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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.

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 particularly 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.

ance 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.

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 cover cases where the worker is 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, this Section 5 comes into play.

tion where the worker is 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, this Section 5 comes into play.

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

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

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.

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.

Usually it will be easy to decide whether a worker is self-employed or 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.

Usually it will be easy to decide whether a worker is self-employed or 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.

Before looking at what features indicate that someone is carrying on a business (i.e. that there is a contract for the worker to work on a self-employed basis), it is helpful to quote some authoritative legal comments on the subject. In the case of *Wheeler*, which were quoted with approval by the Tribunal in *Wheeler*:

Before looking at what features indicate that someone is carrying on a business (i.e. that there is a contract for the worker to work on a self-employed basis), it is helpful to quote some authoritative legal comments on the subject. In the case of *Wheeler*, which were quoted with approval by the Tribunal in *Wheeler*:

“In order to decide whether a worker is self-employed it is necessary to consider many factors. This is not a mechanical exercise. The object of the exercise is to paint a picture of the overall effect can only be appreciated from the detailed picture

business on his own account it is necessary to consider many factors. This is not a mechanical exercise. 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. Decisions 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.*

It is not possible to say with certainty as to whether in any case it will be an employee but ultimately in any given case it will be a matter for HMRC or a court as to whether or not someone is an employee. The law in which it gives weightings to various factors. HMRC’s case law are sufficiently precise to enable anyone to predict how the “balancing exercise” would be carried out or what HMRC’s conclusion will be in that case. *For that reason, we recommend that you take professional advice on your own specific circumstances, tax, and NIC advice in relation to 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 provide work) and if the worker is implicitly or explicitly under the control of the ‘employer’ (i.e. “when, where, what, how”), from which the ‘employer’ has over the worker. It is a good indicator that they will be considered to be an employee.

A significant indicator will be if the worker is obliged to provide work and the ‘employer’ is obliged to provide work) and if the worker is implicitly or explicitly under the control of the ‘employer’ (i.e. “when, where, what, how”), from which the ‘employer’ has over the worker. It is a good indicator that they will be considered to be an employee.

(b) Personal service

That the worker provides personal service. If the worker undertakes the work personally or to give them substantial help, it is an important factor to take into account when considering whether or not the worker is an employee. When considering whether or not the worker has a right to substitute, it is important to consider whether they exercise that right. (See under “Substitution” below) as to how (only) in the context of a worker also important, not just having the right to substitute. In reality self-employed, the worker must be answerable to the client for the choice of substitute to a suitable substitute. However, if the client has the right to substitute, it is a good indicator that the worker is an employee. This is a very important factor to take into account when considering whether or not someone is an employee. The test is whether the worker provides personal service, the test is whether the worker provides personal service, not whether they provide personal service through an intermediary company and IR35. In addition to this, exercise of that right is a possibility that the worker is in fact an employee. The fact that a client can limit the worker’s choice of substitute does not necessarily mean that there is no real control over substitutes then this may be a good indicator that the worker is an employee.

An essential element of a relationship is that the worker provides personal service. If the worker undertakes the work personally or to give them substantial help, it is an important factor to take into account when considering whether or not the worker is an employee. When considering whether or not the worker has a right to substitute, it is important to consider whether they exercise that right. (See under “Substitution” below) as to how (only) in the context of a worker also important, not just having the right to substitute. In reality self-employed, the worker must be answerable to the client for the choice of substitute to a suitable substitute. However, if the client has the right to substitute, it is a good indicator that the worker is an employee.

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

...ces personally and the right of

(c) Other indicators

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

...

- They are required to work regularly (including maternity leave);
- They must do a minimum number of hours per week;
- 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 which engages them;
- The disciplinary and grievance procedures apply to them;
- They work at that business's premises;
- Their contract sets out redundancy provisions specified by that business;
- They are provided with the materials and equipment for their work by the business;
- 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') uses the word 'employee' and 'employee'.

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

...o 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;

...n engages them;

...ss apply to them;

...specified by that business;

...ent for their work by the business

...other job, it is completely different

...fer letter (which can be described as an 'employment contract') uses the word 'employee' and 'employee'.

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

... is instead self-employed.

5. Indicators of self-employment

(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 include provisions such as 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 is a key indicator. Although not decisive, this can be used to describe the relationship. The more likely to 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 to do the work (see “Personal service” above). However, note “Working through an intermediary company” below, which may allow 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 complete;
- is permitted to work for more than one client;
- regularly works for a number of clients.

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;

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6. Rights of a worker arising from being an employee

to do the work (see “Personal service” under “Working through an intermediary company” below, which may allow you to ignore any such right of substitution in the context of IR35 if the worker does not actually exercise that right; in their own time and at their own expense; agreeing them, i.e. the amount paid for their work which does not depend on how long it takes to complete;

If someone is in law an employee, they are entitled to the following, regardless of whether they are paid or not.

6. Rights of a worker arising from being an employee
If someone is in law an employee, 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 or maternity leave;
- 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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and pay;

discrimination on the grounds of race, sex, disability, age, sexual orientation and religion; protection against less favourable treatment on grounds of pregnancy or maternity leave;

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 a client with no third party (an individual, company or other legal entity) interposed or involved with that client, the worker could, in certain circumstances, where there is an intermediary, be treated as if employed by their client. However, under “Employment agency or business subcontracting” arrangements, where there is an intermediary, the worker could, in certain circumstances, where there is an intermediary, be treated as if employed by their client. However, under “Employment agency or business subcontracting” arrangements, where there is an intermediary, the worker could, in certain circumstances, where there is an intermediary, be treated as if employed by their client. However, under “Employment agency or business subcontracting” arrangements, where there is an intermediary, the worker could, in certain circumstances, where there is an intermediary, be treated as if employed by their client.

es”. When a worker is engaged to a client with no third party (an individual, company or other legal entity) interposed or involved with that client, the worker could, in certain circumstances, where there is an intermediary, be treated as if employed by their client. However, under “Employment agency or business subcontracting” arrangements, where there is an intermediary, the worker could, in certain circumstances, where there is an intermediary, be treated as if employed by their client.

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
so.

m any clients - only the PSC does

The usual reason for a worker us
derive a tax/NIC benefit (see belo
individual directly for their clients.

result, they aim to, and often will,
as an employee or self-employed

There is no legal definition of a “p
but a PSC is an intermediary whic
one Director and the Company S
wife). There are normally no emp
them is the only worker providing
its income from supplying the wo
between the PSC and the client
paid to supply the worker’s servic
or benefits from the PSC (not fro
PSC rather than anysubstantial sa

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” (PSC) (see paragraph 4 below)
typically will have two Directors, or
, but need not be, husband and
the two people, and usually one of
the PSC earns all, or almost all, of
. In each case there is a contract
(agency) under which the PSC is
(or is entitled to receive) payments
form of share dividends from the

The effect of the UK system if a pe
pay a lower level of Income tax an
they may pay an even lower level

ther than an employee is that they
they work through an intermediary,

Many years ago, to achieve tax a
supply their services through a P
PSC having to pay Corporation T
drew remuneration only or mostly
and often (depending on the am
dividends.A PSC can build up sig
dividends, as opposed to paying a

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common practice for individuals to
T and media sectors. Despite the
an overall saving where a worker
NICs were payable on dividends,
there might be no tax to pay on
for future distribution in the form of
ntial salary, on a regular basis.

3. The intermediaries legisla

The “IR35” legislation first came in
of being notorious and difficult.

he years it acquired the reputation

IR35 was designed to ensure t
employment taxes, and to elimin
directly as employeesand worke
intermediaries. It was, therefore,an

yers pay the correct amount of
n workers employed by a client
services for the client through
measure.

A worker who provides his
intermediary),wherecaught by tes
rules in relation tax and NI. Since

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ient via a PSC (or other
5 rules,is then regulated by those
e been progressively tightened up

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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 (see below); and
- if they had instead worked for the client they would have been regarded in law as an employee,

anyway which amounts to a PSC (see below). If they had not worked through the PSC (they would not through the PSC) they would have been regarded as an employee,

they are treated as if they were employees for the purposes of the payments made to the PSC by the client.

anyway which amounts to a PSC (see below). If they had not worked through the PSC (they would not through the PSC) they would have been regarded as an employee,

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 way different to “true” employment.

anyway which amounts to a PSC (see below). If they had not worked through the PSC (they would not through the PSC) they would have been regarded as an employee,

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.

anyway which amounts to a PSC (see below). If they had not worked through the PSC (they would not through the PSC) they would have been regarded as an employee,

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.

anyway which amounts to a PSC (see below). If they had not worked through the PSC (they would not through the PSC) they would have been regarded as an employee,

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 an employee of their client, and/or aligning income tax and NICs.

anyway which amounts to a PSC (see below). If they had not worked through the PSC (they would not through the PSC) they would have been regarded as an employee,

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.

anyway which amounts to a PSC (see below). If they had not worked through the PSC (they would not through the PSC) they would have been regarded as an employee,

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*

anyway which amounts to a PSC (see below). If they had not worked through the PSC (they would not through the PSC) they would have been regarded as an employee,

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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 company (or its controller);
- the worker receives or is entitled to receive a payment or benefit that is not chargeable to tax as an employee of the company;
- 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 “reasonable expectation” of receiving the payment or benefit or the payment or benefit can be regarded as ownership or control of more than 5% of the ordinary share capital of the company 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 company;

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 company 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.

relationship with a client to be considered.

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. This test is passed, but it is not an easy test to apply. The other tests (which are much easier to understand and apply in practice.

There is a certain amount of case law on this question of whether IR35 applies to particular arrangements between client and PSC. 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 this point.

question of whether IR35 applies to particular arrangements between client and PSC. 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 this point.

In general, if arrangements made with a PSC allow the worker to substitute someone else to do any of the work, this is a strong indication of 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 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 (rat

work personally will therefore tend to) 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, call 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/worker 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 fre 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 ts to a PSC for the purposes of

So, if you engage a freelancer v PSC, you will not be affected by IR35 rules) applicable in these d 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 freel

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 o

nt 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.

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 bus

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”.

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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/guid

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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/guid).

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 time to be included as part of the terms agreed where that right is exercised.

There should also be a suitable control over the PSC, like a conventional employment contract. To reduce the risk of IR35 applying, that contract should avoid a stated period of time, and payment by the PSC to the worker should be a regular realistic amount of salary, and should be connected to what the client pays for the work. The client should have control over the PSC.

In general, you should take account of the fact that HMRC will be satisfied that a 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 you should seek professional advice before using any of the templates or implementing any other arrangements.

C. CHANGES TO IR35

1. Scope of this Section

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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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In general, you should take account of the fact that HMRC will be satisfied that a 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 you should seek professional 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 identify whether use of the PSC to receive gross payments from a client and for the PSC to pay tax and National Insurance was the case.

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HMG found that PSCs could not be held responsible for identifying such “disguised employment” situations. Where the client is a public sector entity, the responsibility for assessing the situation shifted to the public body concerned, so that it, not the PSC, must operate PAYE and pay the net amount of income tax to the PSC, whereas previously it would have 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 the private sector as well, but the April 2021 changes require the private sector client (not the PSC) to determine whether the freelancer is a “disguised employee” and the client 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 provide that clients which are “small” are not required to be involved in determining the freelancer’s status. In that case - neither the client nor fee payer need to operate PAYE.

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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 in relation to the client payments 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 engaged with (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 intermediary, and to pass the SDS on to the person with whom they are engaged.

The April 2021 rules for the private sector provide mechanisms for a PSC to challenge a decision that the freelancer is within the IR35 rules (a “Status Disagreement Process”). Where a PSC does not determine status, or does so without reasonable care, it 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 free-lance business or your business 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

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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 the arrangements. This may not be immediately evident if you engage a freelancer through an agency. To make sure you are compliant, 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 may also need to give you other information you need in order to carry out a task.

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 need to identify 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. You may be able to use your PSC for some clients but not others, but in all cases you should consider the effect of the rules and the impact of the rules on your net income. Some major business sectors might not deal with PSCs at all, and so if you use a PSC you would not work with PSCs. Other regulated organisations might do that but they pay to PSCs if those clients might try to reduce the rate that they pay to PSCs if those clients do compensate for their resulting increased expense of engaging the PSC.

Further steps

It is advisable that you seek advice in view of the April 2021 changes. Some firms offer IR35 services which include reviewing contracts.

D. Template documents

The Business documents available 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](#)

in by identifying those freelancers need to identify the labour supply and determine those freelancers' status. It is recommended that you identify where the freelancer/PSC deals with you. If you do not wish, in your arrangements with the freelancer, to inform you where a freelancer is working for you through a PSC or other intermediary, you may need to give you other information you need in order to carry out a task.

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 need to identify any other in the chain.

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Simply Docs

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