

28th June 2019

Jesse Norman MP Financial
Secretary to the Treasury House of
Commons London SW1A 0AA

Dear Mr Norman,

Re: Off-Payroll Tax (IR35) – Extension to the Private Sector

I am writing to express considerable concerns in relation to your misleading correspondence to MPs recently, in what appears to be dismissive and boilerplate responses to the considerable concerns raised by their constituents in relation to the proposals to extend the Off-Payroll Tax to the private sector in April 2020.

Mr Norman, you should already be aware that these reforms are highly contentious, damaging to UK Plc, and damaging to livelihoods of circa 500,000 flexible workers. The responses to the recent consultation, which closed on 28th May 2019, highlighted major concerns with the proposals by HMRC. Attached is a summary of those responses, along with a fact sheet with objective evidence – both of which I urge you to read.

Also, to note, you should by now, be aware that the original legislation in April 2000, and the subsequent “reforms” in April 2017 led to thousands of tax payers being swept up into tax avoidance schemes, which HMRC was unable to close down, resulting in their retrospective taxation measures which have led to suicides.

There is no doubt, because we are seeing it already, that more schemes are entering the market, and tax payers will suffer a similar fate in years to come. But, with your considered approach, if you choose to listen, this touch paper of future misery for half a million people, does not have to be lit.

Misleading statements in your letters

Having been leading the campaign to stop this draconian policy for the past few years, I've had sight of hundreds of letters that have been issued by HMRC and HMT on this matter.

I accept that you do not write them personally, probably don't read them, and blindly sign them. This is however, an opportunity for you to understand the real issues at stake, and circumvent the boilerplate propaganda that emanates from the Treasury, in your name.

False claim #1: “The Off-Payroll working rules have been in place for nearly 20 years.”

This is not true. The Off-Payroll legislation (Chapter 10 of ITEPA) is new legislation which came into force in April 2017. The Intermediaries legislation (Chapter 8 of ITEPA) was introduced in April 2000. They are not the same.

Whilst there are similarities between the two different pieces of legislation, in that they both rely on a complex assessment of an individual’s employment status, the tax treatment is entirely different.

A firm that assesses an existing contractor, after April 2020, as ‘inside IR35’ will have to pay additional taxes of 14.3% on top of the existing cost of hiring the contractor. This increased cost means businesses will have to increase existing budgets, or risk delays to or even cancellations of projects.

False claim #2: “The Off-Payroll working rules ensure that the individuals working like employees but through their own company pay broadly the same tax and National Insurance as other employees who are directly employed.”

This is a misleading half-truth. It serves to hide the fact that the vast amount of extra tax that is payable under the new rules is payable by the firm hiring the individual.

The new rules are designed to ensure the payment made to the individual is treated as employment income (section 61N(3)) – i.e. a salary. Firms that pay salaries are required to deduct Employee’s National Insurance (NI) and Income Tax from that salary, and to pay Employer’s NI (13.8%) on top of the salary that is paid.

The amount of tax paid by an individual who structures their income via a limited company is closely aligned to that of a salaried worker, particularly following the April 2016 changes to the way dividends are taxed.

Calculations have shown that hirers are responsible for approximately 84% of the tax shortfall where an individual is engaged outside of IR35, with contractors only accounting for the remaining 16%.

False claim #3: “The rules only apply to individuals who are working like employees, and do not apply to the self-employed.”

This is not true.

The rules apply to EVERY self-employed person. Every single self-employed person needs to be assessed as per section 61M. To suggest the legislation does not apply to everyone is at best a

half-truth. An assessment must be made, and additional compliance protocol must then be followed, based on the result of that assessment.

More worryingly, while Treasury claims the self-employed will not be affected, the hirers will be.

This is because any complex subjective assessment is not binding in law and therefore does not provide certainty. This means that each contractor hired on a self-employed basis places a significant tax risk on the hirer's balance sheet, one that increases year-on-year.

This risk will not disappear from hirers' company balance sheets. Such a liability will have a negative impact on company valuations. As a result, UK Plc becomes a much less desirable place for businesses to operate, due to the threat of any future tax investigation.

False claim #4: “Non-compliance with these rules is widespread, costing the Exchequer a great deal of money each year, placing additional pressure on taxpayers as a whole.”

The figure of a “great deal of money” was estimated by the OBR to be £595m for the year 2020-2021, but were given the highest uncertainty rating possible of ‘VERY HIGH’.

The most important factor was ‘Behavioural’, also ‘VERY HIGH’, and which meant no information was available. Or, in layman's terms – guesswork.

We are starting to see the effects of the policy recently, with banks choosing to terminate all flexible workers, and move those jobs off-shore, or hire workers as employees, on much less incomes, generating less tax.

These measures are reducing tax take, not increasing it.

False claim #5: “Evidence suggests this has been successful in improving compliance without disrupting public sector services or reducing market flexibility.”

The evidence being referred to here is the IFF Research Report commissioned by HMRC, the results of which covered a small time window over two years ago, shortly after the public sector reforms went live. The research did not seek any data from either the agencies with the sector, nor the individuals.

The first draft of the report was refused by HMRC to be released under FOI, but admitted that data has been omitted from it. The tender for the research was recently obtained under FOI, which proved that the financial data that was commissioned to be collected was not published in the final report.

The word “suggests” is not something that a research firm uses, who instead use empirical evidence to “show”. The word suggests is a sleight of hand use of words to imply that the empirical research proved something which it did not.

The claim that is increased compliance is disingenuous, since FOI requests have revealed that HMRC have not policed the reforms to ensure correct determinations have been made. There is widespread evidence that incorrect assessments were made, particularly at Network Rail and HS2, where they assessed 99% and 98% of their workers, respectively, to be “deemed employees”. Against the backdrop of HMRC claiming a third of workers should be deemed employees, this highlights that there is considerable non-compliance.

The reality is, the changes were deeply damaging to the public sector, and those same damages are starting to occur in the private sector.

False claim #6: “The Government has consulted widely on the proposed extension of the reform to all sectors..... having listened.....”

The Government ignored the widespread concerns raised in those consultations, and those same concerns have been raised again, along with more, in the most recent consultation. These recurring issues and recommendations made included:

- Halt reforms until April 2021
- Strong opposition to client-led disagreement process
- Liability model grossly unfair on compliant parties
- Calls for deemed employees to receive employment rights
- Small company exemption deemed unsuitable
- HMRC’s Check Employment Status for Tax (CEST) tool is still not fit-for-purpose
- Widespread non-compliance with the Off-Payroll rules in the public sector
- Concerns over the timing of the proposals in relation to Brexit.

False claim #7: “The Government very much values the contribution of flexible workers to the UK economy, but it is also under an obligation to ensure fairness between individuals who work in a similar way.”

The current proposals are impractical and do not protect the self-employed and flexible workforce. The evidence shows that. The financial institutions have decided to terminate their entire freelance work forces by the end of the year, and move much of the work offshore.

The rhetoric around “fairness between individuals” is not based on truth, since the amount of tax a freelancer now pays by operating through a limited company is similar to that of an employee.

These words and strategies used are a propaganda technique, called scapegoating by using half-truths, and it is embarrassing that our UK Government, in your name, is using these techniques to mislead other Members of Parliament.

Next Steps – Engage and listen, or ignore and dismiss?

Mr Norman, you pride yourself as a champion of Adam Smith, the Father of economics. Mr Smith would not ignore what he is being told. Mr Smith would not use half-truths, scapegoating, and misleading rhetoric to convince others of his cause.

Under your name, this is what the Treasury and HMRC are doing. Proof of all of this can be found in the attached Whitepaper we recently updated titled "*Treasury Letters Debunked*" which carefully deconstructs every misleading piece of boilerplate produced by the unelected puppet master civil servants at Treasury and HMRC. We sincerely hope that you do not repeat the exercise by delegating your response to an unelected official who picks from the stock responses.

We already have one ex-Financial Secretary of the Treasury, in Mel Stride, who, after making false statements in the house of commons on matters of the Loan Charge was labelled by well-respected journalists as "Misleader of the House".

Are you ready to listen, and let democracy exercise itself? Or are you going to be the next patsy who fronts the unelected tax dictators hiding away in Treasury or HMRC?

There are half a million people poised to read your response to us on this, which will be published to our monthly audience of over 200,000 visitors. Please provide a considered response, rather than passing to a bureaucrat for yet more misleading rhetoric.

We await your carefully considered response.

Yours sincerely

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