

CHECKLISTS FOR EMPLOYMENT, SELF-EMPLOYMENT AND PART-TIME EMPLOYMENT

For client businesses

Checklist A For client businesses

1. Are you a business or other legal entity? If so, read on. If not, see Checklist C below.
2. (a) Do you have a written contract with the individual worker (an "individual") i.e. not an incorporated entity or a partnership, in which they are described as an employee?
(b) Do you make payments to the individual after deduction of tax and NI?
(c) Do you make payments to the individual for any payment that you make to them?
If all answers are "Yes", it is likely that the individual is an "employee" for employment law and tax purposes. You should ensure that the individual is not treated as an employee in law but in order to have a better idea as to their position, see paragraphs 4 and 5 of Section A of the Guidance Note. If there is a possibility that they are instead "self-employed" in law, see Checklist B (PSCs).
If any of your answers is "No", it is likely that the individual is not an employee in law but in order to have a better idea as to their position, see paragraphs 4 and 5 of Section A of the Guidance Note. If there is a possibility that they are instead "self-employed" in law, see Checklist B (PSCs).
3. Does the individual work directly for you or through an intermediary entity is involved?
4. (a) Do you have a written contract with the individual which either does not describe your relationship as "employee" or "employment"?
(b) Do they invoice you for the work they do for you (or for the work they do for someone else)?
(c) Do you allow them to work for you wherever and whenever they want?
(d) Do you allow them to work for someone else to carry out any of the work?
If all answers to "4" are "Yes", it is likely that the individual is an "employee" for employment law and tax purposes. You should ensure that the individual is not treated as an employee in law but in order to have a better idea as to their position, see paragraphs 4 and 5 of Section A of the Guidance Note. If there is a possibility that they are instead "self-employed" in law, see Checklist B (PSCs).
5. If all answers to "4" are "Yes", it is likely that the individual is an "employee" for employment law and tax purposes. You should ensure that the individual is not treated as an employee in law but in order to have a better idea as to their position, see paragraphs 4 and 5 of Section A of the Guidance Note. If there is a possibility that they are instead "self-employed" in law, see Checklist B (PSCs).

Client businesses engaged through their PSC

Checklist B - Client dealing with PSCs

1. If your answer to number 3 is "Yes", does the individual work for you through an intermediary? If so, read on. If not, see Checklist A below.

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2. Is the intermediary an employment business, umbrella company or managed service company? If not sure, please seek advice as to what the entity is.

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3. Is there only one intermediary (an employment business or umbrella company), or is there more than one? A PSC (personal services company) is defined in Section B, paragraph 1 of the Guidance Note.

4. If the individual does work through an intermediary, do you make the PSC direct or via a third party? If "Yes", read on, and you will find out whether the IR35 rules apply to you or those rules: see the Guidance Note on the tests for when they apply.

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5. (a) Are you in the public sector? (b) Are you in the private sector? (See Section C, paragraph 1 of the Guidance Note as to "small" - "medium" or "large"? (i.e. not "small" - "medium" or "large" - "small").

If "Yes" to (a) or (b), read on to find out whether you are an "employee" for employment law purposes.

6. If you are within 5(a), you are an "employee" for employment law purposes, i.e. whether you are an "employee" for employment law purposes before paying the PSC. If you are not within 5(a), HMRC decides before then whether you are an "employee" for employment law purposes. If you are not an "employee" for employment law purposes, you are responsible for making that decision.

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7. If you are NOT within 5(a), you are not an "employee" for employment law purposes. You are legally responsible for deciding whether IR35 rules apply to require you to deduct tax and NI before paying the PSC.

For individual workers

Checklist C - Individual workers

1. Are you an individual (an "employee" for employment law purposes) or are you an incorporated entity such as a company or partnership? If you are an incorporated entity, you are not an "employee" for employment law purposes. You are responsible for making that decision.

2. (a) Do you have a written contract of employment or other entity under which you are described as being an "employee" for employment law purposes?

(b) Do you receive payment from the entity that you are an "employee" for employment law purposes? (deduction of tax and NI?)

(c) Do you receive payment from the entity that you are an "employee" for employment law purposes? (Are you responsible for any payment that you receive from the entity that you are an "employee" for employment law purposes?)

If all answers are "Yes", it is likely that you are an "employee" for employment law purposes. You are responsible for making that decision.

If any of your answers is "No", you are not an "employee" for employment law purposes. You are responsible for making that decision. If you are not an "employee" for employment law purposes, you are responsible for making that decision. If you are not an "employee" for employment law purposes, you are responsible for making that decision. If you are not an "employee" for employment law purposes, you are responsible for making that decision.

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the Guidance Note. If any of the above are "Yes", you are not an employee but instead "self-employed" in law.

There is a possibility that you are

3. Do you work directly for a client or through an intermediary entity is involved?

If "Yes", read on. If "No", i.e. an intermediary, read Checklist D (Intermediaries)

4. (a) Do you have a written contract that describes your relationship with the client as "employee" or "employee/contractor"?

client entity which either does not describe it in any way other than

(b) Do you invoice it in respect of the work you do for it (i.e. do you have a contract with it)?

give gross payments from it for the work you do for it (i.e. tax, NI or anything else)?

(c) Do you only receive payments from the client entity?

from it rather than any other

(d) Do you have any other work in the same period (week or month) that you would not expect to have if you were an employee?

work in the same period (week or month) that you would not expect to have if you were an employee?

5. If all answers to "4" are "Yes", you are an "employee" for employment law purposes. If any are "No", as to the likely position, see Section A of the Guidance Note.

employed" rather than an "employee" for employment law purposes. If any are "No", see Section A of the Guidance Note.

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Individual workers working through an intermediary

Intermediary

Checklist D - Individuals using an intermediary

1. If your answer to number 3 is "Yes", do you work through an intermediary? If "Yes" read on.

do you work through an intermediary?

2. Is the intermediary an employment business, umbrella company or managed service company? If not sure, check your status as a worker with HMRC. If "No", read on.

employment business, umbrella company or managed service company? If not sure, check your status as a worker with HMRC. If "No", read on.

3. Is the intermediary a PSC (Personal Service Company)? A PSC is defined in Section B, paragraphs 2 and 4 of the Guidance Note.

any)? A PSC is defined in Section B, paragraphs 2 and 4 of the Guidance Note.

4. Do you work for a particular client and receive gross payments either from that client or through the intermediary? If "Yes", you need to consider whether the client is an "employee" under those rules. If "No", the rules apply.

with the PSC receiving any gross payments either from that client or through the intermediary? If "Yes", you need to consider whether the client is an "employee" under those rules. If "No", the rules apply.

5. (a) Is your client in the "medium" or "large" category?

medium" or "large"? (i.e. not "small" - see the Guidance Note as to "small").

(b) Is your client in the "small" category? (See Section C, paragraph 1 of the Guidance Note)

If "Yes" to (a) or (b), read on.

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6. If your client is within 5(a), "employment", i.e. whether you are the employer before paying your PSC. If not, you are (unless HMG decides before 6 April 2021) be legally responsible for making the decision

regarding whether there is disguised employment. If you are required to deduct tax and NI from your client's payments, then from 6 April 2021 it will be your client's responsibility (unless such a change to the law), be

7. If your client is NOT within 5(a), you are responsible for deciding whether the IR35 rules apply to require it to deduct tax and NI

and your PSC are legally responsible for deciding whether IR35 applies to require it to deduct tax and NI from payments to your PSC.

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