ipse The Association of Independent Professionals and the Self Employed

Off-payroll working rules from April 2020
IPSE response to the HMRC consultation document

May 2019

1. Summary of IPSE's position

IPSE believes the proposal outlined in the consultation document will be deeply damaging, not just to 'Personal Service Companies' (PSC'S) and the agencies in the supply chain, but to their private sector clients and the economy as a whole. We set out our concerns in some detail when responding to last summer's consultation and so will try to avoid repeating those arguments in this response, however, it is worth noting that we still feel very strongly that this policy will:

- Heap significant cost onto businesses
- Restrict the private sector's access to the specialist skills it needs
- Reduce flexibility in the supply of those specialist skills
- Further complicate employment status
- Give rise to legal challenges, particularly with regard to employment rights and status appeals
- Swamp UK businesses in red tape
- Damage UK productivity
- Result in multi-national businesses shifting projects off-shore
- Encourage further use of non-compliant umbrella arrangements and tax evasion schemes

1.1 Brexit

IPSE believes the policy would be damaging whenever it is introduced, however, it must now also be considered in the context of Brexit. The economy is in a fragile state. The pound is extremely low against benchmark currencies. According to a recent piece by Bloomberg News[1], UK firms are losing sales from overseas customers because of concerns about trade disruption and cash being tied up in stockpiling. Growth is weaker, import costs are higher and inflation is up.

Now more than ever the government needs to prioritise the issues that take the country forward. Moving ahead with a measure that will restrict the benefits of the UK's flexible labour market – one of our greatest economic advantages - risks damaging the economy at a time which is already challenging for businesses.

IPSE's Freelancer Confidence Index[2] – a quarterly survey of freelancers that tracks the business performance and economic outlook of independent professionals and the self-employed in the UK – has consistently shown that Brexit is a major concern. Companies are holding back in investing in skilled resources and this proposal will only exacerbate that. The other major issue causing confidence to dip to a record low is government policy towards freelancers.

1.2 UK Productivity

The proposal would cause a significant increase in required resourcing for businesses, as well as for HMRC. Time spent on the almost impossible task of determining the IR35 status of off-payroll engagements is time not spent on productive business activity. For engagements that have been deemed inside IR35, businesses will also need to consider how they can process payments to personal service companies via the payroll, while still reconciling VAT payments – an issue which remains unresolved since the public sector reforms were implemented last year.

With continuing uncertainty and a growing burden on business, the lead proposal risks damaging the UK's productivity.

[1] Bloomberg Business Week, Britain's businesses have already lost, May 2019
[2] Freelancer Confidence Index, IPSE, Q4 2018

1.3 Recommendations

IPSE's central recommendation is that the proposal should be abandoned. We set out the reasons for this in our response to last summer's consultation. Unfortunately, the government has decided to push ahead with the policy and so we make the following further recommendations:

Recommendation 1 – Delay implementation. There are several compelling reasons to postpone the implementation of the policy. These are:

- April 2020 does not give businesses sufficient time to implement the necessary processes to deal with this measure, particularly in light of the complications highlighted by this consultation. The legislation for the reform has not yet reached the draft stage for publication. Businesses will need to see the final legislation before they can put in place the necessary measures to ensure compliance. A delay will provide businesses time to understand and prepare for the changes with access to detailed information set out in the legislation. This will give businesses greater certainty of their responsibilities.
- To ensure certainty and stability for business, government should delay any changes to IR35 until it has brought forward measures on the back of the recent Taylor Review and last year's Employment Status consultation. IR35 compliance could be made much simpler, or even redundant, if clear, unambiguous rules around status are introduced in the first instance. In addition, it would be undesirable for businesses to implement complex status determination processes based on the current rules, which may subsequently have to change.
- A delay to implementation is required for educating the private sector. HMRC's commitment to provide support and guidance to help businesses implement the rules, and improvement in appropriate guidance to suit the needs of the private sector ahead of reform, is vital. Many businesses remain unprepared for the changes and currently lack the knowledge to make decisions concerning employment status and will therefore rely heavily on guidance from HMRC.
- There is a damaging lack of faith in the reliability of the CEST tool. It is therefore welcome that HMRC are committed to improving the tool, however, it remains unclear whether sufficient improvement can be made to fundamentally change attitudes to the tool. Implementation should be delayed until there is agreement that CEST generates accurate results.
- As mentioned above Brexit continues to have a major impact on UK business. At the time of writing the government has no clear, agreed plan to remove the problems caused by Brexit. Implementation of the proposal should therefore be delayed, allowing business and government the time to concentrate on negotiating Brexit.

Recommendation 2 - Liability should remain with the client, not the agency, and individuals deemed to be operating inside IR35 should be placed on the client's payroll, not that of the agency or other third party (typically an umbrella).

Recommendation 3 – Introduce a statutory appeals process to allow individuals to challenge incorrect determinations. The client-led dispute resolution service proposed in the consultation document is woefully insufficient and will only serve to heap more burden on business.

Recommendation 4 – Clients that meet the small company exemption requirements must be obliged to declare their status to the 'PSCs' they engage. PSCs should not be expected to apply tax rules based on the silence of the end user client.

The same principle should apply throughout the supply chain. Small companies should be required to inform the supply chain they are 'small', according to the Companies House definition, and that the IR35 liability therefore rests with the worker's 'PSC'.

Recommendation 5 - Commission an independent body to conduct a full review of the public sector reform. The Government has a unique opportunity to comprehensively review the impact the recent reforms have had on the public sector prior to private sector implementation. A comprehensive review should be undertaken over at least a full tax cycle since implementation. This should allow issues that occur throughout the tax cycle to be identified, with solutions to tackle issues prior to potential implementation of any private sector changes.

Recommendation 6 - Undertake an implementation impact assessment for the private sector. Key statistics, such as the total off-payroll anti-avoidance in the private sector and the cost of implementation for business, are driving the debate. However, these figures are disputed. HMRC's recent losses at tribunal have raised doubts over government's claims about the scale of non-compliance. With such drastic changes proposed to off-payroll in the private sector, it is necessary to understand the full extent of costs, and an accurate reflection of the true level of anti-avoidance, the policy is aiming to prevent.

Recommendation 7 - The reasonable care clause should be put in statute. In the public sector, clients have made blanket assessments. IPSE has spoken to hundreds of contractors and supply chain insiders since April 2017 – all of them agree that blanket assessments are common. It seems that only HMRC are of the view that blanket assessments have not happened.

This problem can be mitigated by placing a statutory requirement on clients to take reasonable care and then defining what reasonable care means. IPSE believes 'reasonable care' means:

- Assessing each engagement individually
- Reviewing the contract and the working practices independently
- Assessing all the factors that would be assessed at a Tax Tribunal

Recommendation 8 - Introduce a new tax relief aimed at encouraging pension savings for those caught by the IR35 rules. There is already a pensions crisis among the self-employed. Just 31%[3] of self-employed people are currently saving for later life. Prior to the off-payroll reforms in the public sector, many off-payroll workers made pensions contributions though their intermediary, and tax relief was effectively claimed on those contributions. Those caught by IR35 in the public sector have lost this ability as a result of the reforms, because all income is taxed at source.

Recommendation 9 – Reinstate the 5% expense allowance where IR35 applies. The proposal suggests that IR35 caught engagements with small clients will allow for a 5% allowance to cover some of the costs of running a business. However, the 5% will not be permitted if the engagement is with a medium or large client. There is no justification for this difference and no adequate justification was given for removing the 5% allowance when the rules changed in the public sector.

Recommendation 10 – Government should consider alternatives to the proposal. This should include ideas that were deemed 'out-of-scope' in last years' consultation.

[3] How to Solve the self-employed Pensions Crisis, IPSE, June 2018

CONSULTATION QUESTIONS

Question 1

Do you agree with taking a simplified approach for bringing non-corporate entities in to scope of the reform? If so, which of the two simplified options would be preferable? If not, are there alternative tests for non-corporates that the government should consider? Could either of the two simplified approaches bring in to scope entities which should otherwise be excluded from the reform? Is it likely to apply consistently to the full range of entities and structures operating in the private sector? Please explain your answer.

The simplified approach makes sense.

The second option proposed is preferable i.e. apply the reform only to unincorporated entities that have **both** 50 or more employees and turnover in excess of £10.2 million. This would be simpler, more consistent with the rules for incorporated entities, and would reduce the risk of non-compliance by unincorporated businesses that might get confused about which criteria (number of employees or turnover) is relevant.

Another option might be to base the size of the company on its Class 1 National Insurance Contributions, similar to the Apprenticeship Levy system.

Question 2

Would a requirement for clients to provide a status determination directly to off-payroll workers they engage, as well as the party they contract with, give off-payroll workers sufficient certainty over their tax position and their obligations under the off-payroll reform? Please explain your answer.

It is essential that clients provide status determinations directly to off-payroll workers they engage. These decisions will have a dramatic impact on the tax status of these individuals and will raise questions over their employment status. One of the most egregious aspects of the rules in the public sector for contractors has been that they do not know who has made the status determination, how the decision was made and have had no route to challenge it.

Question 3

Would a requirement on parties in the labour supply chain to pass on the client's determination (and reasons where provided) until it reaches the fee-payer give the fee-payer sufficient certainty over its tax position and its obligations under the off-payroll reform? Please explain your answer.

It depends on what the determination is. If the engagement is deemed to be 'outside IR35', then the requirement to pass the message down the supply chain, and directly to the worker, is sufficient. If, however, the engagement is deemed to be 'inside IR35', then any breaks in communication through the supply chain become problematic. Entities in the supply chain that feel they have done all that is required of them could become liable for non-compliance simply because another entity failed to pass on the message.

There is also an issue of timing here. If we have understood the proposal correctly, all payments to the worker (or his or her limited company) must have tax deducted at source, from the moment the client decides IR35 applies. But if that message takes a long time to filter through the supply chain, and a gross payment to the worker's company is made, then that will be deemed non-compliance. If someone,

somewhere in the supply chain is off sick, or on holiday, or there is a failure of IT systems, it could cause the supply chain communication to breakdown.

It has become increasingly clear to IPSE over the course of this consultation that complex supply chains will struggle to deal with the compliance burden placed on them by this legislation. We therefore feel that, where clients decide that IR35 should apply, the liability should remain with the client, and individuals deemed to be operating inside IR35 should be placed on the client's payroll, not that of the agency or other third party (typically an umbrella).

This would be a dramatic simplification and would also prevent the proliferation of non-compliant entities springing up (see the answer to Question 9 for more on non-compliant entities).

Question 4

What circumstances may result in a breakdown in the information being cascaded to the fee-payer? What circumstances might result in a party in the contractual chain making a payment for the off-payroll worker's services but prevent them from passing on a status determination?

A breakdown in communication may result from a lack of suitable internal procedures, key staff being away through sickness or on holiday, or potentially IT issues. Given the speed at which the reform is occurring, a lack of understanding of the requirements within the labour supply chain increases the risk of a breakdown in communication. For HMRC to establish who the defaulting party is in a complex supply chain will require investigating more than one party in it and possibly all of them, which will take time and resources from HMRC.

This can be ameliorated by taking the supply chain out of the equation, where IR35 has been deemed to apply. If the client believes IR35 should apply, it should make payments directly to the worker (or the worker's ltd co) via its own payroll. Only then can the client and HMRC be certain the arrangement is compliant.

Question 5

What circumstances would benefit from a simplified information flow? Are there commercial reasons why a labour supply chain would have more than two entities between the worker's PSC and the client? Does the contact between the fee-payer and the client present any issues for those or other parties in the labour supply chain? Please explain your answer.

It is frequently the case that labour supply chains would usually contain at least two agencies, and often an umbrella company too.

The client that has made the determination (and will ultimately be held liable for tax) will not know exactly what the worker has been paid in real time. Businesses with a large worker population will be saddled with a large administrative burden in order to try to keep track of this through a complex supply chain.

As highlighted in responses to the previous questions, where the client has deemed IR35 should apply, the liability should remain with the client and payments should be made via the client's payroll.

Question 6

How might the client be able to easily identify the fee-payer? Would that approach impose a significant burden on the client? If so, how might this burden be mitigated? Please explain your answer.

Yes – it could be burdensome. In many cases in the public sector, clients have no relationship at all with the fee-payer. It can only be mitigated if the supply chain is taken out of the equation and the client is required to pay the worker (or the worker's ltd co) directly and deduct tax accordingly.

Question 7

Are there any potential unintended consequences or impacts of placing a requirement for the worker's PSC to consider whether Chapter 8, Part 2 ITEPA 2003 should be applied to an engagement where they have not received a determination from a public sector or medium/large-sized client organisation taking such an approach? Please explain your answer.

It is very easy to imagine how this approach could result in non-compliance. The worker's 'PSC' will in many cases assume it no longer has responsibility for IR35, and stop thinking about it altogether. This can be mitigated by placing a requirement on clients wishing to rely on the small company exemption to declare their status to the 'PSCs' they engage. 'PSCs' should not be expected to apply tax rules based on the silence of the end user client.

The same principle should be applied throughout the supply chain. Small companies should be required to inform the supply chain they are 'small', according to the Companies House definition, and that the IR35 liability therefore rests with the worker's 'PSC'.

Question 8

On average, how many parties are in a typical labour supply chain that you use or are a part of? What role do each of the parties in the chain fulfil? In which sectors do you typically operate? Are there specific types of roles or industries that you would typically require off-payroll workers for? If so, what are they?

A full understanding of the impact of the reform on specific roles or industries and the operation of labour supply chains should be part of the research prior to reform. Given the importance of understanding the impact of the reforms across different sectors, government must examine this very closely before implementation. We therefore recommend that a full review of the impact of the reforms must be undertaken prior to implementation.

Sectors that may be impacted significantly are financial services, engineering, manufacturing, interim roles, technology, and health and social care. Employment status is a complex area and there can be different concepts as to what is self-employed or employed for tax purposes between different parties – which will inevitably lead to disagreements. Further clarity from government is required as to the importance of factors to consider when making determinations. The ongoing government response to the Taylor Review leaves elements of this in doubt, such as the importance of substitution, mutuality of obligation, as well as the impact of multiple engagements.

Implementation should be delayed, until the government's work around the Taylor Review is complete and has been communicated to business.

Question 9

We expect that agencies at the top of the supply chain will assure the compliance of other parties, further down the labour supply chain, if they are ultimately liable for the tax loss to HMRC that arises as a result of noncompliance. Does this approach achieve that result?

This aspect of the proposal is particularly difficult. It cannot be right that a party in the supply chain can do everything in its power to be compliant, but then still be held liable due to the behaviour of an entirely

separate company. In order to be certain that all parties are compliant, each party will have to conduct an audit on the practices of the others – there are commercial sensitivities that would make this highly undesirable for business.

If the government is intent, as it appears to be, on pushing ahead with this damaging proposal there is only one way it can work, and that is to take the supply chain out of the equation. If the client decides IR35 applies, it must from that moment on place the worker on its payroll, pay them (or their company) directly, and pay employment taxes via RTI. That is the only way the client can be certain that employment taxes are being paid.

IPSE is sympathetic to the government's intentions here. We have heard anecdotal reports of non-compliant umbrella companies inserting themselves in the chain as the fee-payer and making use of aggressive tax avoidance schemes as a way to circumvent the rules. In some instances, workers may not be aware this avoidance is happening, though they are very likely to be held liable. Given the furore we have seen around the Loan Charge, it is clearly in everyone's interest to ensure these scheme providers are not given the chance to proliferate, yet those are exactly the conditions that IR35 creates. Taking the supply chain out of the equation is the only way to ensure compliance.

Question 10

Are there any unintended consequences or impacts of collecting the tax and NICs liability from the first agency in the chain in this way? Please explain your answer.

Yes – see answer to question 9.

Question 11 and Question 12

Would liability for any unpaid income tax and NICs due falling to the client (if it could not be recovered from the first agency in the chain), encourage clients to take steps to assure the compliance of other parties in the labour supply chain?

Are there any potential unintended consequences or impacts of taking such an approach? Please explain your answer.

As outlined in our response at question 9, we believe the only way to ensure compliance is to place a requirement on the client to become the fee-payer, where IR35 is deemed to apply.

Question 13

Would a requirement for clients to provide the reasons for their status determination directly to the off-payroll worker and/or the fee-payer on request where those reasons do not form part of their determination impose a significant burden on the client? If so, how might this burden be mitigated? Please explain your answer.

IPSE agrees there should be a requirement placed on the client to provide the reasons for its determination, both to the party it contracts with and directly to the worker. Providing the information does not in itself create a significant burden for the client, but it will in many cases start a process of dispute that will become extraordinarily burdensome for all concerned.

IR35 is notoriously complex. Determinations can almost always be disputed. Even HMRC itself does not have an accurate view of when IR35 applies, as demonstrated by its recent record at Tax Tribunal – it has lost five of the last six IR35 cases which have come to light. In each of those cases, HMRC was

presumably confident in its assessment that IR35 should apply. However, it was wrong. IR35 did not apply. There is always another side to the argument and clients will quickly become bogged down in arguments over its status decisions.

Once the client provides the determination and the reasons for it, a dispute will follow. The worker will present a different story and argue that the client is wrong. It will be a circular argument that can never be 'won', unless an independent body or indeed a tax tribunal makes a definitive ruling.

Question 14

Is it desirable for a client-led process for resolving status disagreements to be put in place to allow off-payroll workers and fee-payers to challenge status determinations? Please explain your answer.

No. Given the inherent bias toward the client in the status decision making process, it is against natural justice that the dominant party (client) in the process should be empowered to lead the disagreement process. A dispute process led by the client will inevitably fail to be sufficiently robust and would in many cases result in the client simply 'digging its heels in' and standing by its original determination. The whole process is very likely to become a sham. There will be an illusion of a process but in reality, it will be an expensive and ultimately pointless time-wasting exercise.

To address this, there needs to be a statutory and independent appeals process to allow the worker and agencies to dispute the employment status determination provided by the end client.

Question 15

Would setting up and administering such a process impose significant burdens on clients? Please explain and evidence your answer.

Yes. The proposals for a client-led status disagreement process will hugely increase the administrative burden faced by organisations, particularly in circumstances where it may not be possible for resolution between the parties. As mentioned previously, determining IR35 is notoriously complex and inevitably leads to disagreements in a majority of cases. HMRC knows this all too well, having lost five of the last six IR35 tribunals it has fought.

Even one disagreement over IR35 can take hours to resolve fairly. Some clients may have hundreds, even thousands of contractors at anyone time. The administrative burden of not only making the determinations but then administering a disagreement process is enormous. Frankly, the government's suggestion that it could be anything other than hugely burdensome is either naive or wilfully dishonest.

To prevent heaping administrative burden onto clients, and to ensure the dispute process is robust, there needs to be a statutory and independent appeals process that will have the time and resource to make accurate decisions.

Question 16

Does the requirement on the client to provide the off-payroll worker with the determination, giving the off-payroll worker and fee-payer the right to request the reasons for that determination and to review that determination in light of any representations made by the off-payroll worker or the fee-payer, go far enough to incentivise clients to take reasonable care when making a status determination?

No. IPSE fully agrees that organisations should be required to take reasonable care when making status determinations, but we do not agree that the measures outlined here will ensure it happens. An independent appeals process would go some way to mitigating this problem.

On 'reasonable care' – The reasonable care clause should be put in statute. In the public sector, clients have made blanket assessments. IPSE has spoken to hundreds of contractors and supply chain insiders since April 2017 – all of them agree that blanket assessments are common. It seems that only HMRC are of the view that blanket assessments have not happened.

This problem can be mitigated by placing a statutory requirement on clients to take reasonable care and then defining what reasonable care means. IPSE believes 'reasonable care' means:

- Assessing each engagement individually
- Reviewing the contract and the working practices independently
- Assessing all the factors that would be assessed at a Tax Tribunal

Question 17

How likely is an off-payroll worker to make pension contributions through their fee-payer in this way? How likely is a fee-payer to offer an option to make pension contributions in this way? What administrative burdens might fee-payers face which would reduce the likelihood of them making contributions to the off-payroll worker's pension?

Prior to the off-payroll reforms in the public sector, many off-payroll workers made pensions contributions though their intermediary, and tax relief was effectively claimed on those contributions. Those caught by IR35 in the public sector have lost this ability as a result of the reforms, because all income is taxed at source.

There is already a pensions crisis among the self-employed. Just 31% of self-employed people are currently saving for later life. Government is therefore right to consider ways to encourage saving, however, the proposal to do this via the fee payer is problematic.

For various reasons, from employment law to thin operating margins or even IT systems not being configured to support pension contribution collections, most fee-payers are unlikely to be able, or to want, to offer a facility to deduct and pay over pension contributions.

It is also unlikely that workers would entrust their pension monies into the hands of their fee payers, many of whom operate on such slender margins that insolvency is a real possibility.

Taking these points into account, the introduction of an obligation to administer pension contributions on behalf of a worker is likely to prove administratively burdensome, costly and time consuming whilst ultimately resulting in very little take-up. However, there are other ideas to encourage pension take up. In 2018 IPSE published a report which explored some of those options, and we would welcome the chance to discuss this vitally important issue further with government[4].

In the meantime, government should introduce a new tax relief aimed at encouraging pension savings for those caught by the IR35 rules.

[4] How to Solve the self-employed Pensions Crisis, IPSE, June 2018

Question 18

Are there any other issues that you believe the government needs to consider when implementing the reform? Please provide details.

Expenses

Like all businesses, 'PSCs' have businesses expenses. Accountancy and insurance expenses are particularly common, yet no allowance is given for these in the new Chapter 10 of ITEPA (2003) which affects those working in the public sector. The consultation suggests this will be the same for those working in the private sector, but only if the client is medium or large. Where the client is small (as per the Companies House definition of 'small') the 'PSC' will be permitted to deduct 5% of the taxable income to help cover those expenses.

There is no justification for this difference and there has never been any adequate justification given for removing the 5% allowance when the rules changed in the public sector. The 5% allowance should be reinstated for engagements caught by IR35, across both the public and private sectors, and regardless of the size of the client.

Check Employment Status for Tax

The CEST tool was created at the same time as the reforms to IR35 were implemented in the public sector. It has been heavily criticised ever since. IPSE does not believe it will ever be possible to create a tool which can stand up to the scrutiny of case law. CEST adopts a tick-box mentality but the courts have said that you can't take that approach when looking at employment status. Tax tribunals have made judgements that clearly contradict CEST, which leaves businesses with no clear way to make status determinations that could be relied upon at a tribunal.

CEST does not consider mutuality of obligation (MoO). HMRC has defended this by defining MoO as something which always exists in any contract (this is a crude summary of HMRC's position, but it is essentially accurate).

In a case which came to light last year (*Armitage v* HMRC) the presiding officers at the tribunal said the following of HMRC's argument:

"HMRC's case is that where one party agrees to work for the other in return for payment then this satisfies mutuality of obligation between the two parties. That would be true of every contract both employment and for services otherwise the contract would not exist at all. The mere offer and acceptance of a piece of work does not amount to mutuality of obligation in the context of employment status."[5]

This case was settled shortly before HMRC launched the CEST tool. So HMRC either knew, or should have known, that their argument about mutuality of obligation was on shaky ground when they launched the tool.

These arguments have been raised with HMRC at the IR35 Forum, and an informal consultation about the definition of MoO continues. Unfortunately, HMRC has not yet indicated to the Forum that it is prepared to change its position.

This whole policy – shifting the responsibility for determining IR35 status onto clients - is predicated upon CEST being a reliable resource. There is no doubt that making IR35 determinations is difficult. That's why the government created the CEST tool in the first place – to make the process of determining status simpler for clients. But there must be public confidence in CEST, which there cannot be as long as it

[5] Armitage Technical Design Services v HMRC, First Tier Tribunal Tax Chamber, p.12

produces results visibly at variance with what case law would suggest. The HMRC understanding of MoO is flawed, and cases that it most recently lost have been lost on this issue.

If the government is intent on pursuing this policy, it must make changes to CEST that would bring it in line with case law.

Business-on-own account

In the most recent IR35 tribunal – Kaye Adams v HMRC – the appeal was one largely on the grounds that Ms Adams was in business-on-her-account. This was determined by giving due consideration to Ms Adams' other clients and income streams.

In most cases, clients will not be privy to the business activities of the 'PSC', apart from those which directly concern their contract. They could ask the 'PSC' whether it has other clients, and to evidence those engagements, but the 'PSC' is likely to be reluctant to offer that information due to reasons of commercial sensitivity.

In practice, only the 'PSC' can know whether it is in business-on-its-account, which necessarily means the client can never take a holistic view of the IR35 status of its engagements. Each and every determination made by the client will be based on incomplete information and will therefore potentially be inaccurate.

Explore alternative ideas

Each of the four options which were deemed 'out-of-scope' in last summer's consultation merit more consideration than the policy government is proposing here. One of those options was IPSE's Freelancer Limited Company, which we still believe is a viable alternative. However, if this is unpalatable to government, as it appears to be, there are other ideas which we would be very happy to discuss further. It is frustrating that government seemingly refuses to consider these more imaginative ways to tackle the issue of disguising certain forms of work for tax purposes.

The world of work is changing rapidly. Government must be prepared to make radical policy changes in order to keep up. Tinkering around with IR35 will only heap more misery on businesses. IPSE would welcome the chance to assist policy making so that freelancing can continue to flourish while also protecting exchequer revenues.

Outstanding technical difficulties not addressed in the consultation document

There are several technical problems which still have not been resolved from the public sector role out. These are:

1. There is no payroll software available which enables individuals to be placed onto the payroll. The current software does not allow for the conciliation of student loan deductions and cannot reconcile VAT payments. Big companies must be able to distinguish between 'deemed employees for tax purposes' and actual employees.
2. How do the PSCs file their accounts, when tax on some of their profits has already been deducted? HMRC has suggested they reduce their reported turnover yet this contravenes Section 474 of the 2006 Companies Act. The Financial Reporting Council is looking at this issue – it may require a change in legislation.
3. The Government cannot be sure of how much revenue has been raised by the public sector change until it takes into account any rebates, and the loss of Corporation Tax. This will not be made clear until after January 2019.
4. The default Basic Rate tax code which is applied to all taxpayers that are placed onto a payroll is very often inappropriate and will cause complexity later in the tax year.

5. The Radio Industry Guidelines which govern who can and cannot be considered self-employed in the broadcasting industry are still in force. These vary significantly from the CEST tool. The Government must make clear which guidelines should be applied.
6. There is growing concern that the public sector rule change has given rise to non-compliant umbrella models which make use of off-shore tax avoidance vehicles.

It would be reckless of the government to proceed with this measure before all of the issues above have been addressed. Given that it is unlikely to resolve the issues before April 2020, it would be reassuring to business if government would explicitly rule out 2020 implementation, as soon as possible.

Providing this certainty for businesses ahead of the Autumn Budget would rebuild trust between business and Government on this issue and allow for a more constructive discussion to get the policy right.

About IPSE

- The Association of Independent Professionals and the Self Employed (IPSE) represents the estimated 4.8 million individuals working for themselves in the UK.
- IPSE has approximately 74,000 members and associates.

Independent Professionals

Often referred to as freelancers, contractors and consultants, independent professionals are highly skilled specialists supplying their expertise on a flexible basis to a variety of businesses - from large companies to SMEs to public sector bodies.

Frequently, independent professionals will be incorporated businesses. This is driven by commercial necessity. In its report for the Autumn Statement 2016, the Office of Budget Responsibility (OBR) noted that the rise in incorporations was not necessarily tax motivated:

"Not all these incorporations are tax-motivated, as incorporation provides other benefits such as limited liability status. Operating as a company is an increasingly common way to structure a business in a number of sectors – particularly construction, retail, IT, media and professional services. These sectors account for more than half the modelled company population in 2014."[6]

The clients and agencies that engage independent professionals insist on the limited company structure as it protects them from potential employment rights and tax liabilities. These businesses have in recent years begun to be labelled as 'personal service companies'.

'Personal Service Companies' (PSCs)

To ensure clarity of understanding, IPSE, in this response, has used the term 'personal service company' (PSC). However, the term is problematic. There is no statutory definition of a 'PSC'. Legally, there is nothing which distinguishes a PSC from any other limited company. Nevertheless, the consultation document frequently refers to PSCs. IPSE understands the government is referring to what we might describe as 'limited company contractor businesses'.

[6] Economic and Fiscal Outlook, The Office of Budget Responsibility, November 2016, page 122

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