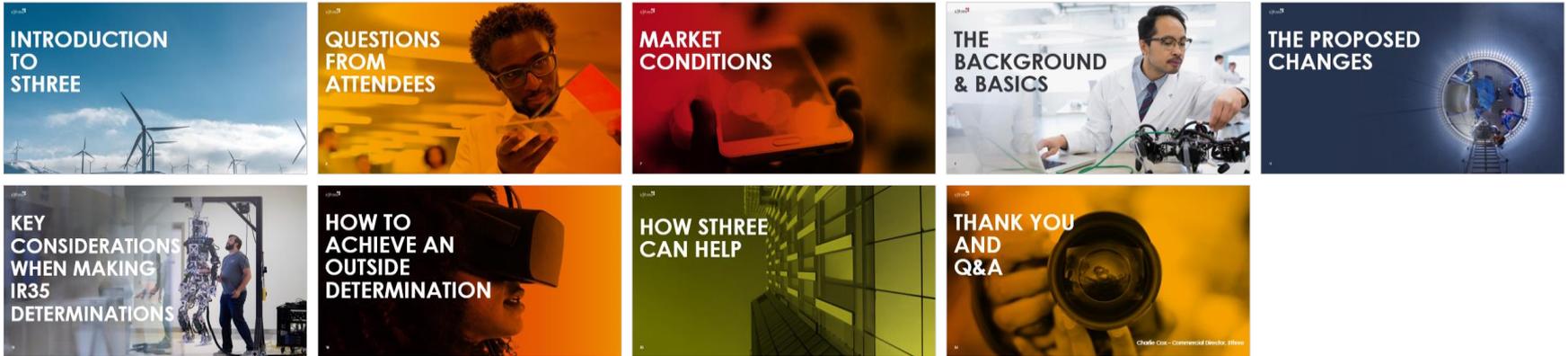


STHREE – PRIVATE SECTOR IR35 REFORM

Off-payroll working rules - **DETERMINATION FACTORS**



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 questions

“How likely is it that these changes this will still go ahead following Brexit and during Covid 19”?

“Will it be postponed given the current state of the UK and the economy”?

Contractor question

“Why are some agencies forcing contractors onto the agency payroll when determined Inside IR35”?

Contractor questions

“Although the Client makes the determination, I have many Clients so can this be used to support an Outside IR35 decision”?

“I'm currently working exclusively on one project, doesn't that put me Outside IR35”?

Client question

“What are the key factors that go into the determination process and how are they weighted”?

MARKET CONDITIONS

A hand holding a smartphone is shown in a close-up, slightly angled view. The phone's screen is dark, and the background is a soft, out-of-focus bokeh of light spots. The entire image is overlaid with a semi-transparent red gradient that is darker at the top and fades towards the bottom.

DATA POINTS

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

- SThree data collected in February last 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

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

67% of end hirers confirmed they did not understand how to implement the reforms

THE BACKGROUND & BASICS



THE BACKGROUND & BASICS

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



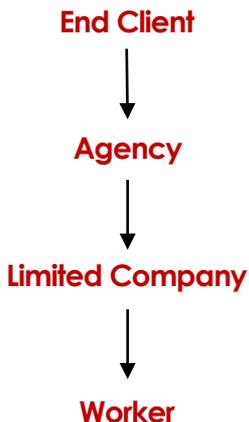
THE PROPOSED CHANGES



THE PROPOSED CHANGES

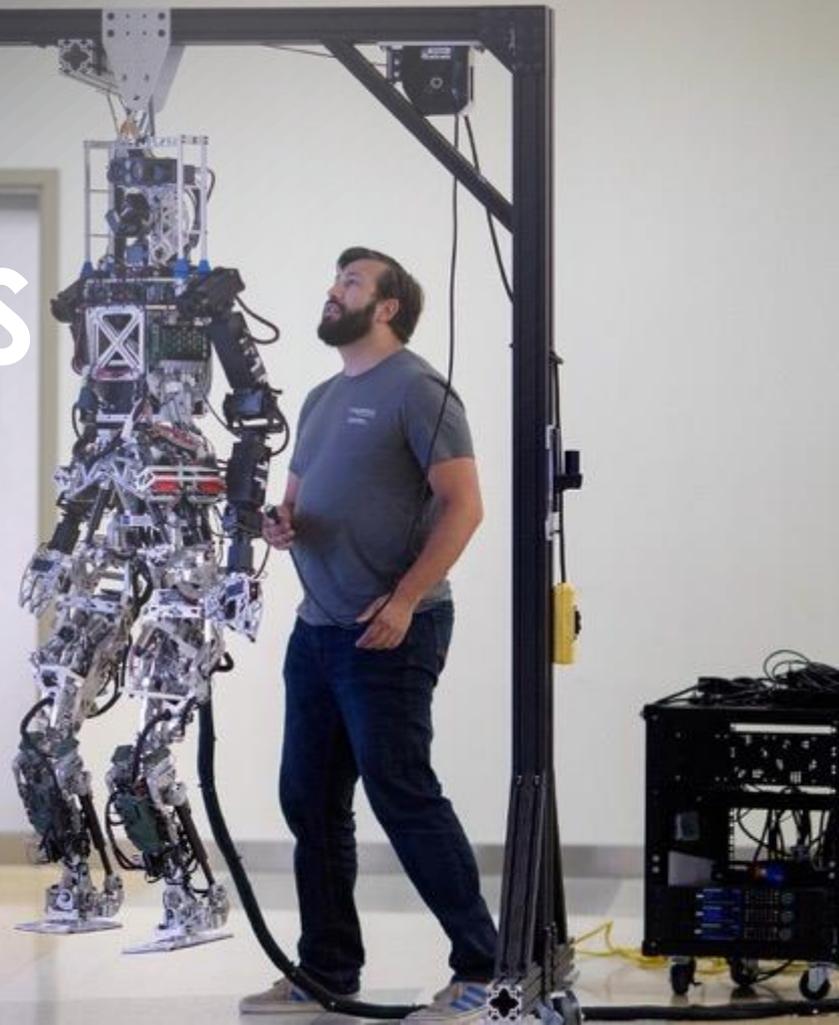
What will change and how will it impact you?

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 engaging with the worker on an employed basis, PAYE directly or via an Umbrella

KEY CONSIDERATIONS WHEN MAKING IR35 DETERMINATIONS



KEY CONSIDERATIONS WHEN DETERMINING IR35 STATUS

Control

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.

- How, When, Where

If a client has the ability & 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.

Personal Service (Substitution)

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.

Mutuality of Obligation (MOO)

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.

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 be identifiable as a contractor and not an employee with any of the same benefits or management from the client

ADDITIONAL DETERMINATION CONSIDERATIONS

- Is the contractor named specifically on the contract?
- Does the contractor specifically have to carry out the work?
- Does the contract contain the right to substitute and does the substitute have to be approved?
- Does the contract relate to a particular project?
- Does the contract terminate immediately if the project ends?
- Is the contractor presented to customers of the client as being part of the client's business or clearly as an independent business?
- If there was no work to do would the client be obliged to pay the contractor?

HOW TO ACHIEVE AN OUTSIDE DETERMINATION

A person wearing a VR headset, looking to the right, against an orange background. The person's face is partially visible in profile, and they appear to be smiling slightly. The VR headset is black and covers their eyes. The background is a solid, bright orange color.

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.

IR35 ARTICLES & LINKEDIN GROUP

Charlie Cox posted this



Charlie Cox posted this



Charlie Cox posted this



Charlie Cox posted this



Charlie Cox posted this



Charlie Cox posted this



The new chancellor needs to step back and rethink IR35

WHEN Philip Hammond announced in 2018 that IR35 would be extended to the private sector, he heralded it as a move that would “open a new chapter in our country’s economic future”. But fast-forward two years, and the new chancellor, Rishi Sunak, is still facing a huge headache over the tax legislation changes, effective from 6 April.



By making hiring contractors more complex and potentially costly, the negatives of IR35 vastly outweigh the positives for both company and contractor as things stand. There’s also a huge fear factor for businesses around the risk of getting it wrong and incurring the administrative costs, fines and reputational damage that doing so would entail.

By rolling out IR35, HMRC is trying to clamp down on instances 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.

I believe that the bill as drafted would achieve the government’s objectives, 95 per cent of contractors and 92 per cent of end hirers said it would not. Additionally, 98 per cent don’t believe that the impact on the private sector has been adequately assessed.

This could foster a culture where contractors jump ship to businesses that better understand and are able to categorise 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.

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 the end company will now make the decision on whether IR35 rules apply to assignments.

In the survey, end hirers were asked if they fully understand what is being asked of them in relation to the reform of IR35 rules in the private sector – 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.

IR35 has real potential to hinder innovation and productivity throughout the UK. While I’m supportive of the government’s attempts to ensure that everyone pays the appropriate amount of tax, it needs to be done properly. This proposed reform is not representative of that.

The decision-making process that businesses must go through is by no means straightforward and is proving challenging. The government belatedly seems to be realising this. In a leaked video, Sunak is seen 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.

This confusion is already seriously impacting UK Plc. Companies should take reasonable care in coming to their IR35 status decisions, yet at a time when the UK should be looking to do

“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 its 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

But “tweaks and improvements” simply aren’t enough. In a recent survey we conducted, when asked if they be-

© Charlie Cox is commercial director of SThree.

THANK YOU AND Q&A

Charlie Cox – Commercial Director, SThree