



OFF-PAYROLL WORKING: ARE YOU APPLYING THE RULES CORRECTLY?

Is your organisation applying the off-payroll working rules correctly? This is one of the most important questions you, as an organisation engaging contractors, should constantly ask yourself.

An off-payroll working specialist at Moore Kingston Smith will ensure your organisation has a robust off-payroll working policy in place. The use of an analytical framework can assess the current situation of your off-payroll working processes and check you are applying the rules correctly.

COMMON ISSUES:

The rules are difficult to apply in practice. For example:

- Determining employment status under these rules for a large number of contractors on short assignments, or with multiple scope changes, can be burdensome.
- It is easy to incorrectly apply the various employment status indicators to the actual working practices of contractors.

CONSEQUENCES OF GETTING IT WRONG:

Failure to apply the rules correctly will result in you being charged penalties by HM Revenue and Customs (HMRC). While a 'soft landing' approach to penalties applies until 5 April 2022, you can still be charged penalties if you have not taken reasonable care to apply the rules. It will also result in the contractors losing certainty over their tax position, and willingness to engage with your business for future projects.

OUR SOLUTION:

We have created a checklist that will help clarify your off-payroll working risks and your current state of preparedness. As you begin to envision key risks you will start to identify areas of greatest priority. You can speak to a Moore Kingston Smith off-payroll working specialist to answer your areas of concern and risk to then form a robust and compliant off payroll working process.

THE CHECKLIST

TECHNICAL	Yes	No	Concerns
Do you rely on the HMRC Check Employment Status for Tax (CEST) tool to determine employment status?			
Are you unsure on how to answer questions around certain employment status indicators in order to determine employment status?			
If you allow contractors to provide substitutes, can your substitution clause/practice be relied upon for determining employment status?			
Have you considered any relevant case law in determining employment status?			
Have you asked an external expert about the accuracy of your employment status determinations of contractors?			
Does the contractual wording reflect the actual working practices of the contractors?			

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Are you complying with the administrative aspects of the rules, i.e. issuing status determination notices, dealing with disputes, etc?			
For ease of administration, do you automatically treat certain contractors as employees without making an employment status determination?			
Do you use one employment status determination for an entire category of contractors?			
If you have entered into a 'statement of works', are you certain that HMRC would consider this to be a genuine contracted out service provider?			

COMMERCIAL	Yes	No	Concerns
Are you planning to use contractors for new and different projects?			
Will contractor's working practices change in the future or as a result of your client projects they complete?			
Do your commercial practices allow you to make employment status determinations for all contractors (including those on short engagements)?			
Are you able to put in place written contracts or contract amendments for all contractors?			

RESOURCE	Yes	No	Concerns
Is your off-payroll working process clearly understood by all departments of your business affected (e.g. HR, Finance, procurement and payroll)?			
Is the person/department from your organisation dealing with the employment status determination sufficiently experienced in doing this?			
Have mistakes been made in applying the rules, and is support needed to help rectify the position?			
Does your payroll team/provider correctly apply the payroll procedures for off-payroll workers?			

CONTACT US

Moore Kingston Smith's off-payroll working experts support businesses to understand their potential risks and work alongside you to design a strategy that helps mitigate risks. If you would like to discuss your current situation and hear more about how we can help, please contact:



Tim Stovold
Partner
tstovold@mks.co.uk



John Williams
Senior Manager
jwilliams@mks.co.uk