

Guidance Note on Employment and IR35

SCOPE OF THIS NOTE

This note addresses two separate

Section A deals with Employment and IR35. 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 confusion. It is known as the “IR35” rules and helps to determine whether an individual engaged by a client to carry out work through an intermediary, usually a personal service company (PSC), it is also important to consider whether the IR35 rules apply to the individual. **Section B** aims to clarify some of the key issues so that you can make more informed decisions about how and 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. H M Government made changes to the IR35 legislation entirely in line with its previous proposals.

Section D refers to the template contracts for employment/self-employment and self-employment.

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, it is important to consider whether a worker providing their services has the status of an employee or a self-employed contractor (i.e. a sole trader). Despite the use of a personal service company (PSC), there will still be a risk that an

impacting on freelance working.

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.

Section B explains what are the key issues so that you can make more informed decisions about how and whether to engage an individual worker or PSC to provide services to your business.

Government’s amendments to the IR35 legislation effective from 6 April 2020. H M Government made changes to the IR35 legislation entirely in line with its previous proposals.

website which are relevant to

to a client engaging a freelancer through a personal service company (PSC) or other intermediary. Use of

worker”, whether they are employed or self-employed.

consideration is whether the individual is an employee of your business, or is instead a self-employed contractor (i.e. a sole trader). Despite the use of a personal service company (PSC), there will still be a risk that an

S

A

M

P

L

E

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 an 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 the arrangement as self-employment.

The following will guide you through you to choose the right approach recommend that you read the following 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-employed "Rights of a worker arising from aware that even if the arrangement employment rather than employed workers (not just employed that you may have responsibility you, depending on the particular s

As to tax, deciding whether tax insurance contributions (NICs) and 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

person has no other 'clients'. See below.

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 the tribunals and HMRC will take into account a range of factors in deciding whether a worker is 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.

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, an intermediary is involved.

3. How to determine whether a worker is employed or 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 employed or self-employed. The two parties cannot by using a label 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 an employee or self-employed. However, there will be many cases where it is not so easy to decide. Where two workers are engaged to carry out the same work for the same person / organisation, it may be difficult to decide which is an employee and which is self-employed 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 / organisation, the worker is carrying on a business on his own account or is carrying on a business which the worker is engaged and employed to carry out.

Before looking at what features indicate that someone is carrying on a business (i.e. that there is a contract for the worker to carry out work on a self-employed basis), it is helpful to quote some authoritative legal comments on the subject. In the case of *Wicks v The Queen*, the following comments were quoted with approval by the House of Lords:

"In order to decide whether a worker is carrying on a business on his own account it is necessary to consider the nature of that person's work activity. This is not a mechanical exercise. It is necessary to see whether they are present in the given situation. The object of the exercise is to paint a picture of the overall effect can only be appreciated from the detailed picture"

through an intermediary company"

ence 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 the tribunals and HMRC will take into account a range of factors in deciding whether a worker is to be regarded as an employee or self-employed.

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

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 5 comes into play.

How to determine whether a worker is employed or 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 employed or self-employed. The two parties cannot by using a label 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 an employee or self-employed. However, there will be many cases where it is not so easy to decide. Where two workers are engaged to carry out the same work for the same person / organisation, it may be difficult to decide which is an employee and which is self-employed 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 / organisation, the worker is carrying on a business on his own account or is carrying on a business which the worker is engaged and employed to carry out.

Before looking at what features indicate that someone is carrying on a business (i.e. that there is a contract for the worker to carry out work on a self-employed basis), it is helpful to quote some authoritative legal comments on the subject. In the case of *Wicks v The Queen*, the following comments were quoted with approval by the House of Lords:

"In order to decide whether a worker is carrying on a business on his own account it is necessary to consider the nature of that person's work activity. This is not a mechanical exercise. It is necessary to see whether they are present in the given situation. The object of the exercise is to paint a picture of the overall effect can only be appreciated from the detailed picture"

which has been painted, informed, considered, qualified, and evaluated, is not necessarily the total of the individual details in any given situation. The picture in one situation is not the same as the picture in another. The picture in each individual case."

HMRC provides a certain amount of guidance but would regard a worker as employee or self-employed would be for a court or tribunal to decide. Decisions on self-employed are often based on various factors. However, neither HMRC nor the courts can enable anyone to predict how a particular case 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

The following are indicators of employment:

(a) Mutuality of obligations and control

A significant indicator will be if the worker is obliged to provide work and the 'employer' is obliged to accept that work) and if the worker is implicitly or explicitly to "when, where, what, how"), from the 'employer' has over the worker. If the worker is to be an employee.

(b) Personal service

An essential element of a relationship is that the worker provides personal service. If the worker undertakes to provide the service or to give them substantial help, it is an important factor to take into account when deciding whether the worker is employed. When considering whether or not the worker has a right to substitute, it is whether they exercise that right. (See under "Substitution" below) as to how (only) in the context of employment is 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 person. However, if the client has

distance and by making an assessment of the whole. It is a matter of judgment, not necessarily the same as the sum of the parts. The equal weight or importance of each factor varies in importance from one situation to another. The picture in each individual case."

It is not possible to say with certainty as to whether in any case it is an employee or not, but ultimately in any given case it is a matter of judgment as to whether or not someone is an employee. The "balancing exercise" in which it gives weightings to various factors for case law are sufficiently precise to enable a decision. The "balancing exercise" would be carried out 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.*

Employment

"Mutuality of obligations" (i.e. the 'employer' is obliged to provide work and the worker is obliged to provide a reasonable amount of that work) and if the worker is implicitly or explicitly to "when, where, what, how"), from the 'employer' has over the worker. If the worker is to be an employee.

It is essential that the worker provides personal service. If the worker undertakes to provide the service or to give them substantial help, it is an important factor to take into account when deciding whether the worker is an employee. When considering whether or not the worker has a right to substitute, it is whether they exercise that right. (See under "Substitution" below) as to how (only) in the context of employment is 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 person. However, if the client has

S

mean that in reality the worker provides services personally and the right of substitution is not genuine.

(c) Other indicators

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

- They are required to work regularly (e.g. holiday, sick leave or maternity leave);
- They must do a minimum number of hours of work;
- A manager or supervisor is responsible for their work 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 benefits;
- 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 not for any other business;
- Their contract, statement of terms or letter of appointment is described as an 'employment contract' or similar.

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

5. Indicators of self-employment

The following are indicators of self-employment:

(a) Contract for services

If there is a contract for services (e.g. a contract for a specific task) of employment. To ensure as far as possible that the contract should avoid any terms which are characteristic of employment, such as disciplinary measures etc.

(b) Wording

Appropriate wording used in the contract or letter of appointment. Although not decisive, this can be a useful indicator.

A

M

P

L

E

personally and the right of

ee, and not self-employed, if most

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

to be paid for the time worked;

r's workload and decides when a
one;

s tax and NICs from the worker's

nd maternity or paternity pay;

n engages them;

ess 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
and 'employee'.

is instead self-employed.

employment)

ployed worker), and not a contract

contract for services, the contract
such as holiday, sickness, and

ere to describe the relationship.

for the worker to be more likely to

S

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

(c) No mutuality

There is no “mutuality of obligation” (see of Employment above), and the client/employer has little or no control over the worker. In this case, the worker is more likely to be regarded as self-employed.

(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

- 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 equipment or running costs;
- provides all or the main tools and materials for the work;
- 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 that this right is ignored under “Working through an intermediary company” below, which is a common way to avoid substitution in the context of IR35.
- is responsible for remedying any defects 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.

6. **Rights of a worker arising from being an employee**

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

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

A

M

P

L

E

be regarded as an “employee” and he or she should be paid a fee, not a salary.

There is no “mutuality of obligation” (see of Employment above), and the client/employer has little or no control over the worker. In this case, the worker is more likely to be regarded as self-employed.

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

is in business for him/herself or for the success or failure of the business;

uses their own money to buy business equipment or running costs;

provides all or the main tools and materials for the work;

can decide what work they do and when to do it;

has the right to hire someone else to do the work (see “Personal service” above). However, note that this right is ignored under “Working through an intermediary company” below, which is a common way to avoid substitution in the context of IR35.

is responsible for remedying any defects 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.

6. **Rights of a worker arising from being an employee**

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

- maternity, paternity and adoption leave and pay;
- parental leave and time off for family reasons;
- protection from race and sex discrimination on the grounds of disability, age, sexual orientation or religion;
- protection from less favourable treatment on grounds of trade union membership;
- 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.

B. WORKING THROUGH AN INTERMEDIARY

It is important to be clear that a worker can be engaged by a client (freelancer) through a personal service company (PSC) or other intermediary. If a client engages an individual worker through an intermediary (an employed or self-employed person), the worker is not engaged by the client.

Although the IR35 rules also apply to engagements through intermediaries other than PSCs, this Note primarily addresses the use of PSCs. The rules for engagements through other intermediaries are explained in paragraph 2 below.

1. Use of an “intermediary”

The IR35 legislation deals with workers who are engaged by a client to work for their client, they may be engaged by the client through an intermediary (an individual, company or other legal entity). If a worker is engaged by a client through an intermediary, the worker could, in some circumstances, be involved as part of the arrangement as an intermediary. If a worker is engaged by a client through an intermediary, the worker could, in some circumstances, be involved as part of the arrangement as an intermediary. If a worker is engaged by a client through an intermediary, the worker could, in some circumstances, be involved as part of the arrangement as an intermediary.

2. Personal Service Company (PSC)

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.

and pay;

discrimination on the grounds of disability, age, sexual orientation or religion; relief and protection against less favourable treatment on grounds of trade union membership; and protection against less favourable treatment on grounds of trade union membership;

fulfil trade union duties;

s (TUPE);

ective;

INTERMEDIARY AND IR35

to a client engaging a worker through a personal service company (PSC) or other intermediary, nowhere a worker is engaged by a client through an intermediary (an employed or self-employed person) other than through an intermediary (an employed or self-employed person) as explained by Section A above.

er than PSCs, this Note primarily addresses the use of PSCs. The rules for engagements through other intermediaries are explained in paragraph 2 below.

es”. When a worker is engaged to work for a client with no third party (an intermediary) interposed or involved with that client, the worker is engaged by the client. If a worker is engaged by a client through a third party intermediary, the worker could, in some circumstances, be involved as part of the arrangement as an intermediary. If a worker is engaged by a client through a third party intermediary, the worker could, in some circumstances, be involved as part of the arrangement as an intermediary. If a worker is engaged by a client through a third party intermediary, the worker could, in some circumstances, be involved as part of the arrangement as an intermediary.

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

contract with any clients or receive any money from 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) for the individual directly for their clients.

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

The effect of the UK system is that a person who pays a lower level of Income tax and NICs than they may pay an even lower level of tax and NICs.

Many years ago, to achieve tax and NIC savings, people used to supply their services through a PSC. The PSC having to pay Corporation Tax, the worker drew remuneration only or mostly in the form of dividends, and often (depending on the amount) in the form of dividends. A PSC can build up significant reserves of dividends, as opposed to paying a salary.

3. The intermediaries legislation

The "IR35" legislation first came in 1997, and it has a 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 being employed through intermediaries. It was, therefore, aimed at workers.

A worker who provides his services through an intermediary, where caught by the rules in relation to tax and NI. Since 2011, the rules have been progressively tightened up.

S

A

M

P

L

E

only the PSC does

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

"person" (PSC) (see paragraph 4 below) typically will have two Directors, or more, but need not be, husband and wife, or two people, and usually one of them. The PSC earns all, or almost all, of its income. In each case there is a contract (with the agency) under which the PSC is entitled to receive) payments in the form of share dividends from the client.

rather than an employee is that they are not employed by the client, they work through an intermediary,

common practice for individuals to use a PSC in the IT and media sectors. Despite the fact that there is an overall saving where a worker uses a PSC, as NICs were payable on dividends, there might be no tax to pay on dividends, or future distribution in the form of dividends, or a regular salary, on a regular basis.

the years it acquired the reputation of being notorious and difficult.

employers pay the correct amount of employment taxes, and to eliminate the possibility of workers being employed directly as employees and workers being employed through intermediaries. It was, therefore, aimed at workers.

client via a PSC (or other intermediary), where caught by the IR35 rules, is then regulated by those rules. The rules have been progressively tightened up.

with the result that, depending on the circumstances, a worker may 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:

- 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,

they are treated as if they were employees for the purposes of the 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 the client, and therefore the arrangements are sometimes referred to as “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.

Further measures tightening up IR35 came into effect on 6 April 2021, and we explain them in more detail in Section C (Section C) below. As explained in Section A, IR35 applies to cases where the client is in the private sector, to suppliers of services to the client who are in the public sector, and to cases where the client is in the private and public sectors.

Still further changes might be implemented in the 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 of the client, and/or aligning income tax and NICs with employment (see below) where they are not an employee of the client, and/or aligning income tax and NICs with employment (see below) where they are not an employee of the client.

4. “Intermediary” defined

Whilst the IR35 rules relating to the definition of an intermediary are very similar, the following is intended to provide a summary of the key principles.

IR35 rules apply to what the rules refer to as an “intermediary”. An intermediary may be any company or individual, other than another individual, *this Note is part of a series of documents*

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

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,

they are treated as if they were employees for the purposes of the 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 the client, and therefore the arrangements are sometimes referred to as “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.

Further measures tightening up IR35 came into effect on 6 April 2021, and we explain them in more detail in Section C (Section C) below. As explained in Section A, IR35 applies to cases where the client is in the private sector, to suppliers of services to the client who are in the public sector, and to cases where the client is in the private and public sectors.

Still further changes might be implemented in the 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 of the client, and/or aligning income tax and NICs with employment (see below) where they are not an employee of the client, and/or aligning income tax and NICs with employment (see below) where they are not an employee of the client.

Whilst the IR35 rules relating to the definition of an intermediary are very similar, the following is intended to provide a summary of the key principles.

IR35 rules apply to what the rules refer to as an “intermediary”. An intermediary may be any company or individual, other than another individual, *this Note is part of a series of documents*

S

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

In brief, although there is no legal relation to the worker who supplies the services (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 from the PSC a payment or benefit that is not chargeable to tax as an employee of the PSC;
- The PSC is not an “associated company” under the Corporation Tax Act 2010; and
- Either the worker has a “reasonable expectation” that the payment or benefit will be provided to the client. “More than 5% of the ordinary business of the PSC is to provide services to the client as an associate(s)”.

5. Employed/self-employed

IR35 requires the underlying nature of the relationship 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 concerned personally, IR35 will not apply. IR35 is not an easy test to apply. Each case depends on its own facts. It also then must be met for IR35 to apply in practice.

There is a certain amount of case law on this. In any arrangements between client and PSC, the question of whether IR35 applies in a particular instance depends on its own facts. There is no any reference to, or discussion of, IR35 in the legislation. It should be noted that case law emerging on this is still in the process of being clarified.

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 services, this is a strong indication that the worker is to be regarded as if employed for IR35 purposes when the client allows the worker to substitute someone else to do any of the work.

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

company will amount to a PSC if, in relation to the worker who supplies the services 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 from the PSC a payment or benefit that is not chargeable to tax as an employee of the PSC;
- The PSC is not an “associated company” under the Corporation Tax Act 2010; and
- Either the worker has a “reasonable expectation” that the payment or benefit will be provided to the client. “More than 5% of the ordinary business of the PSC is to provide services to the client as an associate(s)”.

relationship with a client to be considered. 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 concerned personally, IR35 will not apply. IR35 is not an easy test to apply. Each case depends on its own facts. It also then must be met for IR35 to apply in practice.

question of whether IR35 applies to a particular arrangement. It should be noted that case law emerging on this is still in the process of being clarified. In any arrangements between client and PSC, the question of whether IR35 applies in a particular instance depends on its own facts. There is no any reference to, or discussion of, IR35 in the legislation. It should be noted that case law emerging on this is still in the process of being clarified.

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 services, this is a strong indication that the worker is to be regarded as if employed for IR35 purposes when the client allows the worker to substitute someone else to do any of the work.

A

M

P

L

E

by the client. The fact that they are not working personally will therefore tend to indicate deemed employment (rather than being an employee) in the IR35 context.

6. The effect of IR35

When IR35 applies, the income from the work carried out for the client is regarded as the worker's earnings and subject to Class 1 NICs, called "deemed employment payment" to them by the PSC. IR35 includes long and complex rules applied to calculate the amount and time of receipt of this deemed "employment payment" to each person who works for the PSC.

IR35 also impacts other areas of tax that need to be taken into account in various situations, such as when dealing with corporation tax returns.

In order to avoid lengthening this document, we will not deal with IR35 in relation to other taxes and NICs, but it is important to bear in mind that IR35 also covers such matters and result that they will also be subject to tax and NIC liability.

7. Are any IR35 rules relevant?

IR35 can only impact on any case where a PSC (or other intermediary) is involved. If a freelancer works through a PSC but through some other type of entity (e.g. an agent or a company), then other rules will or might apply, so it is important to consider the rules to a PSC for the purposes of IR35.

So, if you engage a freelancer who works through a PSC, you will not be affected by IR35 rules) applicable in these circumstances. If you are an employee rather than a sole trader, you will have to operate PAYE.

8. How to determine a freelancer's status

Although clients will need to apply the status tests to decide whether someone is a "disguised employee", HMRC has in the past brought cases to tax tribunals to contest the status of a worker. HMRC has in the past brought cases to tax tribunals to contest the status of a worker.

HMRC provide a tool, theCheck Employment Status (CES) tool, which you can reach by clicking [here](#) that clients may use to assess employment status. Due to concerns previously expressed about the tool being, in their view, somewhat biased towards finding that an individual was an employee, HMRC has revamped

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 CEST with the tool is not accurate.

9. Managed service companies
IR35 does not apply to managed service companies. There is separate tax legislation for MSCs. That legislation contains tests specifically applicable

10. Employment agency or business
Employment agencies and business completeness, please be aware of

Where a third party entity is acting as employer of the worker - the person for that purpose is the employee employed, not to be self-employed as an "employment business".
employed by the person/organisation employed by the employment business

However, there are special "agency business. Where those rules apply NIC is paid correctly for workers.
"agency rules" at www.gov.uk/guidance

11. Use of Suitable Contract

Whether or not a worker uses a body as not amounting to them by the relevant arrangements, facts and

Where a PSC is involved, those conditions implemented, and all arrangements

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

Although all facts and circumstances worded contract ensuring the individual provided numerous template contracts

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

Cs") and some composite service legislation for MSCs. That legislation

the scope of this note, but for

agency", the agency is not the the agency introduces the worker only to enable the worker to be where the third party entity is acting er is neither self-employed nor provides services. The worker is s their services to its client.

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

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

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

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

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

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 those of a contract for services, and not those of a contract of employment. If the PSC has an obligation to provide and accept work, and if the client can control the PSC, it should provide a specific, stated quantity of work rather than a general obligation over time, and payment should relate to the work actually worked. If payment clauses also provide for a minimum, The PSC should if possible also provide for a maximum. This will help to avoid IR35 applying if a breach of the terms agreed where that right is exercised.

There should also be a suitable contract between the PSC and the worker like a conventional employment contract. If IR35 is to be avoided, applying, that contract should avoid any obligation for payment by the PSC to the worker other than a regular realistic amount of salary. The PSC should be connected to what the client pays the worker (not the client) to have control over the worker.

In general, you should take account of the fact that if the claimed self-employed status is genuine, it is not an attempt to avoid employment protection rights.

IR35 is a complex subject and should be approached with advice before using any of the templates or making any 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.

If IR35 is to be avoided, applying, there should be a suitable contract between the PSC and the worker like a conventional employment contract. If IR35 is to be avoided, applying, that contract should avoid any obligation for payment by the PSC to the worker other than a regular realistic amount of salary. The PSC should be connected to what the client pays the worker (not the client) to have control over the worker.

In general, you should take account of the fact that if the claimed self-employed status is genuine, it is not an attempt to avoid employment protection rights.

IR35 is a complex subject and should be approached with advice before using any of the templates or making any arrangements.

It is recommended to take tax and legal advice before using any of the templates or implementing any other arrangements.

6 APRIL 2021

S

A

M

P

L

E

The following supplements the above information on IR35 enacted by the Finance Act 2017, and applies to those who work 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

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

HMRC found that PSCs could not determine whether they were a client under changes to the rules in April 2021. Consequently, the responsibility for assessing the employment status of the contractor concerned, so that it, not the PSC, identifies "disguised employment" situations. Where the PSC is a client, the PSC must operate PAYE and deduct tax and National Insurance, whereas previously it would have been the client's responsibility to move the tax risk from the PSC to the client.

3. The 6 April 2021 changes

The IR35 2021 rule changes extend to the private sector as well, but the April 2021 changes shift the responsibility to the private sector client (not the PSC) to determine whether the freelancer is a "disguised employee" and the client must operate PAYE and deduct tax and National Insurance if it determines that IR35 does not apply. If the client determines that IR35 does not apply, the client must pay the gross amount to the PSC. If the entity in question is not also the client of the PSC, then the PSC is responsible for operating PAYE.

However, these April 2021 rules do not apply to "small" entities. They provide that clients which are "small" do not have to be involved in determining the freelancer's status. In that case - neither the client nor fee payer need to operate PAYE.

This means that where a client determines the freelancer's status and if appropriate the PSC has received the payments from the client.

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

- Its annual turnover is less than £10.1 million

the changes to the operation of IR35 from 6 April 2021. Any freelancer who works through a PSC that engages freelancers through a PSC, needs to be aware of the effect of the 2017 rule changes.

to determine whether use of the PSC to receive payments is "disguised employment" by the client. This was the case.

Under the IR35 rules. Consequently, if the client is a public sector entity, the responsibility for identifying such "disguised employment" situations shifts to the public body. If the client identifies such a situation, it (not the PSC) must pay the gross amount net of income tax to the PSC, whereas previously it would have been the client's responsibility to move the gross amount. In other words, it was the client's responsibility to move the tax risk from the PSC to the client.

the changes to the operation of IR35 from 6 April 2021. Any freelancer who works through a PSC 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 from 6 April 2021. Any freelancer who works through a PSC 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 from 6 April 2021. Any freelancer who works through a PSC 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 from 6 April 2021. Any freelancer who works through a PSC that engages freelancers through a PSC, needs to be aware of the effect of the 2017 rule changes.

- Its balance sheet total is less than £12.1 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 had contracted with of its determination of status, the IR35 rules require not only public sector clients, to inform both the entity making the determination (a “Status Determination Statement”) and the client’s reasons for it. Determinations must be made on a “reasonable care” basis. (See [here](#) or [here](#) for our template which is an example of a determination for a client in the private sector and there is only one intermediary in the labour chain.)

The IR35 rules as amended require the client to inform both the entity making the determination (a “Status Determination Statement”) and the client’s reasons for it. Determinations must be made on a “reasonable care” basis. (See [here](#) or [here](#) for our template which is an example of a determination for a client in the private sector and there is only one intermediary in the labour chain.)

The April 2021 rules for the private sector require the client to inform both the entity making the determination (a “Status Determination Statement”) and the client’s reasons for it. Determinations must be made on a “reasonable care” basis. (See [here](#) or [here](#) for our template which is an example of a determination for a client in the private sector and there is only one intermediary in the labour 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 engages freelancers and the free-lance business. The effects might include an increase in the cost of that extra work, practical difficulties in operating in a new legal environment, and the financial impact on your business. The April 2021 changes might affect your business if you are a freelancer or if you engage any freelancers through PSCs or other intermediaries.

S

A

M

P

L

E

age of 50 in the year.

these criteria, the rules similarly do not apply to it.

to the PSC or other intermediary in the labour chain.

c sector.

Anti-avoidance

sector, it had to tell the entity it was making the determination of status. From 6 April 2021, the IR35 rules require not only public sector clients, to inform both the entity making the determination (a “Status Determination Statement”) and the client’s reasons for it. Determinations must be made on a “reasonable care” basis. (See [here](#) or [here](#) for our template which is an example of a determination for a client in the private sector and there is only one intermediary in the labour chain.)

ents of the SDS (i.e. those in the labour chain other than the client and the intermediary) to pass the SDS and the reasons for it.

anisms for a PSC to challenge a decision that the freelancer is within the scope of IR35 (a “Status Disagreement Process”). Where a party is liable for tax and NI, even if it cannot be collected from the next entity in the labour supply chain, the effect of moving liability to the next entity in the labour supply chain.

Action needed now

elance business or your business engages freelancers and the free-lance business. The effects might include an increase in the cost of that extra work, practical difficulties in operating in a new legal environment, and the financial impact on your business. The April 2021 changes might affect your business if you are a freelancer or if you engage any freelancers through PSCs or other intermediaries.

S

If you are the “client”

If you engage freelancers, it is recommended that you identify the labour supply chain in each case, and then implement measures to determine those freelancers’ status. It may not be immediately evident that a freelancer/PSC deals with you through an agency. To make sure you are aware of any agency or other supplier, to whom you are paying, you might need in order to carry out a

in by identifying those freelancers who are not directly engaged. You need to identify the labour supply chain in each case, and then implement measures to determine those freelancers’ status. It may not be immediately evident that a freelancer/PSC deals with you through an agency. To make sure you are aware of any agency or other supplier, to whom you are paying, 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 if so, how) you or any other in the chain.

If you are a client of a freelancer and the freelancer is overseas, you will need to take specific advice as to whether (and if so, how) you 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. You need to be in a position to identify clients but not others, but in all cases you should consider the impact of the rules on your net income. You may not deal with PSCs at all, and so if you use a PSC, you should be aware of the impact of the rules on your net income. Some major businesses and regulated organisations might do this, but they pay to PSCs if those clients are not. This might increase the expense of engaging the

and any intermediaries to see how they can be able to use your PSC for some of their business. You need to be aware of the effect of the rules and the impact of the rules on your net income. You may not deal with PSCs at all, and so if you use a PSC, you should be aware of the impact of the rules on your net income. Some major businesses and regulated organisations might do this, but they pay to PSCs if those clients are not. This might increase the expense of engaging the

Further steps

It is advisable that you seek advice from a professional in view of the April 2021 changes to the rules. You should seek guidance on these from advisers or from HMRC. Some services which include reviewing

that you do or might need to take. It is advisable that you seek advice from a professional in view of the April 2021 changes to the rules. You should seek guidance on these from advisers or from HMRC. Some services which include reviewing

D. Template documents

Simply Docs

The Business and Employment contracts folder contains templates which can be used to create a contract between a client and a freelance worker/intermediary company. Click on the links below to view the

Simply-Docs include templates for contracts between a client and a freelance worker/intermediary company. Click on the links below to view the

Business folder

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

Employment folder

A

M

P

L

E

3. [Self-Employed Agreement](#)
4. [Service Company Contract](#)

S A M P L E