

## 'Pass-the-parcel' Off-Payroll plans are burdensome and unnecessary, says tax expert



Off-Payroll proposals by HMRC in which compliance requirements and accompanying tax liability risk are passed along the supply chain are overly burdensome for all parties involved, including HMRC, a leading tax and employment status expert has warned.

David Kirk, of [David Kirk & Co](#), warns that plans to involve every supply chain member in the compliance process, rather than requiring end clients to deduct tax at source for contractors deemed within the rules, risks mounting administration and heightened adoption of tax avoidance schemes.

"The more intermediaries there are involved in the supply chain – and hence the compliance process, under HMRC's proposals – the more points there are at which one might encounter non-compliant operation. That strikes me as an obvious statement, yet HMRC appears to have overlooked this."

### What are Off-Payroll's 'pass-the-parcel' information requirements?

In its latest [consultation for Off-Payroll in the private sector](#), HMRC details proposals for information requirements expected of organisations involved in the contractor supply chain.

One of which is a laborious process in which intermediaries are expected to pass the client's IR35 status assessment to the next party down, one by one. Accompanying this requirement is tax liability. This means when HMRC doesn't receive the tax it believes to be due, liability will rest with the party deemed not to have fulfilled its obligations. Further details to the proposals include:

- Liability would move down the supply chain as each party fulfils its obligations
- Client is also required to provide its IR35 status assessment directly to the contractor
- If HMRC is unable to collect the liability from a party due to that party ceasing to exist, liability may transfer back to the first party in the chain
- Where HMRC can't collect liability from the first party, it would seek payment from the client.

For Kirk, there are a number of problems with this proposal. Among them is the unnecessary administration that it imposes upon parties involved, and the danger that it could impede workforce flexibility, resulting in a protracted recruitment process.

“The supply chain will soon twig that contractors are only really interested in contracts outside of IR35. Unless clients can offer upfront assurances that working arrangements will meet this requirement, the recruitment process, as HMRC envisages it, will be incredibly onerous.”

## **Off-Payroll plans open to exploitation by unscrupulous hirers**

In the public sector, the involvement of other intermediaries in the compliance process has enabled many organisations to circumvent their employer’s National Insurance (NI) liability. Many have done this by inserting umbrella companies into the supply chain to assume the liability, others by engaging non-compliant agencies which have deducted the sums from the contractor’s income.

In the private sector, an urgent issue is the exploitation of gig economy workers, who are forced into false self-employment by unscrupulous hirers and denied basic workers’ rights. Though Government is currently seeking solutions to this problem as part of its Good Work Plan, the Off-Payroll proposals threaten to intensify the problem, as Kirk highlights:

“In many cases, if a client has the opportunity to force its employer’s NI liability upon the worker, it will do so. Introducing a compliance arrangement which permits clients to engage rogue agencies to handle the tax affairs is only going to encourage further exploitation of vulnerable workers.”

Kirk adds: “IT contractors, for example, can negate this by negotiating higher rates or outside IR35 contracts, but this isn’t a realistic prospect for many low paid workers with little or no bargaining power.”

## **HMRC risks triggering tax-avoidance crisis**

It’s not only UK plc and workers who stand to lose out as a result of the proposal. HMRC risks opening the door to widespread use of tax avoidance schemes. The likes of these have already become prominent in the public sector, often engaged in by contingent workers who have had employer’s NI unlawfully deducted from their income.

“The employer’s NICs issue is really poisoning the well,” notes Kirk. “In the public sector, particularly the healthcare sector, there are many intermediaries providing contractor loan schemes. If it’s happening in the health service, the issue will multiply five-fold in the construction industry.”

With multiple organisations in the supply chain, identifying and penalising the offending parties will also be an obstacle of HMRC’s own making, as Kirk explains:

“If HMRC is trying to track down due tax, is it simply going to write to each intermediary in turn, wait for them to respond and decide whether they have been compliant, before moving up to the next intermediary? The process of ascertaining liability becomes incredibly arduous.

“Ultimately, the only parties that benefit from this arrangement are the intermediaries that are inserted to mitigate risk and which otherwise wouldn’t have any business, and insurance companies who will be – and by all accounts already are - licking their lips.”

## **Why has HMRC proposed this arrangement?**

Given the problems that the proposed arrangement could cause, it’s difficult to understand why the taxman considers it a viable option. One argument is the prospective tax liability for non-compliance is expected to command more concern among agencies than end clients, due to their often significantly inferior turnover, thus encouraging compliance.

Another is that imposing compliance requirements and liability on other intermediaries lessens the burden on clients, resulting in reduced opposition to the Off-Payroll rules from UK plc.

Considering the influence that lobby groups such as the Confederation of British Industry (CBI) hold, this argument carries weight. Kirk acknowledges that this will likely have factored into HMRC’s decision, highlighting that it’s nothing new:

“HMRC has been going down this route of getting intermediaries to pay for quite some time. Not only in the public sector, but also the agency workers rules introduced in 2014. There the taxman took the view that, because the agencies were responsible for sourcing the labour, they ought to be responsible for processing the tax.”

## **Why clients should be left in sole control of compliance**

For Kirk, given that the bulk of the issues spawn from the amount of parties involved in the supply chain, the solution is obvious: “If the end client were simply required to deduct that tax and pay the employer’s NI at source, rather than passing messages up and down the supply chain, all of a sudden these problems cease to exist.

“Companies won’t be tempted to circumvent their responsibilities by inserting dodgy intermediaries because it won’t be a possibility. IR35 status assessments won’t take an eternity to reach the contractor and there will be greater transparency throughout.”

Kirk acknowledges that this arrangement would feasibly require hiring firms to operate PAYE on the agency’s margin, as well as for the fee paid to the contractor, but notes that there is a simple solution:

“In sectors such as healthcare and education, schools and hospitals cannot reclaim input VAT. So, to circumvent what would be an unacceptable addition to their bill, many pay the worker’s salary plus NI via a payroll, while only incurring VAT on an ‘introduction fee’ charged by the agency and paid separately. Taking the same approach would circumvent a different problem here, ensuring that the hirer only has to operate PAYE on the sum paid to the contractor.”

HMRC enquiries would also run a lot smoother, as Kirk points out: “HMRC will find it a lot easier to collect tax from a client for whom hiring contractors is only a small part of what they do, than from agencies and other intermediaries for whom it is everything. The intermediaries won’t have the money.

“It is particularly unjust that, as it stands, the contractor’s agency becomes liable for tax in the instance that HMRC disputes a client’s assessment that the contractor is outside of IR35. Providing the client has taken due care and attention, the legislation enables them to offload their risk onto agencies which stand to gain nothing from the arrangement.”

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