

Off-Payroll audit guide: How to engage contractors after April 2020



The Off-Payroll rules aren't only set to enforce change on the way contractors are assessed for, and taxed under, IR35 come April 2020. They are also expected to generate a shift in the engagement models that some companies adopt when hiring contractors.

With the newly introduced debt transfer provisions placing a premium on supply chain compliance, and the administrative workload associated with hiring a 'deemed employee', clients have many more factors to consider under the Off-Payroll rules.

This, accompanied by issues such as the emerging threat of employment rights claims from affected contractors, makes selecting a suitable engagement model a potential minefield. Here, we detail the pros and cons of some of the most popular and emerging engagement models.

The direct engagement model

Direct engagement is a relatively common engagement structure. But, beyond April 2020 it will be a potentially risky strategy for hiring organisations to adopt, depending on the deemed IR35 status of their contractors.

The rise of the 'gig economy' has left its mark on employment tribunals, with [individuals working for the likes of Uber](#) succeeding with appeals to be considered as 'workers' and therefore eligible for the requisite employment rights.

This is the danger for clients engaging contractors directly as 'deemed employees'. Where contractors are subject to tax hikes due to the hiring firm's determination that they are 'employed for tax purposes', many will rightfully seek entitlement to the benefits that come with employment. Such cases have already made their way to court, resulting in a number of defeats for hiring firms.

Aside from the employment rights risk, the administration involved in directly engaging an 'inside IR35' contractor must also be factored into the equation. Contractor invoices must be processed and paid via PAYE, and whereas a recruitment partner might request payment every three months, contractors will typically expect payment on a monthly basis to support their cash flow.

The recruitment company partnership

The value in recruitment companies is that their involvement in the supply chain negates the previously mentioned issues for the hiring firm. Where a recruitment company sits between contractor and client, the client is absolved of any employment rights risk.

This is the key reason why client engagement with recruitment partners is expected to heighten in response to the Off-Payroll rules. Many recruiters are also quite savvy to the benefit that their presence can bring and are already offering deals on margins charged.

Inserting an agency into the supply chain also rids the client of 'fee-payer' responsibilities, with the agency assuming responsibility for

calculating tax and processing payments due to contractors, ultimately providing the client with one consolidated invoice covering all contract engagements.

From a recruitment company's perspective, compliance is key. The debt transfer provisions introduced to the private sector rules by HMRC mean that clients risk inheriting the tax liability if a party further down the supply chain has been non-compliant. As a result, clients will be placing a premium on compliance, and any recruitment company that is able to demonstrate strong compliance practices will be well set.

Emerging joint employment arrangements

Joint employment is a new arrangement, and a form of margin-only engagement. Whereas a traditional margin-only engagement would consist of a client engaging contractors directly and their recruitment partner invoicing separately for their margin, joint employment comes in two derivations which each provide their own benefits.

Recruiter and payment intermediary

The first is where a recruitment company partners with a payment intermediary and jointly employs contractors, who are then supplied to a client. This arrangement is primarily beneficial for the recruiter and client as it negates the tax liability risk imposed by the debt transfer provisions.

This is because the recruiter can oversee all payments made and ensure that they are compliant, while at the same time preventing any high-risk providers from entering the supply chain. In this arrangement, the client remains protected from employment rights claims, due to the presence of the recruitment company.

Client and service provider

The second form of joint employment is where the end client partners with a service provider offering joint employment, and a recruitment company provides the contractors on a margin-only arrangement.

While this is technically akin to direct engagement, the use of a joint employment arrangement for contractors distinguishes and differentiates their working arrangement from that of employees. This should strengthen the defence of any client pursued by a contractor at an employment tribunal.

But the key benefit to this arrangement is only available to companies operating in sectors that are either VAT-exempt or zero-rated, which include charities, banking and financial services.

In a joint employment arrangement, the actual cost of employment is treated as a disbursement and is therefore not subject to VAT, which is only applied to the margin charged by the agency. Compare this with the VAT paid in a recruitment partnership relationship where the agency applies VAT to the value of the whole invoice, and the savings are substantial.

Which is the right engagement model for my business?

This is just a summary of some of the engagement options available to hiring firms, and their associated benefits and potential pitfalls. Though you should already have an idea of what the most suitable option might be for your firm, this isn't a decision to be taken lightly.

To assist businesses in selecting the correct engagement option, and help fast-track each individual area of Off-Payroll compliance, industry experts [IR35 Shield](#) and [Professional Passport](#) have developed the [Shield Passport Process \(SPP\)](#).

This four-stage, 12-step compliance process is shared with workshop attendees over the course of three hours and conveys a structured approach that establishes compliance while minimising cost and administration. Recruitment agencies can arrange for a workshop to be held at a location of their choosing, before inviting their clients to attend. If you're interested in attending an SPP workshop, then please get in touch.

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