

Employment Status and Payment for Services Guidance

Issued by:	Finance/Human Resources
Effective from:	April 2021
Reviewed:	Annually

St George's University of London

Employment Status and Payment for Services Guidance

Introduction

The document sets out how St Georges, University of London (SGUL) engages individuals to carry out the work of the Institution. It provides details of how to classify the employment/engagement relationship, and the consequences for the payment of tax and national insurance in accordance with statutory regulations.

It is important to determine correctly whether individuals engaged by SGUL may be paid against invoices (self-employment or outside IR35) or must be paid through payroll (employment or inside IR35)

Purpose

- to define SGUL procedures for establishing the employment status of individuals
- to identify the factors which influence the decision on employment status
- these guidelines apply to Limited Companies, Sole Traders and individuals providing a service (s) outside of the normal recruitment procedures.

Who needs to read this guidance?

Anyone involved in any of the stages of hiring someone for any kind of service(s) (outside of the normal recruitment procedures). Finance, Procurement and HR Staff.

Principles of Engaging People

SGUL's preferred method of engaging people is via direct employment, subject to PAYE tax arrangements. This approach reflects strategic needs of the organisation such as student experience, HESA submission and managerial control of activities, coupled with our obligation under HMRC regulations.

Where SGUL does not engage an individual directly as an employee, serious consideration must be given to compliance with HMRC tax regulations and SGUL's own governance framework of Financial Regulations, alongside operational priorities such as value for money and managerial control.

Employment Status

A worker's employment status is not a matter of choice. Whether someone is employed, self-employed, inside IR35 or outside IR35 depends upon the terms and conditions of the relevant engagement.

It is the responsibility of the engaging manager to gather the information required to ensure that SGUL complies with legislation. This is an ongoing responsibility as the employment relationship between SGUL and the individual may change over time.

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Contractors

In the case of arrangements styled as consultancies or self-employed, it is essential to assess employment status for tax purposes prior to any contract being signed and any payment becoming due.

Consultant and self-employed are both terms that are applied quite loosely, but in all cases the key to correct treatment for tax purposes is not what they are called but the nature of the service or services they provide. This can differ significantly from one job to another, even for the same individual. A person can be self-employed in respect of the work done for one organisation, but employed (for tax purposes) for work done for another. It is necessary, therefore, to consider each job or contract in its own right.

Personal Service Companies/ IR35 Legislation

IR35 legislation aims to tax disguised employees who are working through their own personal service companies and using the tax benefits that are available, but who are in reality working in a similar manner to that of other employees.

From April 2017 the government reformed these rules for public sector engagements and will affect all payments made on or after 6th April 2017 regardless of when the work was performed and subsequently made further changes from April 2021.

Responsibility for determining the individual's status for the personal service company lies with the employer. If the IR35 rules (intermediaries legislation) do apply, then under these rules the employer or agency will have to account for income tax and national insurance contributions. The contracting party closest to the IR35 company will be required to do this.

Risks

Payments to individuals who are self-employed, outside of IR35 are taxed differently from those made through the payroll. HMRC will often check to see whether individuals have been correctly treated as being self-employed, outside of IR35

Failure to comply with HMRC rules will result in SGUL suffering significant penalties. This would typically include SGUL having to pay the individual's tax which should have been deducted through the payroll, employers national insurance, apprenticeship levy costs, interest on the total amount which should have been deducted, and a 30% additional penalty.

On a single year, earnings of £26,000 could mean an additional payment of £13,501.

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Engagement Process

Please ensure that the Resourcing Review Committee/Human Resources/Finance has approved the engagement of services before proceeding.

Introduction

To ensure SGUL is compliant with HMRC regulations it is important that the following procedure is adhered to at all times and that we use the Check Employment Status for Tax tool (CEST) which has been issued by HMRC and is available on their website by clicking on the following link:

<https://www.gov.uk/guidance/check-employment-status-for-tax>

The CEST tool enables us to check the employment status of an individual and personal service companies to see if they are employed or self-employed for tax, national insurance purposes and if the intermediaries legislation applies or not.

The CEST Tool

The tool will ask a series of questions about the working relationship between the worker and the engager. When you have answered all the questions, the CEST tool will provide an indication of the worker's employment status. You can rely on the CEST tool outcome as evidence of a worker's status for tax, national insurance and VAT purposes if both of the following apply:

- Your answers to the CEST questions accurately reflect the terms and conditions under which the worker provides their services.
- The CEST has been completed by an engager or their authorised representative (if a worker completes the CEST tool the result is only indicative and cannot be used for business use)

HMRC will only be bound by the CEST tool outcome if the following can be produced

- the CEST tool result screen
- the Enquiry Details screen showing your replies to the questions asked
- reasonable care has been taken when completing the CEST tool questions and reflects the engagement correctly.

You will need to complete the name of the engager completing the tool along with the worker's name/company before saving as a pdf version.

Conditions of Use

Employment status is determined by the contractual terms of an engagement. Normally, this will be the written agreement between the parties. However, where the written document does not represent the whole bargain, or where the terms have been varied either by express agreement or by practice, or where there is no written agreement, then the information entered into the CEST tool may reflect the terms of the contract, what the parties carry out in practice, or a combination of both.

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The information you provide should, to your knowledge, accurately reflect the working arrangements. HMRC routinely carries out compliance activities. In the course of these activities, they will check that the working arrangements reflect the information provided. Please submit a separate CEST tool enquiry for each individual worker.

Employed or Self-Employed/ Inside or Outside of IR35

In order to answer this question, it is necessary to determine whether the person works under a contract of service (employees) or under a contract for services (self-employed, independent contractor). For tax and NICs purposes, there is no statutory definition of a contract of service or of a contract for services. What the parties call their relationship, or what they consider it to be, is not conclusive. It is the reality of the relationship that matters.

In order to determine the nature of a contract, it is necessary to apply common law principles. The courts have, over the years, laid down some factors and tests that are relevant, which is included in the overview below.

As a general guide as to whether a worker is an employee or self-employed, if the answer is 'Yes' to all of the following questions, then the worker is probably an employee/inside IR35:

- Do they have to do the work themselves?
- Can someone tell them at any time what to do, where to carry out the work or when and how to do it?
- Can they work a set number of hours?
- Can someone move them from task to task?
- Are they paid by the hour, week, or month?
- Can they get overtime pay or bonus payment?

If the answer is 'Yes' to all of the following questions, it will usually mean that the worker is self-employed/outside of IR35:

- Can they hire someone to do the work or engage helpers at their own expense?
- Do they risk their own money?
- Do they provide the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?
- Do they agree to do a job for a fixed price regardless of how long the job may take?
- Can they decide what work to do, how and when to do the work and where to provide the services?
- Do they regularly work for a number of different people?
- Do they have to correct unsatisfactory work in their own time and at their own expense?

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Remember just because a worker is self-employed in one job, this does not necessarily mean they will be self-employed in another job. Equally, if a worker is employed in one job, they could be self-employed in another.

When to use and when not to use the CEST tool

DO NOT USE IF

- the individual has already been identified as employed under a contract of employment
- is already on the payroll system
- the payment is for travelling expenses only
- the individual is a student
- they are an actor as HMRC have already identified these individuals as self-employed
- they are offering services of lecturing, teaching, examining, tutoring, demonstrating or delivering any part of the core curriculum as these payments should always be paid through the payroll and subject to PAYE.

DO USE IF

- a payment for work is due and does not fit in the "Do Not Use" section. i.e. casuals/one offs
- services from companies are used, but payment is made to an individual or personal services company

Establishing Employment Status

Once you have established what individuals that this relates to, you will need to use the CEST tool

<https://www.gov.uk/guidance/check-employment-status-for-tax>

Personal Service Companies/IR35 Legislation

If the worker provides their services through a limited company, partnership or unincorporated association then you will need to follow the relevant process on the CEST tool.

Process

1. Click on the above link or enter the above URL on your browser to access the CEST tool.
2. Click on "If the off-payroll working rules (IR35) apply to a contract", under the page "What do you want to find out?" and click continue
3. Under the "Who are you?" click "Hirer" and click continue

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4. As this tool is for limited companies, partnership or unincorporated associations, you will need to click "Yes", if this does not apply you will need to go back and follow the employed/Self Employed instructions (see below)
5. Complete the questionnaire as per the tool questions and once completed the tool will display the results. The number of questions you have to answer vary depending on the information you input to other questions.
6. Email the pdf results to payroll@sgul.ac.uk, ensuring the name of the company/person is on the form along with the person's name completing the CEST tool.
7. Payroll will then send the relevant forms required depending on the results submitted
8. A Status Determination Statement and the reasons will be passed to the worker and organisation in accordance with the April 2021 legislation.

Employed/Self Employed

Process

1. Click on the above link or enter the above URL on your browser to access the CEST tool.
2. Click on "If some work is classed as employment or self-employment for tax purposes", under the page "What do you want to find out?" and click continue
3. Under the "Who are you?" click "Hirer" and click continue
4. As this tool is for individuals/sole traders and not PSC or partnership, you will need to click "No"
5. Complete the questionnaire as per the tool questions and once completed the tool will display the results. The number of questions you have to answer vary depending on the information you input to other questions.
6. Email the pdf results to payroll@sgul.ac.uk, ensuring the name of the company/person is on the form along with the person's name completing the CEST tool.
7. Payroll will then send the relevant forms required depending on the results submitted
8. A Status Determination Statement and the reasons will be passed to the worker in accordance with the April 2021 legislation.

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Determination Status and Process

1. A copy of the determination and the reasons for the result must be passed to the individual prior to the engagement starting,
2. Detailed records of the determination and the fees paid must be kept within payroll
3. Should the worker or agency disagree with the determination then they must inform payroll immediately, stating and providing reasons why they disagree with the determination result.
4. Payroll will consider the reasons for the disagreement and the original determination will remain in place whilst the disagreement is being reviewed.
5. Payroll will decide whether to maintain the original determination or supply a new determination
6. Payroll will respond within 45 calendar days of receiving the notification of the disagreement and inform the individual accordingly.

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There are two outcomes and this will determine the way the individual will be paid.

Outcome 1: Self-employed/Off-payroll working rules (IR35) do not apply

CEST tool result details

'Off-payroll working rules do not apply to this engagement' or

'This engagement should be classed as self-employed for tax purpose'

The documentation required will be a New Supplier Request Form and a personal detail form which will need to be completed by the engager and the individual/personal service company as appropriate. A copy of the individual's passport should be supplied which will need to be certified by the engager as a true copy.

These payments will be paid via Accounts Payable and will not be subject to PAYE.

Outcome 2: Employed/Off-payroll working rules (IR35) do apply

CEST tool result details

'Off-payroll working rules applies to this engagement' or

'This engagement should be classed as employed for tax purposes'

The individual/personal service company will be required to complete a personal details form, a HMRC starter's checklist and supply a copy of the individual's passport and visa documentation if applicable as evidence of right to work in the UK. The copy passport must be signed as evidence that it has been seen.

These payments will be paid via Payroll and will be subject to PAYE for tax purposes.

Payment Process

On receipt of all the correct information, payroll will action as follows:

Outcome 1: Self-employed/outside IR35

The individual/personal service company details will be held in payroll which will be used to report the names and payments made to HMRC on an annual basis in accordance with Schedule 23 Finance act 2011.

The New Supplier Request Form will be sent to Procurement who will then set up a new supplier on the Agresso system following authorisation from payroll

Once this has been completed, the engager will then be able to raise a PO for the payments that will be required in the future for this supplier.

Should the individual/personal service company remain at SGUL but work under a different contract, then you will need to repeat the CEST tool.

If further work is undertaken without the CEST tool being completed, and SGUL is fined by HMRC for being in breach of the IR35 regulations, any additional costs, including fines, will be borne by the Institute/Professional Services department for whom the work was undertaken.

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Option 2: Employed/inside IR35

The individual/personal service company details will be added to the HR/Payroll system.

Once the invoice has been authorised by the budget holder and received in payroll, it will process on the next available pay processing date i. 27th of each month.

This will continue for the duration of the contract for services. Once this contract has been completed the record will be terminated on the HR/Payroll system and a P45 will be issued and no further payments will be paid.

Should the individual/personal service company remain at SGUL but work under a different contract, then you will need to repeat the CEST tool.

Failure to comply

No payment will be paid under either variation until all required documentation is completed and received in full.