

## **IR35 – Guidance on questions in HMRC Employment Status for Tax Tool**

The following guidance is designed to give some additional information on some of the questions contained in HMRC on-line Employment Status for Tax tool.

The IR35 determination is based on answers to a set out questions about:

- the people involved
- the worker's duties
- substitutes & helpers
- work arrangements
- the worker's financial risk
- the worker's integration into the organisation

The outcome of the test is either:

- The intermediaries legislation applies to this engagement
- The intermediaries legislation doesn't apply to this engagement
- We're unable to determine the tax status of this engagement

### **Questions**

#### **About the people involved**

**Question 1** - The first question that HMRC ask is who is undertaking the test, in this case you would answer it as the end client.

**Question 2** – This concerns whether the worker has already started the engagement for you as the end client. Answer yes or no for the piece of work you are testing.

**Question 3** – The questions now move onto the legal entity providing the worker. In order to complete this question you will need to understand from the supplier the legal entity that is going to supply the worker and invoice for the work. Choose from the list the appropriate legal entity.

#### **About the worker's duties**

**Question 4** - This question is around the role the worker would carry out and if it is classed as an "office holder". This is a yes or no answer. In most cases temporary workers will not be office holders. Some of the roles that include office holders include appointments under the internal constitution of an organisation, such as the Chair of the Adoption panel, Investigating Officers and Independent Persons. It also helps to think of them as effectively working as an independent office, not being paid as a temporary worker, and are not under the close supervision or control of the appointing body. Further guidance to help determine this can be found on the HMRC web-site.

If the worker (or their business) does perform office holder duties for the end client as part of this engagement the intermediaries legislation will apply. If they do not perform office holder duties a set of further questions will need to be answered to

enable a determination to be made. The questions asked from this point in the tool may vary depending on the answers given.

#### About substitutes and helpers

**Question 5** – The questions now move onto the concept of substitution. As part of the test, HMRC are trying to establish if “disguised employment” exists. In order to understand this, HMRC are interested in understanding if you will only accept a single named worker to carry out a role (likely to be disguised employment) or if you will accept equally skilled and qualified workers to carry out the role (likely to not be classed as disguised employment). This question asks if we, the end client, would accept the worker’s business sending someone else to do the work instead of the worker initially engaged to complete the work. It provides examples of what substitution means in the context of HMRC and the application of the legislation. Answer yes or no for the piece of work you are testing.

Please think and answer the question based upon what is likely to happen in practice on the ground. For example, if a company has been engaged to provide training, would you be comfortable with any suitably skilled and qualified person providing the training or would you only accept one named person providing the training? Try to put aside any personal preferences as to the person delivering the training and make a decision based upon what you would be comfortable with on the ground.

**Question 6** – If you would always accept a substitute, this question looks at who would pay the substitute. Answer yes or no for the piece of work you are testing.

#### Further questions

**Question 7 onwards** – Where the end client has the right to reject a substitute for any reason, or if a substitute is always accepted but the worker business does not pay them, the questions will move onto the work arrangements for this assignment, the workers financial risks and their integration into the business to enable a determination to be made as to whether the intermediaries legislation applies.