

E-Crunch Ltd – Written evidence (OPR0009)

Summary

1. The extension of the off-payroll working rules has undoubtedly made it more difficult to hire flexible labour which is suitably skilled. With many engagers now deciding not to offer any contracts outside IR35, or even evaluate an engagement for IR35 at all, thousands of freelancers and contractors have decided to close their limited companies and work under PAYE instead. The situation is crippling the ability of business to respond quickly to market conditions and especially as the economy continues its recovery from the shock of the COVID pandemic.
2. In engaging contractors, Crunch has found CEST does not always produce a definitive outcome. There are still too many situations where CEST cannot determine an IR35 status one way or another. Crunch developed our own solution to help contractors assess their engagements for IR35 and we always recommend clients use a combination of CEST, our own assignment review software and a contract review by our own IR35 specialists.
3. Businesses engaging contractors are inherently risk-averse and will often determine an IR35 outcome from CEST without looking at the individual circumstances of an engagement, mainly due to the additional costs involved and lack of expertise. Engagers are seeking a definitive position CEST cannot always provide.
4. To implement the new IR35 rules effectively, engagers have had to work across their organisations. HR systems require updating to collect and retain the information needed to determine the status of an assignment, departmental managers have been trained to understand how working practices need to be understood and documented to inform the determination of IR35 status, managers and HR professionals have been trained on how to use CEST and other online assessment tools. These arrangements are adding to the cost base of medium and large sized UK businesses.
5. Senior management have also had to gain an understanding of the supply chains contractors are operating in, especially where one or more agencies are involved. Legal advice has been taken to ensure responsibility for contracts and Status Determination Statements is correctly identified in each supply chain. Many businesses have had to buy in HR and legal expertise to ensure compliance. Finally, businesses have invested in establishing appeals procedures though it is too early to assess the impact of these on engagements.
6. Many contractors have found the new rules to be unworkable, with many engagers simply assessing an assignment as inside IR35 without looking into the assignment in any detail. Thousands of contractors have now

closed their businesses and are working under PAYE arrangements or as sole traders as they have no option.

7. Many assignments require the use of an Umbrella company which has shifted more costs onto the contractor without any compensatory increase in contractor rates of pay. The increases in National Insurance Contribution rates from April 2022 will add further pressures to contractors paid via an Umbrella Company.

Appendix 1 - response to individual questions

Has the recent extension of the off-payroll working rules to the private sector made it more difficult for engagers (the business the contractor ultimately works for) to hire people with the right skills and expertise? To what extent has its introduction contributed to job vacancies?

1. The extension of the off-payroll working rules has undoubtedly made it more difficult to hire flexible labour which is suitably skilled. With many engagers now deciding not to offer any contracts outside IR35, or even evaluate an engagement for IR35 at all, thousands of freelancers and contractors have decided to close their limited companies and work under PAYE instead. The situation is crippling the ability of business to respond quickly to market conditions and especially as the economy continues its recovery from the shock of the COVID pandemic.
2. At Crunch, we estimate around 20% of our limited company clients have closed or are currently dormant due to assignments outside IR35 being ended and PAYE positions offered. This makes it incredibly difficult for businesses to engage contractors to work on projects or fill skills gaps quickly and effectively.
3. Employers are reporting the highest level of job vacancies on record. There are complex reasons why the economy finds itself in this position, including the flight of labour overseas due to Brexit, supply chain problems and the need for businesses to recruit new workers to replace those made redundant when businesses halted investment during the COVID pandemic. With the shortage of labour generally in the economy, and the lack of flexibility in the workforce to work from 'gig to gig' and for multiple employers due to the extension of IR35 rules, the economy faces a reduced supply of labour which has contributed to the high number of job vacancies.

For those engagers (and their advisers) who use the CEST (Check Employment for Tax Status) tool to assess employment status, how effective do you consider it to be? Do you have confidence in its results? If not, what further improvements need to be made to it?

4. In engaging contractors, Crunch has found CEST does not always produce a definitive outcome. There are still too many situations where CEST cannot determine an IR35 status one way or another. Crunch developed our own solution to help contractors assess their engagements for IR35 and we always recommend clients use a combination of CEST, our own assignment review software and a contract review by our own IR35 specialists.
5. Businesses engaging contractors are inherently risk-averse and will often determine an IR35 outcome from CEST without looking at the individual circumstances of an engagement, mainly due to the additional costs involved and lack of expertise. Engagers are seeking a definitive position CEST cannot always provide.
6. As with any online tool, CEST is subjective and relies on the accuracy of information submitted and who submits it. Our contractor clients have told us about situations where an assessment of an engagement by an end-client is different to their and their agencies interpretation - leading to a dispute which takes time and resources to resolve.
7. CEST assessment of the 'Mutuality of Obligation' test is still inadequate. We work with our clients to provide a view based on our own software solution and contract review - though there are additional costs to the contractor to find the assurance they need when taking an assignment. It is noticeable many IR35 Tribunals are concluding Mutuality of Obligation is a compelling test of IR35 status - the inadequacies in the CEST tool therefore need to be addressed.
8. CEST requires evidence to be retained outside of the online system, so engagers can show 'reasonable care' has been taken in reaching a conclusion at the individual contractor level. This adds further costs for engagers.

What changes have engagers had to make to apply the off-payroll rules to contractors, in terms of systems, personnel and training? By reference to your own experience, to what extent (if any) do you consider that compliance costs have increased because of the changes?

9. To implement the new IR35 rules effectively, engagers have had to work across their organisations. HR systems require updating to collect and retain the information needed to determine the status of an assignment, departmental managers have been trained to understand how working practices need to be understood and documented to inform the determination of IR35 status, managers and HR professionals have been trained on how to use CEST and other online assessment tools. These

arrangements are adding to the cost base of medium and large sized UK businesses.

10. Senior management have also had to gain an understanding of the supply chains contractors are operating in, especially where one or more agencies are involved. Legal advice has been taken to ensure responsibility for contracts and Status Determination Statements is correctly identified in each supply chain. Many businesses have had to buy in HR and legal expertise to ensure compliance. Finally, businesses have invested in establishing appeals procedures though it is too early to assess the impact of these on engagements.
11. At Crunch, we have found the involvement of multiple parties and professionals in the engagement process has led to additional costs and delays in appointing contractors. Negotiations with potential contractors are often extended and delayed. Many contractors ask for additional clauses in contracts as an indemnity against a tax judgement. While it is helpful to have contractors themselves involved in confirming working practices and contractual arrangements, the need to have these reviewed at every stage has caused unnecessary delays to many of our time sensitive projects. We would estimate the average assignment now takes at least two weeks longer to agree and our internal costs have increased by around £500 to £1,000 for each assignment based on time taken by our senior managers to confirm the status of each assignment and prepare the required contracts and Status Determination Statements.
12. We believe these additional costs of compliance to be at the lower end of the scale given we have expertise in-house to review the status of each assignment.

<p>How well has HMRC supported engagers, contractors, and their advisers with the implementation of the new rules and is any further or different type of assistance needed.</p>
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13. From the outset, the government's position has been that any additional costs of implementing the new rules should fall on businesses. While the delayed implementation of the reforms was understood and necessary, businesses were still under-prepared to discharge their responsibilities as engagers. Typically, compliance with the rules has fallen on a small number of individuals in each business and specialist legal and HR advice was needed to ensure preparedness from April 2021.
14. Many contractors have found the new rules to be unworkable, with many engagers simply assessing an assignment as inside IR35 without looking into the assignment in any detail. Thousands of contractors have now closed their businesses and are working under PAYE arrangements or as sole traders as they have no option.

15. The biggest single assistance the government could give to contractors is to abandon the new IR35 rules and allow contractors operating through an intermediary to determine the employment status of their assignments. At a stroke this would re-energise small businesses and reduce costs for engagers.

What behavioural effects have resulted from the introduction of the new rules in the private sector in terms of the arrangements adopted in hiring contractors?

16. Many adverts for contractors now specify the IR35 status of an assignment - so there is transparency in the engagement status which is welcome. However, many assignments require the use of an Umbrella company which has shifted more costs onto the contractor without any compensatory increase in contractor rates of pay. The increases in National Insurance Contribution rates from April 2022 will add further pressures to contractors paid via an Umbrella Company.
17. Many larger businesses, particularly in highly regulated industries such as finance, have simply stopped engaging contractors on assignments outside IR35, effectively creating a veto on any contractor working through an intermediary.
18. Businesses engaging contractors on inside IR35 assignments are not providing any benefits of employment, such as sick pay or holiday pay, providing more disincentives for individuals to work on a contract basis. This is divisive for any workforce and is unwelcome.

The Government is proposing a new employment body with powers to enforce employment rights, including for those engaged by agencies and umbrella companies. How effective do you think such a body will be in ensuring workers, particularly the lower paid, are treated fairly?

19. Protecting the rights of workers is always welcome. The force of a government body with far-reaching powers to impose fines and penalties or otherwise sanction non-compliant businesses could be effective in removing the more unscrupulous employers, Umbrella companies and employment agencies currently operating.
20. However, the employment body will not help the thousands of contractors who feel their livelihoods and freedom to work across multiple assignments and employers have been removed by the new IR35 rules. It is also unlikely to drive up contractor rates of pay.

How successful will the draft Finance Bill proposals for earlier publication of information about promoters and avoidance schemes be in protecting individuals from being drawn

into such schemes?

21. Any additional protections afforded to individuals who may be affected by promoters of tax avoidance schemes is welcome. However, it is doubtful many individuals will know where to find such information if published in the future. It is also likely there will be significant time lags between identifying a potential promoter of an avoidance scheme and the publication of information about it. HMRC may also find themselves with finely balanced decisions to make on publication and would have no guarantee the information would reach its intended audience - ie. those individuals most at risk.
22. In the context of the UK's contractor population, in our experience most avoidance schemes are unsophisticated - for instance the off-shoring of contractor payments or Umbrella companies promising unrealistic amounts of take-home pay. These schemes are generally operated by companies who judge they have little chance of being investigated by HMRC. HMRC should be targeting resources to close down such companies and publishing details of individuals involved in operating the schemes.

10 November 2021