

NEW OFF-PAYROLL WORKING RULES: ORGANISATIONS SHOULD BE PREPARING NOW

The new off-payroll working rules (also referred to as IR35) in the Finance Act 2020 come into effect on 6 April 2021. For medium/large organisations relying on a freelancer workforce, or using freelancers to create a more flexible workforce to boost their recovery from the business effects of Coronavirus, it is now more important than ever that you prepare for the off-payroll working rules ahead of April.

What do the changes mean for your business?

The new rules will mean that when your organisation is engaging with individuals, consultants, freelancers or contractors who provide their services through their own company, your organisation will be responsible for deciding if tax should be deducted at source (e.g. PAYE). So, if you determine the individual is regarded as an employee and is providing their services directly to your organisation, you will need to deduct income tax and employee NICs and pay employer NICs even when the services are provided through a personal service company.

If your organisation is paying an agency that has the contract with the individual's personal service company, the agency is responsible for deducting these payroll taxes. However, you, as the end user of the services, must tell the agency, as well as the freelancer, whether the off-payroll working rules apply.

Key risks for your organisation:

- Substantial increase to your compliance burden putting strain on your current organisation's resource.
- Getting the determination wrong. The approach taken in the HMRC CEST tool does not currently accurately reflect the full range of case law on employment status and has faced much criticism.
- Where failure of obligations under these rules arise anywhere in the supply chain, HMRC could potentially seek payment for tax and NIC from you as the client even where you are not responsible for deducting PAYE and NIC.
- The cost to your organisation of using a freelancer where the off-payroll working legislation applies has increased by up to 14.3% (current employer's NIC charge and apprenticeship levy).
- Where the off-payroll working legislation applies for future engagements, be prepared for the freelancers you use to prefer working for smaller businesses who will not deduct tax at source from their invoices.

How Moore Kingston Smith can help

Moore Kingston Smith offers an off-payroll working solution by drawing on our experience with the existing public sector regime (in force since 2017), advising clients in the private sector on the draft off-payroll working rules legislation and draft guidance (originally due to come into effect on 6 April 2020), and dealing with HMRC on general employment status issues.

Our three levels of off-payroll working solution suit all our client needs.

Service level one: Risk and opportunities meeting

To help organisations commence the process of understanding these rules, we offer an initial off-payroll working risk and opportunities meeting at a fixed cost of £500 plus VAT.

Service level two: Guidance manuals and advice

We offer a suite of separate guidance manuals and advice on each aspect of the off-payroll working process. This includes:

1. Helping an organisation determine if the rules apply to them from 6 April 2021.
2. Assessing the organisation's workforce to identify the freelancers who fall under these new rules.
3. Performing status determinations and provide options on how to determine employment status going forward.
4. Guidance on issuing Status Determination Statements.
5. Guidance on the dispute resolution process, and creation of a policy.
6. Guidance on the payroll operation for freelancers where it has been determined the worker is an employee for tax purposes.
7. Performing due diligence on the supply chain (e.g. where agencies are used) to protect against transfer of PAYE liabilities from agencies back to the organisation.
8. Advising on communication strategy with the workers in the time leading up to 6 April 2021, and beyond.
9. Reviewing third-party off-payroll worker 'solutions' being offered to an organisation (e.g. umbrella solutions, Statement of Works Agreements).

Organisations can pick from any of the above categories to assist them with implementing the off-payroll working rules from 6 April 2021. Fixed fees apply to certain categories listed above and prices start from £1,500 plus VAT.

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This service level is suitable for organisations that have already completed aspects of the off-payroll working process, and require guidance and advice on certain aspects.

Service level three: Full off-payroll working review and manual

This service will provide your organisation with a full detailed review and comprehensive off-payroll working manual including all of the aspects listed above at service level two. Specifically, the steps we follow are:

1. Assess the workforce to identify the freelancers who fall under these new rules. Based on your knowledge of the working arrangements you have with the freelancers, we would perform status determinations and review the contracts you currently have in place.
2. Advise on your communication strategy with the individuals in the time leading up to 5 April 2021 to warn them of these changes. This can include running a workshop for your freelancers so they understand these changes and how the off-payroll working rules will affect how they are paid.

About Moore Kingston Smith

The only firm of accountants and advisors with a dedicated office of over 100 Media specialists that proactively support the broadest range of needs of owner managed media businesses – covering marketing services, film & TV and entertainment, Theatre and mediatech.

We know it's not just about the numbers. As well as providing accountancy, tax and corporate finance services, over the years, by working with some of the industry's most successful companies, we have developed a deep understanding of what drives media businesses. As your trusted advisors we use this experience to work in partnership with you to help maximise your growth and profit potential. We conduct extensive research into industry performance every year with a view to understanding not just the benchmarking data but also identifying what the best performers do to achieve exceptional results. Our well-developed structured approach to our strategic advisory services helps you effectively manage risks, build sales, attract and engage people, and identify key opportunities to improve performance and enterprise value

All this means we can support you throughout the whole of your business lifecycle:

- Start up and small businesses – let our one stop shop approach take care of all your needs, including set up, company secretarial, legal, outsourcing, payroll, accounts and tax including R&D
- Growing and mature businesses - we can support you as your business grows with our award winning technology enabled audit approach, accounts preparation, tax compliance and advisory services such as HR and employee incentives

3. Review your processes and systems to ensure that contracts for personal services are identified and handled correctly. This will include determining their status and passing on the correct notices, as well as providing the correct sums to payroll for calculations on the necessary deductions.

4. Perform due diligence on the supply chain to protect you against the transfer of PAYE liabilities from agencies back to your organisation.

5. Create a dispute resolution policy to comply with your statutory obligation.

6. Review third-party off-payroll working rule 'solutions' and tools that may be offered to an organisation.

This service level is suitable for organisations that have not started to implement the off-payroll working rules and require support on all aspects of the rules.

A bespoke quote will be provided for this full review.

Please contact John or Tim or please contact your usual Moore Kingston Smith adviser for more information.

- International - we can leverage Moore Global's network of accountancy and advisory firms in over 100 countries to take the pain out of expanding into unfamiliar territories. We are also well placed to deal with international audit requirements, and co-ordinate international tax advice.

- Exit planning - our media specialist award winning M&A team, with hundreds of transactions under their belt, will ensure you well prepared for any transaction and maximise the proceeds from the value you have created within your business.

We have hundreds of clients across the media sector who all benefit from our very personal partner led approach, providing the very best guidance, expertise, and specialist sector insights.

In short, we're more than just accountants who count your numbers – we're business partners whose ambition is to help you grow your numbers so that you realise your fullest potential.

CONTACT US

If you would like to discuss any of the matters arising in this survey or how we can help you, please contact one of the Moore Kingston Smith partners by email or phone.

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