HMRC – Supplementary Written evidence (OPR0039)

Further information on the reform of the off-payroll working rules

1. Details of HMRC resources used on:

a) support for the Check Employment Status for Tax (CEST) tool

HMRC currently has 21 full time equivalents (FTE) deployed to provide support on off-payroll working queries and broader employment status queries from customers. This support ranges from general queries about the application of the rules to help with using the CEST tool.

b) enforcement of the off-payroll working rules

As set out in an Issue briefing[1] in February 2021, HMRC's approach to compliance activities for the off-payroll working rules is to support customers get things right, with a focus on education, assurance and encouraging self-correction. Through our tiered risking approach, we will assess the level of risk within a customer or sector, tailoring our level of compliance to the particular risk or behaviour demonstrated. The aim of this approach is to move away from the practice of opening full compliance checks as standard, increasing the number and speed of checks, encouraging customers to self-correct, supporting effective deployment of resource to risk and allowing for a more targeted and wider impacting compliance activities.

HMRC has also committed to taking a light touch approach to penalties in the first year. This means that unless there is evidence of deliberate non-compliance organisations won't have to pay penalties for mistakes relating to the off-payroll working rules made during the first tax year, regardless of when mistakes are identified. Organisations will however need to pay any tax due as a result of any errors identified.

HMRC has set up a specialist team to carry out off-payroll working compliance activity. This specialist team is responsible for:

- supporting customers who are trying to comply with the rules,
- helping customers meet their responsibilities under the rules,
- where customers make a mistake, helping them correct it,
- checking mistakes are corrected,
- identifying and correcting non-compliance with the rules,
- challenging deliberate non-compliance with the rules, and
- challenging tax avoidance schemes that claim to avoid the rules or otherwise reduce the tax payable.

The team currently has 30.84 FTE, although this will increase to 34.84 FTE by

[1] HMRC issue briefing: supporting organisations to comply with changes to the off-payroll working rules (IR35) - https://www.gov.uk/government/publications/hmrc-issue-briefing-supporting-organisations-to-comply-with-changes-to- the-off-payroll-working-rules-ir35/hmrc-issue-briefing-supporting-organisations-to-comply-with-changes-to-the-off-payroll-working-rules-ir35

the end of the financial year.

2. A breakdown of the latest CEST usage outcomes.

In December 2020, HMRC committed to releasing data updates on the usage of the Check Employment Status for Tax tool (CEST). Following the release of CEST usage data in December 2020, HMRC has published updated data quarterly, in March, June and, most recently, September 2021[2]. This latest publication covers the period from the launch of the enhanced tool (November 2019), until August 2021. This showed that CEST had been used over 1.8 million times.

The usage data up to August 2021 is shown in the tables below. This shows that CEST produced an "outside IR35" or self-employed determination in over 51% of uses, an "inside IR35" or employed determination in roughly 28% of uses and was unable to provide a determination in just over 20% of uses.

CEST outcome	Worker Using an Intermediary
Outside off-payroll working rules (IR35)	558,346 (49%)
Inside off-payroll working rules (IR35)	333,431 (30%)
Undetermined	233,631 (21%)
Total	1,125,408

CEST outcome	Direct Engagement
Self-Employed	392,706 (55%)
Employed	176,452 (25%)
Undetermined	142,922 (20%)
Total	712,080

The table below sets out the roles of each CEST user, for the same period. This shows that the majority of CEST users are hirers.

Total "Worker" usage	Total "Hirer" usage	Total "Agency" usage
713,197	**1,092,979**	**31,312**
39%	**59%**	**2%**

3. Details of the findings from the public sector research on the impacts on public sector bodies, and an update on the progress made on further long-term public sector research.

The Government published research into the short-term effects of the 2017 reform in the public sector[3] in May 2018, this was based on field research with

[2] Check Employment Status for Tax (CEST) usage data, 23 September 2021 - https://www.gov.uk/government/publications/check-employment-status-for-tax-cest-2019-enhancement/check- employment-status-for-tax-cest-usage-data

[3]

public authorities between August and October 2017.

In March 2021, the Government published two research reports on the off-payroll working rules:

- Research with Education public authorities on the long-term effects of the 2017 reform[4]
- Research with employment agencies on the long-term effects of the 2017 reform and anticipated effects of the 2021 reform[5]

Fieldwork with public sector organisations was paused in Autumn 2020 to enable these organisations to deal with the effects of the coronavirus pandemic. Findings from the education sector were published as take up rates of interviews among the education sector were high enough at the time to produce robust results.

The research published in March 2021 did not show any systemic challenges that organisations faced in applying the rules. Specifically, the research with the education sector shows that, while there are some costs in initially implementing the rules, the majority find the ongoing operation of the rules reasonable and easy to apply. Evidence also shows there are minimal long-term effects of changes to workforce structures in that sector, although evidence from research published with employment agencies shows many agencies (across all sectors) have seen contractors changing the way they provide their services. Only 7% of organisations who engage contractors before and after the reform found it more difficult to fill vacancies and only 12% found it harder to recruit contractors with the right skills and experience.

The research provided useful insights into how HMRC can support customers, which was built into HMRC's education and support programme for the 2021 reform. For example, the research highlighted the use of local authorities as a source of information for public sector organisations, the need for alternative forms of communication from HMRC, and for more support for clients and contractors. HMRC took this feedback on board and ran additional workshops with local authorities on the changes, introduced additional dates for webinars for organisations and contractors, and have continued with their multi-channel approach to communicating with customers including through email, the RTI payroll system and social media.

While the research found that the majority of organisations are making status determinations on a case-by-case basis, and CEST use is high among education sector organisations, with most finding the tool helpful, it did also highlight some examples where client organisations may be making incorrect determinations. As part of HMRC's education and support programme, HMRC provided further detailed guidance on how customers should take reasonable care when making decisions, as well as delivering specific webinars on making status

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/704931/Off-Payroll_Reform_in_the_Public_Sector.pdf

4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/971807/HMRC_Research_Report_-_Off-payroll_education_clients_FINAL.pdf

5 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970948/HMRC_Research_Report_-_Off-payroll_agencies.pdf

determinations and using CEST.

Fieldwork with other public sector organisations recommenced in July 2021 and continued until October 2021. The findings are being reviewed and analysed, and will be published in due course, in 2022.

Research has also been ongoing with contractors looking at the advice and information that contractors receive about tax, which also includes a small number of questions on the awareness of, and workforce impacts of, the 2017 and 2021 off-payroll working reforms. This research will be published in due course.

4. An update on the progress made on the short-term research into the private sector reform, including what information HMRC is gathering in this research.

Research into the short-term effects of the 2021 reform has been commissioned, and fieldwork has begun. The findings will be available in 2022. This research is with medium and large-sized organisations in the private and voluntary sectors. It primarily aims to assess:

- the administrative burden for client organisations and any challenges they may face implementing the rules,
- the usefulness of HMRCs customer education and support, and
- the impacts on the contractor workforce, including changes in the ways contractors are engaged, changes to rates paid, and changes in the ease of recruitment and filling vacancies. The research looks to gather insights on roles filled by contractors, as well as sectors.

This research is with client organisations as they have the most responsibilities under the reformed off- payroll working rules and will have a good understanding of the overall picture of how they are engaging contractors. However, as set out above, research has also been conducted with other parts of the labour supply chain: agencies and contractors.

External stakeholders, through the IR35 Forum, have been kept updated on HMRC’s research plans and have had the opportunity to feed into the design of the research.

HMRC intends to evaluate the long-term effects of the April 2021 reform and will consider in due course whether further external research is the most effective way of doing this, following consideration of the short-term research and other options available for evaluation.

5. An update on HMRC’s progress on tackling avoidance amongst umbrella companies.

Where an umbrella company meets the criteria to be classed as a promoter and/or enabler of avoidance schemes, HMRC will use its powers under Disclosure of Tax Avoidance Schemes (DOTAS), Promoters of Tax Avoidance Schemes (POTAS) and the Enablers penalty legislation, where appropriate. These powers have been strengthened by new legislation enacted in Finance Act 2021.

Most of the current disguised remuneration schemes we see are promoted and/or enabled by non-compliant umbrella companies.

The Government confirmed at Autumn Budget 2021 that it would introduce a further package of measures to build on changes to existing avoidance regimes and ensure promoters (including umbrella companies operating avoidance schemes) face stronger sanctions more quickly. These are contained in Finance Bill 2021-22.

In 2020-21 we made over 500 interventions into promoters and enablers of tax avoidance across a range of different taxes, including employment duties, and reporting obligations. This includes enquiries into the corporation tax, income tax and VAT affairs of promoters and individuals, and into the operation of PAYE by umbrella companies, as employers. It also includes challenges under our anti-avoidance powers, for example, an enquiry under the Disclosure of Tax Avoidance Schemes regime.

In November 2020, HMRC and the Advertising Standards Authority (ASA) issued a joint Enforcement Notice[6] which set out what promoters should and should not include in their internet advertising. This allows the ASA to apply sanctions to promoters who continue to use misleading advertising, including removing the advertisement from internet searches. As a result, many umbrella companies have shut down or amended their websites.

Our Spotlight series about tax avoidance schemes published on GOV.UK warns people of what they should look out for to spot avoidance schemes. In 2019 and 2020, HMRC issued 11 Spotlight warnings, on different tax avoidance schemes being offered to people. Spotlight 45 (September 2018) and Spotlight 55 (April 2020) specifically warn about non-compliant arrangements with umbrella companies and what to look out for if they claim individuals can have higher take home pay.

In November 2020, HMRC launched an awareness campaign "Tax Avoidance – Don't get caught out" targeted mainly at contractors and agency workers working through umbrella companies. It advises taxpayers how to spot avoidance schemes promoted by umbrella companies and about the risks involved. In November 2021, the campaign was refreshed to include a new interactive risk checker and umbrella payslip guidance to help contractors check how they're being paid and whether they are at risk of being involved in tax avoidance.

Since April 2020, we have written to around 33,000 taxpayers who we suspect are in disguised remuneration avoidance schemes (the majority involving non-compliant umbrella companies) advising them of the risk and providing contacts in HMRC if they want to leave the scheme. We now write to all taxpayers we suspect are involved in avoidance schemes within a few weeks of us becoming aware of their involvement.

In April 2021 we published guidance for contractors working through umbrella companies to help them understand their pay arrangements and warn them about umbrella companies operating avoidance schemes.

We are engaging with employment agencies and industry representative bodies to pass on key messages about steering clear of avoidance. In October 2021, we published guidance for agencies and other businesses that use umbrella companies. The guidance educates them about the warning signs of avoidance,

[6] https://www.asa.org.uk/static/eeef04f6-c2e0-49fd-a76ff4618add271b/Enforcement-notice-advertising-tax-arrangement-schemes.pdf

the risks of using non-compliant umbrella companies and due diligence they should undertake to reduce the risk of becoming involved in the supply chain of avoidance.

In November 2021, the government is published a call for evidence to ensure it has an up-to-date and well-informed view of how the umbrella company market operates. The call for evidence invites views from stakeholders on the role that umbrella companies play in the labour market, and how they interact with the tax and employment rights systems. It sets out the concerns that have been raised by some stakeholders, as well as government action already taken to tackle tax non-compliance and improve protection for workers. The call for evidence closes on 22 February 2022.

6. Information on the impact of legislation to bring National Insurance contributions (NICs) under the DOTAS regime on freelancers and the self-employed.

Provisions in Finance Act 2021 enhanced the operation of the DOTAS regime, ensuring that HMRC can act decisively when promoters or suppliers in the avoidance chain fail to provide information on suspected avoidance schemes. Clause 11 in the NICs Bill makes changes to the existing regulation- making power in the Social Security Administration Act 1992 so that NICs avoidance schemes will be brought within the scope of the DOTAS changes shortly after Royal Assent.

The changes in the Bill will mean that where HMRC suspects promoters of being involved in a NICs avoidance scheme they can issue a notice requiring the promoters to provide information about the arrangements to satisfy HMRC that the scheme is not notifiable under DOTAS. If they do not provide information, or where they do provide information and HMRC considers that the scheme is notifiable, then HMRC can issue a Scheme Reference Number (SRN) and publish details to better inform taxpayers of the potential risks of joining the scheme.

These changes will not adversely impact freelance contactors who are operating IR35 and accounting for their activities correctly, provided that they are not involved in promoting, marketing or enabling avoidance schemes. HMRC makes information available to help individuals steer clear of avoidance. For example, HMRC published a guide[7] last year for contractors and agency workers to help them spot avoidance schemes.

7. An update on the progress with resolving current Loan Charge cases.

Since Budget 2016, and by the end of March 2021, HMRC had agreed over 19,700 settlements with employers and individuals of their use of disguised remuneration (DR) schemes, bringing into charge around £3.3 billion. Around 30% of the settlements are with employers who account for around 80% of the yield and around 70% of the settlements are with individuals who account for around 20% of the yield.

We do not yet have an estimate of loan charge revenue collected, but 6,600 customers indicated they were subject to the loan charge on their 2018-19 tax returns. Compliance work is ongoing for those who appear to have failed to comply with the loan charge. We have opened about 25,000 enquiries into

[7] https://taxavoidanceexplained.campaign.gov.uk/

customers that filed a return but did not include the loan charge or included an inaccurate amount for the loan charge. We also wrote to those customers who did not file their 2018-19 tax return by the 30 September 2020 deadline, as well as those customers who filed a return but did not pay what they owe (or agree a time to pay arrangement) for 2018-19 by September 2020, explaining that penalties would be issued in line with the self-assessment penalties legislation.

On 13 August 2020, we published the 'Disguised Remuneration Settlement Terms 2020'. We also published guidance to help taxpayers understand their obligations and options, and the support available from HMRC to help them conclude settlement of their disguised remuneration tax liabilities. The initial publication included settlement terms for disguised remuneration liabilities not in scope of the loan charge. The terms were updated on 19 November 2020 to include all disguised remuneration liabilities including taxpayers who were subject to the loan charge.

We continue to support taxpayers to resolve their use of disguised remuneration and other avoidance schemes and get out of avoidance for good, including helping those who need extra support and additional time to pay.

In November 2021 we relaunched our awareness campaign "Tax avoidance: don't get caught out" and published an update to HMRC's report on the use of marketed avoidance schemes in the UK.

13 December 2021