

## New UK Her Majesty's Revenue and Customs IR35 Status Tool Reviewed

Article By:

Patrick Ford

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Last week **HMRC** launched an online tool to help decide whether an individual is employed or self-employed for tax purposes (not whether he is a “worker” for employment status purposes, which is a separate question which HMRC isn’t bothered about). The tool is here [online tool](#). You answer some questions, turn a metaphorical handle and out comes a view (NB, not a decision – see below). I have had a look, so here is what I think:

The tool is simplistic as would be expected, but it is just about usable. I think the main difficulty will come where the answer to one or more questions is not completely clear cut – it will then be difficult to know whether the result can be relied upon. I suppose the advice could be to err on the side of caution when answering the questions, particularly if the result still comes up “self-employment”.

The tool does seem to leave it open for a patient individual, business or adviser to find out the minimum requirements for self-employment. For example, if one set of answers produces “employment” but the same set of answers with a right of substitution included produces “self-employment”, the business knows that it can fall the right side of the line by adding a right of substitution. The tool says that it cannot be relied upon re contrived arrangements that are “*developed to get a particular answer*”. However, in this example if the right of substitution which is included is genuine and operable in practice then query whether it would be such a contrived arrangement as it is normal to take steps to structure arrangements as self-employment where the commercialities allow it. Pretty much all commercial contracts are “*developed to get a particular answer*”, so that can’t actually be the test – as always, the issue will be whether the inputs into the online tool reflect the practical reality of how the arrangement operates.

Another question is whether HMRC will notify any changes that are made to the tool in terms of the questions or the algorithms. Businesses may use the tool a few times and get an understanding of what falls on the right side of the line. The danger is that the tool is amended without their knowing and they are then potentially proceeding on what might be incorrect advice (at least in HMRC’s eyes) unless they check on the tool every time.

Last, because these issues are so very fact-dependant, and the tool is (necessarily) rather a blunt instrument, an outcome from it can never be more than persuasive. It is not a decision binding on the Employment Tribunal, HMRC, the “employer” or even the “employee” himself. For a business to

rely on it without separate legal and/or accounting verification of status may be a risk best left untaken, especially as initial trials suggest a somewhat looser connection with recent case decisions than is really desirable. One contractor portal, ContractorCalculator, claims it has inputted the facts from 21 decided cases around employment status. In over 25% of those the tool produced the result “unknown” (i.e. it couldn’t decide) and 10% were found to be self-employed contractors despite the actual case having gone the other way. It also found that contractors who were “significantly controlled” tended to be deemed as genuinely self-employed despite case law pointing to the contrary. ContractorCalculator’s CEO has dismissed the HMRC tool as “*nowhere near fit for purpose*”, a charge HMRC refutes: “*None of these claims is correct*”, it says. “*The tool is working correctly and has been extensively tested. We welcome feedback from users*”, though clearly not if it is in any way critical.

The other big problem with any box-tick tools of this sort is that the given answer may depend on nuances of opinion as between contractor and end-user as to the extent of control, rights to substitute (in practice as well as on paper), etc., and therefore that two parties entering their views of the same contractual arrangement may well come up with different answers.

This particular tool “works” for IR35 tax purposes only and so cannot be relied upon to determine status for employment rights questions, though we understand that something similar may be under consideration by the Taylor Review on employment status. Let us hope that that one gets off to a better start!

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