

OFF PAYROLL WORKING IN THE CONSTRUCTION INDUSTRY: PENALTIES FOR NON-COMPLIANCE FROM APRIL 2022



Organisations in the construction industry applying the off-payroll working rules incorrectly could be charged penalties by HMRC of up to 100% of the unpaid tax for inaccuracies from 6 April 2022.

Organisations must act now to assess working processes and check they are applying the rules correctly to minimise exposure to penalties and reputational risk.

HMRC penalty approach

In a briefing dated 15 February 2021, HMRC set out how it will intervene if it suspects non-compliance with the off-payroll working rules. It includes a commitment not to charge penalties for inaccuracies in the first 12 months of the off-payroll working rules coming into effect, unless there is evidence of deliberate non-compliance. Beyond this 12-month 'soft landing' approach to penalties, HMRC will:

- From 6 April 2022, charge penalties for inaccuracies based on the reason that caused the inaccuracy. The penalties range from 100% of the tax unpaid for behaviour considered to be 'deliberate and concealed', down to no penalty being charged if HMRC considers an organisation to have taken 'reasonable care'. Reasonable care very broadly means an organisation checking with a tax adviser or with HMRC if unsure about anything.
- Use a specialist team to carry out all its off-payroll working compliance activity. This team may contact an organisation to discuss how it is applying the changes to the off-payroll working rules. We have already seen evidence of this in sectors with high usage of limited company contractors, e.g. the financial services, and oil and gas sectors. We expect HMRC to extend these compliance visits to other sectors shortly.
- In certain circumstances, HMRC may publish details of organisations that deliberately get their affairs wrong to encourage them to put their tax affairs in order.

Who the off-payroll working rules apply to:

Since 6 April 2021, medium and large private sector organisations have been responsible for deciding if the off-payroll working rules apply.

The off-payroll working rules apply if a worker or contractor provides their services to a client, e.g. a medium or large private sector organisation, through an intermediary, e.g. a limited company.

Sole traders are not caught by the off-payroll working rules, as they are not operating through an intermediary. However, small, medium and large organisations still need to assess a sole trader's employment status for tax purposes.

How the off-payroll working rules apply to the construction industry

Medium and large organisations in the construction industry must also apply the off-payroll working rules. This is the case even if they are subject to the construction industry scheme.

The off-payroll working rules take precedence over the construction industry scheme rules. This means that, if a limited company contractor is considered an employee for tax purposes under the off-payroll working rules, the off-payroll working rules must be followed. There is no need to also apply the construction industry scheme to this worker engagement.

What duties client organisations need to carry out

The main obligations are as follows:

- Determine the employment status of every worker who operates through their own intermediary, even if they are provided through an agency.
- Organisations must communicate their determination using a status determination statement and ensure there is a process in place to deal with any disputed status determinations from contractors.
- If the client organisation is also the fee-payer and the worker is determined to be an employee for tax purposes following the status determination, the organisation must deduct and pay tax and national insurance contributions to HMRC in their payroll.

Help from the experts

Moore Kingston Smith's off-payroll working experts help businesses understand their potential risks. We 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:

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