

Written evidence submitted by Self-Employed Alliance (FB27)

Finance Bill 2020 Committee Submission - Off-Payroll Rules

Summary:

1. The Self-Employed Alliance is a non-profit organisation and advocate for Self Employed Owner contractors working through small limited companies. These companies are most at risk from false employment and zero rights employment caused by IR35.
2. Our Chairman Dr Iain Campbell gave evidence to the House of Lords Finance Bill sub-committee on the Off-Payroll reforms in February 2020. Further evidence from our StopIR35 campaign was cited in the sub-committee's report *Off-payroll working: treating people fairly*¹
3. This submission relates to IR35 Off-Payroll changes. We highlight that it will fall well short of the claimed objectives both in policy and taxation. At the same time, it will damage the market just as we attempt to recover from the COVID crisis.
4. There are five amendments which we ask the committee to consider.

COVID impact - Our Survey of businesses affected by IR35 Off-Payroll:

5. 30% of those affected by Off-Payroll are not currently able to provide services to their customers during the COVID crisis. They have no revenue and have lost almost all income since the COVID crisis began. Very few qualify for Universal Credit. Many fell between the sharp edges in the Job Retention Scheme.
6. 96% of our survey experienced a drop in earnings due to COVID and 60% of these have had a complete loss of ALL income during the crisis. Despite this only 48.4% have used the CJRS furlough scheme, a much lower percentage than taxpayers *working in a similar way* that Off-Payroll rules considers many to be.
7. 97.8% are experiencing a worsening financial situation. Their COVID crisis income has not covered non-discretionary outgoings. 35% report their finances worsening by between £2,000 - £3,000 per month.
8. The COVID crisis has shown a new dimension to fairness claimed by Off-Payroll advocates. IR35 Off-Payroll treats **ALL** business revenue as income for tax purposes. Treasury claims this increases fairness in taxation. Taxpayer support has ignored **ALL** their primary income during the COVID crisis.

COVID Support:

9. If all taxable income had been supported to the same CJRS & SEISS level of £2500 per month, fairly and on a par with taxpayers working in a similar way, 67.1% of our survey would return to work post COVID in a similar financial position to their peers. They will not do so as they are not similar enough.
10. This inconsistent support from Treasury shows that there is recognition for the intrinsic differences in status for taxpayer support but remain blinkered when it comes to employment status and taxation.

¹ <https://publications.parliament.uk/pa/ld5801/ldselect/ldconaf/50/50.pdf>

11. The committee must recall² that “The off-payroll working rules are designed **to ensure fairness** between individuals working in a **similar** way.”, but clearly very selectively and without actual fairness.

Dividends:

12. 92.4% of our survey receive income through dividends as recommended by their accountants. This is sensible tax planning when you may have variable revenue.
13. The difference in end to end taxation between salary or dividend income is small.
14. The Lords Finance Bill sub-committee report criticises Off-Payroll for failing to adequately consider simpler, more robust, less costly measures to equalise taxation.
15. Off-Payroll attempts to gerrymander employment status tests to make it less likely that an accurate assessment will be made by engagers. The playing field is tilted away from self-employment as there is no incentive for the end client to be accurate.
16. **An amendment is needed to delay Off-Payroll while better options are evaluated.**

Loss of Competition:

17. Contractors affected by Off-Payroll often work side by side with employees from the engager. They ALSO work alongside employees of 3rd party consultancies who do similar work and earn revenue for their employers.
18. The 3rd party consultancy employees are not be affected by Off-Payroll rules. A lack of fairness claimed by the policy. This damages competition in favour of our larger rivals yet from the perspective of the engager, they are identical, except perhaps they have closer connections to government and more recently disturbingly close connections to Treasury.
19. Larger ‘body-shop’ consultancies will receive an unfair advantage, through expense allowances while performing identical work alongside Off-Payroll contractors. Off-Payroll is clearly imbalanced, in favour of large consultancies.
20. Favour for selected business is illegal state aid.
21. **An amendment should include all Off-Engager Payroll working regardless of supplying company.**

Economic Impact:

22. *Rules for off-payroll*² working from April 2020 did not expect major impacts. Treasury has purposefully ‘not seen’ changes widely reported in early 2020. Significant UK work is being off shored to avoid these new rules.
23. The *Exchequer Impact* has been invalidated. Treasury assumptions did not account for the fact that much public sector work e.g. a hospital cannot be offshored.

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

24. Many of our large competitors are not UK based, their revenue for *similar work* does not pay UK taxes. They will become preferred suppliers for engagers which has been overlooked in the flawed economic impact.

Quarters 3 & 4 of 2020:

25. Without a sudden and substantial improvement in their market after the COVID crisis 57% of our survey anticipate their business will not survive beyond October 2020.
26. It is therefore expected more than **120,000 contracting Limited Companies** to wind down their trading and with declining income **will close during 2021**. The *Exchequer impact* is therefore wrong.
27. During the planned expansion of the IR35 Off-Payroll reforms in 2019/20 the market for contract work started to decline as clients in many finance sectors side-stepped the IR35 burden. They have chosen to no longer engage contractors via Limited Companies. The replacements will be overseas or will be non-UK based consultancies. The *Exchequer impact* is therefore incorrect.
28. If the pattern observed during the false start of IR35 Off-Payroll reforms in 2019/20 is repeated in 2020/21 there will be little chance of recovery after COVID.
29. On 1st June, The Financial Times headlined 'UK banks warn 40%-50% of 'bounce back' borrowers will default by £9.25BN'. The total amount borrowed through this scheme by the end of May is close to £20 Billion with a typical value of £30,000.
30. Taking these figures together, IR35 Off Payroll alone is likely to add a further £2.5 Billion of defaults on Bounce Bank Loans.

Personal Service Companies:

31. The *Off-Payroll rules*^{Error! Bookmark not defined.} explain that the term Personal Service Company (and PSC) incorrectly. The requirement for 'personal service' is one of the key indicators for employment which is not always present.
32. The rules and supporting documentation prejudice the 'service company' in line a regime for imbalanced status assessments. This forces genuine self-employed people into *Zero Rights Employment*.
33. **All documentation should be amended to remain neutral on the employment status as it is too revealing of the underhand motives behind Off-Payroll.**

Client Led Disagreement Process

34. In the run up to the aborted introduction of 2020, the Off-Payroll *client led disagreement process* was being applied for the first time.
35. *Off Payroll rules*³ claim that contractors are relieved from the costs of status assessment. This burden is transferred to the client.

³ <https://www.gov.uk/government/publications/rules-for-off-payroll-working-from-april-2020/rules-for-off-payroll-working-from-april-2020>

36. Large engager's define a *disagreement process* using a 3rd party assessor onto which they off-load their new burden. For an assessment which HMRC have repeatedly found impossible to reliably assess, specialist expertise is needed.
37. It is unacceptable that the client led process forces the **contractor to pay** between £100 to £250 to the 3rd party for this **client burden**. This measure has failed to shift the burden already.
38. This cost remains with the contractor who may be unable to offset this business expense as the 5% allowance has been removed.
39. Off Payroll rules³ were very clear that "A 5% allowance is currently available to those who apply the off-payroll working rules to reflect the costs of administering them. Because responsibility is shifting from the PSC to the engager, this allowance will be removed"
40. The 5% allowance to reflect the business cost is being removed, but these costs have not shifted.
41. **An amendment needs to ensure all costs remain with the end-client rather than the contractor who may be taxed as an employee so should not incur end client costs when the rules have shifted this burden.**

Apprenticeship Levy:

42. This levy is not intended⁴ to be paid or deducted from the earnings of small contracting businesses.

*The levy will **only be paid** on annual paybill's in excess of £3 million, and so less than 2% of UK employers will pay it.*
43. This levy/tax is intended to apply to only the **largest employers** and Off-Payroll changes intended to make the end client or 'deemed employer', the 'employer for tax'.
44. It is wrong and unfair for it be paid through deductions from an umbrella employee with earnings typically in the £10,000s. It is currently deducted by the payroll intermediary whose turnover determines whether it applies or not. This is unrelated to the engagement and seems arbitrary. This is not being paid by the engager, but the *deemed employee*.
45. This skews the market in a manner that attracts contractors to smaller possibly less robust umbrella companies who have not furloughed their employees during COVID.
46. **An amendment is needed to have the apprenticeship levy be paid by the *deemed employer*.**

[End of Submission]

Please contact us via email to stopir35@sealliance.org.uk

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⁴ <https://www.gov.uk/government/publications/apprenticeship-levy/apprenticeship-levy>