

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

By email:
offpayrollworking.intheprivatesectorconsultation@hmrc.gsi.gov.uk

3 August 2018

Dear Sir / Madam

**E-Crunch Ltd and Crunch Accounting Ltd - response to HMRC consultation
Off-payroll working in the private sector**

Background to E-Crunch Ltd and Crunch Accounting Ltd and our clients

E-Crunch Ltd and Crunch Accounting Ltd ('Crunch') is a fully online accounting practice providing accountancy and tax services to over 10,500 freelancers, contractors and small businesses. We were the first fully online accountants and we are one of the fastest growing accounting practices in the UK.

We appreciate the opportunity to comment on the above consultation being undertaken by HMRC and our response contains the views of Crunch. We have also sought the views of our clients and are pleased to say 542 of our clients responded. These views are also reflected in our response.

Our overarching comments are provided below. Our detailed response to the consultations' 34 different questions is provided at Appendix 1.

Overarching comments

We recognise the need to increase the level of compliance with off-payroll working rules in the private sector, and that the government is looking to build on its experience of implementing such changes in the public sector.

While HMRC provides evidence of increased compliance and the amount of tax raised in the public sector, we believe further evaluation is needed. For instance, while HMRC concludes additional tax of £400 million is due to be raised, we do not yet know the full cost of implementing the changes for public sector organisations. In addition, the effect of the change is still being felt by personal service companies.

Some of our clients working in the public sector have simply closed their limited companies and are now working under PAYE arrangements or via an agency. Others have decided to work via Umbrella companies and others still have decided not to take any public sector work and are focussing only on the private sector. Some of this activity relates to the decisions made by certain public sector organisations (in the NHS for example) to have fewer workers under short term contracts.

Crunch believes further evaluation is needed to understand the full effect of the new rules on the UK's contractor market and the public sector before further change is introduced.

Evidence from our clients indicates the government's rules on off payroll working are, in fact, widely understood by people operating personal service companies. However, confidence in businesses (end clients) to implement any new rules effectively is very low.

Our clients are supportive that the introduction of new rules should be underpinned by an enquiry and penalty regime operated by HMRC. The penalty regime should also apply to agencies. Crunch believes there should be ongoing enforcement of new rules based on an assessment of risk. This will ensure the largest private sector companies and agencies comply with the new rules.

Our clients are very concerned that the introduction of new rules will happen without enabling them to challenge or appeal against the decision of a business (end client) that the rules apply. Confidence in the results produced by online tools provided by HMRC and others is low, with many of our clients unaware HMRC has an online check employment status tool ('CEST'). Our clients have told us that the private sector businesses they contract with do not have the capacity to hear any challenges or appeals about an IR35 decision and would not accept the outcome of an online check.

Action the government should consider

Based on the evidence Crunch has collected, we believe the government can achieve its objectives for improving the level of compliance with IR35 rules and increasing tax revenues by taking the following action.

1. Complete the further evaluation needed following the introduction of the new rules to the public sector, with a particular focus on the impact on the market for freelancers and contractors and the impact on the provision of labour to the public sector
2. New rules, if introduced, should not apply to the smallest private sector businesses. We are suggesting the new rules should not apply to businesses with turnover of less than £50 million. This will ensure only those organisations with the resources, capacity and expertise to implement the new rules are required to do so.
3. Personal service companies working with businesses with turnover of less than £50 million should continue to operate under existing rules.
4. A lead time of at least 18 months is required to implement new rules. This will:
 - a. enable further evaluation of the impact of the rules on the public sector to be completed, and for good practice to be disseminated by the government to the private sector.
 - b. provide an opportunity for private sector businesses to establish arrangements to implement the new rules, including engaging the personal service companies they work with in the change.
 - c. enable any penalty regime to be established by HMRC alongside an effective enquiry service.

Conclusion

As highlighted above, we believe there is action HMRC should take to assist in increasing compliance with IR35 rules. We believe the action should be targeted at the largest private sector companies and that smaller companies should continue to work under existing rules.

Further work is needed to fully understand the impact of the new rules on the public sector and the market for freelancer and contractor services.

Any change in IR35 rules will need to be introduced over a reasonable timescale of at least 18 months.

Yours sincerely

ROBERT GRANT

Robert Grant FCCA, ACMA
Head of Accounting
For and on behalf of E-Crunch Ltd and Crunch Accounting Ltd

Appendix 1 - detailed response to consultation questions

Appendix 1 Detailed response to consultation questions

The compliance challenge	
Q1. What could be done to improve the compliance enquiry process to reduce non compliance, whilst safeguarding the rights of customers?	<p>There is no evidence (yet) to indicate the introduction of new rules in the public sector has resulted in a more efficient enquiry process. Also, it is unclear how well, or to what extent, public sector organisations have implemented the new rules effectively.</p> <p>To improve compliance, and transparency, introducing a 'comply or explain' approach could be introduced for larger organisations - over £50m turnover. The annual accounts could disclose in a note to the accounts how the organisation is compliant with the rules. Contractors working for organisations with less than £50m turnover would be subject to existing rules. This would ensure only larger organisations, where the problem appears to be in completing HMRC enquiries, would need systems and processes. This would also safeguard the rights of many PSCs to individual treatment from HMRC enquiries under existing arrangements.</p>
Extending the public sector rules to the private sector	
Q2. Could the public sector regime better fit the needs of businesses? How?	<p>HMRC concludes the public sector has responded well to implementing the new rules. However, public sector organisations tend to be larger, with more capacity and expertise to establish systems and processes and then implement the new rules. Applying these rules to smaller, private sector, organisations could be problematic given the high volume and short term nature of many assignments. It would be sensible to allow the smallest private sector organisations exemption from the public sector rules as they do not have the resources or expertise to comply effectively.</p> <p>It is also known that certain public sector organisations have been pursuing policies to get more people into full time employment (NHS for example). Such policies are not widely available to the private sector and are not sustainable over the longer term due to the uncertainties surrounding future economic growth.</p> <p>The private sector requires more flexibility across its labour market which the application of the public sector regime may adversely affect if a new regime is introduced without a sufficient lead in time.</p>
Q3. What if any, changes could help make the administration as simple as possible?	<p>It would be sensible to allow the smallest private sector organisations exemption from the public sector rules as they do not have the resources or expertise to comply effectively. PSCs would continue to determine IR35 status and would work with HMRC directly on any enquiries, as the current position requires.</p>

<p>Q4. If the private sector rules were changed, do you have any evidence that there are parts of the private sector where the administration of any regime may need to vary even though the basic principles including for determining status, remain the same?</p>	<p>The smallest private sector organisations should be exempt from the public sector rules. PSCs would continue to determine IR35 status and would work with HMRC directly on any enquiries, as the current position requires.</p> <p>In a survey of our clients (542 responses):</p> <ul style="list-style-type: none"> • 23% felt their clients will reduce usage of PSCs. • 53% of clients are not confident HMRC CEST tool provided an accurate outcome, 32% had never heard of the tool. • 65% of clients are not confident end clients will have the capacity to introduce the new rules. • 42% of clients did not know the approach their end clients would take to the new rules, 23% felt they would need to work under PAYE and would have no option to be self employed. • 36% felt businesses would not introduce any system to challenge IR35 status. 55% didn't know what the end client would do. <p>The evidence from our clients shows no confidence in on the private sector's preparedness to introduce and comply with new rules.</p>
<p>Q5. Is there any evidence that parts of the private sector will not have, or be able to acquire the administrative capacity, knowledge and resources to enable them to implement any changes in relation to off-payroll workers?</p>	<p>In a survey of our clients (542 responses), only 7% of respondents were confident (extremely/very confident) their private sector clients had the capacity, knowledge and resources to implement changes. 66% of respondents were not confident.</p>
<p>Q6. How could these difficulties be mitigated?</p>	<p>There needs to be a longer timescale to implement the changes in the private sector. There needs to be regular communications from HMRC and the accountancy industry on the impact of changes on personal service companies and the tools available to assess the impact on a contract by contract basis. Good practice based on the public sector experience needs to be disseminated.</p> <p>The difficulties could also be mitigated by introducing the new rules to the largest private sector organisations and over a lead-in time of over 18 months.</p>
<p>Q7. What aspects of policy design might be adjusted if similar changes were brought in for the private sector? Should we bring in a specific penalty if agencies fail to comply.</p>	<p>If agencies fail to comply there should be specific penalties. A survey of our clients (542 responses), showed:</p> <ul style="list-style-type: none"> • 48% thought HMRC should recover all taxes due (as operated in the public sector) • 18% thought a fixed financial penalty set by HMRC was appropriate • 14% thought recovery of taxes due, and a penalty based on fee-payer turnover. <p>Our view is HMRC should recover all taxes due and apply interest on any amount due.</p>

<p>Q8. What action should be taken in the case where the fee-payer hasn't acted upon the client's conclusion that the worker would have been regarded as an employee for income tax and NICs purposes if engaged directly? Should an obligation be placed upon the fee-payer to adopt the client's conclusion and there be sanctions for failing to do so?</p>	<p>We have interpreted this question to mean the 'fee-payer' is the agency or private sector business, the client is the PSC and the worker is the individual placed by the PSC with the fee payer.</p> <p>A survey of our clients (542 responses), showed only 10% felt a fee payer would introduce a system to consider their representations should a disagreement arise.</p> <p>35% stated the fee payer would not introduce any system at all.</p> <p>Given this response, if a client has taken advice that a contract is outside IR35 rules and a fee payer disagrees, there should be an obligation to allow clients to make representation. Failure to consider representations should result in a penalty on the fee payer.</p> <p>:</p>
<p>Q9. What action should be taken if the worker or PSC is knowingly receiving income that has not had the right amount of tax and NICs deducted?</p>	<p>A survey of our clients (542 responses) showed that 38% thought there should be a sliding scale of penalties based on the amount of tax not deducted.</p> <p>HMRC should introduce such a system, with additional penalties for repeat offenders.</p>
<p>Q10. What systems and process changes would businesses need to make?</p>	<p>Businesses will need to invest in new systems to manage the application of IR35 rules. If there is as expected, an increase in the number of directly employed people, businesses will also need to invest in existing HR and people management systems.</p> <p>This will all take time in the private sector, as will the delivery of training on the new rules. There should be a lead in time of up to 18 months to enable the private sector to prepare for the new rules.</p> <p>There will also be a need for the private sector to take action on existing contracts with PSCs to ensure these were updated to take account of new responsibilities under the new rules.</p>
<p>Q11. Would there be any process and administrative cost implications for businesses? Can you provide evidence of the scale and nature of these?</p>	<p>HMRC itself estimates the cost to public sector organisations of administering the new rules was up to £7,500 per organisation. Such costs in the private sector would be disproportionately high, with a higher number of smaller organisations being required to apply the new rules in the private sector.</p> <p>A survey of our clients (542 responses) showed only 6% felt their end clients ('businesses') had sufficient capacity and expertise to implement new systems and processes to administer the new rules.</p> <p>25% felt businesses had no capacity to implement the new rules and a further 26% felt that of the number of employed people by a business increased by 10% or more, then additional investment would be required to manage the situation.</p>

<p>Q12. Can you provide any evidence that these costs would vary depending on how much notice businesses were provided for the introduction of any reform?</p>	<p>It is unlikely costs will vary significantly. A longer lead in time will provide businesses with the scope to find the additional investment necessary to establish new systems and to ensure appropriate training was available to staff.</p> <p>There is little confidence among Crunch clients that businesses will be ready to implement new systems over a short timescale because of the lack of resource and capacity currently available.</p>
<p>Q13. Is there anything else HMRC could do to ease the implementation for businesses, and can you provide evidence of how this would ease implementation or administration for businesses?</p>	<p>HMRC should provide a longer timescale for implementation when compared to the public sector. This will allow PSCs to take the necessary action to prepare by negotiating different contracts, increasing fees or simply finding different ways to operate (through an agency for instance)</p> <p>A survey of our clients (542 responses) showed the following expected impacts.</p> <p>Fees 60% of our clients felt the new rules would lead to an increase in the fees they charge their clients.</p> <p>Business Structure 25% would close their limited company. Of that amount, 52% expected to work under PAYE, 29% expected to work under an Umbrella company and 19% expected to work via an agency.</p> <p>So the immediate introduction of new rules will affect our clients significantly.</p>
<p>Encouraging or requiring businesses to secure their labour supply chains</p>	
<p>Q14. Overall, what are your views on this option? Would it be a proportionate response to the issue?</p>	<p>This is a disproportionate response to the issue. Businesses would need to invest significant amounts in understanding their labour supply chains and then maintaining records.</p> <p>Some labour supply chains are complex and involve multiple suppliers. It would be difficult to keep records which were accurate and up to date.</p> <p>Businesses will also need to change the basis of contracts across the labour chain to facilitate additional record keeping at every point in the supply chain.</p>
<p>Q15. If the government were to pursue this option, what checks should the client be required to perform?</p>	<p>Due diligence would need to be completed on labour contracts which would be a further administrative burden on businesses.</p>

Q16. How should different views on employment status be dealt with? For example in the public sector, disputes should be resolved between the client and the worker, which ultimately allows either party to walk away if they do not agree.	The public sector approach has not yet been proven to deal effectively with disputes between client and worker. Simply enabling either party to 'walk away' from a contract will increase costs of finding scarce resources and leaving contracts where a dispute arises. There will be increased costs of legal protection for PSCs and the risk that businesses will simply stop engaging PSCs if there are disagreements. Businesses themselves may find an increase in legal action against them if PSCs take their own contract advice.
Q17. How would HMRC best enforce compliance with securing labour supply chains, keeping in mind the need to mitigate or reduce dealing with each PSC individually?	HMRC could enforce compliance by ensuring businesses maintain adequate records to evidence the labour supply chain had been secured. HMRC would need to seek out such information even when the client and worker were not in dispute. This approach would add another administrative layer to HMRC's work which would increase costs for HMRC and for businesses to respond.
Q18. Should the requirement be underpinned by some form of penalty?	The requirement would need to be underpinned by a penalty regime. This would need to cover non-compliance with maintaining records and also non-compliance with the rules HMRC put in place around IR35.
Q19. Should the requirement be underpinned by denying the client a deduction for the cost of labour from an unchecked supply chain?	We believe a system of penalties would be more easily understood by businesses and be simple to apply. There would be dispute over the amount of labour costs involved in a supply chain and who was responsible for the non-compliance.
Q20. Should the requirement be underpinned by the risk that the client could be named as having used a non-compliant supply chain?	Naming and shaming non-compliant businesses may act as an effective deterrent for simple supply chains and larger companies who are looking to avoid adverse publicity. Where supply chains become more complex, involving multiple suppliers of labour, it may be difficult to apply this penalty proportionately.
Q21. Would such penalties effectively change behaviour within labour supply chains, helping to ensure the correct income tax and NICs are paid?	It is unlikely a supplier operating in a non-compliant way in a supply chain will be deterred by a system of penalties.

Q22. What would the impact (including the effect on administrative burdens) of this option be on affected businesses, agencies, and individuals?	Businesses will need to hold more records about their labour supply chains. This will be difficult to collect and keep up to date especially where labour supply chains are complex. Agencies will be similarly affected. Individuals may find themselves under PAYE arrangements by default where businesses are unwilling to risk non-compliance. This will lead to more individuals seeking to challenge employment status decisions and / or refusing to take on short term employment assignments when previously, they would have undertaken these as contractors and self employed.
Q23. How effective would this option be in addressing non-compliance with the off payroll working rules in the private sector?	It is difficult to see how this option would address non-compliance with off-payroll working rules.
Q24. Is there any way to improve this option which would make it more effective?	It is difficult to see how this option would address non-compliance with off-payroll working rules.
Additional record keeping	
Q25. Overall, what are your views on this option? Would it be a proportionate response to the issue?	The option places a larger administrative burden on business. It will require additional resources to obtain records which may not be readily available, accurate or readily provided by those in the labour supply chain. It will require a restructuring of relationships where agencies are used. The option is not a proportionate response to the issue.
Q26. If the government were to pursue this option, what information should be required to be gathered?	<p>All contractual information, information about working practices and any changes to working practices, information about equipment provided by businesses to the individual, or owned and used by the individual would need to be obtained.</p> <p>Information would then need to be retained securely for a period of time specified by HMRC and then produced in a way HMRC accepts (electronic or original).</p>
Q27. How could the government ensure that others in the labour supply chain pass accurate and timely information to the client?	A system of penalties and compliance checks would need to be introduced throughout the labour supply chain.
Q28. What penalties should fall on the client or others in the labour supply chain if they fail to comply with the requirement	The requirement would need to be underpinned by a penalty regime. This would need to cover non-compliance with maintaining records and also non-compliance with the rules HMRC put in place around IR35. This would apply throughout the labour supply chain.

Q29. What would the impact (including the effect on administrative burdens) of this option be on affected businesses, agencies, and workers?	Businesses will need to hold more records about their labour supply chains. This will be difficult to collect and keep up to date especially where labour supply chains are complex. Agencies will be similarly affected. Workers may find themselves under PAYE arrangements by default where businesses are unwilling to risk non-compliance. This will lead to workers seeking to challenge employment status decisions and / or refusing to take on short term employment assignments when previously, they would have undertaken these as contractors and self employed.
Q30. How effective would this option be in addressing non-compliance with the off payroll working rules in the private sector?	It is difficult to see how this option would address non-compliance with off-payroll working rules.
Q31. Is there any way to improve this option which would make it more effective?	It is difficult to see how this option would address non-compliance with off-payroll working rules.
Other options to consider	
Q32. Are there other options, within the scope of this consultation as set out in Chapter 2, that would be effective ways of tackling non-compliance in the private sector that the government should consider (for example, possibly drawing on lessons from other countries)?	<p>HMRC should consider introducing public sector rules for only the largest private sector companies. For instance, with turnover above £50 million and subject to an audit. This would then reflect experience in the public sector where organisations tend to be larger in scope and with resources to introduce changes effectively.</p> <p>Applying the new rules could be part of the governance structure for private companies, with a positive statement needed on compliance each year. If organisations do not comply, they would need to explain why they did not have sufficient structures in place. HMRC could use this as the basis of policing the new rules.</p>
Q33. Would these, or any of the other options outlined above, be more effective than extending the public sector reform? If so, how would they be more effective and on what grounds would they be preferable to extending the public sector reform?	<p>If the public sector rules are to be implemented in the private sector effectively, the regime needs to have regard to the resources and capacity available. So it should apply only to larger organisations. Smaller organisations should still rely on the PSC to work with HMRC on any enquiries into employment status. The PSC would still be responsible, and could choose which businesses to work with. If the end client decided on a blanket policy that all PSCs must operate under PAYE, without checking employment status or considering any challenges from the PSC, the PSC could decide to walk away from the relationship.</p> <p>This would protect both PSCs and businesses and retain flexibility in a key part of the UK labour market.</p> <p>There should be a lead time of at least 18 months to introduce any changes in rules.</p>

Other issues	
Q34. Are there any other issues which businesses or individuals who may be affected would like to raise	<p>A survey of Crunch Accounting Ltd customers (542 responses) showed the following.</p> <p>68% understood IR35 rules and how these affect working through a limited company. This indicates HMRC rules are widely understood.</p> <p>86% understood the rules may apply to them. This indicates HMRC rules are widely understood.</p> <p>43% understood the features of a contract which would mean IR35 rules may apply. This indicates there is scope for better understanding of the contractual aspects of IR35 rules.</p> <p>66% were aware there are tools available from HMRC and other sources to check IR35 status.</p> <p>25% concluded changing IR35 rules would have a major effect and mean they would close their limited company. 51% of these would work under PAYE and 29% for an Umbrella company. 20% would work via an agency.</p> <p>41% of clients felt the change in rules would not affect the number of clients they had but 52% felt the number of clients would reduce.</p> <p>64% felt their company turnover would reduce.</p> <p>60% felt they would need to increase daily rates.</p> <p>23% felt their clients will reduce usage of PSCs.</p> <p>53% of clients are not confident the HMRC CEST tool provided an accurate outcome, 32% had never heard of the tool.</p> <p>65% of clients are not confident end clients will have the capacity to introduce the new rules.</p> <p>42% of clients did not know the approach their end clients would take to the new rules, 23% felt they would need to work under PAYE and would have no option to be self employed.</p> <p>36% of Crunch clients felt businesses would not introduce any system to challenge IR35 status. 55% didn't know what the end client would do.</p> <p>Almost all clients who work through an agency had not been contacted about HMRC's consultation on the new rules.</p>