

## **Kingsbridge – Written evidence (OPR0029)**

### **Executive Summary:**

We sent a survey to our PSC contractor customer base at the end of September this year, to find out how the IR35 reforms have been for contractors and how they had been assessed. This received 1675 responses, and some relevant responses have been included in this submission.

The off-payroll reform in April led to an increase in contractors cancelling their commercial insurance policies – primarily due to closing their company down, following the impact of IR35 changes.

Confidence in the government's own Status Tool (CEST) remains low. This is due to criticism of the functionality and indeterminate outcomes, combined with high profile news reports of government departments (that relied on CEST) facing tax bills, and in some cases penalties too.

Kingsbridge's submission features comments from Andy Vessey, Head of Tax at Kingsbridge. Andy has been deeply involved with IR35 since its inception in the year 2000 and has successfully defended around 600 contractors in IR35 enquiries.

### **1. Has the recent extension of the off-payroll working rules to the private sector made it more difficult for engagers to hire people with the right skills and expertise? To what extent has its introduction contributed to job vacancies?**

The reforms in April saw an increase in contractors cancelling their insurance, with the most popular reason for cancellation being 'IR35 – company closure'.

- The cancellation reason of 'IR35-company closure' increased to 52% in March 2021. In April 2021, 573 Kingsbridge contractors cancelled their insurance policy with the reason 'IR35 – company closure' – making up 65% of the cancellations this month.
- In the past 12 months, 'IR35 – Company Closure' has been the second most common reason for cancellations of contractor insurance with Kingsbridge, making up 40% of the reasons for cancellation.
- In a recent survey sent to customers that had declined to renew their insurance with Kingsbridge, the most common reason for not renewing their insurance was that the IR35 reforms had affected their ability to work as a contractor (44% of those surveyed).
- In Kingsbridge's recent contractor survey, which received 1675 responses, 70% of contractors were unable to find work at the moment and said they think it is harder to find outside IR35 work.

### **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?**

Andy Vessey, Head of Tax at Kingsbridge comments:

- "Whilst CEST addresses many of the employment status tests, despite several incarnations, it still does not address one of the most important

key tests of mutuality of obligation (MOO). Despite repeated criticism from the contracting industry and tax profession, HMRC stubbornly refuse to include specific questions about MOO as they believe it will be virtually present in every contract, be that employment or commercial alike. This is because HMRC has a very simple and blinkered definition of the concept of MOO.”

- “CEST has to be used in conjunction with HMRC guidance, suggesting therefore that the department are the supreme authority on employment status when that is simply not true. If it were the case, then HMRC would not lose so many of the IR35 or employment status cases that end up before the tax tribunal and courts.”
- “CEST does not always provide an ‘inside’ or ‘outside’ status determination. Between 25.11.19 – 31.05.21, the tool was used just over 1 million times and just over 210,000 of its results were undetermined.”
- “A number of government departments have relied upon CEST only to be landed with significant tax and NIC arrears plus interest. In 2019, it was revealed that NHS Digital had been presented with a tax bill of £4.3M for the period 01.04.17 – 31.12.18, after HMRC challenged a significant number of status assessments generated by CEST. In 2021, we learned that the DWP and HM Courts & Tribunals Service were landed with arrears of £87.9M and £12.5M respectively for incorrectly assessing a workers’ employment status using CEST. The Home Office was presented with a tax and NIC bill of £29.5M plus interest for making incorrect status determinations.”
- “In addition, HMRC levied a £4M penalty for ‘careless’ behaviour which was suspended for 3 months subject to certain conditions. It is not known if the Home Office used CEST in any way but given that many government departments choose to use the tool because it is free to use and it is the trusted property of another public sector body, then it may be a fair assumption that the Home Office used CEST in some capacity. Whilst it is accepted that the results of CEST are dependent upon the accuracy of the information that is fed into it, these seismic tax arrears suggest that CEST is deficient in some way and cannot be heavily relied upon. In our opinion, there are more superior status tools available that are more thorough and accurate, and demonstrate that the required ‘reasonable care’ has been taken to determine status.”

Contractor Survey results:

- In Kingsbridge’s recent contractor survey, the most common method that contractors said they had been assessed by was an in-house method, with 45% of clients using this method. 32% of contractors said they had been assessed by CEST.
- When asked what contractors had done to prepare for IR35, 28% had checked their status with CEST.

**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?**

N/A

#### **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?**

Andy Vessey, Head of Tax at Kingsbridge comments:

- "It must be acknowledged that HMRC's education process has been good pre and post-implementation of the off-payroll rules (OPR). The department has put a lot of information out in the public domain and their Talking Points webinars on different aspects of the OPR have been regular and useful, albeit that the HMRC officers hosting these webinars do not always provide a satisfactory answer to some of the questions posed to them."
- "On 15.02.21, HMRC issued their briefing, 'supporting organisations to comply with changes to the off-payroll working rules (IR35)' which sets out the department's eight compliance principles. Three of these principles provide support to the hiring organisations to help them comply with the rules and help them rectify any mistakes. The department is also committed to taking a 'light touch' approach to penalties for inaccuracies relating to the OPR in 2021/22 unless there is evidence of deliberate non-compliance."
- "All this sounds very admirable but before the dust has even settled on the new legislation, HMRC has already sent out compliance letters to those in the oil and gas industry, and the banking and finance sectors which is cause for some concern as we were not expecting HMRC to undertake their compliance activity so early on in this tax year. It does therefore beg the question as to how heavy-handed HMRC's approach will be come 06.04.22?"

#### **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?**

Contractor survey stats:

- In our contractor survey, 16% of contractors said they have disputed an SDS.
- Of those that disputed – 12% received no response, 27% result stayed the same (explanation given), 28% result stayed the same (no explanation given), 23% result changed (explanation given), 10% result changed (no explanation given).
- Only 10% of contractors think that their IR35 status has been assessed fairly.

Nicola Hayman, Legal Manager at Kingsbridge comments:

- "These results do not demonstrate the disputes that have arisen in the market down to end-engagers refusing to participate in the SDS process. Many end-engagers have simply refused to use PSC contractors since the reform came in. These results only demonstrate where an SDS has actually been passed down the chain to the contractor."

## **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?**

Andy Vessey, Head of Tax at Kingsbridge comments:

- “When the off-payroll rules (OPR) were originally planned to be introduced to the private sector in April 2020, we saw some businesses taking a decision not to engage with the legislation and blanket ban the use of PSCs and declaring that all contractors must either work via Agency PAYE or an Umbrella company. By doing that they removed themselves from the OPR obligations completely but were driving contractors down a PAYE route one way or another. This practice continues to prevail because these hiring organisations are risk-averse and are afraid of the consequences of getting it wrong, both financially and reputationally, and HMRC are quite happy for this situation to continue as they want more workers to fall within the PAYE regime.”
- “Adopting such a blinkered approach, however, deprives an organisation of securing the best talent, as contractors enjoy the freedom of self-employment and if their client isn’t even willing to consider the possibility, they are likely to seek out clients who are more pragmatic in their approach.”
- “Another consequence of blanket banning self-employed contractors is a loss of skills from the market completely. The Association of Independent Professionals and the Self-Employed (IPSE) recently carried out research that found a third of contractors have closed their companies for retirement, moved into permanent roles, begun contracting abroad or are simply not working following the IR35 reforms this April. The Road Haulage Association also cited the IR35 reforms as a contributory factor in drivers and hauliers vacating the industry and leaving a shortage of labour in this area, as they are not prepared to work ‘inside’ IR35 and see their income drastically reduced.”

Contractor Survey results:

- Half of the contractors that have been assessed as inside IR35 have been subject to a blanket ban, the other half said they were assessed by the client on an individual basis.

## **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?**

Kingsbridge is always in favour of further compliance in the sector.

## **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?**

Andy Vessey, Head of Tax at Kingsbridge comments:

- “Whilst the proposals are to be commended and welcomed, the effectiveness will depend on how quickly and efficiently HMRC share information about new avoidance schemes that appear, and also the channels through which they share this information. Historically, HMRC

have dragged their feet when alerting the public to different tax avoidance schemes, so their proactiveness must vastly improve if we are to avoid a repeat of the contractor loan scandal that heaped misery on so many individuals.”

“The power for HMRC to present a winding up petition against companies involved in the promotion of tax avoidance where it is against the public interest should deter all but the most determined minority. The naming and shaming of not only promoters of tax avoidance but also those associated with promoters through control and influence is also welcomed.”

*15 November 2021*