

Professional Passport – Written evidence (OPR0021)

1. There has been significant chatter across the business networks forums suggesting that many of the highly experienced contractors have opted to accept contracts abroad as many companies have reverted to 'inside' determinations.
2. This is particularly true in sectors such as medical and logistics, where there are many examples of doctors and specialists moving to other countries with Australia being a popular destination.
3. The shortage of logistics and HGV drivers has certainly been compounded by the new Off-Payroll rules with many workers in this sector being forced to operate in a way that has resulted in a significant reduction in their income. This sector operates on very tight margins and therefore has been unable to address these shortfalls.
4. CEST, in our opinion, should be withdrawn. The tool is too simplistic and will often fail to deliver a correct determination. The assurances provided by HMRC have already proved false with them seeking to have CEST evidence ignored in their challenges to status. This is further supported by recent reports of Government departments facing significant bills for incorrect determinations.
5. The private sector has developed a wide range of tools, almost all of which appear more detailed and rigorous when compared to CEST and, we believe, present a more robust outcome. As these are 'paid for' and CEST is free this creates a market distortion.
6. In our role as compliance assessors, we have seen a proliferation of Disguised Remuneration schemes being marketed to contractors. As workers are likely to face income drops in excess of 30% this has provided an ideal sales opportunity for them.
7. We know that HMRC already holds all the information it needs to rid the sector of disguised remuneration schemes and rid the industry of criminal activity but is not acting on it. As a result, the lack of inactivity and visible enforcement has enabled more and more schemes to set up and more and more contractors duped into taking on significant personal financial risk as a result. HMRC has two sets of data available in the form of Real Time Information and Intermediary Reporting and matching up that data should help to spot a dubious provider and shut it down with immediate effect.

8. HMRC seems unwilling to work proactively with compliance assessment companies to tackle the issue. We have suggested some simple steps that could be taken to secure the robustness of compliance assessments and at each turn they seem to look for reasons not to do rather than finding a way where it can be done. The justifications we have received do not pass close scrutiny.

9. HMRC persists in publishing new consultations for proposed changes to legislation to address the Disguised Remuneration issues yet the vast majority of issues apparent in our sector are already covered by existing legislation that is just not being enforced.

10. HMRC also seeks additional powers but once again HMRC is not utilising its current powers to address the issues of non-compliance.

11. Following the Loan Charge action, HMRC now seems intent on recovering lost monies from the workers rather than the providers/promoters of the arrangements. This creates a greater incentive for promoters of Disguised Remuneration schemes as they know they keep the money they make. We believe this is a significant factor that serves to drive the highest levels of non-compliance.

12. HMRC writes to workers to advise them that, in HMRC's opinion, they could be in a Disguised Remuneration scheme and yet many of those providers highlighted remain active in the market today and continue to attract and entice new workers to their offerings. Surely if HMRC has the evidence to write to workers they must have enough evidence to meet the threshold of obtaining a security notice to protect potential losses of revenue.

13. Whilst we support any moves to increase compliance in the sector, we believe that visible enforcement activity is the key. As already stated, much of the non-compliance is already covered by legislation and has an enforcement body responsible for ensuring compliance. A Single Enforcement Body will not change anything for the better unless enforcement action is taken.

14. The sector, and those operating compliantly, already issue significant educational information to workers about what to look for in a non-compliant scheme which seems to have little impact. Workers, particularly at the lower end, do not read, access or understand this information. The enticement of significantly more take home pay wins over any concerns and the false reassurances provided by the promoters satisfy any concerns.

15. My concern with the proposals to publish the information is how this will be used. HMRC seems to be seeking ways to recover losses from individuals as opposed to the providers, which is obviously the easier option. Whilst there is a principle within UK tax law that an individual is responsible for their own tax affairs this is overridden where they are employed by a UK employer who operates PAYE on the income. HMRC can challenge this overriding principle where it can be shown that the employee was aware of the arrangements. So, are these proposals no more than HMRC building a background argument to recover unpaid taxes from an employee by stating that they were informed and therefore must have been aware?

16. All of these points and further suggestions have been highlighted in a published report, *The Good The Bad and The Ugly*. This is available to download here:

https://www.professionalpassport.com/pdfs/Professional_Passport_Good_Bad_Ugly_Final-web.pdf

17. The Summary and Key Recommendations, pages 3 – 6 considers a broad range of items to address many of the issues and distortions we are seeing in the market.

18. This article highlights our views on enforcement activity to address non-compliance and how HMRC seems to be seeking to circumvent the PAYE

Regulations: <https://www.professionalpassport.com/Hot-Topics/Hot-topics/HMRC-Issues-Warning-Letters-to-Contractors>

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