

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 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 likely 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, read on.
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 likely 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, read on.
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 "employee"?
(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 wish?
(d) Do you allow them to work for you wherever and whenever they wish?
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 likely 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, read on. If "No", i.e. an individual which either does not describe them in any way other than "employee" or "employee", they are likely to be an employee in law but in order to have a better idea as to their likely 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, read on. If "No", i.e. an individual which either does not describe them in any way other than "employee" or "employee", they are likely to be an employee in law but in order to have a better idea as to their likely 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, read on.
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 likely 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, read on.

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.

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 do.

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").

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

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

7. If you are NOT within 5(a), you are an "employee" for employment 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 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 purposes. You are not legally responsible for making the decision.

2. (a) Do you have a written contract of employment or other written agreement under which you are described as being an "employee" for employment purposes? If not, are you an "employee" for employment purposes?

(b) Do you receive payment for services from the entity that is not subject to deduction of tax and NI?

(c) Do you receive payment for services from the entity that is not subject to deduction of tax and NI? If not, are you an "employee" for employment purposes?

If all answers are "Yes", it is likely that you are an "employee" for employment purposes. You are not legally responsible for making the decision.

If any of your answers is "No", you are not an "employee" for employment purposes. You are not legally responsible for making the decision. If you are not an "employee" for employment purposes, you are not an "employee" in law but in order to determine whether you are an "employee" for tax purposes, see paragraphs 4 and 5 of Section A of the Guidance Note.

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the Guidance Note. If any of the above apply, you are an employee instead “self-employed” in the Guidance Note.

there is a possibility that you are an employee.

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

If “Yes”, read on. If “No”, i.e. an employee, see Checklist D (Intermediaries)

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

client entity which either does not describe it in any way other than “employee” or “employee”.

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

Do you receive 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?

Do you receive payments from it rather than any other entity?

(d) Do you have any other work in the same period (week or month) that you work for the client?

Do you have any other work in the same period (week or month) that you work for the client?

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

“employee” rather than an “employee” for employment purposes. If any answer is “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 or through a particular intermediary? Do you receive gross payments either from that client or through that intermediary? If “Yes”, you need to consider whether you are an “employee” under those rules. If “No”, the rules apply.

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

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

(b) Is your client in the medium or large category? (See Section C, paragraph 2 of the Guidance Note as to “small”).

medium” or “large”? (i.e. not “small” - see Section C, paragraph 2 of the Guidance Note as to “small”).

If “Yes” to (a) or (b), read on.

Read on.

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6. If your client is within 5(a), "employment", i.e. whether before paying your PSC. If (unless HMG decides before legally responsible for making

deciding whether there is disguised require it to deduct tax and NI then from 6 April 2021 it will such a change to the law), be

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7. If your client is NOT within responsible for deciding whether rules apply to require it to deduct

and your PSC are legally "employment", i.e. whether IR35 paying your PSC.

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