

CEST uses a four-rooms approach with a final judgment. If you obtain a pass in one room you do not proceed to the next, and you can only get a pass in the first three. HMRC has engineered its CEST tool to only pass contractors in cases of absolute certainty. If you don't provide specific answers to particular questions, you won't get a pass. HMRC may be trying to enforce its own flawed take on employment case law with its tool, but a pass can still be achieved.

Note 1: Substitution

If substitution is valid, no further questions are asked. This over reliance on substitution is often overruled by the courts. See MDCM Ltd (Feb 2018). Contractors suffering from wishful thinking may find their client refutes the right to substitution, and will need to rely upon other factors - none of which will have been questioned or established if they have used CEST.

Note 2: Control

To guarantee a pass you must confirm the following:

- That any change in 'task' throughout the contract would need to be arranged under a new contract
- That the client cannot provide input as to how work is carried out
- That where you carry your work out is determined either by yourself or the task itself, not the client

When asked about hours you must answer either "No – the worker decides their own schedule" or "Not applicable – no schedule is needed as long as the worker meets any agreed deadlines".

In most cases this isn't realistic. A contractor will typically agree a schedule of flexibility with their client, and often remain outside of IR35 according to case law. But reveal this to HMRC and you won't get the 'pass'.

Note 3: Financial Risk

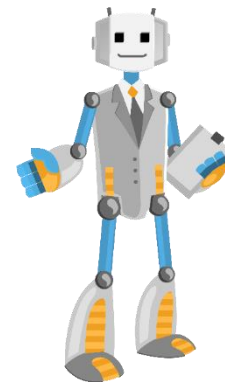
If you're a contractor on a daily or hourly rate – as the vast majority are - the only way you'll achieve an IR35 pass is if you either:

- Claim a significant amount in expenses, or
- Incur significant costs to rectify errors

Financial risk is a relatively minor factor and most contractors are unlikely to obtain a pass since most don't incur significant costs rectifying errors.

⚠️ CEST WARNINGS

1. CEST only issues passes considering one area of status in isolation. This is contrary to the big picture approach used by the courts, and stems from Hall v Lorimer [1993] EWCA Civ 25.
2. Passes are issued prematurely, failing to ask an exhaustive list questions for due diligence.
3. The key test of mutuality of obligation (MOO) is omitted, wrongly assuming it exists for all contractors.
4. There is nothing in law (statute) that says HMRC or a judge has to agree with the result of CEST.
5. HMRC have claimed they will "stand by" CEST, but have no legal authority to do so. Their view is weakened by heavy caveats enabling them to break that promise with ease.
6. Investigations revealed that HMRC holds no evidence to prove that CEST is accurate, and it has been widely criticised by experts, including a QC at a select commons committee.



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