

Contractors can use HMRC's employment status resources to help with IR35 status

Contractors seeking a greater understanding of the process by which HMRC determines whether a contractor is a disguised employee and therefore caught by **IR35** can use the resources available in HMRC's online **Employment Status Manual**. This is the guidance used by HMRC's own compliance officers.

Although no substitute for the **services of an independent expert in IR35** and employment law, HMRC's online guidance can provide valuable insights for contractors wishing to ensure they do not fail self-employment tests and get classed as an employee for tax purposes.

In addition, contractors can test how HMRC might view their individual circumstances by working through the online interactive **Employment Status Indicator**, which provides a top-line snapshot of a contractor's employment status.

Employment tests based on legislation and case law

Because self-employed workers – be they sole traders, in partnerships or directors and shareholders of their own limited companies – generally pay less tax in exchange for the greater risk they take for not being in employment, HMRC are keen to ensure that only those **genuinely in business on their own account** receive the commensurate tax savings.

As there are a great many more self-employed workers of all types other than contractors, HMRC's online Employment Status Manual provides resources to determine the employment status of all kinds of workers, not just contractors.

However, HMRC inspectors use the same tests for employment to determine whether a contractor is caught by IR35 as used for broader employment status. This relies on the same legislation and **case law**, so the Employment Status Manual provides an invaluable reference source for contractors who want to know more.

IR35 resources

The section of the Employment Status Manual specifically for use by HMRC compliance officers to enforce IR35, also known as the 'intermediaries legislation', is found in section **ESM3000**.

Contractors can view HMRC guidance on the **basic principles of the IR35 legislation**, such as liability, deemed payment, plus various tax and National Insurance rules. There is also a revealing section on 'opinions on contracts', which includes case studies, as well as letter templates for HMRC inspectors to use when informing contractors of their findings.

The final main section, 'considering the evidence' explains how HMRC inspectors can apply the relevant tax legislation and tests of employment to determine the employment and IR35 status of a contractor.

Employment test case law and updates

The UK legal system is based on common law and precedent, which means that the results of past legal cases and the decisions of judges have a bearing on determining the outcome of current and future cases.

This is also true of tax and employment law, where case law is widely used in the process of determining whether a contractor is a **disguised employee** or genuinely self-employed. The Employment Status Manual includes an extensive reference section of **relevant case law summaries**.

Case law is a moving feast and is continually changing as decisions are reached in court or in tax tribunals. HMRC keeps the case law section of the manual up-to-date by **adding the results of recent cases**, in particular test cases that reinforce or change a point of law, and providing commentary on how the decision will be relevant to future and ongoing cases.

This section is an invaluable resource for contractors seeking to understand how the legislative framework is changing. It includes updates detailing the impact that cases such as Larkstar and Dragonfly have had on how HMRC and the courts determine a contractor's employment and IR35 status.

Employment Status Indicator

HMRC's online interactive Employment Status Indicator is designed to provide a top-line snapshot of a workers employment status based on a simplistic step-by-step online questionnaire. But because it is a tool for all workers, some of the responses can be ambiguous when applied to contractors.

Overall, however, the tool is a useful 'primer' to get contractors thinking about the kind of issues that will arise when undergoing an **HMRC IR35 investigation**.

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The manual and indicator supplied online should be used with caution, though. In particular, contractors are advised not to use the Employment Status Manual Employment Status Indicator to conduct a self-test they might hope to use in the future to defend against an HMRC investigation. There is no evidence that HMRC would accept using such 'do-it-yourself' tests as demonstrating reasonable care over employment status. Best practice is for contractors to always seek the opinion of an expert in IR35 and employment law, and to do so during negotiations, not after contracts or renewals have been agreed.

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