

# Guidance Note on Employment and IR35

## SCOPE OF THIS NOTE

This note addresses two separate

**Section A** deals with Employment. It provides an overview and explanation of the differences between an employee and a self-employed person. When engaging a worker to provide services to your business, it is important to consider whether the worker is an employee of your business or a self-employed contractor.

IR35 legislation is often an area of concern for businesses. **Section B** explains what are known as the “IR35” rules and how they apply to an individual engaged by a client to carry out work through an intermediary, usually a personal service company (PSC). **Section B** aims to clarify some of the key issues so that you can make more informed decisions about whether to engage an individual worker or PSC to provide services to your business.

**Section C** takes full account of a Government’s amendments to the IR35 legislation effective from 6 April 2020. HM Government made changes to the IR35 legislation in the Finance Act 2020. HM Government made changes to the IR35 legislation in line with its previous proposals.

**Section D** refers to the templates for employment/self-employment and

### A. EMPLOYMENT/SELF-EMPLOYMENT

It is important to be clear that the worker is engaged directly, not through any personal service company (PSC) or other intermediary. Use of intermediaries is covered by Section B.

#### 1. Employed or self-employed

For convenience this note refers to a worker as either employed or self-employed.

In relation to both tax and employment law, the key consideration is whether the individual providing their services has a contract of service with a self-employed contractor (i.e. a sole trader). Despite the use of a personal service company (PSC) or other intermediary, there will still be a risk that an

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impacting on freelance working.

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**Section B** explains what are known as the “IR35” rules and how they apply to an individual engaged by a client to carry out work through an intermediary, usually a personal service company (PSC). **Section B** aims to clarify some of the key issues so that you can make more informed decisions about whether to engage an individual worker or PSC to provide services to your business.

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website which are relevant to

to a client engaging a freelancer (i.e. a sole trader) or other intermediary. Use of

worker”, whether they are employed

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employer-employee relationship (the supplier of the services and relevant legal advice on your part

When workers carry out work for self-employed. An employee is a contract of employment. A self-employed contractor who usually works advantages for both you as the en

Workers might intend or aim person/organisation engaging the arrangements, the position between employment. This may be so e arrangement as self-employment.

The following will guide you through you to choose the right approach recommend that you read the f agreements will be most suitable to provide your business with any

**2. Why does it matter whether**

A worker's status in employment their rights and their employer's employee rather than a self-employed employer because of the different employment compared to self-employment "Rights of a worker arising from aware that even if the arrangement employment rather than employ employed workers (not just empl that you may have responsibility you, depending on the particular s

As to tax, deciding whether tax insurance contributions (NICs) at whether the worker is self-employed where they are an employee – through Pay as You Earn (PAYE suspicious of any artificial self-em

(tax purposes) may exist between therefore always advisable to take

engaged as employees or instead as as entered into, or works under, a worker who is an independent services. Self-employment has es for the self-employed worker.

self-employed basis, as might the their aims, intentions and their s might not amount in law to self- their client describe or label the

you to some of the pitfalls and help dual or company concerned. We g which of our various template aging an individual or a company

**employed rather than employed?**

important in relation to determining orker has the legal status of an consequences for them and their ommon law protection afforded to ts of employees is set out under "employee" below. You need to be n workers amount in law to self- on the particular situation, self- by equality legislation. Note also -employed worker who works for

the E or D and whether national class 2 contributor, depends on e worker is self-employed – unlike t income tax and NICs at source toms (HMRC) is therefore highly rticularly where the self-employed

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person has no other 'clients'. See below.

through an intermediary company”

The following is intended to provide guidance on whether a worker in any given case is likely to be regarded as self-employed. In the event of a dispute about that issue, bodies such as tribunals and HMRC will take into account a range of factors in deciding whether to be regarded as an employee or self-employed.

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A worker’s status (as either employee or self-employed) for tax law may be different from the worker’s status in employment law.

tax law may be different from the worker’s status in employment law.

Although this Section A does not apply to workers engaged via an intermediary, the following guidance on whether a worker is likely to be regarded in law as employed by the intermediary, and to that extent this Section A is also relevant where, as explained in Section 5, it comes into play.

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**3. How to determine whether a worker is self-employed**

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Individuals working on a self-employed basis are often described as “freelancers”, “sole traders”, “self-employed” or “individual contractors”. The use of these or other “labels” in any case does not determine whether a worker is self-employed rather than employed. The two parties cannot by using a particular label just decide the nature of the employment relationship between them. The reality of the relationship must be taken into consideration and the correct label must match the reality.

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Usually it will be easy to decide whether a worker is self-employed. However, there will be many cases where the decision is not so easy to decide. Where two workers are engaged to carry out work for the same person / organisation, it may be difficult to decide because they have been taken on under contracts with different terms. The essential question to decide is whether, in carrying out work for the person, the worker is carrying on a business.

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Before looking at what features indicate that someone is carrying on a business (i.e. that there is a contract between the person and the worker) on a self-employed basis, it is worth quoting some authoritative legal comments on the subject. In the case of *Wheatley v McGregor* (1962) which were quoted with approval by the House of Lords in *Wheatley v McGregor* (1962).

Before looking at what features indicate that someone is carrying on a business (i.e. that there is a contract between the person and the worker) on a self-employed basis, it is worth quoting some authoritative legal comments on the subject. In the case of *Wheatley v McGregor* (1962) which were quoted with approval by the House of Lords in *Wheatley v McGregor* (1962).

*“In order to decide whether a worker is self-employed it is necessary to consider many factors. This is not a mechanical exercise. It is necessary to see whether they are present in the particular case. The object of the exercise is to paint a picture of the overall effect can only be appreciated from the detailed picture.”*

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*which has been painted, informed, considered, qua evaluation of the overall e total of the individual deta in any given situation. Th situation to another. The p case.”*

*stance and by making an he whole. It is a matter of sarily the same as the sum equal weight or importance y in importance from one a picture in each individual*

HMRC provides a certain amount of guidance but would regard a worker as employed or self-employed would be for a court or tribunal to decide. HMRC's guidance on self-employed are often based on a number of various factors. However, neither HMRC nor the courts to enable anyone to predict how a decision will be carried out or what HMRC's conclusion will be. *recommend that you take professional advice on your own specific circumstances.*

HMRC's guidance is not a substitute for legal advice as to whether in any case it would be regarded as an employee but ultimately in any given case it will be for a court or tribunal to decide as to whether or not someone is self-employed. HMRC's guidance is a "balancing exercise" in which it gives weightings to various factors. However, neither HMRC nor the courts case law are sufficiently precise to enable anyone to predict how a decision will be carried out or what HMRC's conclusion will be. *For that reason, we recommend that you take professional advice on your own specific circumstances.*

#### 4. Indicators of employment

#### (Employment)

The following are indicators of employment:

##### (a) Mutuality of obligations and control

"Mutuality of obligations" (i.e. the 'employer' is obliged to provide work and the 'employee' is obliged to perform a reasonable amount of that work) and if the worker is implicitly or explicitly under the control of the 'employer' (as to "when, where, what, how"), from which it follows that the 'employer' has over the worker a significant degree of control (as to "when, where, what, how"), from which it follows that they will be considered to be an employee.

A significant indicator will be if the worker is obliged to provide work and the 'employee' is obliged to perform a reasonable amount of that work) and if the worker is implicitly or explicitly under the control of the 'employer' (as to "when, where, what, how"), from which it follows that the 'employer' has over the worker a significant degree of control (as to "when, where, what, how"), from which it follows that they will be considered to be an employee.

##### (b) Personal service

An essential element of a relationship is that the worker provides personal service. If the worker undertakes the work themselves or to give them substantial help, it is an important factor to take into account when considering whether or not the worker is employed. When considering whether or not the worker has a right to substitute, it is important to consider whether or not they exercise that right. (See under "Substitution" below) as to how (only) in the context of employment also important, not just having the right to substitute in reality self-employed, the worker's right to substitute must be answerable to the employer. The choice of substitute to a suitable person is a right. However, if the client has the right to substitute, it does not necessarily mean that there is no real control over substitutes then this may be an indicator of employment.

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mean that in reality the worker's substitution is not genuine.

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(c) Other indicators

Someone who works for another person, and not self-employed, if most of the following are true:

ee, and not self-employed, if most

- They are required to work regularly (including maternity leave);
- They must do a minimum number of hours of work;
- A manager or supervisor is responsible for their workload and decides when a piece of work should be finished;
- The person / organisation engages them and pays them wages;
- The worker gets paid holiday;
- He/she is entitled to contractual sick leave and maternity or paternity pay;
- They can join the pension scheme;
- The disciplinary and grievance procedures apply to them;
- They work at that business's premises;
- Their contract sets out redundancy provisions;
- They are provided with the materials and equipment which engages them;
- They work only for that business and do not have another job, it is completely different from their work for that business;
- Their contract, statement of terms or offer letter (which can be described as an 'employment contract') usually refers to the worker as an 'employee'.

n leave, e.g. holiday, sick leave or

to be paid for the time worked;

r's workload and decides when a piece of work should be finished;

s tax and NICs from the worker's wages;

nd maternity or paternity pay;

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other job, it is completely different

fer letter (which can be described as an 'employment contract') usually refers to the worker as an 'employee'.

If most of the above do not apply, the worker is instead self-employed.

is instead self-employed.

**5. Indicators of self-employment**

**(Indicators of self-employment)**

The following are indicators of self-employment:

(a) Contract for services

If there is a contract for services (employment), and not a contract for services, the contract should avoid any terms which refer to holiday, sickness, and disciplinary measures etc.

ployed worker), and not a contract

contract for services, the contract

such as holiday, sickness, and

(b) Wording

Appropriate wording used in the contract can be used to describe the relationship. Although not decisive, this can be used for the worker to be more likely to

ere to describe the relationship.

for the worker to be more likely to

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be regarded as self-employed, then she should be paid a fee, not a salary.

and to as an "employee" and he or

(c) No mutuality

There is no "mutuality of obligation" if the client/employer has little or no control over the worker to be regarded as self-employed.

(see of Employment above), and the worker in this case, the worker is more likely

(d) Other factors

Further, a worker is probably self-employed if more of these that apply, the more likely self-employment may be indicated if the

following factors are present. The more of these the worker is self-employed. Self-

- is in business for him/herself or for the success or failure of the business;
- risks their own money;
- uses their own money to buy business assets;
- provides all or the main tools and equipment for running costs;
- can make a loss or a profit;
- can decide what work they do and when to do it;
- decides on timescales;
- has the right to hire someone else to do the work (see "Personal service" above). However, note "Working through an intermediary company" below, which may lead you to ignore any such right of substitution in the context of IR35 if the worker does not actually exercise that right;
- is responsible for remedying any defects in their own time and at their own expense;
- agrees a fixed price for their work which does not depend on how long it takes to do it;
- is permitted to work for more than one client;
- regularly works for a number of clients.

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to do the work (see "Personal service" above). However, note "Working through an intermediary company" below, which may lead you to ignore any such right of substitution in the context of IR35 if the worker does not actually exercise that right; is responsible for remedying any defects in their own time and at their own expense; agrees a fixed price for their work which does not depend on how long it takes to do it;

**6. Rights of a worker arising from employment**

**Working through an employee**

If someone is in law an employee, they are entitled to the following, regardless of whether they are paid through an intermediary company.

they are entitled to the following,

- written particulars of employment;
- unfair dismissal rights;
- redundancy pay after two years;
- notice of termination of employment;
- itemized pay statements;
- equal pay rights;

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- maternity, paternity and adoption leave and pay;
- parental leave and time off for family reasons;
- protection from race and sex discrimination, disability, age, sexual orientation and religion; protection against less favourable treatment on grounds of pregnancy and maternity;
- protection from trade union victimisation;
- protection of employment upon transfer of undertakings (TUPE);
- health and safety protection;
- not to have unlawful deductions from wages;
- statutory sick pay;
- the national minimum wage;
- paid annual leave entitlement;
- limitation on working time under the Working Time Directive;
- right to request flexible working;
- right to request to work beyond the United Kingdom.

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fulfil trade union duties;

s (TUPE);

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Directive;

## B. WORKING THROUGH AN INTERMEDIARY

## INTERMEDIARY AND IR35

It is important to be clear that a worker engaged to a client (freelancer) through a personal service company (PSC) or other intermediary, not where a client engages an individual worker directly, is not covered by Section A above.

to a client engaging a worker through a personal service company (PSC) or other intermediary, not where a client engages an individual worker directly, is not covered by Section A above.

Although the IR35 rules also apply to workers engaged through intermediaries (an employed or self-employed person), this Note primarily addresses the use of PSCs. The rules are explained in paragraph 2 below.

er than PSCs, this Note primarily addresses the use of PSCs. The terms “intermediary” and “PSC” are explained in paragraph 2 below.

### 1. Use of an “intermediary”

The IR35 legislation deals with workers engaged to a client through an intermediary. When a worker is engaged to work for their client, they may be engaged directly by their client, or through an individual, company or other legal entity acting as an intermediary. Where a third party intermediary is involved as part of the arrangement, the worker could, in some circumstances, be engaged directly by their client. However, under “Employment agency or business subcontracting” rules, a worker engaged through an intermediary may be treated as if employed by their client.

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### 2. Personal Service Company

A third party is often used, typically a personal service company (PSC), to act as a form of intermediary between a client and a worker.

onal service company” or “PSC” to act as a form of intermediary between a client and a worker. The worker does not

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contract with any clients or receive any clients - only the PSC does so.

The usual reason for a worker using a PSC is to derive a tax/NIC benefit (see below) as an employee or self-employed individual directly for their clients.

There is no legal definition of a "person" but a PSC is an intermediary which is a company with one Director and the Company Secretary (who may be the same person or a spouse or wife). There are normally no employees, but the only worker providing services to the client. The PSC earns all, or almost all, of its income from supplying the worker's services to the client. The PSC is paid to supply the worker's services to the client (not from the client) or benefits from the PSC (not from the client) rather than any substantial salary.

The effect of the UK system if a person works through a PSC rather than an employee is that they pay a lower level of Income tax and National Insurance than they would if they worked through an intermediary, they may pay an even lower level of tax.

Many years ago, to achieve tax and National Insurance savings, it was common practice for individuals to supply their services through a PSC. The PSC having to pay Corporation Tax on its profits. The worker drew remuneration only or mostly in the form of dividends, and often (depending on the amount) there might be no tax to pay on dividends. A PSC can build up significant reserves for future distribution in the form of dividends, as opposed to paying a regular salary, on a regular basis.

**3. The intermediaries legislation**

The "IR35" legislation first came into effect in 1997. In the years it acquired the reputation of being notorious and difficult.

IR35 was designed to ensure that employers pay the correct amount of employment taxes, and to eliminate the possibility of workers being employed directly as employees and workers through intermediaries. It was, therefore, aimed at workers employed by a client through intermediaries. It was, therefore, aimed at workers employed by a client through intermediaries.

A worker who provides his services to a client via a PSC (or other intermediary), where caught by the IR35 rules, is then regulated by those rules in relation tax and NI. Since the rules have been progressively tightened up

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result, they aim to, and often will, be treated as an employee or self-employed individual directly for their clients.

"person" (PSC) (see paragraph 4 below) typically will have two Directors, or more, but need not be, husband and wife. There are normally no employees, but the only worker providing services to the PSC earns all, or almost all, of its income from supplying the worker's services to the client. In each case there is a contract (with the client or agency) under which the PSC is paid to supply the worker's services to the client (not from the client) or benefits from the PSC (not from the client) in the form of share dividends from the PSC rather than any substantial salary.

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with the result that, depending on the circumstances, a worker may gain little or no advantage from carrying out their work through a PSC.

workers (contractors) may now gain little or no advantage from carrying out their work through a PSC.

As explained below under “5. Employment status”, the key principle applied by IR35 is that where:

The key principle applied by IR35 is that where:

- someone works for a client (or through an intermediary which amounts to a PSC (see below)); and
- if they had instead worked for the client (or through the PSC) they would have been regarded in law as an employee,

any which amounts to a PSC (see below); and if they had instead worked for the client (or through the PSC) they would have been regarded in law as an employee,

they are treated as if they were employees for the purposes of income tax and NICs on the payments made to the PSC by the client.

taxed accordingly on the relevant payments made to the PSC by the client.

In effect, where IR35 applies, it deems a worker to be an employee of their client even though they are not an employee of their client, and, therefore the arrangements is some form of “deemed employment”.

theoretical contract between a worker and their client, and, therefore the arrangements is some form of “deemed employment”.

The tax regime now imposes a higher rate of tax on the profits of PSCs than it did pre-2016, and there is a restriction on the amount of travel and subsistence expenses incurred by a worker caught by IR35.

higher rate of tax on the profits of PSCs than it did pre-2016, and there is a restriction on the amount of travel and subsistence expenses incurred by a worker caught by IR35.

Further measures tightening up IR35 were introduced by the Finance Act 2020, effective from 6 April 2021, and we explain them in more detail in Section C (Section C) below. As explained in Section C, the rules apply to cases where the client is in the private sector, to suppliers where the client is in the public sector, and to suppliers in the private and public sectors.

Finance Act 2020, effective from 6 April 2021” The rules apply to cases where the client is in the private sector, to suppliers where the client is in the public sector, and to suppliers in the private and public sectors.

Still further changes might be implemented in future, to further reduce non-compliance with IR35. Such further changes might include deeming freelance contractors to be employees once they have worked for a client for a certain period, whether or not someone is to be regarded as an employee (see below) where they are not under the direction, control or supervision of their client, and/or aligning income tax and NICs.

ment in future, to further reduce non-compliance with IR35. Such further changes might include deeming freelance contractors to be employees once they have worked for a client for a certain period, whether or not someone is to be regarded as an employee (see below) where they are not under the direction, control or supervision of their client, and/or aligning income tax and NICs.

**4. “Intermediary” defined**

Whilst the IR35 rules relating to tax and NICs are very similar, they are very different. The following is intended to provide a summary of the IR35 rules.

se relating to NICs, they are very different. The following is intended to provide a summary of the IR35 rules.

IR35 rules apply to what the rules define as an “intermediary” for its purposes. Although an intermediary may be any company, partnership, unincorporated association, or other body, *this Note is primarily concerned with those intermediaries which are*

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personal service companies (PSCs) often be contracting with a PSC rather than directly with the client.

that the client/employer will most often be contracting with a PSC rather than directly with the client.

In brief, although there is no legal test for a PSC in relation to the worker who supplies services to the client (from the legislation) are met:

company will amount to a PSC if, in relation to the client, the following tests (derived from the legislation) are met:

- the worker is a member of the PSC (or a director or shareholder of it);
- the worker receives or is entitled to receive a payment or benefit that is not chargeable to tax as an employee of the PSC;
- The PSC is not an “associated company” of the client (within the meaning of the Corporation Taxes Act 2010); and
- Either the worker has a “material interest” in the PSC or the payment or benefit can be regarded as ownership or control of more than 5% of the ordinary share capital of the PSC by the worker and/or the worker’s “associate(s)”.

holder of it); the PSC a payment or benefit that is not chargeable to tax as an employee of the PSC;

the client (within the meaning of the Corporation Taxes Act 2010); and

PSC or the payment or benefit can be regarded as ownership or control of more than 5% of the ordinary share capital of the PSC by the worker and/or the worker’s “associate(s)”.

**5. Employed/self-employed**

IR35 requires the underlying nature of the relationship with a client to be considered. A crucial test is whether the worker would have been an employee of the client if they had not been engaged via the PSC. If the worker would have been an employee if they had contracted with the client personally, IR35 will not apply. IR35 will not be an easy test to apply. Each case depends on its own facts. The other tests (which are much easier to understand and apply in practice.

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an employee of the client if they had not been engaged via the PSC. If the worker would have been an employee if they had contracted with the client personally, IR35 will not apply. IR35 will not be an easy test to apply. Each case depends on its own facts. The other tests (which are much easier to understand and apply in practice.

There is a certain amount of case law on the question of whether IR35 applies to particular arrangements between client and PSC. In each instance depends on its own facts. There is no simple test as to whether IR35 applies in a particular case. There is no reference to, or discussion of, IR35 in the legislation. It should be noted that case law emerging on IR35 is still in its early stages.

question of whether IR35 applies to particular arrangements between client and PSC. In each instance depends on its own facts. There is no simple test as to whether IR35 applies in a particular case. There is no reference to, or discussion of, IR35 in the legislation. It should be noted that case law emerging on IR35 is still in its early stages.

In general, if arrangements made between client and PSC allow the worker to substitute someone else to do any of the work, this is a strong indication of possible self-employment – see “Indicators of self-employment” above. However, where the PSC provides services” but the worker does not substitute someone else for the work, this will not be taken into account for IR35 purposes when determining whether the worker is

client allow the worker to substitute someone else to do any of the work, this is a strong indication of possible self-employment – see “Indicators of self-employment” and “Indicators of self-employment” above. However, where the PSC provides services” but the worker does not substitute someone else for the work, this will not be taken into account for IR35 purposes when determining whether the worker is

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by the client. The fact that they a indicate deemed employment (rather

work personally will therefore tend to (t) in the IR35 context.

**6. The effect of IR35**

When IR35 applies, the income regarded as the worker’s earnings and subject to Class 1 NICs, called the PSC. IR35 includes long and time of receipt of this deemed “e PSC.

work carried out for the client is to tax as their employment income “employment payment” to them by applied to calculate the amount and each person who works for the

IR35 also impacts other areas situations, such as when dealing v

be taken into account in various corporation tax returns.

In order to avoid lengthening this benefits received by PSCs/workers in mind that IR35 also covers such to tax and NIC liability.

be not dealt with IR35 in relation to payment, but it is important to bear result that they will also be subject

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**7. Are any IR35 rules relevant**

IR35 can only impact on any ca intermediary) is involved. If a free other type of entity (e.g. an agen might apply, so it is important to IR35.

grant, i.e. where a PSC (or other through a PSC but through some company), then other rules will or ents to a PSC for the purposes of

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So, if you engage a freelancer v PSC, you will not be affected by IR35 rules) applicable in these c employee rather than a sole trade operate PAYE.

as opposed to working through a consequence of normal tax law (not d to decide whether they are an are an employee, you will have to

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**8. How to determine a freelance**

Although clients will need to app someone is a “disguised emplo aggravated by the fact that H M cannot necessarily be regarded a tax tribunals to contest the status c

ent status tests to decide whether to do so, and that difficulty is HMCR”) view of status in a case has in the past brought cases to ge percentage of those cases.

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HMRC provide a tool, theCheck E clicking [here](#) that clients may use Due to concerns previously expre biased towards finding that an in

(“CEST”) which you can reach by (e) to assess employment status. ST being, in their view, somewhat employee, HMRC has revamped

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CEST, and it may in future updates be registered by a number of tax/acc changes will be made to improve outcome produced by use of CES with the tool is not accurate.

the comments on the revamp were . It is to be hoped that additional has said that it will stand by an check shows that information used

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**9. Managed service companies**  
IR35 does not apply to managed companies. There is separate tax contains tests specifically applicab

Cs”) and some composite service slation for MSCs. That legislation

**10. Employment agency or business**

Employment agencies and bus completeness, please be aware of

the scope of this note, but for

Where a third party entity is act employer of the worker - the pers for that purpose is the employe employed, not to be self-employed as an “employment business”.

agency”, the agency is not the the agency introduces the worker only to enable the worker to be here the third party entity is acting er is neither self-employed nor

employed by the person/organisa employed by the employment bus

provides services. The worker is s their services to its client.

However, there are special “age business. Where those rules app NIC is paid correctly for workers. “agency rules” at [www.gov.uk/guidance](http://www.gov.uk/guidance)

ply to an employment agency or on responsible for ensuring that tax and e (23 September 2015) about the [employment-intermediaries](http://www.gov.uk/guidance/employment-intermediaries).

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**11. Use of Suitable Contract**

Whether or not a worker uses a trying to establish arrangements body as not amounting to them b the relevant arrangements, facts a

y) as an intermediary, if they are byHMRC, a tribunal, or any other will need to consider the totality of

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Where a PSC is involved, those c implemented, and all arrangement

the way in which the contract is client, and the worker.

Where no PSC is involved by a v the contract is implemented, the engages to do any of the work for

ces will include the way in which e worker, and anyone the worker angements between them.

Although all facts and circumstand worded contract ensuring the ind provided numerous template cor

account, nevertheless, a carefully r is a key starting point. We have and Employment folders for this

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purpose which you can see [here](#), of agreement between a client and an intermediary. In either case, the worker is deemed to be a de-facto employee for employment and tax law. The worker/intermediary/client template has the effect explained above.

**12. Other tips**

Where a PSC is involved, to reduce the risk of IR35, the contract between the PSC and the client should be for services, and not those of a contract of employment. The PSC should have an obligation to provide and accept work, and should have control over the PSC, it should provide a stated quantity of work rather than a stated period of time, and payment should relate to work completed. If payment clauses also provide for penalties, that might also be helpful. The PSC should if possible also provide for the worker's payment needed for the work. It will help to avoid IR35 applying if a break clause is included as part of the terms agreed where that right is exercised by the PSC.

There should also be a suitable control over the worker which is as much as possible, to reduce the risk of IR35. The contract should be for only one client, and the worker should be required to do work for only one client, for the PSC to decide (perhaps as a regular realistic amount of salary). The worker is to receive amounts connected to what the client pays for the work. The contract should provide for the PSC (not the client) to have control over the worker carries out their work.

In general, you should take account of the details of the arrangements and document them appropriately for HMRC to be satisfied that the claimed self-employed status is genuine and not a tax-driven device or an attempt to avoid employment protection rights.

IR35 is a complex subject and it is recommended to take tax and legal advice before using any of the templates or implementing any other arrangements.

**C. CHANGES TO IR35**

**1. Scope of this Section**

some of those templates are forms of agreement between a client and an intermediary. In either case, the worker is deemed to be a de-facto employee for employment and tax law. The worker/intermediary/client template has the effect explained above.

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IR35 is a complex subject and it is recommended to take tax and legal advice before using any of the templates or implementing any other arrangements.

**6 APRIL 2021**

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The following supplements the above information on IR35 enacted by the Finance Act 2017. Any freelancer who works through a PSC, and any business that engages freelancers through a PSC, needs to be aware of the effect of the 2017 rule changes.

the changes to the operation of IR35 enacted by the Finance Act 2017. Any freelancer who works through a PSC, and any business that engages freelancers through a PSC, needs to be aware of the effect of the 2017 rule changes.

**2. Context of the changes**

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Until April 2021, IR35 rules required a client to determine whether to receive gross payments from a contractor through a PSC and for the PSC to pay tax and National Insurance contributions.

Until April 2021, IR35 rules required a client to determine whether use of the PSC to engage a freelancer was "disguised employment" by the client. It was the case that the client was responsible for identifying such "disguised employment" situations.

HMG found that PSCs could not be held responsible for identifying such "disguised employment" situations under changes to the rules in April 2021. Consequently, the responsibility for assessing the situation and identifying such "disguised employment" situations shifted to the public body concerned, so that it, not the PSC, is responsible for identifying such "disguised employment" situations. Where the client is a public sector entity, the PSC must operate PAYE and pay the net amount of income tax to the PSC, whereas previously it would have operated PAYE and paid the gross amount. In other words, it moved the tax risk from the PSC to the client.

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**3. The 6 April 2021 changes**

The IR35 2021 rule changes extend to both the public and private sectors as well, but the April 2021 changes affect only the private sector client (not the PSC). From 6 April 2021, a client must determine whether a freelancer is a "disguised employee" and then determine whether IR35 applies. If the client determines that IR35 does not apply, it must pay the gross amount to the PSC. If the client determines that IR35 does apply, it must operate PAYE and pay the net amount to the PSC. If the entity is not also the client of the PSC, then the client is responsible for operating PAYE.

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However, these April 2021 rules do not apply to public sector clients. The April 2021 rules provide that clients which are "small" are not required to determine freelancers' status. In that case - neither the client nor fee payer need to operate PAYE and pay the net amount to the PSC.

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This means that where a client is "small", the responsibility for determining the freelancer's status remains with the client (just as it was before 6 April 2021), and if appropriate the PSC has to operate PAYE and pay the net amount received.

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For this purpose, "small" means that the client falls within at least two of the following conditions:

For this purpose, "small" means that the client falls within at least two of the following conditions:

- Its annual turnover is less than £10 million

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- Its balance sheet total is less than £1 million
- The number of its employees is less than 50 in the year.

If the client is non-corporate and if these criteria, the rules similarly do not apply to it.

This “small” exception relates to the client, not to the PSC or other intermediary in the labour chain.

The “small” client exception does not apply to the public sector.

**4. Information requirements**

Before 6 April 2021, where the client is in the public sector, it had to tell the entity it engaged with of its determination of status. From 6 April 2021, the IR35 rules require not only public sector clients, to inform both the entity and the freelancer or PSC of their determination (a “Status Determination Statement”) and the client’s reasons for it. Determinations must be made on an individual basis. (See [here](#) or [here](#) our template which is an example of a determination for a medium sized client is in the private sector and there is only one intermediary.)

The IR35 rules as amended require the client to determine the status of the person in the labour chain other than the client and the freelancer or PSC on to the person with whom they are engaged.

The April 2021 rules for the private sector require the client to determine status on an individual basis (a “reasonable care” which you can see in our guidance). Where a client does not do so, or does so without reasonable care, HMRC will be liable for tax and NI, even if it cannot be collected from the next entity in the labour supply chain.

**5. Impact of changes to IR35**

The April 2021 changes might affect your business if you engage freelancers and the freelance effects might include an increase in the cost of that extra work, practical difficulties in operating under the new rules, and the commercial and financial impact on your business. It is important that you consider the IR35 rules as amended if you are a freelancer or if you engage any freelancers through PSCs or other intermediaries.

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**Anti-avoidance**

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**Action needed now**

The April 2021 changes might affect your business if you engage freelancers and the freelance effects might include an increase in the cost of that extra work, practical difficulties in operating under the new rules, and the commercial and financial impact on your business. It is important that you consider the IR35 rules as amended if you are a freelancer or if you engage any freelancers through PSCs or other intermediaries.

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If you are the “client”

If you engage freelancers, it is recommended that you identify those freelancers working for you through PSCs or other intermediaries in each case, and then implement arrangements to ensure that you are not liable for their tax. This may not be immediately evident if you engage a freelancer through an agency. To make sure you are not liable, you should inform any agency or other supplier, to whom you are paying, that you are working for you through a PSC or other intermediary. You might need in order to carry out a

If you are a client of a freelancer and the freelancer is overseas, you will need to take specific advice as to whether (and how) you should pay or any other in the chain.

If you are the freelancer

If you operate a PSC, you need to be aware of the 2021 rule changes which need to be implemented from 1 April 2021 for some clients but not others, but in all cases you should consider the impact of the rules on your net income. Some businesses will not deal with PSCs at all, and so if you use a PSC with some clients. Some major businesses and regulated organisations might do this, but they pay to PSCs if those clients are not. This increased expense of engaging the

Further steps

It is advisable that you seek advice from a professional in view of the April 2021 changes to IR35. For guidance on these from advisers or HMRC, see the services which include reviewing

**D. Template documents**

The Business documents available on the Simply Docs website include templates which can be used to create forms of agreement with a freelance worker/intermediary company.

1. [Self-Employment and Freelance](#)
2. [IR35 And Other Company](#)

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**Simply Docs**

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