

**Formal consultation response from the Chartered Institute of Payroll Professionals in
respect of: Off-payroll working rules from April 2020**

Organisation response to be submitted to: HM Revenue and Customs

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Dear Sirs

By Email

Introduction

The Chartered Institute of Payroll Professionals (CIPP) is grateful to have the opportunity to comment on the consultation for the Off-payroll working rules from April 2020. We are pleased to be able to feed into the policy and operational changes that arise from this consultation, and hope that this written response will form the basis of an ongoing relationship with HMRC. The CIPP gives permission for you to include us in the list of organisations involved in the consultation exercise. Company information about the CIPP and its role in representing employers can be found at the end of this response.

Purpose of response

Our response aims to provide a summary of quantitative results taken from our survey that ran throughout April and May to gather responses from CIPP members and other payroll tax professionals (from a wide range of organisations that includes automotive, education, IT and social care from both the public and private sectors) to the consultation questions. We also held a think tank roundtable on 16 May and our response incorporates views and experiences shared by members in attendance.

Scope of the reform

We welcome the exclusion of small entities from these reforms, however the definition of small organisation needs to be consistent – particularly as it relates to when the obligation will begin for the client organisation and what time period needs to be monitored for the employee headcount and turnover.

The proposals for the non-corporates is not workable for client organisations – it gives insufficient time to prepare for small organisations who breach the thresholds and makes assumptions that knowledge of off-payroll working rules exists within all organisations – it doesn't.

If differing exclusion criteria needs to exist for corporates and non-corporate organisations, then both should mirror the generosity found within the Small Companies Act. However in direct response to the consultation paper, option 2 was the preferred choice due to its greater generosity.

Qualifying criteria needs to be clearly laid out in guidance to ensure that the definitions apply consistently – making direct reference to legislation e.g. the Small Companies Act 2006 might be useful for those with legal training but for the average engaging client and the practitioners who will be required to monitor compliance within their organisation it isn't helpful.

Ensuring information is shared appropriately

Yes, in essence good communication between the client, the worker and the fee payer is essential, we know from feedback given by our members working in the public sector that establishing, and in

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some cases, agreeing, the status determination can be an area that is fraught with challenge but in placing this requirement on the client it will support better communication between client and worker, in simple supply chains. It should provide greater clarity and communication lines in more complex chains. Whether it provides more certainty over the workers tax position however is less certain as this remains a complicated area – but better lines of communication can only improve the process.

Efficient timelines need to be set in support of transferring determinations (and reasons) to the fee payer, again we believe that this will provide better lines of communication that can only improve the process.

Circumstances will occur that result in the breakdown with the information cascade, but possibly no more than already exist to hamper good compliance with legislation. The longer the supply chain the greater the risk. Improved communication requirements between client, feepayer and worker, should result in greater transparency in complex supply chains. This may result in increased simplicity to chains being sought that reduces risk.

Initially we foresee an increase in administrative burden (certainly anecdotal feedback from public sector members indicates this to be the case) as improvements are made to processes that support greater transparency and improved communication.

The more time given by Government to organisations to enable preparation in an informed manner the greater chance of reducing the cost of administrative burden.

Two wrongs do not make a right. Requiring the worker's PSC to assess the contract simply because they haven't received a determination from a public sector or medium to large organisation from April 2020, will simply add confusion. Albeit it protects the exchequer. There should be an expectation to receive the determination and where not, steps should be taken. It could also provide an added incentive to the client not to comply? The process of requiring the determination to be given direct to the worker should be applied, where this doesn't occur it is the client that has failed and only in exceptional circumstances should the burden be placed on the worker's PSC – this should not be a routine expectation.

We received only a small number of responses to the question relating to size of the typical supply chain however two to three parties are, in our members response, the norm – where supply chains are encountered. With an agency adding to the number between client and worker.

There is concern about the risk of long standing disputes and so there is a need for enforcement being applied by HMRC in a robust manner and consistently, but yes we agree that there is a possibility that where liability of tax loss is placed on the party who is in a position of power and control, more effort will be made to ensure good compliance throughout the chain.

Helping to make the correct status determination

We foresee the additional burden being created as organisations transition to new processes that incorporate these reforms, however once incorporated we see no significant additional burden from providing reasons behind the status determination. The work arises from making the determination.

Indeed the opposite could be true as it may reduce the risk and occurrence of challenge from the worker who does not understand the determination outcome.

Robust communications provided by HMRC will be needed to ensure that all parties are clear on what is required and why.

Whilst consistency across organisations is desirable, any regulatory reform that enables a client-led status disagreement process should build a framework but allow sufficient flexibility to allow for organisational and sectoral variances.

Pensions

We understand Government's desire to increase the take up of workplace saving and providing consistency with the NI treatment is a positive outcome.

We haven't seen any evidence that suggests that where choice is allowed the client will wish to take up pension provision wholesale. Indeed, it has the possibility to create more confusion than it serves to resolve. Creating additional administrative burden in paying into different pension schemes that the worker/contractor chooses.

However, we do see that for a certain group of higher paid contractor this may indeed be an encouraging development that offers significant NI savings if contracts were to include a contract sum made up from fee plus pension contribution.

Practical application

Payroll software isn't required to identify when an individual is a 'deemed' employee who is being added to the payroll for income tax and NIC calculations only. Some software has supported their clients by use of a flag to ensure that other calculations are not carried out, for example, student loan deductions.

Sadly, this action hasn't been mirrored by HMRC, nor have HMRC systems been adapted to recognise the different processes that a deemed employee with require. This is not acceptable nor does it aid employers, engagers, clients, agencies and their contractors, to name but a few who are impacted by these reforms, to easily enact this policy within their organisations. It also further risks confusion and animosity between contractor and client.

Tax codes used for deemed employers should be OT not BR to ensure that the correct amount of tax, at the correct rate is made, reducing the number of higher rate tax payers who find themselves accruing tax arrears.

The process of corrections also does not run smoothly between client and HMRC, we ask that this be addressed within guidance.

We have not commented on the improvement needed to the CEST tool as we are aware that this work is ongoing however we would request that consistency be applied in the language of Off-payroll working/IR35/Intermediaries legislation.

Conclusion

These latest reforms to Off-payroll working (IR35) rules will see the number of organisations affected increase significantly – even allowing for those who will fall outside of the scope – a significant education programme and update of guidance and information, in all forms and at all levels, will be required to be delivered by HMRC to enable organisations and their advisors to be aware of and to comply with the new obligations.

Recommendations

Guidance needs to be timely, clear and accurate, it also needs to speak to the increasingly wide audience that this subject will now attract and it needs to ensure that each party affected by these reforms are made aware – particularly those who may think that they are not captured by the latest reforms.

We remain concerned that the timescale for this reform is not reasonable due to the inevitable (and ongoing) delays caused by the current political upheaval as a result of our exit from the European Union.

However, we also remain committed to providing HMRC with support to cascade information and guidance as you update the resources available through GOV.UK, manuals, webinars, bulletins, updates and webcasts.

Should you require clarification of any of the points that have been made in this response, please do not hesitate to contact me or another member of the Policy team.

Yours faithfully

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Company Information

The Chartered Institute of Payroll Professionals (CIPP) was established as an official industry body in 1985 when the Institute of British Payroll Managers (IBPM) was formed. In 1998, the IBPM merged with the Association of Pensions and Superannuation Administrators (APSA) to form the Institute of Payroll and Pensions Management (CIPPM), which became the Institute of Payroll Professionals in September 2006 and was granted Chartered Status in November 2010. The CIPP is the Chartered Institute for payroll professionals in the UK and currently has in excess of 10,000 members enjoying a range of benefits. In addition, the CIPP is the UK's leading provider of education for payroll, and has established the friends of automatic enrolment which is responsible for bringing together and educating all of those responsible for implementing automatic enrolment for pensions.

The mission statement of the CIPP is:

Leading payroll and pension professionals through education, membership and recognition

Representation

The views of the Chartered Institute are sought and valued by Government departments and other organisations, as witnessed by its representation on bodies ranging from HMRC, and other external Employer Consultation Groups. The Institute, through its Policy team headed up by Helen Hargreaves, has been responding to consultation documents and attending consultation meetings for more than 19 years.

As a result of this sustained effort, we have created sound working relationships with the DWP, HMRC, BEIS and other Government departments.

The Chartered Institute operates an Advisory Service staffed by professionals able to provide accurate and authoritative advice on a wide range of topics. It also runs national forums which allow members direct contact with representatives from HMRC and other relevant bodies and also provides a forum for members to input and feedback on the CIPP's policies.

Education

The Institute validates and controls a wide range of professional qualifications in both the payroll and public sector pensions sectors, from Foundation Degree level to Masters level. IPP Education, a wholly owned subsidiary of the CIPP, delivers the qualifications and provides tutors at officially recognised standards. IPP Education also runs a comprehensive range of short training courses throughout the UK.

Events

The CIPP also runs a series of conferences throughout the year, culminating in the Annual Payroll Conference and Exhibition.

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