STHREE – PRIVATE SECTOR IR35 REFORM

Off-payroll working rules

Charlie Cox – Commercial Director, SThree
INTRODUCTION TO STHREE
ABOUT STHREE
We are a global PLC.
The SThree group consists of a family of ten niche recruitment brands focusing on STEM industries (Science, Technology, Engineering, and Mathematics).
OUR PURPOSE
Bringing skilled people together to build the future

OUR VISION
To be the number one STEM talent provider in the best STEM markets

• £1.35bn revenue
• 20,000+ new placements
• 6,000+ unique customers
• 74% contract focus
• 11,000+ live contractors

*Financial Year 2019
Our UK contract business has been operating 34 years

We have an in depth understanding of all contract & flexible working legislation

We have proactively mixed our business towards contract & flexible working as part of our strategy

25% of our UK order book is Public Sector, giving us hands on real life experience in this legislation change
THE BACKGROUND & BASICS
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What is IR35?

- IR35 is a tax legislation that is designed to combat tax avoidance by workers who are supplying their services to clients via a limited company but who would be an employee if the limited company was not used.

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>Legislation originally introduced</td>
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<tr>
<td>2017</td>
<td>Legislation changed in the Public Sector</td>
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<tr>
<td>2020</td>
<td>Intended go live of the IR35 reforms</td>
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<tr>
<td>2021</td>
<td>New go live for the Private Sector reforms</td>
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The Background & Basics

Refresher on what happens in the Private Sector now

• Since 2000 it has been the contractor who decides the IR35 status of an assignment

• The contractor decides if the rules apply (Inside IR35) or do not apply (Outside IR35)

• If operating Outside IR35, there can be tax benefits, commonly resulting in the contractor receiving dividend payments, which results in a higher net retention than compared to if employed

• Lots of contractors operating in this way are genuinely doing so and will be able to continue to do so post reform, this is important to understand to help support the contract / flexible working community and also enable customers to attract the best talent available
THE BACKGROUND & BASICS

Why are HMRC looking to make these changes?

- The rules have been in place since 2000 but HMRC believe there to be widespread non-compliance.
- They believe the cost of the non-compliance to be £1.3b in 2023/24.
- In April 2017 the reform to the Public Sector rules was implemented.
- HMRC believe that as a result, compliance has increased and in the first year, an additional £550m of income tax and national insurance was gathered to support the UK’s public services.
THE PROPOSED CHANGES

Key things to understand
THE PROPOSED CHANGES
What will change and how will it impact you?

Example supply chain

- The proposed changes will closely mirror what happened in the Public Sector in 2017
- The responsibility for making the IR35 determination will move from the Limited Company to the Client
- If the rules apply (Inside IR35) the Fee payer in the chain will then be responsible for deducting the tax contributions at source before paying the Limited Company the Net amount
THE PROPOSED CHANGES
IR35 taxation simplified

If client determines an Assignment to be **Inside** IR35

↓

Umbrella Company

Agency PAYE

Limited Company (Fee Payer deducts Tax and NI before payment)

If client determines an Assignment to be **Outside** IR35

↓

Limited Company
THE PROPOSED CHANGES

Is this applicable to every end client in the UK?

It has been confirmed that any medium or large businesses as defined by the Companies Act 2006 will have to implement the new rules.

Smaller businesses are defined as those which satisfy two or more of the following requirements:

• Turnover no more than £10.2m
• Balance sheet total no more than £5.1m
• No more than 50 employees.

*Existing rules will continue to apply to small businesses
CLIENT RESPONSIBILITIES
CLIENT RESPONSIBILITIES

Determination and Status Determination Statement (SDS)

- You'll need to determine the employment status of a worker
- You must do this for every contract you agree with an agency or a worker
- You should communicate your determination to them using a Status Determination Statement (SDS)
- You will hold the liability for Tax and NI payments until you have passed on the SDS

An SDS must:
- be passed to the worker and the person or organisation you contract with
- give your conclusion and reasons for coming to it
- you must take reasonable care when making a determination
REASONABLE CARE

What is it and why is it important?
WHAT YOU NEED TO DO AS A CLIENT
What is reasonable care and why is it important?

If the client fails to take reasonable care, the responsibility for the deduction of tax and NICs, and the payment of the apprenticeship levy and paying these to HMRC will rest with it.

Examples of behaviours that would indicate a client has taken reasonable care include, but are not limited to:

- accurately applying and keeping a record of the employment status
- applying HMRC guidance on determining status
- seeking the advice of a qualified, professional advisor
- having someone with a good understanding of the work to be undertaken involved in the determination process
- checking existing individual determinations to ensure they remain valid/accurate
- if any material changes to a worker’s terms or working practices, making a new status determination
WHAT YOU NEED TO DO AS A CLIENT

What is reasonable care and why is it important?

Examples of behaviours that **do not constitute reasonable care** include, but are not limited to:

- Determining that every worker is Inside IR35 and that the rules do apply to all
- Determining that large groups of workers are Inside IR35 who have some variations
- Failure to reconsider where there has been a material change in services
- The absence of any proper support or training within an organisation to enable accurate consideration of the rules
- Inputting inaccurate information into a determination tool or process when making a determination
- Person tasked with completing the SDS does not have the knowledge required or right level of support
WHAT YOU NEED TO DO AS A CLIENT
What to do if a worker disagrees with your determination?

- Consider the reasons for the disagreement
- Decide if you want to maintain the determination if you feel it is correct and give reasons why – or provide a new determination because you feel it was wrong
- Keep records of the determinations and the reasons for them as well as any representations made to you
- Confirm from which date the determination is valid

A disagreement can be made with you until the date where the last payment is made for the worker’s services

- You must provide a response within 45 days of receiving the notification
- From the 6th April 2020 you must introduce a process to make sure you consider your worker’s views if they disagree with your determination
KEY CONSIDERATIONS WHEN MAKING IR35 DETERMINATIONS
**KEY CONSIDERATIONS WHEN DETERMINING IR35 STATUS**

<table>
<thead>
<tr>
<th>Control</th>
<th>Personal Service (Substitution)</th>
<th>Mutuality of Obligation (MOO)</th>
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<tr>
<td>Most contractors supplying services to an end client will be highly skilled in their area of expertise. As a result, they should not be subject to control from the client in relation to how they deliver the services they have been engaged to provide.</td>
<td>Personal Service is a strong indicator of employment status. In a ‘normal’ employment relationship, the employee would not be able to send in a substitute to carry out their services. Where a contractor is operating Outside IR35 there should be a ‘right of substitution’ clause in the contract. However, it’s not enough just to have this clause in the contract and it must be reflected in the working practices of the arrangement; meaning that if a substitute was provided at any point, that substitute would be accepted by the client.</td>
<td>This examines the obligation of the end client to provide the contractor with work on an ongoing basis and whether or not the contractor is obliged to carry out that work. A genuine self-employed Outside IR35 setup would see the contractor engaged for a specific project or piece of work and if anything else is offered, the contractor would not be obliged to accept it. If they do, this could be acceptable but would need to be agreed under a separate contract, specific to the new piece of work or assignment.</td>
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<tr>
<td>• How, When, Where</td>
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<td>If a client has the ability &amp; in reality does dictate the how, when and where elements of control, then it could be argued that the PSC/Limited Company is under control of the end client and therefore potentially Inside IR35.</td>
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INSIDE IR35 INDICATORS

Control
The client most likely controls the how, when and where the services are provided.

Substitution
The client, regardless of the contractual wording would not accept a substitute if offered by the contractor.

Mutuality of Obligation
Client would likely continue to offer additional work to the contractor would most likely accept it with no contractual changes.

Financial risk
The contractor does not take any financial risk and would be paid for all services provided regardless of quality.

Part & Parcel
The contractor would not be viewed any differently within the organisation to other employees, likely receiving same management and benefits.
OUTSIDE IR35 INDICATORS

**Control**
The contractor most likely controls the how, when and where the services are provided.

**Substitution**
The client, supported by contractual wording would accept a substitute if offered by the contractor.

**Mutuality of Obligation**
Client clearly understands that the contractor is supplying a set service, backed by contractual wording to support this.

**Financial risk**
The contractor may incur financial risk and potentially have to fix mistakes etc at its own cost if identified.

**Part & Parcel**
The contractor would clearly identifiable as a contractor and not an employee with any of the same benefits or management from the client.
UMBRELLA COMPANIES
UMBRELLA COMPANIES
Information on Umbrella Companies

• Any contractors supplying services using an Umbrella Company do not fall into this legislation

• Compliant Umbrella Companies employ the contractor and ensure that the relevant Income Tax and National Insurance contributions are paid in the same way as any traditional employee

• It is important to understand which Umbrella Companies are being used in the supply chain. Some companies are not providing compliant solutions and with the Criminal Finance Act in place, having a compliant supply chain where an Umbrella Company is involved has never been more important

FCSA is the UK’s leading professional membership body dedicated to raising standards and promoting supply chain compliance for the temporary labour market
UMBRELLA COMPANIES
Information on Umbrella Companies

At SThree we have a compliant Umbrella Company Approved Supplier List (ASL) and only trade with compliant companies to remove any risk from the supply chain and protect our contractors, our clients and ourselves.

All of the Umbrella Companies partners who supply Stthree as part of our ASL are all FCSA Accredited.
WHERE THE RISK SITS
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Key details on risk in the supply chain

- The Off-payroll working rules have been created to ensure compliance
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Key details on risk in the supply chain

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Client
Agency 1
Agency 2
Fee Payer
Contractor
Pass on SDS
WHERE THE RISK SITS
Key details on risk in the supply chain

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Key details on risk in the supply chain

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Client  
Agency 1  
Agency 2  
Fee Payer  
Contractor

Make correct payment in line with determination
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Key details on risk in the supply chain

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HOUSE OF LORDS

Key data from the SThree written submission to the Finance Bill Sub Committee

• SThree data collected in February this year was used in the House of Lords by FCSA CEO
• We collected data from over 1500 respondents covering both contractors and clients on the lead up to the reforms

- 36% of people who have worked in the Public Sector since the reform have experienced blanket Inside determinations
- 16% of contractors working in the Public Sector left as a result of the 2017 reform moving to the Private Sector
- 55% of contractors working in the Public Sector experienced a reduction in net take home pay as a result of the changes
- 97% do not believe that lessons learned during that time have informed the new Private Sector reform
- 98% do not believe that the impact on the Private Sector had been adequately assessed
- 67% of end hirers confirmed they did not understand how to implement the reforms
- 94% of end hirers confirmed they thought that this reform would have a negative impact on their business
“Our data has been used throughout our submission to highlight the seriousness of the issues the proposed Off-Payroll Reform will inflict on the UK economy at a time when businesses should be supported to build workforces that are fit for purpose and globally competitive.

While SThree believes in fact-based, data driven decisions, we’re concerned that the planned reforms fail to make a decision on that basis”.

“The governments objective for introducing the Bill is to improve fairness in the tax system by ensuring that individuals are not able to sidestep employment taxes or NICs by working through a PSC. We asked the same question to contractors and clients in the UK.

95.53% of the respondents said No, the Bill as drafted would not achieve the governments objectives”.

WHAT SHOULD I DO NEXT AS A CLIENT?
## KEY THINGS TO DO AS A CLIENT TO PREPARE

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<td><strong>Education</strong></td>
<td>Ensure you understand the legislation within your business and have the appropriate resources and training available to the hiring manager population</td>
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<td><strong>Audit</strong></td>
<td>Complete an audit on your contractor workforce to understand who you need to make determinations for, also look at your agency portfolio and the Umbrella Companies in the supply chain</td>
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<td><strong>Process</strong></td>
<td>Ensure you have clear processes in place and make sure that Reasonable Care is taken throughout any determinations that are being made</td>
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<td><strong>Communicate</strong></td>
<td>Have a clear communication plan in place for your contract workforce and work closely with them through the determination process and beyond</td>
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<tr>
<td><strong>Change</strong></td>
<td>Start thinking about what you might need to change in the business and how you engage with the contract workforce. Set yourself up to be commercially attractive to the best available talent</td>
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WHAT SHOULD I DO NEXT AS A CONTRACTOR?
KEY THINGS TO DO AS A CONTRACTOR TO PREPARE

**Education**
Ensure you understand the legislation and if you want to set up to supply customers primarily Inside or Outside IR35

**Preparation**
Make sure you are setup correctly, chose the best engagement model, Umbrella, PAYE, Limited etc

**Setup**
Have your contracts and working practices reviewed in the lead up to the reform. This will identify any changes you may need to make ahead of April

**Review rates**
Depending on if you are likely to be working on some Inside IR35 assignments, understand what the likely impact on take home pay and what your new bill rate would be

**Engagement**
Start to engage with and work with agencies and suppliers who understand the legislation and can offer guidance and support as we approach the go live of the reform
HOW TO ACHIEVE AN OUTSIDE DETERMINATION
ACHIEVING AN OUTSIDE DETERMINATION
What can be done to help achieve an Outside determination?

- **Start thinking differently** – all parties need to understand that they are entering into a business to business relationship. The client will be engaging the service of a Limited Company to deliver a set piece of work.

- **Define the piece of work** – Clients should scope the requirement clearly and specify the services they want to be delivered. This should be both documented and discussed with the Limited Company contractors.

- **Contract with services listed** – Both upper and lower level contracts should include a clear overview of the services including but not limited to, project title, key project milestones, expected deliverables and completion dates.

- **No control from the client** – In this business to business relationship, on a day to day basis, the client should be aware that it’s up to the service provider how they deliver the services that have been set out in the contract.

- **It’s not personal service** – The client are receiving services from a business, the business can decide who provides those services, if they business proposes to supply a substitute, this client should be willing to accept this.

- **Relationship throughout** – Ensure that both parties continue to act in a business to business relationship. The service provider can chose, how, when and where they provide services as long as the delivery is in line with the contract.
HOW STHREE CAN HELP
OFF PAYROLL WORKING SOLUTIONS

Experience
Not only are we a compliant PLC, we have first hand experience of these changes in the Public Sector.
The business is setup and ready to support both clients and contractors through these upcoming changes.

Audit & Review
We can help you audit your contractor workforce making sure that you understand the key things to look for to mitigate risk and maximise opportunities.
We can help you review your supply chain to ensure compliance.

Training & Education
We can deliver training sessions to your business, tailor made for senior management, hiring managers and also your contract workforce.
On the lead up to the proposed reform earlier this year these were extremely popular.

Articles & Guides
From reasonable care process maps, FAQ’s, presentations to IR35 industry specific articles we have a great selection of tools.
These can all be used by your business to increase the knowledge on this subject.
OFF PAYROLL WORKING PRODUCTS

Contingent Staffing Contracts
Contracts specifically designed to support the working practices of both Inside & Outside determined engagements.

We have created these having had reviews completed by the UK’s industry leading firms.

FCSA Accredited Umbrella companies
Ensuring full compliance in the supply chain, protecting our customers and contractors alike if you want to engage with an Umbrella Company, our approved list will look after you.

Managed Services
Our project partnering services are fully supported by our in-house Service Delivery Management function and are contracted under a Statement of Work (SOW) providing both Single interims or Project teams

IR35 Determination Tool & Insurance
Our IR35 determination tool makes your determination process very simple indeed.
Insurance backed services available to give you that extra piece of mind.
Why are HMRC looking to make these changes?

Not every contract assignment should be determined as inside IR35.

Different end clients with different approaches

The new normal: thinking (and acting) Outside the box.

Off Payroll rules & the rise in non-compliance in the Public Sector

Off Payroll Working - a positive outlook

The new chancellor needs to step back and rethink IR35.

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THANK YOU

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