

IPD Employment Status and Intermediaries Policy
Room 3/46
100 Parliament Street
London
SW1A 2BQ

9 August 2018

Dear Sirs

HMT & HMRC Consultation – Off-Payroll working in the private sector

We support HMRC's review of the intermediaries' legislation with a view to improving its effectiveness and addressing instances of non-compliance. We believe it to be an example of good governance and welcome the opportunity to comment on the proposals.

The consultation provides an early evaluation of the public sector reforms and seeks views on how best to implement similar reforms within the private sector. Whilst we recognise that there are instances of non-compliance within the current system, we are concerned and disappointed that the overarching tone of the consultation is that companies and off-payroll workers are seeking to avoid tax and that the current system is not fit-for-purpose. In our experience neither is the case.

The flexibility of the UK labour market provides real advantages to all companies, regardless of size. Companies are able to use this active market to adapt the size of their workforce quickly to meet specialist non-core business needs, fluctuating demands in workload, and to cover staff absences. In our opinion, this inherent flexibility is key to UK business' comparative global strength and the ability of the UK to attract skilled professionals. It is therefore vital that the Government does not undermine this by creating unrealistic compliance burdens – for companies and off-payroll workers – which may have the unintended consequence of reducing the attractiveness of the UK to future investment and as a place to work.

We agree with the comments made in section 2.3 that employment status is not a choice but is determined by the facts of an engagement and the working practices. However, before any reform to the private sector off-payroll working legislation is undertaken, we urge HMRC & HMT to align the tax definition of an employee to the Employment law definition, so that there is a common definition for all business and public bodies, regardless of size, and improve the 'Check employment status for tax' (CEST) service. In our experience the CEST oversimplifies complex tax legislation and contracts with off-payroll workers such that the outcome is, more often than not, 'undetermined'. Improving the CEST service will provide greater certainty to all parties (HMRC, companies and off-payroll workers) that the correct tax treatment for an engagement has been determined.

Having reviewed the Independent Research commissioned by HMRC on the impacts of the initial stages of implementing off-payroll working rules in the public sector alongside section four of the consultation, it is clear that the April 2017 reforms are creating real and difficult problems. We recommend that a comprehensive post-implementation review of the public sector reforms is undertaken covering, at a minimum, a full tax cycle. This will provide HMRC/ HMT with visibility over issues occurring throughout the tax cycle and enable performance of a thorough cost versus benefit analysis.

Furthermore, the Report raises some real concerns in relation to the potential impact on UK labour market flexibility and the administrative burdens on clients and agencies (section 4.9). Whilst we note that, in HMRC's view (outlined in section 4.10), these concerns are anecdotal and not matched by HMRC experience, we strongly urge HMRC to investigate further as a lack of due consideration of

such issues could cause serious consequences for the UK labour market and impose excessive burdens on business if not appropriately addressed.

In addition to the above, our concerns in relation to extending the public sector rules to the private sector are:

i) proposed timing of implementation

We understand that HMRC/ HMT intend to implement the proposals from April 2019. This does not provide businesses with sufficient time to update systems and implement effective processes and procedures. We strongly recommend that HMRC /HMT do not pursue an April 2019 implementation date. This would not only ensure that businesses have adequate time to implement the changes, but would also provide HMRC /HMT adequate time to address and develop solutions to the ongoing issues with the public sector implementation ahead of any private sector implementation.

ii) lack of a comprehensive impact assessment

The figures quoted in the consultation and driving HMRC's /HMT's review of the current legislation are preliminary, and there is a lack of transparency as to how these have been derived. Additionally, it appears that no consideration has been given to the fundamental differences in the operations of public and private companies or the differing nature of off-payroll workers (and their contracting arrangements) in the different sectors. In our opinion, it would be remiss of HMRC to rely solely on the responses received to this consultation (particularly in relation to questions 10 and 11) in assessing the impact on the private sector. Furthermore, whilst the consultation seeks input into administrative cost implications for businesses (question 11), views on the initial set-up costs have not been sought. Footnote 19 notes that the average set-up costs for central bodies was £7,550. In our view, this is unrealistically low and the anticipated cost of compliance in relation to systems changes alone could be in the hundreds of thousands of pounds per business. We strongly recommend that a thorough impact assessment is undertaken to provide an accurate cost versus benefit analysis for the UK economy as a whole. We would be happy to facilitate a meeting with HMRC and our members to discuss this further.

iii) Lack of consideration of alternative options

In our opinion, there is merit in exploring alternative options that have been deemed out of scope in the consultation, particularly the application of a flat-rate withholding tax, similar to the construction scheme. This would be a pragmatic and cost-effective solution, which would provide certainty to businesses and off-payroll workers that the tax treatment of the engagement is correct. Any tax withheld would be deducted from payments and paid to HMRC. When the off-payroll worker submits their tax return, a tax credit would be available equal to the withholding tax deducted by the end user. This solution has the additional benefits that there is already a well-known system in place that is operating effectively, meaning that the initial set-up costs for businesses would be low, and companies already have procedures and processes in place to manage both the withholding element and the payment to HMRC. In our view, this is a simplified and less onerous version of the proposal outlined in section 6.17 of the consultation, which would also address some of HMRC's concerns outlined in the consultation (for example that the risk of being found to be non-compliant is low (section 5.9)). This would take the decision of tax status determination out of the end user's hands.

Who we are

The 100 Group of Finance Directors represents the views of the finance directors of FTSE 100 and several large UK private companies. Our member companies represent almost 90% of the market capitalisation of the UK FTSE 100 Index. Our aim is to contribute positively to the development of UK and international policy and practice on matters that affect our businesses, including taxation, financial reporting, corporate governance and capital market regulation. Whilst this letter expresses the views of The 100 Group of Finance Directors as a whole, those views are not necessarily those of our individual members or their respective employers

Please feel free to contact me at chrisoshea100group@kpmg.co.uk should you wish to discuss our comments. I would be more than happy to meet to discuss these, or any other relevant items, further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'COS', with a stylized flourish extending to the right.

Chris O'Shea
Chairman
Taxation Committee