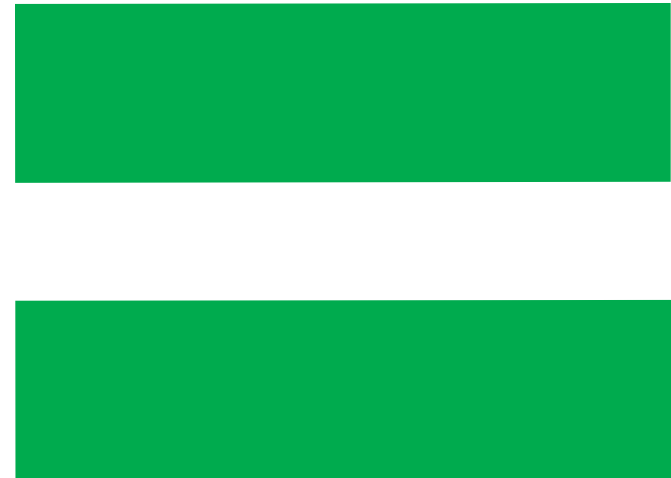


Employment Status: How to achieve self employment


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17 September 2015



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'income'	Self	Employee	Risk
5,000	0	0	0
25,000	1670	4363	2693
50,000	3387	10051	6664
100,000	4387	17951	13564

Indemnity, costs, penalties, reputation



Condoc Proposal 2013 but likely 2016



LLP changes 2014

IR35 changes 2016

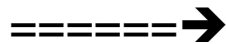
5.11 The Government believes that the following three criteria meet those requirements and are reliable indicators, within the context of the construction industry, of a worker being in receipt of self-employment income:

1. Provision of plant and equipment – that a person provides the plant and equipment required for the job they have been engaged to carry out. This will exclude the tools of the trade which it is normal and traditional in the industry for individuals to provide for themselves to do their job;
2. Provision of all materials – that a person provides all materials required to complete a job; or
3. Provision of other workers – that a person provides other workers to carry out operations under the contract and is responsible for paying them.

Individual – self employed

Service Company

S34 ITOIA



Glasses
Free Parking
Childcare Vouchers
Pension scheme
CPD training
Money Box excess P
Mobile Phone(s)
V low emission car
£150 Financial Advice
Events £150
Relocation £8000
Family



Practical considerations

- Individuals can arrange by contract
- Employers or intermediaries carry the risk?
- Practice is to gather evidence and this may involve interviewing the contractor. The HMRC approach the end users and obtain written or oral 'evidence' which often appears to support their case against the contractor.
- Research legal precedent
- Employment Law cases helpful
- Balance the Brief – anticipate HMRC arguments
- Think of the bigger picture including profit, computation, NIC, VAT and CTA10/S455



Status

- Matter of contractual arrangement
- NIC loss estimated at £2bn for incorrect status
- Certainty is achievable
- Mutuality of Obligation
- Substitution
- Working pattern
- Control
- Mixed status possible



Mixed Status

Sidwick & Matthews

Davies –v- Braithwaite 1933 18 TC 198

B J Kent v HMRC 2010 UK FTT 358

CIR v Brander & Cruickshank 46 TC 574

McManus v Griffiths [1997] BTC 412,

Mohinder Singh v Revenue & Customs [2011] UKFTT 707

Dr Amir Ali **Majid** v Revenue & Customs

[2012] UKFTT 144

Mr T **Coffey** t/a **Coffey** Builders

Dr M Selvarajan v Revenue & Customs 2012] UKFTT 193



Status : risk areas

This contract needs
careful consideration

- CIS
- IT Systems
- IT Programmers
- Consultants
- Locums and dentists
- Carpet fitters
- Entertainment
- TV Camera operators
- Journalists
- Lorry & delivery drivers
- Agricultural workers
- 'Casual' workers

3.2 Table of indicators for status resolution

- McMenamin v Diggles 1991 BTC 298
- Carmichael & Another v National Power plc [7200] [1999] 1 WLR 2042
- Express and Echo Publications Ltd v Tanton [7210] [1999] IRLR 367
- (1) MacFarlane & (2) Skivington v Glasgow City Council [7220] EAT/1277/99
- Nethermere (St Neots) Ltd v Gardiner and Taverna [7110] [1984] IRLR 240



Recent Status and IR 35

- Paul Anthony Bell v Revenue & Customs [2011] UKFTT 379 – SE bricklayer
- Autoclenz Ltd v Belcher & Others [2011] UK SC 41, car cleaners EE
- TV Services Ltd v Revenue & Customs [2010] UKFTT 586 (TC) TV actors EE
- Tiffin v Lester Aldridge LLP 2010 UKEAT 0255 – salaried partner SE



Recent Status and IR 35

- Primary Path Ltd v Revenue & Customs [2011] UK FTT 454 –IT expert SE
- Marlen Ltd v Revenue & Customs [2011] UK FTT 411 – designer SE
- E C R Consulting Ltd v Revenue & Customs [2011] UKFTT 313 – IT consultant & agency
- Brian Turnbull v Revenue & Customs [2011] UKFTT 388 – lorry driver SE
- MDF design Ltd v R&C – IR 35 did not apply



Recent Developments

- IR 35 cases
 - Novasoft
 - Fitzpatrick
- Status
 - CIS
 - ITV actors
 - Case law precedent
 - Eric Newman Developments Ltd v Revenue & Customs [2012] UKFTT 111
- Economic driver often NIC

The Future ?

£2bn



HMRC Business entity guidance 6-12 tests

Business premises (10). Does the business own or rent business premises which are separate both from your home and from the end client's premises?

Professional Indemnity Insurance (2). Does the business need professional indemnity insurance?

Efficiency (10). Has the business had the opportunity in the last 24 months to increase business income by working more efficiently?

Assistance (35). Does the business engage any workers who bring in at least 25% of the yearly turnover?

Advertising (2). Has the business spent over £1,200 on advertising in the last 12 months?

Previous PAYE (Minus 15). Has the current end client engaged the worker on PAYE employment terms within the 12 months which ended on the last 31 March with no major changes to the working arrangements?



HMRC business entity tests 7-12

Business plan (1). Does the business have a business plan with a cash flow forecast which is updated regularly? Does the business have a business bank account, identified as such by the bank, which is separate from the personal account?

Repair at own expense (4). Would the business have to bear the cost of having to put right any mistakes?

Client risk (10). Has your business been unable to recover payment for work done in the last 24 months (more than 10% of yearly turnover)?

Billing (2). Does the business invoice for work carried out before being paid and negotiate payment terms?

Right of substitution (2). Does the business have the right to send a substitute?

Actual substitution (20). Has there been an example of actual substitution?



Reasonable Care Conclusions

- VERY IMPORTANT! If it can be shown than the taxpayer took reasonable care then there is no penalty due.
- Doubtful cases document ESI and reasons for conclusion
- IMPORTANT that there is a clear audit trail
- Leave big FOOTPRINTS!!!
- Toolkits are voluntary

True Legal Position

Note how HMRC's 'helpful' tests do not coincide (See red emphasis)

1. Extent and degree of **control** exercise by the client over the worker
2. The worker's right to engage **helpers or substitutes**
- 3. Mutuality of obligations** between the worker and the client
4. Financial risk of the worker
5. Provision of equipment
6. Basis of payment of the worker
7. Personal factors
8. The existence of employee rights
9. Termination of the contract
10. Whether the worker was part and parcel of the client's organisation
11. Exclusive services
12. Mutual intention



Thank you

Any Questions?

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