

**Formal consultation response from the Chartered Institute of Payroll Professionals
in respect of the consultation on
Off-payroll working in the public sector: reform of the intermediaries legislation**

Organisation response to be submitted to: HM Revenue & Customs

Date of submission: 18 August 2016

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Dear Sirs

By Email: off-payroll.consultation@hmrc.gsi.gov.uk

Introduction

The Chartered Institute of Payroll Professionals (CIPP) is grateful to have the opportunity to comment on the consultation proposals for Off-payroll working in the public sector: reform of the intermediaries legislation. 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 the HM Revenue and Customs Employment status team. 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.

Following on from the CIPP response to the 2015 consultation Intermediaries Legislation (IR35): discussion document we again reiterate that we respond from the viewpoint that use of a Personal Service Company (PSC) simply to gain a tax or NI advantage is unacceptable and continue to support increased enforcement by HMRC that results in increased protection of vulnerable workers employed inappropriately through PSCs.

Purpose of response

To provide the views of the payroll professional in response to the relevant questions raised within the consultation publication Off-payroll working in the public sector: reform of the intermediaries legislation.

Our findings have been gathered from a mix of survey results (survey ran from 18 July to the 8 August 2016) and anecdotal evidence.

We note many similarities also to be found within the Intermediaries Legislation Qualitative Research

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530151/Intermediaries_Legislation_Qualitative_Research_-_July_2016.pdf

Summary of key findings

Definition of the public sector

The FOI Act and the FOI (Scotland) Act provides a definition that will result in a clearly recognised and consistent approach to defining and recognising public sector engagers.

Overwhelmingly there is support for private companies carrying out public functions to be included within this definition, in fact we would go further to say that subject to a satisfactory timeline for implementation (see below) we would look to see no sector or size of engager excluded.

There is evidence to suggest that all sectors and engager/employer sizes are at risk of non-compliance with IR35, and further more to exclude sectors adds a level of complexity to an already complex framework.

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“... it doesn't feel reasonable for these companies, completing public sector work but on contract, to be excluded... it is giving private companies an unfair advantage to be excluding them.”

“... there should be a level playing field, if private companies carrying out public functions are excluded there will be a distortion in the public sector market place and further privatisation is inevitable...”

“... I think this should be a national exercise and no distinction / separation between private and public sectors...”

“... If they are providing the service for the Local Authority they should be covered by the same legislation... This should be built into the Contracts when Services are awarded.”

Information

We believe that there should be a legal duty to disclose the information required by the end engager to enable the correct decisions to be made. There is evidence that confirms that if clearly defined and consistent rules don't exist then the impetus to deliver/disclose information will not happen.

The Digital Tool should be backed by clearly defined expectations of what information is needed to be gathered – and by whom, and what information should be provided – and by whom.

Guidance should be unambiguous to enable engagers to adapt or establish for the first time processes and a clearly defined policy which should include reference to the digital tool.

Making the decision

On paper the decision flow chart appears to be asking the right questions with the right priority and to rule out engagements that are clearly out of scope, with the benefit of appearing to be simple to understand and use

The reality however is rarely so straight forward and so we would hope that guidance is being developed that adds a little more depth and includes more working examples that an engager may come across.

There should be a recognition that IR35 guidance will in the future be accessed by a far greater number of practitioners than it has in the past as the onus shifts from the small number of PSCs (and their professional advisers) to a wide range of engagers/employers with teams working in Payroll, HR and Finance and procurement departments.

If all facts are known then the two parts of the decision flow chart do have the capacity to provide engagers with certainty on day one of the hire – in an ideal world. Processes will need to recognise that situations and answers may change over the course of time, and where they do the decision flow chart and tests may need to be revisited.

Also in an ideal world, this information and data will be collected as part of the procurement/pre-employment checks and certainly robust processes that are based on clearly defined and mandated rules will be needed.

Digital tool

A robust, reliable and consistent digital tool that is mandatory will be fundamental to the successful delivery of this proposal and we welcome HMRC's encouragement for expressions of interest and we would like to lodge our expression of interest at this point.

Working in collaboration with all stakeholders to design a robust digital tool is the way to achieve this to ensure that every possible view and experience is captured in the end product.

We are concerned however at the delivery timeline – we do not believe that a robust tool will be delivered and fully tested against all possible situations by 6 April 2017 when it will be needed.

Transfer of liability

At this point we would highlight that employers already have significant administrative burdens and liabilities, however and akin to the operation of PAYE by the employer, we agree that the liability for the correct operation should fall to the engager/agency, along with the liability for tax and National Insurance (and penalties and interest where appropriate), when the rules have not been applied correctly?

However liability should transfer to the PSC and its directors where the PSC has given false information to the engager.

We would highlight that this goes to the heart of HMRC's ability to police the widespread operation of IR35 and we would like to reinforce concerns that we raised in our response to the *Intermediaries Legislation (IR35): discussion document*.

- *We remain concerned that the underlying premise of this discussion piece is that HMRC are unable to fully police the current IR35 regime and believe that HMRC should first be in a position to actively and publicly police the regime.*
- *We would therefore question the wisdom of immediate further regime change. Time should be allowed for the measurement of success, or otherwise, of recently introduced reporting requirements.*
- *Active and well publicised compliance activity by HMRC will reap its own rewards. Anecdotal evidence seems to suggest that the lack of any visible compliance activity by HMRC since the introduction of the IR35 regime has encouraged greater non-compliance as the belief has grown that 'we won't be looked at'.*

We are of the view, as a result of anecdotal and survey evidence along with observations of research findings in the Intermediaries Legislation Qualitative Research that engagers and/or employers of every size and every sector display a risk averse nature – as a result we are likely to see a greater number of individuals pay being processed via PAYE ‘just to be safe’.

We therefore predict greater use of the appeal process where the PSC and/or engager disagree, this has multiple disadvantages, however the most critical for the purpose of this response is:

- Increased administrative cost and burden to the engager – of every size particularly the SME if the Intermediaries Legislation Qualitative Research is to be used as a benchmark.
- Increased administrative cost and burden to the PSC
- Increased costs to HMRC to process appeals.

Costs

Where views have been given it is clear that there is a strong believe that additional costs of administering this obligation will be significant, both from an administrative perspective as well as the perspective of additional contract sums, which are predicted to increase to account for the impact of IR35 being operated ‘just to be safe’ by risk averse engagers.

Further research, based on known workings of the digital tool along with informed decision making on additional processes required (by both engager and PSC – and agency where applicable) would be needed in order to quantify actual costs.

Recommendations

Delay in implementation – broaden the scope

- We would ask for a delay in implementation until April 2019 - but an expansion to all engagements caught by IR35, not only in the public sector but also the private sector. This delay would provide ample time to design, build and thoroughly test the new digital tool which we believe should be mandatory to use but robust and reliable in its findings. This can only be achieved with a measured and not a rushed delivery.

Taking a staggered approach to the obligation for operating IR35 assessments, first by expanding the obligation to the Public Sector and then next we would assume to the wider private and third sector will cause unnecessary complexity and does little to aid the wider understanding of IR35. There appears to be evidence that engagers of all sectors, types and sizes are ignorant of the rules regarding IR35, have inefficient processes in place to ensure compliance if burden is to be passed to them, and are therefore at equal risk of non-compliance or furthering non-compliance by PSCs. If this is the case, then transferring the burden to all engagers would provide the benefit of consistency across the board – rather than the one sector approach that is being proposed.

IR35 is viewed as a specialist area by the majority of payroll professionals who will need to become knowledgeable by the delivery time line.

Despite being just over six months away from a proposed go live date there is still no sign that this news and information is being promoted to the wider Public Sector engager community and their agents. This must happen as a matter of urgency to alert them of the need to adapt and strengthen their internal processes and to begin collecting the data which will enable payroll departments to process 'deemed payments'.

- In addition it needs to be recognised that there may be a delay in collating all information and therefore deemed payments that are processed via RTI may not be reported 'on or before'.

An appropriate late reason code should be added to the existing list of late reason codes within the data items list to allow for the increased and legitimate risk of this occurring as quite often in a large organisation the decision maker may be very remote from the engager.

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 and Research 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 17 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. CIPP Education, a wholly owned subsidiary of the CIPP, delivers the qualifications and provides tutors at officially recognised standards. CIPP 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 & Pensions Conference and Awards Ceremony.

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