

House of Lords
Economic Affairs Committee
Finance Bill Sub-Committee
Call for Written Evidence

The legislation upon which we find ourselves commenting on, was poorly resourced and researched from conception, poorly drafted, and is now being poorly patched.

There is an entire sector of the work force who will be affected by this legislation and therefore due diligence must be applied.

The judiciary have been required to exert their wisdom upon the legislation since its inception, and more often than not have ruled against HMRC. It is hard to see that findings of the judiciary have been incorporated in the legislation. HMRC has one interpretation of the legislation and the judiciary has another. Surely this means that the legislation is not fit for purpose.

Inevitably there is a need to prevent disguised remuneration, but whether shifting the onus to the end client be it small, medium or large, will achieve this has not been adequately researched.

The crucial element of determination under the proposed legislation is the CEST test as published by HMRC, which is at no point referred to in the legislation.

Addressing your document:

Existing Measures in the Public Sector

Some IT contractors previously operating through PSC's have been employed by Public Sector organisations at a salary far higher than what the PSC had previously charged in order to have access to the specific skill set required. A daily fee of £25 is payable by the employee to an umbrella company plus a payroll charge of £18 per week. How can this be construed as employment, when permanent staff do not have similar deductions made, especially the cost of processing the payroll?

Contractors with a specific skill set e.g. a marine surveyor, have enough work in the private sector. They consider their private sector contracts make them outside the scope of IR35 using the CEST test, and therefore are turning down work in the public sector.

GP locums currently operating as self-employed have been sent letters asking them to form a PSC.

In conclusion, the public sector is being hit hard, not only with ER NI costs but also higher salary costs, not to mention the potential costs of employee's rights which in some cases are being settled by HMRC out of court. They are being restricted in their pool of resources. Confusion reigns and in the case of GP's they are clearly being issued with incorrect advice.

Impact of new off-payroll rules on organisations

1. Private sector impact

Contractors and consultants need to be distinguished in the legislation.

A consultant:

- Professional
- Experienced
- Has expertise in a specific area suitable to share with other organisations

- Works alone for a host of reasons which makes them not suitable for employment - takes control and responsibility for their own work, not suitable for team culture, organisational politics, nor HR management, has a genuine business with a wide client base
- Works either as self-employed, or through their own company -may or may not obtain engagements via an agent
- Geographically mobile
- Deadline and delivery focused
- Fulfils a short and specific need for an organisation where the organisations own employees do not possess the expertise
- The organisation does not need to retain the services of the consultant once the task has been completed or the deadline met

The legislation needs to be drafted such that the consultant is not precluded from obtaining work in their own right. The proposed legislation would limit organisations access to this skill set and limit the consultants desirability to the end client who may be reluctant to expend time verifying the consultant and even if the consultant/client relationship under the CEST test falls outside IR35, will the end client be prepared to take the risk.

Consequences of the proposed legislation

- Organisations will suffer the costs of employment or the costs of verification
- A geographically isolated workforce
- Organisations lose access to the qualified consultants that they need
- Work could be outsourced to other countries

A contractor:

- Is a resource
- Works in a team of resources
- Has experience in a specific field
- Has no managerial influence
- Is geographically mobile

A team of contractors is useful to an organisation

- One off pieces of work spanning a defined time period
- No costs nor management of an employee relationship where dealing with an agent who controls and assumes responsibility for the contractors

Consequences of the proposed legislation

- If contractors are working via an agent and are being paid via payroll by the agency, then there should be little impact.
- Regarding a “chain of contractors and subcontractors” there is already a verification system in place through the HMRC CIS system which could be extended to all self-employed contractors. It should be noted that a company that has been verified and certified under CIS, has no deduction of tax made at source and can continue as a business in its own right and can deduct expenses. The contractor could be on one

particular site for 12-18 months. For the CIS sub-contractor who is self-employed, HMRC does the verification and certification. The contractor will deduct at source, tax at 20% from the invoiced labour cost. The CEST test has no application here.

Surely there must be some consistency across industries.

Medium and Large Organisations

Should the Bill stand, perhaps Charities and Not for Profit organisations should be excluded from Medium and Large Organisations.

Policy objectives and wider context

Adam Smith, *The Wealth of Nations* (1776) “The administration of tax collection should not negatively affect the allocation and use of resources in the economy, and certainly shouldn’t cost more than the taxes themselves.”