



**HM Revenue
& Customs**

Employment Status & Office Holders

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Who am I?

Employment Status and Intermediaries

I am a senior technical expert within Employment Status and Intermediaries

We are HMRC's response to non-compliance related to status, IR35 and Employment Intermediaries.

We conduct compliance checks into entities who we are concerned are not getting things right, and recover any unpaid duties.

We also look at ways to help people get it right in the first place!

Consequence of a Compliance Check

Status checks can be time consuming and costly:

- Cost of your time spent on the check
- Cost of tax advice
- Employer's NIC charge (approx. 13.8% of the payments)
- Employee's NIC charge (approx. 12%)
- Income tax charge (variable depending on set-offs)
- Penalties (up to 100% of the amounts above)
- Cost of litigation
- Mental stress of dealing with all of the above!

The effect of a check can be reduced by getting it right in the beginning.

What is Employment Status?



What is Employment Status?

Should someone be taxed as an employee or as self-employed?

You cannot choose to be self-employed – the facts **must** support it.

We use indicators to ascertain status – Control, Financial Risk, Right of Substitution etc.

Not just what a contract says – must consider how things happen in reality as well.

A complex area of tax:

“if we did manage to ‘solve it’, we should immediately move on to world peace as we’d clearly be on a roll.” – Office of Tax Simplification

Status – Why does it Matter?

If an organisation engages someone to do a job and pays them directly they **must** consider status.

Organisation has to consider the work being done and decide if this should be treated as employed, and operate PAYE if it is.

The engager will in most cases have responsibility for any non-operation of PAYE.

CEST

HMRC offers the Check Employment Status for Tax tool – CEST.

An online tool which can be used by engagers or workers and asks questions about the work.

CEST usually gives a clear decision.

HMRC will stand by the CEST result **if** the information provided to CEST was accurate.

Office Holders



Office Holders – What is an Office?

An “Office” is a position which has a lasting existence independent of the person who filled it

For example:

- Company Director
- Clergyman
- Coroner

The person may come and go, but the role remains.

The person who holds the office is always treated as an employee for tax purposes – regardless of any other status tests.

Is it an Office?

An Office has an existence separate from any person.

Things to look for:

- The post is established by an organisation's charter or constitution (e.g. presidents, board members).
- The post is defined by statute (e.g. company director, coroner).

The engager must operate PAYE on payments to the holder of an office, and is responsible for any unpaid duties.

No get outs – even if the wider status test would come out as “self employed”, being an office holder takes precedence.

Office Holders – Compliance

We perform enquiries to check entities are getting it right, and will challenge arrangements which do not implement office holder taxation correctly. For example:

- Office holders being paid as self-employed.
- A mixture of a small salary and a large “consultancy” amount.

Remember – no other status indicators are relevant. Office Holders’s are always treated as employees!

IR35 and Off-Payroll Reforms

Some engagements may be via a worker's Limited Company

These will fall under IR35 and/or the Off-Payroll Rules.

This is its own complex subject which cannot be covered in depth here today – please contact HMRC's IR35 Helpline if you need specific advice on situations involving paying a Limited Company.

For further details:

- visit GOV.UK website
- email us at ir35@hmrc.gov.uk
- telephone us on 0300 123 2326
- fax us on 03000 533 124

Resources

GOV. UK is a good source of information and contains links to :

- The **Employment Status Manual** - <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual>
- **CEST** (Check Employment Status Tool) - <https://www.gov.uk/guidance/check-employment-status-for-tax>
- IR35 and Off Payroll Information - <https://www.gov.uk/topic/business-tax/ir35>
- Contact us about IR35 - <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/ir35-enquiries>