

**ATTENTION: NEW  
RULES FROM APRIL  
2020 FOR THE  
PRIVATE SECTOR**

# MANAGING THE RISKS OF ALL NON-PAYROLL LABOUR

AUGUST 2019

IDEAS | PEOPLE | TRUST



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**ATTENTION:  
THE DRAFT LEGISLATION HAS  
BEEN PUBLISHED CONFIRMING  
THE OFF-PAYROLL LABOUR  
RULES WILL BE EXTENDED TO  
THE PRIVATE SECTOR FROM  
APRIL 2020.**



### WHAT IS NON-PAYROLL LABOUR?

Non-Payroll labour involves the engagement of individuals for services that are paid outside the payroll, usually via the purchase ledger. This could include consultants, subcontractors, associates or directors paid via an agency, a limited company (personal service companies (PSCs)), partnership or on a self-employed basis. The individuals could be used in your business or for onward supply to your clients/customers.

# THE SPIRALLING COSTS OF GETTING THINGS WRONG

The Government will introduce new legislation in 2020 to help tackle the perceived abuse of tax/NIC relating to off payroll labour in the private sector. This is the latest legislation in tackling the whole of non-payroll labour, and builds on the rules that have been in use in the public sector since April 2017. This means that if you directly engage (or place) workers who are paid off payroll you may have withholding responsibility from April 2020 whether or not the worker is providing services in the public or private sector.

BDO recommends that all engagers take early action to understand and address their individual risk to ensure that they are compliant well before this date.

## NON-PAYROLL LABOUR

HMRC will always test a business's practices relating to the employment status of individuals, ie those engaged directly on a self-employed basis. This is to ensure that taxes are paid under the correct legislation and involves examining both the contractual and actual arrangements in place between the individual and the engager. HMRC now considers employers must understand not just employment status but also IR35, the intermediary rules, and offshore host employer rules.

## COUNTING THE COSTS

The risk of getting it wrong can be huge and could include:

- unpaid PAYE for the last 6 tax years
- unpaid Employee's and Employer's NIC for the last 6 tax years
- under-deducted auto-enrolment employee pension contributions
- unpaid auto-enrolment employer pension contributions
- interest on unpaid PAYE/NIC
- penalties for the above failures
- potential claim for entitlement to employment rights
- unpaid Apprenticeship Levy
- protracted enquiries with HMRC involving considerable stakeholder time.

Furthermore Corporate Criminal Offences obligations exist that could lead to criminal convictions, unlimited fines and public record of the criminal offence. Whilst for the largest organisations, businesses falling within the Senior Accounting Officer obligations could necessitate qualifying an SAO statement, a personal fine for the Senior Accounting Officer or potentially court proceedings.

It is easy to see how the costs of such errors can quickly become substantial and even threaten the viability of the organisation going forward.

It is essential that all parts of an organisation that touch the engagement process, understand the importance of getting it right and the risks associated with getting it wrong.

With the proposed legislative changes, HMRC carrying out more employer compliance audits and more information digitally available at their fingertips, now is the time to stand back and assess your organisation's risks.

Potential risks arise from both engaging or being involved in the supply of any non-payroll labour which could involve self-employed individuals, consultants, those that invoice, officeholder roles, management charges, honorarium, executive and non-executive directors operating via PSCs. These must be understood and addressed prior to the April 2020 deadline for those in the private sector. The public sector rules are also expected to change slightly.

# A NON-PAYROLL LABOUR TAX RISK ASSESSMENT

Our non-payroll labour tax risk assessment is designed to identify the potential areas of employment tax risk to your business and establish what course of action should be taken to mitigate the risks identified.

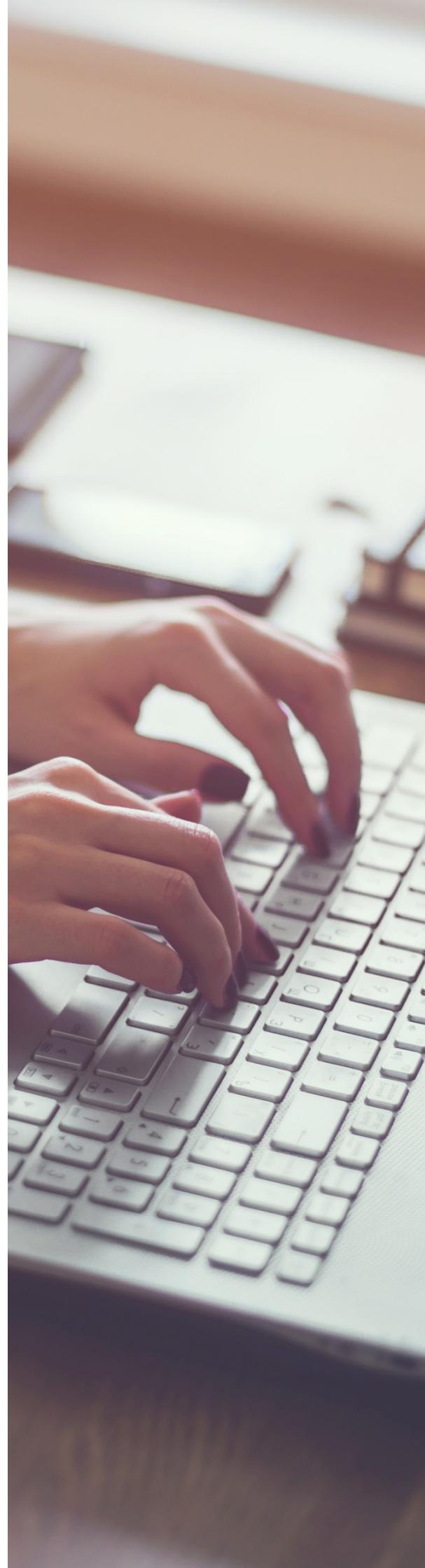
Our employment tax specialists have significant experience of the application of the complex legislative requirements associated with the use of non-payroll labour. Drawing on this experience, the risk assessment process will involve meeting with the relevant stakeholders in your business in order to:

- establish the profile of your non-payroll labour portfolio
- determine the level of visibility your relevant stakeholders have over this
- identify the depth of current understanding held by key stakeholders of the risks involved
- discuss the processes in place to identify and manage non-payroll labour employment tax risks going forward.

The risk assessment will generate an overview of the areas of concern:

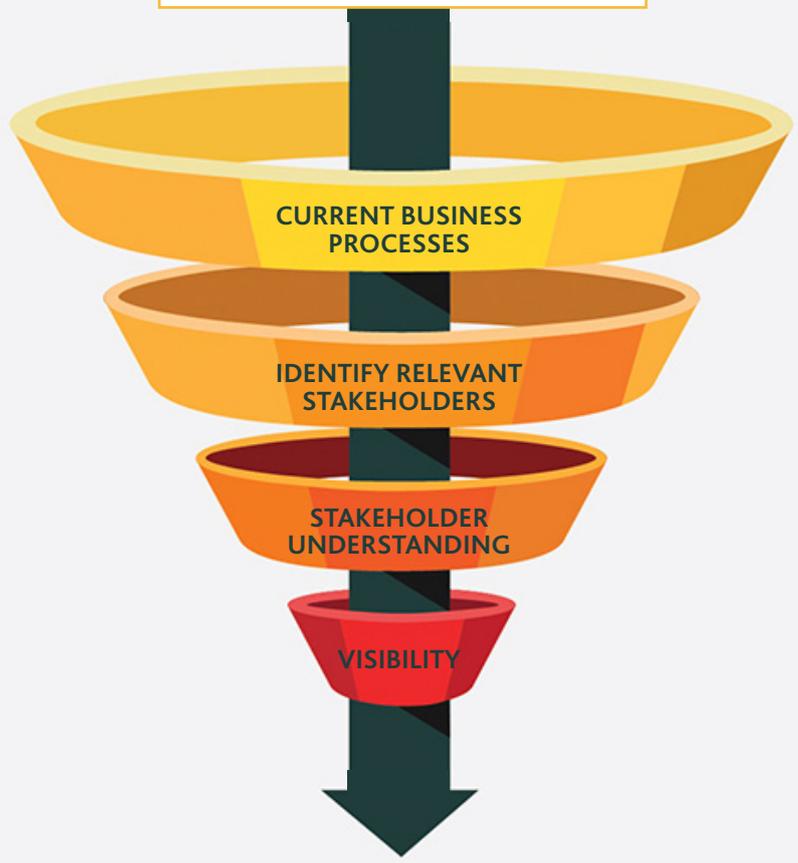
- summarise the key elements of tax risk
- prioritise next steps
- identify any procurement process changes
- recommend improvements to compliance processes.

Following on from the conclusion of the risk assessment, we would be happy to discuss and agree with you the specific actions required. This could include assisting with the implementation of relevant systems/controls, training of key personnel, contributing to the drafting of policy documents for the use of non-payroll labour and, where appropriate, assisting in the identification of any irregularities and approaches to HMRC.



**ESTABLISHING THE PROFILE OF YOUR NON-PAYROLL LABOUR PORTFOLIO**

- PSCs
- Agency workers
- Off-payroll labour
- Overseas companies/agencies
- Directors
- Self-employed
- Oil and Gas workers
- Onward supply of labour or labour and service



**NON-PAYROLL LABOUR RISKS**

- PSC rules (IR35)
- Oil and gas rules
- Employment status
- Host employer rules
- Public bodies policing IR35
- Agency rules
- Construction Industry Scheme
- Offshore rules
- Office holders

**SUMMARY TO FACILITATE DEVELOPMENT OF TAX RISK STRATEGY AND APPROACH TO MITIGATION.**

# THE RISKS WE WILL COVER

## EMPLOYMENT STATUS

HMRC view employment status as an area which is frequently misunderstood, the rules incorrectly applied and it is a 'soft' target when undertaking compliance activity. Our experience shows businesses frequently pay individuals on a self-employed basis where there is little basis for supporting such a position and often without appropriate documentation.

## IR35 RULES

For many years, businesses have relied on IR35 providing complete protection from any HMRC claim for underpaid tax/NIC where they directly or indirectly engage an individual via a Personal Service Company (PSC). However, incorrect engagement terms, PSC structures not visible to the engager and/or payment arrangements still undermine the position and place a business at risk of HMRC challenge.

## PUBLIC BODIES AND THE INTERMEDIARIES' RULES

From 6 April 2017, public bodies have been responsible for assessing if the IR35 rules apply to any individual supplying their personal services via a PSC. With complex supply chains, a public body may be unaware it is engaging an individual who is ultimately provided via a PSC and their potential payroll withholding obligations.

The obligations can also be moved to the entity paying the PSC if there are other entities in the contract supply chain.

## PRIVATE SECTOR ENGAGERS

The draft legislation published on 11 July 2019 confirmed that from 6 April 2020 the responsibilities faced by public bodies will be extended to engagers in the private sector. There were also some changes including a requirement for the end user's status determination to be communication to the PSC and worker. In addition, engagers will be required to introduce a 'status disagreement' framework to allow any queries on the IR35 determination to be raised. Each party in the chain must complete their own obligations, otherwise they become liable to PAYE/NIC.

## NON-EXECUTIVE DIRECTORS AND OFFICE HOLDERS

A long standing area of non-compliance, where organisations presume a Non-Executive Director (NED) or other office holder is automatically self-employed and can be paid outside the payroll system. There are limited circumstances where a NED or office holder can be paid off-payroll but the rules are complicated and there can be further difficulties where a PSC is used as a vehicle for supplying the individual (see aside). Non-Resident Directors are also a high risk area.

## CONSTRUCTION INDUSTRY SCHEME (CIS)

Many organisations are unaware that where a CIS sub-contractor is an individual, they have an obligation to consider the employment status of the sub-contractor before any payments are made. As the individual is included on a monthly CIS return, and likely to be subject to a CIS deduction, the assumption is that there are no other tax/NIC consequences.

## AGENCY RULES

Since 6 April 2014, there has been a requirement for the agency who is directly engaged with the end client, the primary intermediary, to ascertain if the worker is subject to (or to the right of) supervision, direction or control (by any person) in the supply chain. It is common to have several parties in the supply chain which can create uncertainty over the conditions under which a worker undertakes their role.

## OFFSHORE INTERMEDIARIES' RULES

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Also since April 2014, there has been a risk that any PAYE/NIC withholding obligation will fall to the end client, ie the organisation which receives the services of the worker. Some organisations may be unaware that an offshore intermediary is in place and so they are at risk of a claim for underpaid PAYE/NIC.

## OIL AND GAS SECTOR WORKERS

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There are special rules for UK Continental Shelf workers in the oil and gas sector. These rules prescribe who is responsible for applying PAYE, but are not straightforward to apply, particularly with complex supply chains.

## INTERMEDIARY REPORTING REQUIREMENTS

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Specified intermediaries have to make quarterly returns to HMRC noting details with regard to payments made to or for certain workers they have supplied to their end clients. The information required is detailed and must be correctly formatted to ensure HMRC online filing accepts the return, with penalties for incomplete, incorrect or late filed returns.

If you would like us to undertake a non-payroll labour risk assessment for your business please contact one of our employment tax experts and we will be happy to arrange a meeting with the relevant stakeholders.

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