

Enhancement to the Check Employment Status for Tax (CEST) Technical Testing.

We carried out three tranches of formal technical testing to validate the results and output from CEST;

1) Testing against Litigation cases

We tested the updated version of CEST against the list of litigation cases already published on Gov.UK (<https://www.gov.uk/government/publications/cest-tool-tested-against-tax-cases/test-results-produced-after-cests-development>).

In addition, we tested a further 13 cases which have been heard at First Tier Tribunal (FTT) and Upper Tribunal (UT) since the initial Gov.UK list was posted;

- Professional Game Match Officials Limited (employment status – FTT, under appeal to UT)
- Canal Street Productions Limited (IR35 – FTT)
- RALC (IR35 – FTT, under appeal to UT)
- Armitage Technical Design Services (IR35 – FTT)
- MCDM Ltd (IR35 – FTT)
- Jensal Software Ltd (IR35 – FTT)
- Albatel Ltd (IR35 – FTT)
- Christa Ackroyd Media Ltd (IR35 – FTT & UT)
- Paya et al (IR35 – FTT)
- Kickabout Productions Ltd (IR35 – FTT, under appeal to UT)
- Atholl House Ltd (IR35 – FTT, under appeal to UT)
- George Mantides Ltd (IR35 – FTT, under appeal to UT)
- Red, White & Green Ltd (IR35 – FTT)
- Northern Lights Solutions Ltd (IR35 – FTT)

These cases were tested against the Judge’s findings of fact from the published decisions. Where a specific finding of fact had not been made to allow an answer to a question a best approximation was made from the submissions of both parties.

Cases under appeal will be updated once decisions are settled.

Where HMRC has lost a case at the FTT it has been because new evidence came to light or the judge weighed the facts differently. The judges have confirmed that the factors that HMRC take into consideration when determining status are correct.

We are in the process of updating the gov.uk list to reflect the outcomes from those cases which are not under appeal to a higher court. In the meantime, the outcomes of the cases that are final are:

	FTT Decision	CEST decision per Judges facts	CEST decision per HMRC view of facts at time of submission.
Albatel	Not Caught	Not Caught	Caught
Jensal Software	Not Caught	Not Caught	Caught

Armitage	Not Caught	Not Caught	Caught
Canal Street	Not Caught	Not Caught	Caught
MDCM	Not Caught	Not Caught	Caught
Red White and Green Ltd	Caught	Testing pending	Testing pending
Northern Lights Solutions Ltd	Caught	Testing pending	Testing pending

2) Comparison testing against the previous version

All testing took place using the current version of the CEST prototype. Each team involved in testing cases was provided with the same copy of the prototype to ensure consistency of content and output. We were able to use the prototype to not only monitor the outcomes from testing but also compare how they correlated against the results that would have been generated from the original CEST should the same information have been entered, up to the new business on own account questions. The testing produced the same outcomes.

3) Testing against settled and active compliance cases

Compliance teams from both Large Business (LB) and Employment Status and Intermediaries (ES&I) have been involved in testing CEST using active and settled compliance interventions across both employment status and IR35 risk.

ES&I tested a total of 60 active and settled cases across five teams. The results from the testing were;

Employed / IR35 applies	38
Self-employed / IR35 does not apply	13
Unable to determine	9

Of the 13 cases that produced an outcome of self-employed / IR35 does not apply 10 had already been settled on that basis by the compliance team(s). The remaining three have individual factors which can account for the difference;

Case EK7: Active compliance case. The outcome was based upon the information available to the testing team at the time and they were satisfied with the self-employed outcome based upon those facts. This case will be closed.

Case EH12: Active compliance case. The difference in outcome arose due to the testing team using the taxpayer's interpretation of the 'Financial Risk' section, this led to a self-employed decision. When the team re-tested the case using HMRC's

interpretation of the section the outcome was employed. The supporting ESM guidance for CEST around these questions clearly articulates HMRC's view of the questions and how they should be answered.

Case C1: Active compliance case. The difference in outcome arose due to the testing team using the taxpayer's interpretation of the 'Control' section, this led to a self-employed decision. When the team re-tested the case using HMRC's interpretation of the section the outcome was employed. The supporting ESM guidance for CEST around these questions clearly articulates HMRC's view of the questions and how they should be answered.

Large Business tested a total of 26 settled and active cases. The results from their testing were;

Employed / IR35 applies	16
Self-employed / IR35 does not apply	7
Unable to determine	3

Large Business did not identify any differences in outcomes from the cases they tested between their compliance view and the CEST view. However, HMRC identified that some questions, primarily around control, presented users with an opportunity to either falsify or manipulate answers to reach a preferred outcome.

HMRC have already counteracted this by including an active disclaimer at the beginning of CEST which must be accepted to continue that alerts users to the risk of deliberately falsifying answers. HMRC have subsequently published supporting guidance for CEST in the Employment Status Manual on Gov.UK to explain in greater detail, with examples, how the individual questions should be answered.