

CTG Expert Insight Session: Employment tax developments for charities

28 April 2021

#charitytax

Today's panel

- Richard Bray, CTG Chair
- Nick Bustin, Haysmacintyre
- Ritesh Parmar, Deloitte
- Julia Ascott, BUFDG

A woman with blonde hair wearing a red sleeveless dress with a floral pattern and black heels is walking towards the right. A man with a beard and glasses, wearing a dark suit, light blue shirt, and dark tie, is walking towards the left. They are in a modern office hallway with large glass windows and doors. The background is slightly blurred, showing office furniture and a 'PULL' sign on a door.

haysmacintyre

Charity Tax Group Insight Session

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Job retention scheme - Background

Part of the Government's response to COVID-19

Over £34b paid to protect 10m+ jobs (September 2020)

Phase 1 commenced on 19 March 2020

Phase 2 commenced 1 July 2020

- Staged reduction in Government support
- Introduction of flexi-furloughing
- Originally due to come to an end on 30 October and replaced by the Job support scheme

Phase 3 scheme reinstated from 1 November 2020 and now due to run until 30 September 2021 (previously 31 March 2021)



Current arrangements

- The Government will pay up to 80% of an employee's salary
- Monthly salary cap of £2,500 will apply
- The employer will be responsible for paying National Insurance and pension contributions
- Publicly funded employers will not have access to the scheme
- Restrictions for partly public funded employers
- The employers must have a UK bank account and UK PAYE scheme



Current arrangements

- Employees must be registered on the employer's PAYE payroll by 23.59 on 30 October 2020
- Can be employed on any type of employment contract
- Possible to fully or flexi-furlough employees



Amending current claims – Under-claims

- From 1 November any under-claims can only be corrected in that 28 day window
- The deadline for increasing claims under the original scheme closed on 30 November 2020



Amending current claims – Over-claims

- There may be several reasons why an over-claim has arisen (especially in the early months of the scheme):
 - Keeping up to date with the numerous changes before the final Direction was issued on 19 April 2020
 - Basing calculations on weeks rather than days
 - Taking account of pay rises from 19 March 2020 when pay should have been based on pre-19 March earnings
 - Claiming 'top-up' payments
 - Treating pre-salary sacrifice earnings as reference pay
 - Miscalculating an employee's contracted hours when flexi-furlough was introduced from 1 July 2020
 - Failing to pay out the grant to employees, or within reasonable time
 - Including ineligible employees in the claims



HMRC challenges

- HMRC estimate £3b overpaid (September 2020)
 - HMRC issued 27,000 nudge letters
 - HMRC has also received over 8,000 whistle-blowing reports
 - Employers are expected to check their claims
 - Repay any excess amounts
 - Risk of being 'Named and shamed'
- Currently HMRC are focusing their attention on organisations they believe have been abusing the system.
- Where any organisation has overstated their claims they should enter into dialogue with HMRC to rectify



Recovery of overpaid claims

- Schedule 16 Finance Act 2020
 - A charge to income tax arises where an employer has claimed an amount to which they are not entitled
 - Charge is equal to 100% of the over-claimed grant
 - The intention is to recover all overpaid claims
 - The tax liability becomes chargeable at the time the over-claimed grant was received; or
 - At some later date, for example, where the employer ceased to be eligible to make claims
- Charge will be added to income or corporation tax calculations

HMRC Assessments

- HMRC have the power to raise assessments where over-claimed grants have been paid
- HMRC able to raise an assessment within four years following the year of assessment in which the over-claim occurred.
- Can be extended by a further two years where the claimant's behaviour was careless or deliberate
- Liabilities will normally fall due for payment 30 days after the assessment is issued
- However, time to pay arrangements can be negotiated with HMRC



Notification of liability

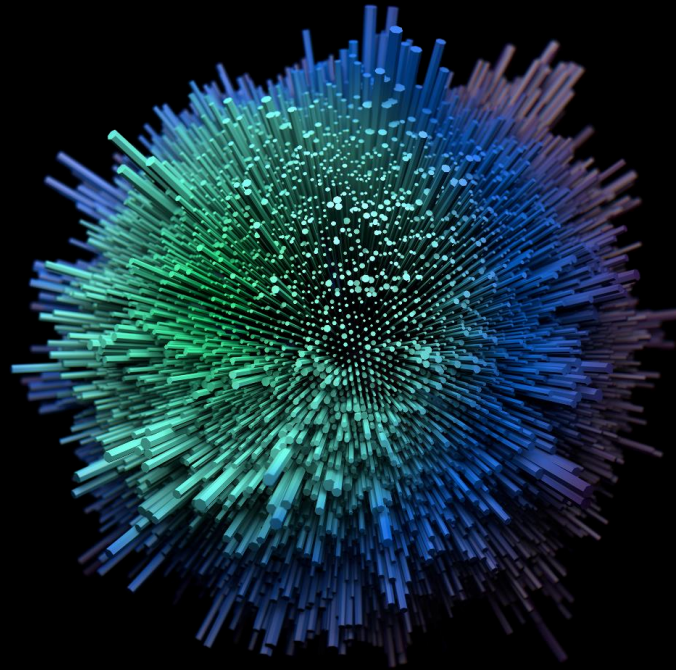
- The employer is required to notify HMRC that an over-claim has arisen
- Penalties can be imposed for failing to notify
- Notification deadlines is the later of:
 - 90 days from the date the over-claim arose; or
 - 20 October 2020 (30 days after Finance Act 2020 gained Royal Assent)
- Penalties will depend upon employer behaviour:
 - Deliberate and concealed up to 100%
 - Deliberate up to 70%
 - Non-deliberate up to 30%



Summary

- The scheme provided invaluable support to protect jobs
- Provided employers with time to make strategic decisions
- Challenges for employers to keep on top of all of the changes to the rules, especially in its early stages and when the scheme was revised
- Employers should review the level of grants claimed
- Where recent under-claims have been submitted look to claim the additional amounts due
- Over-claims need to be resolved with HMRC to help mitigate penalties and reputational risk





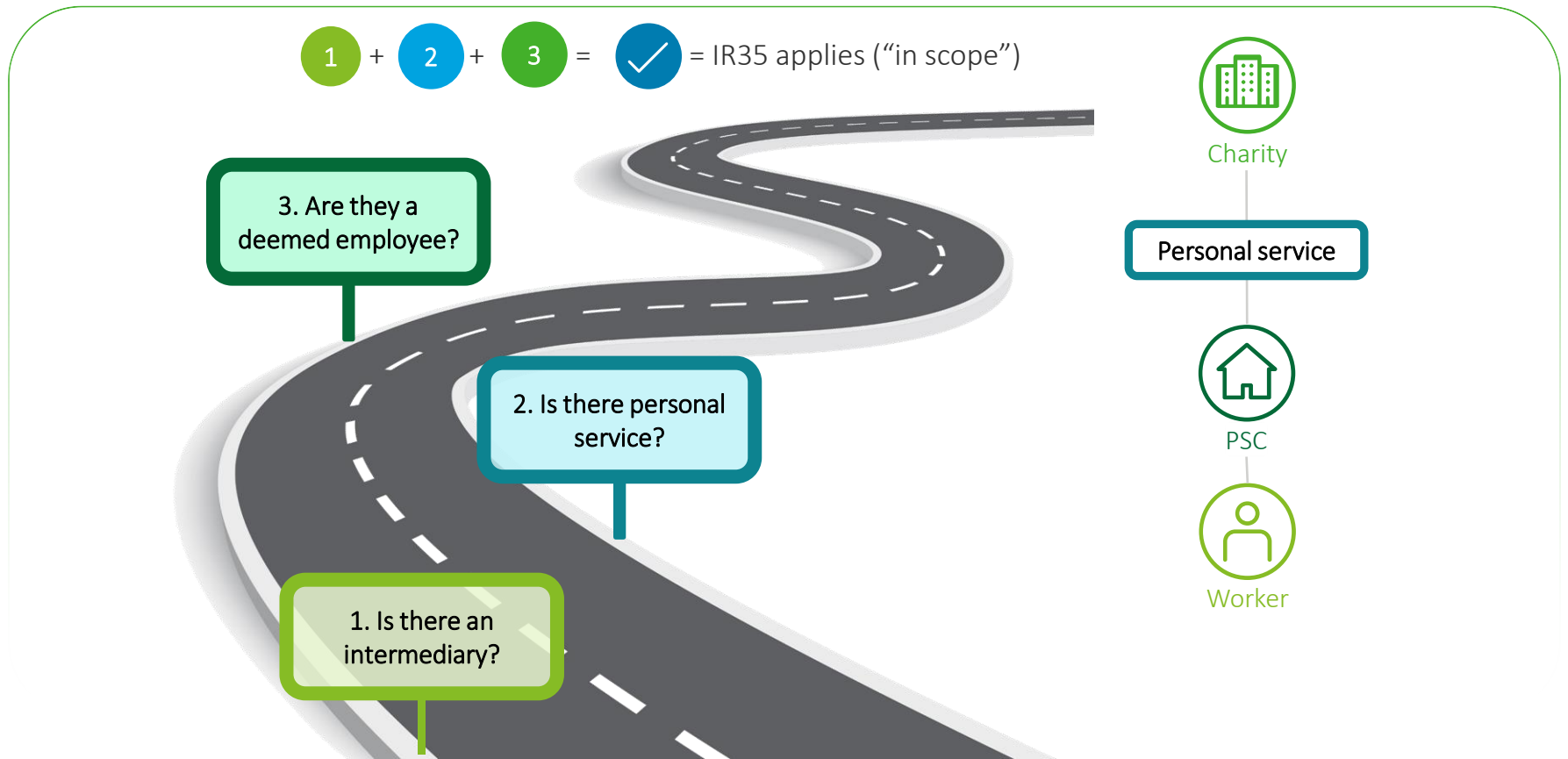
Charity Tax Group: Expert Insight Session
IR35 & Employment Status

28 April 2021

Overview of the new IR35 rules

Overview of new rules (Chapter 10, ITEPA 2003)

The Three Gateways



Overview of new rules (Chapter 10, ITEPA 2003)

New rules from 6 April 2021



A worker is "Inside IR35" where they

- a) Personally, provide services to a medium or large "client" through an "Intermediary" (e.g., a PSC/LLP); and
- b) Is deemed to be an employee of the client under a hypothetical contract with the client, ignoring the PSC.

Note: Where the worker is providing their services through an Intermediary, is an office holder of the end-client, PAYE and NIC will be due.



Where IR35 applies

- a) The 'end-client' must provide a Status Determination Statement ("SDS") to the worker AND the entity it contracts with (either the PSC or the agency in the examples above); and
- b) The 'fee payer' (End-user / agency in the examples above) is liable for PAYE, NIC and Apprenticeship Levy ("AL") on the payment made to the PSC, **for services rendered in the period after 6 April 2021** (where they are a qualifying person).

Overview of the legislation

Medium and Large end-clients

The new 2021 IR35 rules will apply to the public sector and to medium or large end-clients in the private sector. There is an exemption for small companies in the private sector.



When is an end-client Medium or Large

The definition of what is a 'small business' is taken from the Companies Act 2006 and will apply to limited companies, LLPs, unregistered companies and overseas companies. It is for the end client to determine whether they are small or not.

A corporate entity will be treated as medium or large-sized if it meets at least **two** of the following criteria for two consecutive financial years:

- turnover of more than **£10.2 million**
- a balance sheet total (assets) of more than **£5.1 million**
- more than **50 employees**

NOTE: HMRC has confirmed that "turnover" relates to trading income which an organisation would report as income in a profit and loss account. As such, turnover does not include donations or other voluntary income/cash gifts.

“Outsourced” vs “Personal” Service

'Outsourced' or 'Personal' service?



'Personal Service' indicators (a.k.a. secondment/resource augmentation)

'Freedom to do a job by one's own hands or by another's is inconsistent with a contract of service....'

Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance

- Client contracts for individuals (named or not)
- Client manages the project and team
- Contractor works as part of client team
- Contractor works on client premises
- Contractor reports to the client
- Client responsible for the deliverable
- Price based on time and materials



'Outsourced Service indicators (a.k.a. 'Statement of Work')

An outsourced service is not defined anywhere in legislation, but the key considerations are:

- Client contracts for a task/deliverable
- Supplier manages the project and team
- Contractor manages own team, or works as part of a suppliers' team
- Contractor works on Supplier's premises and visits client as and when required or appropriate to do so
- Contractor reports to Supplier
- Supplier responsible for the deliverable (and correcting defects)
- Price paid for a deliverable

Employment status

Employment Status

Key points to note

- There is no statutory definition of what makes someone an employee or self-employed
- The individual cannot choose their status
- Employment indicators have been developed through a history of case law which help to determine an individual's employment status for tax purposes
- A particular indicator may carry more or less weight, depending on the context
- No single factor is decisive, each of the factors need to be collectively considered to build up a picture of the overall engagement
- Each individual engagement needs to be considered on a case-by-case basis
- Need to consider the actual circumstances/reality of the situation as well as what the contract says

Employment Status

Employment status indicators

1. Irreducible minimum

For an employment to exist, all three of the below tests must be met:

Mutuality of obligation:

- Engager obliged to pay the worker; worker obliged to provide their own work or skill

Personal service:

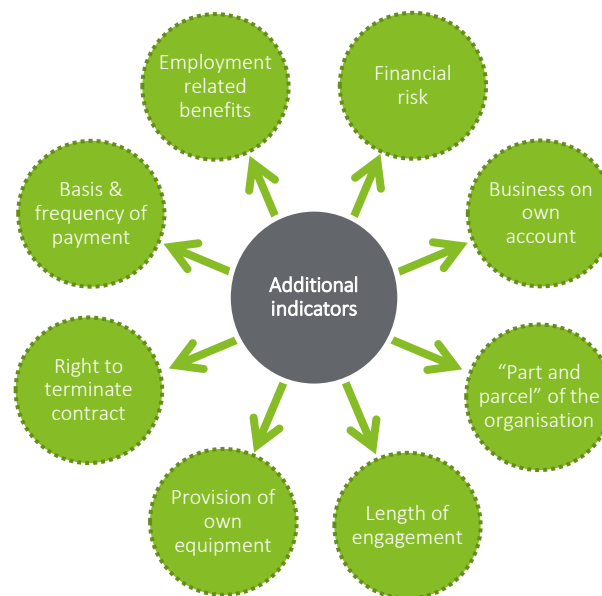
- Obligation of the worker to provide personal service rather than send a substitute

Control:

- Right to control **what** the worker has to do, **where** it has to be done, **when** it has to be done and **how** it has to be done

2. Additional employment status indicators

Where the primary indicators are all met, the remaining fact pattern must be considered against:



Employment Status

Secondary employment status indicators

In addition to the three key indicators, further employment status tests have been outlined below; each of which should be taken into consideration when determining an individual's employment status:

Financial risk	<ul style="list-style-type: none">• Does the individual risk their own money ? E.g. buying assets, bearing running costs, paying for overheads and materials, etc.• Is the individual required to rectify substandard work in their own time?
Provision of own equipment	<ul style="list-style-type: none">• Does the individual provide their own equipment in order to carry out their work or is this provided by the company?• This is more important in the provision of "big items" rather than small tools where it is customary to provide them.
Employment related benefits	<ul style="list-style-type: none">• Is the individual entitled to employment related benefits? E.g. maternity pay, sick pay, pension rights, etc.
Ability to profit	<ul style="list-style-type: none">• Does the individual have the ability to profit from carrying out tasks more efficiently?
Basis & frequency of payment	<ul style="list-style-type: none">• How is the individual paid and at what frequency? E.g. fixed wage or salary, per week, per day, per job, etc.• Is the individual entitled to additional payments? E.g. overtime, long service bonuses, profit share, etc.
Integral to the organisation	<ul style="list-style-type: none">• Does the individual have a desk at the employers location?• Does the individual have an email address at the employer?
Right to terminate contract	<ul style="list-style-type: none">• Can the individual terminate their contract for a reason other than a serious breach of contract?
Length of engagement	<ul style="list-style-type: none">• How long is the engagement likely to last?

HMRC's Check Employment Status for Tax ("CEST") tool

HMRC's CEST tool

Overview

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

What is it?



- An online tool through a series of questions to assess employment status.
- HMRC agree to be bound by the result, provided the answers given reflect actual circumstances.
- Provides employed or self-employed answer 85% of the time.

HMRC's CEST tool

Results

Upon completing the CEST questionnaire, you will receive one of three outcomes:

**Off-payroll working rules
(IR35) apply**

**Unable to make a
determination**

**Off-payroll working rules
(IR35) do not apply**



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Top 3 Tax issues in HEI

Presenter:

Julia Ascott, Payroll and Employment Taxes
Specialist, BUFDG

28 April 2021

3. Off payroll working

- Changes to existing rules for public sector and expansion to medium and large companies in the private sector
- Universities complying with off-payroll rules since 2017
 - Education is key
 - Clear lines of communication
 - Understanding responsibilities
 - Sole trader v intermediaries
 - What is an intermediary
 - What is a contracted-out service



2. International Taxes

Why do we care if they work overseas?

- Perception problem
- Access to healthcare and other benefits
- Resources limited (1:30)



- Covid related – get back to the UK or new contract?

1. Home working

- Working from home or homing from work
- University policies – including working from home overseas
- Exemptions continue to apply for 21/22 tax year for:



- Reimbursement of home office expenses
- Reimbursement £6 per week to cover additional costs as a result of working from home.
- Employees will need to reapply for 21/22

Action: consider a formal policy

Questions and feedback

For more information please contact
info@charitytaxgroup.org.uk or visit our
website www.charitytaxgroup.org.uk