

## IR35 Shield now underwritten by specialist insurer Markel Tax



IR35 and Off-Payroll compliance solution [IR35 Shield](#) has announced that its status assessments can now be underwritten by market-leading insurer, [Markel Tax](#).

The partnership can provide IR35 Shield's customers with a further layer of valuable protection ahead of the April 2021 extension of the Off-Payroll legislation to the private sector. It comes after Markel Tax conducted an extensive review of IR35 Shield's compliance procedures and understanding of the law.

"We are satisfied that the [IR35 Shield for Business assessment service](#) assesses working practices correctly in respect of the Off-Payroll legislation due to come into effect from April 2021," comments Paul Mason, Head of Tax Partnerships for Markel Tax.

"Markel Tax has been providing advice and guidance on IR35 and underwriting IR35 based insurance policies for 20 years, and we are delighted to be working with IR35 Shield to help firms manage the risks associated with the new Off-Payroll reforms."

Dave Chaplin, CEO of IR35 Shield, adds: "We are delighted that Markel Tax, a prestigious and specialist tax insurer, has agreed to offer its insurance to our IR35 Shield for Business customers, which provides further protection in the event that HMRC successfully challenges the determinations our customers make using IR35 Shield."

### Insurance policy removes the remaining risk for fee-payers

The announcement is positive news for agencies and hiring firms tasked with complying with the legislation and should give them the confidence to engage contractors on an 'outside IR35' basis without fear of building up future tax risk.

The Off-Payroll legislation has effectively permitted HMRC to pursue fee-payers for backdated tax, penalties and interest if the taxman believes a contractor has been incorrectly assessed as 'outside IR35'. The taxman can instead target the hiring firm if that firm has failed to accompany its status assessment with a Status Determination Statement (SDS) that demonstrates reasonable care.

If a firm has adhered to its compliance obligations, the chances of it falling victim to a successful HMRC challenge are relatively slim. This would require HMRC to open an enquiry into an engagement, contest the status outcome, and succeed at a Tax Tribunal in the face of all the contrary evidence gathered by parties involved in the engagement.

The taxman's poor track record in IR35 Tax Tribunals, along with the tightening up of contractual paperwork and working practices that have accompanied the Off-Payroll rollout, further balance the odds in the defendant's favour. However, the prospect of defending against legal action alone has seen many hirers and agencies adopt a risk-averse approach to Off-Payroll, resulting in blanket 'inside IR35' assessments and subsequent struggles retaining contractors.

## Shield assessments underpinned by comprehensive insurance offering

But with the availability of a case law-backed compliance solution underpinned by a comprehensive insurance offering, hirers and agencies have little reason to be circumspect. Indeed, if hirers know that the fee payer agency has the protection of Markel's insurance, they will have nothing to fear from the transfer of debt provisions as there should be no reason for the agency to fail because of a large tax debt.

Businesses undertaking IR35 Shield assessments can rest assured that they can be covered by Markel Tax's Fee-Payer Protect insurance policy, which includes:

- Cover of all defence costs in the event of an HMRC challenge, including any resulting tax liability and penalties\*
- Cover for all tax years, including any enquiry windows that look back six years
- Representation at both First Tier (FT) and Upper Tier (UT) Tax Tribunals
- Further protection provided via additional contract reviews by Markel Tax
- All risk can be covered by one policy
- No weak prospects of success clauses

The last point is crucial, as prospects of success clauses could effectively provide underwriters with an opt out if they felt the defendant had a weak case. Unfortunately, organisations that take a less than robust compliance approach and think they can use an insurance product as an alternative to Off-Payroll compliance are often vulnerable to these clauses.

Markel's approach to this issue reinforces the importance of a compliance-led approach so that acceptance of an engagement for insurance is essentially acceptance that there are reasonable prospects of success. But the reality is that circumstances and case law can change so that what was outside IR35 at the time the engagement was reviewed has changed; i.e. we have to accept that HMRC may win cases. However, in those scenarios where the argument cannot be won on the fee payer's behalf, it means that there is tax to pay, and so the tax loss element of the Markel policy is then called upon to meet that tax liability.

What this policy does is confirms the insurance position at the outset, so fee payers know that their position is covered. What this policy does not do, is enable firms to insure against the deliberate non-payment of tax; so hirers and agencies are still advised to secure tax investigation insurance to underpin their compliance efforts.

The Markel Tax policy is testament to the accuracy and meticulousness of IR35 Shield's status assessments, while demonstrating a mutual commitment to offering comprehensive protection, as Chaplin highlights:

"It was key for us to work with specialist tax insurers whose policies did not contain weak wriggle out clauses, which are [a type of complaint seen by the Financial Ombudsman Service](#). We have spoken to many brokers over the last two years, but we always felt that they fell short on their understanding of IR35 and the best way to shape policies. Fortunately, Markel Tax and IR35 Shield are on the same page in terms of how things should be done to protect clients and make sure policies respond."

Chaplin adds: "Given HMRC's frequent attempts to extend enquiry windows to the full six years, and its more recent appetite to appeal lost cases via the UT, another prerequisite for our decision to partner with an underwriter was that their insurance covered those areas."

### Why did Markel Tax decide to partner with IR35 Shield?

Just as IR35 Shield carefully chose Markel Tax based on the details of its insurance offering, the underwriter applied its own rigid processes to ensure IR35 Shield's assessment service was of the required quality to be underpinned by its insurance policy.

This involved an extensive review of IR35 Shield's compliance procedures, including the solution's understanding of employment status case law, its methodology, and the accuracy of its statements.

After concluding that IR35 Shield's assessment service evaluates working practices correctly in relation to the Off-Payroll legislation, Markel Tax has confirmed that fee-payers using IR35 Shield are eligible for cover under the insurer's Fee-Payer Protect policy from April 2021.

With the Off-Payroll legislation set to be extended to the private sector in 6th April 2021, less than four months remain for firms and agencies to adopt processes that compliantly assess and retain their valuable contingent workers. However, those still seeking support with compliance can speak to IR35 Shield and secure themselves [a free live trial of IR35 Shield today](#).

*\*Please contact Markel Tax on 0345 223 2727 or at [IR35@markel.com](mailto:IR35@markel.com) for full details of the Terms and Conditions. Markel Tax is a trading name of Markel Consultancy Services Limited. Markel Consultancy Services Limited is an Appointed Representative of Markel International Insurance Company Limited which is authorised by the Prudential Regulatory Authority and regulated by the Financial Conduct Authority and the Prudential Regulatory Authority.*

Published: 18 December 2020

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