being disadvantaged.

25 February 2020

Ian Wilson

I have been a contractor for over 20 years, working in a variety of industries that include, Aerospace, Defence, Mobile, Pharmaceutical and Medical.

I experienced the effect on the Public Sector as the legislation was introduced at the UK Ministry of Defence, and then more recently at a major UK Defence company as UK industry attempts to cope with this rapidly introduced and poorly supported legislation.

The views that follow are written to align with the areas of interest and questions that appear on the Lords Committee website.

1. Existing measures in the public sector
What has been the experience of the new off-payroll rules in the public sector?

In the run-up to the introduction in the public sector, little clear guidance had been provided by HMRC, and it was clear from the use of the CEST online tool at the time that it would not provide a clear determination, because it failed to address a number of key factors, did not take existing case law into account, and had no means to adequately take individual circumstances into account.

The local MoD staff were uncertain as to how to progress, until a determination was made, presumably at a high level, that all contractors that had been brought into the organisation through Capita were deemed to be inside IR35.

The team of which I was a part included senior engineers, some Chartered, who had been brought in precisely to provide the specialised expertise and guidance needed on the project, working largely independently of the main project team.

The only conclusion that I could draw was that the UK MoD had only perceived the legislation as introducing risk, and then determined that the 'safest' option was to automatically deem everyone as inside IR35 - no individual determination was offered.

As a result, I believe that the majority of the team left to pursue roles in the private sector.

Impact of new off-payroll rules on organisations

2. No specific comment - I am not aware of any publicly available information that would indicate if HMRC conducted an adequate assessment.

3. My personal experience is that small organisations have not been sufficiently involved in the development of the legislation - this extends more widely to the agencies that work with clients and contractors.

4. The current effect would appear to be (to date) that the vast majority of organisations are choosing to either eliminate contracting entirely as a means for attracting staff, or deeming all roles to be inside IR35. This extends across all sectors of industry.

The effect on the chain of contractors and subcontractors, is that the existing agencies have largely been kept in the dark, and not involved in any discussion with client. This means that, even for those contractors who may accept an inside-IR35 determination, the client has not provided clarity on what a new contract may be, and they are unable to state what the financial terms are either.

5. In my view, it is a mistake to place the burden of the measures on the private sector in this way. The complexity and variety of roles and contracts in the private sector make it almost impossible for even medium size organisations to understand what they need to, and how to go about it. Large organisations are not even bothering - while the organisation I currently contract for appear to have provide individual determinations, in reality I am well aware that my determination was not conducted by somebody who actually knows my day-to-day work practices, and there are no rules or penalties that require this organisation to conduct a fair or independent appeal.

Having now received my appeal outcome (fundamentally no change), it is clear that the organisation has deliberately put in place an appeals process that serves only their agenda – as there is no independent appeal, it is not possible to further challenge the outcome of the appeal. Evidence provided has been dismissed out of hand, and no face-to-face discussions or arbitration has taken place.

Determining tax status of workers

6. No, the tests for determining employment for the purposes of these rules are not sufficiently clear to both engager and worker; they do not reflect the reality of the contracting environment.

The CEST tool, as covered by others who have submitted evidence to yourselves, is not fit for purpose. So industry is meant to use this tool, against which HMRC themselves have failed to win IR35 cases, and achieve a better result.

Perhaps one possible direction to consider may be the regulation of employment contracts, in a manner similar to tenancy agreements, where standard terms and conditions might therefore be applied and treated by category.

7. The tool leads to too much subjectivity that can be applied when answering the same question. Equally, the blatant opacity of HMRC when questions have been raised as to how the tool has been developed, and that it does not appear to take case law into account, erodes any trust that might have been due.

8. Effectivity will remain to be seen; there are no real safeguards to ensure that any appeal is dealt with fairly, or independently - instead, large businesses are treating this as they would any other emergent short term risk, and (largely) choosing to eliminate that risk by not using outside IR35 contracting.

Policy objectives and wider context

9. Well, it would be useful to know what the objectives really were; if the intent was to completely eliminate outside IR35 contracting, then HMRC are well on the way to achieving that, at some considerable disruption and cost to industry. I believe that a significant number of contractors affected are choosing to leave their existing roles, because to remain in the same role that is now considered inside IR35, that implies that their previous determination could be considered as incorrect, and leave them open to investigation.

If however HMRC genuinely wish to allow outside IR35 contracting to continue to exist, industry must be provided with the tools, guidance and time to accurately and fairly conduct determinations.

10. No comment.

11. In my view, umbrella companies do not provide much in the context of these proposals. For those contractors who do not feel able or willing to operate their own company, the umbrella company can provide a level of comfort, but in my view they really act as another middle man, charging a slice of the income that would be due to the contractor.

12. It appears that employment rights legislation is not aligned to tax legislation. The only apparent morsel offered by those companies who will now only contract inside IR35, is to suggest that contractors can consider permanent positions at significantly lower salaries - I'm sure that wouldn't be another motivation for large companies.

Of course, I'm sure that, were a large number of existing contractors to consider permanent work, HMRC will have taken into account the lower tax take (no VAT or Corporation Tax from their small companies), the fall in business for agencies, and that contractors would no longer spend on accountancy fees or professional indemnity and public liability insurance.

10 March 2020

Martin Wilson

I hereby submit this evidence in a personal capacity as someone currently finding themselves out of work as a result of the IR35 changes.

Impact of new off-payroll rules on organisations
Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?
No.
I actually don’t think the law or off-payroll rules are the issue here, moreover it’s the interpretation of it, and HMRCs approach which have led to the unintended consequences of this change.
I think there was an assumption that large organisations would act in plenty of time to prepare themselves for the changes. As the deadline has approached it is clear that many have left it too late to implement processes that facilitate a fair assessment of contractors, not that the CEST too is fit for purpose, or that organisations have decided that they are unwilling to accept any burden of risk or costs. As a result they have introduced a blanket ban on contractors or agencies who engage with contractors.
The interpretation of the rules by large organisations means that those deciding to work under an umbrella will pay, not only employee NI and Income tax, but also employers NI.

In all of the models with umbrella companies: the proposal was a reduction in day rate, I'd be treated as inside IR35, receive no employee benefits, loose my ability to claim all my costs and pay employers tax? The burden is clearly stacked against the contractor.
Whilst I believe market forces will correct the path many organisations have taken eventually, it is going to hit many individuals and their families, organisations, and the UK economy very hard in the short to medium turn.
Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?
The whole ecosystem will need to change to support small businesses who might not understand the opportunities that this presents i.e. there will be a hugely experienced workforce that they can leverage that will no longer look to support large organisations as clients who are imposing a blanket ban on PSCs. It is going to take a while for the market to mature and stabilise in this regard.

What will be the effect of these new measures on a chain of contractors and sub- contractors?
Based on conversations with other PSCs there will be an exodus from large organisations which will stall projects, prevent growth and impact tax revenue.
I primarily work in the financial sector in London and following internal guidance from within HMRC, I feel unable to take a 6 month fixed term contract at my current client as this could lead to investigation by HMRC.
Despite assurances HMRC have left a loophole in their promises not to investigate previous contract history which could be abused. Their lack of transparency has caused an enormous amount of distrust.

IR35 Promise 3 – "HMRC have taken the decision that they will only use information resulting from these changes to open a new enquiry into earlier years if there is reason to suspect fraud or criminal behaviour".
The market is saturated with contractors as a result of fewer outside IR35 roles, this is having a downward pressure on day rate and is causing a great deal of stress not only for contractors but for employees in organisations, facing the potential of a walkout from contractors who cannot accept the terms offered in FTCs or working for an umbrella company.
What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?
HMRC are not deemed as trustworthy and I doubt there will be a government u-turn because no-one will admit to making a mistake on this, instead I would suggest that an independent body take over from HMRC introducing a suitable CEST tool which reflects UK case law, unlike HMRC's.
This central service/database could be used to assist organisations in performing assessments on their PSCs hires, this could provide them with a liability shift if HMRC were to investigate their use of off payroll employees. i.e. they have been diligent in their approach. This could be a charged for certificate

that each PSC would seek to get and could generate income/ cover the cost of providing the service.
Determining tax status of workers
Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
Clearly not or we wouldn't be seeing the large number of blanket bans for PSCs, the CEST tool is very poor and despite changes made to it recently still does not reflect UK case law in its outcome of the assessment.
What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
There should have an independent body running it, HMRC do not have a good track record of assessing PSCs correctly as can be seen in their success rate in courts.
How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
There are no safeguards in place and it is not clear what the potential impact of being found inside IR35 would be, is VAT, corporation tax, dividends etc taken into account? - the uncertainty is causing chaos which will disrupt tax revenues, and the growth of organisations
Policy objectives and wider context
Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
Remove the liability from the organisation by providing an independent body who can provide certification of status - this will raise funds and provide a clear way forward for both organisation and contractor
Will the Bill, as drafted, achieve the Government's objectives?
If the objective is to increase the amount of tax revenue, no?
The Fixed term contract that I was offered with my current client would see me contribute £20,000 less in tax (annualised) in addition my personal income would be significantly less which impacts my disposable income.
In addition there will be less VAT revenue on purchases through lack of spending power for those previously working as a PSC: this will place a real deflationary pressure on the UK economy.
What is your view of the role of umbrella companies in the context of these proposals?
Exploitative; they are forcing PSCs to pay both employers and employees NI contributions whilst providing a lower rate. They are turning a bad situation and making it worse through greed and fear. I have refused to enter conversations with them as they are not fit for purpose.
How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
I think the question answers itself by highlight an unfairness, As a PSC I have no issues paying tax, as highlighted earlier my contribution will be less under the proposed changes, and I'm happy to take less holiday, pay for my own

travel, provide my own pension provision, insurance, healthcare, accounting, and manage the risk of being out of work for short periods as you work to build opportunities (4.5 months in the last 14) this seems to have been completely forgotten by people who complain about fairness of those working for PSCs.
I find myself out of work as of the 28th February (contract cut short and allows 1 month for all invoices to be settled ahead of the deadline); there are many others in a similar situation.
To then go into an inside IR35, earn less, contribute less to the economy, and not get access to the benefits as I can no longer afford to finance myself is exploitation. As this exploitation is being ignored by the UK government; I'm reviewing my options and I'm considering taking my considerable expertise overseas where governments are looking to replace London as the financial centre of Europe.

24 February 2020

Paul Wood

I am writing to voice my concerns over the changes and implementation of IR35 and the impact this will have on, myself, my business and the wider economy.

At present my client is essential scared of the legislation, the guidance and the implementation of this poorly thought out change. Before the election Savid Javid promised a review of this, a legislation that he thought should have been scraped before he joined Parliament. However, this was slightly watered down following the election victory, again another politician miss leading the people he is supposed to represent for personal and political gain. However, this review has begun and due for completion in Mid-February. The outcome of this is yet to be concluded at the time of writing on the 21st February.

My client is having to implement these sketchy guidelines, based on the assessment made of the HMRC's CEST tool. A tool that does not meet the government's own digital standards, nor the more important factor of been in line with UK Law. This is flawed and heavily weighted to provide the assessment that best suits the HMRC and their goals. The client has therefore taken the decision not to use any contractors.

This has left me with a few options. The first been to take a permanent role within the business. If I was able to do this I would be taking a role that were I would be payed far less than my current arrangements. This would result in the tax recuperated been a higher percentage of my earnings but a small value in pounds than I am currently paying. However, this is not viable as my client doesn't want to take me on due to the nature of the work and requires the flexibility to reduce its workforce depending on workloads and active projects.

The second option is for me to join and Umbrella company, which they are dictating I use one of their "approved" option. Ongoing down this route I will have to close my company and will no longer be able to retain the services of my accountant, impacting on local businesses. This route also means I will now be funding both employee and employer national insurance contributions from my previously agreed rate. To perform as required the work involves me travelling long distances each week and spending time away from my home and family. This also incurs additional costs in the form of travel, accommodation etc. A burden that will also now be transferred directly to me as an individual. This is something I will no longer be able to do. This will have an impact on the businesses that I visit each week, i.e. hotels, restaurants, etc.

If I am to take a position with an "umbrella" company I will now been viewed as a temp worker for the purpose of employment rights, no pension, no holiday, no sick entitlements, no paternity rights, no company benefits, Car, health/life insurance, but as an employee for tax purposes. This has put me in the worst-case position from both points of view. All of this on a temporary contract with no notice or redundancy rights.

The government has constantly said that they want two people in the same office doing similar work to be paying the same in taxes, which appears to be the aim of this legislation. However, they don't appear to be too bothered about the employment rights of the same two employees.

This has also resulted in me been unable to put any money away for the future in forms of a pension, which I believe is actually encouraged or use to be by the government.

The third option I have is to reject the two options above lose my business and any income I have. Having a young family this is not really an option. Due to the nature of this legislation the client is not willing to take the risk and penalties that this flawed legislation will potentially burden it with. At present I am looking at options, the main option is taking my skills abroad to a fairer tax regime, one that encourages business and entrepreneurship, as this legislation is clearly anti-business.

These changes to my personnel situation are going to be extreme. I will still be expected to perform as I am, with the added additional expenses of employer's national insurance contributions (effectively by a cut in my rate). Any expenses I incur performing my role to the client will still have to be paid for from my income, however these changes will mean after tax and national insurance contributions. This is putting me into a very delicate financial position, one that I am unsure how I can continue to cover my outgoing following the introduction of these additional burdens.

This is causing anxiety in my family life and everything that goes with this. This is essentially limiting the area I can work in from the whole country to an area

of about 40 miles (1 hrs drive) from my home address and will stop me accepting any work that would involve me spending a night away from my home address. This has a knock-on effect to the hotel I regularly use in my weekly routine.

This has also stopped us from performing a planned home extension and home improvements. This just will not happen now, again causing damage to the local economy, in an already relatively poor part of the country.

I have many friends and colleagues and friends who are also going to be affected by this legislation.

I urge you to act now before it’s too late. You are in your position to represent the people.

10 March 2020

Mike Wood

As part of the House of Lords IR35 investigation I submit the following as feedback from my own personal circumstances.

As a contractor I have multiple customers that I do work for, unfortunately this year that is all coming to an end. The clients I work for all have taken a blanket approach to IR35 and although this may not be best practice they are taking the viewpoint that they simply cannot risk using contractors anymore.

I have worked for a range of client's across a range of industries (banking, energy, IT etc) and each one of them have announced in the last 30 to 60 days they will cease using contractors by April 2020.

For me and my family this has been personally devastating, I specialise in Telecommunication/Networking and very few companies will hire a engineer full-time for these roles as its one off specialised tasks.

My wife is a foreign national and as such I relied on income from my business to support us both as we plan to have kids and therefore she will be unable to work. Unfortunately I am now in a position that I cannot do that and ultimately we are now looking to move to her home country abroad. The current proposed legislation has ultimately removed my income and associated personal and business taxes from the UK.

I know at this late stage the decisions have probably already been made but I among many other contractors have been impacted by the processes and procedures that have been put in place for companies to decide how they will deal with contractors. I really do now fear for small businesses in this country

and the flexibility that will be lost as a result of IR35. I ask you to consider my feedback and the impact the changes to IR35 are having on myself, family and thousands of other contractors in similar situations.

25 February 2020

Matt Worsdell

I am, apologies, was, a contractor in IT. First of all, a little background as to my contracting career.

Following the financial crash in 2008 I found myself unemployed as the consultancy I worked for folded. In the first two years I commuted 2 hours each way to London and then worked evenings and weekends on a contract I managed to secure with a large US based farming client. It was hard work but I managed to set aside what is termed a war chest, for when times are difficult. For the next couple of years, I continued to contract, away from home, travelling to other parts of the country to perform roles for various clients.

As a family, we decided we would move back home to the welsh border, a lovely rural area which does not have a great deal of highly paid employment. We were living in the south of England and the pressures on schools and local infrastructure was beginning to tell.

I continued to contract, staying away from home sometimes 3, sometimes 4 days a week. In 2018 I contracted in London and my travelling expenses were well over £10k, a mixture of rent, food, train fares and local train services. Last year I managed to secure a role in Manchester and commuted 150 miles each day putting over 20000 miles on my car in around 9 months. However, I was lucky enough to be home every night to see my family.

In the 11 years I contracted, I did not have any gaps in work. I sometimes worked seven days a week and my holiday amounted to probably less than 10 days per annum. I made sure I kept up to date with my skills, ensured professional qualifications were up to date and even embarked on a masters degree. I worked hard, paid my taxes and ensured everything was above board.

As a PSC. I employed another consultant on a couple of occasions in order to deliver work I had managed to secure. I worked adhoc to support my aforementioned US client. I performed local IT support jobs installing Wifi in a local pub and for the local cricket club. Having gained skills in home automation I even performed an install for a local developer.

It’s all stopped.

Following the moves to implement the off payroll rules the opportunities are no longer there. Clients are understandably not prepared to take on the risk of back taxes and the admin burden of managing lots of small limited companies to ensure that the supply chain is compliant.

The cost of travel and working away simply doesn't add up for an inside IR35 role. As a result, I've found myself a permanent role, less money, so less tax, and closed my company.

I'll no longer be spending money on accountancy, bank fees, software subscriptions, insurance, train fares, hotels, fuel, car parking, taxis, IT equipment, coffee, Airbnb, restaurants, etc.

I'll no longer be collecting VAT, paying huge amounts of corporation tax, dividend tax.

I'll no longer be gathering the best knowledge and experience, supporting clients to implement change and productivity improvements.

I'll no longer be keeping my professional certifications up to date, nor ensuring I have the necessary skills to market myself.

Business is a balance of risk and reward. In putting the risk where there is no reward, HMRC have successfully closed down the opportunity for many.

I will be paying income tax and national insurance which will be slightly less than the CT and Dividend tax I paid previously.

Unfortunately, all those other small businesses will suffer too, plus the local rural economy as I readjust my spending to the new world order.

Ironically, since I wrote this submission, my employer has assigned me to a Franco Dutch project and as a result my 25 years+ experience has been lost to the UK economy.

10 March 2020

Cliff Wright

I wish to submit the following information for consideration as part of the Lords committee review into the "Off payroll working" legislation due to be rolled out into the private sector.

I currently work in the private sector for large organisations and from my experience, already – ahead of the legislation being in force – am one of thousands of freelance consultants who are faced with the very real likelihood of

needing to close my business from April. Every single one of the consultants in my network is left optionless with regard to the future of their business.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

I have witnessed already that larger businesses, Financial services companies, banks and retail businesses etc who are the main-stay of mine (and many other consultants' that I know) client base, are all taking a blanket approach to avoiding any liabilities this legislation places upon them, by simply refusing to engage with individual consultants any longer. Those small number that are still willing to engage, appear to be taking a blanket approach to determinations, meaning that anyone engaged will be forced into an "Inside IR35" contract, regardless of the engagement.

In short, the imminent impact (as backed up by a recent confidence survey conducted by IPSE which revealed a dramatic drop in freelancers' confidence in the market) is that Contractors will be forced to close their business which will not only affect themselves, but have a halo-effect on the wider economy in that they will no longer employ accountants, buy equipment, insurances etc.

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

Simply put, no. In my experience, businesses appear to be fearful of the liabilities and potential negative publicity that may arise from making a mistake in the assessment process, which is driving them, in tandem with a lack of desire to expend huge HR resource efforts on the determination process, to make blanket assessments.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The CEST tool is massively inadequate and is driving businesses into the "blanket" approaches they are taking, both from the point of view of being used as a determinator, but also from the point of view of the levels of Administration now placed upon businesses that they are not resourced to undertake in the true spirit that they should be.

10. Will the Bill, as drafted, achieve the Government's objectives?

Only if the government planned to force thousands of small consulting businesses to close, reduce the flexibility of talent this country has, and create a 3rd employment status of "Worker without rights", would the objective be achieved.

Right at the point, with Brexit looming, where this country NEEDS a flexible talented work-force for companies to be able to adapt and react quickly to changes in the market, these changes will force thousands of consultants to close their businesses, resulting in both a reduction in this flexibility, but ultimately a net-loss of taxes to the treasury as a result.

20 February 2020

Christopher Young

For the Attention of The Finance Bill Sub-Committee:

Dear Lord Forsyth of Drumlin,

1. As a Director and Owner of a Limited Company providing Consultancy services, please find below my evidence to support the House of Lords investigation into the extension of the off-payroll working rules to large and medium-sized businesses in the private sector.

2. Through my own current experience, I will illustrate how HMRC and many businesses are unfairly implementing the new off-payroll working rule changes and how this will have a hugely damaging impact, in both the short and longer term on the UK's population of c5m Contractors, the UK's large and medium sized business they support and the wider UK economy.

3. **Impact of the new off-payroll rules on organisations:**

4. Q4. What will be the effect of these new measures on a chain of contractors and subcontractors?

5. The reality of the planned changes is that genuine self-employed Contractors like myself – who are just small businesses offering their services to other businesses – will lose between 25-40% of current revenue as a result of paying employee taxes, the employers' National Insurance charge (an effective rate of around 50 per cent) and in some cases even the hirers' apprenticeship levy, but without any access to any employee benefits including but not limited to holiday, redundancy and sickness pay, pension contributions and health insurance.

   How can being taxed like a permanent employee but have no employment rights be deemed an acceptable and fair treatment of the UK's population of 5m Contractors.

6. The widespread blanket bans adopted by many companies will severely limit the opportunities to continue working as a Contractor, resulting in many Contractors opting for one of the following;

7. Continuing as a contractor and either operating outside IR35 or accepting an inside IR35 solution such as an Umbrella Company.
8. Take a permanent role
9. Work outside the UK
10. Take a break from contracting

11. Therefore, many Contractors are being faced with immediate and very damaging impacts on their business, either they accept a 25% cut in their income or walk away from clients with limited prospects of securing new clients due to the wide spread blanket banning of contractors outside IR35.

12. It should also be noted that the proposed PAYE solutions being offered to Contractors such as Umbrella Companies, also result in Contractors being unable to claim travelling expenses, which further reduces their income.

13. Determining tax status of workers:

14. Q7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

15. I believe that the amendments to the CEST tool made in December 2019 did improve the fairness and appropriateness of the tool, before these changes were made it was impossible to be determined as outside IR35, that is no longer the case.

16. The CEST tool still fails to consider mutuality of obligation (MOO), based on HMRC's assumption that MOO is present in all contractual engagements, this has been referenced by the courts and other legal experts as a major failing of the tool who have presided over the recent completed HMRC court cases that they have lost including HMRC Vs NHS Digital and HMRC Vs RALC.

17. It is my view that the IR35 rule changes and the uncertainty surrounding the actual legislation and the CEST tool has forced companies to be risk averse and blanket ban the engagement of Contractors operating through PSC's by either blanket banning the use of Contractors through PSC's or blanket assessments that all contractors are inside IR25.

18. I currently work for a large UK Defence, Aerospace and Security organisation. At the group level they have decided to assess groups of contractor roles, rather than the individual Contractor, the majority are all being assessed as Inside IR35.

19. Within the division I work, they have decided to assess the individual Contractor, so two different approaches within the same organisation, communication to both agencies and contractors has been lacking in clarity.

20. In my situation, I changed roles at the beginning of the year, myself and my Line Manager advised the HR IR35 team of the new scope of services against my new and the need to have a new contract issued, as this illustrated that I was outside of IR35, to date I've still had no response.

21. The HR IR35 team discussed my assessment through the CEST tool with my Line Manager before issuing the formal determination, but based my determination on my old role and a number of inaccurate answers to questions that ignored the answers provided by my Line Manager and the in-house Legal advice.

22. In addition, the HR IR35 team have assessed a fellow Contractor performing exactly the same work as me and they have answered several questions in the CEST tool differently between the two of us.

23. In my experience I believe that my current organisation are unfairly assessing their Contractors with the aim of determining all their Contractors to be inside IR35 to remove the risk of any liability with HMRC.

24. Q8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed? Policy objectives and wider context

25. I am currently preparing my appeal to my determination, but am not confident that it will be a fair review given the HR IR35 team have already ignored the inputs of both my Line Manager and the internal legal advice in the original determination.

26. Q10. Will the Bill, as drafted, achieve the Government's objectives?

27. As evidenced in my answer to Q4 above, Contractors are not accepting the new IR35 working rules, there is clear evidence that contractors are taking up all of the available options available to them from moving into permanent roles, accepting interim roles via an umbrella company and deciding to pursue other opportunities outside the UK, leaving Companies with a lack of available skilled, flexible, resource, as a result, we are already seeing Companies engage off-shore resource to continue delivering projects.

28. The net effect of this is likely to be damage to the private sectors ability to deliver the projects required to support the UK economy in the critical post Brexit period, at the same time, it provides a real risk to the additional Tax receipts that HMRC is expecting to receive as a result of the rule changes., especially if more Contractors decide to pursue work opportunities outside the UK and companies engage off-shore resource to replace the work of contractors.

29. The reality of the planned changes is that my personal and Limited company contributions to HMRC of c£44k each year will be put at significant risk with the new changes.

30. Q12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

31. The new measures will harm contractors financially and they will make it much harder for companies across the UK to access the vital flexible expertise they need to deliver projects and drive the economy forward in this critical post Brexit period for the UK, where UK companies will need access to a pool of available, highly skilled, flexible resources to support the delivery of projects that will help the UK companies and economy grow and prosper.

32. The IR35 rule changes and the approach being taken by many companies are already driving huge numbers of Contractors out of many UK companies with no access to many UK organisations who have blanket banned their engagement.

33. The "gig economy" will shrink significantly this year resulting in many companies accessing off shore resource to replace the skills no longer available in the UK, as a result, there is a significant risk that the UK economy suffers from the loss of a wide range of highly sought after skills, experience as companies are unable to deliver the change and transformation required to deliver the opportunities of Brexit.

34. It is neither fair nor reasonable to expect Contractors to be taxed in the same way that permanent employees are when Contractors receive no employee benefits, such as pensions, holiday and sickness pay.

35. It is incorrect to suggest that all Contractors are paying little tax. For the Tax Year 2019/20, I have paid personal tax contributions in excess of £20,000 and in addition my company has paid Corporation Tax of £20,000.

36. It is highly likely that due to the direct impact of the IR35 working rules being implemented in the private sector, I will not be making the same financial contributions to the UK economy in the future given the significant impact on the future engagement of Contractors by the private sector as I am now seriously planning to continue Contracting outside of the UK.

37. Thank-you for the opportunity to contribute to your investigation into the impact of the new IR35 working rules

18 February 2020

David Young

1.1 – **Summary of my situation:**

- Born Dumfries and Galloway
- Educated with MSc in Advanced Computer Networking
- Had to leave Dumfries and Galloway when 18 to study and since no work in computing in this area, worked in central belt of Scotland
- In September 2017 made redundant at age 53 from Multinational USA health company
- Came back to Galloway (address DG99JH) not a single job in computing (same as when I left 35 years ago: much needs done!)
- I decided I wasn't sitting on my "backside" and looked into contracting market
- This market is rather funny in its operation within computing and demands that you operate as a Ltd Company (with agencies securing contracts)
- I worked over in Edinburgh on contracts till June 2019.
- Since June 2019 I visited friends in Singapore (agree 100% with Boris if we could start a process to get UK being like Singapore)
- However on returning the UK contract market is in utter decline due to off payroll or ir35 legislation proposed for April 2020 (not just in IT the entire thing)
- I am hoping that you can see that I am not an anti-tax person.
- I am a person who simply has to work through my Ltd (personal service company).
- I just cannot believe that the dynamic flexible working being provided by contractors is being attacked by my **conservative** government.

1.2 - **Real events that have happened to David Young, 16 Weir Terrace, Sandhead, Stranraer:**

- Many contracts are not being renewed or offered for only a 2 month period until end of March 2020 (reason being the planned introduction pf IR35 into private sector in April 2020).

- ***All banks and financial service companies (Aberdeen Asset, Tesco Bank, Barclays, JP Morgan to name a few) have decided they will not engage with Personal Service Companies (PSC) after April 2010 IR35. They are not running any tools from Inland revenue: just banning us.***

- ***Given above agencies are telling all contractors that use PSC they must engage or work through an umbrella company (I had this said to me twice last week). Every agency using a different set of umbrella companies.***

- I need to keep my PSC for contracts that are Outside IR35 so will potentially end up paying an Umbrella Company and the expenses of keeping my PSC going.

- Some larger agencies are prepared to deal with the Inside IR35 situation and pay the PAYE + NICS for the contractor (in my situation they quoted deducting PAYE, Employers Nics, Employee Nics holiday accrual, apprentice Levey and other minor expenses ALL FROM MY contract rate!!). This has become a wide spread practise with such agencies, since the impending IR35 new rules proposed in April 2020.

- I have had to engage my accountant to check if proposed deductions for tax from my daily rate are correct and I have had to see my "corporate lawyer" to check if holiday accrual and employers NICs should be taken from me and to check what the working relationship will be under proposed April 2020 IR35 laws.

- To date my accountant has found issues with certain agency and umbrella companies figures: when they have provided me with working examples of what my take home pay would be if forced to use them when contracts inside IR35. This is extremely discouraging since it maybe such companies are trying to make figures better than they would be to get contractors to use them.

- ***There also is an extremely worrying trend of Umbrella companies offering contractors take home pay rates that are in no way***

deducting the correct tax, such companies being housed outside the UK.

- Under new proposed IR35 rules I having to travel from Dumfries and Galloway to location where contract is, will not be able to claim expenses for subsistence and travel. Scotland just is rural!

- As mentioned previously all these points above are affecting me at present and are making it extremely difficult to engage it any contracts to date.

- I hope this information gives a little insight into what is actually going on.

1.3 – At present what is happening contractors rates:

- in the majority of situations the contractors rates are being reduced or frozen: thus the contractors cannot adjust rates in line with tax deductions and lack of expense claims.

- Umbrella and indeed agency with payroll capabilities are taking Employers and Employee NICs, PAYE, apprentice levy and holiday money all out of the contractors rates. However contractors rates are not being increased.

1.4 – Companies are blanket banning contractors Ltd Companies PSC):

- IBM now rejecting PSC:

  https://www.computerweekly.com/news/252477002/IR35-private-sector-reforms-IBM-joins-list-of-enterprises-taking-blanket-ban-approach-to-PSCs

22 February 2020

Petrus Zeeman

Summary
I have been further hit by the governments war on contracting to the extend that there is nothing left for me any more.
Add this to my personal position regarding an enormous Loan Charge claim, being hounded for APN's and now the loan books have been unscrupulously sold on and these people are now calling in the loans insisting on payment in weeks.
I hate having paid to a ICAEW accredited accountant to use IR35 to scare me away from starting a Ltd Company in 2006. Instead I joined an umbrella Company and receiving 78% if my pay – the same % as with a Ltd Company – I just new Dotas registered, QC approved and insisted on as the only safe way by my accountant (who got his kickback). I knew nothing about loans or anything similar.

ANSWERS TO SPECIFIC QUESTIONS
Determining tax status of workers:
I have been blanket assessed as inside IR35 – no assessment no appeal
I can go PAYE and HMRC have said they would not go after contractors who are outside and no go inside. And yet there are numerous HMRC internal memos about to no go after people who have done just that – so there is no option but to resign
I need to do a handover to an Indian based company with no ideaof the business or processes. So the £50k in VAT and Tax I pay a year is lost to HMRC
The market is flooded so I can find another job – so I'm to go on the dole! That a negative income for HMRC then
My life is ruined if not for my family I have nothing to life for – I'll be bankrupted, homeless, without a job and 46 years old. So just about too late to do anything else.
The stress of all this is killing me.. its breaking up my family, I barely have friends who would put up with this broken, humiliated being that is me.
And all because I paid for – and followed the advice of an accountant who Jesse Norman says did nothing wrong
I hate the world, I hate my life and losing my job because of IR35 is just the last straw

19 February 2020

Romit Zutshi

Summary

- In light of the proposed Off Payroll Reform in the private sector, self-employed contractors are seeing the end-client employing a blanket decision whereby they are stopping engaging with Limited Company (LTD)/ Personal Service Company (PSC) contractors.
- Instead of correctly determining the status of the contractor, private sector end clients have resorted to not determining the contractor status and only engaging contractors on a PAYE basis.
- Moreover, end clients are deducting employer taxes such as Employers NI and Apprenticeship Levy from the contractor daily rate. This has resulted in the self-employed contractor becoming an employee for tax purposes but without any associated employment benefits such as sick leave and holiday pay.
- I strongly believe the reforms in their current arrangement is ending self-employment within UK business without achieving its stated objectives.

Impact of new off-payroll rules on organisations

2.

- I don't believe the impact of the reforms on the private sector has been adequately assessed. The complexity of determining the contractor status correctly and the burden of potential penalties and reputational damage has

resulted in the private sector end clients taking a conservative approach of not determining the status of the contractors and deciding to take a blanket approach of not engaging with self-employed contractors.

3.
- Exclusion of small organisations could results in creating unbalanced market and provide incentives for circumventing the rules. There is a possibility of confusion around when a small organisation would lose its exclusion.

4.
- Immediate impact on contractors and sub-contractors is that UK businesses will drastically reduce their engagement with contractors on a self-employed basis.

- This will have a big impact on the earnings of contractors who usually demand a market premium rate for the skills and flexibility that they bring to the UK market.

- In my personal situation, my end client has taken a blanket decision to not engage with PSC contractors from 6th April 2020 onwards and forced me to either accept a PAYE contract or terminate my contract.

- For PAYE contract, Employers NI and apprenticeship levy is being deducted from my day rate and I also need to contribute for any sick pay/holiday pay. I have faced the similar situation in a new contract that I have agreed with another private sector end-client.

5.
- Business needs to be prevented from doing blanket decisions. End client needs to follow the status determination process and contractors should be able to dispute the status. Additionally, business need to be educated on how to engage with self-employed contractors in a compliant manner without bearing undue risk of getting it wrong.

Determining tax status of workers

6.
- No the tests of determining the employment status are not clear and do not reflect the reality of the contracting environment. In industries such as mine, investment banking, end client has concerns around security/reputational risk and some of the status determination tests are not suitable. Rather than status tests we need alternative arrangements on hiring flexible workforce, such as fixed duration engagements with clearly defined outcomes.

7.

- I did not need to use it for my assessment as the end client did not assess me but having reviewed it I don't think it is fit for purpose. The tool outcome could suggest the engagement is outside but the actual working practises can be different.
- Moreover, the CEST tool outcome is not defendable in case of an IR35 investigation. The tool needs to have detailed audit trail and needs both end client and contractor inputs.
- Additionally, an independent validation of the tool result needs to be done so there are no discrepancies later.

8.
- Currently the status determination process is totally client driven and the contractor does not have any say. In case of dispute/challenge, again it is client's decision that is binding on the contractor.
- The dispute resolution should involve an independent review that allows contractor views/position to be taken into consideration.

Policy objectives and wider context

9.
- A simpler solution would be to levy a fixed charge from businesses to hire self-employed contractors something like a Contractor Levy. This would not cause structural changes in the engagement of self-employed contractors and also assist in the revenue collection objective of the reform.

10.
- No, as the behavioural impact of the changes would prevent in achieving governments objectives.

- Increasing offshoring, reduction in earning potential of self-employed workers would reduce the tax collected and the inability to engage flexible workforce would impact the profitability of the UK businesses resulting in further reduction of the associated tax revenues.

11.
- Umbrella companies in my opinion are introducing a risk as they are potentially attracting an alternative way of employment where the contractor is employed with the umbrella companies and receives salary/employee benefits from umbrella companies.
- There is a risk that umbrella companies practises would be deemed incorrect by HMRC and the contractors would get penalised later.
- There is a lack of clarity on whether the umbrella companies are regulated and how contractors can eliminate the risk of engaging with them.

- Additionally, some umbrella companies advertise higher take home salaries for individuals thereby enticing them to switch over from agency payroll to umbrella companies.

12.

- I feel the strongest opposition of the reforms is that it is creating a new category of workers – employees for tax with no employee benefits.
- The reforms would encourage employers to move existing staff into this category as they have got an opportunity to save costs by adopting this approach.
- In the modern "gig economy", flexible working should be a norm and to support that self-employment opportunities should be encouraged. The business needs the flexibility to hire staff but they need to compensate the flexible staff for the risk they take versus a permanent employment.
- The reforms are trying to eliminate the risk premium for the self-employed contractors and favouring the employers as they are passing the employment costs to the contractors.

24 February 2020

ANONYMOUS EVIDENCE

Anonymous

The proposed changes for the private sector off-payroll rules will be damaging to both companies and contractors alike.

To summarise points made in this response:

No lessons have been learned from the public sector rollout.

HMRC has not done a proper impact assessment or considered the cost of compliance to businesses.

Small businesses require assurances/further information to minimise the potential of accruing substantial tax risk, should the size of their business grow, and a status determination is successfully challenged by HMRC.

The effect of the changes has been devastation of the contracting sector with PSC bans, blanket assessments as inside IR35 (resulting in contractors being forced to use umbrella companies or onto the payroll). Due care is not being taken. Employers' NI is being pushed onto the contractor.

Status determination is currently a sham with blanket assessments being the norm. An independent body with no conflict of interest should be set up to assist.

The tests for determining employment are not clear and do not reflect the reality of the contracting environment.

The CEST tool is still not fit for purpose as it does not reflect case law and excludes the mutuality of obligation. Per Hall v Lorimer, a mechanical exercise (e.g. CEST) should not be used to determine employment status. A question relating to mutuality of obligation should be added.

The status determination process will be unsuccessful in resolving employment status issues. Companies will take a "take it or leave it" approach. A recommendation is that an independent (of HMRC/HMT) external body should be used.

The best/simplest way to achieve the desired effect of the new rules would be to introduce a flat rate contractor levy, payable by clients.

Politically the bill may achieve the Government's desired objectives but in terms of revenue the figures are optimistic.

Umbrella companies should be regulated. Offshore providers should be outlawed. A potential Loan Charge mark 2 scandal will be the result if this is not dealt with. Suicides will result.
Answers to specific questions
Existing measures in the public sector

Q1. What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

No lessons have been learned from the experience. The fact that locum doctors, for example, now refuse to work out of area and, as I am aware from Doctors known to me, there are now struggles to fulfil rotas due to the changes.

Impact of new off-payroll rules on organisations

Q2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

No. Given that even IR35 status experts and HMRC disagree with the status determinations, how can companies expect to correctly assess statuses without engaging external experts or training their own in house, which will undoubtedly be a costly exercise.

Q3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

No answer.

Q4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

Devastation and indeed as being observed, many companies in the private sector are now refusing to engage with PSCs as a result. To mitigate tax risk, companies are blanket assessing contractors as all inside IR35, regardless of the legislative requirement for due care.
There are real examples of companies moving work offshore. For example, in the contract I left in January at a large software house in Chippenham, I was informed by the development/project manager that she was having to make preparations to potentially move the development work to Pune in India as a result of people leaving due to IR35 status determinations. The result of this will be zero revenue for HMRC across multiple contractors. I am aware of several similar situations arising in multiple companies.

Q5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

HMRC should not be misleading and apply the law as intended, not as they require to ensure maximum tax.

The only scope I can foresee is for industry and HMRC to work together to

ensure there are approved suppliers of IR35 status determination services. Currently there are too many conflicts of interest with consultancies purporting to offer IR35 determination services and then pushing their own consultants to organisations.

Possible status determination services provided by the likes of QDOS Consulting, Bauer & Cottrell, IPSE (or their associates), IR35 Shield, Markel Tax and so on. After all, these organisations have all won numerous IR35 status determination cases against HMRC.

Determining tax status of workers

Q6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No. Determining employment status is incredibly difficult and more nuanced than HMRC would have the general public believe. Many organisations, large and small, struggle to understand the rules.

The tests do not reflect the reality of many contracting environments, particularly knowledge-based contractors. It relies on an outdated and romanticised ideal of a company requiring expenditure on significant amounts of equipment to create a widget or construct something tangible.

Q7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The CEST tool is not fit for purpose as it does not align with case law, is misleading, and crucially it ignores one of the pillars in tribunal cases, the mutuality of obligation.
Also, per Hall v Lorimer (https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm7160) it was stated that "this is not a mechanical exercise of running through items on a check list to see whether they are present in, or absent from, a given situation." Having a tool such as CEST to determine employment status goes against this.

It can be improved by adding mutuality of obligation with a question such as:

Q: Does mutuality of obligation exist in this engagement? Is the supplier obliged to accept any work you give them to do and are you obliged to pay them for the duration of the contract even if you have no work to give them to do?

If the answer is yes then it counts towards the inside matrix, if no it's an automatic outside status determination.

Q8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

The status determination process will not be effective in resolving issues of employment status. Two scenarios are regularly being observed:
The end client blanket assesses all contractors, regardless of actual status.

The contractor is given a take it or leave it option.

There are no adequate safeguards allowing decisions to be challenged. It will be done on a company by company basis with a "take it or leave it" option given to the contractor.

The only way in which all sides can have faith that there would be adequate safeguards for status determinations is if an independent body/organisation/company were responsible for dispute resolution. This could not be a body with vested interests represented by HMRC/HMT who will follow an approach of max tax rather than the right tax.

Policy objectives and wider context

Q9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

The best way to achieve increased revenue is to implement a flat rate contractor levy, payable by companies engaging contractors. It would be simple and easy to achieve.

Q10. Will the Bill, as drafted, achieve the Government's objectives?

Politically, perhaps. From a revenue perspective, I doubt it.
To expand on the above. Politically have always been the politics of envy associated with contracting that somehow contractors are tax dodgers and earn far too much. The one thing not often discussed is the liquidity contractors provide to companies/organisations to scale up/down projects as necessary. It also tends to show that the UK is very much closed for business. Question 12 articulates the point in relation to rights. In short if it is fair that an additional tax burden is placed on contractors as if they are employees, they should receive employment rights. If I am working in a X month contract, I should receive statutory holiday as an employee. I'd be happy to have a couple of days off per month.

From a revenue perspective, even the OBR was unable to accurately state how much revenue this would bring in. There are 2 miscalculations which have been made:

If organisations stop engaging contractors and force people to choose between permanent employment and leaving, the permanent employees will often receive much less as a permanent salary than a contractor.

The amount of work moving outside of the UK.

The number of people leaving the UK.

The number of people retiring.

As an observation, when pursuing a contract with a large bank based in New York, contracted to an entity in Ireland but working out of an office based in the UK, there arguments about the status of an IR35 contract. Ultimately the contract was deemed unworkable because, and I quote "IR35 status determination made it too difficult", hence the contract went to a person based in Dublin.

Q11. What is your view of the role of umbrella companies in the context of these proposals?

Umbrella companies can have a role, but it should be made clear that if the proposals proceed, that, as is my current understanding, that the employer's national insurance should be paid by the client company and not the contractor via the umbrella company.

Several unscrupulous organisations are now trying to entice contractors with promises of higher retention rates. These organisations are often based offshore.

As a result of the above, I fully expect another Loan Charge type scandal as unsuspecting users are drawn in or worse given no choice but to use a specific umbrella company. To be clear, this is likely to lead to further suicides.

Umbrella companies should be regulated and audited.

Q12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

The "gig economy" is different in the sense that participants working for companies such as Deliveroo (as my eldest son has) have contracts but do not work through limited companies.

"Gig economy" contracts are often more exploitative, resulting in shifts being required at short notice, shifts being cancelled at short notice, disputes over pay with little hope of resolution and so on.

23 February 2020

Anonymous

1. I am an independent IT Contractor working through my own IT Services Limited Company and am providing a Written Submission in a personal capacity.

2. I have been contracting for a number of years and firmly believe that I have been fairly paying my taxes and collecting VAT from my

clients on HMRCs behalf. I have had my contracts independently assessed to confirm that they do not fall within IR35.

You asked for views on a number of topics which I will address in turn.

Determining tax status of workers

Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

3. In my experience clients either relying exclusively on the HMRC Check Employment Status for Tax (CEST) tool or outsourcing the determination process to third parties. In reality clients are making blanket determinations that contractors are within IR35 or simply ceasing to engage independent contractors through limited companies in order to limit the cost and effort of making determinations and to remove the risk that determinations are subsequently challenged by HMRC. I therefore believe that the determination process is not fair as it is being skewed as a risk mitigation exercise.

What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

4. The CEST tool is not fit for purpose, it oversimplifies the process of making a fair determination and the questions used are open to significantly varying interpretations which means it is easily possible to get contradictory status determinations whilst still having answered the questions honestly.

How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

5. There is a process for challenging status determinations, but I think the majority of independent contractors will not do so because the questions which are used to make a determination are too subjective and therefore challenges are highly unlikely to be successful.

6. *P*olicy objectives and wider context

Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

7. The objective of the new rules is based on a false assertion by HMRC that there is an avoidance of paying tax, or more specifically clients are avoiding paying Employers National Insurance by engaging disguised employees through limited companies. As an independent contractor I

do not have employment rights and cannot claim many of the benefits which National Insurance is collected to fund and therefore the entire premise of the legislation is flawed.

Will the Bill, as drafted, achieve the Government's objectives?

8. I do not think that the bill will achieve the Government's objectives, entire sectors of the economy such as banking are ceasing to engage independent contractors, others are offshoring work, Contractors are moving overseas all which will mean a reduction in the tax collected by HMRC. There will also be an increase in the burden on the welfare state as contractors become unemployed in the short term.

What is your view of the role of umbrella companies in the context of these proposals?

9. Umbrella Companies have been available as a route for independent contractors to engage with clients for many years. Umbrella companies take a fee for their services which is a further "tax" on contractors who have to engage via this route. The proposed introduction of this new legislation has led to many more Umbrella Companies being established which I believe are offering misleading advice to independent contractors, I have personally had proposals from umbrella companies where the quoted "take home pay" differs by several thousand pounds. This is leaving independent contractors exposed to potentially unscrupulous practices and profiteering on the part of these companies.

How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

10. It is entirely unfair that some individuals are taxed as employees but without the rights of employees. I have been offered positions as a "PAYE Contractor" with clients or intermediary companies engaging temporary workers on behalf of clients. This policy is creating a system of second-class employees who are taxed as if they are employees but have absolutely no employment rights; no sick pay, holiday pay, parental leave or redundancy. This under class of No Rights Employees also do not count towards an organisation's headcount for things such as gender equality, comparisons of executive pay to average employee income etc. and can be dismissed at very short without reason.

11. Some intermediaries will say that they pay holiday and sick pay however in reality all they are doing is withholding a portion of the contractors' earnings to cover this and it is completely unclear whether these withheld earnings would be returned to the contractor if not required. If I were to take a single 6 month engagement with a

client during which time I took no holiday and had no time off sick, it is not clear whether the intermediary would be required to pay me the withheld income at the end of the engagement or whether they would be profiteering from me.

12. I am able to continue to contract through my limited company however there is an imbalance here too. I am required to have my own Public Liability and Professional Indemnity insurances, legally I have to engage an accountant to prepare and submit my company accounts. All of these costs which are legitimate costs of running a limited company will, under the new legislation, have to be met from my income after PAYE taxes have been deducted so I am penalised for working in this way. Previously the legislation allowed for a percentage of the company income to be excluded from the PAYE tax calculation for this, however this has been removed under the new proposed legislation.

13. The "gig economy" is an extension of the concept of contacting through a limited company, HMRC is, in my opinion, completely out of touch with the modern flexible economy the UK needs to succeed, particularly in the Post Brexit era. Instead of recognising that employment has radically changed over recent years and will continue to do so at an increasing rate HMRC is applying yesterday's thinking to
tomorrow's world instead of recognising that they need to support and incentivise those of us who choose to work in more flexible ways in support of our clients rapidly changing needs.

Thank you for the opportunity to contribute to your committee's scrutiny of the legislation.

6 February 2020

Anonymous

In preparing this response, I have aligned the paragraphs with the Call For Written Evidence document.

Existing measures in the public sector
While I have been unaffected by the changes within the public sector, there is evidence that organisations have found it difficult to attract talent, leading to increased costs and project delays/cancellations. In cancelling projects, which one supposes were initiated to save money, that money saving initiative is lost to the public sector.

Impact of new off-payroll rules on organisations
There could be a significant cost burden to organisations in ensuring that they comply with the new rules. Two spring to mind; status determination and payroll costs. Done on an individual basis, preparation and execution of status

determination can take hours. Both one-off payroll system modifications, and running contractors within the payroll, will add significant costs to a business.

There is evidence that businesses are side-stepping these processes. In the case of determination, by making blanket assessments, and for payroll system concerns, by forcing contractors to use umbrella companies for payment.

In practice, this means that there is no burden on the company, with the contractor bearing all tax and NI costs (both employee's and employer's), as well as those of the umbrella company (between £700 and £1000 per year, from what I've heard).

To my mind, there are so many nuances to this very complex piece of legislation that the right thing to do is postpone it for at least another year so that the unintended consequences of its introduction can be properly and fully assessed.

I can't comment on the robustness of the small company exclusions, but I would say that as a company grows, and approaches at least one of the thresholds, contractors who previously determined their status will find that their engager takes over that responsibility. The risk then is that blanket determinations are made, as with medium and large businesses.

Contractors engaging sub-contractors will, I believe, effectively cease because contractors will have no mechanism to offset the sub-contractor's costs. This will make it more difficult for organisations to satisfactorily complete projects if they must source the would-be sub-contractor's skills themselves.

As noted in 2, above, organisations are removing the burden on themselves by blanket assessing contractors and forcing the use of umbrella companies, both of which are to the contractor's detriment.

Determining tax status of workers
Generally speaking, I feel that the determination tests are reasonably clear, but there is evidence of engagements where determination is difficult.

I have not used the CEST tool for some time. I understand that recent versions of it have removed the test for Mutuality of Obligation, considered a key tenet of a contract. HMRC have been roundly criticized for its removal, seen by some as a cynical ploy to direct CEST users towards an 'inside' status.

With risk avoidance being a key driver of business, I don't see how challenging a status determination would work in practice. That is, if a company has decided that a role falls inside IR35, no amount of challenging is likely to make a difference.

Policy objectives and wider context
I cannot think of a way that the new rules' objectives can be achieved that doesn't negatively impact both a whole sector of the working population and companies' ability to innovate with a flexible workforce.

Prima facie, the Bill may achieve the Government's objectives, for example the gathering of an additional
£1.2bn in 2023/24. It is claimed, although I have not seen it myself, that this doesn't align with projections from the OBR.

However, the £1.2bn headline is only one side of the story. It will be offset by several things, for example:

contractors becoming permanent employees, earning less and paying less tax and NI
contractors closing their businesses and retiring early
contractors moving abroad
businesses sending work abroad
loss of VAT income from engagers who are unable to claim it back
less money spent in local communities, and loss of VAT/Corporation Tax income, due to lower disposable income
lower corporation tax from businesses whose competitive edge is blunted due to delayed and cancelled projects
the impact on ancillary services such as accountants and insurance companies

I have never used an umbrella company so I can't speak from personal experience. I hear that there are good ones and bad ones. What they share is an operating model that makes the contractor an employee, but an employee responsible for the full gamut of employment costs, including employer's NI and very likely the apprenticeship levy.

Contractors know and embrace the risks and rewards of setting up their own business. It is entirely unfair, and morally wrong, to tax individuals as employees, for them to pay employer's NI, and at the same time afford them no employment rights.

They accept that there will be periods without income due to sickness and holiday, and the need to fund their own pensions, maternity leave and paternity leave. They accept that they have no redundancy protection, that they may need to travel long distances to companies that need their skills, and to have to spend time away from their family.

This legislation will create a sub-class of employee who has absolutely all the risks and none of the rights.

What will there be to stop any and every business from recruiting so called employees in this way, and for them to side-step their obligations as an employer?

Already, there are websites promoting the concept of a No Rights Employee, an example of which is
n orightsemployee.uk. No Rights Employees is what almost all contractors will unfairly become in the UK.

If, as HMRC contend, employees (however they are defined) should be taxed fairly, then no employee should have to pay employer's NI, and employment

law and tax law need to be connected to ensure that everyone is protected with employment rights.

23 February 2020

Anonymous

I would like to take this opportunity to supply some points of my own. I'm sure these may have been supplied before, but I'd still like to make them. I'm self-employed myself but I am hoping these comments come across as measured and not biased.

1. There is a balance that is being eroded. Business needs a pool of expertise to call upon. As an example, the company I'm currently supplying my services to is also involved in supplying a solution for the upcoming SFTR financial trading regulations. To do this they have built a team almost entirely of self-employed contactors to perform this task. Once the project is over, the team will be largely disbanded with, I'm sure, a few stragglers left over to perform maintenance and handover the solution. Under IR35 this pool of expertise will be reduced substantially making it much more difficult for business to react (and take advantage) of opportunities that arise. It will also make sourcing expertise for adhoc projects much more difficult as not every project is like the one just described.
2. It appears that HMRC more or less assumes that every contractor is working as such to avoid tax. I believe this couldn't further from the truth. Many people end up contracting as it's the only way to get work. For myself, I ended up contracting after a succession of failed full time jobs. Some people prefer it because of the independence, and I would now consider myself in this category.
3. The amount of extra tax revenue HMRC has estimated is very much over estimated I think. The reason I believe this is that not everyone classed as inside IR35 will stay self-employed:

    a. Some will switch to permanent employment. If I did this, I would be paying around the same amount of tax that I'm currently paying.
    b. Some will move outside the UK and continue being self employed removing themselves from the UK tax system altogether.
    c. Some will switch to umbrella companies which has the same effect as point "a".
    d. There is a cost associated with policing IR35.
    e. I can't tell from the numbers whether HMRC has taken in account the corporation tax that is being paid by the large number of limited companies. From what I can see they have based their numbers on personal tax. For example, in point "a" above, when I say I would be paying the same amount tax overall it's because I wouldn't be paying corporation tax.

For the above reasons I obviously think that IR35 hasn't been that well thought and I would argue it will make UK PLC less competitive.
Thank you for your patience
25 February 2020

Anonymous

Off-Payroll Working - Taxing the Synthetic Self-Employed

I am a commercial solicitor of some 30 years standing. Regardless of any preference on my part, I now work as an in-house interim lawyer.

You have called for evidence on the changes to IR35 due to commence this April. This a personal view, but there is a human cost to these changes that everyone seems to ignore.

Many contractors or consultants, including me, who provide our services through a PSC do so out of necessity and not preference. It is the only way that we will get work – self-employed status is rarely, if ever, offered. The employer does not have the addition of an employee, self-employed or otherwise, and all that doing so entails including the ability to hire and fire freely. There are a number of reasons behind that approach, some of them, like a headcount freeze, are often unrelated to the specific role and are business-wide.

For the contractor, the benefits are more nebulous. Yes, the tax is less, but see my remarks of this later in this letter; some say they like the flexibility of when to work, but I always seem to spend my periods out of work trying to get my next contract; and of course, you can be let go with no consequence for the hirer. The contractor, no matter his or her status in or outside IR35, does not get the benefit of sickness or holiday pay. The deal is no cure – no pay.

For lawyers, the contracts tend to be short (twelve months or less) and there is often no continuity or certainty of engagement or re-engagement. The majority of interim posts that I see are only available to those who have a PSC. The reasons for this are many, and include the well-known opportunities around employers' national insurance contributions but also include other realities such as the age of the consultant. Regardless of antidiscrimination legislation if you are lawyer over 50, then the majority of opportunities open to you are likely to be interim and short-term.

The economics of working as a contractor are fairly blunt: to survive as best you can from one contract to the next. To achieve this, any current contract must provide sufficient income (however structured):

to pay the cost of actually doing the job, and these costs may well be considerable if the job is away from your home;
to pay the cost of your household living expenses while you are working (and which will continue regardless of whether you are working or not);
to pay all personal and corporate taxes and any expenses associated with them as they arise; and

to provide a sufficient reserve for living expenses at least to last from the end of the job in hand until you start to get paid for the next one and to provide a welfare fund for the unremunerated periods of sickness and holiday; and for a pension and possibly other savings (though often these are neglected or unavailable).

As you can see, item 4, the reserve to maintain you while you are not working, is the additional item compared to a permanent employee on PAYE. PAYE employees have rights to holiday pay and sickness pay. A contractor will not.

From long experience it is my view that it takes four to six months from the end of one contract to the start of the next. Over the last six years I have had ten interim roles. The longest was thirteen months, the shortest three days. In between, I have had gaps unpaid usually of four to six months and two of over thirteen months which were all but completely disastrous.

As to the effects of this legislation, in the legal world, many are expecting to see a reduction in the number of senior lawyers working as contractors. Those that do will probably be paid more to offset the effects of PAYE but reduce the pool of opportunities – same money having to pay for less bodies. For those opportunities what will not accommodate the fees increases, it is expected that hirers will engage less experienced lawyers at cheaper rates. Quality will probably suffer. It is likely that a significant number of competent senior lawyers will be left out when the music stops. Some will go to increase the number older skilled workers visiting Job Centres.

The blanket determinations said to be made by large companies on contractor status are also likely to be in breach of law (I understand that determinations are supposed to be individual). Most contractors will not be able to find the money or time to challenge the matter and just suffer the consequences. Unilateral approaches rarely make good policy in this way. Further the law on the existing IR35 rules is not applied correctly by the HMRC – the line of BBC cases going against them shows that.

It is my view that there have been sufficient increases in taxation already in the last few years and that there is no significant additional societal benefit to be seized upon for further taxation, especially without an increase in the benefits usually concomitant on paying tax PAYE. What benefit there is often absorbed by the vagaries of having to find further work and fund the period of no pay.

Finally, this seems a good way to discourage initiative and hope in business. I am left to contemplate an even more hostile environment in which to gain work and the means to live.

25 February 2020

Anonymous

I am 55 years of age & have worked within the Nuclear Industry on a contract basis over the last 15 years.

I specialise in Nuclear Ventilation Systems predominantly legacy buildings for AWE Aldermaston, Sellafield etc.

The team of four plus one apprentice is made up of 3 Contract people & one Staff person.

If the IR35 legislation comes into effect on the 6th of April, two of the Contract people are going to take early retirement, both in their early 60's & because the company I work for has done a "blanket ban" even though I used the CEST tooI & was outside of IR35, I myself will have to look for a new position, outside of IR35.

The worrying thing is the apprentice who is only 20 years old is going to lose a wealth of knowledge that we are teaching him & a more alarming effect is that the work that we are doing to keep these facility's safe, some of the buildings were built in the 1950's, will stop, which will not make the ONR very happy at all.

Now I know we are just grains of sand on a very large beach, but this must be happening all over the country in many industries.

On a different note.

If the "flexible work force" is not available because no one is going to work away from home if you can't claim any accommodation, travel expenses, how are the government going to deliver such massive infrastructure projects as HS2 & New Nuclear Build if people will not go because it is not financially feasible?

This IR35 needs to be stopped or it will ruin this country.

10 March 2020

Anonymous

Determining tax status of workers

1. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker?

No. From my personal experience it is clear that the engagers have little understanding of the subtleties of the questions posed by the CEST tool. CEST is a coarse tool that fails to provide adequate guidance as the user proceeds through the series of questions. Failure to answer a question correctly will prevent the user from accessing possible options within later questions, which may prove to be the key factor in reaching the correct determination. For example, the CEST result I was given by BAE Systems contains the following error:

Section 1 Question 4 – 'Has the worker already started working for your organisation?'

Question has been incorrectly answered as 'No', although the contract between my Limited Company and the organisation conducting the assessment commenced in April 2019.

2. What is your assessment of the Check Employment Status for Tax (CEST) tool?

The CEST tool does not cover 'Mutuality of Obligation'. The lack of 'Mutuality of Obligation' has been the principal reason that HMRC has lost a number of recent Tax Tribunal cases e.g. Alcock vs HMRC. Omission of this key factor of the Business to Business relationship within the CEST tool is totally inappropriate.

3. Does it [the CEST tool] require improvement? If so, how might it be improved?

The CEST tool may be applied as the user sees fit in order to gain the outcome the user desires. There appears to be no granularity to ensure that each question is answered accurately – or indeed the ability to mark a question as 'not applicable'. I work as a Ltd Company Contractor in the defence sector, and I require Security Clearance (SC) in order to gain access to the site to conduct my work. The questions within the CEST tool relating to the Right to Substitution are therefore not applicable. If I had a deadline to meet and was unavailable to work, I would not be able to send another equally qualified / competent / experienced individual to continue the work, as the SC process requires sponsorship from the Client company and takes in the order of 2 to 3 months. The correct answer to this question is therefore 'not applicable' – which is not an option within the tool.

4. In addition to Section 1 Question 4 (above), other questions that have been incorrectly answered within my CEST Assessment (conducted by the Client) are as follows:

Section 4 Question 1 'Does your organisation have the right to move the worker from the task they originally agreed to do?'

Question has been incorrectly answered as 'Yes'.

The correct answer to this question should have been: 'No. That would require a new contract or formal working arrangement'.

Under the Mutuality of Obligation working practices I operate under, I have absolutely no obligation to accept any task asked of me by the Client. I have evidence of declining work I have been asked to do by Client Management. Similarly the Client is not obliged to offer me additional work once I have delivered against a specific scope of work.

Section 4 Question 2 'Does your organisation have the right to decide how the work is done?'

Question has been incorrectly answered as 'Yes'.

The correct answer to this question should have been: 'Not relevant, it is highly skilled work'.

The organisation does not have the expertise to determine how the work is done. I am a Functional Safety Engineer certified by TUV Rheinland, specialising in Safety Instrumented Systems, and I have developed a Functional Safety Management System for my Client based upon BS EN 61511 / 61508 as a direct consequence of a Legal Action placed upon the organisation by the COMAH Competent Authority. No other individuals within the organisation have the expertise to either conduct this work, nor the knowledge to understand whether it has been conducted adequately to withstand the scrutiny of the COMAH Competent Authority. I have personal responsibility for this Risk and have the adequate level of liability insurance to provide me with the necessary professional protection, should the work be determined to be incorrect.

Section 5 Question 6 'If your organisation was not happy with the work, would the worker have to put it right'

Question has been incorrectly answered as 'Yes, they would fix it in their usual hours at their usual rate or fee'.

The correct answer to this question should have been: 'Yes, unpaid but their only cost would be losing the opportunity to do other work'.

I am required under contract to have Public Liability Insurance of £2,000,000 and Professional Indemnity of £1,000,000. I am responsible for arranging and paying for this cover. Additionally, the contract my Ltd Co has for this work specifically states:

"SUPPLIER'S OBLIGATIONS:
7.1.5 to remedy, without charge and with the minimum disruption to the Client, either any work which the Client is dissatisfied with and which is notified to the Company or any defects in the Services provided to the Client arising from the Contractor's acts or omissions"

5. My point in presenting these questions is not only to highlight the gross errors within my CEST assessment – as this is a 'group' assessment also given to many of my colleagues – but also to question the system of appeal. My appeal against an incorrect outcome has been submitted to the Client. The Client has 45 days in which to respond, which puts me perilously close to the proposed date of implementation of the extension of the off-payroll working rules, and as far as I am aware my Client is under no obligation to correct the original assessment. The Client has used the CEST tool to assess job 'groups' without looking at the working practices of the individual – or even the different departments within the Company – to determine the answers to the questions within the CEST tool, and I fear they will use this rationale to refute my appeal. As a small business owner I cannot afford to wait until this appeal is answered; I am forced to seek alternative contracts now.

6. I find the policy of being able to appeal only to the Company that made the initial assessment rather disconcerting. Whilst I acknowledge that the principle of making the initial request for redress from the decision-maker is the most efficient method in the majority of cases, in the instance of IR35 determination the Company has no incentive to conduct the assessment in an un-biased way. Indeed, there is significant benefit to the Company to be made from applying an inaccurate 'Inside' IR35 determination for the majority of its contingency workers, with no risk to the Company whatsoever.
7. The Company has already displayed a willingness to use the 'Inside' determination to its advantage. For example I was offered the 'opportunity' to transfer to a Staff role at a level of professional seniority and corresponding salary far below that of my skills, experience and professional standing. I consider this to be both insulting to me and a reflection of the bias that the Company has applied to the CEST process to leverage advantage in attempting to secure 'new employees' at way below market rates, in a geographical area that has traditionally been challenging for recruitment.

General Comments

8. I have kept this evidence specific to my circumstances; however I can assure you that many tens of my colleagues here at this large Defence Company are similarly affected. One of my Client's current Projects is design and build of the Dreadnought Class submarine to replace the ageing Vanguard fleet. The Continuous At-Sea Deterrent relies upon the delivery of the Dreadnought Class on schedule; the effect of the poor implementation of the IR35 legislation by companies such as my Client poses a significant risk to meeting this schedule, and ultimately to maintaining CASD which the UK has managed to do for over 50 years. This risk can be summarised as *the potential loss of significant numbers of highly skilled and specialist workers such as Technical Safety Specialists; Controls and Instrumentation Engineers; Naval Architects; etc at a critical point in the delivery of the Dreadnought Class Project.* As an ex-Vanguard Class submariner myself (serving over 20 years in the Royal Navy) I am disgusted that the maintenance of CASD into the 2030s is seriously under threat due to poorly implemented legislation by this Government and the deliberate misapplication of this legislation by Industry to its own advantage.

9. Finally, the extension to the rules has resulted in some Clients imposing 'blanket bans' on the use of contractors to ease the burden of assessing a contractor's status, and also to protect themselves from retrospective tax demands from HMRC should they get it wrong. As previously stated, there is absolutely no incentive for Client companies to conduct the CEST assessment in an unbiased manner. By manipulating the CEST tool, Industry has much to gain and nothing to lose with absolutely no commercial risk. The extension to the off-payroll working rules will result in a much smaller, lower quality and less flexible workforce for the UK at a time when we need it the most!

7 February 2020

Anonymous

I understand you are asking for evidence submissions of thee impact of implementing IR35 off pay role legislation on 6th April this year. I am a independent contractor of 20 plus years with my own Ltd company and I will be impacted in the following ways based on the template of feedback you have provided.

Existing measures in the public sector

- *What has been the experience of the new rules in the public sector?* I work in the Private sector and have limited visibility of the private sector but I am aware that HMRC has charged NHS Digital £4.3m for incorrect determinations diverting valuable funds away from patients. I am also aware that HMRC has granted themselves exemptions as they recognise the value of the self employed and the impact of not having access to his workforce will have on their ability to deliver.
- *What lessons have been learned from this experience, and how have they affected the Finance Bill proposals?* - It would appear no lesson have been learnt as the HMRC are moving ahead to bring IR35 to the private sector.

Impact of the new rules on organisations

- *Has the impact of the extension of the rules to the private sector been adequately assessed?* No companies are in chaos and are making blanket determinations to avoid the risk of tax inspections, brand damage etc. This is being done without reasonable care as all self employed are being treated the same.
- *Is the exclusion of small organisations sufficiently robust?* This will only consider a small number of firms as the use of specialist contractors in mainly in large organisations.
- *What effect will these new measures have on a chain of contractors and sub-contractors?* Supply chains will now have increased members with umbrella organisations and agencies taking on greater roles and at the expense of the self employed. This provides little value to the supply chain. This is unnecessary complexity that confuses ownership and responsibility.
- *What should HMRC do to help businesses understand the new administrative rules?* There is no reflection on case law and key determinants of status. They should stop/postpone the implementation date and properly consult with all in the supply chain, freelancer bodies and businesses. No one is certain if they are taking the best course of action as a straight Business to Business transaction is now being replaced with complexity of new actors and charges that are not understood and responsibility for applying is unclear.

Determining tax status of workers

- *Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker?* No CEST is widely open to misinterpretation. In my own case I bring specialist Machine learning and AI expertise into a large Financial services organisation that does not exist in any permanent employees. There is no supervision or control exerted as they don't know what I do but are happy to pay for my output however they are asked to assess my status without knowing how I delivery the service. The client can not get it right so are cautious.
- *What is your assessment of the Check Employment Status for Tax (CEST) tool?* Ambiguous, does not cover critical case law such as mutuality of obligation and for the genuine self employed can not be completed by the client as they don't know how I deliver and work.
- *Does the CEST require improvement? If so, how might it be improved?* It does not focus on true working practices or how I have set my business up to be outside IR35. Independent legal reviews of my contract and working practices have repeatedly confirmed my self employed status but this is not considered by CEST.

Policy objectives

- *In your opinion, are there better or simpler ways in which the objective of the new rules might be achieved?* I agree that disguised self employment is wrong and where it occurs should be addressed. The genuine self employed have established them selves as businesses and pay the associated costs of insurances, accountants, professional bodies. payroll, CPD, pensions, and opt to give up employment rights. The solutions being implemented for IR35 now creates taxed employment without the rights and protections that every UK worker is entitled to such as holiday pay, pensions, sick pay, training etc. The present system of straight forward fee payment with tax and NI processing by the self employed is simple and efficient, adding more actors into the supply chain and more charges creates confusion and the risk of tax errors that will be time consuming and stressful for all involved.
- *Will the Bill, as drafted, achieve the Government's objectives?* No I have calculated I will pay significantly less tax - I will no longer be liable for corporation tax and I have since business inception always paid myself a much higher salary than needed. It will also negatively impact accountancy and recruitment agencies as business turns to consultancies and offshoring where significant tax will be lost through these routes. There will be multiple self employed who will no longer be able to work and will claim benefits through the state. The efficiency of organisations and access to well qualified flexible workforce will be lost, projects will be cancelled and UK business will become uncompetitive.

Self employment is my preferred way of working with large organisations, it suits my skills and personality and I have accepted that to follow this route I have to forgo the benefits of permanent employment such as career opportunities, training, holiday & sick pay, pension and benefits. Working in this way also has considerable risk of interrupted income, I have had several long periods (5-6 months+) of no income and have managed my business accepting these periods will occur. I have to pay for public and professional

indemnity insurance, training and continuous professional development, a home office and the cost of any rework if demanded by my clients. These are the traits and risks of a business not an employee.

If this law is introduced I will have to stop working and will stop paying any tax to the HMRC.

Xx February 2020

Anonymous

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What

lessons have been learned from this experience, and how have they affected the draft

Finance Bill proposals?

- ***I am seeing HMRC lying and reacting to what their perceive to loop holes as a result of contractor behaviour due to this rollout***
    - ***Public Sector roll out 'was a success' – all in the industry know it was not.***
    - ***HMRC will not publish figures (as not in public interest)***
    - ***Treasury hide behind 'cannot comment' on an individual's tax situation' when the fact is raised that that Outside IR35 exceptions are widespread in the Home Office; HMRC itself; DWP; FCO etc.***
        - ***Despite saying there was 'no impact' in the Public Sector roll out.***

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been

adequately assessed? In particular, is the assessment that has been made of the compliance

burden (including costs) of these new rules realistic? Has the right balance been struck in

the compliance burden on the taxpayer and on HMRC?

- ***No and no***
- ***Blanket inside IR35 determinations by 3rd party consultancy (who supply professional services in their own right – conflict of interest)***
    - ***Despite HMRC CEST and independent contract review both confirm my Outside IR35 status, client coached responses***

to determination review ensured blanket Inside determination.
    - ***Clear and obvious case of 'the outcome needs to be x'***
    - ***No vehicle for appeal as client has mitigated its own risk and set working practices in motion as a result***
        - ***Unlikely to revert in short/medium term***
    - ***My current end client is aiming to stop using contractors overall***
    - ***Inside determinations employment purely for tax purposes with no employment rights***
        - ***Cover needs to be provided by contractor at their own cost – public liability & indemnity insurances***
        - ***Training at own cost***
        - ***No sick pay – therefore cost of sick cover insurance***

- ***Client revised working practice strategy now include significant increase in off-shore engagement (Cognizant) to backfill ceased contractor engagement***

- ***I am finding the contract market very unstable at present due to this Off-Payroll Private Sector debacle***
    - ***Previously I could find new short/medium term clients and engage***
    - ***Contract availability and opportunity drying up while the industry waits to see outcome of uncertainty***

- ***Agency (Employment Business) is reducing contract paid rates to cover their Class 1 NIC (Employers NIC) and Apprentice levy – i.e. veiled passing on to contractors.***

3. Is the exclusion of small organisations sufficiently robust, and how might small

organisations gain sufficient assurances that they fall within the exclusion?

- ***No, as it impacts a minority of enterprises – the vast majority are (as designed) caugt by this***

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

- ***My current end client is aiming to stop using contractors overall***
- ***Inside determinations employment purely for tax purposes with no employment rights***
    - ***Cover needs to be provided by contractor at their own cost – public liability & indemnity insurances***
    - ***Training at own cost***
    - ***No sick pay – therefore cost of sick cover insurance***

- ***My personal impact will be a £20k - £30k loss to HMRC - Corp Tax; Personal tax; VAT impact;***
    - ***Knock on impact of my accountant being sacked;***

    - ***Effectively my business would operate at a loss – potentially triggering Corporation Tax refund.***
        - ***claim of business expenses (liability and indemnity insurances still required operating inside IR35) impacting business profit***
    - ***I am considering a temporary permanent role until things settle with significantly reduced income***
        - ***Even less to the Treasury – slice of a smaller cake***

- ***I am seeing contractors cutting engagements short therefore impacting inflight and pipeline projects.***

5. What scope might there be for simplifying or otherwise reducing the administrative

burden of these measures? What should HMRC do to help businesses understand the

new administrative rules?

- ***Allow the previous status quo to continue and put a limit on engagement in an organisation of say 24 months. Or can operate within sam cinet under multiple business cover – as large consultancies currently do.***
    - ***Example – I have recently engaged with diffent clients within the same organisation – because I operate in the same organisation I am now penalised***
- ***The legislation should be aimed at 'perm-tractors' – ie those who embed themselves in organisations for multiple years and ARE effectively an employee. True businesses should be allowed to operate as a business.***
- ***This ill thought out blanket approach is damaging our economy***

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear

to both engager and worker? Do they reflect the reality of the contracting environment?

- ***No & no***
    - ***Despite HMRC CEST and independent contract review both confirm my Outside IR35 status, client coached responses to determination review ensured blanket Inside determination.***
    - ***Clear and obvious case of 'the outcome needs to be x'***

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it

require improvement? If so, how might it be improved?

- ***There is evidence that when it suits HMRC they do not abide by their tool's determination***
- ***The tool does not take into account case law nor MOO (Mutuality Of Obligation)***

8. How effective will the status determination process be in resolving issues of employment

status? Are there adequate safeguards, allowing decisions to be challenged? If not, what

more is needed?

- ***It is not adequate***
- ***Blanket inside IR35 determinations by 3rd party consultancy (who supply professional services in their own right – conflict of interest)***
    - ***Despite HMRC CEST and independent contract review both confirm my Outside IR35 status, client coached responses to determination review ensured blanket Inside determination.***
    - ***Clear and obvious case of 'the outcome needs to be x'***
    - ***No vehicle for appeal as client has mitigated its own risk and set working practices in motion as a result***
        - ***Unlikely to revert in short/medium term***
    - ***My current end client is aiming to stop using contractors overall***
    - ***Inside determinations employment purely for tax purposes with no employment rights***
        - ***Cover needs to be provided by contractor at their own cost – public liability & indemnity insurances***
        - ***Training at own cost***
        - ***No sick pay – therefore cost of sick cover insurance***
- ***Client revised working practice strategy now include significant increase in off-shore engagement (Cognizant) to backfill ceased contractor engagement***

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be

achieved? If so, what are they?

- ***Allow the previous status quo to continue and put a limit on engagement in an organisation of say 24 months. Or can operate***

within sam cinet under multiple business cover – as large consultancies currently do.
    - ***Example – I have recently engaged with diffent clients within the same organisation – because I operate in the same organisation I am now penalised***
- ***The legislation should be aimed at 'perm-tractors' – ie those who embed themselves in organisations for multiple years and ARE effectively an employee. True businesses should be allowed to operate as a business.***

10. Will the Bill, as drafted, achieve the Government's objectives?

- ***No***
    - ***Longer term some contractors I know are moving their businesses to Europe or taking an enforced break until things settle.***
        - ***Impact = opportunity to off-shore further or Professional Service consultancies at premium rates – increasing project costs***
    - ***Freelancer movement abroad; taking breaks until things settle; transition to permanent employee market leading to . . .***
        - ***Reduced income and therefore reduced tax revenue as a result***
            - ***PAYE on a smaller cake***
            - ***No corporation tax***
            - ***No VAT***
            - ***Offset of Employers NIC not big enough to cover shortfall***
        - ***Freelance accountants being let go***
            - ***another reduced source of taxation***
        - ***Businesses folding or changing operating model – supplier agencies; significant off-shoring***
            - ***Less revenue based on reduced***
        - ***Potential increased burden on state benefits for unemployed freelancers, their accountants and fallout from supply business collapse***
    - ***Inside IR35 freelancers enduring rate reductions to cover fee payer employers NIC***
        - ***corporation tax reduced as effectively non-profit making inside IR35***
        - ***VAT no longer available as PAYE at source for 'deemed employee' for tax purposes***
    - ***Impact on small business and flexible workforce***

11. What is your view of the role of umbrella companies in the context of these proposals?

- ***Taking advantage of the situation for profit***

- ***Agency (Employment Business) is reducing contract paid rates to cover their Class 1 NIC (Employers NIC) and Apprentice levy – i.e. veiled passing on to contractors.***

12. How do the new measures relate to the wider context of changes in working

arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if

they are employees, but do not have the rights of employees?

- ***No it is not fair***
    - ***Cover still required to be provided by contractor at their own cost – public liability & indemnity insurances***
    - ***Training at own cost***
    - ***No sick pay – therefore cost of sick cover insurance***
- ***You are either and employee or a business – no middle ground***
-

23 February 2020

Anonymous

Summary

As a Chartered Electrical Engineer (MIET), I have 20 years of experience working in various industries including pharmaceutical manufacturing, renewable power and civil nuclear decommissioning. Approximately 10 years of that experience has been as a direct salaried employee and 10 years as a contractor providing design services to large client firms in the private sector. I believe my direct experience of the off-payroll rules (commonly referred to as IR35) will be of some relevance.

Existing measures in the public sector

1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

I have not worked in the public sector so cannot comment.

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

My recent experience has shown that the impact on the private sector has not been adequately assessed. The large private sector engineering firms that dominate the sectors in which I work have shown a complete lack of

understanding of the off-payroll rules, their intention and consequences. Every large firm I have contacted in recent months has resorted to a blanket status determination of "inside IR35" for any contract work to be carried out after April 6th.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

The criteria for exclusion of small organisations appears to be sufficiently clear, however, there is widespread belief that this exclusion will be temporary and that small organisations will be required to make off-payroll status determinations in the near future.

4. What will be the effect of these new measures on a chain of contractors and sub-contractors?

It seems likely that the effects will be as follows:

a) Genuine contractors will not be able to find contracts with an "outside IR35" determination as there is no incentive for large firms to offer them.
b) Firms will find it almost impossible to flex their organisation to cope with the natural peaks and troughs of labour required as projects progress through the lifecycle from design to implementation.
c) Any engineering projects which require large numbers of people to travel and work away from their home during the week (e.g. nuclear new build, HS2) will not be able to source enough labour as the removal of the ability to claim legitimate business expenses will make it economically unviable for contractors to work away from home.
d) Large numbers of highly experienced contractors will retire early and the UK economy will lose their knowledge and talent.
e) Large numbers of contractors will take salaried employee positions instead of contracts "inside IR35" and will lose the flexibility to gain experience of other industries.
f) Large numbers of accountancy firms will be forced to reduce in size or close as the majority of their clients close their companies.
g) There will be a knock-on effect to the economy as a whole as the large reduction in take home pay for contractors will result in less consumer spending.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

It is clear from 20 years of case law that the off-payroll rules have never been simple. There is little HMRC can do to help business understand the rules because judges, lawyers, accountants, firms and HMRC themselves do not agree on the application of the rules.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

The rules are not sufficiently clear and do not reflect the reality of contracting.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The CEST tool is a brave attempt to simplify a highly complex situation. As such it is not the CEST tool itself that requires improvement but the off-payroll rules that it is attempting to simplify.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

The status determination process is a farce. The vast majority of large engineering firms have already decided to blanket all contracts as "within IR35" as there is no incentive for them not to do this. There are no safeguards and no method of challenge except to appeal to those who have already made the decision. In most cases, the higher level executive of the firm has cascaded the decision down to lower management who then inform the contractors of the decision.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

If we assume the objective of the rules is to stop disguised employment then there is a very simple way of achieving this. Most people would agree that the primary indictor of a disguised employee is an individual who has been contracted to the same organisation for a long period of time (in engineering project terms, this would be a period of more than 3 years). If the rules were modified such that any contractor providing services to the same firm would have to be deemed an employee after 3 years then this would surely meet the objective of the rules. In order to avoid the contractor leaving and returning after a short time in order to bypass this determination, a minimum 6 month non-service period could be applied after the 3 years.

If, however, we assume the objective of the new rules is to maximize tax receipts to HMRC then again the rules are not likely to achieve the objective. To take a typical example from the engineering field: a contractor supplies his services to a firm at an invoiced rate of £40 per hour. Assuming a 40 hour week and 48 weeks worked a year, this would result in a gross of £76,800. An "outside IR35" determination would result in taxes of approximately 25% being applied to that which would net HMRC £19,200. An "inside IR35" determination would result in taxes of approximately 40% being applied which would net HMRC £30,720. The attractiveness of the off-payroll rules to HMRC suddenly become clear.

However, if the contractor can instead become a permanent employee at a gross salary of £55,000, HMRC's take drops to £16,500 while the employee now sees a similar take-home pay to the "inside IR35" determination. On top of this, the employee enjoys employment rights such as holiday, sick pay, pension contributions and possible career progression. There is therefore no incentive for a contractor to continue to contract if the only contracts available are "inside IR35". This is why it is likely that large numbers will retire early or take salaried employee positions. The likely result of the implementation of the

off-payroll rules to the private sector is the loss of a flexible workforce to firms, the loss of the ability for individual contractor to gain a broad range of experience in multiple industries, a reduction in tax receipts to HMRC and the delay or failure of major engineering projects.

10. Will the Bill, as drafted, achieve the Government's objectives?
Unlikely, see above.

11. What is your view of the role of umbrella companies in the context of these proposals?
I have already been contacted by umbrella companies offering tax avoidance schemes of the kind described by Guidance Note Spotlight 35. The fact that these companies appear to be operating with impunity is quite disturbing and many contractors facing the prospect of losing 20% of their earnings will be attracted by such schemes.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
One of the four universal principles for the rule of law describes Just laws as when the laws are clear, publicized, and stable; are applied evenly; and protect fundamental rights, including the security of persons and contract, property, and human rights.
It seems fairly clear that the off-payroll rules have never met this definition. The large number of cases previously taken and subsequently lost by HMRC show that the law is not clear even to them. In many of these cases, HMRC has argued that signed contracts should be ignored as irrelevant to the case. I think it would be extremely difficult to argue that if an individual is deemed to be a "disguised employee" and should therefore be taxed as an employee that at the same time they are not an employee and do not have the rights of an employee. However, that appears to be exactly what HMRC are arguing. This fundamental dispute is very likely to become a very large issue on April 6th.

22 February 2020

Anonymous

Impact of new off-payroll rules on organisations

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

The legislation should require a confirmation certificate to be provided by HMRC, which is valid for a 12 month period, for any small company that requests one for the purpose of the implementation of these rules. It should be mandatory for any small company relying on the 'small company

exemption' to pass a copy of this certificate on to other businesses in the supply chain to avoid the inevitable problems of misinformation derived from silence. This will help to protect not just the small company and give certainty as to its' status but other parties in the chain.

The so called 'exclusion of small businesses' is only from one aspect of the new rules which is that they do not have to make status determinations. This has not been properly reflected in the communications from HMRC and may result in a dangerous misunderstanding for many small companies who believe they do not need to understand and evaluate and act upon the impact of the changes.

Transfer of liability rules mean that a small company may be the recipient of a surprise tax bill from HMRC if the fee payer further down the chain fails to pay the required PAYE / NIC. Our small business is going to have to review any ong

oing and new contracts to ensure that the appropriate indemnities are in place which may provide some protection and / or consider taking out insurance which adds another cost to our business.

A small company, when it is the fee payer in the chain, remains liable to run the payroll and make the complicated and difficult PAYE/ NIC deductions for their 'deemed employees'. Our small business does not have the resources to be able to process a 'deemed employee'. Outsourcing the payroll or using an umbrella may be a solution but will add to the cost and complexity of business and also creates the risk that the liability for the tax transfers back if not correctly paid by the third party. The necessary due diligence and monitoring on the third party and the risk that outsourcing creates are very unwelcome demands on the resources of our business.

Both of these requirements are onerous, potentially very costly and could threaten survival of our business. The transfer of liability rules as they currently stand mean that the HMRC could seek redress from a business further up the supply chain, including small companies, for taxes remaining unpaid due to business failure for any reason. The onus should be on HMRC to provide evidence of fraud, collusion or lack of reasonable care taken on the part of the business they are seeking redress from and not be given powers to unreasonably pursue businesses who have taken reasonable care. A small company may struggle to defend an HMRC demand due to lack of resources and the reputational damage could unfairly threaten survival.

4. What will be the effect of these new measures on a chain of contractors and sub- contractors?

Some potential clients in our industry have already declared that they will not permit consultancies to subcontract services to PSC's. The 'associate model' for consultancies is widely used and relied upon particularly for a small/ start up consultancy such as ours. We regularly engage subcontractors via PSC's in narrow fields of expertise to advise us. It is simply not possible or viable to engage these experts in any other way for a business of our size. If this approach is copied by other potential clients this could represent a significant restriction on our ability to do business and could impact the ability of any future start up consultancies thus reducing competition in the market.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

HMRC should not be implementing these new rules at all. They are not only an administrative burden but a real risk to the continued existence of small businesses and a flexible workforce. An entirely different approach is required.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Yes.

a) Align employment rights with the tax status of the individual and compliance of the IR35 rules would dramatically improve with the PSC remaining responsible for status determination. In other words provide an incentive to the individual involved, and
b) Reduce the employers NIC burden which was the driver for employers to move parts of their work force to 'self employment' in the first place.

10. Will the Bill, as drafted, achieve the Government's objectives?

No.

This represents an ill thought out approach that is difficult to get right and is likely to have a significant and very different repercussions to the workplace than the government expects.

I do not believe it is the governments' intention to threaten the viability of our business however these proposals do just that in a number of ways. I outline above the threat to the 'associate model' that would significantly restrict our ability to do business.

In addition it is entirely possible given the risk aversion and apparent desire to circumvent the implementation of the new rules by a large section of our potential client base who have banned further use of contractors via PSC's to

also ban the use of consultancies who do not pass the 'condition of liability' test without further consideration. At a stroke we would fail at the first hurdle in gaining business with many large banks and the list of those banks is likely to get longer with time. It does not matter that our work is outside the rules on every measure if they adopt an approach similar to that already taken for PSCs, and PSCs via consultancies, which is that they will not work with them under any circumstances. This threatens our very survival and also of any other small consultancy. Only large established consultancies will be able to continue which will then inevitably reduce competition and raise costs in the market.

It can not be the intention of the government that as a consequence of this change it is the individual worker who will bear the brunt of the cost of the employers NIC. Many employers will not increase the rate paid to compensate for the employers NIC being deducted from their pay and the individual effectively pays the tax due by the employer. To implement a change that burdens the weaker party in a transaction in this way is not good government policy.

Neither the legislation nor guidance from HMRC provides clarity on 'outsourced services'. This is a complex and difficult area and has not been fully addressed. The question of 'who is the end client' is far from straightforward as the examples given by HMRC would suggest. Complexity is also added when as in our case we are a 'small company' and our clients are not as different rules would apply. The potential for misunderstandings as to whether a status determination needs to be considered and responsibility for it are significant and not fully addressed.

11. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

This is discriminatory and should not be allowed to happen. The alignment of employment law and tax law is a prerequisite to any change and these rules should not be implemented.

Anonymous

Summary

1. Thank you for asking for feedback from members of the public on the proposed changes. To date I have exchanged written and electronic mails with my local MP who now understands the impacts of the proposed changes and he had expressed his concerns to Sajid Javid. He continues to push for a response that is acceptable and not simply a "standard" boiler plate set of answers. I have also written directly so Sajid Javid myself and got a "standard" response that did not address my concerns.

2. I and many, many other limited company contractors are extremely concerned about the impact of the proposed changes for a variety of reasons:
    a. I know contractors at Lloyds who left their contracts early December 2019 as Lloyds decided they no longer wished to use limited company contractors. This has happened before the new rules kick in in April.
    b. I know of many other contractors where their end client also has made the same decision as Lloyds and they will shortly be out of work. This is also happening before the new rules kick in in April.
    c. This means a large an increasing number of companies are no longer an option to work at for limited company contractors.
    d. I know contractors who are now considering early retirement and some are considering leaving the country to work in cultures where the flexible workforce are remunerated accordingly based on the risks they take not being in permanent employment.
    e. Those that are remaining and working for the same client under an umbrella company are faced with a significant reduction in income, major concerns that HMRC will investigate them and look further back in their engagement timeline (as seen with the loan charge) and are simply disgusted about the unfairness of been seen as "employed for tax purposes" yet having no other "benefits" a permanent resource would have in terms of sick pay, paid holidays, pensions, etc. Permanent members of staff are now waking up to this as when interviewing contractors and questions are coming up. These permanent members of staff are disgusted when they start learning more about the changes and the impact to individuals and their comanies .
    f. There is also widespread frustration that some people (myself included) are also expected to pay <u>Employer's</u> NI contributions in addition to the other fees & taxes that umbrella companies deduct.
3. At a time when organisations throughout the country need a flexible resource to work on the ever increasing amount of regulatory change, the inevitable work that Brexit will generate plus any other activities companies are planning, these proposed changes will
    a. make it much harder for organisations to get temporary resource on board to help address spikes in work volumes.
    b. lead to work moving abroad, reducing the tax take for the UK and having a negative impact on quality, timeliness of deliverable thereby costing companies more with likely work delays.
    c. through the increased use of consultancies (e.g. Accenture), create significant cost increases for projects as these consultancies charge their resource out at very high fees.
4. There is also significant frustration that it appears HMRC are taking limited company contractors to court and losing a large number of these cases and not learning or willing to make any changes to their approach. Our collective taxes are funding these court cases. I understand a number of cases have been lost in relation to Mutuality of Obligation. This is not even covered in the Qs of HMRC's CEST tool to assess self-employed / employed status. If their assessment tool is flawed and they have not even stood by the results the tool has generated in some cases,

there is significant mistrust and concern about the post April situation for clients and limited companies.

5. I sincerely hope you are able to challenge the proposed changes and that HMRC and the government will engage with the various bodies (e.g. IPSE) that are asking for a pause and reasonable discussion to come up with a fair approach for self-employed identification and fair taxation.

1. **What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?**
    a. I have only worked in the private sector (17 years as a permanent member of staff at MBNA/Bank of America) and then as a limited company contractor since 2012. The anecdotal feedback I am aware of is that the changes led to:
        i. Some projects being delayed as people moved away from the public sector reducing the quality and amount of resource available.
        ii. Project cost increases as some organisations had to increase their rates to compensate for the additional tax burden contractors incurred in order to keep key people in roles.
        iii. I have also read some stories that the changes led to a reduction in working hours by some medical personal which has had a negative impact on waiting lists.

2. **Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?**
    a. I don't think it has. If it has, why are so many organisations deciding or have already decided to no longer engage limited company contractors?
    b. Flipping the onus to the end client to do the assessment has led to many risk averse organisations being very wary about getting the decision wrong and being liable for significant fees and changes from HMRC.
    c. My perception is that end clients have also seen HMRC pursue limited company contractors through the courts irrespective of whatever outcome was achieved when competing the CEST tool assessment. Risk averse organisations will not want the potential for fines if this happens to them.
    d. I am hearing of lots of contractors who are simply walking away from work when blanket bans are introduced or they are wary about staying and moving to in IR35 roles. . . .either clients are losing key resources which will impact their planned work.
    e. This will ultimately have an impact on client's end customers in that work will be delayed whether than being a project put on hold

or key decisions taking longer due to the churn of resource or certain activities being de-prioiritsed.

3. **Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?**
    a. No comment, I am aware small organisations are exempt but I have to date only contracted at large "blue chip" organisations so have not looked at this part of the rules

4. **What will be the effect of these new measures on a chain of contractors and sub- contractors?**
    a. Large numbers of people are already out of work as an ever-increasing number of clients do not wish to engage contractors.
    b. Contractors will have significant reductions in income. From a personal perspective, I have now extended my mortgage term to a point after which I had planned to retire. I am no longer able to support my teenage children through university as I had planned to do leading to an even large debt burden for them.
    c. If I wish to continue to keep my project management skill set up to date, if I moved to an in IR35 role, I will still need to fund my training but this will be from reduced take home pay, rather than via expenses from my limited company. This will lead to people being de-skilled over time which will also impact organisations.
    d. Contractors cannot find work even if they are looking. I am seeing lots of posts about people applying for roles along with lots of other people as the amount of roles appears to have reduced significantly so more people are out of work and appear to be out of work for longer.

5. **What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?**
    a. The CEST tool needs to be updated to reflect all key areas of self-employed assessment. There is nothing in there re Mutuality of Obligation and cynically, I understand that this is where they have lost a number of legal cases.
    b. HMRC and the government need to engage various representative bodies (e.g. IPSE) along with end clients, agencies, accountancy bodies & umbrella companies to work through the significant concerns raised to create a simplified and fairer solution for all. Even when constituents get their MP to raise valid Qs in parliament, standard boiler plate responses are given that don't address the questions.

6. **Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?**
    a. The CEST tool is flawed, does not appear to take into account all key areas of assessing self-employed status and despite this being raised by various people (e.g. Dave Chaplin – from contractorcalculator.co.uk), satisfactory changes have not been made.
    b. There is ambiguity in the Qs as well. With my current client, I considered completing the questionnaire and actually made a start. The client advised me that some Qs needed to be given a specific answer by me. I suspect this is down to them being risk averse and worried about being challenged by HMRC at a later date when they will be liable for any penalties generated. I decided to stop answering the Qs as it was clear to me that they were only expecting one outcome (i.e. IN IR35)
    c. From what I read from cases that have gone to court and HMRC have lost, HMRC do not always stand by the results of the CEST tool either which is not fair and leads to mistrust of the tool and HMRC.

7. **What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?**
    a. Please see my feedback above- 5a, 5b and 6 a to 6c inclusive.

8. **How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?**
    a. HMRC do not seem to stand by the results of the CEST tool. It is farcical this happens and with the tool being flawed and not a fully fair assessment of employment status (See 5a) this is a ridiculous situation for all parties (Limited company contractors, clients & agencies) to be in.

9. **Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?**
    a. Unfortunately, I do not have the answers. There are though a number of organisations and individuals (IPSE, offpayroll.org.uk, Dave Chaplin, etc) that if given the opportunity, would engage with the government and HMRC to discuss better ways of identifying

self-employed status and having a fair tax system in place for self-employed people.

10. Will the Bill, as drafted, achieve the Government's objectives?

a. If the objective is to raise more taxes based on HMRC projections, I feel this is unlikely. This is due to people I know who are retiring, moving abroad, not working for 6-12 months using funds they have built up in the hope this "blows over" or people no longer being self-employed. I feel this will lead to a lower tax take and as workloads increase to those left behind, morale will be reduced impacting productivity in general which will also have a negative impact on tax take.

11. What is your view of the role of umbrella companies in the context of these proposals?

a. I understand that if you end up moving to an in IR35 role, you need to go via an umbrella company. I am frustrated that when I am seen as "employed for tax purposes" I will be expected to pay employers NI from my day rate. I am also expected to pay a weekly/monthly fee to the umbrella company for this "privilege"
b. I'm also aware that some new umbrella companies are appearing that are offering tax avoidance schemes to maximise take home pay masked as "above board" solutions. I understand this is what happened that led to the loan charge issues.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

a. Not at all. When I move to an in IR 35 role (I need to keep working, cannot afford a break as my wife is on long term sick so I've decided to go this way), I feel disgusted that I will be treated as employed for tax purposes, still taking all the risks as I would before these changes came in but getting none of the benefits an employed person does.
b. Organisations will always need flexible skilled resources to flex their permanent resource pools when there is a demand. This need will never go away but the flexible resource pool may be less flexible or may even not always be available as a result of these changes.

19 February 2020

Anonymous

Thank you for the committee's commitment to collating a broad range of evidence to investigate this matter.

SUMMARY
I am submitting my evidence to you as an individual and small business owner who has been wrongly caught up in the cross-industry panic in advance of the IR35 legislation reforms. The negative impact is already a reality. This is due to the largest of my current 'live' clients ('Client A') applying a blanket-ban on Private Services Companies (PSCs) and limited companies from 27 March 2020.

Even though I am currently working with *other* clients, the decision by Client A will have a significant impact on my business as I had agreed to provide my business services to them until 30 June 2020. They are asking me to continue to provide these services for almost 48% less than the price we agreed, via PAYE or umbrella. In any other service provision scenario, this would be viewed as an act severely lacking in professional integrity.

For context: I became self-employed in 2000 following several successful years as an employee communications professional. In January 2012 I set up my consultancy. This was, in part, because medium and large organisations now insisted that a self-employed individual must be a 'limited company' in order to do business. This is now being held against us.

Over the last 20 years I have worked hard to build my reputation as a cross-industry change communications expert in pharmaceuticals, defence, IT, retail, energy, banking and professional sport. I provide my services to multiple clients at any given time, with an ongoing flow of repeat business alongside larger project work. I have one employee – an administrator – who has worked for me for over five years. Her job is now at risk. The company is VAT registered and I pay around £30k in corporation tax per year, as well as employers' NI for my employee.

I am the main breadwinner by a significant margin. If I am forced to accept an incorrect 'inside IR35' status, the **net** loss to our household income will be around **32%** and we will not be able to cover our monthly outgoings. These include the mortgage, childcare, car payments, council tax, basic living expenses, and utilities. Our two young children attend state schools. They both have Special Educational Needs which requires a particular degree of management from me as a mother, and regular interaction with the two schools. Being self-employed and managing my own time is critical to managing the never-ending cycle of mothering, working, and engaging with school/support practitioners. We do not have private medical insurance and we do not have a holiday every year. I typically take around 12 - 15 days off each year, unpaid. I pay dividend tax, income tax and national insurance from my personal account.

As a change communications expert, my services are hired by companies going through extensive periods of change. Companies often opt for an external

person to handle their employee communications for change projects, especially when redundancies are involved. This is because we are entirely impartial, with no alliances or emotional attachments. Projects have a beginning and an end, and don't involve 'business as usual' work. I typically align with project delivery teams who are also external, and I mainly work from home.

During a project my services include supporting and coaching leaders as a discreet and trusted advisor, and equipping them with the words, tools (and confidence) to deliver tough messages to hundreds or thousands of people. I also create communications strategies, plans and content to facilitate the execution of the transformation.

Absolute trust is paramount - if I am not trusted and do not make people feel like I'm 'one of the team', I have failed. According to the IR35 reforms, this would deem me to be 'like an employee'. In fact, it is a key element of the service I provide and the 'brand' and reputation I have created, which has customers returning to me.

I am gravely concerned for the future of my small business. Despite operating as I do, the reforms do not see the 'grey' of the PSC landscape. I do not work alongside employees and pay different tax – I provide a specific service that does not exist in-house. The absence of clear legislation or guidance is causing blanket-bans of all PSCs. It disregards the legitimacy of my business and my working practices, and ignores my right to be assessed individually. I have been denied my right to appeal on the grounds that it is a ban and not an assessment outcome.

Equally concerning is how third party companies will benefit financially, as you will read later. This reform is the complete removal of workers' rights. It is the forcing of people into working situations they have no choice but to agree to, if they wish to be able to pay their household bills and continue to look after their family. Making workers pay Employers' National Insurance is the (illegal) taking of a proportion of another person's rightful income. If this were happening in another situation, we would be calling it prostitution and the third party companies who are benefiting financially would be referred to as pimps.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

Response: The tests are not clear to anyone and do not reflect the reality of the contracting environment.

6a) The tests are too broad and do not account for every type of PSC or contractor, or the terms under which their services are procured by clients. Externally, the focus has been on IT contractors and Finance contractors, when the world of contracting is vast. It covers <u>many</u> areas of expertise and there is a plethora of reasons clients engage PSCs instead of recruiting a permanent employee.

6b) The substandard tests are a result of the monumental rush HMRC is in to go live with this legislative reform. HMRC purposefully pushed the proposals past MPs while they were distracted by Brexit, thus avoiding any reasonable level of scrutiny. HMRC have since ignored – and now deny – that medium and large companies are responding to the changes by blanket-banning all PSCs. This is despite an abundance of (very public) evidence to the contrary.

6c) Due to the lack of clarity and robust guidance, organisations are ignoring the requirement to individually assess. As described in my summary, Client A's blanket-ban has disregarded my company status as a legitimate consultancy with multiple clients, substitutions and an employee, etc. This common approach has also removed my right to appeal any decision, which I believe to be unlawful, since it has also removed my right as a small business owner to engage with my client directly.

6d) Because the tests are not fit for purpose and companies are blanket-banning PSCs, questions have been asked of Jesse Norman, MP, by fellow MPs in the House. He has repeatedly denied all knowledge of companies blanket-assessing and blanket banning PSCs, despite having twice been physically handed a complete list of companies who have done that. On occasion he has replied to questions on Twitter related to this specific matter. His denials in the House are influencing other ministers towards accepting ill-informed decisions that have already brought UK industry to a state of paralysis, ahead of it grinding to a halt in the coming months.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
Response: My assessment of the CEST tool is that it is not fit for purpose, is deliberately weighted towards finding a worker 'inside', and requires significant improvement and testing.

7a) My own assessment is alongside the admittance already made by HMRC that:

- The tool has not undergone any formal testing to validate its accuracy;
- HMRC are unable to produce any detailed evidence of its accuracy to date, despite claims that it was under 'continual review';
- No formal assessment has been undertaken to ensure the tool meets the Government's Digital Service standards which are designed to ensure a service is good enough for public use;
- Independent testing of the tool and its accuracy measured 24 assessments that had resulted in status determination cases: 42% were flawed. This is alongside many and varied other examples and legal arguments where the tool has been found to be inaccurate.

7b) Going into more detail, the questionnaire is not specific enough in relation to the 'whole' of the contractor's status. By their very nature, the working practices of contractors are diverse and are not 'black and white'. There are vastly differing elements to factor in, such as business ownership, ways of working, employee numbers, client activity, 'substitute' networks, mutuality of obligation, and so on. This leads clients to force consultants into an 'inside'

determination, in order to remove all risk to themselves over making an incorrect decision.

7c) Using my own status as an example for the committee:

1. My limited company has been incorporated since January 2012, further to 12 years' prior as a sole trader.
2. I always have multiple clients for whom I provide services simultaneously.
3. I have never worked with a client for a run of more than 14 months, the structure of which being thus:
   - An initial agreement and scope of work is usually for between three and six months;
   - This is then extended if a client has further need and would like for me to deliver this additional work, in the interests of trust, consistency and quality;
   - This is often the case if an implementation go-live date slips and my expertise is needed for an additional period of time.
4. I have an employee; she is an administrator and is an important asset to the running of my business.
5. I have a small network of 'substitutes' to whom I can defer work should the need arise. They are all professionals with a similar degree of expertise and experience, who could step in to support a client at a moment's notice and with little disruption.
6. I work from home most of the time and, like any good service provider, am flexible around my clients' needs.
7. The nature of the services my company provides requires an unquestionable level of confidentiality, along with – critically – being able to access sensitive or classified client data that can only be accessed using a client's equipment and/or network. This is especially true of the work I have done within the defence sector; I am a signatory of the Official Secrets Act, and hold UK and Scotland security clearance to a level sufficient to have allowed me to work on Portsmouth Naval Base and access MOD sits across the UK, including Rosyth, Boscombe Down, Hillend, Fort Halstead, Cowes (BAE), and Broad Oak, amongst many others.

7d) The CEST tool deems the use of a client's equipment to be admittance that the worker's status is that of an employee. There is no 'grey' to this view, as described in 7c/7, or opportunity for justification. It is a closed question.

7e) The CEST tool could be improved if the process of completing the questionnaire was the responsibility of **both** the client *and* the worker, with clearly defined accountability on each entity for the accurate completion of <u>their</u> section. This would address two of the most significant known issues:

1. A client hastily and wrongly assesses a worker as 'inside', based on an institutional fear, or a corporate directive, to avoid risk and 'find' <u>all</u> workers inside;
2. It is not the hiring manager who completes the assessment (I.e. the person who has the knowledge about the scope of work, the PSC being engaged, and the terms of the agreement). It is an entirely separate

third-party in HR or Procurement, with no knowledge or understanding of the service requirement, of the PSC who has been identified to supply those services or its ways of working. It cannot be possible for that third-party to complete the questionnaire without guessing answers (or selecting answers that are 'low risk' for the client), and therefore incorrectly determining an individual as 'inside'.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
Response: The status determination process is ineffective because it is incomplete and is already failing to resolve issues of employment status. There are no adequate safeguards to allow decisions to be challenged. There is an immediate need for a process that enables workers/PSCs to seek support when companies deny their right to appeal. As it stands, the legislation entirely disregards the worker and their rights. The following points are informed by my own experience.

8a) The status determination process is incomplete and is, as yet, undefined. Such is the rush of HMRC to push this legislation out on 6 April, the determination process has not been tested fully, in a 'Beta testing' scenario, to see where there are gaps in practice, and to identify any adjustments that need to be made before it goes live. A change in legislation and process like this - which directly impacts the livelihoods of individuals if it is not right or fit for purpose - cannot possibly go live until it has been properly tested to capture as much working data as possible. *Please see also my answer to Question 7.*

8b) Linked to this, HMRC claim to have held 'round table' discussions and forums with c.300 people who represent the flexible workforce in the UK. However, in the numerous professional networks, forums and groups I belong to, and whose thousands of members represent a vast cross-section of the contractor industry, not a single person has been a part of these HMRC discussions. I believe the inefficiency of the determination process, and ensuing industry chaos, is a result of this failing.

8c) In contrast, there has been strong representation from the 'Big 4' consulting firms – EY, Deloitte, KPMG & PwC - all of whom benefit directly from the obliteration of their main competition, the small business owner and contractor*. We also know that other third parties and financial beneficiaries of this new legislation have been at the table. This would suggest the configuration of these biased forums has not been equally representative of the UK contractor industry as a whole, and most certainly has not included sufficient representation of individuals impacted.

*We provide the same consulting expertise, knowledge and practices as people farmed out from large consulting firms, but at a significantly lower cost, against which they cannot compete. I have provided my services to clients on numerous occasions where consulting firms have failed to deliver in either quality or substance.

8d) The way in which over 100 medium and large UK businesses have handled the process of 'determinations' – that is to blanket ban and blanket assess – has already directly impacted the workers' right to follow the appeals process. Contracts have been ended prematurely and project work has been offshored, **including to the company owned by the new Chancellor's father-in-law**. Small businesses throughout the contractor supply chain are in trouble, or are closing, including legitimate consulting companies like mine, accountants, business insurance companies, childcare providers, bed and breakfast establishments, and administrative support services, all of whom provide services to consultants and have lost business.

8e) My own personal experience of the lack of safeguard measures, and the removal of any right to challenge or appeal decisions, is not unique. I submitted my appeal and evidence to the third-party payroll provider (TPPP) for Client A, and received an email telling me I had no grounds. I have been denied my right to appeal.

8f) The majority of PSCs/contractors have no relationship with TPPPs and, therefore, even *less* chance of being safeguarded. The process of securing the services of a PSC are handled directly between the client and the PSC. As an example; in the matter of banning all PSCs from Client A and forcing business owners into no-rights employment with a 25-35% net pay reduction, the role of the TPPP is that of a bailiff, throwing out directives, laying down rules and acting as the 'strong arm' on behalf of Client A.

Using my own experience to illustrate:

- Initially approached by Client A to supply services to meet a specific requirement. Terms of engagement and cost agreed directly. The TPPP handled the contract and payroll provision;
- The TPPP announced Client A's decision to blanket ban all PSCs by 27 March 2020, and that any contractor wishing to stay <u>must</u> become PAYE or go under an umbrella company, at a gross revenue loss of up to 50%;
- The blunt and bullishly worded announcement arrived after the news had already been shared on Twitter, and stated there would be no negotiation of day rate to compensate the net losses to the individual (of between 25 – 35%);
- The TPPP mandated an 'approved' list of six umbrella companies, <u>including their own</u> umbrella arm, NASA. (*Please see my response to Question 11 for more about unregulated umbrella companies);*
- Both 'options' remove all worker rights, leaving the PSC substantially out of pocket. The original agreement between the client and the PSC is being torn up without discussion;
- Both 'options' involve the TPPP/umbrella company taking **13.8%** of <u>my</u> paid client invoice (as well as other so-called charges). This 13.8% is the Employ<u>er</u>s' National Insurance which <u>they</u> should be paying as 'the employer'. This is an illegal practice but continues to go unchallenged. I do not reimburse myself from <u>my</u> employee's pay;
- Client A refuses to engage directly with PSCs, despite service providers (us) continuing to work closely with key client stakeholders. It is a very awkward situation; most stakeholders had no idea this was going to happen and now have no idea how they are going to deliver projects;

- I submitted my appeal to the TPPP, with evidence that I, my business and my working practices, all deem me as being 'outside' IR35. The TPPP were quick to reject it and wholly refused to recognise my right to appeal, on the grounds that Client A's ban removes any right for argument, regardless of circumstances or error.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?
Response: The difficulty with this question is that the objective is fundamentally flawed and requires refinement. Beyond that, the real issue here is that the original objective of IR35 was to address the matter of (usually highly paid) employees receiving a redundancy package 'on Friday' and then turning up 'on Monday' as an extremely highly paid contractor. This abuse of the system was never enforced by HMRC and this is the result. The new rules should simply be a commitment to weed out the contractors who have been working for a single client for many years, who do not have any other clients, and who, to all intents and purposes, should be paying tax differently. However, that *still* does not mean that anyone who is not a permanent employee, and does not receive the rights, benefits and perks of being one, should be taxed as if they are an employee.

9a) Firstly, what exactly *is* the objective? Is it simply to make £3bn? If so, there are number of large organisations operating in the UK who have not paid any taxes for some time and could fulfil this financial goal set out by HMRC and HM Treasury, many many times over.

9b) The objective must first be established and agreed with the required level of due care and attention. As I said, when previously this was agreed, many MPs were distracted with Brexit. It was the optimum time for HMRC to push through ill-conceived, discriminatory reforms and avoid a level of scrutiny that would otherwise most certainly have raised questions. HMRC's calculated cynicism in doing this could be likened to that of Labour MP Jo Moore, on 11 September 2001.

9c) An alarming degree of IR35 misinformation has been supplied by HMRC to those who speak publicly on their behalf in the House of Commons and elsewhere (namely, Jesse Norman, Sajid Javid, and now Rishi Sunak). Great care must now be taken to ensure that what is being implied or claimed is the truth. Jesse Norman and Sajid Javid have both denied that blanket bans and assessments are happening and have both claimed that most contractors should be 'inside' IR35. Jesse Norman has now twice been physically handed the full list of companies who are blanket banning and blanket assessing. This level of dishonesty from a member of parliament is deeply concerning, particularly as this has been drawn to his attention hundreds, if not thousands, of times on Twitter (@jesse_norman).

9d) This misinformation from HMRC includes:

- Telling the Chancellor and other Treasury ministers that the legislative reform of IR35 is a low-level practice that will make marginal difference to individuals, despite the reality of the financial impact;
- Inaccurately claiming that 90% of PSCs, contractors and freelancers are not paying the 'right' amount of tax;
- Failing to admit there are thousands of legitimate small businesses already caught up in the fallout of blanket-bans on PSCs, or that the contractor supply chain is already detrimentally impacted;
- Claiming the processes and tools for the rollout and enforcement of the reforms have been tested and are fit for purpose;
- More recently, advising Rishi Sunak that there will be no 'heavy-handedness' in the first 12 months from 6 April 2020. HMRC guidance published online states otherwise. A video of Rishi Sunak citing HMRC's reassurances to a live audience emerged w/c 17 February.
    - Furthermore, the catastrophic impact on our economy will not be seen until FY21/22, as any business taxes accrued in FY20/21 will reflect FY19/20. Therefore, HMRC's 12-month grace period is meaningless, because the 'heavy-handed' tactics will begin when the taxes for FY20/21 are due.

9e) Thus, the achievement of the objective is reliant on the objective being reasonable and fair, and an objective that is not going to obliterate small businesses, that is not going to wipe out the competition for the UK's large consultancies in one fell swoop, and is not going to remove the basic rights of anyone working in the UK.

10. Will the Bill, as drafted, achieve the Government's objectives?
Response: No it will not. I refer you both to my response above, and to my reasoning, below.

10a) As it stands, the impact of IR35 will have a significant negative impact on the UK economy and is already:

- Obliterating legitimate small businesses in the UK who have been caught up in this broad-brush approach, and blanket-banned alongside normal contractors, irrespective of the terms of engagement;
- Driving up unemployment for contractors, freelancers, PSC owners, and the employees of small businesses being forced to close;
- Directly impacting the freelancing supply chain where PSCs no longer require *their* services, including: accountants, specialist resourcing agencies, childcare providers, proprietors of small hotels/bed & breakfasts, business bank accounting services and business insurance companies.
- Sending consultancy work offshore to fill the gaps left by PSCs. **This includes the the company owned by the father-in-law of the Chancellor of the Exchequer, Rishi Sunak, which forms a gross conflict of interest**;
- Deferring work to the UKs biggest consulting firms, all of whom were directly involved in advising on the development of this revised IR35 legislation, and who are now already benefiting from it;
- Removing the previously fair and level playing-field between small business consultants and the larger consulting firms;

- Discouraging women* from returning to work after children, on the basis that they will not be able to continue to operate their small businesses or sustain their genuine self-employment status, which enables them to work flexibly and be 'all things to all men';
- Causing an equal degree of difficulty for people who are carers for elderly or disabled relatives, for the same reasons that are impacting women returning to work.

*It should be noted that much of the focus in the press has been on IT contractors, a majority of whom are middle-aged men (probably with older, more independent children), who spend most of each week working away, who charge very high day rates, and who incur expenses. This does not reflect us all. There are as many of us who do not match that profile, and who have family obligations, or carer responsibilities, and for whom flexible self-employment and contract work is the only way to make it work and continue to contribute to the economy. We do not earn thousands of pounds per day and we do not rack up weekly expenses. We have been marginalised and discriminated against in the broad-brush application and ultimate failure of this legislation.

11. What is your view of the role of umbrella companies in the context of the proposals?
Response: It is my opinion that this legislation has handed umbrella companies a licence to print money. They are largely unregulated and, I am advised, break the law with some of their practices. The enforcement of workers to engage with umbrella companies means that the umbrella companies are cashing in on this legislative reform. New companies are springing up daily, promising unlawful proportions of net revenue to people who sign up, at a time when those people are vulnerable and desperate and may take unnecessary risks they would otherwise never have considered.

11a) Based on my own research and quotes obtained from umbrella companies, my view is that to engage with an umbrella company is to be forced to accept:

- I must pay a company, who may not be of my choosing, between £20 and £32.50 per week simply to pass on revenue that is legally owed to me by my client, based on a contractual agreement negotiated and agreed between me and my client, at a rate negotiated and agreed between me and my client;
- This third party is going to illegally take 13.8% of my revenue to reimburse themselves for the Employers' National Insurance that they are legally obliged to pay as an accepted business cost associated with having employees;
- There will be no consequences for this third party illegally reimbursing themselves for the Employers' National Insurance contribution that they are legally obliged to pay;
- A further 0.5% will be taken from the revenue that is legally owed to me by my client to cover an Apprenticeship Levy charge which does not

apply to me, since I am not an employee, I have no rights, and I do not receive any benefits;
- I will be taxed as if I am an employee and I will pay NI contributions as if I am an employee, but I will, for the first time in my life, have to provide my professional business services without any mutually agreed, equal notice period with my client, and that I will not receive any benefits or rights, despite being paid as if I am an employee.

12. How do the new measures relate to the wider context of changes in working arrangements, including the 'gig economy'? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?
Response: The new measures do not relate to the wider context of changes and, no, it is not fair that some people will be taxed as if employees, while receiving none of the rights, security or benefits that an employee does.

12a) Rishi Sunak and Jesse Norman constantly refer to **fairness** and to 'the employee and the contractor who sit side by side, doing the same job and not paying the same tax'. However, the IR35 reforms swing wildly in the opposite direction. There is nothing fair about the contractor:
- Having no rights and carrying all of the risk associated with engaging with the client;
- Being forced to pay the Employers' National Insurance contribution, while an employee does not;
- Being forced to contribute to the Apprenticeship Levy;
- Being forced to foot the bill for any expenses they may accrue in order to deliver their services to the client, including travel, board and sustenance;
- Having no mutual notice period – contractors have to give 30 days' notice while the client gives none;
- Being illegible for any kind of compensation (I.e. redundancy) in the event that the role is terminated;
- Receiving no holiday pay, sick pay, maternity/paternity leave or pay,
- Receiving no pension or client contributions to their own private pension, if they have one;
- Receiving no life insurance or 'death in service';
- Receiving no medical or dental insurance cover for them or their family;
- Being unable to benefit from training or development from the client;
- Being unable to benefit from leisure benefits, such as gym membership, or store discounts.

12b) This is a broad-brush approach designed by people who do not understand the industry and, worse, have not taken the time to try to understand it. Their solution is not fit for purpose and has already had a catastrophic impact on people's lives and on UK industry which is in a state of paralysis. HMRC's solution is being applied as a blunt instrument, while the variables of flexible working demand a variety of approaches.

12c) Like any project, the starting point is to ensure a full and detailed understanding of what it is we are dealing with and what we want to achieve. Once established, you then work out how many variables (or audiences, or end

users) exist, before then working out the best way to address each variable. You then bring as rich a cross-section of each variable group together to test *their* solution and identify gaps, improvements, etc. You then repeat the testing exercise as many times as is necessary to ensure it is right.

12d) Quite simply, this best practice approach has not been followed by HMRC, nor has an appropriate level of scrutiny been applied to ensuring it is right and fair, and fit for purpose. This is why thousands upon thousands of contractors are now being forced out of work altogether, *or* forced into accepting working conditions that remove all rights, and place the 'power' over these once independent, self-employed people, into the grasping hands of third party companies who will treat them as status-less commodities, and charge them for the pleasure.

12e) As previously stated; in a different 'service' industry, the sum of the parts of the IR35 reforms is akin to corporate prostitution, with TPPPs and umbrella companies being allowed to take their cut like pimps.
24 February 2020

Anonymous

I write personally to you as, in my words, a Consulting Technologist well versed in many forms of technology from all eras. I have worked on and off as an IT contractor for 25 years, played with modern computing for 40 and began working with networked office computing before Microsoft.

What I have written is intended to give some background and comment on the IT Industry and the good and bad aspects of IR35, from the perspective of a contractor. It is not a detailed legal argument, merely something that you may not often get sight of, how some of it actually works.

Summary

The IT Industry – Overview	Page 1
The IT Industry (Today	Page 2
My History	Page 3
IR35	Page 6

The IT Industry

1. The Information Technology industry has always suffered from problems in regulation and validation. Whether in selling hardware and software or services, it is plagued with connivance and misdirection, designed to beguile and confuse, all in the aim of making money. Industry standards are often dictated by organisations with a vested interest in selling more products or services, thus finding truly independent Technologists able to differentiate between value and frippery, is difficult to say the least. This is not necessarily the case should an organisation have funds to employ the best or to engage the leading vendors. Many do not.

Note: It is widely known to Technologists that Microsoft gained near ubiquity in business systems by allowing Windows to easily be illegally copied. Once

businesses became dependent on Microsoft software, later versions included robust copy protection. Clever, if devious drug dealer strategy.

2. The IT contracting market sprang up to meet the needs of organisations that wished to embrace the information age, yet had little to no understanding of what was required, nor staff with the skills to implement. Many service companies also began at this time, a high proportion of which were formed by greedy people wishing to cash in on a perceived 'gold rush' where money could be made by hiring a few 'techies' and purporting to know how IT worked to organisations that had no way of understanding if they even held qualifications.

These two situations led to the position the IT contracting market has remained stuck with ever since.

A. The leading vendors in the industry create a perception akin to scientific development that IT needs to advance at a damaging (to business) rate. Their sales principles follow inspiring the fear of being left behind competitors that deploy the latest and supposedly greatest, technology. Technology savvy organisations are able to determine their own pace, many more, particularly public organisations, are not.
B. Short term IT contracts are almost entirely undertaken through a third party 'recruitment' agency. These agencies have only one purpose, to place IT contractors in roles and to take a cut for every hour worked. If an unskilled resource is placed, the agency will still get a cut of any monies invoiced until that resource is let go. To compound the problem, agency staff, for the most part, have no comprehension of the IT industry.

3. So with the widely known fortunes to be made in the IT industry, charlatans, incompetents and the simply self-deluded raced to join the rush. The leading vendors didn't mind since they also made money from selling certification in their products, however low the standard of certification might have been. Up until 'The Cloud' vendors didn't have to support the software (for free), Technologists held the majority of that knowledge to that point. Microsoft were famously barred from the Microsoft Mail Technologist groups due to animosity surrounding their purchasing the product from a competitor.

All of the above led to two outcomes for skilled Technologists.

A. There will never be an end to customers requiring honest and skilled people to develop their IT systems or remediate them from a mess left behind by the last person or organisation.
B. The truly skilled people and businesses in the industry cannot often be differentiated from the incompetent, until after being engaged.

4. Today

A. While certifications have become slightly more well regarded, for the most part people holding certification and little experience are not trusted by Technologists, even if they are more likely to get contacted by agencies.

B. The advent of the 'cloud' sales concept means that the largest vendors have even more control over the pace of advancement and even which of their products customers are allowed to use, based on cost to support and revenue damage based on removing. As with the many fads over the years, supposedly intended to reduce costs (Offshoring, foreign contractors, outsourcing), all this has done is generate a more complex landscape and more work for skilled Technologists.
C. Most roles that involve engaging a project team of mostly contractors will likely result approximately 10 to 50% contractors being sub-par, requiring more support and resulting in extra work for the skilled contractors and permanent staff. This range estimate is based on the quality of interview process. (at worst this can involve a simple face-to-face meeting with no technical assessment)
D. The service provider organisations that grew to immense proportions in the 1990s, still regularly need to engage short term contract resources to be able to service all the customers they win. In some cases an entire project team may be complemented by a single permanent member of staff for a customer project. The customer will often not be informed that the contract team has no previous history with the service provider, nor do they hold any in-depth knowledge of their true skillset. This leads to the same result as the previous paragraph, a risk of damaging resources allowed to work on systems they are not qualified to.
E. If even I am considering contracts abroad solely because of IR35, how many are HMRC going to alienate enough to think why bother with the UK if it wants to use the smallest businesses as a cash cow? I know skills such as mine are in demand and, should I be that way inclined, I could relocate in next to no time.

My History

5. My father was a Polish child refugee resulting from World War II and my mother grew up living through the Blitz in Battersea. They both eventually ran their own businesses, one listed in BDEC and a supplier of unique training equipment to NATO and allies during the Cold War. I worked with my brother, eight years my senior and not only my first teacher but one of the students that explained the first computing 'O' level to the teachers at our school, Merchant Taylors. By the age of 19, I had formed my first Sole Trader company, gained several clients, some West End accounting and legal firms and expanded by word of mouth, based on a reputation for honesty and quality. I even turned down a role at Microsoft out of loyalty to my customers.

6. In 1995, I was approached by an agency with regards to a contract role at the BBC. I was offered the role but was told by the agency that they would not deal with me through my Sole Trader company (that had been running for several years and was VAT registered). I was forced to create a Limited Company and found that even though my skills in the messaging arena were highly sought after and even when directly recommended to an organisation, I would have to do business with them through an intermediary agency.

7. Since I began before accreditations existed in my field and chose to leave school following my 'O' levels, aged 15, I have little to no qualifications. Despite this, I have worked alongside Microsoft staff and consultants on many

occasions, had Microsoft engaged on my recommendation to validate my work for a global organisation and designed a process that although Microsoft said impossible at the time, became the industry standard for migrating email systems for many years.

8. I feel my breadth and length of experience qualify me more than most to write on this matter. I have provided services to utilities, communications and technology companies, central and local government, The NHS, media, fashion, retail, finance and banking industries, to name a few. Contracting for 25 years, trying to protect organisations from the lies in our industry and to help them control technology to benefit the organisation, not cripple it financially. I am lucky that I can see with clarity what most cannot and so my skills, to those that have seen them in action, are always in high demand. My truly independent position affords a high level of trust to my opinion.

9. Some organisations simply cannot budget for someone of my level for any great length of time and could not offer a permanent salary that equates to the skills I can offer, nor least hold my interest. In allowing me access to their systems for just a few months, I can save an organisation a great deal. These organisations cannot afford to engage companies such as Microsoft and so are prey to many businesses that still exist, offering the world when they can often deliver little of value.

10. A case in point would be an NHS trust that had trouble delivering a project using an accredited Microsoft Gold Partner. Three years in and nearly half way to delivery, I was asked to evaluate the position, remediate previous issues and deliver the remaining work. I completed this alone and in under three months. While I cannot divulge further detail of this case, I can say in my opinion, more damage has been done to the NHS by breaking its buying power up and leaving each Trust prey to the 'sharks' feeding on small public and private sector organisations. The NHS as a single organisation could have developed a medical tablet device rather than using an Apple/Google one, the BBC managed to create one of the first home computers after all.. Organisations such as Microsoft wouldn't offer the lowest level of partner to that NHS, they'd come and visit personally.

11. I have weathered the storms of every new fad in IT that promises to save money but instead generally simply means money goes out of a differing budget and business operations are destabilised… … then people such as I come in to tidy up. My concerns then with the manner and approach taken by IR35 is in it failing to take into account the problems in the IT contracting market which it will likely compound by adding another complication and destabilising the market further.

A. Many organisations will not wish to add complexity to their hiring process by vetting every contract to see it conforms and so will state all contracts 'inside IR35'. Those that take this approach will exclude themselves from hiring contractors who will refuse to consider 'inside IR35' contracts.
B. Most unskilled contractors don't care what their contract pays, so long as they can get something for a few months that increases their chance of

getting another contract and in general pays them at least until their first contract term is over.

Given the section explaining something of the industry, it is fair to imagine the impact of limiting the scope of hiring in a market always denoted as being short of well skilled people. To limit it to the unskilled, desperate and resentful, might not be considered prudent.

12. I can understand that my particular skillset is moderately rare, I have been fortunate to work with some of the greatest minds in our industry, yet sometimes, taking two NHS roles in particular, I take on a role of a far lower level, simply because I would rather I help deliver it than risk it being done by an incompetent. I am not saintly by any means, I happened to be available at the right time and knew I could do something for worthy institutions, at a level of quality not normally seen. Feels better than helping a business sell more garden rakes or cinema tickets.

If now, based on criteria set by HMRC, I ignore adverts for such roles, it may not harm me beyond extending time between contracts, it will harm organisations that would otherwise have access to the full market of IT contractors.

13. In terms of the direct and current impact of IR35 to me and UK organisations, my current role at an important UK organisation is ceasing at the end of February, in a contract that has been renewed 10 times over two years. This was due to a number of new projects resulting from a massive expansion into the USA and my being capable of covering many differing roles when the company had lost many key permanent staff due to restructuring. In the time I have been on this contract, I suffered a concussion from someone driving into my car and worked from home for short periods for five months. This was an unheard of situation to me and in part denoted the value this organisation holds for the services I provide. Their kindness in this matter is one reason I have remained with them longer than I usually would. How does that fit into an IR35 calculator?

The work I have been undertaking to help this organisation expand operations in the US has not completed but because I have been led to believe they are applying 'inside IR35' to all contractors and I refuse to condone the use of umbrella companies, I will be leaving at the end of February.

I cannot say that losing my skills and detailed knowledge will severely impact this business, all I can say is that were it not for the adoption of IR35, I would have been retained at least to bring a satisfactory end to the projects I am Lead Architect on. My leaving was raised as a risk to the project which has now lost very specific and specialised knowledge from my developing designs. This organisation has also extended their offshore presence to Poland as well as India, moving at least half of the team I was working with out of the UK.

14. IR35 does not take into account subtleties or business demand that may need temporary resource to be retained due to the pertinent and unique knowledge of a system. If those skills are required for two years but the

project is delayed, does HMRC have the right to effectively state after an arbitrary time a contract becomes permanent employment? Is that even a part of this legislation?

15. I would also question just how much one such as I is damaging our country by operating as an IT contracting business? What I earn goes to pay for me to live, pay additional funds to care for my mother on top of the poorly run care system that she paid into throughout her 65 or so years working and paying taxes, support my children through normal life and hardships and is spent almost entirely in the UK. Where is HMG losing out from me?

16. Technologists know governments have yet to take charge of IT. Where is the dedicated Ministry of Technology that hires some of the brightest in the field to protect public bodies from the 10,000 page Statement of Works delivered from wily vendors and consulting firms (where everything appears to be promised but later turns out to be an extra cost)? Digital UK? It is so sad to see the path you've been led down, doesn't even warrant the moniker, joke. Department of Digital?? Pray, do tell, what does that even mean? We need money spent on tarmac, not 'digital roads'.

Did you know? Before being stopped in 2007, 75% of the world's spam email was emanating from an ISP in Silicon Valley, California. Not some 'dark web' location in deepest darkest China or Russia, oh no. It was from the same place the biggest anti-spam software vendors are located (I was developing an anti-spam service dealing with 1.5 million messages per day when it stopped, so saw the difference immediately). Today, the same techniques are being used in the cyber wars playing out around us.

17. I cannot obviously divulge the type or number of security issues I have had to either remedy or advise organisations to rectify throughout my career. Even so, none remained following my intervention, so I have not had to worry I carry any quandaries of conscience with me. It does though make Technologists laugh and shudder equally when hearing about the comparatively paltry data leaks and whistle blower stories, oft accompanied with the words, "If they only knew".

IR35

20. This legislation is not just a blanket across IT, but other industries. How on earth does that work? Does construction have much in common with IT? Faced with questions that say I'm not allowed to include IT equipment in an evaluation of how I perform my role, seems to suggest an attempt to create blocks to perceived loopholes in other industries.

21. Am I an employee or do I run a business? Am I employed by my own business and another at the same time now? It seems HMRC wishes to change how business operates without changing the rules of how businesses operate. Did contractors create the current contracting market or did businesses and who allowed it to happen? Why? Was it because a business could avoid taking responsibility for employee contributions and benefits that could run far in excess of a contract rate? In that case, why have contractors been the target of HMRC until recently? Why is it now a case of putting responsibility onto

businesses that involves a non-decision of either taking a cheap standard approach or an expensive, risky and complex one?

22. How well do recruitment agencies fare in the tax payment arena? Being effectively pimps that sit back taking money for the hard work of others, there is a lot of money to be made as a contracting agency. Of course they can then afford to employ accountants who can make their business incredibly 'tax efficient', so are not a concern to HMRC, as long as the correct markers flash up on their accounts like any 'good' accountant will ensure happens. They're still getting their cut of Public Sector contracts aren't they? Did their mark-up take a hit in all this? Do an investigation, see if more than 1% of agency staff can pass a basic IT test and ask why do they form part of our industry when they damage it so?

23. I personally agree with the principles of IR35. In that businesses have chosen to avoid responsibility for people who should be classed as employees. As such, their culpability is in flooding a valid market with inappropriate people, while avoiding paying taxes and pensions that would otherwise have fallen to them. What is disagreeable is the manner in which HMRC have smashed a hammer onto the market with scant regard to the valid need for skilled contractors whose value was the reason a 'gold rush' began.

24. As such, the results in the IT industry have been similar to a lot of scare tactics over the long painful years of IR35 being almost completely ignored, many contractors take temporary permanent roles to see what happens, others bow down and the remainder refuse to be cowed by a poorly developed set of legislation. On the face this can be seen as a success in the public sector. HMRC get more PAYE inputs, 'inside IR35' contractors pay directly and even though many public sector contract rates have gone up to offset the IR35 imposition, that money goes back to HMRC, so it is all nicely wrapped up. Doesn't identify what quality of contractor you are left with does it?

Note: Do HMRCs figures stating the gains in taxes since 2017 include an offset covering the rises in Public Sector contract pay rates that would have had to be sought from government? Has been bizarre to see Public Sector rates exceed Private Sector.

25. It wasn't as if the best in the industry were racing to help in any case was it? What is that old saying? If you've given up or don't want to have to do much and have a nice easy life, take a job in the Public Sector. (Thankfully there are some principled and dedicated people that do join and keep it all running, I've met some and been privileged to work with them.) An even greater divide could grow between the affluent business sectors and public and small or low margin industries (retail?). Some contractors take a low paid role to fill in while waiting for one that matches their higher level skills. Is shutting the door on the benefits highly skilled people can bring to lower level roles worth it?

26. It is already hard enough to be treated as a business. I have on occasion demanded a change to an agency's standard contractor contract. This process is not only extremely difficult to enact and often requires approval by one of

the heads of the organisation. It is seen as out of the ordinary simply because agencies and hiring businesses alike, wish for an easy life. The contractor trying to run a business, paying for insurances, their own training and equipment, their holiday and sick pay, doesn't generally have a department to do things for them. How is it HMRC can deduct tax, denoting employment, from a contractor's revenue without also expecting full employee benefits to be granted to those contractors or requiring a permanent employment contract be enacted? IR35 – A good way to undermine centuries of developing labour laws.

Then again TUPE was brought in to deny loyal employees long term benefits by selling them on like slaves to other organisations. Here, have a chunk of employees, reset their loyalty clock and we'll buy back whoever stays from you in a few years.. Perhaps the same should be done with Civil Servant Pension special additions? Transfer them to a different organisation and erase long service benefits. Cost saving to the state. (Great having that data freely available online isn't it?)

27. As far as I have seen and I am sought after due to my ability to find the smallest pertinent detail, the evaluation of IR35 is an overly complex, poorly defined, unfocussed and ill-communicated concept. The questions leave little room for subtleties that have been eradicated in the formation of standard contracts and even with my experience in the industry and in running businesses, needed far more explanation than is offered. It underlines my perception that most businesses would see the need to have a legal team evaluate every outcome, before accepting they could not later be held liable. How many businesses would contemplate this?

28. Have I been contacted about IR35 by HMRC? No. Have I been classified as an IT Contractor, even though for several years recently, I worked solely for a client base I built up about 10 years ago? I have no idea. I could work on one 'inside IR35' contract for three months as an 'employee x2' and then move to a two year contract 'outside IR35' as only an employee of my business. Would working on one 'inside IR35' contract tar me and thus mean I was a target for HMRC? Like other businesses, I have evaluated the risk and will take the path of least risk to my organisation.

29. Does HMRC hear IT managers shouting "this is insanity" when told they either can't retain valued resources or hire new ones with appropriate skills, simply because the business has chosen not to waste resources on vetting each candidate for IR35 suitability? (Businesses are risk averse if you weren't aware, so to risk incorrectly calculating HMRC's vague IR35 output generator is an almost certain, no.)

30. Should not a calculation for IR35 validation include that of an ex-employee being hired by the same or associated organisation? The appropriate legislation making such an approach illegal for a defined period of time and appropriate deterring fines to businesses that follow such processes. Agencies currently use 12 months to stop contractors returning to an organisation directly, simply on the basis the agency introduced the contractor. Why not put the same controls in place that stem businesses avoiding employers' responsibilities,

rather than stop valid contractors' businesses from performing their function? Innovative I know, stop the problem at cause, not result.

31. It would seem reasonable to consider a percentage increase in Corporation Tax for limited companies to be paid as a National Insurance contribution. Not least since businesses cannot function without healthy employees and as most accountants make use of current PAYE principles to reduce NI contributions. Try asking an accountant to increase your tax liability, they don't understand such words, so again, is it the contractor or the system of tax governance that is broken?

32. Even worse, we now hear the foul call of 'Umbrella' companies rising again. Those vehicles famously used to pay offshore accounts and completely avoid UK tax, are now being seen as a way of circumventing IR35. For the first time in years I have even been asked if I would use one for a contract in 2020. My answer, as ever, was that I have no interest in using an entity designed to masquerade as a business. Bravo HMRC, another shot in the foot.

33. While HMRC and Treasury representatives can sit laughing, relaxed with no imminent risk to their livelihood, HMRC continues to fail to win even court cases that any would agree should have been classified under the auspices of 'inside IR35'. How then can they justify applying such wishy-washy and potentially destabilising legislation to private organisations that don't have the ability to demand an increased budget from the government to pay more to HMRC, on the basis it all goes back to the government anyway?

Over the course of 20 years one would imagine that even a Public Sector organisation could have designed a properly thought out, honest, fair and obvious approach, rather than dragging a dead dog along for all that time while claiming it is a live prize pedigree parrot.

21 February 2020

Anonymous

IR35 Off-payroll working rules
Response to House of Lord's "CALL FOR WRITTEN EVIDENCE"

Please find my evidence below. Note that I wish to remain anonymous and I have chosen not to give specific company names in case of reprisals from them or HMRC.

I will first present my current situation, followed by answers to specific questions (in the House of Lords' CALL FOR WRITTEN EVIDENCE) on the following pages.

My Situation

I currently supply IT services to a very large supermarket (my "client") through my own PSC (Personal Services LTD Company).

I work in a team of 14 people comprised of the following 4 types of worker:

(a) 5 x client "permanent" employees, i.e. working via the client's payroll
(b) 3 x PSC contractors (like myself)
(c) 4 x contractors who are permanent employees of large consultancy companies
(d) 2 x PSC contractors who are subcontracted via one of the large consultancy companies

The manager of the team (not included in the above) is a permanent employee of the client. All members of the team are treated exactly the same in terms of ways of working, except that the 5 x client employees have more control over what they work on, and they receive employee benefits (e.g. sick pay, holiday pay, health plan, pension etc) from the client.

Due to the imminent IR35 changes, the client has assessed the workers as follows:

- client employees - type (a) - are out of scope
- type (b) are inside IR35
- types (c) and (d) are out of scope as far as my client is concerned, and their status determination has been delegated to their relevant consultancy company who have decided that:
    - type (c) are out of scope
    - type (d) are inside IR35

I have decided not to continue working for the client due to fear of reprisals from HMRC, i.e. if my status changes from outside to inside IR35, I suspect HMRC will investigate my IR35 status for previous years.

The job market is very bad (due to IR35) and I am unlikely to get another job in the short term, so I have decided to take a break for a few months. Hopefully the job market will improve after that.

Question 4:
What will be the effect of these new measures on a chain of contractors and subcontractors?

I believe the "spirit" of the IR35 rule is that the employer/employee **relationship** between the end client and the worker is supposed to dictate the status determination and that this status determination is supposed to be carried out by the end client, rather than those who might stand to gain from the tax advantages of deciding one way or another.

What I have witnessed is that the status determination has been passed down the chain in all cases except where the worker is engaged with the client via their own PSC (i.e. type b workers list on page 1). I.e. For workers who are engaged via large consultancy companies (types c & d), the status determination has been delegated to those consultancy companies to make their own status determination, which they have done without any consultation with my manager. Those consultancy companies have determined that IR35 does not apply to their own permanent employees (worker type c) but that the subcontracted workers (worker type d) are *inside* IR35.

This is unfair both on real employees of the client and for PSC workers for the following reasons:

1. From the PSC worker's point of view, why should the status determination rules for workers supplied by large consultancy companies be any different to the rules for PSC contractors ? A disguised employee is surely still a disguised employee regardless of the chain of engagement ?

2. From a permanent employee of the client's point of view, a disguised employee's NIC & PAYE contributions to HMRC should be calculated on the whole fee paid by the client to the consultancy company.

If the status determination is not done by the client, large consultancy companies will remain free to avoid paying tax in the same way as the PSC companies that IR35 is targetting, i.e. by charging their client as much as they can but paying the worker as little as possible and distributing the difference between very rich shareholders as dividends which attract less tax.

In summary, instead of preventing tax avoidance in the interest of fairness to real permanent employees and the UK tax payer, the new rules are dictating *who* is allowed to carry out the tax avoidance. I.e. The new IR35 rules are saying that PSCs are not allowed, but large consultancies **are allowed**.

Question 6.
Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No, the rules are not clear.

Not only are the rules complex and open to interpretation the rules also treat permanent employees and contractors as equivalent, and don't take into account the shorter length of engagement and fact that contractors are generally more highly skilled, highly experienced and receive none of the benefits, employment rights and preferential treatment that permanent employees receive.

It is not fair to simply ignore these differences.

There also appears to be a loophole in the rules which allows large consultancy companies to make their own status determinations, as described in my answer to Question 4.

Question 8.
How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

This is a moot point. There can be no safeguards; it's the nature of working as a contractor. The contractor has no rights and is usually on a short notice period. If the contractor does not agree to what the client needs, they will be given notice. According to the new rules, the client must ultimately be responsible for the status determination, and it's quite clear that all large clients are "playing it safe" and determining their non-permanent workers to be inside IR35 (except for the large consultancy loophole described in my answer to Question 4).

Clients are saying that they are assessing contractors individually and avoiding the term "blanket ban" because they want to be seen to be following HMRC's rules.

In my case:

The client delegated the assessment task to the agency closest to them in the engagement chain.

Before the assessment, the agency told all contractors: 1. they will be assessed individually, 2. there will be no blanket assessments, 3. if found inside IR35, the client would *not* be prepared to make adjustments in terms of ways of working (to change the status determination) or increase rates to cover loss of net income due to tax.

I received an email with my status determination - inside IR35 with 3 reasons covering: right of substitution, risk & control. FYI, the status determination was done without any involvement from my manager who was blissfully unaware.

I responded with my objections and they opened an "appeal". Some of my objections were based on wording of my contract which explicitly states that I have a right of substitution and bear financial risk.

In response to my appeal I received an "Appeal Determination Outcome" where they disagreed with my objections, said that my status determination had not changed and closed the appeal case. They also pointed out that not only were they looking at working practices in recent times, but also the working practices that they wish to promote from April 6th 2020.

So, even if my objections were valid before 6th April they would not be valid after 6th April. I.e. regardless of my actual ways of working, it's clear that the client does not want me or any
of it's contractors to fall inside IR35.

All contractors I spoke to received exactly the same status determination and the ones who appealed received exactly the same response.

Question 9.
Are there better or simpler ways in which the objective of the new rules might be
achieved? If so, what are they?

Yes.

Suggestions:

How about a time-based system similar to the system used to limit companies claiming expenses to (say) 2 years (see https://www.gov.uk/hmrc-internal-manuals/national-insurance-manual/nim06270).
This system seems to work for expenses, so why can't it also be applied to workers ? If a company supplies a contractor (i.e. the same individual) to the same client for more than (say) 2 years they must pay NIC & PAYE on the whole client fee. Genuine contractors should frequently move between clients.

Or, reverse the test so that instead of testing for disguised employment, test to see if someone is a genuine contractor.

In the interest of fair competition, any rules should apply to consultants supplied by all sizes of consultancy company - not just PSCs.

Question 10.
Will the Bill, as drafted, achieve the Government's objectives?

Only if the Government's objectives are to boost the profits of large consultancy companies and their shareholders - many of whom are off-shore.

Everyone else will lose:

- contractors will look for work outside the UK
- contractors will gradually move into permanent jobs and pay less tax overall
- permanent employees will have to compete with ex-contractors for salary, overall driving salaries down
- contractor support professionals (e.g. accountants) will lose their income
- clients will lose a valuable & flexible workforce

This will be damaging for the UK economy and the government will gather less tax overall.

Question 12.
How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

No it's not fair.

Employment rights and benefits (e.g. sick/holiday pay, career progression, redundancy rights, etc) are one of the fundamental differences between permanent employees and contractors. You can't compare permanent employees with contractors and ignore these differences. Contractors do not want to pay the same tax and get none of these benefits. Therefore this whole flexible workforce will be destroyed.

Meanwhile clients will still have a requirement for flexible & personal services and will be forced to look to large consultancy companies to fill the gap. Consultancy companies who can afford expensive lawyers and accountants who will find bigger and better ways to avoid paying tax and many of whom will send their profits off-shore.

Also, large consultancy companies cannot fill the gap in the same way. This is why the contractor market existed in the first place. Contractors are much more flexible than large consultancy companies. A client can quickly build their own individually selected team who work directly in the client's interests. Contractors can be hired and fired quickly without the contractual obligations which inevitably come into play when dealing with a large consultancy company.

Without the contractor workforce, client projects will suffer and the result will be damaging to the economy.

25 February 2020

Anonymous

SUMMARY

Sadly this is a complete chaos, Organisations are now judge, jury and executioner, inconsistency across the market place, forcing contractors to face significant pay and or benefit differentials to Perm employees and the Government/HMRC has let it happen, with an unclear framework, rules that are subject to interpretation and an unrealistic and ungoverned timeline, with no protection for the contractor in place.

Companies need and thrive on a flexible workforce, it provides career options, quick to market innovative products something the UK used to be proud of, we should be encouraging this skill vs discouraging and or penalising it. Especially in such an uncertain year, more chaos under the governments not so watchful eye. Please be brave in your decision, it's doing the difficult but right thing that matters not the easiest thing.

ANSWERS TO SPECIFIC QUESTIONS

Impact of new off-payroll rules on organisations
2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

I do not feel the impact on the off payroll worker has been considered or calculated sufficiently.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

Unfortunately not, in my direct experience at a large UK Insurance Company whilst the small organisations fall out of scope, large in scope organisations have deemed that working with a small org deems them as in scope.

4**. What will be the effect of these new measures on a chain of contractors and sub- contractors?**

Negatively, based on the fact that in my experience:

A. *Organisations are using this as an opportunity to contradict contract structures that they have been happy to engage in for years and or are using the opportunity to force pay cuts and or new policies.*
B. *Organisations were party to these same contracts before yet they are now saying they are not going to stand behind them (the general majority)*

blanket assessments or new policies are
5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

C. *HMRC need to provide a clearer rule set rather than areas that are subject to interpretation. If it were clearer why are all organisations taking different approaches?*
D. *HMRC should have mandated a timeline for milestone implementation that removed this last minute blanket determination and policy making, ie, CEST tool determined by date, contractor consultant date, appeal date, all with sufficient time to an effective date. I sit 8 days from the end of my contract with no single documented offer on the table, just a verbal notification, this has left no time for any of the published processes to take place. It is critical to mandate timelines to the organisations to mitigate this uncertainty, in short they have just kicked the can down the road in order to take advantage and worst case increase the level of unemployed, increasing the burden on society.*
E. *HMRC need to establish a contractor help line.*

6. *Companies are deeming the appeal process negatively on the contractor, putting the contractor under late pressure to sign or else face unemployment.*

Determining tax status of workers
6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

No, see question 7

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

G. *No, It is a complex world, simple yes no answers are not always applicable. My company have even ignored the HMRC guidance. HMRC need to establish a contractor help line. It feels like no one is supporting the contractor.*
H. *There was no question that understood the scope of the work specifically areas such as: 'is the role temporary in nature ie the work package has a limited start and end date. if the contractor brining specialist skills that are only needed for this engagement?*

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

I. *No there are not, the guidance needs to be enforceable and a contract appeal process needs to be independently governed as right now the organisations are judge, jury and executioner,*
J. *Contractors are completely exposed and vunerable, often the agencies who are supposed to act as a represented have a conflict of interest between their large corp client and their small contractor.*
K. *I have a situation where my contracts although identical have been viewed differently by different clients which means if i accept i need to run a limited company and an umbrella company, how silly is that!, more middle men, more fees, less income for individuals to invest in the economy*

Policy objectives and wider context
9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

The objective may be acceptable it's the implementation approach and policies that are unacceptable.

10. Will the Bill, as drafted, achieve the Government's objectives?

I can't see how, to me it's chaos, in a year when we are facing enough instability as a nation job security is put at risk.

11. What is your view of the role of umbrella companies in the context of these proposals?

1. *Another intermediary, charging for unnecessary services, adding complex layers to the employment that will only drive up cost.*
2. *Organisations are restricting 'approved umbrellas and therefore restricting an individuals emplyer, causing even more chaos and admin in contractors having to perform new due diligence on potential employees in an already time constrained process.*
3. *Personally an umbrella company is offering no additional value than my own limited company. another faceless call centre with so many clients that they cannot offer sufficient client service.*

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

L. *Due to inconsistencies, organisations, umbrellas etc are all offering differing things. There seems to be no regulation on what should be offered. it is totally inconsistent and unequal.*
M. *Again in my situation multiple clients, applying inconsistent policies and rights. a shambles*

18 February 2020

Anonymous

1. After losing a vast amount of money when Nortel Networks went bankrupt about 12 years ago, then being out of work for a year during the recession, then being back to work for a while until having to spend 3 months in hospital with my premature child who later died; I almost had to file for bankruptcy, but wanted to pay off my debts and so instead went on a Debt Management Plan (DMP) for 10 years, working as a contractor all over the UK, taking virtually no time off to clear off the accrued debts.

2. I recently completed the DMP, but due to my age I seem unable to switch to a permanent role, and as we live in a remote part of the country and cannot relocate due to my youngest daughter's condition, then the only option was to continue contracting. But due to IR35, I can no longer do that, as I can no longer afford the accommodation whist working away. So this is a massive blow to us as a family and we see no way out of it. You have no idea what this unfair legislation is doing to us.

Anonymous

My response, numbered as per the questions taken from the pdf at https://www.parliament.uk/business/committees/committees-a-z/lords-select/economic-affairs-finance-bill-sub-committee/written-submission-form/:

1) the public sector is a unique beast, such that most job adverts for these roles request "experience of working in the public sector" - https://www.totaljobs.com/job/implementation-analyst/solos-consultants-ltd-job89397622?src=search&page=1&position=6&WT.mc_id=A_PT_CrossBrand_Jobsite&searchCriteria=Public+Sector+Business+Analyst&searchLocation=London&source=jobsite

as such, I was a mostly closed pool and those changes forced a binary choice: leave the public sector or accept the changes, which is to reduce the benefit of being a contract resource (and the associated risks) but realise few of the benefits of being a permanent employee, or leave to the private sector.

this is the interesting part as the new changes seem to be trying to capture the remaining part of the market that do not work in the public sector or escaped it first time round.

Also, the government can force the public sector to obey easily; the private sector is more complex and can push back more - which is why HMRC are having so much trouble with it now, albeit they are likely to force this through (well without the House of Lords validating of course!) the only lessons learned are cynical ones: the gov has a poor understanding of the various modes of contract working and ultimately doesn't care. they think they will take more tax revenue than they do now, and they are willing to squeeze people to do it rather than democratically and intelligently design a meaningful solution.

2) it has not been assessed! The government, to date, shows very little understanding of the many ways people supply services. I have seen evidence of them recognising maybe 2 variants of a freelancer/contractor but there are many more.

This is one of the main problems. their hypothesis is flawed and their method of proving it and solving the problem are therefore flawed also.

I as a contractor move around, invest in my own skills and offering (permanent employees expect their employers to pay for courses etc!), only take the work I want to do (employers dictate work even when it's not what you want to do!) and so on.

HMRC/the gov. do not appreciate any of this and how it makes us different, and why we do not want to be employed! I was an employee for 12 years and I can say I gained little benefit from it, spent the first year or 2 doing what was promised then things changed and the employee is stranded. it looks bad if we leave early because we are not happy (it doesn't for a contractor!) and we are forced to take benefits that we may not want in lieu of cash!

The current goal of recruitment firms and hiring managers in the private sector is to pay the same or similar rate but deduct PAYE tax, offer the minimal benefits of being employed (not that we want to be!) and force us to take these

roles. Many are trying to illegally pass on the employers NI within the rate of the contractor, so we pay it, and many recruiters do not understand that this is illegal.

In-fact, recruitment firms (which are not regulated and make money from placements which means they are free to commoditise job seekers) have a long history of non-ethical practices and they are gatekeepers and are expected to be honest about fee's and rates to candidates (which they haven't in the past) and now we have given them even more control. HMRC/the gov. seem oblivious to this or simply don care.

One lesson HMRC will learn is that the private sector will not fail because of this, they will (and are) off-shoring much of the work. Brexit will offer many new non-EU resources (especially via Asian consultancies) to cover this work. the UK contractor is out in the cold! The tax revenue they aim to generate will not be received from out of work/emigrated contractors and the consultancies do not pay as much tax as they could now, especially the global ones! (I have registered with ~15 mainly Dutch and international agencies and consultancies recently as I aim to work abroad and continue growing my brand)

3) I am unsure of the criteria, but it always seemed woolly!

The biggest problem is they are relying on recruitment firms to advise and there is a conflict of interest but also a lack of capability on their parts - they are mostly sales-based organisations!

4) HMRC are forcing contradiction, again!

they currently state within IR35 that a contractor must be allowed to substitute their work if they can find a suitable and capable alternative - but under PAYE how can this still stand? there is no longer that LTD company relationship - we are no longer suppliers, so how can we offer sub-contractors or substitutes?

I am not familiar with contractor chains.

If the gov understood the market, they would understand why these proposals do not work.

5) I will leave this to those concerned. my only note is that the CEST tool has been proven at tribunal to be inadequate.

https://www.contractorweekly.com/tax-a-ir35-news/newly-released-cest-data-give-contractors-inside-ir35-case-claim-back-tax/

6) No, but that is the least of our worries as the roles advertised are either in or out and we get no choice. people already working a contract will have this issue most, but then given the binary choice of leave or stay..

I read an article recently stating HMRC are now pursuing public sector workers whom converted to PAYE. presumably HMRC think that if they were happy to stay, they must be disguised employees. they may have a point, but this is entrapment!

7) it has never worked. people without understanding are designing a tool to deterministically prove what they want, not that which is true. Simple solution: bring in a neutral party to qualify HMRC's hypothesis (whatever that is/those are!) and then formulate an appropriate tool. it should not be left to HMRC (their ability to adequately define tax rules should be assessed also)

8) as per my previous answers: it is built upon sand, it cannot be effective. There are thousands of articles written about it. the whole process needs a rethink. I am a business consultant by trade, and I have seen flaws in the approach, research (if any), design, implementation and review of IR35 from the start.

9) HRMC's approach has been myopic and lacked objective input and scrutiny.

They need a holistic approach and to consider all factors (think PESTLE analysis etc.). They need to state their aims (ensure contractors are not working as employees? ensure they pay the right tax?) and then perform adequate analysis using all subject matter experts to inform the process and solution. for example: they first need to understand the many types of contractor they are, how they work and engage, from which sectors etc.

I could talk all day about this as it is my job, but a ground-up review is required as this has been a farce for 20 years!

10) it would be nice to know what their PRECISE objectives are, but as to my 2 guesses above - no. they should also have an objective to not stress businesses with red tape and costs, and not do the same to contractors and leave them as they are if they are not a disguised employee.

the truth is the market has stalled in recent months, people have spent too long worrying about this and without adequate information. I have been without a contract for months because I refuse to accept inside IR35 roles (I am not an employee and do not want to be one) and few people are offering outside roles, and the few that are, end in March (often converting to inside roles).

11) Umbrella companies are being used to front the payroll work. one recruitment firm (William Alexander) told me that they insist on their list of Umbrella's as they know they are compliant. this is a problem as I have an accountant and would want to use them. recruiters will not allow this and are not prepared to assess my suggested umbrella, and nobody knows how to!

also, (as aforementioned) the recruiters are passing the day rate onto the umbrella without including employers NI which means we pay for it! Again, there's no policing of this and HMRC have not said a thing.

Ultimately, if we are (adequately) determined to be inside IR335, why can we not be paid to our LTD company and the onus upon us to pay the tax? Again - we do not want to be employees!

also, why are they offering holiday and pension at a fixed rate? I currently pay my own pension, and holiday should be separate as we are not employees and do not have employee rights!!! This is a complete mess caused by HMRC's lack of understanding of business and work. taxation must include these aspects.

12) I accidentally answered the 2nd part of this in 11). It should be illegal to tax me as an employee but not give me employee rights. If I am investigated by HMRC I will attempt to counter sue.

the gig economy cannot thrive if the only people whom can operate as contractors/freelance are simple traders like tradespeople, copywriters etc. there is a need to have someone around for a project for 1-n months and not hire someone. Indeed, it is not in the spirit of the law to hire someone as a permanent employee then sack them 2 years later (although I recognise that now employees do not have rights for the first 2 years!). Fixed term contracts provide this, but guess what?! they offer the bad parts of contracting and employment! (low pay compared to the same full-time role, no flexibility, no protection, no employment benefits).

HMRC need to understand this: they need to define permanent work and how long that lasts, where employment rights come into this and what they are, and then what freelancing/contracting is, and how long that can reasonably last and how.

a contractor whom moves around every month is more in favour that one whom stays for 2 years. this should not be the case.

Anonymous

Please see a copy of the message below which has been circulated to all contractors working on Morgan Sindall projects and engaged via Rullion as their agent.

This is clear evidence of blanket decision and failure to ensure reasonable care by not reviewing individual engagements.

I have now seen similar response from about half a dozen companies that engage contractors and I await a response from the company I am engaged via, which I expect will tow a very similar line.

What is effectively happening is a systematic cull of limited company contractors as companies do not wish to take on any perceived risk. This fear is further increased by the abject lack of clarity offered by HMRC.

Companies across the board are taking a similar approach which will inevitably result in many thousands of contractors that are genuinely outside of the legislation being forced into engagements that are not reflective of the true position. They will be forced to pay and additional 30-35% tax on their top line earnings which I should add will be taxes that are ultimately undue.

My specific engagement requires me to regularly work at locations away from home and my company pays for the lodging and living away from home expenses along with fuel/travel costs. I also have many overheads including but not limited to, accountancy, banking, insurances (Professional indemnity, public liability, employers liability) Company vehicle/tax/insurance/maintenance, mobile phone, mobile internet, website management and fees etc.

If as I expect – I, like many others will be forced into a PAYE engagement and there is no rate alteration/increase then the deductions made via PAYE will remove any funds that are available to facilitate payment of such overheads and the business will effectively become insolvent overnight.

To add insult to injury any funds left (effectively the wage) will now be required to subsidise any costs required to deliver the role. This is a position that no employee would ever be expected to endure yet it is seen as acceptable to treat myself and others like me in such a way, all the while without having any employees rights or benefits.

I trust you will see the injustice of this predicament and will do whatever you can to address the situation and prevent what will be a disaster for myself and many others like me.

<u>EXTRACT FROM MESSAGE ISSUED TO CONTRCATORS</u>

Good Afternoon,

As you are aware, we have been liaising with Morgan Sindall and discussing how they will ensure that they are compliant with the coming IR35 reform. As

such, we have now received instructions from them on how they will engage with contractors and temporary staff post 6th April 2020;

- *The business will only employ temporary workers on a PAYE or Umbrella basis (inside-IR35).*

- *Any current contractor / temporary worker who is engaged via a PSC (personal service company) will be required to convert to a PAYE or Umbrella status.*

You may receive a communication internally which will confirm the above. It may also state that if you wish to remain with Morgan Sindall, you will be required to be engaged via one of the Morgan Sindall Labour Desk (MSLD) agencies. I write to confirm that in the case of your assignment, should you wish to continue your contract past April 6th 2020 this will be done via Rullion.

Please let us know your intended payment method (PAYE or Umbrella) by Friday 6th March 2020.

Rullion have partnered with six Umbrella companies and attached are their contact details. Please feel free to contact them. They will be able to provide you with a breakdown of potential take home pay if you chose to follow the Umbrella route.

We appreciate that you may have questions and comments regarding this. Should you wish, please direct any enquiries to our Morgan.Sindall@rullion.co.uk mailbox. We will either respond to these directly, or provide a response after consulting with the business. Alternatively, please feel free to contact your Rullion representative to discuss this further.

A further communication will be issued shortly which will request how you wish to proceed following 6th April 2020.

Anonymous

My response, numbered as per the questions taken from the pdf at https://www.parliament.uk/business/committees/committees-a-z/lords-select/economic-affairs-finance-bill-sub-committee/written-submission-form/:

1) the public sector is a unique beast, such that most job adverts for these roles request "experience of working in the public sector" - https://www.totaljobs.com/job/implementation-analyst/solos-consultants-ltd-job89397622?src=search&page=1&position=6&WT.mc_id=A_PT_CrossBrand_Jobsite&searchCriteria=Public+Sector+Business+Analyst&searchLocation=London&source=jobsite

as such, I was a mostly closed pool and those changes forced a binary choice: leave the public sector or accept the changes, which is to reduce the benefit of being a contract resource (and the associated risks) but realise few of the benefits of being a permanent employee, or leave to the private sector.
this is the interesting part as the new changes seem to be trying to capture the remaining part of the market that do not work in the public sector or escaped it first time round.

Also, the government can force the public sector to obey easily; the private sector is more complex and can push back more - which is why HMRC are having so much trouble with it now, albeit they are likely to force this through (well without the House of Lords validating of course!)

the only lessons learned are cynical ones: the gov has a poor understanding of the various modes of contract working and ultimately doesn't care. they think they will take more tax revenue than they do now, and they are willing to squeeze people to do it rather than democratically and intelligently design a meaningful solution.

2) it has not been assessed! The government, to date, shows very little understanding of the many ways people supply services. I have seen evidence of them recognising maybe 2 variants of a freelancer/contractor but there are many more.
This is one of the main problems. their hypothesis is flawed and their method of proving it and solving the problem are therefore flawed also.

I as a contractor move around, invest in my own skills and offering (permanent employees expect their employers to pay for courses etc!), only take the work I want to do (employers dictate work even when it's not what you want to do!) and so on.
HMRC/the gov. do not appreciate any of this and how it makes us different, and why we do not want to be employed! I was an employee for 12 years and I can say I gained little benefit from it, spent the first year or 2 doing what was promised then things changed and the employee is stranded. it looks bad if we leave early because we are not happy (it doesn't for a contractor!) and we are forced to take benefits that we may not want in lieu of cash!

The current goal of recruitment firms and hiring managers in the private sector is to pay the same or similar rate but deduct PAYE tax, offer the minimal benefits of being employed (not that we want to be!) and force us to take these roles. Many are trying to illegally pass on the employers NI within the rate of the contractor, so we pay it, and many recruiters do not understand that this is illegal.
In-fact, recruitment firms (which are not regulated and make money from placements which means they are free to commoditise job seekers) have a long history of non-ethical practices and they are gatekeepers and are expected to be honest about fee’s and rates to candidates (which they haven’t in the past) and now we have given them even more control. HMRC/the gov. seem oblivious to this or simply don care.

One lesson HMRC will learn is that the private sector will not fail because of this, they will (and are) off-shoring much of the work. Brexit will offer many new non-EU resources (especially via Asian consultancies) to cover this work. the UK contractor is out in the cold! The tax revenue they aim to generate will not be received from out of work/emigrated contractors and the consultancies do not pay as much tax as they could now, especially the global ones! (I have registered with ~15 mainly Dutch and international agencies and consultancies recently as I aim to work abroad and continue growing my brand)

3) I am unsure of the criteria, but it always seemed woolly!
The biggest problem is they are relying on recruitment firms to advise and there is a conflict of interest but also a lack of capability on their parts - they are mostly sales-based organisations!

4) HMRC are forcing contradiction, again!
they currently state within IR35 that a contractor must be allowed to substitute their work if they can find a suitable and capable alternative - but under PAYE how can this still stand? there is no longer that LTD company relationship - we are no longer suppliers, so how can we offer sub-contractors or substitutes?
I am not familiar with contractor chains.
If the gov understood the market, they would understand why these proposals do not work.

5) I will leave this to those concerned. my only note is that the CEST tool has been proven at tribunal to be inadequate.
https://www.contractorweekly.com/tax-a-ir35-news/newly-released-cest-data-give-contractors-inside-ir35-case-claim-back-tax/

6) No, but that is the least of our worries as the roles advertised are either in or out and we get no choice. people already working a contract will have this issue most, but then given the binary choice of leave or stay..
I read an article recently stating HMRC are now pursuing public sector workers whom converted to PAYE. presumably HMRC think that if they were happy to stay, they must be disguised employees. they may have a point, but this is entrapment!

7) it has never worked. people without understanding are designing a tool to deterministically prove what they want, not that which is true. Simple solution: bring in a neutral party to qualify HMRC's hypothesis (whatever that is/those are!) and then formulate an appropriate tool. it should not be left to HMRC (their ability to adequately define tax rules should be assessed also)

8) as per my previous answers: it is built upon sand, it cannot be effective. There are thousands of articles written about it. the whole process needs a rethink. I am a business consultant by trade, and I have seen flaws in the approach, research (if any), design, implementation and review of IR35 from the start.

9) HRMC's approach has been myopic and lacked objective input and scrutiny. They need a holistic approach and to consider all factors (think PESTLE analysis etc.). They need to state their aims (ensure contractors are not

working as employees? ensure they pay the right tax?) and then perform adequate analysis using all subject matter experts to inform the process and solution. for example: they first need to understand the many types of contractor they are, how they work and engage, from which sectors etc.
I could talk all day about this as it is my job, but a ground-up review is required as this has been a farce for 20 years!

10) it would be nice to know what their PRECISE objectives are, but as to my 2 guesses above - no. they should also have an objective to not stress businesses with red tape and costs, and not do the same to contractors and leave them as they are if they are not a disguised employee.

the truth is the market has stalled in recent months, people have spent too long worrying about this and without adequate information. I have been without a contract for months because I refuse to accept inside IR35 roles (I am not an employee and do not want to be one) and few people are offering outside roles, and the few that are, end in March (often converting to inside roles).

11) Umbrella companies are being used to front the payroll work. one recruitment firm (William Alexander) told me that they insist on their list of Umbrella's as they know they are compliant. this is a problem as I have an accountant and would want to use them. recruiters will not allow this and are not prepared to assess my suggested umbrella, and nobody knows how to!
also, (as aforementioned) the recruiters are passing the day rate onto the umbrella without including employers NI which means we pay for it! Again, there's no policing of this and HMRC have not said a thing.

Ultimately, if we are (adequately) determined to be inside IR335, why can we not be paid to our LTD company and the onus upon us to pay the tax? Again - we do not want to be employees!
also, why are they offering holiday and pension at a fixed rate? I currently pay my own pension, and holiday should be separate as we are not employees and do not have employee rights!!! This is a complete mess caused by HMRC's lack of understanding of business and work. taxation must include these aspects.

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HMRC need to understand this: they need to define permanent work and how long that lasts, where employment rights come into this and what they are, and then what freelancing/contracting is, and how long that can reasonably last and how.
a contractor whom moves around every month is more in favour that one whom stays for 2 years. this should not be the case.

Anonymous

I would like to provide evidence in a personal capacity and contribute to the Lords enquiry on the draft Finance Bill 2019–20 in relation to the off payroll working rules due to come into force in April 2020.

This legislation is anti-business, anti-flexible labour market and will be catastrophic for small consultancy businesses and the wider UK economy.

By effectively cutting off their access to flexible expertise, the government is making UK companies less agile, dynamic and innovative. It is weakening businesses just when, as the UK leaves the EU, we
need them at their strongest.

My company currently contracts with some large London based insurance and IT consulting companies.

Many clients are blanket assessing small IT Consulting companies as inside IR35 and not using the CEST tool.

The CEST tool itself is highly flawed since there is no test for mutuality of obligation (MOO) – one of the central tenets of whether IR35 applies or not. HMRC believes that an obligation exists in every engagement, so their tool doesn’t test for it. Yet a court ruling has rejected this claim many times.

The impact of these disastrous rules on my company is that many clients have now started to outsource much of the high-end data analytics and IT consultancy work to offshorers such as the Indian subcontinent to the detriment of the UK economy as a whole.

The result will be **less tax for the UK exchequer** as a result of these rules.

Going forward there will be significantly less opportunities to provide flexible solutions to clients and our companies revenues will drop significantly with adverse effects on our current payments of Employers NI, Corporation tax and other expenditure.

Other impacts will be a major loss of productivity and flexibility as projects are cancelled given that many small IT consultancies will leave their clients due to the impacts of this badly thought out legislation.

Following the introduction of these rules Public sector organisations have been struggling to attract and keep hold of talented contractors following last year's tax rule changes for the self-employed

The study by the CIPD and IPSE, the association for independent professionals and the self-employed, found more than half (51 per cent) of public sector hiring managers thought they had lost skilled contractors because of April 2017's changes to the IR35 rules, while nearly three-quarters (71 per cent) were facing challenges in retaining their contractors.

I sincerely hope that these badly designed rules will be reviewed and withdrawn before they impact our economy.

13 February 2020

Anonymous

1) <u>Background of Submitter:</u>

a) I have been working as a self-employed Project Manager since 2010. The reasons I became self-employed are:

i) **Ability to work on new and innovative projects**

(1) I have had the opportunity to work on multiple, high profile programmes within the Banking and Financial Technology (FinTech) sectors e.g. As part of a major IT transformation programme within the Royal Mail, I led the migration of their Business to Business (B2B) customers parcels shipping platform from their legacy platform to a new service provider as the only Project Manager on the programme.

ii) Financial benefits

(1) As an IT Consultant, I have earned a premium fee for "hitting the ground running" and delivery excellence, with multiple clients, upon commencing a contract without the need for training or supervision.

iii) **Freedom to take time out without impact to my career**

(1) I took some time out (circa 5 months) to spend time with my family, pursue further professional study and volunteering without impact to my career. This is not something that I would have been able to do as a permanent employee.

2) <u>Impact of new off-payroll rules on organisations</u>

a) Q. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

i) There is little evidence to suggest that the impact of the extension of the rules to the private sector has been assessed. The knee-jerk reaction of many companies also demonstrates that this is a compliance burden that is being avoided.

ii) My current client has said that they cannot and will not carry out status determinations on individuals and have adopted a 'one size fits all' approach i.e. Contractors either a) accept a Fixed Term contract or permanent role or b) Leave. This is a blanket approach which is explicitly against the guidance. The assumption is that this is a direct consequence of the unrealistic compliance burden being placed on organisations.

iii) My previous client HSBC will no longer work with Personal Service Companies (PSCs). All roles have either been **offshored** or no longer exist.

b) Q. What will be the effect of these new measures on a chain of contractors and subcontractors?

i) As a consequence, most companies have taken the approach to terminate all PSC engagements the 28th February.

ii) We all have to work on the grounds that a role that is not given a status determination will be seen by HMRC as inside IR35. Despite HMRC unconvincing assurances, no-one believes that they won't try and recoup taxes on previous contracts, which as contractors, we could not afford to take to tribunal and fight. As a consequence, everyone is working to ensure they have been paid for the last time before the 6th April 2020 deadline and either stop work or move to a clearly determined outside IR35 engagement.

iii) Furthermore, there are a significant number of contractors who travel from other parts of the country for client contracts. Such people will no longer be able to claim travel expenses, which means travelling far for work is no longer feasible. This also means potentially more unemployed if the area in which they live does not have much in terms of their type of work.

iv) What is being observed within the market is that majority of roles are being pushed through umbrellas or to PAYE without any employment benefits, and no change in rates. The umbrella firm industry is known for lack of compliance/ clarity with rates/ take home pay all being advertised in a manner that is unclear. Additionally, contractors run the risk that if Umbrella companies deduct tax liabilities but do no actually pay them correctly, recourse still lies with the contractor.

v) This policy is harming the mobility of the highly skilled resources, encouraging numerous jobs to be offshored (which can only lead to

high unemployment), letting unscrupulous Umbrella firms enter and create a tier of no rights' employees on PAYE.

3) Determining tax status of workers

I cannot comment to the questions in this section other than to point out the fact that companies are not attempting to make determinations

a) As per above the vast majority of firms are simply not bothering to attempt to apply the rules and carry out status determinations via CEST. A website started recently https://www.offpayroll.org.uk/ has been taking input directly from contractors to understand the approach by each firm.

b) According to their current statistics 54% of employers are now banning PSCs and 19% are attempting to engage with status determinations but are not taking reasonable care.

4) Policy objectives and wider context

a) Q. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

i) It is unclear what the true objective of the offpayroll working rules are.

ii) If it is to discourage and prevent false employment, then possibly limit the number of years that can be spent with a client before you become classed as an employee for tax purposes.

iii) If it is to increase tax income, then propose a different class of PSC for the self-employed with modified tax bands that still allow us to deduct operating expenses.

b) Q. Will the Bill, as drafted, achieve the Government's objectives?

i) No, I don't believe it will. It will destroy what has been a thriving and successful contracting industry, encourage offshoring of most jobs and create no rights' employees. It will also increase unemployment, with more people in the market than jobs available, thus increasing those collecting job seekers allowance and other benefits. Unemployment means people will not be spending money and the government will be paying out more due to the increase in number of unemployed.

c) Q. What is your view of the role of umbrella companies in the context of these proposals?

i) The policy is encouraging the growth of some unscrupulous umbrella companies as that take advantage of what is essentially a messy and panicked situation for contractors and organisations alike.

d) Q. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

i) It is woefully unfair to be taxed as an employee and then have to fund pension contributions, critical illness, sickness, death in service benefits, annual leave all from post-tax income without the same rights as an employee.

10 February 2020

Anonymous

Personal Impact Statement
From an experienced contractor with 10 years + experience
Summary

- The impact of the new IR35 policy, and more specifically, how many corporate employers are implementing the policy is having a significant negative impact on UK Plc
- The assumption of a large net increase in tax revenues is a naïve assumption based on a narrow set of PAYE calculations. In reality, net tax revenues are more likely to fall than increase as a result of IR 35.
- Large employers are reacting to this unnecessary admin and compliance burden by simply moving more key jobs and skills off-shore.

1) Company & Market Responses to IR35

a. The draft legislation assumes companies and individuals will undertake IR 35 determinations to provide fair assessments to various temporary staff. However, the market response from major corporate employers has been completely different. Faced with yet another unnecessary compliance burden and financial risk the default response from most major employers has been to determine all temporary staff inside IR35 from April. No safeguard and no appeal.
b. My current client (40,000 global employees) announced on 12th February that all UK contractors must confirm their intentions to move to a 100% PAYE model hosted by a third party agency by 28th February. This does not mean moving to the Client PAYE model – the client do not want the extra headcount and cost. If the contractor is not willing to move to an external PAYE model in the next two weeks their current engagement will cease on 20th March.
c. Individuals in scope of this announcement have been given 2 weeks notice to accept an immediate and significant pay cut or lose their

income completely. It is a brutal response to the policy and I am willing to provide the actual emails and content if needed. A large percentage of contractors would have met the standard for falling outside the scope of IR35 but this is not an option.

d. The company is well aware that a large number of contractors are going to leave. This is particularly true for the IT function and for Project Management teams in general. The impact will be managed by moving these UK roles offshore to India and Eastern Europe (Warsaw). The economic impact will be negative for UK Plc and there will be a very significant drop in the net tax take for HMRC based on this scenario. Once these critical skills are off-shored it is unlikely that they will return, causing further detriment to the UK economy and skills base

2) Personal Impact

a. Personally moving to a PAYE model with no determination would be an instant & effective 35% decrease in pay for myself. This is probably the basis for HMRC benefit calculations that assume a net 35% increase in tax receipts. This is based on some simple and unreal assumptions. It also ignores the corporation tax I pay through my personal company which varies by individual.
b. Under this scenario I would be responsible for the full range of employer and employee taxes, yet I would get none of the benefits. I would have no holiday entitlement, no sickness cover, no pension and no other employee protections. I can be terminated any time with no reason, recourse and no payoff. So I would be an 'employee' for tax purposes only, with no legal protection or benefits whatsoever. This is why people use a PSC option.
c. Like most people, I cannot afford a 35% pay cut so I am effectively working my notice. This has put myself and my family into a very difficult and stressful position at a time when the contractor market is being squeezed and job opportunities are already falling due to IR35.

3) Other Supply Chain Impacts

a. The negative economic impact extends beyond myself. I engage with my client through a small but growing and successful recruitment agency. They are looking at losing 60-70% of their current contractor base and income so the most likely outcome is laying off all of their admin, payroll & sales team. They may just fold completely as the business investors and owners are facing a huge problem. I would no longer require the support of an accountant to prepare my accounts, so there will also be a significant downturn on this support business post April, when many businesses will produce their final set of accounts. Same for all the other fees my company pays (insurances, admin etc).

b. On a personal note, I incur many business expenses when providing my services to my client, some of which I recharge and some of which I charge to my personal business. This includes travel, flights, accommodation, meals and conference expenses and a business lease on a car. All of this will now cease with immediate effect. The economic ripples will be felt beyond my own personal situation and this can be multiplied by tens of thousands of people in the same scenario. The negative economic impact will be spread widely and this is going drive a consequent fall in the total tax take of the government. Less transactions mean a fall in VAT, staff layoffs mean less PAYE reduced profits mean less corporation tax. My own Corporation Tax will be zero next year (previously about £20-25k per annum).

17 February 2020

Anonymous

I will limit my response to 1 question due to lack of time:

- ***What will be the effect of these new measures on a chain of contractors and subcontractors?(Q4)***
  - Blanket bans are now widespread across my industry (insurance) and particularly at companies that I would be likely to have moved to previously or even companies I worked with in the past who I may have returned to.
  - Personally the client I currently contract for are yet (as at 25/02/20) to announce their policy. This means
    - I have no idea if I will have work after the end of March.
    - I have no idea what my earnings will be after March so I cannot plan anything in the future.
    - If I am told there is a PSC ban then I need to consider the risk of a historic investigation which even if we assume I was 100% outside IR35 would still be costly and inconvenient. I would therefore have no choice but to leave at the end of March with no new job to go to.
    - In the past I have been in a position to do that but now with the market in turmoil, I have no idea how long I could be out of work as the job market is now flooded with skilled contractors.
    - If I am forced to operate within IR35 the loss in income is huge with one conservative calculator saying I would lose 28000 pounds. That is 28000 pounds take home, which is the equivalent of well above an average UK salary in lost income and that doesn't even take my expenses into account.
    - I have had a new role fall through due to a recruitment agent not understanding the new rules and telling me I would be considered

outside IR35 only to be told by the client that the role would be inside.
- I've had 1 agent try to submit me for a project where the Employers Secondary Contributions would be payable from my rate and another agent try to sell as a benefit to me that the client would pay the secondary NI contributions (which they should).
- If I am forced to operate inside IR35 I have no idea which umbrella companies to trust as the regulations are incredibly complex and also I am well aware of how various umbrella companies duped people into the loan charge scheme only to then disappear into the ether when the proverbial hit the fan.
- The regulation is incredibly difficult to interpret and the only lay man translations of it are from those with vested interests on both sides of the fence. It shouldn't be that difficult to determine my employment status.

Anonymous

Thank you for the opportunity to comment on these proposals. I am commenting in a personal capacity as someone employed as contractor through my own limited company. My comments are aimed at addressing questions 6-12.

1) As a result of these proposed changes the evidence shows that companies are either simply not taking contractors on at all or the assessments are pre-determined and inaccurate, eg where I am currently engaged there has clearly been a blanket assessment of those who have already received their determination statements. There is a right to appeal but as the appeal is made to the same people making the inaccurate assessments it is unlikely to succeed. Also, the lead time for appeals is 45 working days and yet with 30 working days to go I still don't have my status determination statement. Despite the CEST tool repeatedly finding me to be outside IR35 I wholly expect to be told I will be inside when my status determination statement arrives.

2) We are not employees and trying to shoehorn us into this classification is just wrong. The plan is for us to be taxed as an employee but with no pension, paid holiday, sick pay, training, staff benefits, on-site parking, employment protection, performance and pay reviews, et cetera. On top of that, the employers National Insurance contributions will be deducted from our day rate so we'd be effectively paying both employers and employees National Insurance.

3) Furthermore, if I were to be classed as an employee I'd have to pay an umbrella company fees of ~£70 a month just to get paid. I have also been told I would need liability insurances even if I am deemed to be inside IR35. How many employees pay to get paid or have to take out their own insurance?

4) Additionally, there is the risk of retrospective tax liabilities if I am forced to work inside IR35 when I was previously outside. With the timescales as tight as they now are I am like l to have to accept a determination I don't agree with or not work at all.

5) None of that sounds at all like being an employee.

6) So the legislation is flawed, not only does it not lead to fair and accurate assessments but if you are caught by it then you are put in this awful "employee without being an employee" status.

7) These changes also massively reduce workforce flexibility as it makes it prohibitively expensive to work away from home as no expenses are allowable.

8) The whole ill-conceived idea is generating an enormous amount of stress and uncertainty; for example, on Friday just at the point where I was about to give notice as the payments for work in March paid in April could potentially be caught by IR35 the government announced this now wouldn't happen "for clarity". The new rules are due to come into effect in 6 weeks yet I don't have my status determination statement or any idea of the new contract rates. I therefore also can't make a decision on whether to stay where I am presently engaged, register with an umbrella company if this is required, cancel child benefit payments, etc.

Anonymous

I am incredibly grateful to have received the opportunity to provide my comments in relation to these regulations and refreshing to hear that the House of Lords are taking this matter seriously and conducting such a review.

I have been a contractor in the public and private sectors for several years and was working with a public sector entity at the point when the public sector rules came in, back in 2017.

I am fundamentally opposed to these regulations for a set of very specific reasons. I have set these out below:

1. Fairness and Equality:
    a. The regulations are fundamentally unfair and seek to tax contractors in the same way as their directly employed peers on the basis that they are 'disguised employees'. Except this isn't the case. As a contractor, you are always running the risk of not securing another assignment and thus becoming unemployed. This isn't the case for directly employed staff, if they were to lose their jobs, they would receive paid notice, redundancy payments or both. This isn't so for contractors.
    b. Pension provision – as a contractor, your pension provision is solely your responsibility, lets take the NHS as an example, directly employed staff receive a 14.3% employer pension contribution, a

contractor on the receives nothing when working through a personal service company and a nominal 3% contribution when working PAYE through and agency or an umbrella company. Over the course of a career the loss of pension contributions of such magnitude can make the difference between a comfortable retirement and poverty in old age. This is the risk accepted by contractors when choosing to do the work that they do.

c. Employment Rights – Directly employed staff receive the full suite of protections under the Employment Rights Act and various other pieces of legislation. This isn't so for contractors and so the risk of being unfairly terminated has little, if any recourse.
d. Paid leave – holiday entitlement is often included in the calculation of the day rate provided, however, paid sickness leave, paternity, maternity, adoption, compassionate, emergency and jury service leave is not paid. Again, if HMRC insists on collecting the same tax, contractors should receive the same benefits.

Contractors as a group of professionals accept these risks and offer their extensive skills in exchange for being rewarded fairly and being able to adopt their own working practices and to structure their finances in a business like manner, yes they may pay less tax than their directly employed peers, but that is in recognition of all of the sacrifice that they have to accept in relation to their rights and the potential financial impact and detriments of not having redundancy pay and pension protections.

Instead of recognising the reality of the situation, HMRC has simply sought to extract the maximum amount of tax from the individual at the point of payment. This will kill the contracting industry which provides contingent labour in the form of very specialised skills to organisations at the time when they need them. Often, these skills aren't required year-round or regularly, but they are required at times, engaging a contractor enables the end client to engage these skills for as long as they require them without the costs associated with on-going employment.

These are the reasons why I find the regulations themselves unfair and the wider these reforms are extended, the worse the picture will become. I routinely find myself asking the myself 'didn't the Treasury learn anything from the lifetime pension allowance reform that brought the NHS Medical Workforce to its knees?

Determining the status of the worker:

The guidance issued by HMRC is woefully inadequate, this lack of clarity and HMRCs willingness to go against its own tools assessment of status has encouraged organisations, understandably, to take a blanket approach to contractors. There is a real fear of the repercussions of taking anything other than the least risky approach. That is bad for business and bad for Britain.

The simple solution is to repeal the legislation entirely and allow workers to determine their own tax status, HMRC should dedicate additional resources to challenging IR35 status in specific industries and that in and of itself will police

the regulations. This is simply a resource starved attempt to extract as much tax revenue as possible from skilled professionals without providing any protections in return. I don't envisage a repeal of the legislation.

CEST:

One way in which the CEST tool could be improved would be to enhance the guidance and explanation. HMRC should make the completion of the tool a joint assessment between contractor and end client, the outcome should then remain valid for a period of 6-12 months and HMRC should promise not to overturn the result of the tool for the same duration, giving contractors and clients some certainty around their tax affairs and liabilities for a short period of time. This will also induce a culture of regular review.

The questions the CEST tool asks are vague and the answer will vary depending on the task you are carrying out on any given day. HMRC should establish some high-level principles that need to apply more than 50% of the time in order for assessments to be more accurate. This would reduce the administrative burden on individuals and organisations.

I myself have contacted HMRC about IR35 status in the past and it is so poorly understood, even by the majority of their workforce, let alone the contracting community and clients. If HMRC can't articulate it via their customer facing workforce, how can we be expected to get it right?

The legislation needs to be simplified, as does the assessment and meaningful status needs to be provided to the assessment once given, you have to ask yourself what the point of doing the assessment is, if HMRC will cast it aside on a whim?

In the aftermath of Brexit the UK Government should be encouraging and fostering entrepreneurship and flexible working, the contracting industry epitomises both of these and yet it seems that for the past 5 years, HMRC cannot take the industry out of their sights for a way to increase tax revenue with minimal effort. If it is the Governments position that contractors should be taxed as employees without the benefits associated with being an employee, then why not ban contracting in its entirety and give the current contracting workforce the opportunity to have all of the protections their permanent counterparts have? This will never happen whilst the contracting market exists, for the simple fact that it suits business to engage contingent labour.

Anonymous

This is my personal view on the introduction of IR35 in the private sector.

After running an IT business for over 20 years, I can safely say that the current state of IR35, and the uncertainty around it's introduction to the Private Sector has virtually destroyed this business.

I have, in the past, been investigated under IR35, not once, but twice, and having been 'deemed' as being 'inside' by HMRC with very little thought from them with regards to the true working conditions, both of these results were overturned (without getting to the Commissioners stage) at great cost to myself and my company. They were also a huge waste of time (over 18 months in the second case) and caused a huge amount of anxiety.

Expenses.

Since finishing my last contract, in July 2019, I have been unable to find other work, due, in part to Brexit, but more recently to the lack of suitable contracts available. I have been put forward for 5 or 6 contracts, all of which were over 100 miles from my home, and as such would necessitate relocating through the working week, and associated travel, accommodation and subsistence expenses.

An employee of the businesses concerned (they were all large multinationals) would expect that business to pay expenses for any of their employees working away from their main office for such times, including travel (and paid travel time), accommodation and subsistence. All of this would not be classed a taxable income for the employee. As a 'contractor' under IR35, all of this expenditure would be incurred by myself from taxed income, and, of course, 'travel time' would not be claimable from the business along with any of these other expenses.

This means that, as far as contracting work in concerned, I now need to limit my search to local contracts that would be commutable. Sadly, I have only seen ONE contract that would satisfy this criteria in the last 7 months. Being aged over 60, but with over 35 years high level experience, it appears that no IT company wants to take me on as an employee, so 'contracting' is my only way of earning a living now.

The other contracts I have applied for have since been deemed to be 'caught' by IR35, and after taking into account the tax payable, accommodation, trave and the other 'expenses', would not have been possible for me to undertake. Luckily, I had funds put aside with my company to cover such periods when contracts are difficult to find. Under IR35, I would not have, and would have had to 'sign on' as unemployed.

Training.

IT as an industry is rapidly evolving. In the past 2 years, I have spent close to £4000 on training, much of it on 'speculative training' for skills that are up and coming. So far, this has been a legitimate company expense. Employees of a larger business have training provided, at no cost to themselves (including the tuition, travel and accommodation). Taking a contract that is within IR35 will mean that any further training that I wish to undertake, will be paid out of my own pocket, from taxed income. Of course, taking further training at my own expense will mean that I would also be unable to work for that amount of time, and therefore will not get paid. In effect losing twice.

Without constant training (at my own expense, from taxed income) it will be impossible to compete for work in the future.

Employee benefits.

None of the inside IR35 contracts I have seen include anything for sickness cover, so if I were to be ill, I would not be eligible for any sickness cover that an 'employee' would be.
I'm also certain that should I become too ill to work for an extended period of time, then any contract would be terminated immediately, something that would not happen to a permanent employee. A correctly drafted, and enforced 'outside IR35' contract such as the ones I have been working to in the past would, of course, include a substitution clause, so this point would be moot!
With regards to pensions, I have my own (very small) pension, but as far as an inside IR35 contract is concerned, there will be no way that the company I would be contracted to would pay anything towards one, even if they do so for 'employees'. Indeed, from talking to 'umbrella' companies, it seems that none of them would entertain putting any of my earnings into anything but their own pension schemes. Since contract work is not a full time expectation, I can see that moving money from these schemes into my own would be very costly.

Marketing.

I am currently marketing my company, websites, advertisements, flyers etc. at a cost close to £500/month. If I have to take an inside IR35 contract,this will have to be paid out of taxed income too.

Umbrella companies.

I did work via an umbrella company when I first started freelancing, many years ago. My thoughts on the 2 that I used are probably not repeatable, suffice to say when I finished with the last Umbrella company (in the late 1990s) I ended up with a demand for somewhere in excess of £5500 from HMRC for unpaid tax due to the umbrella company's ineptitude. Once I had paid an accountant to sort out their figures, it was around £130 that was owed. Again, I feel the expense of adding an umbrella company into the 'chain' is a completely unnecessary expense. It has always been a concern that any 'agency' that I worked through would go out of business, using an umbrella just adds to that concern.

The CEST 'tool'

It has been said many times, and by more experienced people than myself, that the CEST tool is not fit for purpose. Indeed the recent results from the 'media' industry show this to be true more than ever. It now seems that the concept of mutuality of obligation is being just ignored as well as the right of substitution. This looks like blatant ignoring of existing law.

Blanket 'inside IR35' determinations.

It has been stated that individual cases should be determined separately. Recent news has shown that several large businesses, including Barclays, Lloyds, HSBC, Deutche Bank, RBS and BAE Systems have stated that they will not have contractors in Business to Business arrangements, but instead will blanket all the workers as being inside IR35.
No doubt, if any of the large IT consultancies benefit from this by supplying workers to fill those roles left empty, then these workers will at least be able to have their accommodation, travel and subsistence costs met without having to pay for them from taxed income.

In short:

- Employees of large consultancies will be able to claim back the expense of working away (accommodation, travel and subsistence) whereas people in an IR35 'caught' contract will have to pay for these out of already taxed income.
- Ongoing training is important, employees will get ongoing training paid for (including their 'pay', travel, accommodation, subsistence and tuition) by their employers. People in an IR35 'caught' contract will need to pay for all of this from taxed income, and suffer no income whilst on any training course.
- Employees will get a level of 'sickness pay', often from Day 1 with an employer, whereas people on an IR35 'caught' contract will receive nothing, and will often have their contract terminated. With a B2B contract they would have the ability to send a substitute!
- Employees may get some level of employer contribution to a pension. People engaged on an IR35 'caught' contract will be forced to use a pension that an umbrella company will use. This will cost money to switch to their normal pension at some point.
- Despite each contract needing to be assessed for IR35, it appears that most, if not all, of the large companies utilising contractors are taking the 'safe' option and blanket assessing everyone 'inside'

Anonymous

1. N/A

2. No, the impact on growing a small business from a single person to employing staff has not been assessed. The future operating model offered by Agencies is to force the use of Umbrella companies not allow the use of Limited companies.
This model has happened because it's more convenient for Agencies and it's the only other operating model they know and use today, so closing your current business seems the only feasible option and therefore ending future expansion.

The provision to allow 5% to cover the business operation cost will not happen in an Umbrella company model and this has not been assessed.

3. N/A

4. Taking on larger projects as a collective of contractors would be impossible and therefore competition would suffer, which allows only established companies to compete for new work.

5. Use existing tax measures such as a higher Corporation Tax rate for PSCs.

6. No as they have not been fully defined and are causing panic especially as the HMRC could reassess previous work over a historical period based on different rules.

7. It's clear from the determination statement from the engager that they have used the tool to understand what they need to remove from the contracts to blanket everyone as inside ir35 and reduce their risk. The tool could be improved by making sure the engager and contractor are completing the assessment together, which would be filed.

8. No use at all. The engager now sees that they carry the perceived risk if HMRC challenge the determination at any point in the future for previous years worked by their old contractors. Therefore the challenge processes will always fail due to this risk and they will blanket determinations of inside even on evidence. As a CEO of a large company would you have a risk to profits for shareholders based on a possible future tax liability.

9. To allow the operation of Limited companies the potential to employ staff and grow, they could increase the Corporation Tax for PSCs to offset the perceived loss of NICs.
This has the benefit of allowing the retention of funds within a company for future investment but would be more costly that operating an Umbrella Company.
Contractors that do not wish to operate as a business would use an Umbrella Company.

10. No as engagers will stop using Contractors and therefore HMRC will receive lower tax revenue from those individuals as their salary will reduce due to the holiday and other benefits given. This will also have a negative effect on the short-term delivery of projects that could hit already troubled sectors like travel and retail.

11. Prevent a service business from ever growing and expanding.

12. No especially where someone has severe health problems like myself over the last 25 years and therefore have no rights at all.
Generally, in business terms you are treated as a "thing", a laptop for example, if it's broken then it's discarded. As a limited company I own the intellectual and copyright of my work until it has been paid in full but this protection plus other protections would disappear especially as sometimes

happens the client refuses to pay you for the previous month or two and you are immediately terminated for any reason they decide.

25 February 2020

Anonymous

Summary

- Currently working as Ltd Company contractor in Financial Services Sector
- Blanket bans on Ltd Company contractors are being invoked by most large banks and FS companies
- No longer allowed to use Ltd Company and must go via Agency PAYE or Umbrella Company specified by end client
- Rates cut to allow this to remain cost neutral for agencies and end client
- Rates cut to pay ER NI and Apprenticeship Levy from contractor rate, end clients still able to not pay their employer liabilities for contractors they are now forcing into 'employment'
- Take home pay severely impacted, financial implications to families significant
- No longer able to save for periods where work is not available
- No longer able to afford to pay decent pension contributions
- No longer able to claim travel expenses so contracts away from home are no longer viable
- If no blanket ban invoked role based status determinations are been done without being based on current contract terms or any input from contractor
- Serious lack of understanding of IR35 within these companies and the staff involved in any assessment process
- Contract roles are being sent offshore
- Risk of retrospective investigation when forced inside regulations under blanket ban
- Market for contract roles non existent at the moment
- Mental health impact on hundreds of Ltd Company contractors should not be underestimated

Answers to Specific Questions
Existing measures in the public sector

1. No Comment

Impact of new off-payroll rules on organisations

- My experience of how the FS sector is dealing with the changes would signify that this impact has been significantly understated. Decisions are being made based on legislation that is still not passed into law and is currently changing at a crucial point in the timeline for companies trying to work through the changes.

- No comment

- In my sector contractors are not able to continue engaging with clients via Ltd Companies and are being forced into 'employment' with no benefits on reduced contract rates to cover ER taxes.

- The rules are very complex for anyone to understand with too many nuances as to what constitutes self-employment. Simplification of the rules are required in order for all parties to be able to have comfort that we are adhering correctly to the rules.

Determining tax status of workers

- No, engagers are struggling to understand how the rules should apply and in most cases is a matter or someone's own interpretation of the rules. Given that the rules are new to the internal staff dealing with them contractors are fighting a losing battle when trying to explain the rules. In my opinion the three pillars of Substitution, Direction, Supervision & Control and Mutuality of Obligation do not reflect the reality of a contracting environment.

- The interpretation of the questions are open to individual opinion and can be answered in such a way that a particular desired decision can be made by the assessor. Mutuality of Obligation, one of the main pillars of IR35 is not included in the tool. The tool is currently being completed without assessors taking current contract conditions into account.

- Due to the complexity and ambiguous nature of the rules determining employment status is not a clear cut process. Appeals processes appear to be in place but in reality the decision will not be changed when challenged so contractors have no choice but to accept the decision or leave. The rules are not clear cut enough and a rethink on what constitutes self employment is required.

Policy objectives and wider context

- No comment

- If the Government's objective is to raise more tax it is debatable that contractors now on lower rates and no longer paying corporation tax, dividend tax and self assessment PAYE/NI contributions will create more revenue for the Government. Many calculations I have seen recently would confirm this point of view. There is also the question of VAT in the FS sector, given that they are not able to claim this back I would suggest the VAT revenue from people such as myself will decrease. The knock on effect on recruitment agencies, accountants when no-one needs their services anymore, hotels when no-one can afford to travel for contracts and the wider economy in general when contractors disposable income has been significantly reduced has also not been taken into account.
  If the Government's objective is to destroy the contractor/self-employment market then I would suggest that they are well on their way to having achieved this.

- They are an extra layer of administration involved in how my take home pay gets to me. In most cases I will have no free choice in choosing what umbrella company I use as this is being dictated to me by the end client/agency. I imagine some kind of financial agreement is in place between these entities. By the very nature of contract work we move around frequently so it may mean changing umbrella companies each time we take on a new contract based on who the agency/end client allows us to use. This becomes an administrative nightmare in terms of pension contributions etc. Why should we be forced to change employers at the whim of other businesses, it is not practical and will more than likely end up with tax errors due to the fact that incorrect tax codes are used. The pseudo employee benefits that umbrella companies give contractors such as holiday pay etc all come out of the contractors rate so are not real employee benefits.

  There are still many umbrellas advertising large take home pay amounts which must be using the same loans that have created the loan charge issues that are affecting many contractors. There needs to be proper regulation of these companies before they can be considered a viable replacement to working through my own Ltd Company. I should also have free choice of which umbrella company I use that suits my circumstances.

- It is not fair to tax individuals as employees when we receive no employees rights, in most cases we are also going to be paying employer taxes, by way of rates being cut, meaning big businesses are still not meeting their taxation responsibilities. Our contracts can be terminated with no notice and we do not receive any of the employment rights associated with this. We will receive no employment benefits and are still responsible for being able to survive during periods of no work, pay into our own pensions, provide training etc. I am happy to do this while working under my own company on a contract rate that will allow me to do this. If forced into 'employment' with reduced rates and double taxation (EE & ER) being forced upon me I will struggle to cover every day living costs and continue with the benefits my Ltd Company currently provides. These benefits such as pension payments will need to be stopped and that is a worry for my future. I had thought that the Government were trying to reduce the number of zero hour contract but the way the new rules are being implemented in the real world is creating another large sector of highly skilled zero hours contractors. I cannot see fairness in any of this.

19 February 2020

Anonymous

Areas of interest The Sub-Committee welcomes views on any of the following questions relating to the proposed extension of the off-payroll working rules to the private sector. The SubCommittee is interested to know about the real-life experiences of individuals and organisations, as well as more general

responses—for example, relating to the impact of these (and predecessor) measures on the tax classification of workers and the broader impact on the labour market.

Existing measures in the public sector

1. *What has been the experience of the new off-payroll rules in the public sector?*

What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

I am not convinced that lessons have been learned. Though I am sure many in the public sector are currently enviously admiring the stance taken by many large organisations of side stepping the issues by refusing to work with Personal Service Companies (PSCs) either directly or indirectly further down the supply chain.

The examples below identify lessons that should have been learned but appear to be ignored, specifically by HMRC.

Given the number of court cases brought by HMRC against contractors in the public sector under IR35 that have failed and cost taxpayers significant sums for barristers it feels like this bill is another failure being forced through. HMRC has only achieved a successful outcome in 12% of all cases https://www.contractorcalculator.co.uk/ir35_court_cases_judgments.aspx

HMRC is consistently failing when challenging IR35 status since the public sector reform in 2017 https://www.simplybusiness.co.uk/knowledge/articles/2019/05/celebrities-win-IR35-cases-against-HMRC/

Use of the HMRC's Check Employment Status for Tax (CEST) tool. HMRC agreed that anyone completing the tool with valid information would not be held liable for an incorrect decision caused by the output from the CEST tool. With the NHS being fined millions (£4.3M?) link https://www.contractorcalculator.co.uk/nhs_digital_hit_43m_tax_bill_cest_553910_news.aspx

The judiciary ahs determined that the tools and approach from HMRC is failing

CEST not fit for purpose

Judge Dean took the opportunity to highlight the issues being raised with HMRC's Check Employment Status for Tax (CEST) tool, which is designed to determine whether your work falls inside or outside of IR35.

She said: "In our view the level of control falls far substantially below the sufficient degree required to demonstrate a contract of service and we are satisfied that the factors strongly indicate that the contract was one for services."

Dave Chaplin, CEO at ContractorCalculator, said: "Time and time again we have debunked HMRC's claim that CEST is accurate and once again we have proved this to be the case."

Incorrectly taxing people is nothing to celebrate

Chaplin further commented that: "HMRC has also previously boasted that the off-payroll reforms have netted £550m, which is nearly double the amount previously forecast by the Office of Budget Responsibility.

"Damaging and disrupting businesses by incorrectly taxing them, and extracting money which is not due, is nothing to be proud of and certainly not a sign of compliance."

While Andy Chamberlain, deputy director of policy at IPSE said: "This judgement should be a wake-up call to government that it cannot expect businesses to understand a tax law that it cannot even implement itself."

Impact of new off-payroll rules on organisations

2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

Given the approach by many organisations side stepping the IR35 Off Payroll issue by terminating all contractors and banning any engagement with Personal Service Companies it feels like the Off Payroll legislation has not been adequately assessed and is having unintended consequences.

SSE PLC is an example of an organisation that is banning engagement with any small limited company (Personal Service Company). This approach is driven by the desire to avoid the risk introduced by IR35 and Off Payroll reform. The approach taken by SSE PLC could help to boost the Employer National Insurance Contributions (NICs) though it feels wrong that this tax is the being forced on entrepreneurs that are taking the risk. At SSE PLC, as with many other organisations, the Employer National Insurance contribution is being forced on all people currently engaged via limited companies which is to be taken from the current payments, rather than covered by the employer as set out in law.

From the public service:

HMRC has boasted that the off-payroll reforms have netted £550m, which is nearly double the amount previously forecast by the Office of Budget Responsibility.

Damaging and disrupting businesses by incorrectly taxing them, and extracting money which is not due, is nothing to be proud of and certainly not a sign of compliance.

Andy Chamberlain, deputy director of policy at IPSE said: "This judgement should be a wake-up call to government that it cannot expect businesses to understand a tax law that it cannot even implement itself."

https://www.simplybusiness.co.uk/knowledge/articles/2019/05/celebrities-win-IR35-cases-against-HMRC/

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

If this bill is passed, I am confident that the exemption for small businesses will soon be removed in the coming years. However, the guidance on what constitutes a small organisation appears to be very clear. This area of the proposed bill does not appear to have any issues, though admittedly as this does not affect me I have not investigated the issue in depth.

4. What will be the effect of these new measures on a chain of contractors and subcontractors?

Perversely, these new measures add more risk and cost to the people in the chain of contractors and subcontractors undertaking the work. There is a risk that the Umbrella organisations people are being forced to engage with will not pay either in a timely manner or, in the worst case, not pay at all. According to the guidance on gov.uk the umbrella organisation only has to pay the worker when the umbrella receives payment from the agency. Moreover, the people at the end of the chain are being forced to pay for the privilege of this increased risk.

https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2390

There is also the fact that the people at the end of the chain are (usually) left to foot the Employer National Insurance costs leading to a (near) 15% reduction in 'take home' monies. This is certainly the case at SSE PLC and by reporting in the wider press also the case for most other large organisations.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Organisations are simply not clear on the rules and many have paid for advice from one of the big four to determine the lowest risk approach. The advice received is not to engage any Personal Service Companies and ensure that the entire supply chain follows the same approach. This feels anti-competitive and I am sure would be robustly challenged in the courts if the boot were on the other foot. i.e. the big four were similarly blocked from working directly for FTSE100 or other large organisations.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

These tests are obviously not sufficiently clear as many organisations have chosen to side step the issue by following the anti competitive approach and banning any engagement with small limited companies

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

The tool is obviously not fit for purpose as it totally ignores MOO (Mutuality of Obligation). HMRC choose to ignore this issue despite losing numerous high profile court cases. HMRC need to work with people, such as Dave Chaplin of contractor calculator, to improve the assessment tools rather than against these people as they have to date. HMRC appear to ignore reasonable requests for engagement, suggestions for improvement and then also los try to avoid revealing information requested through freedom of information requests.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

The status determination appears to be irrelevant due to the way large organisations have been encouraged to interpret the anticipated change in legislation. Very few large organisations are actually running status determinations and are avoiding the issue by the anti competitive approach of removing all small entrepreneurs from the supply chain.

The current approach that I understand is that an employer can be challenged on their decision though they only have to respond back within 45 days to day that they are standing by their original decision. There is no independent arbiter to ensure a fair and just decision is made. Establishing an independent organisation, totally separate from HMRC, feels like the best approach to this issue.

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

Ensure that people who are truly within the scope of payroll (IR35) are held to account, rather than the entrepreneurs who travel many miles to work on short term roles to meet specific needs of organisations and government, think HS2, Hinkley Point, implementation of new financial banking regulations, and not least the anticipated implementation of technology systems to cope with impending exit from Europe as Brexit is finally delivered. Most, if not all of these projects will require staff for short term engagements. Anecdotally it feels like most people who are good at their role will take work outside IR35 where possible. This risk is widely accepted by organisations though the detrimental cost to their delivery and the wider economy is likely to be significant.

There are many that are currently employed through umbrella organisations with 85% take home pay, surely this is an easier and more appropriate target for HMRC?

I have never known HMRC to investigate an organisation to validate whether staff should be inside or outside IR35. The approach suggested of using the CEST tool to support decisions appeared to be a really good decision, however, HMRC have really shot themselves in the foot by fining the NHS £4.3M for using the CEST tool and following this guidance. Perhaps an independent body could be established to support, monitor and enforce IR35 status determination within organisations?

10. Will the Bill, as drafted, achieve the Government's objectives?

I feel that the potential additional revenue HMRC will receive from the contractors that choose to work under PAYE and accept that they are responsible for the employer element of National Insurance Contributions (NICS) will be outweighed by the volume of work that is being offshored and the reduction in corporation tax from the Personal Service Companies that will no longer be paying this tax.

I am expecting HMRC to claim a significant victory in the short term, however, the real view should take into account that Employer NICs are paid immediately (monthly) at source, whereas corporation tax is paid some months in arrears so the actual reduction in corporation tax will be a lag that starts to be experienced well into 2021.

Many contractors are talking about early retirement, working offshore, or emigrating which will have a negative effect on HRMC income. The impact to organisations and ability to make use of a flexible workforce will similarly be significantly diminished.

11. What is your view of the role of umbrella companies in the context of these proposals?

There appears to be very little regulation, control, or accountability for these umbrella organisations where tax avoidance is rife. I am being told by many umbrellas that I need not worry about the PAYE element and that in fact I will be significantly better off as I will receive (take home) 85% of my overall renumeration.

One of my most significant concerns with the Umbrella companies that appear to be honest is that none will accept that there is a legal contract and obligation for the umbrella to pay me, regardless of whether the rest of the supply chain is either unable to or refuses to pay. This obviously negates what would otherwise be a significant cash flow challenge to these Umbrella organisations as they rapidly expand to address the stance taken by many of the FTSE100 and large organisations in side stepping the assessment of contractors by refusing to engage Personal Service Companies.

I am also significantly concerned that there is now no recompense for late payment. If an Umbrella chooses to pay late the usual route of applying

legislation supporting late payment of invoices will not apply. What resource do contractors now have in the event an Umbrella pays late, or not at all?

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

The new proposed measures really do fly in the face of sanity for workers in the gig economy and appear to be blatantly unfair. Perhaps if the playing field was levelled to equivalence for permanent employees there might be more understanding: forcing permanent staff to wait until suppliers paid the organisation before they were paid their salary (lack of risk taken on by Umbrellas only paying contractors when the agency pays), waiting for someone to approve work completed before they were paid (agencies), paying for the privilege of someone processing your payroll for you (Umbrella organisations).

People are now being forced into paying the employer NICs contribution from their current rates, there are none of the usual rights that would come with working as an employee such as pension contributions, sick pay, holiday pay and the like. Whilst Umbrella companies give a nod towards this requirement, the reality is that all of the usual employment benefits are funded by the person fulfilling the work rather than the employing organisation.

Unfortunately, some people (it appears Jesse Norman of HMRC is in this camp) have interpreted the perceived take home pay rate of contractors as being unfair. What is being totally ignored is the risk reward nature of the work undertaken with (usually) shorter notice periods, accepting the risk of not being paid between roles – and therefore the additional take home pay has to cover times when contractors are not working in gainful paid employment, flexibility in location - most contractors travel significantly longer distances to work than permanent staff and often stay away from home.

What appears to be particularly challenging for many is the removal of expenses that can currently be claimed to get to the temporary place of work. The removal of these expenses will likely lead to a less flexible workforce as people feel less willing to travel significant distances and pay for their temporary accommodation.

25 February 2020

Anonymous

Thank you for taking the time to review the potential impact of the proposed IR35 legislation in the private sector. I would like to bring to attention of the sub-committee the notes below. These are submitted in a personal capacity based on my experiences of working as a freelance IT consultant.

1. I've worked as a freelance software consultant for 25 years. As a result of engagements with many different clients, I have a comprehensive set of skills that I can offer. The higher rates that I can command compensate for not receiving any pension contributions, holiday pay, sick pay or training. I am happy to take responsibility for these matters myself. This way of working affords me flexibility, variation and the ability to take my career in a direction I choose. I feel that I am making a positive contribution to UK PLC.
2. I understand that the use of PSCs is being abused by some companies wishing to avoid paying Employer's taxes for lower paid labour. However, this blanket approach pursued by HMRC is throwing the baby out with the bath water. It may tighten up on the use of PSCs where they shouldn't be used but it will also decimate the highly skilled freelancing community where I feel there is a valid case for their use.
3. It has been demonstrated in a number of court cases that HMRC's CEST tool is not fit for purpose. The employment status of a contractor determined by the tool has frequently been proven to be wrong. From April 2020 onwards, potential clients will be fearful of making the 'wrong' determination of a contractor's status because of the fines that HMRC will impose on them. My current client (a large utility company in the water sector) is taking a risk averse approach by ending all contract engagements at the end of this month.
4. One possible outcome of this is that HMRC will actually receive less tax revenue than they do now. As an example, my current client is advertising roles for permanent members of staff to replace the contractors. These positions are paying salaries much lower than the rates they were paying the contractors (because the company is now liable for pension provision, holiday pay, sick pay, training, apprenticeship levy, etc). These lower salaries will often yield less tax revenue than HMRC would have received if the company was engaging a contractor.
5. Where clients are not converting contract roles to permanent ones they are sometimes offshoring work. Last year my company provided software development services to a client, based in Exeter. This company provides prescription drug safety and cost savings web services to the NHS. They are a relatively small company and are very project orientated. Each project is short in duration (3 - 6 months) and is focused on delivering maximum return on investment. They cannot afford to take on permanent members of staff, with the associated long-term liabilities, to work on these projects as they may not need the staff once a project is complete.
   When my contract (and those of three other contractors) came up for renewal in December 2019 they chose not to renew. Instead, they chose to handover the work to Godel – an IT offshoring company with offices in Belarus. Godel have some very talented people working for them who speak perfect English and produce high quality software. Daily status meetings were held via videoconference and the team in Belarus were treated as if they were working in the office in Exeter. This partnership

was developed because of the threat of IR35. HMRC are now missing out on tax revenues from four highly skilled UK based software developers.

6. The timing of this could not be worse. As we are about to leave the EU I would have thought that the Government would be doing everything in its power to bolster the economy and support those of us with valuable skill sets in preparation for the challenges that lie ahead.
7. When the IR35 changes were rolled out in the public sector it caused chaos in Government IT projects. To mitigate the risk of losing the skilled contractors, many projects recommended that the contractors they were engaging with increase their rate by 20%. This is bureaucracy at its worst. The contractors charged the Government departments and extra 20% just so they could pay the Government (HMRC) an additional 20%. Utter madness.
8. I am nearly 50. I am fortunate that I have an amount of savings that will allow me to take a break from work while I wait for the dust to settle. After a short holiday, I'll focus on enhancing my skills. I will then have several choices. Do I continue to try to find work as an independent consultant in the UK at a lower rate; do I look for positions in Europe / elsewhere; do I start to wind down towards a proposed retirement at age 60. I would like to continue to work as I do but this vendetta that HMRC has against genuine contractors is making this less and less appealing.
9. I would be very grateful if you can influence the Treasury / HMRC to make the distinction between those that are abusing the use of PSCs and those of us who are genuinely in business in our own right and who are making a valuable contribution to many companies in the UK.

23 February 2020

Anonymous

I'm a Director of a limited company and work as a consultant on big IT projects in the finance sector. My client (a consultancy) has a contract with a bank to implement a new IT system and have subcontracted part of the work of implementing that system to my company.
The consultancy have given me two options:

1) **Get employment with their preferred umbrella company (iConsult).** This company doesn't have a good track record (very small ("micro"), not been trading many years, few profitable years, in debt and losing money). I therefore have little confidence in them paying me or making correct tax payments. These companies are also expensive, charging employers' NI and their own fees.
2) **Ending the contract**

The consultancy have declined to make me a permanent employee. They also don't want to look if the contract is within or outside IR35 and take the risk of

getting it wrong – although I believe it is outside IR35, I would be happy if they made the opposite designation and for me to work inside (even if that means me paying the employers' NI or a corresponding reduction in fee). From talking to others in the industry, it looks like this over-caution means this will be the case everywhere and it will be very difficult for me to find more work.
The way in which this legislation favours the consultancies and umbrella companies and other intermediaries who contribute little economic value over the people running the companies who actually do the work seems particularly unfair.
My next steps are to look for other contracts (inside IR35 or otherwise) and confirm there really is no work. I will then look at moving abroad. This last option is really painful as after saving for a long time, I finally managed to buy my first house last Autumn; I feel settled here, and to think about selling up and moving on is very distressing.

Anonymous

Below if a brief detail on my experience so far of the new IR35 rules.

I had worked for Network Rail for 9 years and 2 months as a permanent employee when I decided to leave and start my own limited company which was an exciting venture for me. This was because Network Rail refused to allow me to have a second job and I was professionally constrained in undertaking on other works where Network Rail was the client due to the conflict of interest.

After starting my new limited company, I worked as a Contract Specialist Engineer working for organisations undertaking work for Network Rail **and** other clients which included considerable travel around the country. All the IR35 assessments I had undertaken identified my contracts as outside of IR35 and due to the project roles I undertook were of short or limited terms.

As part of running my own limited company I was responsible for the following:

My own training

My own travel expenses

My own professional licences

My own professional

memberships Professional

Indemnity Insurance My own

accounting

My own website

Provision of my own equipment including IT and tools

I did not receive any employment rights or benefits including:

Annual Leave

Sick Pay

Paternity Leave

Training

Pension

Train Ticket Discounts

Professional licences

Professional

memberships

My company was successful and had been operating for around 4 years until the spectre of the Off Payroll Working Rules in the private sector. Bringing these rules in for the pubic sector had already put me off undertaking contract roles within it.

Once the Off Payroll Working Rules implementation in the private sector became increasingly close Contractor positions outside IR35 became increasingly difficult to find and without work my limited company became insolvent much to my dismay. Blanket determinations have been common, and Clients have increasingly decided not to work with PSCs at all.

I was forced to take a role at Network Rail working within scope of IR35 with all of the tax and NIC of a permanent employee (even paying Network Rails Employers NIC out of my daily rate!!) with no employment rights. This is far from ideal and has left me with a 30% reduction in income and no security.

It is worth noting that working within scope of IR35 makes it not financially viable to work anywhere other than in one's immediate area which severely limits which roles and works that I take on. This is limiting the freelance market and, in the months to come it will become apparent that the flexible workforce is a lot less flexible. How projects like HS2 and Crossrail will find staff who are willing to travel will become a big issue.

I have started to make enquiries to work abroad including in Australia as have some of my fellow freelancers, all of which will be a loss to the railway industry in this country at a time when we can ill afford to lose valuable experience.

My experience has been echoed by many of my colleagues. Regards

Anonymous

Here follows my written evidence as a Software Solutions Architect working on a permanent basis for an IT firm. I have previously contracted (through an umbrella) and worked directly for companies including Sage, British Airways and I am currently an employee of DXC Technology. I am writing as a private individual, my views are my own and do not represent those of any other company or entity.

Consultation questions and my evidence responses (in bold):

Existing measures in the public sector
1. What has been the experience of the new off-payroll rules in the public sector? What lessons have been learned from this experience, and how have they affected the draft Finance Bill proposals?

Due to the shrinking public sector and the outsourcing of much tax-payer investment into the private sector the impact has been minimal and the learnings have reduced the risk of rolling out the policy to the private sector.

Impact of new off-payroll rules on organisations
2. Has the impact of the extension of the off-payroll rules to the private sector been adequately assessed? In particular, is the assessment that has been made of the compliance burden (including costs) of these new rules realistic? Has the right balance been struck in the compliance burden on the taxpayer and on HMRC?

The off-payroll rules to the private sector have been assessed as much as is reasonable to do so by Pareto, given the cost to the tax payer. The right balance has been struck in the compliance burden between taxpayer and HMRC as to require the HMRC to do more would both fall foul of the law of diminishing returns and be at additional cost to the majority of unaffected tax payers who are employees.

3. Is the exclusion of small organisations sufficiently robust, and how might small organisations gain sufficient assurances that they fall within the exclusion?

It will be best to provide in-flight iterative corrections for the process in this sub-group, rather than unnecessarily delay these changes at further cost to the tax payer.

4. What will be the effect of these new measures on a chain of contractors and sub- contractors?

Even the very wise cannot see all ends; although it is likely that those effected will adapt to find the most optimal way to avoid any disadvantages incurred as result of the proposed changes.

5. What scope might there be for simplifying or otherwise reducing the administrative burden of these measures? What should HMRC do to help businesses understand the new administrative rules?

Provide clear guidance online with case studies covering the most common cases and exceptions.

Determining tax status of workers
6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

There is currently ambiguity due to the education piece which must be undertaken by those who wish to defer readiness for these changes in the hope that the changes will be deferred. The documentation should be independently reviewed and the process of making the legislated changes should be completed with minimum cost to the tax payer. Lessons learned should be reflected in corrective measures in subsequent legislation rather than speculation and analysis paralysis at cost to the tax payer.

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

It is adequate and provision should be made to gather feedback within the tool from users and make iterative improvements based on real usage data rather than costly supposition.

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

As with feedback mechanisms attention and resource should be provisioned to this but not at the cost of the schedule which would cause unnecessary additional cost to the tax payer.

Policy objectives and wider context
9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

The objective of the new rules has long since been lost in the complexity of implementation. A scientific approach must be taken of measurement, control and thereafter course correction based on the myriad of unknown outcomes and market interactions.

10. Will the Bill, as drafted, achieve the Government’s objectives?

It will achieve the unstated objectives of temporarily reducing the cost of some services until the market adapts to the route of least resistance.

11. What is your view of the role of umbrella companies in the context of these proposals?

They will make money which so long as it is taxed within the U.K. I have no objection.

12. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

For society to function in a equitable manner everyone without exception should pay a proportionate amount of tax, national insurance and pension provision. Those who do not wish to are raising the risk that they will become a burden on the rest of society in the future. If they wish to do so, they are at liberty to find another society in which to live, not to opt out of their obligations to the society in which they work and live. Regrettably I do not believe that the proposed changes will make much difference in the long run to those who seek not to participate responsibly in our society. The best that can be hoped for is a temporary reallocation of responsibility in the short term and in that given that these decisions have been made by government, we should not waste more expense In needlessly debating them further. In my opinion, whatever that is to come about as a result of these changes will occur regardless, sooner or later, it is more important that we respond proportionately and wisely to the outcome than to hypothesise endlessly without experimentation. If these changes turn out to be a disaster we should learn from that and decide on any necessary remedy thereafter.

Thanks for your questions; I hope my answers in evidence have been of value.

Anonymous

I would like to take this opportunity to supply some points of my own. I'm sure these may have been supplied before, but I'd still like to make them. I'm self-employed myself but I am hoping these comments come across as measured and not biased.

1. There is a balance that is being eroded. Business needs a pool of expertise to call upon. As an example, the company I'm currently supplying my services to is also involved in supplying a solution for the upcoming SFTR financial trading regulations. To do this they have built a team almost entirely of self-employed contactors to perform this task. Once the project is over, the team will be largely disbanded with, I'm

sure, a few stragglers left over to perform maintenance and handover the solution. Under IR35 this pool of expertise will be reduced substantially making it much more difficult for business to react (and take advantage) of opportunities that arise. It will also make sourcing expertise for adhoc projects much more difficult as not every project is like the one just described.

2. It appears that HMRC more or less assumes that every contractor is working as such to avoid tax. I believe this couldn't further from the truth. Many people end up contracting as it's the only way to get work. For myself, I ended up contracting after a succession of failed full time jobs. Some people prefer it because of the independence, and I would now consider myself in this category.
3. The amount of extra tax revenue HMRC has estimated is very much over estimated I think. The reason I believe this is that not everyone classed as inside IR35 will stay self-employed:

    a. Some will switch to permanent employment. If I did this, I would be paying around the same amount of tax that I'm currently paying.
    b. Some will move outside the UK and continue being self employed removing themselves from the UK tax system altogether.
    c. Some will switch to umbrella companies which has the same effect as point "a".
    d. There is a cost associated with policing IR35.
    e. I can't tell from the numbers whether HMRC has taken in account the corporation tax that is being paid by the large number of limited companies. From what I can see they have based their numbers on personal tax. For example, in point "a" above, when I say I would be paying the same amount tax overall it's because I wouldn't be paying corporation tax.

For the above reasons I obviously think that IR35 hasn't been that well thought and I would argue it will make UK PLC less competitive.
Thank you for your patience

Anonymous

I am submitting this evidence in a personal capacity. This submission specifically addresses:
Point 4 and Point 12

1. I'm writing to let you know about my concerns for the fate of the creative industry in which I work, in the wake of the implementation of the new IR35 rules in April. I have worked as a freelance graphic designer within the London design industry, on and off, for over 20 years. Each time I freelanced I was advised by my accountant to set up as a limited company as, without this structure, most design and recruitment agencies in London wouldn't take me on. This has proven to be the case. I have freelanced for sixteen different

design agencies in the past five years alone, and taken freelance roles through five different recruitment agencies. All have stipulated I must have limited company status.

2. Only in the past couple of years, with the changes to IR35 in the public sector, have I become aware of the implications for myself and fellow freelancers in the private sector. Prior to this I have been unaware of any information or campaigns from government or HMRC to clarify or enforce these confusing and opaque rules. This appears to have been the case with many other freelancers within my industry.

3. I understand that the onus is on the director of the limited company to be aware of the rules. But with little guidance or advice when being pushed into this route through necessity, and the confusing and complex nature of the existing and new rules, it isn't surprising that so many freelancers are set to be caught by the new IR35 rules, and see their income and potentially their employment prospects plummet as a result.

4. The following are my observations on how freelancers in the design industry currently work, based on personal experience.

5. There are advantages and disadvantages to freelancing. The advantages are tax efficiencies; the ability to be VAT-registered for help with equipment costs, despite being under the threshold; the ability to offset some expenses against my tax bill; and having greater control of my cash flow.

6. However, the disadvantages are many:
– There is no safety net when freelancing. If I'm sick and miss work I don’t get paid.
– I get no paid leave so I have to plan my family holidays and other appointments carefully.
– It is common for me to be paid late – outside of the agreed 30 days – and on occasion I've had to wait over three months for invoices to be paid.
– Job insecurity: contracts can be cancelled hours before they are due to start, or terminated mid-contract.
– There are inevitably quiet periods between contracts. In those unpaid periods I work daily to update my portfolio and cv, and make agencies aware that I am available for work.
– I have to be very flexible. Some contracts can run for as little as two or three days, some can be as long as six months. In one 12-month period between 2017 and 2018 I worked for ten different design agencies consecutively on contracts ranging from a few days to a few weeks.
– I need to pay an accountant to deal with the complexities of being a limited company.
– I have to pay indemnity and liability insurances, and also insure myself against long term sickness.

7. The understanding among freelancers is that we accept these risks in order to provide a flexible workforce for agencies that need our expertise on an ad hoc basis. Therefore the financial advantages mitigate the downsides,

making the role of a flexible freelancer more attractive to those who choose to take this route, and to those who employ us.

8. How I see the new rules having a detrimental impact on creative freelancers and the industry in which we work:

9. Being deemed inside IR35 will see freelancers paying higher rates of tax, but with none of the protections that permanent employees enjoy, such as sick pay, holiday pay, maternity and paternity leave etc.

10. I anticipate a loss of a minimum of 20% of my current income due to design and recruitment agencies concluding that I, and other freelancers like me, are inside IR35. I will continue to carry all the risks outlined above, but receive none of the protections and benefits that permanent workers receive.

11. The extra financial burden on the engaging agencies, of employer NICS and associated costs for assessing freelancers' status, will increase the likelihood of downward pressure on day rates.

12. There may be a push by design agencies to recruit more permanent employees, causing a downward pressure on wages, and causing opportunities for contractors to dry up.

13. Conversely, there is also the danger of unintended consequences, with employers seeing this as an opportunity to reduce their permanent staff and take on more freelancers inside IR35, without having to provide the protections that permanent employees receive by law.

14. The majority of my work has been in live events and annual reports. Live events agencies rely on designers being available from event to event, with employment peaking during delivery periods, and tailing off during quiet and pitch periods. Annual reports tend to be seasonal, so there is often a quiet period over the summer before the rush to design and deliver from September to April. The flexible workforce that many agencies like these rely on may be greatly reduced, which could have a big impact on the competitiveness of these companies.

15. I understand there are those who abuse the system, working for a single employer for years as a contractor. This is not the way freelancers in the design industry work.

16. Perhaps a fairer solution could be introduced that would protect and incentivise the flexible workforce. It could involve a compromise in the form of a freelancer tax vehicle that would give tax incentives to freelancers to mitigate their risks, limited liability protection, and allow National Insurance contributions. Status as a freelancer could be predicated on maximum contract terms of, for example, six months, with no return to the same employer for three months.

16. To conclude, I fear the new IR35 rules will lead to a downturn in contracting in the design sector, with a knock-on effect for employers. In the

current climate of Brexit and economic stagnation, this feels like the wanton vandalism of the thriving creative sector in the UK.

17. Thank you for taking the time to read this, and please rethink these unfair reforms - or at the very least, delay them until the full impact can be assessed.

22 February 2020

Anonymous

I apologise for the format of this submission; I've not done this before so I'm unsure of the structure that is expected.

1. I have worked in IT for the Banking and Finance industry for over 20 years. I started as a contractor, took a permanent position some years later, before returning to contracting shortly before the so-called credit crunch. I have no direct knowledge of contracting for the public sector nor with areas outside of IT and Finance and so will restrict my comments accordingly.

2. It is my belief that the new off-payroll rules will have a large, negative impact on my family, IT contractors in general, the Finance industry as a whole, and the UKs ability to remain competitive especially in light of Brexit, leading inevitably to a decline in overall tax take. It's hard for me to imagine a more self-destructive policy than the one being proposed.

3. My primary client has terminated all contractors operating via a PSC. There are no exceptions, no appeals. My options are to leave or operate via an Umbrella company or on a PAYE basis. The latter two options will reduce my income by 25-30%. If I cannot find other work at a better rate we will be forced to sell our home. The stress that this has caused to my family is considerable. Everything we have worked for, the home we have tried to make for our son, the friends we have made and the links to our community will all be gone in a matter of months.

4. Our smaller clients, whom we are doing work for at cost or at a loss in order to grow the business will be let go and we will close down our company. If the contract market doesn't bounce back shortly, we will look to work overseas.

5. Being put in the absurd position of being taxed as an employee (plus paying employers NI and the apprenticeship levy) but having no benefits whatsoever has been widely made already. The more general misconception that contractors pay less tax has no basis in fact. We may pay a different set of taxes but the overall effective tax rate is

comparable. What is different is that a contractor's day rate is higher than a permanent employee. The reasons for this are that the contractor receives no sick pay, no paid holiday, no pension, no redundancy package, no training, no staff perks or employment rights of any sort. Personally I earned more overall when I was a permanent employee than I ever have as a contractor.

6. My experience is sadly far from unique. Most, perhaps all, major banks have adopted the same blanket approach of refusing to engage contractors operating via a PSC.

7. For a number of reasons trust of HMRC amongst contractors is very low. There is a widespread belief that staying at the same client following a blanket ban (even if it's not technically an admission of being inside IR35) will trigger an investigation and a claim for back-taxes. Even if the contractor were to prevail in that claim, as is likely given HMRCs dire rate of success when contesting the IR35 status or contractors, it would only be after a long, expensive and very stressful experience. The assurances of the Chancellor and HMRC that this won't happen are not widely believed.

8. Given the option of staying in the same role, for 30% less money and with the risk of an HMRC investigation many contractors are opting to leave. Some are moving to another role, most are taking time out, some are retiring or moving abroad. What we have never seen before is the sheer number of contractors quitting at the same time. Teams are not being decimated, they are just ceasing to exist. Entire project teams are just quitting, others are only losing 50% of their people.
9. The impact of this on project work is simply that those projects cannot proceed. For any non-trivial project it takes 3-6 months for someone to become truly productive. We are currently looking at 100's of projects being, at best, mothballed until new staff can be brought on board and to bring themselves up to speed. 3-6 months lost across the entire industry. Projects that would have made money and thus taxes. Regulatory projects essential to protect consumers and the quality of the UK banking system. Everything just shutting down. My own team has gone from having a full book of work, to "keeping the lights on" to deciding which projects to shut down.

10. It's hard to imagine Brexit not requiring regulatory changes to be made to core IT systems, and yet, in many instances, those who are most familiar with those systems will have left, all at the same time. No knowledge transfer, no continuity, nothing. You may ask why the banks have allowed this to happen – in my opinion it is a combination of factors; they are scared of HMRC, unwilling to spend the fortune required in order to certify all their contractors, and the usual disconnect between

those working on projects and senior management who don't get that you can't simply replace one IT person with another with no productivity drop.

11. The upshot of all this is that the Finance industry is going to underperform this year. The UK, and London in particular, has built up a fantastic ecosystem to support that industry. A flexible and responsive workforce is a key part of that infrastructure. That flexibility is being destroyed. When that goes a company's ability to ramp up quickly to respond to new challenges, or to reduce headcount quickly to cut costs is lost. This reduces the UKs advantage over our European neighbours. The UKs financial services industry is going to come under immense pressure following Brexit from a European Union keen to repatriate business. At the moment there is a chance to weather than pressure as there is nowhere in Europe that can match the concentration of skills that are there in London. As soon as we chip away at that then Frankfurt and Paris and Dublin all become a bit more attractive. It won't take much for that critical mass to be lost. That will cost the UK a fortune.

12. IR35 was intended to stop employees quitting on a Friday and starting work in the same place on the Monday as a contractor. Never, in over 20 years working in this industry, at dozens of different firms from small hedge funds to the largest banks in the world, have I seen this happen. I'm sure there are instances of it but they must be rare indeed. This legislation is trying to solve a problem that doesn't exist. In doing so they are destroying an industry. In their myopic focus on income tax they are missing out on the wider loss to the tax take.

Thank you for your time.

Anonymous

Thank you for the opportunity to provide comments and views to The Sub-Committee to assist your enquiries.

I am making these responses in a personal capacity – I am a Director and owner of my own consultancy business, specializing in the provision of compliance and risk solutions in the financial sector.

I have done so for 8 years and focused on supporting companies introduce a bespoke compliance conflict of interest system, this being the third global roll out I have completed.

My current client, a large FTSE 100 company has conducted 'individual assessments' however with some CEST tool answers predetermined at a policy level despite contractual and working practices evidenced to the contrary, an

in-scope result has been returned should I extend my services with a new contract.

The difficulty with the proposed approach, as in my case, is despite significant company costs, clear out-of-scope contractual terms and evidence of reality/practice being aligned to being out of scope, firms do not want the risk and will therefore take the appropriate decision for themselves.

I can understand why given the nature of the complex rules and the HMRC approach that firms are acting in this way, taking the risk adverse route. However, the bigger problem is them how they deal with the ensuing Employer National Insurance and Apprentice Levy and the lack of employment rights that also come with the "deemed employee" new class of employee (despite not wishing to be or acting in anyway like an employee!).

The option I am left with is to either accept a 14.3% cut in fees to accommodate the Employer National Insurance and Apprentice Levy, or to take the same rate as present and move to an umbrella arrangement for them to deduct the same 14.3%. Either way, the impact of paying Employer National Insurance in addition to the restructured tax arrangements is more than significant both immediately and moving forwards. I fear that the market has reacted by a fear of HMRC, risk adverse and therefore moving all potential engagements to within scope of the rules thus destroying future engagements and profitability. A potential future client has banned PSCs and I understand that my previous three clients have also backed away and either banned or restricted.

I am fully supportive of ensuring that the correct and fair tax is paid by all, however the current proposals are ill thought and are having the impact on those that have no comparison at all with a permanent employee – the flexible workforce is flexible (and paid higher than a permanent employee) for several reasons, nothing to do with taxation. It is the flexibility, the challenge and enjoyment of fulfilling a short-term transition for a client and being in business for one's own account. However, with these rules, people like me are being pushed towards employment which is exactly what we do not want.

Furthermore, a new class of employee is being created whereby no employment rights or benefits are in play, but still taxed the same (or more now with the employer NI).

This is the largest goal post movement possible – setting up a business and running one's own consultancy takes time, patience, planning, capital etc – it is a life decision, a plan is made financially for one's family etc. however now faced with stark decision, continue with less turnover and less potential clients or turn to the permanent career path I left 8 years ago and rebuild at much lower levels of income.

On a personal level this moving of the goal posts will mean a higher tax payment (employer NI largely) however the economic offset of this is that we must cut our family expenditure considerably, our children's places in a private school are under threat regrettably (knock on potential cost back to the state as a consequence) and our longer term financial plan has been ripped up. This

is compounded by the knowledge that these rules should not be applying to me (or restricting my client's from using my services).

The flexible and entrepreneurial small businesses have been placed in a corner and the supply of clients cut off in one fell swoop. I urge for all that can be down to minimize the impact of these changes, ideally delaying and holding an independent review in order to fix the problem and not place a sticking plaster over the wrong part of the cut. There must be a fairer and better thought out solution to the problem of taxing the flexible and self-employed.

Determining tax status of workers

6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?

    - Reality is blurred because the organisation/client is not paying attention to individual contractual arrangements and not understanding all of the arrangements a self-employed person has in place in order to fulfil the services. Instead, due to wanting to minimize risk, the organizations/clients are clearly taking every measure possible to ensure in scope responses are returned, which is not difficult given the wording of some of the CEST questions.
    - The test does not result in a true and accurate picture of the contracting environment

7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?

    - The CEST tool does not take account of Mutuality of Obligation, a key determinant
    - The substitution question wording is skewed to result in the answer the HMRC is looking for i.e. just because someone has not used a substitute does not mean they cannot or will not
    - It is less about the CEST wording but more about how organizations will look at the questions and the outcomes in a different light due to the fear and confusion from getting it wrong / wanting to arrive at in scope determinations to reduce risk

8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?

- Completely ineffective. In my example, I should be out of scope based upon the answers I have entered into CEST, however my client has entered answers which result in scope. I have appealed, however not sure that will have much chance in a David v Goliath scenario. What recourse is there should it be found that the decision was wrong, the employer NI will be a huge problem to recoup (especially when PSCs will not be paying it but will have had their rates slashed for it to be paid by the client/fee-paye?

- The challenge process must be independent and not by the client/organisation who is wanting to minimize risk and hence place everyone in scope of the rules
-

Policy objectives and wider context

9. Are there better or simpler ways in which the objective of the new rules might be achieved? If so, what are they?

- Yes, the rules need to protect/exclude genuinely self-employed firstly by ensuring they remain out of scope and secondly by not destroying the marketplace in which the self-employed operate
- There are two questions which cut through so much to me (1) do you receive any employee benefits ie: pension, holiday pay, sick pay, life insurance, health insurance? And (2) do you need to provide indemnification/professional insurances in conducting the work? No to (1) and Yes to (2), is a very straight forward determinant.

10. What is your view of the role of umbrella companies in the context of these proposals?

- It concerns me that people are being forced into umbrella arrangements, many of which appear uncompliant or of greater risk

11. How do the new measures relate to the wider context of changes in working arrangements, including the "gig economy"? Is it fair that some individuals are taxed as if they are employees, but do not have the rights of employees?

- No, this is creating a new type of employee, one without any rights

- Personally, I am being forced to lower my fees to cover the cost of the employer NI on top of the rearranged tax arrangements resulting in a crushing blow to the company I have created and the plans I had for the future of the business and for my family. In essence being now being forced to be an employee but without any benefits or rights, and when I have no wish to be an employee, I am self-employed for a reason and for the niche services I provide to my clients
- It is fair to tax those who act like permanent employees the same as those who are, however, there needs to be balance and benefits should then be mirrored.

Thank you for your time looking into this very complex but important matter.

24 February 2020

Anonymous

1. I am writing in response to the call for evidence into the changes to Off Payroll Working, expected to be implemented from 6th April 2020, in the capacity as a limited company IT contractor, specialising in Financial Services and Technology, to provide insight on the effects it is having on me as an individual, my business and the potential impact on the wider economy.

2. I am one of many people who will be out of work from 28th February due to a blanket ban on limited company contractors. This is a direct consequence of the roll out of Off Payroll Legislation.

3. Circa two thirds of my previous clients have decided not to engage with individual, role-based assessments to determine whether contracts should be deemed as employed for tax purposes or not and have implement a blanket ban on limited company contractors and it is hard to blame them for this action, given that HMRC has an appalling record of winning IR35 tax tribunals, which suggests that the law:

1. Is far too complex to adequately asses; if HMRC can't win cases based on tax law, how can you expect a HR Manager, with no detailed knowledge of IR35 case law to be able to come to a legally robust conclusion they can be confident in?
2. Poses an unacceptable risk that HMRC will start a spurious investigation and pursuing it with a low likelihood of non-compliance being proved; but still costing £1000s to defend the case. Why would you take the risk if you have more than a few contractors providing services to your business? The more contractors you use, the higher the risk of bankruptcy if you get it wrong.
3. Is not properly represented within HMRC's CEST tool, which is missing crucial decision logic around Mutuality of Obligation; how can you trust a

status determination, which misses an area of law, which has been fundamental in determining the outcome of previous legal hearings?

4. In response to being forced out of work with my current client, despite not completing the project work I was engaged to carry out, I have had to consider my next steps. The table below shows the estimated expected impact on my UK tax contributions, over a 12 month period, based on these options:

5. Table of options

	Options (listed most preferable to least)	**UK Taxes Due**	**Estimated Tax Due**	**Impact on UK Tax Take**
1	Continue as-is **(incredibly unlikely given the current state of the market, due to blanket bans)**	Corporation Tax VAT* PAYE	£48,720	N/A

		Dividend Tax		
2	Wait things out for up to a year, using reserve cash in the hope of being able to secure an outside IR35 contract	PAYE Dividend Tax	-£506	-£49,226
3	Seek opportunities abroad	N/A	£0	-£48,720
4	Take a permanent job; highest anticipated salary of £60,000	PAYE	£16,665	-£32,055
5	Take a permanent job; lowest anticipated salary of £40,000	PAYE	£8,928	-£39,792

*VAT not reclaimable by the majority of my clients.

6. HMRC will receive less tax in all scenarios, which involve me no longer operating via a limited company and the best case scenario, in terms of tax paid, is via permanent employment, using my skillset, which will lead to HMRC receiving a larger slice of a much smaller pie, as permanent employees command much lower salaries than the fees limited companies charge for services.

7. In addition to the above, if my business is to be liquidated it will not be contributing to the economy by paying for the following services:

1. Accountancy & Banking (c £1000 p/a)
2. Insurances (c £300 p/a)
3. Software and Communications (c £500 p/a)
4. Continued Professional Development (c £200 p/a)

This may not seem a lot as an individual business but it will soon add up if contractors decide not to continue in business and close their companies down.

8. I believe that HMRC are fundamentally incorrect in their assumption that all contractors, who have been engaging clients via their limited companies will switch to engagement via PAYE or Umbrella companies for the following key reasons:

1. All the negatives of self-employment are present but without any of the benefits of being employed directly such as pension provision, sick pay, paid holiday, continual professional development (courses / books / qualifications) etc.
2. Opposition to the creation of a new class of employee, with all of the tax liabilities but not of the employment rights

3. Inability to claim travel expenses to visit client's site(s) as it would reduce the profitability of the work; this will undoubtedly reduce the flexibility of the workforce as contractors will no longer take on contracts, which require overnight stays or very long commutes
4. Numerous horror stories about umbrella companies, such as them forcing the employer's tax liability onto the contractor, not passing on tax to HMRC, keeping holiday pay, rather than passing it on to the contractor and hidden / unclear charging structures meaning it is hard for contractors to plan financially
5. HMRCs absolute lack of integrity, leading contractors to believe that if they were to ever work inside IR35, HMRC would use this as a stick to beat the with and claim that ALL work historically carried out on a contract basis, should have been caught by IR35. The fact that they consistently ignore judgements against them based on a lack of Mutuality of Obligation, suggests that they do not feel constrained by legal precedent. If that is the case how can anybody trust them to act fairly and lawfully?
6. HMRC have not done any robust behavioural modelling on the expected outcome of this change in law; the OBR has assessed the uncertainty as very high

9. I personally will only consider positions within IR35, on a short term basis, if I am desperate and have no other option to make the money required to pay my mortgage / bills. I do not view operating in this way as a long term solution and would seek to escape it as soon as possible, if forced down this route.

10. From a personal perspective the implementation of off-payroll working rules has had a very negative impact on my life. I am having trouble sleeping due to the stress of not knowing whether my business will survive and / or whether I will need to look abroad for work. Further to this, I am at the point where I feel that I need to make the decision on whether or not to have children, which I don't feel able to do until I know whether I'll be able to secure steady work.

11. I would like to make it absolutely clear that I have no objection to paying a fair amount of tax or even more tax than I do at present but I do not believe that the draft legislation will lead to an increased tax take from contractors, as many will not take an inside IR35 role and will be forced into permanent employment or will look for contracts abroad. For those that are forced into an inside IR35 role, it certainly will not increase fairness as they effectively become an employee for tax purposes but won't receive the employee benefits and will be looking over their shoulder worrying that HMRC will target them for work done previously, which was genuinely outside IR35.

12. Some suggestions to improve the situation, which could be explored, in relation to the law on IR35:

1. Retain the liability for payment of back taxes with the limited company supplier; the fact that HMRC win so few IR35 cases suggests that existing rates of compliance were already high and it is much less likely

to lead to blanket assessment and / or blanket banning of wealth generating small businesses
2. Simplify the tax regime and bring income tax and dividend payments more into line, to reduce the perceived benefits, of limited company contractors using dividends for remuneration
3. Merge Income Tax and National Insurance; there is no need to have 2 separate taxes at the point of collection
4. An independent body to create a version of CEST, which is not rigged by HMRC and includes elements of case law, which HMRC have ignored, such as Mutuality of Obligation; if such a tool is going to be relied upon it has to be accurate and seen to have integrity and not the current sham most contractors and engagers know it to be
5. An independent body to regulate the conduct of HMRC, to ensure that all tax payers, be they employed or self-employed are treated fairly in respect to both taxation and benefits; it is unfair to create a sub-class of worker who is employed for tax purposes, but has no employment rights and it is telling that HMRC are still claiming that there is no blanket banning of the self-employed occurring despite a wealth of evidence that it is

13. I hope that this submission will prove to be insightful. Please feel free to contact me if you require any further information or clarity on an existing point.

17 February 2020

Anonymous

My submission relates to:

Impact of the new rules on organisations

- Has the impact of the extension of the rules to the private sector been adequately assessed?

I'm an IT contractor in the finance sector. Or at least I was.

My most recent client - one of the big 5 banks - have recently released all of their contractors working in the Wealth subdivision including me[3]. Having made enquiries about alternative opportunities it is becoming increasingly clear that contracts laying outside of IR35, as it will be from April, are virtually non-existent[4]. Instead, contractors are being offered permanent roles, typically for 50% of the money that they will have been receiving for the same work in the past and that's before the additional tax implications of working within IR35 are considered[5]. To compound this further the roles are specific to a

[3] See HSBC HR for further details
[4] From discussion with a number of recruitment consultants, most recently Jack Waller of Venquis. Please contact him for further details.
[5] Again, Jack will be able to provide further information.

programme of work and when that programme ends the role will be made redundant and the worker released.

It’s proving prohibitively difficult to find work and whilst I’ve been self-employed for 25 years I am now having to consider moving away from my line of work and to something else, although I know not what at this time.

To say that the effects of the new IR35 legislation are catastrophic may actually be an understatement.

We need your help,

Anonymous

Freelancing is not temping.

I've met many people who think that freelancing is just a way to get some experience and cash while you are looking for a real job.

We freelancers disagree.

We're happy running our one-person businesses. We pride ourselves on providing a quality service at a good rate every day we face our clients. Clients, not employers.

We aren't freelancing because it pays more. If you go down the typical career path you'll earn more for the same ability than a freelancer will.

Yes we'll have more time off. But we'll spend that downtime looking for gigs or training ourselves. You're not saving us.

We aren't being exploited in no-benefits quasi-employment contracts. We aren't the builders labourers or NHS subcontractors whom it seems this legislation was originally designed to 'get'.

We don't need to be corralled into exploitation by umbrella companies or as zero hours temps.

We are genuine one-person companies who collectively add enormous value to the UK economy. And who are flexible and able to move to Amsterdam or Dublin if we have to.

IR35 is a dull sledgehammer, blindly swung. It will damage the creative industry, which is a great contributor to your receipts.

The UK Creative Industry is admired worldwide, Please reconsider this Finance Bill, & don't remove the jewels from your crown.

25 February 2020

Anonymous

Q1) What has been the experience of the new off-payroll rules in the public sector?
I recently started on my first public sector project. The role was only available if I worked through one a short list of umbrella companies. The rate is already lower than normal and to reduce the large tax burden I am making big pension contributions so HMRC are getting less tax than if I was able to work through a limited company.

After a month of being in the new role I used the CEST tool which showed that I was Outside IR35. That does me no good as the role is only available if I agree to work via an umbrella. Thus my expenses come out of my taxed income. As a result I expect this to be a short term gap filling role.
Q4) What will be the effect of these new measures on a chain of contractors and subcontractors?
For my previous role the end client had a blanket ban on contractors.
I have seen several other roles that I have enquired about and each has been deemed as inside IR35 though none was able to provide details of why, who or how that status determination had been made. Once again unless I agreed to work via an umbrella I would not be considered for the role.
The umbrella then takes all the employers tax and NI from the daily rate I am paid which I thought was against the rules but appears common practice.
Q7) What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
CEST is not fit for purpose. I have for many years had my contracts reviewed for IR35 status by a professional group of tax status advisers.
On occasion I have entered details into CEST and it is often unable to make a determination.
Q8) How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
The problem is that new roles are not being offered outside IR35 and if you don’t agree to work via an umbrella and inside IR35 you won’t have a role to challenge the status of.
Challenging the status would be too risky as the roles have short notice periods and I fear that I would just be given notice if I challenged IR35 status.

Q12) How do the new measures relate to the wider context of changes in working arrangements, including the “gig economy”? Is it fair that

some individuals are taxed as if they are employees, but do not have the rights of employees?

Workers need their rights protecting, especially in the gig economy, but many contractors are not on zero hours contracts. Instead they are brought into an organisation because they have specific skills that are required for a project or short term.

Treating contractors as employees by putting them inside IR35 means they pay employers taxes as well as their own whilst not being able to claim any expenses even though work is often more than a commute away and requires accommodation. The contractor gets none of the employment benefits.

The net result is that the workforce will only be able to work close to home where expenses are few; they won't be flexible. Rates are not being adjusted to compensate to the contractor will earn less and pay less tax.

Ultimately the number of flexible workers may fall as older ones retire, others move abroad and those left choose permanent employment so that they have some rights.

Anonymous

SUMMARY:

- The proposed off-payroll legislation has already had a huge impact upon my ltd company, Relo Consulting Ltd. After months of searching for new clients we are faced with not having any clients from the beginning of April 2020
- The proposals are not impacting my family as I don't have any income as from 1/4/2020 and if we can't find another client, we will have to look at deferring payments on bills. After only a couple of months if we can't get support unfortunately, I will need to consider selling my house
- We applied for over 500 contracts since October 2019 but none of these have progressed into a contract with a new client. I have also applied for permanent positions but have been told by agencies and end recruitment teams that companies wont employ me out of fear that I will leave if the contracting market was too miraculously pick up
- I have sought help from Shout who are a mental health crisis support team. Since around November 2019 I have suffered from depression and anxiety due to the fear of not being able to provide for my family and to also grow the business that I set up. I am now in a position following the support from Shout to say that I have suffered from thoughts of suicide because I felt that my inability to provide for my family is something that I would not be able to come back from. Thankfully Shout have supported me and whilst I am now longer as fearful as I was, I am still feeling extremely anxious about having no income from 1/4/2020 onwards
- We did not predict that the off-payroll legislation into the private sector would be so catastrophic on the contracting industry. Contracts have dried up, work is being moved abroad, large consultancies are now advising clients on status determinations but are also bringing in their own teams when contractors are leaving, and what is left is a host of

inside IR35 contracts that in our case would reduce our existing income by a further 30%-40%. Employers NI is also being taken out of existing contract rates as most clients have rate cards that they try to stick too and they are not prepared to take on any increase in rate to cover the additional taxes that may need too be paid due to unfair assessments along with the NI that they are actually responsible for

ANSWERS TO SPECIFIC QUESTIONS:

Existing measures in the public sector:

1. Whilst we have never undertaken a contract in the public sector, we have found it very difficult to secure a contract following off-payroll introductions to many factors including a lot of contracts now wanting prior public sector expertise. Given what we know about the public sector implementation we don't believe any lessons have been learnt. The CEST tool whilst having some updates is still unreliable, the blanket ban approach has happened in the private sector with clients in this sector now disengaging PSC's due to a fear of investigation by the HMRC for incorrect status determinations

Impact of new off-payroll rules on organisations:

2. We don't believe so. The impact is huge and whilst it impacts PSC's like us it also includes all of our suppliers, i.e. accountants, web designers, printers etc along with the pension companies, the hotel chains etc that we use when working for clients who are not local. The impact is far and wide from IT consultants, to oil rig workers, to local pharmacists. All of these are now impacted by the approaches taken by the majority of private sector clients. We don't believe the right balance has been struck in the compliance burden on the taxpayer and HMRC. The evidence particularly over the last 6 months shows this
3. We haven't reviewed the exclusion of small organisations as our clients are medium to large organisations
4. The effect of these measures is catastrophic. Less clients who will engage with contractors, roles now deemed inside IR35 yet contracts and working practices are clearly outside IR35. Blanket bans, no PSC's and forcing consultants to either leave, take permanent positions or move into Umbrella scheme (Some of which are non-compliant). This is a major blow to the flexible workforce in the UK and isn't just impacted the PSC's ability to operate but it is also impacting the mental health of the owners of PSC's.
5. Either delay the implementation and work with PSC's and business to get it right. Put the right tools in place so that businesses can do a fair

assessment and are not scared of getting it wrong. Make the legislation clear but given that it isn't even out yet I think this is concerning. The better idea would be to scrap the legislation completely and look at other alternatives to recoup what HMRC believe to be gaps in employers NI.

Determining tax status of workers:

6. They are not clear at all. The fact that CEST tool doesn't even stand up in case law is very worrying, this is one of the reasons why blanket bans are happening because businesses are worried about getting it wrong. One of the pitfalls of this is work in the UK is now being offshored via large consultancies that PSC's/consultants just can't take on.
7. We believe some useful improvements have been made to the CEST tool but fundamentally it is still flawed because 1) it doesn't stand up in case law and 2) even HMRC are getting it wrong when they have used the output of the CEST tool in court. The tool should focus on the contract that the consultant has agreed with the supply chain whether that be the end client, an agent. If the agent who represent the end client are providing a contract, they should ensure that the end client has approved it. How can a consultant be held responsible for a contract that they have agreed with the representative of the client?
8. Not effective at all. The legislation hasn't been published yet, so clients are extremely nervous. We have had a client assess a contract as inside IR35 and they discounted the contract we had agreed with their preferred agency, off their PSL! They said they reviewed the Master Services Agreement (MSA) between themselves and their agency yet when we asked to see the MSA the agency said that it was unavailable to us due to the commercial and confidential information contained. So if the clients supply chain has got it wrong, how can the consultant be held responsible for something that they have no control over, The appeal process is also flawed because whilst the client has provided an opportunity for the appeal, the decision will not change, We believe this is out of fear of them being investigated by HMRC in the future because again, the legislation hasn't been published and the determination of an employee is unclear to them. How can David take on Goliath with the resources that Goliath has?

Policy objectives and wider context:

9. We believe so. There are many options that have been presented to the HMRC in the past by representatives such as IPSE etc. One option would be some sort of engagement tax that the client pays or more interesting would be a clear definition of an employee vs non-employee and something that would stand up in court. Zero rights employees which this legislation is causing will take our economy down a path that we don't believe will benefit anyone. The talent that we try to nurture and grow as a country, and the entrepreneurial mindset will move to other

countries and HMRC will lose all of the taxes associated with those individuals.

10. We don't believe so. For example, if we look at the taxes/vat etc that we paid in the last Financial Year if we compared that to what our consultant would earn in a permanent position the payments to HMRC from PAYE, NI, Employers NI would be significantly less than corporation tax, personal tax, VAT etc that we pay. So whilst certain HMRC budget pots may increase, others will reduce more dramatically than those that have increased
11. Being forced to use an umbrella instead of trying to build a company to support our economy, especially in the digital age, Brexit period is something that we cannot comprehend. Umbrella companies, not down to their fault are now reaping the rewards of hard work put in by consultants and it feels that due to decisions made by clients, especially big corporations such as Barclays, HSBC etc that are doing blanket bans, consultants don't have many other options. The outside IR35 offerings going forward are very very slim compared to 12/24 months ago. There are also some umbrella companies who are offering consultants higher percentages and unfortunately certain consultants may have to take this path just to feed their families, pay their mortgages etc. This path feels very much like another loan charge situation.
12. We believe that if an individual is deemed to be an employee that they should receive the same benefits as a permanent member of staff if they are to pay the same taxes. Consultants take on the risk of no clients, sickness, holidays, pensions etc when working independently yet this legislation is forcing end clients to categorise the majority of contracts as Inside IR35. PSC's like ourselves may have to take these positions just to support our families yet we have zero rights, zero benefits (a cup of coffee from staff canteen surely can't be deemed as the same employee benefit as 6 months paid sick leave). We know of other consultants who have been out of work now for 12 months and unfortunately this is becoming more and more of a recurring situation for many of us in that work isn't available

Thank your for reading our written evidence.

24 February 2020

Anonymous

My Background

Line of Business – 2 Lines of Business

1. Enterprise Architecture Services
2. Training Services focussed on architecture & Agile Implementation

Nature of Contracts - Fixed Price, Outcome based contracts (fees are dependent on success of projects or specific measurable improvement metrics) and Time & Material.
I have multiple contracts running at same time or have overlaps between contracts.
Current contract is a time and material with a leading retail company in UK.

Summary of Evidence provided below

I agree with the law for freelancers or contractors who are disguised employees, but the law is inadvertently hurting freelancers like myself who work on multiple contracts and prefer risk / milestone-based work and want to continue to be entrepreneurs.
Current Tax status determination process is flawed as it does not recognize there are Freelancers like me who work on multiple contracts and prefer outcome-based contracts (fixed price or outcome based on specific measurable outcomes) and are willing to work on a risk reward or milestone based models.
Clients often prefer Time & Material contracts instead of accepting fixed price or outcome-based contracts and therefore freelancers cannot be penalised for actions companies make. In my case my company is rejecting my proposal to outcome base price my work packet of architecture services instead would like to continue time and material basis, despite my best efforts and I should not be penalised for a choice the end client makes.
I do have an agreed scope, clear client responsibilities in my contract and deliverable but the mechanism of payments the client would like to keep it as time and material.
The CEST tool and the determination process is filled by the client should be mutually decided instead of client alone deciding without providing contractor a basis for determination and also not providing the contractor a chance to provide evidence of work practises (in my case it's my other fixed price contracts, on the ground independence to determine how I plan and execute my work and ability to substitute resources).
In case of an Undecided Status, the CEST tool does not enforce collection of evidence to ensure a correct determination is done, which is again illegal. Both parties should be allowed to provide evidence of working practise.
The challenge process for Determination is the weakest area of the legislation, as it does not lay out the process of providing evidence to challenge the end client determination and for the freelancer to provide evidence to support his position and get an equitable stand in the decision.
The off-pay roll working rules also does not prevent companies from outright decisions (most banks, insurance companies, telco and retailers) have done, of not taking up determination test and instead coming up with No Contractor policies. Blanket rule is arbitrary and does not allow true freelancers (who take risk, run their business independently) to serve the industry if there are no companies willing to take services from free lancers outside IR35.

What is Required

1. CEST tool should be included to cover Freelancers and their working models and cover if the client has been offered Fixed Price / Risk reward contracts, and the client choose not to accept, that should not be scored against the freelancer.

2. CEST tool should include evidence of working practises for last 2 years for the contractor to take an overall view of the number of contracts and their variations (Time and Material, Fixed Price or Outcome based) rather than the current contract alone?
3. Blanket No Contractor rule, should be made illegal? A company must do an assessment if the contractor asks for the same, and furnishes proofs of being independent as a business and its relationship with the client and other clients?

I am providing evidence on specific clauses.
Determining tax status of workers
6. Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker? Do they reflect the reality of the contracting environment?
Prantik – No, the process is unclear, and many end clients have chosen to ignore determination, or have decided to fill determination without the correct facts / or consulting the contractor or their inputs and that is incorrect and actually illegal as it's a point of view of one party only.
In case CEST tool comes out Undecided. Contractor or Free lancers should be allowed to furnish proofs to resolve determination.
7. What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved?
Prantik – Tool does not include if the End Client has rejected offer for fixed pricing or risk share contracts or work practises Contractor would like to implement.
Tool does not include if the offer of a substitute is rejected by the client.
Tool should ideally first be filled by the contractor & freelancer and then the end client should cross check and dispute any of the facts which are not correct, for the disputed items proofs should be allowed to be considered to resolve the overall determination which would be acceptable and binding on both parties.
8. How effective will the status determination process be in resolving issues of employment status? Are there adequate safeguards, allowing decisions to be challenged? If not, what more is needed?
Prantik – This is the weakest area. Current process does not enforce a determination, does not enforce the client share the determination with the freelancer and the challenge process is 45 days, which is very difficult to sustain for Freelancers (who are tight on cash flow cycles). The process for challenge has not been explained, so there is no fair way of establishing or challenging an incorrect determination.
What you need is a clear workflow which considers inputs from both freelancer(contractor) and End Client and an evidence-based determination can be made.

Anonymous

Existing measures in the public sector

A1. I haven't yet had the privilege of working with the Public Sector – however my understanding is that this has not been easy for them. The recent case of NHS Digital is a good example of how easy it is to get it wrong in HMRC's eyes, even when using CEST.

Impact of new off-payroll rules on organisations

A2. I think they have completely failed to predict the behavioural changes currently being exhibited by the Private sector e.g. avoiding the need to carry out significant numbers of quite specialised status assessments, by simply stopping engaging "PSC" Contractors in favour of umbrella, FTC, or client payroll – to avoid the administrative burden, but also in fear of investigation, and retrospective action by HMRC. It was profoundly naive in my view to imagine that the Private sector rollout would in any way resemble the Public one, when the Private sector have completely different objectives and controls. I also don't think they have fully assessed the impact this will have to the wider economy. There is a knock-on effect for accountancy and insurance practices, amongst other professional services. A reduction in those willing to travel if they can no longer offset their expenses, not only impacts Clients trying to attract expertise to where it is needed but will also affect travel and hospitality. There will also logically be less disposable income flowing back into the economy, impacting retail, trades etc.

A3. No response.

A4. No response.

A5. The Private sector have already simplified things, by just not engaging "PSC"s. I'm not sure there is an easier way, other than perhaps to outsource the admin to specialist third-parties.

However, I'm not confident HMRC would be best placed to help *anyone* understand this legislation – for example, encouraging Clients to carry out blanket role-based assessments without considering the individual circumstances, fails to show reasonable care; steering them to use CEST and then challenging the results when they don't like the outcome more-or-less guarantees a risk-averse "inside IR35" approach from the Client; and judging by their recent losses at tax tribunals, they don't really understand issues like Mutuality Of Obligation (which is one of the key tests - they have their own interpretation, but it's incorrect as far as I can see).

Determining tax status of workers

A6. I think the current tests are subjective and unclear, and out of date. For example:

Mutuality Of Obligation – HMRC assumes this exists because a contract exists, and so don't even consider it in CEST – but as I understand the regulations, this is a misinterpretation, and so CEST outcomes are inherently biased in HMRCs favour.

Supervision, Direction, Control – in my view, modern practices like flexible / remote working blur the lines, and a good SME Employee will usually call the shots over what needs done and how, with nominal supervision, devaluing SDC as a way to distinguish Employee from Contractor.

Personal Service – One of the key reasons to engage a Contractor is for their specific knowledge and experience, which makes it hard to justify using this or substitution as a key test.

The most telling point for me about this process is that it takes a "judgment call" (sometimes literally, at a tribunal) to determine employment (therefore tax) status – and that becomes a major issue when your judgement differs from HMRC's (again, see NHS Digital). Also, in my view it doesn't help that there is no such thing as a "PSC" in law – perhaps we need this in order to more clearly define who/what the reforms apply to, and a more structured points system that does away with nuances and subjectivity.

A7. As I understand it, CEST does not align properly with case law, but more importantly omits Mutuality Of Obligation (which is one of the three key tests). So that to me suggests either poor design, or wilful negligence by HMRC in its implementation. Both versions.

A8. Because of the blanket "PSC" ban being introduced by many clients, I can't comment on how effective the SDS process is, no evidence to go on in my sector. However, allowing the Client to control both the assessment *and* the appeal processes surely can't be good.

Policy objectives and wider context

A9. Perhaps – if it's "Employee" vs "Contractor", I think the income tax differential was mostly addressed by previous changes to dividend tax, but that could perhaps stand further adjustment, leaving Employer's NI to deal with. But if you accept that although a Contractor might not pay 14% Employer's NI, but *does* return upwards of 16% VAT *on top of* their turnover, then you have to start to question if anyone sat and thought this through, or were they just obsessing over what the Contractor *doesn't* pay, rather than what they *actually pay overall*. People try to equate Contractor turnover with Employee salary, to show that a Contractor pays less tax on paper - but this is nonsense, it's apples and oranges. If you actually equate a Contractor's *role* or *skillset* with an "equivalent" Employee (if one exists), you'd see that they'd command a lower salary, but with Employee benefits like pension, sick pay etc that a Contractor has to cover for themselves (along with many other overheads) – and a simple case study would probably show there's actually very little difference in relative terms – yes, the Contractor commands a premium for various reasons – *but they pay a fair percentage in overall tax*.

A10. I can't see how, looking at the current situation. When people realise, they are taking home the same or in some cases now less than an "equivalent" Employee, they will consider either packing it in, moving abroad, or going back to permanent employment. Also, we are already starting to see work being offshored due to this fiasco, which makes zero tax for the treasury.

A11. I see them as an unnecessary layer – but if they have to exist, they should be carefully regulated, so that the same organisations that got away with perpetrating the Loan Charge debacle (including HMRC, by their failure to act) aren't allowed to do the same here.

A11. In my view, employment status needs to be clearly defined, which then guarantees specific rights, and in turn defines someone's taxation regime. An "inside IR35" determination simply leads to Employee taxation without Employee rights, for those taking significant financial risk, at a time when the UK needs a flexible workforce more than ever

20 February 2020

Anonymous

Thank you for our requesting evidence[6] relating to the upcoming Finance Bill off-payroll working rules changes applicable to the private sector mid and large businesses.

The current situation: the basis for my evidence

A single client contract for a large multi-year project in the IT services sector. The immediate fee-payer is a consulting firm who contract with my PSC to supply services to a single client of theirs on a project named in the Agreement.

I consider the end-client, that which has the project, to be the client for status determination purposes however the fee-payer consulting firm dispute that and insist they are the client.

The fee-payer will not engage on PSC services contracts out of principle and, as such, has unilaterally determined all PSC suppliers to be within IR35 rules. Offering instead:

i) Become a permanent employee at much less favourable rates

ii) Contract through an umbrella intermediary, offering a modest increase in daily contract value to 'help pay' for the increased Employer's tax liability

iii) Termination

Impact of new off-payroll rules on organisations Q2.

Impact to individuals:

[6] https://www.parliament.uk/business/committees/committees-a-z/lords-select/economic-affairs-finance-bill-sub-committee/news- parliament-2019/call-for-evidence2019/

i. The engager is passing on their Employer's NIC and Apprenticeship Levy liability to me, resulting in a net reduction in gross contract value. I read that this practice is prevalent, despite the draft legislation guiding against.

ii. The impact assessment does fail to record the time and well-being costs to the Directors and employees of PSCs in discussing, evidencing, disputing any current client determinations and, more so, the costs of acquiring new client(s). HMRC are passing their cost of compliance to the taxpayer.

iii. It is unimaginable that so many PSC companies were previously non-complaint. The impact to compliant individuals and PSCs is significant - contrary to HMRC's summary of impact on individuals[7]

Impact to business:

iv. If the labour supply of contract workers diminishes, what effect will this have on the many organisational short- term projects which benefit from the flexibility of staffing from this resource pool – with often very highly skilled specialist workers. Will it prevent businesses from investing in capital projects, thereby reducing their competitiveness which in turn could contract the economy? The very many projects in the Financial Services sector, which has now shed its contract working labour, cannot continue without risk and most certainly were not frivolous projects which could be readily halted. An impact not foreseen by HMRC in the summary in the Policy paper.

Determining tax status of workers

Q6.

v. Patently not. Evidence by IPSE and offpayroll.org concludes that many organisations are blanket banning the use of PSC companies in their resources. I fail to believe that, as HMRC point out in the Policy paper, only those who are currently non-compliant with existing rules are affected. This misinterpretation of the draft legislation has led to risk-averse behaviour by clients, resulting in blanket banning of the use of PSCs in their supply.

[7] "Those who are complying with the existing rules should feel little impact.". https://www.gov.uk/government/publications/rules-for-off- payroll-working-from-april-2020/rules-for-off-payroll-working-from-april-2020#who-is-likely-to-be-affected accessed 10/2/2020

Q7.

vi. The CEST itself seems largely reasonable, if not subjective in many questions. In my own client case, the fee- payer (who refuses to ask the end client because they have been advised it is their own liability, not that of the end client) rated several heavily weighted questions negatively, which resulted in a determination that off- payroll rules do apply. I ran through my own assessment using the same tool and found off-payroll rules do not apply.

vii. That itself suggests that the criteria are subjective. A risk-averse uninformed fee-payer answering the questions with bias, to falsely justify their own pre-conceived view. Not acting with reasonable care (ESM10014).

viii. It can be improved by HMRC making it known that it stands behind CEST determinations, provided the test has been applied accurately and with integrity; removing the chance for fee-payers to obdurately dispute the PSC own determination

Q8.

ix. Ineffective. I needed to press my fee-payer for a formal status determination statement (SDS). Even so, there is no rationale – simply the decision. When I sought to dispute the decision, there is no recourse and no rationale. When I sought to question further, the fee-payer attempted to influence me by threatening to withdraw the two offers of permanent employment or contract agreement through umbrella company. Evidently there is insufficient clarity to employers or fee-payers of their responsibility to act with reasonable care in this process. The threat of getting it wrong (and being found to be so by HMRC) is overshadowing their judgement.

x. Instead, perhaps there should be a tribunal process where PSCs can put their case and seek an independent arbitration. The possibility of this may reduce any bias currently being shown by some engaging companies.

Policy objectives and wider context

Q9.

xi. A new tax scheme specifically for the small business. The combination of Corporation Tax, Value Added Tax, Employer's NIC and Apprenticeship Levy doesn't work for HMRC nor does it for the small business.

xii. Another better way might be to make Accountants, those paid by the vast majority of PSCs to prepare their tax calculations each year, liable for auditing the off-payroll status, taking evidence from both the fee-

payer and the PSC to make their determination. Professional objectivity may be better applied then.

Q10.

xiii. The objective is seemingly not, as stated, to increase compliance with off-payroll working rules[3]. The objective seems to be to raise more tax and National Insurance contributions by increasing risk to the engaging fee- payer. As it is being applied by engaging organisations now, HMRC are unlikely to achieve the objective as many former PSC workers will take permanent employment positions at lower salaries. This, I suspect, has not been factored into the forecast.

xiv. I do query if HMRC has factored in the reduction in business taxes, when forecasting such increases in tax revenue through the off-payroll working rule changes.

Q11.

xv. One umbrella company is offering me employment, against my own secured client contract for which I have taken the cost of acquisition, sales and client servicing, but with minimal benefits of statutory sick pay and nominal holiday pay (deducted from the gross contract value paid by my client). Umbrella companies stand to gain hugely from this draft legislation change.

Q12.

xvi. With a growing number of the working population operating in small entrepreneurial ways, stimulating the economy and innovating, it should be coveted and supported by Government legislation – not stifled.

xvii. As an employee of my client, I would be entitled to 5 weeks' paid holiday plus public holidays, full sick pay, 5% pension contribution, benefits package and approximately 70% of the gross income of a PAYE terms contract worker through an umbrella organisation. Employment rights safeguard against termination at a convenient time to the client/employer if their sales diminish.

xviii. Conversely, as a PAYE terms contract worker I face 14% deduction from the gross contract value for Employer taxes, against which personal taxes are then deducted. Yes I have 30% more gross income but I am not paid for time off holiday or sickness, I must make my own pension contribution out of net pay, no benefits, no employment rights and a fixed end date for this work – usually within 6 months with a notice period of

typically less than 1 month.

xix. This is not equitable. Taxing off-payroll workers like employees but without offering rights of employment is not conducive to stimulating an entrepreneurial economy. There must be some increased reward for the risk taken by independent and freelance workers.

Anonymous

Determining the tax status of workers (Items 6-8)

Paragraph	**Item 6.**
1 2	**Question – Are the tests for determining employment for the purposes of these rules sufficiently clear to both engager and worker?** It appears that the main test that companies are using to determine employment status is the HMRC 'CEST' tool. The tool is set up so you review the work/Contractor as if you are either The Client or the Contractor and there are questions which are not clear and could lead to an incorrect verdict. Example. Section 3 of CEST, regarding Substitutes and helpers **Question from CEST tool to Hirer-**Has the worker ever sent a substitute to do this work? **Input from the Hirer into CEST-** No It has not happened. The input appears to conclude that this will never happen? If you've only worked somewhere for 1 month it is more unlikely that it will have happened than if you had worked there for say 3 years. I started in November and I could have provided a substitute but the requirement never arose. This is covered in mine and most contractor's terms of contract. There are other items that require clarity like the above.
3 **4**	**Item 7.** **Question - What is your assessment of the CEST tool?** Like any software the tool depends on the accuracy of the input as well as the logic behind the coding within it. From the results of my case it is clear that: i) The hirer doesn't always know your personal circumstances and whether you have costs etc.

5	When I received my IR35 CEST output from my client, it had a number of input errors, which showed that the person inserting the data did not know what they were doing. The best way to stop this issue is for the contractor to check the input beforehand (NB. If you were a staff member you would be consulted on such a momentous decision and have HR present in the room!) ii) Mutuality of Obligation is not covered within the CEST questions. This is such a major item that it should be inserted to ensure that the tool is a valid method of assessment
6	**Item 8**. How effective will the process be? I received my IR35 determination on 18th February 2020. My client says they will respond within 45 days. But there's only about 34 days from the 18th until the 6th April and any new 'inside IR35' contracts will have to be decided upon before then. So although there appears to be a period for challenging the decision it is not realistic and many professionals who are legitimately outside IR35 will be determined to be within it! Again, the Contractor should sit down with the Hirer/Client to ensure that the Tool is completed correctly. This would be the main safeguard.

I cannot believe that this process has been carried out in such a slipshod manner. It is clear that (in my case) the CEST tool has been used inaccurately.
I have not been consulted in any way and am amazed that my client feels that they can input information into the CEST tool without any understanding of whether it is applicable to me or not.

Anonymous

1. I am writing to share my experience on the impact of the governments decision to push forward with changes to the off-payroll legislation. Since the former chancellors most recent budget announcing plans to move forward with the private sector implementation the number of contract roles available in the private sector are few and far between.

2. This is due to the risk associated with engaging PSC contractors by end clients. I am being forced into what I can only describe as a no rights employee arrangement. I am forced into a situation in which I must pay Income Tax and National Insurance as an employee without any of the other benefits of being an employee such as pension contributions, holidays, paternity leave etc. This is in direct contradiction to the Employment Rights Act 1996 and the governments fair working policies. If I am to be taxed as an employee, then surely, I should receive the same benefits as an employee?

3. ***What will be the effect of these new measures on a chain of contractors and subcontractors? (Q4)***
   As mentioned above, the effects of the changes so far are a noticeable downturn in contractor engagement. To expand on the points further blanket banning on the use of contractors by large organisations means the work is now being moved offshore. The flexible work force is being stifled at a time of economic uncertainty due to our country's decision to leave the European Union. There is a very real risk of creating a skill drain as the highly skilled individuals that work on delivering technical projects take their expertise to other countries with less aggressive taxation.

4. ***What is your assessment of the Check Employment Status for Tax (CEST) tool? Does it require improvement? If so, how might it be improved? (Q7)***
   In its current state HMRCs CEST tool is not fit for purpose. It does not consider key points such as Mutuality of Obligation and the right to provide substitutes. These are key indicators in determining someone's employment status at employment tribunals. HMRC have lost most cases taken to tribunal and wasted considerable amounts of taxpayer's money in the process. HMRC claim to stand by the CEST tool decision "when used correctly". However, this week they have fined the NHS over its "misuse" of the tool. Due to the ambiguity surrounding the use of CEST in making decisions, how can private businesses be sure HMRC will not fine them for "misusing" the tool.

5. ***Will the Bill, as drafted, achieve the Government's objectives? (Q10)***
   HMRC claim that by 2023 the new changes to the IR35 legislation will result in an increase of £1.23bn in tax revenue. I believe this number to be fanciful and speculative. If HMRC are wrong 80% of

the time when cases are taken to employment tribunal then it is logical to assume the real figure would be 20% of £1.23bn(£246m). HMRC have also not mentioned whether there would be losses to VAT, Corporation Tax and Dividends Tax income as more contractors are forced to wind up their limited companies what impact would these things have on the governments budgeting?

6. ***What is your view of the role of umbrella companies in the context of these proposals? (Q11)***
   Umbrella companies are now facilitating the No Rights Employee arrangements allowing businesses to avoid NI contributions and avoid employment rights as set out in the Employment Rights Act 1996. forcing individuals to pay Income Tax and National Insurance and seemingly demanding that the contractor pay the employers NI contributions too.

7. To summarise I do not believe the legislation in its current state is fair and adequate. I hope the sub-committee can see that HMRC need to address serious shortcomings in how the off-payroll rules are being applied and engage with businesses and contractors further. It feels like HMRC are being heavy handed in what is essentially an ill thought out cash grab at the expense of small businesses. I ask that the committee pause the roll out of the legislation into the private sector. I reiterate my most pressing concerns as a contractor that no one seems to be able to answer. **How can I be taxed as an employee and not receive employee benefits**?

24 February 2020

Anonymous

1. I used to work in the Public Sector (carrying out specialist Telecoms and Cyber Security works in the Rail Industry). In the run up to the legislation being brought in in April 2017, it was chaos with the various projects, with people tasked with trying to understand and implement the changes. Due to this uncertainty I decided to leave the Project I was providing services for. I don't believe many lessons have been learnt from this as from my own experience it seems that the exact same situation is currently happening in the Private Sector, causing loss of key personnel, loss of productivity and additional direct costs to the End Clients.
2. I don't believe it has. From personal experience with my client, I know the consultancy costs alone are into 6 figures (not accounting

for direct labour costs to the client). Therefore, multiply this by the amount of businesses this will affect, and it makes you wonder how the HMRC has arrived at a figure of ~18 million for full implementation for all Clients Nationwide.

3. Again, I can only speak from personal experience, but my main Client has carried out a Blanket Ban on PSCs so it is affecting small organisations as much, if not more than the larger Consultancy firms.
4. Contractors and Sub-Contractors are already being affected with myself and many of my peers I know having their Contracts terminated (without even the choice to go Permanent or via an Umbrella Company).
5. The easiest way to simplify would be to implement a PSC levy/tax on the end client. Therefore, that would make the whole process a lot simpler and straightforward for all parties involved. Alternatively, the CEST tool should be made unambiguous and legally admissible and binding in the case of an HMRC investigation. Another help would be to publish the final legislation sooner to allow people to fully digest the final details.
6. I have read many documentations (as well as the HMRC's guidance), attended many seminars and talks and I'm still unclear as to how IR35 should/does work.
7. I have completed a CEST assessment which came out as myself being outside IR35. However, this has no impact to my current situation.
8. For me personally with my main client I haven't been offered a SDS as all PSC's have been blanked banned.
9. I believe the easiest way to simplify would be to implement a PSC levy/tax on the end client. Most people in the Contracting Community understand the need to update the Tax Regime to cater for the changing environment but IR35 is not the mechanism for doing this.
10. I truly believe that if the Government objective is to receive more NIC's from 'employees' for Tax purposes then yes. However, if the Government object is to increase the amount of Net Revenue then I believe it will fail. Again, I can only use my own personal circumstances to back this up, but taking my circumstances, compare the amount of revenue the Government receives from my limited Company and what they would get on an equivalent staff job, you can see the net loss as follows:

11.

	Contract Rate (Based on a 12-month Contract @650/day (taking into account 5 weeks holiday)	Equivalent Permanent Role @55k/year
Gross	£152,750	£60,000 (figure based on what main client has offered for equivalent permanent role)
Deductions	19% Corporation Tax & 32.5% Dividends Tax = 45.3% Effective deductions	40% Income Tax – 2% Employees National Insurance = 42% effective Deductions
Actuals to the Treasury	£69,195.75	£25,200

As you can see from the above, the Treasury would make a loss in terms of Net Income of nearly £44k. The argument from the HMRC is that there will be additional income based on having the additional EIC if I was to stay in my current PSC role. However, that is not even an option for me at the moment with my main Client. The other thing to take into consideration is the lost flexibility/lost revenue around the current highly mobile Contractor workforce. If Contractors are not allowed to claim expenses for Hotel/Sustenance, it is going to be extremely difficult for projects in remote areas to retain the highly skilled workers they need, especially for the likes of large project such as Hinkley, and the Defence industries up in Barrow. This has been demonstrated previously with the difficulties TfL and Crossrail had retaining staff post 2017.

12. I worry that because Umbrella Companies don't appear to be regulated, there will be the Potential for another Loan Scandal as some Umbrella Companies look to be offering "take home" rates that are not feasible if the new taxes regime is being followed.
13. I find the mantra that is continuously repeated that the two people doing the same job should be paying the same amount of tax. I totally agree if the two people are getting the same rights and benefits (and not many people would disagree) but that is simply not the case. What is actually happening is:
    a. People being forced from PSC's to Umbrella companies are having to pay EIC's as well as Employee's IC's. I'm not aware of any Employee who has to do this

b. Employee's get far more benefits, such as Pension, training, sick pay, right to park in Staff Car Park, etc., etc.
c. Employees have rights in terms of termination, unfair dismissal etc.

As well as the monetary (both for myself and for the impact it will have on many other Businesses such as Accountants, Hotels, Restaurants etc.) and flexibility impact IR35 will have, my bigger concern is that the legislation is effectively opening the door to allow Employers to give no-rights Zero Hour contracts to a much larger part of the working population.