Determining Employment Status

The following checklist provides a quick guide to the key employment indicators that may be used to denote whether an individual is employed or not. This is intended as guidance and not all criteria in one section need to be met to determine employment status.

Mutuality of obligation and right of substitution are significant factors in making the determination.

Factor	Self-employed	Employee
Engagement	Contract for Services	Contract of Service
Personal service	Will provide own services, but may also sub-contract work to others, or bring in outside assistance.	Only provides their personal services.
Mutuality of obligation	Is free to accepts or turn down work if he desires. The engager is under no obligation to offer any work, or further work.	The employer is obliged to offer work, and the employee is obliged to do as the employer requests.
Right of control	Likely to be in control of most aspects of the work done.	An employer may control "what", "how", "where" and "when" work is done. However, a highly skilled employee may also exercise "what" and "how" also as the employment demands.
Right of substitution	May sub-contract work, or bring in assistance. Depends on nature of work; an individual may be engaged because of their personal reputation or skill and so no substitute will be acceptable.	It is rare for an employee to have the right to appoint a substitute.
Provision of own equipment	Will normally supply all small tools and bring in or hire in plant.	May sometimes supply own small tools or equipment: employer will provide all plant and machinery.
Financial risk/ability to profit	Will quote on a job-by-job basis. Is able to make more profit by more efficient working, or may incur loss if overruns on time, or	Paid whatever work is done, benefits from the National Living / Minimum Wage and statutory holiday entitlement. An employee will bear little risk unless exceptionally work directly relates to a bonus or commission

	if required to rectify defects in own time.	scheme. Or, if poor work affects appraisal for promotion or other benefits.
Opportunity to profit	Can profit if work is performed efficiently, or from re-charging and making a profit on materials.	May only profit under a bonus or incentive scheme. However, may benefit from tips, or payments from third parties.
Length of engagement	Generally a fixed-term or short-term contract.	Contract will generally be open-ended after probation period (if any).
Part and parcel of the organisation	May become "a fixture" in that his work brings him to the company regularly, but acquires no additional responsibilities or privileges as a result.	Is capable of being promoted, or manages other staff. Part of works pension, or SAYE scheme.
Employee type benefits	Unlikely to be entitled to any type of benefits. May be invited to functions with other external suppliers.	Part of pension scheme, enjoy canteen or sports club facilities, car parking, attends staff functions.
Right to terminate contract	If other party is in breach.	Would normally give notice under specified contract term.
Personal factors	May be engaged because of skills, reputation etc.	Personal factors may be the reason for appointment.
Mutual intention	The intention of the parties should be stated in written contract. This may not be persuasive if in reality the parties behave differently and should be given minimal weight.	If the parties intend the relationship to be one of employment it is difficult for the courts to say otherwise. In most cases the parties will have agreed written terms of employment and the employee will have enforceable rights under employment law.

In March 2017 HMRC published a new Check Employment Status for Tax (CEST) tool. This can be used by workers, agencies and engagers to see whether a worker is employed or self-employed for tax purposes.