

Off-Payroll audit guide: How to manage your contractor workforce



How contractor clients manage their contingent workforce in the build-up to the Off-Payroll rules will play a crucial part in how many contractors they are able to retain, and at what cost.

Many organisations have been spooked by the tax liability risk and the perceived administrative burden of compliance imposed by the Off-Payroll rules, and have therefore sought approaches to negate these issues. But, as we'll explain, such approaches can prove more costly while causing substantial and lasting damage to a business.

Managing your contractor workforce: what not to do, and why

We could have sourced a host of examples of what not to do from the public sector where, in 2017, poor preparation and reluctance to assess contractors left hiring organisations facing mass contractor walkouts. This resulted in spiralling costs, project delays and even cancellations, evidence of which can be found in our [IR35 factsheet](#).

However, more recent examples have emerged in the finance sector, where the likes of HSBC, Barclays and [Lloyds have issued blanket bans](#) on the continued engagement of limited companies, leaving contractors with three options:

1. Work via Pay As You Earn (PAYE) and suffer a resulting tax hike
2. Engage via a third party umbrella company (same resulting tax hike)
3. Cease their engagement

By taking the risk-averse approach, these companies are expected to bear the brunt as the best and brightest contractors find work elsewhere. Meanwhile, retaining valuable contingent workers on a PAYE engagement will likely require a rate renegotiation in the contractor's favour.

And whereas forcing a contractor into a PAYE arrangement negates any tax liability risk, the hiring firm and their recruitment partner now have to source the cost of employment taxes – roughly 12-13% on top of the contract rate.

It's not only the decision to avoid Off-Payroll compliance which is inadvisable. Most of these companies have informed contractors by circulating emails which have subsequently been picked up by the press. It doesn't take much for a company to garner a reputation within the contract sector, and the inevitable bad PR resulting from an approach such as this risks long-lasting recruitment challenges, with

contractors well aware of which firms to avoid.

Preparing for Off-Payroll-imposed changes

Similarly, poor communication and last minute IR35 status decisions are unlikely to sit well with contractors, and could also lead to unwanted consequences. When communicating IR35 assessments with contractors, it isn't simply a case of informing them of their deemed IR35 status.

The Off-Payroll rules require that clients provide contractors with a [Status Determination Statement \(SDS\)](#) detailing the reasons behind a status decision, and the importance of studying these details spans beyond the legislative requirement.

If you follow our timeline for Off-Payroll compliance, by November 2019 you will have conducted an initial assessment of your contingent workforce based on contracts and working conditions. Using a compliance solution such as [IR35 Shield](#) at this stage will:

- Provide an indicative status determination for each contractor
- Highlight the characteristics posing the greatest IR35 risk
- Inform contractual and working practice amendments reducing IR35 risk

Having conducted initial assessments and undertaken a financial analysis of the impact of the status decisions on the business by December 2019, in January 2020 you will be ready to communicate the impending changes to contractors.

Communicating changes to 'inside IR35' contractors

No IR35 status assessment is complete until a contractor's personal circumstances have been taken into account. With IR35 Shield, contractors can be invited to complete the final assessment by answering questions pertaining specifically to their business.

In some cases, the contractor's input may be enough to secure them 'outside IR35' status. But in the majority of cases, your earlier work will have given you a good idea of who is likely to be caught by IR35.

We suggest that by January 2020, you begin speaking to your 'inside IR35' contractors in small groups, preferably grouping contractors with similar working arrangements together. During these discussions you should seek to:

- Convey their deemed IR35 status and reasons behind this
- Find out their plans going forward

These discussions will provide a platform from which to begin any potential rate renegotiations, while feedback from contractors will inform your financial strategy. Crucially, demonstrating to your contractors that you have given them a fair assessment and taken measures to reduce their IR35 risk might mean they are more inclined to accept their tax position, avoiding a potential walkout.

Communicating changes to 'outside IR35' contractors

Communicating changes to contractors deemed outside the scope of IR35 is more straightforward. It's simply a case of providing them with certainty as early as possible in the form of an SDS. This is easily achieved using IR35 Shield.

With the contractor having answered the questions relevant to their business, their status assessment will be complete and IR35 Shield will generate an SDS relevant to that engagement.

The SDS will confirm the contractor's IR35 status while detailing exactly how the determination was reached. This can be issued to the contractor via email and will form the basis of a strong defence if HMRC were to challenge the engagement.

Why your compliance approach must consider contractors

By refusing to acknowledge the behavioural impact of the Off-Payroll rules, HMRC's already minimal compliance guidance risks setting thousands of contractor clients and their recruitment partners up for a fall. Understanding the mindset of contractors, their likely decisions, and how this impacts your company, are all key to achieving effective compliance.

These factors are all key considerations of the [Shield Passport Process \(SPP\)](#), a four-stage, 12-step process helping contractor clients and recruitment agencies fast-track their way to effective Off-Payroll compliance.

Developed by IR35 and contracting industry experts IR35 Shield and [Professional Passport](#), these three hour workshops teach attendees a structured approach to Off-Payroll compliance which minimises both administrative workload and risk. Workshops are open to bookings from recruitment agencies, who can arrange for a workshop to be held at a location of their choosing, before inviting their clients to attend.

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