



KPB | MONARCH

Date 13/03/2020

To whom it may concern,

My client has been made aware of a blanket decision to include all temporary contractors within IR35, this has been completed without recourse to an SDS (Status Determination Statement). This does not follow the government guidelines and indeed is frowned upon by HMRC.

Each Agent/Hirer/End User/Fee Payer should take care and exercise due diligence in determining the status of every contractor engaged on a temporary basis. The application of the SDS provides the first tier of evidence from which an informed decision can be made. Upon reviewing the SDS the Agent/Hirer/End User/Fee Payer may decide that the contractor does indeed fall inside of the IR35, this can be communicated to the contractor and they have 45 days to appeal the decision, should they disagree.

The resulting decision would be binding on both parties producing two courses of action, the first is that the contractor is outside of the IR35 legislation and conventional business practices would prevail, and the second is that the contractor is firmly inside of IR35 and should revert to employed status for future engagements. It is at this stage where expectations are at variance, regarding the now deemed de-facto employee as engaged with yourselves, which gives rise to you entering them onto your PAYE Scheme and reporting such action to HMRC through RTI, using deemed de-facto employee you would not be offering holiday pay, statutory sick pay, student loan deductions (if required) together with automatic enrolment for pensions. You would agree that this places my client in an exposed position with regards to your temporary engagement offer, also it is in direct contravention of two different and conflicting laws, first of employment law whereby the offer seems to preclude fundamental requirements of employment legislation, and the second is that the position is contestable with regards to employment tax law, whereby application of the tax status of the client is compromised by not being in receipt of the benefits associated with employment law.

The only course of action is for you to employ my client under conventional employee/employer relationship, giving my client the necessary advantages defined in employment legislation, while adhering to the employment tax laws by virtue of their status as enrolled within your PAYE Scheme.

I should welcome your comments at your earliest convenience as the timescales for implementation draw near, I would draw your attention to the fact that no change whatsoever has occurred within the IR35 legislation, the change is one of onus, which now resides with the Agent/Hirer/End user/Fee Payer evident in the published document in July 2019 and inclusion in the Finance Bill 2020. I would remind you that a blanket response to the Finance Bill places you in direct opposition to your prior decision to engage willingly with my client prior to the implementation on the 6th April 2020.

For and on Behalf of KPB Monarch Limited

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