
WEBINAR FAQs

**BROOKSON
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<p>If the CEST tool is only to be used for guidance, how do we actually ensure we've made the correct determination?</p>	<p>HMRC say the CEST tool can be relied on if it has been completed correctly. This caveat does pose a risk if a non-IR35 specialist or somebody not close to the working practises or the terms of the contract completes CEST. There is still an element of doubt around the use of CEST and have been examples of HMRC seeking to not include the outcome in tax tribunals. It is not mandatory, so it is worth considering other approaches to undertaking the assessment.</p>
<p>If we have a payroll employee seconded into a client company and they pay us on a monthly basis for that contingent worker. Is it the client's responsibility to complete the SDS?</p>	<p>If the employee is on the payroll and paid after deduction of the correct amount of PAYE then the off-payroll rules do not apply and no SDS is required.</p>
<p>If a client makes a blanket decision and states that all contractors are inside IR35, is that a lack of 'reasonable care'? What is our recourse as a fee-payer?</p>	<p>Yes, making a status determination without reviewing each specific role will be viewed as not taking reasonable care. If this results in a PSC being paid net of PAYE then the end client will be the party required to pay the tax and NIC, not the fee payer. It is likely however in this scenario that the client requests the individual no longer operates via a PSC but via agency payroll or employed umbrella, in which case the off-payroll rules cease to apply.</p>
<p>Clients don't have the resources to audit every supplier's payroll compliance (nor would we necessarily be allowed access to such data) therefore, how can the client mitigate supplier/agency failure to pay PAYE/NIC to avoid debt transfer?</p>	<p>We are seeing more clients consolidating their supply chains, requiring their agencies to secure their supply chains (e.g. use of FCSA accredited umbrellas) and seeking to see payslips / RTI submissions (GDPR can be overcome here if the supplier has nothing to hide). Including these requirements in the contract with your supplier would also be good practice.</p>
<p>As reasonable care is so subjective, how can we ensure that we have enough knowledge in the business to meet it? And is using an SDS tool, enough to meet reasonable care, or is there anything else needed?</p>	<p>Employment status is a complex area and you may need to seek external advice to help supplement or develop your internal knowledge or study the published HMRC guidance. Guidance on reasonable care can be found here: https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10014</p>

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<p>Do we have to complete an SDS for any contractors we use even if they are established ltd companies?</p>	<p>Yes, an SDS is required if you are engaging contractors who work via their own limited company.</p>
<p>We have had an instance of a contractor paying for an SDS to be done and then presenting it to us for sign off; what is HMRC's view of this?</p>	<p>HMRC have indicated to us in previous discussions that this is unlikely to meet reasonable care. The client is the party responsible for producing the SDS so the client should be comfortable that the person undertaking the assessment has a full understanding of the working practises and the underlying contracts, has answered the questions truthfully and honestly and understands the nuances of employment status.</p>
<p>We have a number of outsourced services - do we (as the final client) require our outsourced service providers to provide the SDS's that they have carried out?</p>	<p>If your supplier is providing you with a fully outsourced service (not the provision of labour) they are required to produce and SDS and issue it to any limited company contractors they use. See guidance regarding outsourced services: https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10010</p>
<p>What is HMRC's view on insurance products that are being sold to protect against tax risk, and who should pay for them?</p>	<p>Unable to gain HMRC's view on this, although we know this is an area they are looking at. As with any insurance product, it is important to understand when it applies and when it doesn't. If the status assessment is inaccurate it is unlikely that an insurer will pay out. Look for "chances of success clauses" which appear in most tax loss insurance products. My view is to ensure you have met reasonable care and assessed status accurately, you may then look to apply a belt and braces approach with tax loss insurance cover.</p>
<p>The deadline references payments processed after 6th April. Is this based on when the contractor is paid (as ours are paid by a recruitment agency) or is it based on when the agency invoices us for payment (some are on 60 day payment terms which would be for hours worked in Feb)</p>	<p>It is based on when the work is done. Any work undertaken on or after 6 April is covered by the new rules, even if it is paid for several weeks or months later.</p>
<p>If we as a management consultancy receive a SoW for a program of work and decide to use contractors, presumably we are the client in this case and should be responsible for the SDS?</p>	<p>This is correct on the basis that the services you are providing are not the personal services of the contractor(s) you are using. You cant just label this as outsourced services or SoW, see guidance: https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10010</p>

IF YOU HAVE ANY FURTHER QUESTIONS OR WOULD LIKE TO
UNDERSTAND MORE ABOUT OUR SERVICES,
WE WOULD LOVE TO HEAR FROM YOU.

Contact Brookson Legal

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