

## IR35Testing.co.uk vs HMRC ESS tool: How our tool can help PSBs beat IR35



Public sector bodies (PSBs) who assess IR35 status using [IR35Testing.co.uk](https://www.ir35testing.co.uk) stand a far better chance of keeping their contractors outside IR35 than they would if using HMRC's Employment Status Service (ESS) tool. The benefits of adopting this solution can be felt throughout the supply chain:

- **Public sector bodies:** retain the skills necessary to progress projects and maintain frontline services
- **Contractors:** continue to provide their services without risking excessive taxation
- **Agencies:** reduce tax reporting requirements and employers' National Insurance (NI) payments.

### Main differences: HMRC ESS tool and IR35Testing.co.uk

Beyond the fact that the objectives of our tool and HMRC's ESS tool are diametrically opposed, there are several other major differences that make ours a better solution for the public sector. These include:

- HMRC's attempt to achieve a binary outcome was always impossible - our tool displays IR35 risk on a 19-point scale
- HMRC's view of IR35 doesn't align with employment case law – ours does
- HMRC's objective is to maximise tax yield - we want to help contractors secure an accurate assessment of IR35 status, and help them stay outside IR35.
- HMRC's tool is widely considered by experts to be inaccurate - and isn't trusted by agencies. Ours predicts the same results as ALL the existing IR35 court cases.
- HMRC's claim to stand by their result comes with caveats making the promise wafer thin. Ours is underwritten by insurers who will take on the tax liability.

We do have one thing in common: **We are both free, and both deliver the results of the IR35 review instantly, within minutes.**

Here's how our tool can help beat the compliance nightmare that is the public sector IR35 reforms.

## HMRC ESS tool. It came, it tested, it sank

HMRC's tool is now widely accepted to be unreliable. HMRC still claim it is inaccurate despite objective factual evidence that demonstrates that it cannot give the same results as actual court cases.

This isn't surprising. The recently released [Employment Status Review](#) acknowledged the complexity of building online tools to assess employment status, estimating that an accurate tool would take five years to develop. However, HMRC has attempted to achieve this in less than a year, having begun development very late after the March 2016 announcement of the IR35 reforms.

Not only were they never going to build anything remotely accurate in such a short timescale, their goal of delivering 100% certainty and binary results was impossible to achieve.

Based on our experience, this timeframe was far too short to develop an accurate tool that could identify anything other than the easy-outliers, but they don't appear to have even achieved that.

We now know from extensive feedback from users and our own analysis that HMRC's tool is woefully inaccurate. For starters, it doesn't predict the same results as the actual 21 IR35 court cases. It also seems that around 25% of contractors, many of whom are clear passes, are given "Unknown". It makes sense to have an unknown section, but their unknown results don't appear to be grouped around one area - they are scattered across the whole pass/fail spectrum. Are they rolling a dice?

We are also seeing around 30% of blatantly IR35-failing contractors being told that IR35 does not apply to them. Whilst this sounds great for contractors, the fact is, agencies and providers discovered this very early on and have lost complete faith in the HMRC tool. This has fueled the panic and motivated many to simply implement blanket bans on PSC contractors.

The original goals of providing accuracy and certainty simply have not been met.

## IR35Testing.co.uk - the 7 year journey

We have had a seven year head start on HMRC, having first introduced our online IR35 test in 2009. Since then, our tool has been used more than 100,000 times and has been enhanced based on a unique blend of experience, drawing upon:

1. 17 years practical understanding of IR35 that has seen us consult with the Treasury and HMRC
2. 30 years commercial programming and software development expertise
3. Regular collaboration with IR35 and employment case law experts

During this time we have updated and expanded our tool to maintain accuracy and ensure a thorough understanding of the contractor-client relationship:

1. Our set of questions has increased to 101 – almost double that of the HMRC ESS
2. Answers are analysed using a sophisticated artificial intelligent system
3. The AI system paints-a-picture from the answers and uses a stand back approach to consider the whole (as directed by Hall versus Lorimer, 1993)
4. Our tool accurately predicts the same results as all 21 IR35 court cases
5. Tax liability insurance is accessible for contractors/agencies if a pass result is achieved.

## 30 page analysis report - providing evidence and guidance

After taking our test, each contractor can obtain a 30 page IR35 Test Report.

If they have failed, the Report will suggest what can be done to increase the likelihood of achieving a pass.

If the contractor has passed, they will receive a certificate along with tailored expert analysis and a sign-off sheet for the client to complete. This ensures that they are meeting the requirement to prove that reasonable care has been taken when establishing their IR35 status.

## Why have HMRC made such a mess with their Employment Status Service (ESS)?

HMRC have demonstrated that it doesn't understand the employment case law that underpins IR35. For example:

- HMRC has publicly stated that it believes two people doing the same job should be taxed the same
- This is not the law, neither is it what IR35 is about
- IR35 is concerned with the working relationship between the worker and hirer, not the nature of the work itself.

If you were an IR35 tax expert reading the latest set of questions in the HMRC ESS tool, you would see that there are many that have no precedence in case law, whilst other important areas of case law are not addressed at all.

If you downloaded the publicly accessible code and reverse engineered the decision logic, you would also discover that the weightings do not align with the advice given by judges in hundreds of historic court cases. You would also see that the underlying structure of the decision engine doesn't model how a judge would consider a case. They are miles away from developing an accurate tool.

The taxman has based the development of the ESS on fundamental misunderstandings.

## Why IR35 status needs to be displayed on a spectrum

The HMRC ESS tool aimed to provide upfront certainty over IR35 status in 90% of cases. This means telling a contractor outright whether they have passed or failed. In reality they have 25% in an unknown category and 30% passing when they should in fact fail. They are either getting it wrong or providing uncertainty over half the time.

For something as subjective as IR35, a binary solution simply isn't possible. This is why our tool presents a contractor's level of IR35 risk on a 19-point spectrum, where a contractor can receive anything from a strong pass to a strong fail. This is the only way to accurately present a contractor's IR35 status.

## How can you keep your contractors outside IR35?

Our solution helps contractors stay outside IR35. The detailed 30 page test report that contractors have the option to buy after taking the test provides valuable observations that the contractor and PSB can act upon. Key features and benefits include:

- Tailored observations that indicate how contractors can reduce their IR35 risk
- Answer commentary that informs contractors of the impact of their answers on their IR35 status
- Contractors and PSBs can use this information to genuinely adjust working practices and mitigate IR35 risk
- Contractors who pass also receive a test certificate and client sign-off sheet which can be used to demonstrate to HMRC that reasonable care has been taken
- The test result is underwritten by insurers, offering complete protection to all parties involved.

## Retaining your contractors' valuable skills

Whether your organisation engages ten contractors or 10,000 contractors, our free-to-access, fully-automated solution can provide you with what we believe to be the most accurate IR35 evaluation available.

Ensuring your contractors are able to trade outside IR35 is vital to keeping them in the public sector and continuing to provide the essential skills you need to maintain public services.

[IR35Testing.co.uk](https://IR35Testing.co.uk) provides the best chance of you doing exactly that. If you would like to know more, please [contact the team](#).

Published: Friday, March 17, 2017

*100,000+ monthly unique visitors*

© Copyright 2017 Byte-Vision Limited UK. All rights reserved [Copyright notice](#)