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IR35 Employment Status Considerations

The considerations provided below are not legislatively defined, but are instead based on significant case law surrounding employment status. It is important to note in using this document that one factor in isolation will not provide a definitive answer to an individual's employment status. Instead, the overall picture must be considered surrounding the individuals working practices and the formal contract. Please be aware that an individual's employment status is solely an opinion unless ruled by a court.

Substitution

Does the individual have to personally provide the services, or can they provide someone else to produce the service at their discretion?

Can the end client refuse a substitute on grounds other than that the substitute does not have the required experience / qualifications?

Control

Does the individual have the freedom to decide how, what, where and when they carry out the work?

Does the end client have a say in how, what where and when the individual carries out the work? i.e. they stipulate that the work must be completed in normal working hours, Monday to Friday between 9am and 5pm?

Is the individual ultimately under the supervision, direction and control ("SDC") of the end client?

Mutuality of Obligation

Is the individual obliged to accept work from their client?

Is the end client obliged to provide the individual with paid work?

Is there a notice period, contractual or implied?

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Number of Paymasters

Does the individual solely work for one end client with their only income coming from that client, or are they engaged with a number of other companies and therefore have a number of paymasters?

Equipment

Is the individual required to provide their own equipment to carry out the work or is this provided by the end client?

Financial Risk

Is the individual at financial risk by being engaged as a contractor, i.e. are they personally responsible for fixing anything the client is not happy with or will the client pay them for their time to fix anything?

Are they genuinely in business for oneself?

Other

Does the contractor attend the wider staff Christmas Party? If so, do they make any contribution towards the costs?

Could the individual be viewed as part and parcel to the end client's business? i.e. is there an element of integration such as the individual wearing the same uniform as employees, having a Company email address or business cards which do not specifically state that they are a contractor of the end client?

IR35