

IPD Employment Status and  
Intermediaries Policy, Room 3C/15  
100 Parliament Street  
London SW1A 2BQ

Dear Sir / Madam

## **Crunch Accounting Ltd - response to HMRC consultation on off-payroll working rules from April 2020**

### **Background to Crunch Accounting Ltd and our clients**

Crunch Accounting Ltd ('Crunch') provides fully online accountancy and tax services to over 10,500 freelancers, contractors and small businesses. We have our own in-house software providing real time information to our clients about their accounts and tax liabilities. Our clients have unlimited access to help and support from our expert accountants and specialist account managers. Crunch was 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 new consultation being undertaken by HMRC and our response contains the views of Crunch. We have responded to previous consultation on the extension of the off-payroll working rules to the private sector.

Our overarching comments are provided below. Our detailed response to the consultations' 18 different questions is provided at Appendix 1.

### **Overarching comments**

The Government must continue to build on its experience of implementing off payroll working rule changes in the public sector by publishing good practice for end clients and Personal Service Companies (PSCs) to consider in the lead up to April 2020.

We believe workers are concerned about paying the correct amount of tax, but they want to know how this is affected by their employment status before an assignment with a client starts. Workers are unlikely to take on a contract where their employment and tax status is uncertain. An associated concern for (PSCs) is that the client may follow a blanket approach to IR35 assessment and transmits

inaccurate information down the labour supply chain or does not transmit it all. This will increase the uncertainty surrounding employment status among workers.

It is doubtful many (PSCs) have the expertise and/or capacity to meet the requirements contained in Chapter 10, Part 2 ITEPA 2003. They will need to seek specialist advice and incur additional costs to ensure compliance.

It is difficult to see why any Agency would take on responsibility for ensuring compliance with off payroll working rules. Indeed, they may develop contracts explicitly removing this responsibility and the risk of non-compliance will remain high. Similarly, it is also difficult to see why a client would put resources into establishing an efficient, effective, and transparent dispute resolution process. It would effectively be hearing 'appeals' against its own decisions. PSCs will not trust clients to come up with an alternate outcome based on their dispute. Fee-payers are unlikely to seek any resolution, passing this onto the PSC to administer.

The removal of the 5% allowance should be revisited. The Government now expects PSCs to find resources to pursue outstanding IR35 determinations and support any disputes of determinations made. There is less incentive for a PSC to remain trading if the allowance for expenses disappears.

The CEST online tool will require updating to more accurately determine the IR35 status of contracts - specifically the Mutuality of Obligation test. The tool will need updating by Summer 2019 at the latest to enable workers to consider how their contracts will be assessed by clients in the lead up to 1st April 2020.

For non-corporate entities, It is sensible to remove the balance sheet test from the options and there should a single threshold test of £10.2 million turnover.

## **Conclusion**

HMRC will need to publish good practice guidance to enable the smooth transmission of information through the labour supply chain and to deter clients from establishing blanket employment status conclusions. This should be underpinned by a suitable penalty regime for non compliance.

The 5% allowance for administration costs should continue to be allowed to assist Personal Service Companies to meet the costs of obtaining employment status assessments from clients and in the event the costs of a review or an appeal need to be met.

Yours sincerely

*Robert Grant*

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

Appendix 1 - detailed response to consultation questions

**Appendix 1 - detailed response to consultation questions**

<p>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 entities into scope, 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.</p>	<p>It is sensible to remove the balance sheet test from the options for non-corporate entities. The first option will be the simplest to administer as it is easily understood. It will also ensure consistency between public and private sectors.</p> <p>We believe there should a single threshold test of £10.2 million turnover.</p> <p>Many non-corporate entities use short term workers and may exceed the 50 employees threshold for only a short period of time. They may inadvertently be brought into the regime and then leave it again quickly.</p>
<p>Question 2 Would a requirement for clients to provide a status determination directly to 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.</p>	<p>We believe workers are content to pay the correct amount of tax, but they want to know this before an assignment starts. Workers do not want contractual arrangements involving the flow of information amongst multiple parties and a disputes system unlikely to complete before an assignment starts. Workers are unlikely to take on a contract where their employment status is uncertain.</p> <p>Central to the proposed rules is the seamless and timely exchange of information. This requirement must be the responsibility of the client.</p> <p>But this brings additional burdens for PSCs. From the outset, contractors will need to know the size of the organisation they are contracting with. This suggests clients will need to share information about reported turnover, number of employees and balance sheet to allow a contractor to understand where IR35 assessment responsibilities should lie. This is another administrative responsibility for the PSC to resource.</p> <p>HMRC will need to publish good practice guidance to be followed by clients to enable the smooth transmission of information through the labour supply chain. This should be underpinned by a suitable penalty regime for non compliance.</p>

<p>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.</p>	<p>It is essential that the contractor and the agency involved receives notice of the client's assessment immediately and before an assignment starts. The fast moving nature of the contractor market will make the exchange of information in a timely way problematic. HMRC will need to publish good practice guidance to be followed by clients to enable the smooth transmission of information through the labour supply chain. This should be underpinned by a suitable penalty regime.</p>
<p>Question 4 What circumstances might result in a breakdown in the information being cascaded to the fee-payer? What circumstances may 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?</p>	<p>The main risk is that the client follows a blanket approach to IR35 assessment and transmits inaccurate information down the labour supply chain or does not transmit it all.</p> <p>A complex labour supply chain may not be consistently understood, particularly if there are multiple agencies and clients involved on a project or assignment or multiple variations thereof. This would lead to information simply being lost or not passed on between affected parties.</p> <p>There will be inevitable time lags as information is passed down the labour supply chain, which means contractors may start an assignment without receiving notice of their IR35 assessment or assurance it is accurate. Clients may be reluctant to pass information on knowing it is incomplete or 'boilerplate' until they receive multiple repeat requests for the information.</p>
<p>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.</p>	<p>In the interests of understanding the labour supply chain, clients should always know the fee payer. There are special situations where this may not be possible.</p> <p>There could be two or more entities between the worker's PSC and the client where, for instance, responsibility for a project was split into discrete parts with the PSC working periodically as different professions were involved rather than a single period.</p> <p>Also, a complex financial project (mergers, acquisitions, liquidations) or investigation may have multiple parties in the labour supply chain to source scarce skills and then contract with a PSC on behalf of the ultimate client. These scenarios would likely emerge where clients operate in multiple jurisdictions and the PSC is based in the UK.</p>

<p>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.</p>	<p>In the interests of understanding the labour supply chain, clients should always know the fee payer. In almost all cases this should be a simple piece of information to collect. The worker's PSC or Agency should provide this information. More complex assignments are covered at our response to questions 5.</p>
<p>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.</p>	<p>The proposal suggests the risk of information about an IR35 determination not finding its way through the labour supply line lies with the client. But the PSC will be responsible for applying the principles contained in Chapter 10, Part 2 ITEPA 2003.</p> <p>It is doubtful many PSCs will have the expertise to meet this requirement and will need to seek specialist advice, and pay for it, to do so. It is also doubtful if PSCs will have the financial resources to pursue a client for the relevant assignment determination.</p> <p>PSCs will therefore be reticent in deciding whether to challenge an IR35 status.</p> <p>In the context of Chapter 10, Part 2 ITEPA 2003, the client is responsible for any non-payment of employment taxes. The client will also need to keep records of individual assignments for around 7 years and produce these on demand for a PSC or an Agency (and HMRC).</p> <p>It is difficult to see why a client would take on this risk. This means the client could simply follow an approach of treating all assignments as inside IR35 and deducting all employment taxes at source.</p> <p>A further risk is that clients, under pressure to engage PSCs providing scarce skills, will not send the relevant determinations through the labour supply line and the worker will not know their employment status for tax purposes.</p>
<p>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?</p>	<p>The following parties are typically in a labour supply chain for our customers:</p> <ul style="list-style-type: none"> <li>● Client (engager)</li> <li>● Agency (fee payer)</li> <li>● PSC limited company</li> <li>● PSC worker.</li> </ul> <p>The roles are bracketed as appropriate.</p>

<p>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 non-compliance. Does this approach achieve that result?</p> <p>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.</p> <p>Question 11 Would liability for any unpaid income tax and NICs due falling to the engager (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?</p> <p>Question 12 Are there any potential unintended consequences or impacts of taking such an approach? Please explain your answer.</p>	<p>It is difficult to see why any Agency will take on responsibility for ensuring compliance. Indeed, they may develop contracts explicitly removing this responsibility. The approach will not achieve the desired result and the risk of non-compliance will remain.</p> <p>As highlighted in our response to question 7, it is difficult to see why a client would take on this risk (of unpaid employment tax). This means the client could simply follow an approach of treating all assignments as inside IR35 and deducting all employment taxes at source.</p> <p>A further risk is that clients, under pressure to engage PSCs providing scarce skills, will not send the relevant determinations through the labour supply line and the worker will not know their employment status for tax purposes.</p>
<p>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.</p>	<p>As highlighted in our response to other questions, we believe there is little incentive for clients to ensure the smooth flow of information through the labour supply chain. This would include the reasons for a status determination. We believe the standard position a client will take is that all assignments are within IR35.</p> <p>It would nevertheless be sensible to make it a requirement that clients provide the reasons for a determination when they produce the determination itself for distribution across the labour supply chain.</p>
<p>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.</p>	<p>It is difficult to see any reason why a client would put resources into establishing an efficient, effective, and transparent dispute resolution process. It would effectively be hearing 'appeals' against its own decisions. PSCs will not trust clients to come up with an alternate outcome based on their dispute. Fee-payers are unlikely to seek any resolution, passing this onto the PSC to administer. This will result in further costs for PSCs. It is also unclear how the payment of employment tax will be dealt with if a status determination is amended. Are fee payers expected to withhold payment of employment taxes pending the outcome of a dispute and appeal?</p>

<p>Question 15 Would setting up and administering such a process impose significant burdens on clients? Please explain your answer.</p>	<p>As highlighted above, it is difficult to see any reason why a client would put resources into establishing an efficient, effective, and transparent dispute resolution process. It would effectively be hearing ‘appeals’ against its own decisions. PSCs will not trust clients to come up with an alternate outcome based on their dispute. Fee-payers are unlikely to seek any resolution, passing this onto the PSC to administer.</p>
<p>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?</p>	<p>To summarise our responses to other questions, it is difficult to see any reason why a client would put resources into establishing an efficient, effective, and transparent process from issuing a determination through to hearing an appeal.</p> <p>PSCs will not trust clients to come up with an alternate outcome to their own concerns about a determination or to resolve a dispute fairly and transparently.</p>
<p>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?</p>	<p>While it may seem attractive to fee payers to reduce employers NI contributions, the administration involved will be cumbersome given the transient and short term nature of contract work. Fee-payers will also need to retain records for up to 7 years and are unlikely to invest resources in establishing systems to do this.</p>
<p>Question 18 Are there any other issues that you believe the government needs to consider when implementing the reform? Please provide details.</p>	<p>The removal of the 5% allowance should be revisited. The Government now expects PSCs to be prepared to find resources to pursue outstanding IR35 determinations and support any disputes of determinations made. There is less incentive for a PSC to remain trading if the allowance for expenses disappears.</p> <p>The Government will need to publish guidelines for workers who have contracts running in the lead up to and immediately after 1st April, stating where responsibility for determining the IR35 status of such contracts lies. The Government should also publish its position on contracts where the status changes based on a client review compared to the PSC review.</p> <p>The CEST online tool will require updating to more accurately determine the IR35 status of contracts - specifically the Mutuality of Obligation test. The tool will need updating by Summer 2019 at the latest to enable workers to consider how their contracts will be assessed by clients in the lead up to 1st April 2020.</p>

<p>Question 18 continued Are there any other issues that you believe the government needs to consider when implementing the reform? Please provide details.</p>	<p>The Government has not acknowledged the problem of blanket assessments. The proposed disputes process does nothing to address this. Further work is needed on this and to name and shame clients who are known to be conducting blanket assessments. There are plenty of examples from the public sector to draw on.</p>
	<p>HMRC should begin publishing known good practice from the experience of implementation in the public sector.</p>