



OFF-PAYROLL WORKING IN THE PRIVATE SECTOR

Issued 9 August 2018

ICAEW welcomes the opportunity to respond to the consultation **Off-payroll working in the private sector** published by HM Treasury and HMRC on 18 May 2018.

This response of 9 August 2018 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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EXECUTIVE SUMMARY

1. We believe that there are three interdependent policy issues that need to be resolved:
 - a) the tax and legal status of work should be the same, certain and comprehensible;
 - b) the tax and benefit differentials between different types of work need to be addressed; and
 - c) off-payroll working in the private and public sectors should be taxed in the same way.

We acknowledge that achieving this will be challenging for government but failing to address these issues will perpetuate the current uncertainty. All stakeholders should take the opportunity to work together to ensure consensus.

2. Our major points include:
 - a) *The tax gap:*
 - i. We acknowledge the policing problems faced by HMRC.
 - ii. An holistic approach is needed: tax/NIC solutions need to be arrived at alongside employment status solutions.
 - iii. We are not convinced that the figure of £410m is a useful one in assessing the real success of the public sector reforms, and believe that a further detailed breakdown of the cost (including employers' NIC) of non-compliance in the private sector should be provided.
 - b) *Tax differentials:* the cost imbalance between different categories of work needs review.
 - c) *Administrative and other changes:*
 - i. It is too early to assess the success of the public sector regime as a full year's cycle (including enquiries into employment status etc) has not been completed.
 - ii. As a matter of priority, practical problems with the public sector off-payrolling regime need to be resolved (see [ICAEW REP 73/18](#) letter to FST and [ICAEW REP 91/18](#) letter to HMRC).
 - iii. Members are seeing an increasing number of arrangements following the public sector changes whereby the cost of employer NIC, auto-enrolment costs, apprenticeship levy and holiday pay is being passed on to the contractor.
 - iv. Adequate lead time will be needed if off-payrolling changes are made in the private sector, so, if implemented, go-live should not be before April 2020.
 - d) *Independent research and evaluation:* we consider that HMRC's independent research into the public sector regime was too restricted to provide a reliable performance indicator.

MAJOR POINTS

3. We welcome the opportunity to comment on the consultation document [Off-payroll working in the private sector](#), published by HMRC and HMT on 18 May 2018.
4. There are three interdependent policy issues (see below) which are fundamental to this consultation and which must be addressed:
 - a) The tax and legal status of work should be the same, it should be certain, and the consequences should be comprehensible to the engager and worker. There are a number of possible options to explore which would achieve this, and these must be considered in conjunction with employment rights to arrive at a balanced and coherent position. We would welcome the opportunity to work with government to develop this.

- b) Work should be taxed in the same way, regardless of the wrapper or status. While we understand that government policy appears to be to provide an incentive for those in self-employment (via lower rates of tax and NIC), we believe there must be a debate about how much such an incentive should be and how it should be targeted. We understand the government's reluctance to tackle the disparity between the total tax paid by and on behalf of the self-employed and employees; however, the differential remains at the heart of the problem and must be addressed through an informed national debate. We strongly believe that addressing the differential would be the most robust long-term way to restore equilibrium of workers' employment status in the jobs market and to protect Exchequer revenues.
 - c) Off-payroll working in the public and private sectors should be taxed in the same way. Having different tax rules is unsustainable in the longer term, leading to greater complexity, unfairness, a greater administrative burden and the likelihood of more mistakes and ultimately non-compliance. However, the changes introduced in 2017 for the public sector are continuing to cause problems and these must be resolved before the same system is considered for the private sector (see [ICAEW REP 91/18](#) for current issues in the public sector).
5. We understand that dealing with these is going to be challenging for government and businesses and we acknowledge that there will be winners and losers. However, failing to address these issues will only add to the current uncertainty faced by businesses and workers. In the absence of a definitive and workable solution the UK will be revisiting the status of work and off-payroll working every few years. All stakeholders should take this opportunity to work together to ensure consensus in building a roadmap which provides clarity and consistency and also levels the playing field in terms of the amount of tax paid by, and benefits and rights afforded to, people in similar situations, while ensuring parity across both the public and private sectors, and compliance with our Ten Tenets for a Better Tax System summarised in Appendix 1.

GENERAL COMMENTS

The tax gap

- 6. We appreciate the difficulty HMRC has had historically in policing off-payroll working, while also noting that many of the problems stem from the complexity of the rules. This has been exacerbated by lack of HMRC resource.
- 7. While we support the government's desire to close the tax gap, it is important to adopt a holistic approach to modernising the rules for taxing work. Any changes to the private sector should be considered alongside the outcome of the Matthew Taylor review.
- 8. The consultation states (para 4.5) that the increase in income tax and NIC receipts following the reform of off-payroll working in the public sector is £410m. We note that (as implied by para 4.5 itself) the additional net revenue from all sources being brought into the UK Exchequer as a result of the changes will be considerably less than this once the reduction in both corporation tax and tax on dividends paid out by personal service companies (PSCs) are taken into account. Furthermore, the figure does not take account of the loss of VAT that would have been charged on fees where contractors have subsequently been moved to contracts of employment, nor any adjustments where contractors dispute the status allocated to them via self assessment and are ultimately found to be outside IR35. We would therefore challenge whether the figure of £410m is a useful one in assessing the real success of the public sector reforms.

9. We also note in para 2.14 of the consultation that the cost of non-compliance with the off-payroll working rules is projected to increase from £700m in 2017/18 to £1.2bn in 2022/23. We would welcome a breakdown, detailing in particular how much of this is employer NIC.

Tax differentials

10. We note that government is not considering tax, including NIC, rates as part of the employment status consultation nor as part of the private sector off-payrolling consultation. We remain of the view that a divergent tax burden is a major driver behind current hiring practices. This is mainly represented by the 13.8% rate of employer's NIC and 0.5% apprenticeship levy paid in respect of employees and the absence of these costs in respect of the self-employed, although there are other tax differentials too. Other cost differentials include pension costs under auto enrolment, which are currently 2% but will rise to 3% next year, and also holiday pay which is accrued for employees at a rate of 12.07%. We therefore believe strongly that the most robust long-term way to restore equilibrium of workers' employment status in the jobs market and to protect Exchequer revenues is to reduce the differential.

Administrative and other impacts

11. The timing of any change in the private sector must be considered carefully. UK businesses are already having to implement software and process changes for Making Tax Digital (MTD) and the full extent of the impact of Brexit is still unknown. Any change to the private sector should not be introduced until April 2020 at the earliest, to allow sufficient time for HMRC to provide guidance and software specifications based on enacted legislation and for businesses to review their internal processes, amend current systems or purchase and test appropriate software. If further MTD requirements (ie, quarterly reporting for business income tax and corporation tax) are introduced from April 2020, any changes to the private sector rules should be further delayed: we do not believe that businesses should be asked to implement two separate, but major, changes to their tax systems at the same time.
12. The reform to the off-payroll rules in the public sector has had a number of teething problems since it was rolled out in April 2017. We strongly recommend that the government addresses these issues in the public sector urgently, regardless of the policy decision taken in regard to the private sector (see [ICAEW REP 91/18](#) for more details).
13. We understand that the government's lead option to tackle the non-compliance is to extend the public sector rules to the private sector (para 6.9). In the event that UK businesses become more risk averse as a result of the changes and therefore decide to take on more employees rather than contractors, a significant benefit of flexible labour will be diminished and business costs will rise considerably, so reducing profitability.
14. It is too early to fully understand the impact of the 2017 public sector changes. Until we have seen a full compliance cycle, including company and personal tax return filing, together with resolved enquiries, full assessment of the changes is not possible. Due to the lack of publicity given to HMRC's employment status review facility, individual workers who disagree with their status will need to complete a self assessment tax return and use that return to make a challenge. This will inevitably lead to an increase in workload for HMRC, essentially deferring the problem of final status determination from the initial decision taken by the engager to the final resolution through the self assessment tax return process. Other remedies available such as employment tribunals, suing for debt or judicial review will be either considerably more costly and/or even more time-consuming.
15. We are aware that there has been some growth in a number of schemes and our members have already noted the increased use of umbrella companies resulting in a shift of the risk of

non-compliance from PSCs to umbrella companies. Agencies supplying workers are putting the individuals into umbrella companies often without telling the individuals, which prevents the agency or the public sector body (PSB) picking up the employer NIC costs and apprenticeship levy. The end result is that these costs are being deducted from the individual's net pay. It seems unlikely that this was Parliament's intention.

16. If the public sector changes were to be rolled out to the private sector, there would be a significant increase in the administrative burden of tax for private sector engagers. Further, a lengthy implementation period would be required and considerable support and guidance would have to be provided.

Independent research and evaluation

17. Paragraphs 4.12 to 4.23 of the consultation report the results of independent research and evaluate the effectiveness and experience of implementing the changes in the public sector. This research is an important indicator and the references to its results will be a major factor in any decision about whether, how and when to extend the reforms to the private sector. We believe the research was, unfortunately, too narrowly drawn and did not cover a number of issues that arose from implementing the proposals in the public sector.
18. The conclusions drawn from the research are that the changes have been successful, however, we would challenge this in a number of respects.
19. The timing of the research focused only on the early implementation period. It will therefore have focused almost exclusively on how easily the end client found it to:
 - a) take the decision about employment status, with particular reference to using the CEST tool;
 - b) set up and pay the worker through a payroll if necessary (although there is no mention of the back-end process of collecting contractor data, paying contractors through payroll systems, reporting information to HMRC, sending out pay statements, dealing with erroneous student loan notices and the impact on gender pay reporting etc).
20. While the majority of PSBs will already have a payroll through which they pay their existing employees, we are aware of various parts of the process which will still be challenging. For example, redesigning internal processes to be able to cope with deemed and real employees, collecting and inputting appropriate data into the payroll system and, ultimately, paying the contractor. Many sole director companies may be taking advantage of not having to submit RTI returns every month (as they can file a nil payment employer payment summary covering several months), so for them, this change will bring a significant additional administrative burden as well as the related additional cost, which will be much harder to absorb than for a large PSB.
21. The organisations interviewed were all public sector engagers themselves and the research did not consider the wider range of affected stakeholders. Frequently, engagers use agencies, and in the private sector, this could be an employment agency to 'recruit' the contractor and also a payroll agent to pay their employees (and ultimately any off-payroll workers). It would appear the latter agency's role in the engagement process has been almost entirely omitted.
22. As the research ran for just a few months following go-live, it is unlikely to have captured all the cases where the worker disagrees with the decision and seeks to challenge their status. This poses a significant problem for workers, who will not know how to challenge a decision at the time it is made (or who will not wish to risk their engagement by making such a challenge). Instead, as noted above, they must rely on the self assessment system, where some months after submitting a self assessment tax return in which the worker self assesses him/herself to be self-employed, HMRC opens an enquiry to challenge the figures. Many

individual workers will not be able to afford to wait this long for their case to be resolved with certainty. The issue has been exacerbated due to HMRC systems not being able to identify the difference between deemed employees and true employees on the Full Payment Submission (FPS). This has led to HMRC staff on the helplines informing contractors that the PSB has incorrectly set them up as an employee, when in actual fact the PSB has not – it is just that HMRC is unable to distinguish between an employee and a deemed employee, which is unhelpful.

RESPONSES TO SPECIFIC QUESTIONS

Improving the current compliance process

Q1: What could be done to improve the compliance enquiry process to reduce non-compliance, whilst safeguarding the rights of customers?

23. Although it is too early to fully understand the impact of the 2017 public sector changes we are concerned about how disagreements will be arbitrated and settled. Status cases are heavily fact-dependent and professional fees will often be very high, meaning it will rarely be in the taxpayer's interests to contest HMRC's view.
24. Until we have seen a full compliance cycle, including company and personal tax return filing, together with dispute resolution and enquiries, full assessment of the changes is not possible. It appears that in the absence of specific appeal legislation, individual workers who disagree with their status, will need to complete a self assessment tax return and use that enquiry system to make a challenge. An independent arbitration process would be useful at the earlier stage of the dispute.
25. Better, more transparent, reporting on tax returns and within RTI submissions would allow HMRC to identify individuals who work through service companies. The earlier attempts to do this were unsuccessful, but as, ultimately, MTD will lead to all businesses above a size (yet to be specified) keeping their accounting records digitally and submitting quarterly reports, more timely information should become readily available. Clearly, an individual whose only business income is derived from just one client for long periods of time will be more likely to be caught by the rules. While this does not on its own mean there has been non-compliance, it is a possible indicator. We would be willing to explore with HMRC how in future MTD data could be utilised, and how MTD systems such as the Business Tax Account could be used to send relevant prompts to taxpayers, to improve compliance.
26. The rules are complicated and not well understood by many workers affected, nor indeed by their engagers. We understand the difficulty HMRC has in policing non-compliance in the private sector, especially given the scale and size of the issue and we acknowledge that HMRC resources are under considerable stress. Nevertheless, it seems logical to assume that if the return on investment from employing more fully trained status officers would result in a more efficient and compliant system, increasing staff numbers should be reconsidered.

Extending the public sector reform to the private sector

Q2: Could the public sector reform better fit the needs of businesses? How?

27. While we are aware of a number of problems with the public sector reform (see [ICAEW REP 91/18](#)), we agree that ultimately, having just one system is better for UK business. It is, however, of the utmost importance that the current problems in the public sector are resolved as a first priority. If the reform is to be extended to the private sector, it should be done only once all of these issues have been addressed and the public sector changes are seen to be working as intended.

28. In particular we note that businesses in the private sector operate differently from those in the public sector and often more complex structures exist between the client and the worker. For example, more than one type of agency might be involved within the same supply chain: an employment agency could be used to source a group of workers, while a payroll agency may then be used to pay them.
29. Public sector engagers are more likely to already have experience of running a payroll and will be less likely to need help.
30. We think sector-specific guidance is essential.

Q3: What, if any, changes could help make the administration as simple as possible?

31. More use should be made of flags and markers in the RTI system. For example there needs to be a deemed worker marker to allow HMRC to distinguish between deemed and real employees. This would, for example, stop student loan and auto-enrolment deductions being made inappropriately.
32. The PSC should report fees extracted as salary as tax and NIC free (RTI FPS box 58A), thus ensuring there is no duplication of taxable income (as the PSB will report it under RTI). However it is not clear which information source is used to populate the individual's personal tax account (PTA), how HMRC reconciles this and what information is shown in the PTA. If the PTA reports both the income from the PSB and the income from the PSC there is a risk of confusion and possible duplication of income.
33. See [ICAEW REP 91/18](#) for detailed comments regarding deemed employee tax codes.

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?

34. Although the same basic principles are applied to determine the tax status of any contract for work, some sectors have in the past been handled by specialist departments because of their nature. These include for example, the media, pharmacists and medical staff, which have particular indicators specific to their work to make it easier to apply the tax rules consistently. We understand that special guidelines were issued for the radio industry for example, and while these were not made publicly available on GOV.UK, they have never been withdrawn.
35. The full list of end client engagers affected by the rule change for the public sector has been relatively easy to identify. The rules apply to a public authority as defined by the [Freedom of Information Act 2000](#) and the [Freedom of Information \(Scotland\) Act 2002](#) so contacting this group to make them aware of the 2017 rule changes will have been straightforward for HMRC. This will not be the case for the private sector which has a much larger population of private sector engagers. A much longer lead time will be needed, and this will need to be accompanied by a full programme of support from HMRC, particularly for SMEs who do not employ employment tax specialists.
36. We are aware that HMRC offered training, guidance and assistance to public sector engagers to ensure they were able to cope with the April 2017 changes. Despite this, there have still been a number of issues with implementation in the public sector - see [ICAEW REP 91/18](#) for detail. We are concerned that HMRC is not in a position to provide this level of support to the private sector given the scale and diversity of the market.
37. We note the suggestion that online guidance is provided. However, due to the constraints on what can be published on GOV.UK, there is concern that any guidance will at best be misleading or omit the more complex scenarios.

38. Many private sector engagers will be using these new rules, and if necessary determining IR35 status, for the first time. Private sector businesses will need an appropriate lead time to ensure they have understood the rules and put the necessary IT systems and internal processes in place. For example, small businesses will need time to:
 - realise that the law has changed in respect of off-payroll working;
 - determine whether the new rules will apply to them as an engager; and
 - inform their payroll agent who will likely charge higher fees to assist with status determinations if required by the engager.
39. Businesses will also need to amend and link their payroll software with their accounts payable systems. In addition their VAT reconciliation processes will have to be updated.
40. We recommend, therefore, that the reform, if extended to the private sector, is not implemented until at least 18 months from the publication of draft legislation to allow time for the necessary IT changes to be implemented.
41. In particular, engagers will need to understand the difference between employees and non-employees who need to be paid through a payroll, and payroll systems will need to be able to report deemed employees. This has already proved problematic in the public sector with issues such as automatic (and unauthorised) deduction of student loans via PAYE (see para 27).
42. There are a number of operational and systems issues which will need to be considered. These are explained in Appendix 2.

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?

43. Red tape creates an administrative burden and our members tell us frequently that all change carries an extra administrative cost. Most recently, businesses have had to implement GDPR and also gender pay gap reporting rules. They are currently preparing for MTS and are wondering what changes are likely to follow Brexit in March 2019. Resources need to be allocated to these tasks and often this will mean taking on extra workers or outsourcing. It is easy to find cases where off-payroll working rules need to be considered.
44. According to the National Literacy Trust, around 15%, or 5.1 million adults in England, can be described as 'functionally illiterate' (<https://literacytrust.org.uk/parents-and-families/adult-literacy/>). We have no statistics for how many potential employers struggle with literacy, but it seems likely that any which are faced with making an employment status decision following a change to the off-payroll working rules will need help to understand and, if necessary, implement them.

Q6: How could these difficulties be mitigated?

45. Improving literacy would clearly help business in general, but this is a long-term project. In the shorter term, help must be provided, particularly to businesses in the first few years and as they go through specific phases of the business lifecycle, and in this case as they take on staff, on or off payroll.
46. More help could be given to businesses using websites to find labour. Most of these websites go to great lengths to explain that they take commission for facilitating the tendering process, but are not part of the contract for the work. Perhaps these portals could be required to do more to warn the parties involved of the tax and legal consequences and explain where to find more help.

47. The tax, employment law and state benefit rules for off-payroll working generally are in desperate need of simplification, which can only be achieved if they are all considered together as part of a review of the status of work. There is currently no government review in progress to do this; indeed, Matthew Taylor's work specifically excluded tax. While the tax cost of employment and self-employment is so markedly different, too much rests on legislation which is too hard for most businesses and workers to apply.
48. Whatever the changes brought in for the private sector, adequate time must be allowed for these to be implemented. This should include extensive discussion with the tax, payroll and accounting professions, not just businesses, but also the thousands of agents who will play an important part in making a successful transition for business and workers involved.

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?

49. See answers to Question 8 below.

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?

50. The requirement to make the status decision and to be liable for the payment should be linked and should belong to the same person or entity.
51. There is a difference between an employment agency which is ignoring a determination and one which disagrees with it. In any penalty system, there needs to be a presumption of innocence and a defence of reasonable excuse.
52. The worker must be given a specific right of appeal, which must be close to the time when payment is being made. This is particularly relevant for workers on low incomes where suffering an unexpected deduction will create hardship.
53. Little mention has been made of the interaction of the new system with benefits, including universal credit. Workers, Jobcentre advisers and DWP are likely to be handling complex legislation they are unfamiliar with as some claimants present as employees for the first time.

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?

54. We believe that this is effectively dealt with by regulation 72(4) of the PAYE Regulations.
55. However, an individual may receive income knowing the 'correct' tax has not been deducted because for example code BR was used and not OT. This should not be an offence and should not be subject to penalties.
56. However if the individual and an engager knowingly colluded to evade tax they should both suffer penalties. This will, however, require HMRC resource to enforce. The threat of penalties alone is not sufficient when such individuals believe there is little chance of being caught.
57. If the individual worker receives payment gross when they know it is employment income, they can already declare it as such on their self assessment tax return. If the tax return has sufficient information to identify the payer, then that should meet the worker's obligation to report in full. Clear guidance would be needed to explain this. It is however rather more likely that the worker will be querying their employment rights, such as holiday pay, rather than the

tax status of their income. If the legal employment and tax status was the same, this would solve most of the problems.

58. In any challenge made to the engager, the engager must have rights of appeal and possibly also rights of recourse if they are found not to have acted unreasonably.

Q10. What systems and process changes would businesses need to make?

59. See reply to Question 4.

Q11: Would there be any process and administrative cost implications for businesses? Can you provide any evidence of the scale and nature of these?

60. There will be process and administrative costs for businesses as they will need to consider and review internal processes to ensure all departments in the organisation are joined up (see Appendix 2 for operational issues).
61. We presume HMRC will already have recent cost estimates for a business setting up and operating a payroll for the first time.

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?

62. A two-step change process without any roadmap in place would be the worst of all worlds. So for example, to change the rules to those now used by the public sector, and then later to make further changes to implement any Matthew Taylor proposals, would be more costly and administratively complicated than to take time to consult on and agree the plan in advance.
63. If the government decides to change the private sector rules, then sufficient time for implementation is essential. Any foreshortened timescale will be more expensive as more intensive testing will be required, particularly if HMRC has not amended its systems in advance of any rollout. There could also be an increase in payroll fees as payroll agents will need to enter into an extensive communications exercise to inform their clients (and in particular the very small businesses who are unlikely to be aware of the rule change) alongside an internal systems review to identify any changes necessary to prepare for implementation.

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?

64. We recommend that any roll-out of the public sector rules is delayed until at least April 2020 to give businesses sufficient lead time to familiarise themselves with the rules, acquire appropriate IT systems and implement internal processes.
65. The law needs to be enacted early enough for HMRC to publish and publicise final guidance and deliver definitive IT specifications for businesses and software houses.
66. Many small private sector businesses use payroll agencies. HMRC should ensure that guidance and support is offered to these agencies too so that they are fully aware of the changes ahead.
67. We recommend HMRC sets up an off-payroll user group that would include payroll agencies, accountants and tax advisers who have been dealing with the changes in the public sector.

Encouraging or requiring businesses to secure their labour supply chains

Q14: Overall, what are your views on this option? Would it be a proportionate response to the issue?

68. We agree with the observation in paragraph 6.21 of the consultation document that this would place a large administrative burden on business without directly tackling the issue of non-compliance.
69. We think it would be largely ineffective as many SMEs would be unaware of their responsibilities or, if they were aware of them, they would not have the necessary ability to check their supply chains.
70. We do not believe that this option would be a proportionate response to the non-compliance issues in the private sector. Ensuring compliance to this extent will interfere with the smooth and efficient operation of a business, particularly where different departments are involved in checking different parts of the supply chain.
71. This option would create a significant administrative burden for business and it is likely that there will still be a level of non-compliance, even with these requirements in place, which HMRC would need to police.
72. As such we do not see this as a viable option to tackle the issues which are presented in the consultation document.

Q15 – Q24

73. No comments.

Additional record keeping

Q25: Overall, what are your views on this option? Would it be a proportionate response to the issue?

74. This would be a significant burden to businesses in the private sector and in particular there would be storage costs to consider.
75. As with option two, the first challenge would be to ensure that businesses were aware of their obligations, which we do not think would be an easy task. Even where they are, they will need to set up new systems to retain this information: contracts would probably be retained anyway, but new systems would be required for shift rotas and line management reporting requirements (if indeed there were any of either). Bearing in mind that nobody would require these for any other purpose, and the people responsible for them would not generally interact with the business's tax system in any other way, we foresee considerable internal difficulties in getting businesses to do this.
76. Depending on what records were kept, and for how long, there could be GDPR issues to consider.
77. Agencies are required to submit quarterly reports to HMRC which contain certain information. The information required here should be reviewed and assessed in line with the proposed changes to the private sector as it could well be possible for HMRC to gather additional (and reasonable) information in this way.

Q26 – Q31

78. No comments.

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)?

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?

79. We consider that a simple roll-out of the public sector rules to the private sector would miss an opportunity to make significant improvements to off-payroll taxation. This is an area which has been discussed, often emotively, for decades and to rush to an imperfect solution at a time when the very nature of work is changing, and the Taylor report is still being considered by government, would be a missed opportunity.
80. One option, which has not been fully explored, would make the client and not the intermediary responsible for paying employers' NIC. While we have not fully consulted with our members on this, and there would be administrative challenges, it would be a logical next step and would tie together the status decision and payment liability, leaving the worker to suffer only workers' taxes. This would require further discussion and a proper implementation plan, but it is possible that this or some variant on it, might provide a way forward.

Other issues

Q34: Are there any other issues which businesses or individuals who may be affected would like to raise?

81. No comment.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).

APPENDIX 2

OPERATIONAL AND SYSTEMS ISSUES

We set out below some of the key systems and operational issues that businesses will need time to deal with if the public sector rules are extended to the private sector:

Large businesses

1. In larger businesses the data required to set up an employee comes not from a direct input into the payroll software, but typically via a data feed from the human resources (HR) system. The function of the payroll software is essentially to calculate and report real time information as the payment is made and carry essential personal information and details of pay and benefits entitlement. HR systems are likely to also hold this personal information. Businesses will need to assign a new cost centre code to deemed employees to ensure they are not reported internally as true employees. For large employers using ERP systems this will take time and bear a financial cost. A “flag” will also need to be added to the payroll system and Full Payment Submission to alert HMRC to which individuals are deemed employees.
2. For many private sector organisations the HR system will operate globally so any changes must be tested for downstream impact in every geography – one cannot simply tweak the UK system because there isn’t a UK stand-alone system. In order to make changes to a global HR system, one would expect at least six months to escalate the business case to the proper level and then a further 12-18 months for design, testing and implementation.
3. The HR system is one of the core systems within an organisation and much is done with the data. For example statutory reports are made to Regulators such as the SEC, gender pay reporting, country-by-country reporting and headcount forecasting. Head counts are also used in tax where a business claims tax relief dependent on its size, such as the Enterprise Investment Scheme. Having individuals on the HR system who are not employees, potentially affects all downstream data reporting, meaning businesses will need to:
 - a) Understand and catalogue the downstream data uses,
 - b) Assess whether and to what extent these are impacted
 - c) Design and implement fixes.
4. The data feed from HR to the payroll system will cause issues, as non-employees will not have salary data (since they are paid by invoice). Intervention will be required to extract the fees from the invoice which then becomes the ‘salary’. The data feed has a number of automatic checks and safeguards, and these will have to be redesigned in order that false error messages are not being generated by deemed employees.
5. Small business suppliers have often complained that large suppliers take too long to settle their invoices. Some of this delay is systems related. One large private sector company has given us the following systems example to illustrate how the additional step to verify whether or not IR35 applies, interrupts the work flow between receiving an invoice and making payment.

‘The pay data for these non-employees would come from the Accounts Payable (AP) system. In our organisation, invoices must be submitted electronically through a supplier portal (a common global system), and are verified electronically by approvers, who are assigned by expense type and value, before being processed for payment. It would therefore be necessary to insert a holding step after verification to prevent invoices from providers who are identified as within IR35, from being settled

automatically. Instead, the VAT-exclusive amount of the invoice would need to be fed into the payroll system at the next available run to serve as pay data, and matched to the right PAYE record. This would require either a direct data link from AP to payroll, which currently does not exist, or at the very least a method of exporting the data from AP in a way that can be imported into payroll (eg, a csv file).'

In order to complete the export/import, one would need to have a method of identifying the affected suppliers within the AP system, which we don't have at present. The timescale for any changes not already "on-programme" would be 18-24 months as resources are typically committed 18 months ahead in line with the overall business plan. We are also aware that in some sectors, retail in particular, there are software freezes from September to post-Christmas to ensure there is no risk to the IT systems or unexpected down-time during peak-trading.

If it were possible to calculate the PAYE deductions on the amount of the invoice (excluding VAT), then the net figure would need to come back into the AP system as a company amendment to the invoice and be re-verified before being submitted for payment. Again the link between payroll and AP would need to be a direct data feed or export/import via csv.

A further problem comes when we use the data from the AP system to compile the VAT return. The system has a number of automatic safeguards, and one of these is a reconciliation of taxes to the amounts paid. However, if we have an invoice amount of £100 + VAT (£120), and 20% PAYE withholding has been applied to the £100, we now have a payment of £80 (£100 – £20), and a VAT amount of £20. Naturally the payment of £80 will not reconcile with a VAT payment of £20 as it's not the right VAT rate for the supply. Before compiling the VAT return, we would need to manually reconcile with the payroll data every entry where there is a VAT mismatch. This is potentially thousands of manual reconciliations.'

6. The above illustration is a real case. It hasn't mentioned Making Tax Digital, but this will also require systems change in order to extract and report the correct quarterly VAT totals automatically from April 2019.

Small businesses

7. Smaller businesses with no integrated HR software/payroll software will need to send the data, probably on a spreadsheet, to their payroll agent, detailing the individual's hours charged and relevant data.