

Off-Payroll audit guide: How to avoid compliance complacency



Once the dust has settled following introduction of the Off-Payroll rules, a significant risk for clients is that they become complacent, having initially assessed their contract engagements. But, the line dividing IR35 status isn't always distinct and over the course of an engagement, habits can creep in which can significantly heighten IR35 risk.

As history has taught us, complacency between client and contractor is one of the spaces that HMRC likes to play in its pursuit of 'deemed employment', so some precautionary measures are advisable to ensure that your IR35 compliance processes remain effective.

Fortunately, the additional measures required to ensure compliance are relatively simple, can be easily implemented into a firm's compliance processes, and are well worth the avoidance of unnecessary Off-Payroll risk.

Off-Payroll compliance complacency: what are the risks?

The main risk for clients is that a contractor's working arrangements come to resemble those of an employee - far from what was agreed in the written contract. If the contractor was initially engaged as 'outside IR35', but things change, this could impose a degree of tax risk on the client, particularly if the contractor has been engaged by the client for a long period of time.

In the past, some contractors and clients have been guilty of simply agreeing renewals with identical contract terms as their original agreement, even though circumstances have changed, with new projects, or changing scopes, agreed.

They might assume that an IR35 assessment isn't necessary because the contractual terms are the same as before, but in reality, the working arrangements have changed. Under the Off-Payroll rules, this type of complacency can cost clients.

Below are the main mistakes that some contractors and clients have proven susceptible to, and which you need to avoid:

- Renewing contracts without re-specifying the changing scope, or new project - remember, contractors are hired on a project basis
- Offering to pay for a minimum amount of time for skills, rather than being paid for work done
- Offering and accepting work outside of what is stipulated in the contract – a solid indicator of control over the worker

It's also important to keep in mind that, where HMRC investigates, it can extend its investigation from four to six years if it can prove that the loss of tax arose as a result of carelessness. The failure to reassess certainly fits the bill, underlining the dangers for clients engaging

contractors for multiple years without tending to their IR35 compliance duties properly.

JLJ Services: a cautionary tale

A cautionary tale comes from an IR35 tax tribunal ruling from 2011, where IT contractor John Spencer and his company, [JLJ Services](#), [received a split decision](#) in its appeal against a HMRC-imposed tax bill spanning a seven-year contract.

Though Spencer successfully overturned the taxman's IR35 assessment for the first three years, the tribunal ruled that the last four years of his engagement with Allianz were inside IR35. This came after his client's project manager conceded that there was nothing to distinguish Spencer from an employee during this time, apart from the mechanism by which he was paid.

Critically, Spencer had moved from agreeing a series of contracts for specific projects to accepting a one-year contract that was extended repeatedly over four years. During this time, the tribunal heard how Spencer's client could ask him to work on any task, as opposed to requiring that he work on specific projects.

This cost Spencer a substantial portion of the initial £141,000 settlement imposed by HMRC. Under the Off-Payroll rules, the danger for clients is that they could eventually be found liable for similar sums if they let similar practices creep into play.

How to monitor your contingent workforce

Fortunately, it's relatively easy to ensure adequate compliance. The first step for clients is to reassess their contractors for IR35 upon each contract renewal.

If the working conditions are to differ from what was previously agreed, this needs to factor into the assessment, and the contract should be freshly scoped and drafted – after all, it's a new project. If the contractor is to undertake new work, ensure that it is on a project basis and stated within the new contract. Ideally, you'll also want to include a clause in the contract stating that if the contractor is offered work outside of contractual scope, then there is no obligation for them to agree.

IR35 assessments for renewed contracts make for a swift and simple process with [IR35 Shield](#), our recommended IR35 compliance solution. Having scoped the arrangement and made the necessary contractual updates, IR35 Shield's 'collaborative assessments' feature enables various parties to complete the parts of the assessment most relevant to them. This ensures that answers provided are accurate, while the resulting assessment comes accompanied by a Status Determination Statement (SDS), demonstrating reasonable care.

Continual monitoring of your workforce is recommended to identify and address any IR35 risk. IR35 Shield stores all existing and historical contractor engagements, displaying this data as the risk profile for the client's workforce, highlighting any areas of concern that they may wish to address.

Remember, this risk profile is only accurate if the working practices match the answers provided in each status assessment. But if considered IR35 assessments have been undertaken for each contract renewal, particularly using IR35 Shield's unique collaborative assessments feature, this won't be a problem.

IR35 tribunal cases and the importance of due diligence

In addition to monitoring your workforce, it's important to stay up to date with the latest IR35 court cases and any potential changes to employment status case law, as this could affect the risk profile of your existing 'outside IR35' contractors. Upper Tribunal cases can set precedents influencing future cases, so if there are any potential changes in the law, you will need to understand whether they will affect your workforce.

ContractorCalculator is generally first to react to the latest tribunal cases, and often provides in-depth analysis highlighting the implications of each case for contractors and their clients. IR35 Shield also has an extensive network of experts, and can notify its 'IR35 Shield for Business' customers if a case is likely to set any new precedents.

Ultimately, due diligence is essential to guarantee compliance. But it doesn't have to be as onerous as you would expect. The [Shield Passport Process \(SPP\)](#) is a four-stage, 12-step compliance process designed by compliance experts IR35 Shield and [Professional Passport](#), and tailored for clients and their recruitment partners.

The private three-hour workshop teaches clients and recruiters how they can fast-track their Off-Payroll compliance, ensuring that the necessary care is taken without undertaking an excessive administrative or cost burden. Workshops are open to recruitment agencies, who can arrange for one to be held at a location of their choosing, before inviting their clients to attend, ensuring the aligned approach to compliance that the legislation requires.

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