

# Off-payroll working in the public sector: reform of the intermediaries' legislation

HM Revenue & Customs  
Employment status team  
Room 1E/10  
100 Parliament Street  
London  
SW1A 2BQ

Dear Sirs

Off-payroll working in the public sector: reform of the intermediaries' legislation.  
Consultation Document ("ConDoc")

## Introduction

Intouch Accounting Limited ('Intouch') is a firm of Chartered Accountants representing over 2,000 Personal Service Companies ("PSC") and supporting them through the provision of routine accounting, corporate and personal tax services.

Intouch is a member of the Freelancers and Contractor Services Association ("FCSA"), an approved accounting partner with the Association of Independent Professional and the Self-Employed ("IPSE") and a member firm of the Institute of Chartered Accountants in England and Wales ("ICAEW").

Intouch does not act as an employment intermediary itself. The full range of the compliance accountancy and tax services provided can be found at [intouchaccounting.com](http://intouchaccounting.com).

As stated above, our clients are of the type that are commonly referred to as PSC's, many of which may consider accepting contracts within the public sector, and are likely to be directly affected by the proposals.

Intouch welcomes the opportunity from HM Revenue and Customs ('HMRC') to contribute to the process of consultation. Representatives of Intouch are willing to contribute further with the consultation process and we have offered to contribute towards the development of the digital tool.

We are fully supportive of measures that are intended to:

- promote and encourage compliance within the UK tax system through clarity and transparency
- robustly discourage non-compliance and
- support measures to counter those inclined to deliberately mislead, fail to report or adopt aggressive avoidance tactics.

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The taxation of PSC's has presented many challenges and continuing concerns to government for some time; whilst existing legislation is not particularly complex and is generally well understood its interpretation is often based on areas that require subjectivity that can lead to uncertainty or concerns over compliance in the mind of Government.

We believe that the vast majority of PSC's wish to be compliant and pay the right amount of tax, without the slightest intention to deliberately defraud the tax system. A vast majority of PSC's appoint responsible, experienced and properly qualified advisors to ensure that compliance is met.

We recognise that there are a limited number of rogue employers and service providers that encourage non-compliance but consider government is wrongly assuming that rogue action is representative throughout the whole of the UK's flexible workforce.

Intouch believes that any reform of IR35, whether limited to the public sector or also extending to the private sector, must encourage and reward compliance whilst also preserving flexibility in the workforce and the UK's entrepreneurial nature. PSC's serve an extremely important role in both public and private sectors and the flexible workforce continues to make a positive contribution to the recovery and success of the UK economy.

HMRC recognise that there are legitimate reasons for PSC's to exist and that they provide an invaluable vehicle through which individuals and industry respond to changes in demand.

The recent "Brexit" outcome of the referendum poses significant, new and unforeseen challenges to the future success of the UK economy. The importance of ensuring that reform does not unnecessarily impede the labour market is ever more important, as key public services and large scale infrastructure projects will continue to rely heavily on the UK labour markets.

The public sector competes for resources with the private sector. We would warn government of the potentially unforeseen consequence that legislative reform would reduce the public sectors ability to attract essential resources during these challenging times.

Our response includes our observations and concerns over the consequences of the proposals to the genuine self-employed PSC; the practical effect to the supply chain within the temporary labour market; and includes our own alternative suggestions that HMRC may find helpful to consider.

## **Executive summary**

Intouch has the following key concerns regarding the proposals within the Condoc:

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- Is reform of the legislation necessary? The key problem remains the lack of effective resources that HMRC has to undertake adequate implementation and enforcement.

Transferring implementation and enforcement to the supply chain will only provide a short term respite until HMRC encounter widespread claims for refunds of overpaid tax, resolving status disputes and longer term formal tribunal appeals.

The existing legislation is very well understood by professional advisors acting for the vast majority of PSC's. There are many accepted legal precedents, sixteen years' experience dealing with the legislation and considerable practical guidance available to the market. Therefore, the level of compliance is likely to be much greater than government believe.

Further reform is only likely to result in confusion and uncertainty as the new rules are implemented by inadequately experienced or qualified parties (closest to the PSC), rather than qualified professionals.

- The question of defining status requires all relevant facts to be available and the application of an experienced understanding of how those facts should be interpreted within the individual circumstances of an assignment. Status is a uniquely individual question based upon fact and interpretation that cannot be answered in a simplified way. Attempts to oversimplify and short cut the process of the assessment of status will lead to widespread status disputes and appeals.

In addition, detailed established working practices could not be fully understood in advance of the start of an assignment. Our experience is that it would normally require at least one month on site before all parties have established relationships that are likely to reflect the normal practices for the future.

The lack of clarity is amplified by no one party in the supply chain possessing sufficient facts or understanding to reach a complete and accurate assessment of status. Relevant information will not be freely available throughout the supply chain without time to be collected and a statutory obligation to do so.

- False self-employment will be replaced by false employment as those parties closest to the PSC take a risk adverse approach. The most likely outcome will be an increase in status disputes, costly to the supply chain, the taxpayer and HMRC.
- The proposed simplified test based only on personal service and control fails to recognise the other factors normally considered (by tribunals) in status cases that form the basis of accepted precedents. A change in the basis of determining status will have the consequence of creating

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a new “public sector IR35” despite the Condoc giving assurances otherwise. A different IR35 will add further confusion over status for those operating in both public and private sector.

- We understand that the digital tool will comprise a prequalifying series of questions that determine whether the PSC is within scope of IR35 legislation, followed by detailed questions substantially based upon the existing Employment Status Indicator and modified for its purpose.
- The use of existing or modified tools that lack widespread support, that are not entirely or accepted as consistent with established precedent and employment tax law will lead to false outcomes. If the digital tool fails to gain widespread industry acceptance it will fail in its intended purpose and be ignored or challenged.
- The proposed deduction of tax by the party closest to the PSC will not allow for the correct calculation of tax liabilities. The proposals do not consider the entire basis of calculation set out in the legislation and fail to recognise how information required to calculate the correct liability for Tax and National Insurance (both employers and employees) will be available. In particular a failure to include all deductions for pensions, expenses, benefits and capital allowances will result in widespread overpayments, alongside substantial administrative burdens.
- Attempts to merge corporate and personal taxes will cause considerable confusion despite attempts to provide for appropriate set off. The administration of the tax affairs of public sector PSC's and their employee / shareholders will become a costly burden for both taxpayer and HMRC as over and underpayments are resolved after the fact.
- The Condoc fails to recognise the full impact of the proposals on the public sector, the supply chain, taxpayer and HMRC; the impact statements have ignored the full cost of taxpayer disputes, tribunal appeals, widespread tax repayment claims, claims for employment rights and the supply chain meeting the cost of resources for proper implementation that government itself cannot afford. The negative cash flow arising from the reforms (whether or not short term) will adversely affect the willingness of contractors to operate within the public sector. Meanwhile taxpayers will seek to recover costs through increased rates, multiplied by margins up the supply chain to the end public sector engager.
- Government stated objectives to level the playing field, fulfilling public sector duty on taxation and fairness can only be met if employment tax is partnered with employment rights. If the public sector wishes to contract on a flexible basis with deemed employees, then the public sector should also be forced to accept that such deemed employment also carries employment rights.

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It is inconceivable for government to continue any claim of fairness whilst failing to recognise the public sector should accept its responsibilities in all areas.

- The government is unlikely to realise the expected financial return from this reform. The Condoc refers to additional revenue of £440 million and presented in a manner that infers that number can be recovered from the public sector. We consider that the Condoc falsely makes these claims whilst failing to account for all the significant cost of disputes.

## Alternative proposals

In order for off-payroll workers operating in the public sector to be correctly assessed and taxed we suggest:

1. Extend the current framework set out in the Treasury Directive PPN 08/15 across all off-payroll workers in the public sector. The Condoc suggests this is working to improve compliance and widening the scope will extend that success; whilst the obligation to complete this process is already present and established within the supply chain.
  2. The mandatory use of a digital tool generally accepted as fit for purpose. The tool must be fully developed in partnership with industry, tax and legal bodies to ensure that it is consistent with existing precedents, employment tax law and allow for variations that exist between different industry sectors, the broad spectrum of skills, roles and levels of seniority. Government and HMRC should seek to establish a reliable tool that is widely accepted by all stakeholders as providing a fair outcome, based upon the facts and producing an outcome that binds both taxpayer and HMRC.
  3. Status should only be tested after a 60-day period of grace during which payments are made gross, without penalty, whilst relevant facts are collated and working conditions are accurately determined by the supply chain. The agreed working practices can then be used, adopting the digital tool, to produce an acceptable outcome based on all relevant facts.
  4. The PSC should be entitled to request all relevant information from the public sector within minimum agreed periods. (The absence of a statutory basis for obtaining information denies the taxpayer access to relevant information, whilst allowing third parties to determine the tax liability without any taxpayer protection, would be a travesty.)
  5. A standard fast track appeal process should be in operation alongside the digital tool to facilitate the resolution of disputes in an efficient and expedient manner before excessive tax liabilities are incurred.
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6. A fast track tax repayment process should be established during the appeal process any tax deductions are repayable via the RTI process.

## Detailed concerns

The March 2016 Budget announced that from April 2017 it would make public sector bodies responsible for “operating” IR35 to off-payroll working in the public sector. The subsequent Condoc issued on 26 May 2016 set out the government’s proposals to reform the intermediaries’ legislation for people working via PSCs in the public sector in such a way that the public sector can apply the rules with “confidence and certainty”.

The proposals from the Government set out changes to an existing, tried and tested system that would normally deliver all of its stated objectives if HMRC were to properly exercise its existing powers. HMRC has acknowledged that it does not have the resources available to do so and the solution proposed by government is to attempt to transfer the obligation away from HMRC onto the labour market supply chain.

However, the proposals will fail to deliver a straightforward reallocation of responsibility to the supply chain as the consequences of errors and mistakes will pass back to HMRC in terms of tax repayment claims, dispute resolution and tribunal appeals.

The proposals contain many oversimplifications, presumptions and fails to address the practical mechanics of how these proposals will work. It remains clear that government continues to lack full understanding of the flexible workforce and its supply chain, the complexity of their arrangements and how the intermediaries’ legislation operates in financial terms.

Our detailed concerns are:

The basis of IR35 for the public sector

The Condoc clearly states that no change to the basis of IR35 is intended and seeks to enable the public sector to apply the rules with confidence and certainty. However, the proposals proceed to describe a series of tests that are substantially different to those recognised in law and generally accepted as the basis for status determination.

If these proposals were to proceed into legislative form the public sector would be subject to a substantially different form of IR35 to the private sector, subject to tests inconsistent with understood laws and precedents defining employment status.

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The proposals set out a series of gateway tests intended to identify the Paying Agent and those entities within the scope of the reforms. Then, once having identified the relevant Paying Agent and PSC the proposal is to ask whether personal service is required and that control exists.

Where the answer to both questions is Yes, the Paying Agent is required to apply the reforms. However, if the answer to either is not “Yes” further steps should be taken to assess status.

But restricting any employment status test as proposed alters the basis of IR35 as follows:

1. Existing test criteria are not restricted to only personal service and control but also the following, broadly understood terms:
  - a) Mutual Obligation
  - b) Financial Risk
  - c) Commercial Risk
  - d) Intention of the parties
  - e) Part and parcel of the engager

The existence of personal service and control, whilst indicative that employment may exist, is not the full extent of the tests normally be applied. By answering Yes and applying IR35 as proposed without addressing those other issues has the effect of lessening the scope of the test and bypassing the recognised decisions of the courts and tribunals.

2. The proposals do not consider the outcome from answering either question with “No”. In normal employment tests the lack of either personal service or control would result in an outcome that employment does not exist. Answering “No” means No and there ought to be no further requirement to consider the digital tool.

Failing to recognise this fact fundamentally alters the nature of IR35 for the public sector.

We understand an inability to answer “Yes” may mean “I don’t know”, in which case the digital tool may be the solution.

We would recommend that a clearer conclusion, consistent with the existing basis for determining IR35 status would be to reverse the approach proposed. If the answer to either question is “No” IR35 may be presumed not to apply. Where the answers are not “No” the digital tool must be used to determine status.

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This would in effect make use of the digital tool mandatory, in all public sector cases, forcing Paying Agents to require that the test is completed before determining status and applying tax deductions. This would have the additional benefit that overcomes our fear Paying Agents will merely take the risk adverse approach of all assignments.

## Digital tool

We have been provided with details of HMRC's current progress on the digital tool. If our understanding is correct the proposal is to apply a series of pre-qualifying questions to confirm that the PSC is within scope of the legislation and then to apply a modified Employment Status Indicator.

In the absence of a beta version of the digital tool we are unable to test or comment upon it; it is unfortunate that the tool is unavailable given it is a key component of the proposed reforms. We believe that government should consider carefully the objectives for the digital tool to provide confidence and certainty. We would recommend the following:

1. The digital tool should be developed in conjunction with all stakeholders, including professional advisers, tax and legal professionals, the entire supply chain and trade bodies representing the main industries and skills common to contracting.
2. Although based upon facts, those facts should be interpreted according to four factors:
  - a. Industry or sector
  - b. Role (project based or continuing service)
  - c. Skillset (i.e. IT, Media, Medical)
  - d. Seniority
3. Paying agents should be obliged to complete the test and to defined standards
4. The digital tool facts and outcome should be freely available to the PSC and client alike, with a minimum 28-day period to correct any misunderstanding
5. Outcomes should be binding on both parties but also subject to a fast track appeal process

HMRC can only realistically expect the tool to gain widespread credibility and acceptance adopting these approaches. If HMRC fail to provide an acceptable tool it is unlikely to achieve its stated objective of delivering confidence and certainty. HMRC should recognise the risk that any bias built into the tool will soon result in outcomes that are consistently challenged, this will also fail to deliver on the intended objective.

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## **Paying Agents**

Evidence is increasing that Paying Agents are likely to take a risk averse approach to determining status. Our discussions with IPSE, APSCO, REC and FCSA are consistent with the general view that agencies will not invest in the necessary expertise to conduct thorough tests nor the processes to obtain all the relevant facts. To make matters worse the general view is also that most will follow a risk averse approach and assess most PSC's as within the reforms to avoid transfer of debt risk.

A failure to undertake comprehensive tests will undermine achieving the objectives and the expectation that status will be determined in a fully compliant manner. HMRC would be naïve to consider that agencies following a risk averse policy would result in anything other than widespread appeals against status, supported by professional firms and insurance policies.

The proposals fail to consider how Paying Agents will be encouraged to apply the proposals sensibly in a manner aimed at an accurate assessment of status without being provided with the necessary incentives or measures aimed at enforcing an adequate process.

It is a firm objective for HMRC that all compliance obligations are met. It is inequitable for HMRC to consider false employment as compliance in any shape or form.

The cost to HMRC and the Exchequer of such an increase in appeals would substantially erode the anticipated benefits and the unintended consequence of HMRC resources being diverted to defending appeals by taxpayers.

As a professional accountancy practice, this firm, would be unable to stand idly by whilst the clients we represent were faced with erroneous status outcomes and excessive tax liabilities. We suspect many of our colleagues acting for PSC's would take the same view.

HMRC should, if the proposals proceed without addressing the issue of the Paying Agents obligations, be prepared to set aside resources to handle a substantial increase in formal appeals and potential tribunal cases.

## **Calculation of Tax**

Chapter 8 Part 2 ITEPA 2003 includes specific clauses designed to provide a clear basis for the calculation of the deemed employment payment. The provisions allow for the deduction from income of the fixed 5% deduction, existing employment income, benefits in kind and deductions for exempt employment income such as pensions and expenses and capital allowances. The resulting amount is then used to determine employers NI and the deemed employment payment.

The proposals fail to address how the Paying Agent will be able to correctly determine these

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values within timescales that will not adversely affect cash flow for the PSC. Nor does the Condoc address the substantial costs incurred by the Paying Agents collating, assessing and approving deductions in order that correct payments are made and tax liabilities determined.

A failure to address these issues will lead to widespread claims for overpaid tax, returning the issue back to HMRC as it resolves the predictable increase in tax disputes.

We have included (Appendix One) a detailed example to demonstrate the outcome. In summary or example shows:

1. The tax deducted by the Paying Agent would not be correct
2. The final outcome would result in a tax overpayment and subsequent repayment claim
3. That the most likely outcome for the exchequer is far less than the benefits anticipated.

A failure to correctly determine tax liabilities and deduction of excessive amounts will place PSCs at a severe cash flow disadvantage. This will result in the unforeseen consequence that PSC's would be unable to afford to make pension contributions or invest in training or capital assets out of net of tax income paid to it.

The outcome of the proposals would be to create a more onerous version of IR35 applicable only to the public sector.

We would recommend that a PSC should be able to make a claim for deductions and to advise the Paying Agent of the deductions to be made without the need for these deductions to be approved; and this should go much further than the basic 5% deduction. This could be accompanied by penalties for excessive claims to protect the exchequer.

If the proposals were to lead onto reform that did not address the need for accurate assessment of tax liabilities HMRC should be prepared for a substantial increase in tax repayment claims, setting aside the necessary resources to meet this outcome.

## Payment of tax liabilities

Existing IR35 liabilities on deemed employment payments are due to be paid by the end of the fiscal year on 22 April. This provides a significant advantage for the private sector compared with the public sector proposals that require deductions on or before payment of net income to the PSC.

Additionally, there are further provisions within existing legislation that permit both status and tax liabilities to be determined at any time up to 31 January following the end of the fiscal year.

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This timescale reflects the often difficult tasks of collating and then assessing the necessary facts to determine status and to obtain financial information appropriate to correctly calculate tax deductions.

The outcome of the proposals would be to create a more onerous version of IR35 applicable only to the public sector.

## **Unrealistic expectations**

The Condoc refers to the view held by HMRC that significant tax receipts are lost through non-compliance. The dividend tax reform operative from April 2016 has eroded the gap between those within and outside IR35 and the reform on tax relief for travel and subsistence has further levelled the playing field between similar workers.

We are not convinced that the Condoc takes account of these new changes from 6 April 2016 when assessing the impact of reforming IR35 in the public sector.

It is however clear that the impact assessment fails to address the cost to HMRC of the resulting disputes with taxpayers, the costs to the supply chain and the eventual cost to the public sector.

## **Dispute Resolution**

The Condoc fails to recognise the significant cost to the taxpayer and HMRC of dispute resolution.

Having set out the reasoning that tax liabilities will not be accurate the resulting cost of claiming and administering tax refunds cannot be ignored. Based on our experience the cost of dealing with basic tax overpayments is in the region of £350 for the average PSC per claim, we can only suspect that HMRC costs are equivalent.

If our fears transpire that the digital tool is not development in an appropriate fashion or that Paying Agents are permitted to take a risk free approach HMRC will encounter significant numbers of status disputes. Based on our experience the cost of dealing with status disputes are in the region of £4,000 on average, we can only suspect that HMRC costs are equivalent.

In extreme cases, where disputes cannot be resolved, the outcome will be an increase in tribunal cases. Based on our experience the cost of dealing with tribunal action is in the region of £20,000 for the average appeal, we can only suspect that HMRC costs are equivalent.

The impact statement fails to include these costs.

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## **Supply Chain**

There is no doubt that each party in the supply chain will be affected by these proposals. Whilst the Paying Agent will be responsible for obtaining relevant facts, no one party in the supply chain will have access to everything relevant. The Paying Agent has a direct contractual relationship with the PSC but may not have contractual relationships with the engaging end client.

Allowing movement of information along the supply chain to be voluntary will have practical problems. Without the formal power to seek information from all parties in the supply chain, with whom they may not have commercial relationships, the burden of administering requests for information will have a domino effect along the supply chain to the engaging end client. There are also issues concerning confidentiality and data protection that must be addressed.

There is a further concern that creating unnecessary disputes between the PSC and the paying agents over status and associated tax deductions will negatively affect the relationship between the worker and the engaging client. We anticipate that workers will be unwilling to continue to work where they suffer tax deductions that they do not agree with.

## **Transfer of Debt**

Penalties are not always the best form of ensuring compliance. HMRC recent consultation on penalties identified that incentivising compliance in a positive way and helping taxpayers to be consistent and compliant would be a preferred route.

We are wholly in agreement that transfer of debt should be the blunt instrument in cases of deliberate fraud. This exposure should apply to any party in the supply chain that condone or contribute to such fraud.

However, we also believe that HMRC should take further steps to encourage compliance by providing clear exemptions from any transfer of debt where the Paying Agent has taken proper steps to assess status.

We believe that only the PSC should ultimately be responsible for taxation on its income. A corporate liability for unpaid PAYE liabilities should only be transferrable to the workers personally where their actions are unreasonable. They should not apply where reasonable steps have been taken to ensure tax status is correctly assessed and applied.

It would seem that the Condoc is imposing the risk of a personal liability that far exceeds the standard duty of care directors have for unpaid liabilities of a company under existing insolvency and tax laws, and we believe this to be inequitable.

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Those existing laws should be sufficient for HMRC to recover unpaid liabilities from the workers in cases where, as directors, they have not acted properly.

## **Response to Questions**

Please see our response to the questions raised within the Condoc in Appendix Two.

## **Conclusion**

Our comments, concerns and proposals are based upon substantial practical experience dealing with contractor's personal tax, PSC's and liaising with HMRC. We believe the proposed reforms are unworkable and will result in costs and burdens that have not been considered in full.

Yours faithfully

DJ Strike ACA FCCA  
Director  
Intouch Accounting

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## **APPENDIX: EXAMPLE TAX CALCULATIONS**

*Connor is an IT security specialist working through C Limited and has been offered a 12 month contract with the MoD, via P Agency. The contract is intended to start in 7 days.*

*The MoD agree to pay £4,000 per month to P Agency, who take a 10% margin, agreeing to pay C Limited £3,600.*

*P Agency requests information from the MoD concerning the nature of the assignment and working practices. The MoD is unable to provide answers for security reasons. It informs P Agency it believes that IR35 applies.*

*P Agency takes a risk averse approach and accepts the view of the MoD without further enquiry. Connor is unable to counter argue this status because he has not worked on site to establish the actual working practices that will truly apply.*

*C Limited incurs accountancy and other administrative expenses of £175 per month together with the following monthly expenses:*

- *Public and Employers Liability & Professional Indemnity of £50*
- *Pension contributions of £400*
- *Other permissible employment expenses of £100*
- *Connor also purchases at the beginning of the contract computing equipment for £1000 that qualifies for capital allowances purposes and specialist business software for £300.*

*Connor has a tax code of 1100L.*

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At the end of the first month P Agency receives payment from the MoD of £4,000 and calculates the following payment to C Limited:

Contract rate payable to C Limited	3,600
Deduct 5% allowance	<u>180</u>
Balance	<u>3,420</u>

Tax deductions:

Employers NI ( $3,420 - 676 = 2,744 / 1.138 \times 13.8\%$ )	333
Employees NI ( $3,420 - 333 = 3,087 - 672 = 2,415 \times 12\%$ )	290
Income Tax ( $3,087 - 917 = 2,170 \times 20\%$ )	<u>434</u>

Payment to C Limited ( $3,600 - 333 - 290 - 434$ )	<u>2,543</u>
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C Limited receives £2,543 and pays

Expenses of	725
Computer and software	1,300

**Assuming that P Agency applies the same principles over the year. The total tax deductions made by P Agency and paid to HMRC =  $(333 + 290 + 424 = 1,047 \times 12)$  12,564**

Under existing IR35 rules the position would be different.

Income derived from IR35 contracts ( $12 \times 3,600$ )	43,200
Add flat rate ( $43,200 \times 20\% = 8,640 - (14.5\% \times (43,200 + 8,640))$ )	<u>1,123</u>
Subtotal income derived from IR35 activities	44,323

Deduct:

5% allowance	2,216
Pension contributions	4,800
Permissible employment expenses	1,800
Capital allowances and computer software	<u>1,300</u>
Sub-total	34,207
Employers NI ( $34,207 - 8,112 = 26,095 / 1.138 \times 13.8\%$ )	<u>3,164</u>
Deemed employment payment	<u>31,043</u>

Employees NI ( $31,043 - 8,060 = 22,983 \times 12\%$ )	2,758
Income Tax ( $31,043 - 11,000 = 20,043 \times 20\%$ )	4,009

<b>Total tax liability <math>(3,164 + 2,758 + 4,009)</math></b>	<b>9,931</b>
<b>Refund due to Connor</b>	<b>2,633</b>

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*In addition, the tax payment date substantially varies between scenarios. Under existing rules, the deemed employment payment tax liability would not be payable monthly but paid by the company or via self-assessment (payments on account and balancing payment).*

*It is also unrealistic to expect that P Agency, adopting a risk averse approach, would undertake to collate, review and approve permissible tax deductions, to employ adequate resources to calculate an accurate deemed employment payment and tax deductions. These resources would be too costly to P Agency unless obliged to do so by the reforms.*

*It would now be interesting to consider the position outside IR35. Assuming that the salary paid to Connor was at the employees NI threshold for simplicity.*

<i>Corporation tax (44,323 – 15,960 = 28,363 x 20%)</i>	<i>5,673</i>
<i>Dividend tax on (28,363 – 5,673) a 22,690 distribution</i>	<i><u>1,106</u></i>
<i>Taxation paid outside IR35</i>	<i><u>6,779</u></i>
 <i>Difference between IR35 and Non IR35</i>	 <i><u>3,152</u></i>

*Assuming that Connor represents the average public sector worker and that 70% of the presumed 20,000 contractors were within IR35, the beneficial impact before HMRC costs of compliance would be 20,000 x 3,152 x 70% = £44 million. Deductions for the financial impact to HMRC of handling expense disputes, tax refunds, status disputes and formal tribunal appeals would substantially erode any contribution to the exchequer.*

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## **APPENDIX TWO: RESPONSE TO QUESTIONS**

Our status as a professional adviser means that not all of the questions are relevant. Below we have attempted to respond to those which are.

Q1 – No

Q2 – No response

Q3 – No. Extending to private companies broadens the impact to include elements of the private sector. This will make it difficult to determine whether caught or not as the definition goes beyond the list defined in the FOI Act / FOI (Scotland) Act. A clearer definition will be required for those companies that supply not services but in reality supply people for specific functions.

Q4 – All public sector bodies that face shortfalls in resource and suffer recruitment issues. In particular the NHS, Education and all bodies seeking to develop digital solutions.

Q5 – Engaging clients should be provided with clear guidance on the information that should automatically be made available and be obliged to provide answers to questions raised by the Paying Agent and the PSC.

There should be free exchanges of information concerning the projects, the roles and the skills, however there will be risks concerning security and confidentiality that may limit this exchange. Where the exchanges are limited provisions should be in place to avoid false outcomes.

Guidance should specify timetables for those exchanges.

Q6 – the 5% allowance must be retained (as well as relief for employer's pension contributions and other deductions in the IR35 deemed payment calculation) to ensure that this consultation does not result in additional tax / NIC being calculated and contractors subject to IR35 in the public sector receiving a net take home pay reduction.

Q7 – Yes, in the main, provided that circumstances are as clear as presumed. However, in practice there may be instances where the outcome is unintended.

Q8 – Yes

Q9 – No, these questions presume that all cases follow a vanilla set of circumstances and do not allow for the complexity of some arrangements.

Q10 – No, there is insufficient time to obtain all relevant information in order that the questions can be answered with reasonable certainty and the two questions fail to address the key issues concerning status.

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Q11 – Reforms must impose obligations on the public sector to provide relevant information prior to the commencement of the contract or be modified to allow sufficient time for working practices to be agreed. The reforms should address the likelihood that Paying Agents will seek a risk averse approach by imposing obligations to fulfil a reasonable evaluation of all relevant facts.

Q12 - This may require significant investment in engaging people with the appropriate skills and knowledge to request the correct information, analyse it in a suitable time period and reach the correct conclusion. This is a complex area and some knowledge of employment law is likely to be required and as a result this resource will be relatively expensive.

Q13 – As we have seen from the existing ESI tool and the recent failure of the business entity tests, the issue of determining employment status is not a simple test and as a result a simple and straightforward online tool is which gives the correct legal position in the majority of instances, in my opinion, unworkable.

Engagers and Paying Agents will therefore have to invest significant cost, time and resource into establishing the correct legal position so as not to penalise genuinely self-employed contractors working in the public sector.

Q14 – The liability should rest with any party that condones or contributes to the provision of fraudulent information, or to seeking a fraudulent outcome.

Q15 – The liability is that of the PSC. However, protection should exist to ensure that PSC's are not penalised for the actions taken that are outside of its control.

Q16 – The following costs and burdens are likely to arise:

- False employment and overpayment of tax for the genuine self-employed contractor

- The Paying Agent undertaking an adequate and reasonable test must employ the appropriately qualified and experienced people to obtain, evaluate and conclude on the relevant information.

- The Paying Agent will need to employ resources to manage expense claims and deductions for the purposes of completing calculations as each payment date.

- HMRC should employ additional resources to administer tax repayment claims, to deal with status disputes and tribunal cases without unreasonable delays.

- The PSC will suffer cash flow disadvantages that will limit capacity to make pension provisions, invest in capital assets and professional training to maintain skills and expertise.

- The public sector will need to set aside resources to collate all relevant information to provide within reasonable timescales to the various parties.