

A GUIDE FOR DELIVERING STATUS DETERMINATION STATEMENTS (SDS)

WE ANSWER THE FOLLOWING QUESTIONS:

1. HAVE YOU CONDUCTED AN SDS BEFORE THE FIRST PAYMENT TO THE CONTRACTOR IS MADE?
2. HAVE YOU DELEGATED THE SDS PROCESS TO YOUR AGENCY?
3. DO YOU HAVE ANY CONTRACTUAL INDEMNITIES WITH RESPECT TO TAX LIABILITIES IN THE AGENCY CONTRACT?
4. DO YOU NEED TO HAVE AN APPEALS PROCESS IF THE CONTRACTOR DISAGREES WITH YOUR FINDINGS?



Have you conducted an SDS before the first payment to the contractor is made?

The client is liable for any unpaid tax and NI until a valid SDS has been provided to the contractor, which must be prior to the first payment being made. Furthermore, the client must use reasonable care in making the determination in order to be absolved from any further liability.

Have you delegated the SDS process to your agency?

Clients may delegate the SDS process to the agency however under the off-payroll legislation they remain responsible for the assessment and must sign it off. However, clients should be aware that liability is likely to pass to them if the agency they hire workers through cannot cover IR35 claims. Reasonable care must be taken when issuing the SDS. Clients must question whether the SDS tools and processes in place are adequate. If they are not, they may become exposed to the IR35 liabilities and may face penalties for acting without reasonable care. Therefore, it is important for clients to conduct due diligence on their agencies' IR35 processes.

Do you have any contractual indemnities with respect to tax liabilities in the agency contract?

Although the client is responsible for the SDS and must use reasonable care under the off-payroll legislation, there is nothing to stop the client from obtaining contractual indemnities for any tax liability arising as a result of an engagement. However, the indemnity will only be enforceable if the agency is solvent at the time the indemnity is being relied upon and/or has sufficient insurance to meet its contractual obligations.

Do you need to have an appeals process if the contractor disagrees with your findings?

The contractor has the right to appeal, and the client must have a process to consider any appeals. Where the contractor contests the SDS, the client must respond to the contractor within 45 days. If the client concludes that the original SDS is correct it must provide reasons for its conclusion, whilst if the client concludes that its initial SDS was incorrect, it must issue a new SDS. Failure to respond to the contractor within the 45 days may result in the client being treated as the fee-payer and becoming liable for tax and NIC.