

## Off-Payroll audit guide: Why client and agency cooperation is key to compliance



Off-Payroll compliance requires diligence and cooperation throughout the supply chain, particularly between the end-client and their recruitment partners. A client can invest as much time and effort as they want into implementing compliance policies and practices, but if the same rules aren't followed by their recruiters and other intermediaries, compliance is far from guaranteed.

This exposes both the recruitment partner and the client to significant financial and criminal risk, in spite of their best efforts to comply with the legislation. A successful approach to Off-Payroll compliance will involve the client and their recruitment partner working in tandem to ensure that all tasks are communicated and implemented in sync, avoiding any unnecessary risks in the process.

### Off-Payroll: the cost of no cooperation

The debt transfer provisions introduced by HMRC to the Off-Payroll rules in the private sector have imposed unprecedented risk on the client and their recruitment partners, while placing a newfound onus on cooperation.

The provisions permit HMRC to pursue the recruitment partner for a perceived outstanding tax liability where there is evidence of non-compliance in the supply chain and it is unable to retrieve the sum from the offending party. Ultimately, the taxman can target the client if it cannot recoup this amount from the recruitment partner.

Similarly, diligent policing of the supply chain is essential to ensure that the client doesn't risk punishment under the [Criminal Finances Act \(CFA\) 2017](#), which targets bodies that fail to prevent the criminal facilitation of tax evasion.

Establishing policies and drafting contracts which convey compliance will not alone rid clients of any risk imposed by the CFA. They must be supported with adequate processes which are evident in the dealings of their recruiters. Otherwise, if an intermediary further down the supply chain is found to have facilitated tax evasion, this could spell big trouble for the client.

HMRC is also known to 'play the spaces' in IR35 tribunal cases. Should a case make it to tribunal, the taxman will be on the lookout for discrepancies between the client and recruitment partner's compliance protocol. Should it find any inconsistencies, the client and recruiter are facing an uphill battle.

But the real danger for clients in this scenario is that a victory for HMRC could perceptibly place all other engagements managed by the client and recruiter in jeopardy, assuming that they have undertaken the same demonstrably misaligned approach.

### Establishing and implementing compliance policies

Throughout the compliance process, the client will be putting policies into place concerning the engagement of contractors ahead of the

reform, all of which will need to be communicated to and agreed with the recruitment partner.

For example, a client may implement a policy relating to the engagement of limited company contractors where the assignment falls within IR35. Should the client wish to engage affected contractors via an umbrella company, the agency will be largely responsible for making the necessary supply chain adjustments.

If the client only wants to source 'inside IR35' contractors from an accredited umbrella provider Preferred Supplier List (PSL), the two will need to work together to establish the desired providers, with the recruiter tasked with introducing said providers into the supply chain.

## Working together to mitigate supply chain risk

This process should also help identify any contractors who are operating via providers who present a high compliance risk to client and recruitment partner. In which case, both parties will need to agree protocol for moving these contractors onto a preferred supplier before communicating this to the affected contractors. Similarly, clients and recruiters may decide to agree to move contractors working via medium risk providers onto a preferred supplier on renewal, or by a specified date.

Early confirmation of an agreed date upon which the policies become effective could help minimise the amount of disruption caused. For example, if the client provides enough notice, this would give the recruiter time to notify the providers who aren't on the PSL. This presents the provider with the opportunity to secure the required compliance accreditation to avoid being frozen out by the client, while negating the need to shift contractors elsewhere.

## Getting the paperwork right

The termination and renegotiation of contracts is another issue that clients and recruitment partners will need to address together. Both parties need to make sure that ample time is granted to amend the arrangement prior to April 2020, especially if the contracts in question contain termination notice periods.

Having conducted an initial assessment of their contractors for IR35, the client should have carried out the necessary financial analysis to determine the amended contract fees that they can afford to offer contractors.

This will also need to be communicated to the recruitment partner who will use it to inform the final rate specified in the lower-level contract, having factored in their margin, which itself may need to accommodate employment taxes.

Finally, great care needs to be taken to ensure that the redrafted upper-level and lower-level contracts are consistent. This means ensuring that they specify the same protocol with regards to assessments and determinations. Failure to do so could corrupt the whole engagement and risk putting the entire compliance operation to waste.

## How to ensure comprehensive Off-Payroll compliance

When you consider the inherent risks that the Off-Payroll rules pose to both client and recruitment partner, the importance of compliance can't be overstated. Failing to work closely alongside one another only creates further hurdles to overcome in achieving compliance.

Detailed in this article is an extensive, but not exhaustive, summary of tasks that clients and their recruitment partners will need to complete together. For more comprehensive guidance, in addition to structured advice on the Off-Payroll compliance process as a whole, consider booking a private workshop courtesy of the [Shield Passport Process \(SPP\)](#).

Hosted by compliance experts [IR35 Shield](#) and [Professional Passport](#), this three-hour workshop teaches a structured four-step, 12-stage process helping companies to achieve Off-Payroll compliance while subjecting themselves to minimum risk and administration. SPP workshops are available for agencies to book before inviting their clients to attend, ensuring that Off-Payroll is tackled together.

The workshops also introduce compliance solution IR35 Shield and explain how it can be used to outsource and enhance Off-Payroll compliance. For more information on how IR35 Shield can be used not only to accurately assess IR35 risk, but to guide prompt and well-informed business decisions where Off-Payroll is concerned, [visit the website](#).

Published: 20 November 2019

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