



OFF-PAYROLL WORKING RULES IN THE PRIVATE SECTOR

Budget Representation by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to make representations in relation to the 2020 Budget.
- 1.2 This submission concerns changes to the off-payroll working rules which are intended to take effect for the private sector from 6 April 2020. We ask the Chancellor to consider delaying the introduction of these changes for one year to 6 April 2021.
- 1.3 Section 2 below sets out a summary of the key reasons why we believe such a delay is required. Section 3 goes on to set out these reasons in more detail.
- 1.4 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This representation is written with that background.

2 Summary

- 2.1 The current timetable means that, at the time of writing in January 2020, the new off-payroll rules will apply to the private sector in less than three months. However:
 - Final legislation is not available, and it is not clear what changes may be introduced to the draft legislation previously consulted on (see para 3.5).
 - Many important practical issues are not covered by the draft legislation at all (see para 3.5).
 - Detailed guidance covering the practical application of the rules has not yet been released (see para 3.7).
- 2.2 We are concerned that the resulting lack of certainty means that businesses will find it difficult to make the necessary preparations in time (see para 3.8).
- 2.3 Whilst we welcome the announcement by the Chancellor on 7 January¹ that a review will be undertaken into the implementation of the off-payroll working rules, we do not believe that this reduces the need for a delay in their introduction. Rather, the fact that this review will only conclude a matter of weeks before 6 April 2020 strengthens the argument for such a delay (see para 3.13).

¹ <https://www.gov.uk/government/news/off-payroll-review-launched>

- 2.4 Delaying the introduction of the new rules by one year would allow extra time for preparation, and reduce the chances of problems arising for businesses, workers and HMRC (see para 3.9). It would also demonstrate that lessons have been learnt from the rushed introduction of the rules for the public sector in 2017 (see para 3.10 and 3.11).

3 The case for delay

- 3.1 The changes to the off-payroll rules, which are set out in draft legislation for Finance Bill 2019-20 published on 11 July 2019 (the *draft legislation*)², represent a fundamental change in the way private sector businesses engage with contractors.
- 3.2 If the rules are implemented as proposed in the draft legislation then, from 6 April 2020, responsibility for determining whether an engagement falls within the off-payroll rules will move from the worker's personal service company (PSC) to the client (the business which requires the worker's services). The party which pays the PSC (which may be the client, or an agency depending on the commercial arrangements) will then be required to operate PAYE and NICs as appropriate.
- 3.3 These changes will require affected private sector bodies to put in place a number of new systems and processes. They will need to review existing arrangements at 6 April 2020, and implement checks and arrangements for new contracts entered into after that date. Existing arrangements may also need to be renegotiated in response to any reduction in income received by the worker as a result of the rules. Public sector bodies (who have been subject to similar rules since April 2017) will be affected as well, having to make adjustments to their existing practices to accommodate changes proposed by the draft legislation, including to the information which must be supplied to workers and how disputes over employment status are dealt with. All of these adjustments and changes will require a significant investment of time and resources.
- 3.4 We are concerned that affected businesses will not have had adequate time to carry out these preparations by 6 April 2020.
- 3.5 Final legislation is not yet available, and nor have HMRC made any response in relation to the representations made by the ATT and others in respect of the draft legislation³. It is therefore unclear whether any of the requirements set out in the draft legislation will be subject to change. We also note that many important practical issues, such as when liability can be transferred within a supply chain and exactly what information will need to be shared by clients, are not addressed in the draft legislation at all, and will instead be addressed at a later point in either secondary legislation or guidance.
- 3.6 Further, the fact that the Budget will not take place until 11 March means that the Finance Bill incorporating the final legislation is not likely to be published until a few weeks before the scheduled start date of 6 April 2020, and is unlikely to receive Royal Assent until after that date.
- 3.7 As we noted in our previously submitted comments on the draft legislation, the availability of practical and business-focused guidance will be vital to the successful introduction of the off-

² <https://www.gov.uk/government/publications/rules-for-off-payroll-working-from-april-2020>

³ <https://www.att.org.uk/technical/submissions/rules-payroll-working-april-2020>

payroll reforms. However, no such detailed guidance has been issued to date, and we have seen only limited evidence of any HMRC education and information campaigns.

- 3.8 The current lack of final legislation and detailed guidance results in a lack of clarity as to how the off-payroll rules will operate in practice, making it difficult for businesses to make adequate preparations. Under the current timetable there remains less than three months for businesses to get ready.
- 3.9 Introducing these changes without allowing sufficient time for businesses to prepare increases the risk of problems for those businesses, the workers they engage and HMRC. These include, but are not limited to:
- Low levels of compliance and increased numbers of errors.
 - Greater demand on HMRC phone lines and staff for support (at a time when resources are already strained).
 - Inappropriate, risk-averse positions being taken by businesses (for example, a blanket decision to put all workers onto the payroll regardless of the nature of the arrangements) - to the detriment of workers.
 - Cash flow issues for affected workers and their PSCs (who will have only limited time to plan accordingly).
- 3.10 The introduction of changes to the off-payroll rules for the public sector in 2017 was widely criticised for being rushed. This was acknowledged on page 10 of HMRC's summary of responses to the consultation *Off-payroll working in the private sector* dated 29 October 2018⁴, which stated:
- "The government is committed to learning from the public sector reform in taking forward similar reforms in the private sector. Based on the feedback received, the government will ensure that organisations have sufficient time to prepare for the changes by implementing the reform in April 2020, rather than April 2019. This is in recognition of the need for organisations to set up systems to comply with the reform and review existing contracts"*
- 3.11 We believe that introducing the off-payroll rules to the private sector in April 2020, when final legislation and detailed guidance are not yet available, risks repeating the errors made in the public sector reform, rather than learning from them. In particular, as noted at paragraph 3.6 above, the legislation for off-payroll working in the private sector (as was the case for the public sector) looks unlikely to be passed into law until after the scheduled commencement date.
- 3.12 We note that HMRC issued an updated version of their Check Employment Status for Tax (CEST) tool in November 2019. However, concerns remain about the accuracy of this tool and its approach to determining employment status (which is not always in line with that taken by the Tribunal). Given the likely level of reliance both HMRC and businesses will place on the output of CEST, it is important that these concerns are addressed before the rules are introduced.
- 3.13 Finally, whilst we welcome the Chancellor's announcement that there will be a review of the implementation of the changes to the off-payroll rules (including further evaluation of CEST), we are disappointed that the Government appears to be pushing ahead regardless with implementing those changes from 6 April 2020. We note that the Government's review is intended to conclude

⁴ <https://www.gov.uk/government/consultations/off-payroll-working-in-the-private-sector>

by mid-February, which we consider to be not only overly optimistic, but also leaves only a matter of weeks for its findings to be put into effect and any changes communicated to businesses. We believe that rushing the review in this way, and only allowing a very short time to implement any suggestions it may produce, is likely to undermine its effectiveness.

- 3.14 We therefore encourage the Chancellor to consider delaying the introduction of the off-payroll rules in the private sector until April 2021. This will allow additional time for thorough scrutiny and necessary improvement of the draft legislation; as well as a comprehensive review of the implementation of the rules and the production of detailed guidance. In addition, businesses will have more time to put the required systems and processes in place, improving the chances of a smooth and successful roll out.

4 Contact details

- 4.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Emma Rawson (erawson@att.org.uk, mobile 07773 087111).

The Association of Taxation Technicians

5 Note

- 5.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 9,000 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.