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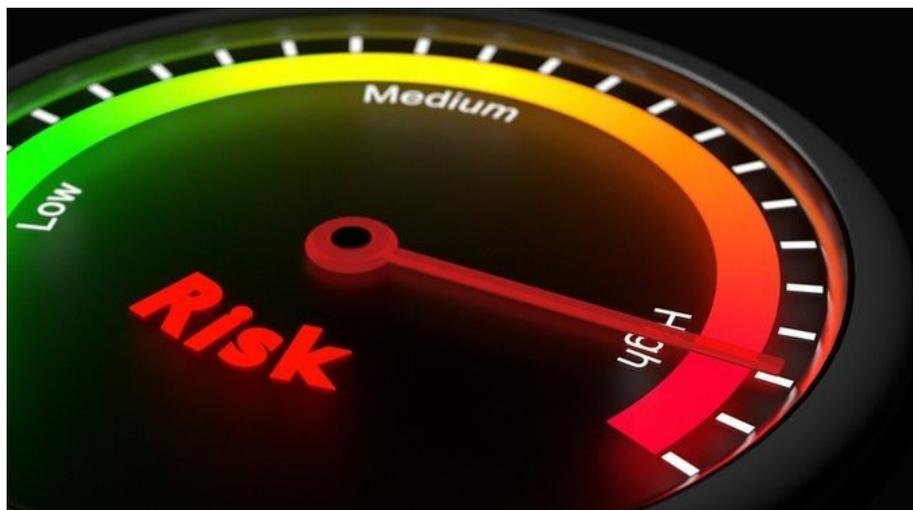
Off-Payroll audit guide: How to identify and address IR35 risk before April 2020

This is the third in a series of guides on Off-Payroll compliance for contractor end-clients and recruitment agencies. In the previous guide, we explained how hiring firms can conduct an audit of their recruitment partners to identify the operating structure used by their contractors, in order to identify who needs to be considered in relation to the Off-Payroll rules. While awaiting feedback from recruitment partners, clients are advised to conduct an early IR35 status evaluation of their contingent workforce.

Though every contractor ultimately requires a full individual status assessment in order to provide a Status Determination Statement (SDS) and meet the requirements for reasonable care, this precursory exercise, which examines groups of similar contractor roles, is invaluable for two key reasons:

1. Helps businesses ascertain a general picture of the status of their workforce

2. Identifies the main compliance challenges facing an organisation

This isn't simply another box to tick on the compliance checklist. An analysis of their contractor workforce helps organisations identify and prioritise more urgent cases, while highlighting practices which could minimise future compliance costs and workload.

'Role' is a bit of a taboo word when it comes to IR35, because it has connotations with permanent employment, where one assumes a job title and provides skills for a set number of hours. In other words, it can imply that one is inside IR35. For the sake of understanding, we will occasionally use the term 'role', but what we are really referring to is what you might describe as a common engagement profile.

How to create contractor role-based profiles

Grouping contractors with those in similar engagements can provide a solid foundation when exploring their potential status, before assessing them on a case-by-case basis at a later date.

When categorising your contractors, you might group together those working on particular projects, or those in the same areas of work – essentially groups where you believe the working arrangements of the individuals to bear the most similarity.

The aim is to identify multiple different types of contingent worker and assign each contractor to a particular role. For each role, you then need to collect as much information as possible. This means locating the upper and lower-level contracts for each role, as well as gathering information about the typical working conditions.

Lower-level contracts will need to be sourced from recruitment partners, which isn't as problematic as it sounds. With this being an exercise geared towards minimising future compliance costs and administrative burden for client and agency, you should find recruitment partners to be more than cooperative in this regard.

Effective analysis hinges on chosen compliance solution

Having identified your contractor roles, the next step is to conduct indicative status assessments for each role, based on the information that you have gathered. This will guide your strategy going forward. How easily this process is achieved will hinge on your choice of Off-Payroll compliance solution.

Conducting status assessments is a complex task, and you will not have time to do this yourself. When selecting a compliance solution or provider, make sure that they have historical expertise in the subject matter, and in making IR35 status determinations. You should also seek a solution which can scale its offering to meet the size of your workforce, and which can provide consistency and accuracy across many determinations.

IR35 Shield, a complete Off-Payroll compliance solution which supplements its accurate IR35 assessments with tailored feedback based on the answers provided to the questionnaire, is our recommended option. The online solution contains features geared towards this particular exercise, and is fully scalable, delivering the speed and accuracy you will need, together with business intelligence from its reporting capabilities.

'Indicative status determinations' from IR35 Shield

Using IR35 Shield's Collaborative Assessments feature, firms can access indicative status determinations based on the information at their disposal. The unique technology splits the status assessment into three sections pertaining to the contract, the working conditions, and the contractor.

Each section contributes to the 100+ questions asked during the status assessment and can be completed separately. Firms can create components within these sections, answering questions and adding necessary information as required.

Having incorporated the contractual paperwork and the working conditions into components, firms can match up created components to arrive at an indicative status determination. This is not a final full status assessment but it will highlight:

- Each profile's likely IR35 status along a 19-point scale

- Any contractual or working conditions significantly increasing IR35 risk

- Invaluable information on which to base future compliance decisions

Prioritising and addressing at-risk contracts

Having assessed the various profiles, you are now in a good position to identify those that require prioritising. We recommend separating the profiles into five groups, ranging from 'most likely inside IR35' to 'most likely outside IR35', with the former obviously requiring the most urgent attention.

Taking the feedback from your indicative status determination into account, you can now evaluate whether it's practical to consider changing the way you engage with some of your contractors such that the actual working conditions are more reflective of an outside IR35 determination. But remember, the golden rule here is not to impose contrived, unrealistic amendments to engagements – this will only create risk in the long term.

You need to decide whether contractual amendments and changes to working conditions that minimise IR35 risk can be applied in practice without causing any problems. The same process can be applied to those deemed to bear little IR35 risk, to see if you can achieve even greater certainty over their employment status.

Another factor to consider at this stage is the individual engagements themselves. For example, a contract which is due to expire before April 2020 will be of no concern from a compliance perspective. Conversely, a currently active contract which overlaps beyond April 2020 will require addressing most urgently, while a contract which is up for an extension before April 2020 also poses a potential risk.

Off-Payroll: the importance of an early IR35 evaluation

Conducting an early evaluation of your contingent workforce might seem time consuming, but the long-term benefits for the entire supply chain make it a no-brainer. With IR35 Shield's collaborative assessments feature, you can reuse indicative assessments by issuing them to

contractors before inviting them to complete the remaining part of the assessment. Having completed the questionnaire in a matter of minutes, you have a final status determination, while IR35 Shield generates an SDS for your contractor.

This process significantly reduces the ongoing cost and administrative implications of assessing and processing contractors for both clients and their recruitment partners. It also enables recruiters to advertise the indicative IR35 status of a role with confidence, underpinned by an approach to compliance that will naturally attract contractors.

Indicative assessments: part of the Shield Passport Process

For a more detailed explanation of the pre-assessment process, as well as further structured guidance on effective Off-Payroll compliance, recruiters can enlist the assistance of the Shield Passport Process (SPP).

This private workshop, designed by compliance experts IR35 Shield and Professional Passport, teaches agencies and their clients how they can achieve Off-Payroll compliance in a risk-free and cost-effective manner. To arrange an SPP workshop to be held at your organisation, please get in touch.

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