

SThree Plc – Written evidence (OPR0025)

1) Has the recent extension of the off-payroll working rules to the private sector made it more difficult for 'engagers' (employers) to hire people with the right skills and expertise?

- Before the rules were introduced, SThree stated that the right balance had not been struck between the taxpayer and HMRC. Under the new rules, the onus is on the engager to make decisions on the tax status of an assignment but survey results confirm that is very difficult to do correctly using the available information and tools.
 - Our most recent data backs this up. Every single client and contractor who responded to our survey believes the reforms to off-payroll working rules (IR35) have made it more difficult for engagers to hire contractors with the right skills and experience. This is problematic given that our previous data has shown that the demand for STEM talent still exceeds supply – a trend which is continuing as the current job market is experiencing a “war for talent” with resulting higher vacancies and wage inflation.
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2) For those engagers (and their advisers) who use the CEST (Check Employment for Tax Status) tool to assess employment status, how effective do you consider it to be? Do you have confidence in its results? If not, what further improvements need to be made to it?

- 81.5% of contractors, and half of our client respondents, said the Check Employment Tax Status (CEST) tool was either 'poor' or 'below average'. The same percentage of contractors also have no confidence in the results provided by CEST. Some of the concerns include that it doesn't take enough valid points into consideration to come to a correct outcome. Similarly, there are concerns that HMRC and government clients no longer stand by the tool, but are using other criteria advised (but not publicised) by HMRC, therefore making self-assessment difficult.
- Numerous further improvements are strongly suggested. For the tool to be fit for purpose it must become a 'multi-party' platform that allows other parties in the supply chain to register and feed into it, with the results being both recorded and accessible. The tool should reflect case law which it doesn't currently do. It needs to address Mutuality of Obligation (MOO), which is extremely important in reaching an accurate determination. The CEST tool should also explain why it reaches inconclusive decisions in the circumstance where it does.
- None of our clients from our survey have confidence in the results from CEST – they commented that they sometimes struggle to get a clean result showing whether a contractor is inside or outside IR35.

- However, these results aren't fully surprising as contractors and engagers had similar feelings about the tool before the off-payroll working rules changed. In our most recent survey, respondents have also raised concerns about CEST being too basic and raised concerns about reports that show that the findings are being overruled in court. Employment status is complex and industry-dependent. Some contractors commented that engagers can use it to suit their own ends.
 - Contractors believe CEST needs to be improved to recognise the specific needs of clients and contractors in certain industries – pharmaceuticals for example. They're also concerned that MOO is not adequately covered by the tool and don't trust HMRC not to change the rules – with some saying the body already challenges decisions from the tool. Furthermore, they're concerned CEST currently doesn't fully reflect the criteria HMRC are using to advise companies.
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3) What changes have engagers had to make to apply the off-payroll rules to contractors, in terms of systems, personnel and training? By reference to your own experience, to what extent (if any) do you consider that compliance costs have increased because of the changes?

- SThree has always been concerned that the impact these changes will have on the private sector have not been properly assessed and this includes the compliance burden. In total, 78% contractors we surveyed believe businesses have had to make changes to apply the off-payroll rules to contractors, in terms of systems, personnel and training. Similarly, 88.9% said costs associated with compliance have increased and none said costs have decreased. Clients who responded also said they've had to make changes and all said costs have gone up.
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4) How well has HMRC supported engagers, contractors, and their advisers with the implementation of the new rules and is any further or different type of assistance needed?

- 87% of contractors believe HMRC have "poorly" (13%) or "very poorly" (74%) supported them when it comes to the implementation of the new rules. Engagers believe the assistance offered has been "poor" or "below average."
- A recurring theme that emerged from the contractors and clients we surveyed is that some companies are risk averse and have struggled to implement the new rules on a case-by-case basis. Therefore, they've made blanket policy decisions on contractors rather than actually assessing each case. Another contractor said the rules were "strangling" the contracting industry and that the changes hadn't been properly thought through. In essence, a tool like this is unlikely to be accurate unless the engager has a strong level of understanding of the

law/rules and the resource to be able to apply them correctly on a case-by-case basis.

- Contractors and clients both reported that there's been little if any advice offered from HMRC. One contractor said they've heard some advice through Staffing Trade Body groups, but that contractors voices aren't being heard. Another was concerned about HMRC understanding their own rules given the number of tribunals and court cases surrounding the changes.
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5) To what extent has the introduction of the new rules generated disputes between engagers and contractors concerning the status of contractors vis à vis the rules and how successfully or otherwise have these been resolved?

- More than three quarters (75.9%) of contractors said they've either had lots (35.2%) or some disputes (40.7%) with engagers as a result of the new rules. Similarly, all of the end-clients surveyed had the same experience, with three quarters experiencing some disputes and a quarter lots of disputes.
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6) What behavioural effects have resulted from the introduction of the new rules in the private sector in terms of the arrangements adopted in hiring contractors?

- As previously referenced, our research shows that the lack of clarity and complexity of the new rules means that engagers default to risk aversion tactics when it comes to determinations. This is due to a fear of HMRC fines and criteria not consistently applied. For example, some Engagers have simply banned all Limited Company contractors without assessing the roles.
- Another finding from our survey was that clients are opting for the "easy route" and advised that any contract roles will be inside IR35 – due to either not wanting to or not understanding the requirements of proper assessment. One surveyed contractor said clients have been advised by accountancy firms not to assess each contract role as it is easier, less admin and less risk to advise all contract roles are captured by IR35.
- Consequently, one contractor told us clients are struggling to find contractors to work inside IR35. They specifically cite the IT industry, where established experts are still working outside of the rules and clients are paying more for less qualified contractors to ensure compliance, rather than getting the highly specialist skills they need.
- One contractor said the changes are causing mistrust as well as a lack of incentive to keep contracting, with some companies reducing the number of contractors they use completely. Alternatively they are no longer looking to hire outside IR35.
- From a client point of view it's resulted in more paperwork and red tape. Not only that, outsourcing/finding contractors is harder and more

expensive than before. This is down to contractors asking for increased day rates to cover the cost of deductions of Engager taxes.

7) The Government is proposing a new employment body with powers to enforce employment rights, including for those engaged by agencies and umbrella companies. How effective do you think such a body will be in ensuring workers, particularly the lower paid, are treated fairly?

- Only 2% of contractors surveyed believe a new employment body would be "above average" at ensuring workers, particularly the lower paid, are treated fairly. The rest thought it would be either be "average" (22.2%), "below average" (20.4%) or "poor" (55.6%). One client believed the body would provide an "average" service with the rest saying it would be "below average" or "poor."
 - Rather than being a positive, one contractor said a new body like this would just add "more complexity to the chain." Moreover, it's thought more red tape or "bureaucracy" isn't the answer and that reversing the plans would be simpler. Another suggested putting things back to how they were and looking at "opportunities to make the short-term contracting industry work better for everyone."
 - Other contractors who left comments see the creation of a new body as an opportunity to create work where work is not required. With one even saying it wouldn't be of any benefit and will "end up being mothballed."
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8) How successful will the draft Finance Bill proposals for earlier publication of information about promoters and avoidance schemes be in protecting individuals from being drawn into such schemes?

- 96.6% of the contractors and clients who completed our survey said they are "not sure" how successful the draft Finance Bill proposals, for earlier publication of information about promoters and avoidance schemes, will be in protecting individuals from being drawn into such schemes.

15 November 2021