

Institute of Interim Management – Written evidence (OPR0028)

1. 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?

Yes, in spite of the 12 month private sector implementation delay, things are now more complex and problematic. The IIM offers 3 points of note:

- I. Engagers are showing a worrying lack of understanding of the regulations, resulting in the use of 'blanket determinations' (illegal), contracting out to 'umbrella' companies (adds cost to the value chain and more confusion on deductions) and companies changing their skills acquisition approach and banning any freelancer engagements.
- II. Market research conducted by the IIM (over 2000 responses), showed a consistent reduction in those on assignment at the time of the survey by 5% since 2017 when the new regulation version started its implementation, coupled with a 16% reduction in days worked in the prior year, again showing a consistent reduction over the time period. The trend does not appear to be lockdown related.
- III. Our survey also showed that, in response to the regulations, 25% of respondents would effectively remove themselves from the UK interim market by returning to permanent work (16%), retiring early (2%) or choosing to work abroad (6%). A further 23% stated that they would only operate on 'outside IR35' contracts. In summary, this forecasts nearly half of IMs are looking to leave the market. We also note from even more recent survey data for a much broader range of freelancers run by IPSE, that 20% of contractors stopped working with clients when their contract was switched to 'inside IR35', 31% refused a contract that was deemed 'inside IR35' and 14% moved into permanent employment. Future trends in the IPSE survey (covers a broader group of contractors) support what has been seen by the IIM. Responding to 'what do you see as your approach to work in 2022', 55% said they would only work 'outside IR35', 28% would work with small clients only (where the contractor retains the right to determine tax status), 24% intend to work abroad (a more likely scenario with international travel opportunities improving), 19% to return to permanent work, 11% plan to retire and 6% 'to stop working altogether'.

The net effect is the wholesale reduction of expertise from the sector, often quoted as the most productive in the UK economy, at a time the country can least afford to lose one of its most value adding resources.

2. 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?

No. No. Complete overhaul of a hopelessly simplistic tool that does not take account of existing case law and precedent (short response to the 3 part question).

The IIM regards CEST as not being fit for purpose. It deliberately avoids any consideration of mutuality of obligation (MOO), as HMRC has continually taken a view that the presence of a contract of any form is enough to demonstrate MOO. This flies in the face of precedent and case law. Having said this, there is now the return of the Professional Game Match Officials Ltd (PGMOL) v HMRC case to the first tier tribunal to re-look at the facts of the case surrounding 'MOO'. Depending upon the outcome, if PGMOL are successful, then HMRC will need to re-think their position and the impact on the CEST tool would be significant. In the meantime, HMRC do not fair well in front of tribunals on this point, wasting tax payers' money in pursuit of their goal.

The IIM has available to its members, a 100 question checklist to facilitate a balanced view on the various aspects to be taken into account when assessing the tax status of an assignment. We believe that such an approach fulfils the requirement in the regulations for 'reasonable care' to be taken in making the determination. We do not see the CEST tool representing this standard. One point that is more pertinent to IMs is the 'officer' question. If the answer in CEST is 'Yes' (are you an officer?), then it automatically states you are 'inside IR35'. Rather like the assumption on MOO, the IIM believes that this is a false view of the situation for a senior interim (surely 'yes' infers a clear lack of supervision, direction or control?). It will also cause issues of interpretation of position being undertaken, shows a lack of understanding of the nature of interim work and the form of the contract. Given there is no real legal definition of the term 'officer' there remains room for unhelpful debate. The IIM believes that this question is irrelevant in judging whether the IM is in business on their own account or not.

3. 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?

Feedback from our 2021 survey gives anecdotal evidence from IMs about the impact on clients (engagers). Some engagers have decided not to use freelancers at all as they do not wish to risk the wrath and bad publicity of and from HMRC. The process has become more complex where Umbrella companies are being insisted upon by engagers. Although not a requirement of the regulations, highly risk averse engagers are using such organisations as a buffer between themselves and the IM. This adds cost and complexity and reduces the 'take-home' pay of the IM. Other companies are adopting a 'blanket determination' approach for all freelance work, which is illegal, putting much heat into the system without any light.

Finally, the SDS (Status Determination Statement) should be provided from medium/large organisations in all cases. This is a legal requirement. In our survey, 52% of clients did not provide one. This number improved in the later IPSE survey to 38%. Given there has been a whole year to

plan the introduction, these numbers are very poor and demonstrate the confusion and lack of understanding in the engager community. We also noted that in the public sector in our survey, 60% of all 'inside IR35' work did not have an SDS and that is after 3 years of implementation, which HMRC has declared is working well.

4. 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

Short answer: poor.

HMRC appears to rely on CEST. Until it suits their purpose at tribunal to argue against it. We also note that information is surfacing from the private sector that HMRC are asking companies in the financial services and oil & gas sectors for information regarding how their contractor engagement processes are operating. This start to compliance activity (presumably aimed at sectors where there are relatively few, large concerns for ease of impact) reminds us that HMRC have said that they will operate a 'soft landing' in terms of penalties for non-compliance, not that they will ignore it altogether. Compliance holds a number of issues for IMs as well as engagers, due to the potential for HMRC to point to minor differences in understanding between the parties, plus the ability to look retrospectively well beyond the latest regulation changes.

The IIM has no sense of a constructive dialogue and certainly HMRC cannot be possibly seen as an independent third party from whom any sense of reasonable care or a balanced approach might be expected.

5. 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?

In Q3 response, we pointed to the poor use of the SDS process which causes early friction in the relationship. The situation is worse than the headline production figures. Where an SDS was provided, our survey showed that 15% were appealed. About half of these were changed as a result. This is not a good way to start a commercial relationship. In the recent IPSE survey, of those provided with an SDS, 29% did not agree with the finding and 77% of those challenged the outcome. Only one in five of the challenges were successful.

For IMs, the contact with clients is very often, direct. If through an Interim Service Provider (ISP: a specialist agency matching suitable IMs with the needs of engagers) however, the contact is generally close quite quickly. Either way, any activity that is not legal according to the regulations will cause friction. Inserting another party such as an umbrella, does not help the general communication process.

6. 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?

From the IMs perspective, there is a large move to wanting 'outside IR35' assignments only. For those prepared to work 'inside IR35', there is pressure to achieve increased 'day rates' that the contract would be based

on, to compensate for the significant loss of earned income. Unfortunately, this compensation recovery approach does not have a high success rate yet. Even in the public sector, 44% saw their income reduce and 25% saw that income fall more than 20%. The recent IPSE information showed an average 30% reduction in quarterly earnings (private sector) with 25% experiencing more than a 40% reduction.

For IMs, pressure to work from an umbrella company is generally not strong, with only 8% of respondents indicating that they are doing so. The rationale for an IM to work through an umbrella is weak and would be only considered if assignments were largely being pushed through to being 'inside IR35'. However, in such situations, member feedback is that employer's NI and apprenticeship levy is being passed on to the IM, payment frequency can be impacted by how quickly the end client pays the umbrella company and 'holiday pay' is potentially problematic. Additionally, it is not possible to claim expenses from the umbrella, with professional development and sick pay not chargeable.

A final point is that historically, the engagement arrangement between the client and the IM has been a clear business to business transaction (as it should be). In more recent times, we have observed a change in the process used by organisations, making it mirror a permanent recruitment process. This can bring unhelpful elements to the interaction that are not required and the overall effect is to slow down the whole engagement. This is potentially problematic as one of the main selling features of using an interim is the rapid turn-round available to bringing in the expertise (it can be done in a very small number of days).

7. 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?

The position of low paid freelance workers is not within the IIM's remit.

We are not clear under IR35 regulations why this would be of benefit. The regulations are there to determine tax position only. The implication of such a body to enforce employment rights would mean people becoming employees and their contract would then become a (temporary) employment contract (of service, not for service).

Given all IMs are in business on their own account, anything that conflates this way of working and employment, is to be actively avoided.

8. 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?

The IIM sees this as of marginal benefit to and impact on IMs.

Our view, on behalf of the membership, is that having a simple, easily understood and applied tax system is the best approach. Ideally, having a tax system that works for the 21st century would be sensible. This would mean going back to first principles and producing a system that achieves a properly 'fair rate of tax', taking into account the whole tax picture and risk taken on by people in business on their own account.

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