

QDos – Written evidence (OPR0017)

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. Qdos believe that the extension of the off-payroll working rules has, in the short term, created both recruitment and retention difficulties for engagers.
2. Whilst perhaps not as pronounced as the impact felt in the public sector in 2017, where we were aware of numerous projects being delayed, many organisations have struggled to balance compliance processes with the need for skilled external expertise.
3. Against a backdrop of an increased demand for such expertise, particularly in IT, the off-payroll extension has exacerbated the difficulty companies face when seeking temporary labour.
4. 29% of 55 engagers Qdos surveyed after the implementation of the off-payroll working rules reported experiencing delayed projects as a result of the rules, whilst 58% experienced a loss of contractor resource and 44% reported increased financial costs.

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?

5. Qdos do not believe that CEST is an effective or robust mechanism for determining status, nor do we have confidence in the results it generates.
6. Whilst CEST will often be a natural starting point for organisations looking for a solution, we are experiencing a growing number of companies who are moving away from the tool due to its limitations.
7. Given the undeniable complexities involved in employment status case law, a tool of some form is certainly warranted. Since it's original release, however, we have always maintained that delivering a one-size-fits-all process – based on hard coded logic – is a virtually impossible task.
8. This point is clearly exemplified in the marked disparity between the limited, binary question set on CEST and the process HMRC use in practice when conducting compliance activity (where it is not uncommon to have over 50 questions as an opening gambit).
9. The above may be acceptable if CEST was being marketed as a guidance tool for organisations to use as a starting point, but the reality is that companies have relied on it - in isolation - to determine the tax status of their entire contingent workforce.
10. The difficulties involved in using an automated tool to determine status also manifests in its inability to give a result in all cases. Whilst 21% may be a minority, the fact CEST has been used so extensively means a significant number of users have been left in limbo – with no obvious route to progress their assessment.

11. We also have concerns regarding CEST's correlation to established case law and are mindful of the fact that it is merely HMRC's interpretation of law – something we believe should be made clearer to users.
12. Much has been made of CEST's disregard of mutuality of obligation (MOO), which is one of the key pillars of employment status. Whilst adequately considering MOO in a binary question set is challenging, we do not feel it should be ignored.
13. We also feel that the presentation of certain questions borders on being misleading. Substitution, for instance, is another cornerstone of status and is dealt with by a 'yes/no' question asking whether the hirer can reject a replacement. The explanatory notes on CEST itself state: "This can include rejecting a substitute even if they are equally qualified, and meet your interviewing, vetting and security clearance procedures."
14. In [ESM11045](#), however, the guidance states: "Where the hirer can only reject a substitute upon grounds that they are not qualified to perform the work, this would fall within the 'No' category for CEST provided it would be practical and plausible for the worker to send a substitute."
15. We feel that the limited explanation on CEST pushes users into providing a black and white answer to a complex question, whereas the guidance in ESM11045 (which is not referenced within CEST) may prompt further consideration. Given the answer to this specific question has such a significant impact on the ultimate result, we feel it should be presented with far more guidance attached to it.
16. We asked 381 contractors to score how well they trusted the CEST tool (0 being not at all, 10 being completely). The average result was 2/10.

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?

17. Yes, we certainly believe compliance costs have been increased.
18. The challenges engagers have faced have been significant and, often, difficult to quantify. A common concern amongst engagers we speak to is that fulfilment of the off-payroll rules does not naturally sit with one department and requires a multi-discipline response.
19. Even where engagers have sought the assistance of external advisors – such as Qdos – the commitment required internally remains significant.
20. A significant number of engagers have had to recruit more staff solely to deal with off-payroll processes, with those that don't often suffering reduced output in existing business functions.
21. Compliance activity necessary of engagers in respect of reform can be split into two phases: preparation in advance of reform and fulfilment of continued compliance post reform.

Pre- Reform

22. A common programme of works Qdos supported engagers with, in preparation of reform, included:

- Wholesale IR35 Audit - an extensive assessment on an organisations utilisation of contingent labour
 - Implementation phase for recommendations from audit to be put in place
 - Training of key staff on IR35 legislation and business processes for managing compliance
 - Completion of status assessment exercise of entire incumbent contractor population
23. Qdos provided this service to over 100 end client organisations through 2019-2021 at an average cost of £15,000, in Qdos fees alone. Many larger engagers would have procured similar services from the Big 4 accountancy firms, incurring costs at significantly higher rates than Qdos.
24. Such programmes typically spanned three to four months end to end. However, the postponement of reform meant that projects extended by an average of an additional three months, a significant amount of time and resources for any business.
25. For engagers to service such programmes, internal IR35 project teams were necessary. These typically consisted of representatives from key functions; tax, finance, HR, procurement, ops and in most cases a project manager. The PM role was often seconded internally or recruited specifically for the projects. The resource cost to the business to service this would have been sizeable.
26. In addition to this, businesses either rolled the management of their ongoing IR35 assessment process into existing functions or recruited specifically for this. Whichever options engagers chose, direct cost can be attributed staff training, recruitment and additional headcount and cannot be overlooked.

Post Reform

27. A significant amount of engagers' focus was on becoming compliant in advance of the legislation, and rightly so, however several months on from reform that focus has shifted and centres on maintaining that compliance.
28. Whilst a positive step that organisations are demonstrating high levels of, this again carries a cost.
29. The key areas we see engagers currently focusing on:
- A form of consultancy service to assess the engager's compliance with the legislation (are they appropriately fulfilling their responsibilities?) and adherence to their own internal IR35 compliance processes. Such an exercise could be a six-to-eight-week project, involving multiple departments and the services of an external specialist like Qdos or a Big 4 firm.
 - A new mechanism to undertake status determinations - with many businesses going through re-tender exercises as per their procurement policies and/or looking to move away from incumbent processes like CEST. The cost to engagers is difficult to quantify due to the formality of internal procurement processes and the potential reengagement of an IR35 project team, which would be in addition to moving to a more

appropriate (and paid-for) determination service compared to a HMRC's free CEST tool.

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

30. Taking into account the gravity of off-payroll reform, not to mention the financial consequences of mismanaging these changes, we feel that HMRC's guidance and support has been insufficient overall.
31. There is also a concern that HMRC's decision not to issue penalties for non-compliance in the first year of reform being in operation (2021/22 tax year) has led businesses to believe that the tax office will not demand tax liabilities for non-compliance. HMRC's so-called 'soft landing' offers little to businesses, given tax liabilities owed in typical IR35 cases are much greater than financial penalties handed out.
32. We have had numerous conversations with engagers where the 'soft-landing' has been misconstrued and, in some cases, has created a level of apathy towards the reform.
33. We are also disappointed that HMRC produced no reaction to some of the more knee-jerk approaches taken by large engagers of contractors. We had many instances – particularly in financial services – of engagers making policy decisions not to engage personal services companies. Reports suggest that many of these needlessly risk averse decisions are still being upheld.
34. While this approach circumvents the legislation entirely and is therefore technically 'compliant', it is also unnecessarily drastic. We feel that HMRC have neglected to promote the fact that engaging personal service companies *compliantly* is an entirely legitimate and economically positive approach to resourcing.

To what extent has the introduction of the new rules generated disputes between engagers and contractors concerning the status of contractors vis à vis the rules and how successfully or otherwise have these been resolved?

35. Immediately following reform, 38.5% of 431 contractors surveyed after the implementation of the off-payroll rules said that they would challenge an inside IR35 assessment, whilst 11% were unsure.
36. As part of the Status Review service Qdos provides to engagers there is a Disputes module, this feature provides contractors a means to raise a challenge in respect of their status determination and engagers a means to manage such challenges.
37. Qdos supported private sector engagers through 25,000 assessments, of which we saw 14% of determinations have an outcome of Inside IR35. Of the 3,500 Inside determinations only 18% were disputed by contractors.
38. The dispute process followed by engagers working with Qdos was simple, straight-forward, clearly communicated and involved Qdos, the engager and the contractor. It provided a fair means for contractors to make their case and clients to respond with support of Qdos.

39. Engagers who had a clear and well-considered approach to compliance, supported with direct and open communication with their contractor population, had a considerably smaller proportion of determinations disputed vs those who were less engaged with the contractor population.
40. The difference between these initial two data points (38.5% and 17%) can in part be attributed to a change in contractor behaviour as a result of how engagers managed and delivered their determination exercises, including disputes. The lack of detailed guidance from HMRC in respect of the challenge process required of engagers certainly left this aspect of the rules open to interpretation and many engagers have struggled to implement an appropriate process of their own.
41. It is worth noting that many disputes between contractors and engagers went beyond the formal challenge process. Loss of goodwill, breakdown of relationships and in some cases, contractor exits happened where engagers took the more extreme knee-jerk and risk averse approach to managing the reform.
42. On the above basis, it would be fair to assert that the reform has caused (and to a degree continues to cause) a considerable amount of dispute between engagers and contractors when looking at disputes in the broadest sense.

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?

43. As detailed before, off-payroll reform has meant that some businesses, even sectors, are hesitant to engage with contractors. Some - but not all - firms are making rash strategic decisions that leave contractors with no option but to work via umbrella companies or become employees, or have their contract cancelled.
44. We have also seen a significant increase in the number of 'alternative' approaches to resourcing, often by way of 'statement of work' engagements - where the supplier of the services theoretically holds the burden for determining the status of any contractors they engage.
45. Whilst this approach is conceptually sound, we have concerns that some are promoting it to engagers as a workaround to the off-payroll rules without giving full consideration to the manner in which such engagements are actually delivered.

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?

46. We feel that more direct oversight and regulation is a necessary step, particularly given the significant growth in contractors using umbrella companies.
47. While an employment body must focus on protecting vulnerable workers and by this we refer to gig economy workers (many of whom want and need employment rights), it must also be recognised that not all self-employed workers are asking for this - contractors for instance.

48. There are millions of freelancers and contractors who want to remain completely independent and self-employed, both in terms of their employment status and tax status. In our experience, and having assessed the IR35 status of more than 150,000 contractors over the years, the majority are genuinely self-employed and are not abusing the IR35 rules.

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?

49. Time will tell. In the years leading up to off-payroll reform in both the public and private sectors, there has been a proliferation of tax avoidance schemes that target unsuspecting contractors.

50. On the face of it, giving HMRC the power to seek freezing orders to stop tax avoidance schemes from dissipating or hiding their assets, new rules allowing HMRC to heavily penalise UK entities that facilitate tax avoidance and naming promoters of these schemes to warn potential victims are positive developments.

51. However, the issue that we feel is being overlooked is the clear need to regulate the umbrella company market, which is the root of many of the problems regarding tax avoidance schemes today.

52. Promises have been made to regulate the umbrella industry, but very little has been done. The government must prioritise this in order to prevent a scenario similar to the Loan Charge from occurring again.

53. Of the 129 contractors we surveyed who indicated that they had used an umbrella company in 2021, 91% said that this was because they were required to do so by their agency or client. 80% also said that their use of an umbrella company had increased in 2021.

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