STHREE – PRIVATE SECTOR IR35 REFORM

Off-payroll working rules – THE DETERMINATION PROCESS

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 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
QUESTIONS FROM ATTENDEES
ATTENDEE QUESTIONS
Answers to questions that were raised by attendees on signup

Client question
“Is it your view that the IR35 regulations will go live in April 2021 and if so, how aggressively will they be implemented”?

Contractor question
“How does working from home (in the UK) for a EU entity effect IR35 determinations. Does it have any significance at all”?

Contractor question
“Can I avoid IR35 by working on only predetermined work packages”?

Client question
“My client have advised they will no longer work with Limited Company contractors, is this normal and it considered a blanket determination”? 
THE DETERMINATION PROCESS
OBJECTIVES OF THE WEBINAR

Key points

• In this event we will take a closer look at the process you need to follow in order to reach a determination

• We will discuss the different ways you can carry out a determination, and how all this information needs to come together in a Status Determination Statement

• We won’t be covering key items that we have covered in the series before, if you would like to see more information on these we will send the links afterwards. The series previously has focused on the background and basics of IR35, the proposed changes, determination factors, how to achieve an outside determination
THE DETERMINATION PROCESS

High level key steps

- Key steps below that need to be followed by the client

Look at current workforce

Talk to suppliers you engage with

Determine if the off-payroll working rules apply

After the determination

Ensure correct payment process

Identify Limited Company contractors

You may need information relating to the type of engagement

Does the contract go beyond 6th April

Tell the contractor and the agency you engage with using a Status Determination Statement (SDS)

Make sure the fee payer is informed and using the correct payment method
REASONABLE CARE
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
WAYS TO DETERMINE STATUS
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Available options

- HMRC CEST Tool
- Other status determination tools available such as Kingsbridge, QDOS, IR35 Shield as well as many others
- SThree have partnered with Kingsbridge
WHAT YOU NEED TO KNOW TO MAKE A DETERMINATION
WHAT YOU NEED TO KNOW TO MAKE A DETERMINATION

Key points, regardless of the tool or process you use

You will need to know

• details of the contract
• the worker’s responsibilities
• who decides what work needs doing
• who decides when, where and how the work is done
• how the worker will be paid
• if the engagement includes any corporate benefits or reimbursement for expenses
WHAT DO YOU DO ONCE YOU HAVE MADE A DETERMINATION
CLIENT RESPONSIBILITIES

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
CLIENT RESPONSIBILITIES

Example Status Determination Statement (SDS)

Status Determination Statement

Reference: ST000170441
Assessed by: Charlie Cox

We believe this engagement falls Outside IR35 and the contractor is therefore Self-Employed for tax purposes, due to the following reasons:

About the contract
- The contractor is not acting as an office holder of the end client
- The contractor's business is able to send a suitable substitute in place of the contractor
- The end client does not have the right to approve any substitute
- The contractor's business would be responsible for insourcing and paying any substitute
- The end client has indicated they would be likely to accept a substitute

End client control
- The contractor's work is not managed by the client and, instead, they are in control of its quality
- The contractor has some responsibility for the success or failure of the objectives
- The contractor has to carry out the work on the client's site due to security or data sensitivity
- The contractor provides skills to the client it doesn't currently have access to

Part and Parcel & Business on Own Account
- The contractor's company is required to hold insurances such as professional indemnity
- The contractor is not restricted from working with other clients during this engagement
- The contractor doesn't manage any employees of the end client

Integration
- The contractor is completely separate from the client's internal structure
- Mutuality of Obligation (MOO)
- The contractor will not be paid when they are unable to work due to sickness

Acknowledgement

The following people have been asked to acknowledge this document:

Name: Charlie Cox
Status: Complete
Role: Supply chain
Completed: 12/02/2021
WHAT IF THE WORKER DISAGREES WITH THE DETERMINATION
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 2021 you must introduce a process to make sure you consider your worker’s views if they disagree with your determination
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

Our IR35 determination tool makes your determination process very simple indeed.
The new chancellor needs to step back and rethink IR35

When Philip Hammond announced in 2018 that IR35 would be extended into the private sector, he heralded it as a move that would “open a new chapter in our country’s economic future”, stating that it was the “right thing to do”. It was the beginning of the new chancellor Rishi Sunak, who is still facing huge headaches over the tax legislation changes, effective from 6 April. By rolling out IR35, HMRC is trying to clampdown on tactics where a contractor is using a limited company for tax purposes but is operating like an employee. This would mean that those working contractually in this situation would end up paying roughly the same income tax and national insurance contributions as actual employees. Until now, contractors in the private sector have been responsible for deciding if the IR35 rules apply to them or not. That is all changing. However, and to the end company will now make the decision on whether IR35 rules apply to them. The decision-making process that businesses must go through is no means straightforward and is proving challenging. The government initially seems to be rewriting this. A leaked video from Rishi is more confirming that “we are shortly to publish a review on how it should be implemented, which should have some tweaks and improvements to make sure that the transition is as seamless as possible.” He went on to say that HMRC will not be at all “heavy handed” in the first year. But “tweaks and improvements” aren’t enough. In a recent survey they conducted, when asked if they believe that the bill as drafted would achieve the government’s objectives, 95 per cent of contractors and 92 per cent of end clients said it would not. Additionally, 96 per cent don’t believe that the impact on the private sector has been adequately assessed. In the survey, 61 per cent were asked if they fully understand what is being asked of them in relation to the reforms of IR35 into the private sector. According to the HMRC 74 per cent confirmed that they did not know. With less than six weeks left until the new rules go live, this is a very worrying statistic. This confusion is already seriously impacting businesses and is far from being solved. Rishi, who has said businesses should take reasonable care in coming to their IR35 status decisions, etc. of a time when the UK should be looking to do everything it can to thrive, implement such reforms in a way that will make it a very difficult task indeed. By making hiring contractors more complex and potentially costly, the negatives for both company and contractors will be huge. Sunak faces the task of being a business around the risk of getting it wrong and incurring the administrative costs, fines and reputational damage that doing so would entail. This could foster a culture where contractors jump ship to businesses that better understand and are able to comprehend them correctly. Those firms that take a pragmatic approach to this reform will have the pick of the best available talent. That’s good for some companies, but is causing tremendous trouble for others. IR35 has real potential to hinder innovation and productivity throughout the UK. While I am supportive of the government’s attempt to ensure that contractors are transparent in the amount of tax, it needs to be done properly. This proposed reform is not representative of that. Sunak faces a huge challenge as he attempts to balance tax revenues with building a workforce which is fit for purpose. He must assess the real impact of IR35 ahead of full implementation and make a call on whether it goes ahead in its proposed form. If he takes a step back, conducts a review grounded in data, and gets it right, it could just “open a new chapter in our country’s economic future”. This reform has real potential to hinder innovation and productivity throughout the UK.
THANK YOU
AND
Q&A

Charlie Cox – Commercial Director, SThree