

IR35 Legislation 2020

CHARITY
IT LEADERS



- **Introductions & Real Staffing overview**
- **IR35 background & basics**
- **Draft Legislation overview**
- **Applying Reasonable care**
- **Making your charity attractive to CWs**
- **How Real Staffing can help**
- **Quiz**



Real Staffing Public Sector



Faith Doherty
Head of Client Relationships



Conor White
Public Sector Business Manager
Real Staffing

About Real Public Sector



Established in 2005

Over 14 years experience

Part of a larger FTSE 250 group

Public Sector specialist consultants

Focused on improvement



Perm and Contract Recruitment

- Digital
- IT
- Infrastructure
- CRM
- Data
- Business Intelligence
- Information Governance
- Cyber Security
- Project / Programme Management
- Exec appointment
- ERP
- Development



SThree overview

SThree plc is a leading international staffing company. We provide specialist Contract and Permanent recruitment services in the STEM (Science, Technology, Engineering and Mathematics) sector.



Countries

16

Offices

44

Contract runners

11,203

Global Revenue

£1,3b



What is IR35?



What is IR35?

IR35 is tax legislation that is designed to **combat tax avoidance** by workers supplying their services to clients via an intermediary, **such as a limited company**, but **who would be an employee if the intermediary was not used**

Such workers are called 'disguised employees' by Her Majesty's Revenue and Customs (HMRC)

The current Private Sector landscape

Since 2000, it has been the **contractor who decides** on the IR35 status of an Assignment

The contractor decides if the rules apply or do not apply, this is more commonly known as being **Inside** IR35 or **Outside** IR35

If working **Outside** IR35 there are tax benefits, commonly resulting in the contractor receiving dividend payments which changes the amount of Tax and NI payable on the income resulting in a higher net retention than compared to if employed

Legislation originally introduced in

2000

Off Payroll Legislation in Public Sector

2017

Planned change to Private Sector

2020



The proposed changes



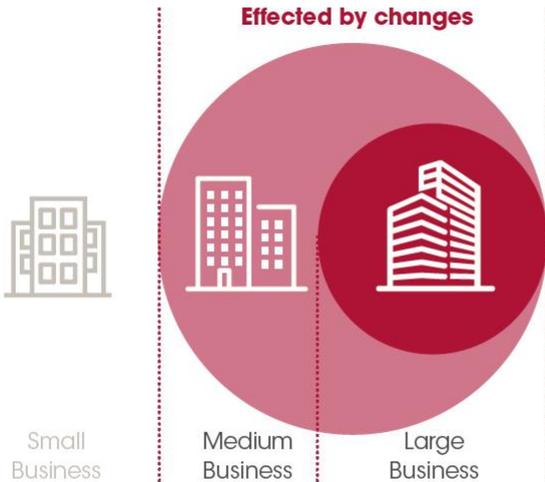
What are HMRC proposing to change?

The proposed change which mirrors what happened in the Public Sector in 2017 will see the **End Client** have to decide on the IR35 status of the Assignment

The **Fee Payer** will then be responsible for deducting the relevant TAX and NI contributions at source, before paying the Limited Company the Net amount if the Assignment is determined as **Inside IR35**



Which businesses will this be applicable to?



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

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*

IR35 taxation simplified

If an Assignment is determined '**Inside**' IR35 contractors should be paying employed levels of tax



If continuing to use a Limited Company the Fee Payer will have to deduct Tax & NI before paying the Limited Company the Net amount or contractor will need to move to an Umbrella Company

If '**Outside**' contractors can pay themselves via a combination of salary and dividends which can be more tax efficient



In this scenario the Fee Payer can continue to pay the Limited Company the Gross payment as before with no changes to taxation

Case Study



NHS DIGITAL + NETWORK RAIL

- NHS Digital recently accepted £4.3million fine from incorrect ir35 assessments.
- Used CEST tool for determining contractors working status.
- Competition to attract the right IT talent led to assessing many 'outside' assessments for contractors.
- When submitting finances for the year, HMRC assessed that £4.3m in unpaid income tax was discovered through incorrect ir35 assessments, where care was not taken.
- Crucial for this audience that these assessments are done correctly and reasonable care is taken given the 'project' nature in tech and IT roles.

- On the flip side Network Rail went for a 'blanket' inside approach, and put 810 out of 817 contractors onto PAYE 'inside' roles.
- Blanket approach shields employer from future tax liabilities
- However, this is not the correct approach and led to contractors leaving, putting projects and deadlines in doubt.
- % of those contractors should have been outside.

- Crucial that the right care and knowledge is applied when making a determination

Key considerations when determining the IR35 status



Determining the 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 to and 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. This practice helps secure an Outside IR35 determination.

Control

Client controls how, when and where the services are delivered

Financial Risk

Contractor has no risk and paid regardless of quality of services provided

Substitution

Client would not be willing to accept a substitute to provide the services

Part & Parcel

Contractor not viewed any differently to employees of the client

Mutuality of Obligation

Client obliged to offer additional work and contractor obliged to accept

Equipment

Contractor likely not to provide own equipment and will use client own

Control

Contractor controls how, when and where the services are delivered

Financial Risk

May be working to payment on deliverables, will have to cover cost of Insurance etc.

Substitution

Contractor could provide and pay a substitute who would be accepted by client

Part & Parcel

Contractor clearly identifiable as external resource and not staff member

Mutuality of Obligation

Contractor under no obligation to accept work other than that agreed

Equipment

Contractor likely to provide own equipment to supply the services agreed

Reasonable care

What is Reasonable care?

Reasonable care was added to the legislation before the rollout to the Public Sector to ensure that hirers take reasonable care in making their decision on the status of an assignment.

This was a result of some clients making 'blanket' decisions and saying that everyone was to be deemed inside IR35 or that Limited Companies could no longer be used.

This was not in keeping with the intention behind the legislation and the reasonable care element was added to prevent this.

The Government has indicated this could be further enforced in the Private Sector and has stated in the consultation that it "intends to further explore options for the consequences of businesses failing to use reasonable care in making their decisions".

Ensure you have a process in place

It's going to be important for businesses in the Private Sector to be able to show that they have **documented processes and procedures in place; including training and support to assist anyone looking to engage with a flexible worker to ensure the correct IR35 decision has been reached.**

If clients make a determination that a contractor is Outside IR35, but on subsequent audit is found to be Inside IR35, the question then arises as to whether an incorrect determination was made, resulting in the hirer becoming liable for any income tax that should have been deducted.

Demonstrate Reasonable care

Hirers are protected from this scenario through the introduction of a reasonable care clause. This states that so long as the hirer can demonstrate they have taken reasonable care in making a determination, a subsequent re-characterisation does not in itself result in the hirer becoming liable.

Instead, documentation e.g. correspondence with the fee payer and/or contractors explaining the reasons for the determination, can be used to protect hirers.

It is therefore important for businesses to evidence their IR35 determination process. Failure to do so will leave hirers exposed to potential liabilities.

**Umbrella
Company
contractors**



Umbrella Company contractors

Anyone supplying services using an Umbrella Company **does not fall into this legislation.**

This is because they are employed by the Umbrella Company and 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.

Umbrella Company contractors

Here at STthree 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.



FCSA is the UK's leading professional membership body dedicated to raising standards and promoting supply chain compliance for the temporary labour market



Key points and overview following Draft Legislation



Draft Legislation overview

- New rules apply to the Private Sector & Charities from April 2020
- Similar to the Public Sector, end client responsible for determining IR35 status of assignments where they engage a Limited Company contractor
- 'Small clients' are excluded from the new rules
- End client have a duty of 'reasonable care' when making determination
- End client to supply a Status Determination Statement citing reasons for decision
- Client Led Status Disagreement process in place, 45 days to respond
- If status confirmed as 'Inside IR35' then the Fee Payer must deduct Tax and NI payments
- Debt liabilities can pass back up the supply chain

What are contractors going to want to see happen?

There will be contractors whose Assignments are determined **Inside IR35**, there will be some determined **Outside IR35** and there will be some that sit in a grey area in the middle

For those in a grey area, changing contractual setup, working practices, agreeing milestones and deliverables can help enable these to be determined as Outside IR35 where appropriate

**Making your
charity an
attractive place
for the contingent
workforce**



Outside Determinations

**Think about
what you are
looking to
achieve and
what you want
to be delivered**

**Will it need a
job description
created or can
you properly
define and
scope a SOW?**

**This should be
a business to
business
engagement**

Outside Determinations

Would it be possible to add financial or rectification risks into the contract?

Service Provider Insurance – PI policies should be in place to cover services

You should be genuinely willing to accept a suitable substitute

**How SThree and
Real Staffing
can help you**



Experience

As a compliant PLC with extensive experience in contract staffing and IR35, a large part of our UK business trades in the Public Sector

As a result, we have been through these changes before and have built up great knowledge and ways to support our customers in the lead up to and through the transition that we will see in April 2020 in the Private Sector

It shouldn't be underestimated how important this experience is providing our customers with confidence

Audit your flexible workforce

Firstly, make sure you are able to identify and understand how many flexible workers you have within the organisation; **this is a great way to start to prepare your business**

Not only knowing how many contractors but being very **clear on understanding how they are engaged** is vital

With many different engagement models, contractors supplying services directly or through an agency, through a consultancy, via a Limited Company or an Umbrella Company it's important to understand the structure of each one individually



identify



understand



engage

Training and Education

Ensure that everyone involved in engaging with flexible workers within the organisation is **aware of the IR35/Off Payroll Legislation**

Ensure that when looking to engage with a flexible worker that **Reasonable care** has been taken

Ensure that **business processes and working practices** for hiring managers are clearly defined and documented, depending on the size of the business, have a core team responsible for owning the process. Lots of clients have already setup an IR35 working group



identify



understand



engage

Contractor engagement models

With 33 years of contract staffing experience, working with a compliant PLC such as Sthree/Real Staffing will ensure your business minimises the potential negative impact of not handling this change effectively; meaning you can instead make **positive changes to the way you engage with contractors**

SThree available models:

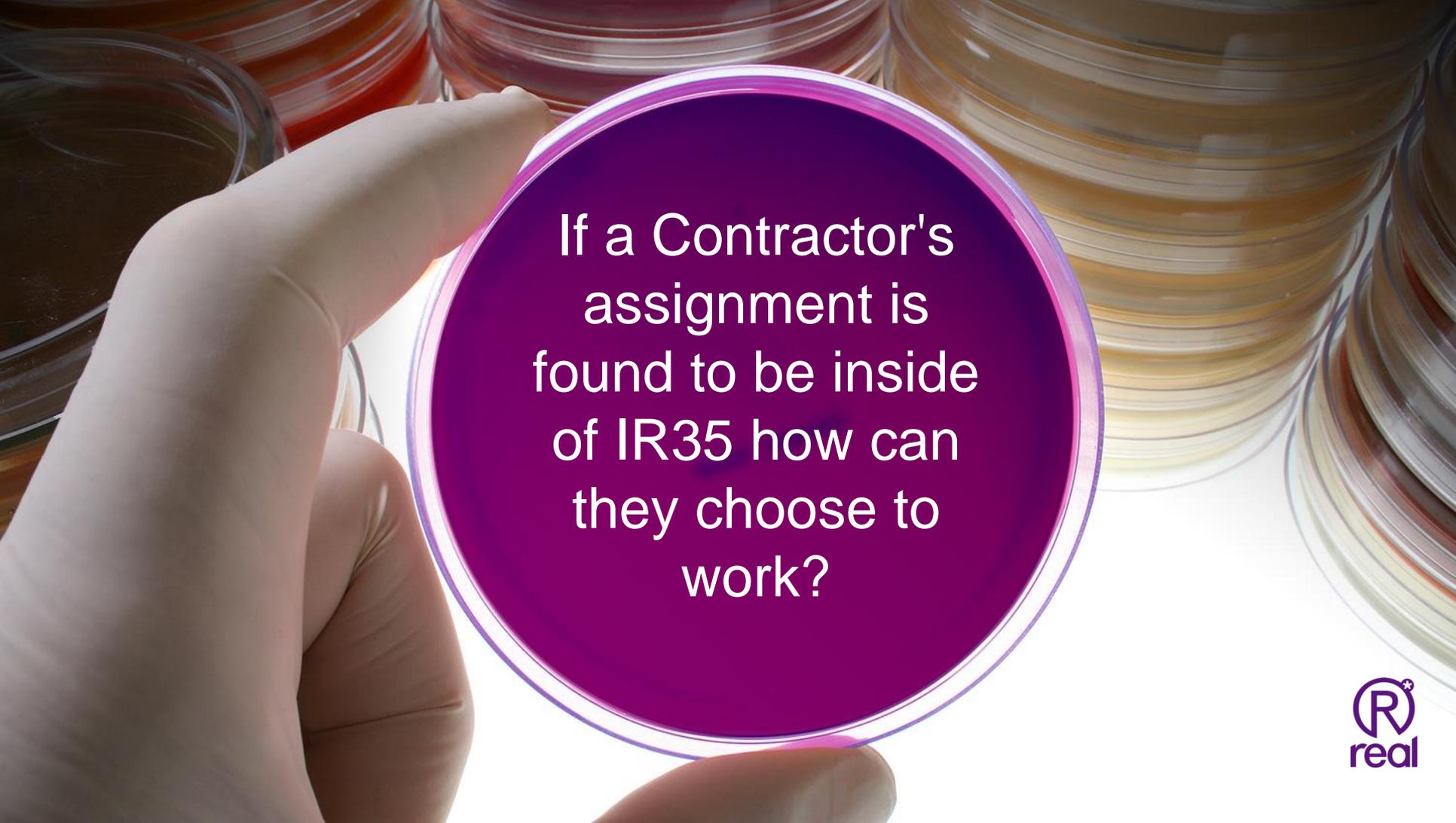
- Contingent Staffing (Inside & Outside IR35)
- Statement of Work (SOW) and Consultancy Services
- Direct Model (payment of Inside IR35 Limited Company contractors)
- Compliant PAYE Umbrella Company Supply Chain

Any questions?



QUIZ



A hand in a white glove holds a petri dish. The dish is filled with a purple liquid. Overlaid on the dish is a purple circle with white text. In the background, there are several other petri dishes with different colored liquids (red, yellow, brown).

If a Contractor's
assignment is
found to be inside
of IR35 how can
they choose to
work?

Who is liable for
outstanding tax if
reasonable care was
not used when
making the
determination?

If a Contractor's assignment with one Client is 'Outside' will it be the same with a different Client?

A hand in a white glove holds a petri dish. The dish is filled with a purple liquid. Overlaid on the dish is a white circle containing the text: "What does a Client need to do when making a determination?". In the background, several other petri dishes are visible, some containing red and yellow liquids.

What does a
Client need to
do when making
a
determination?

Does the
determination need to
be done before or
after the start date?



What's the most commonly used tool to make a determination?



A hand in a white glove holds a petri dish with a purple center. The center contains the text "Can the determination ever change during the assignment?". The background shows several other petri dishes with various colored media (red, yellow, brown).

Can the
determination
ever change
during the
assignment?

The Contractor can substitute their services for someone suitably qualified and skilled. Is this an indicator of the assignment being Inside or Outside?

