

# 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, 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.

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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 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 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-employed "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

aged 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?

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

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 B, the worker is engaged via an intermediary.

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

Individuals working on a self-employed basis are often described as "freelancers", "sole traders", "self-employed" or "individuals in business". 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 labels just decide the nature of the employment relationship between them. The reality of the relationship must be taken into consideration and the courts will decide what is the reality.

Usually it will be easy to decide whether a worker is self-employed or employed. However, there will be many cases where it 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 whether one is self-employed and the other is 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 are likely to 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. Thomas* (1985) 1 W.L.R. 1214, Lord Justice Mustill made the following comments which were quoted with approval by the House of Lords in *Wicks v. Thomas* (1985) 1 W.L.R. 1214:

*"In order to decide whether a worker is self-employed or employed it is necessary to consider the nature of the work activity. This is not a mechanical exercise. It is necessary to see whether they are present in the 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"

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*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 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 considering 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 part varies in importance from one situation to another. A picture in each individual case.

It is not possible to say with any certainty as to whether in any case it will be an employee or not ultimately in any given case it will be 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 "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**

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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 engagement is described as an 'employment contract' or 'contract of employment'.

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 engagement. Although not decisive, this can be a useful indicator.

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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 method of 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 a contract of employment**

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

- written particulars of employment;
- unfair dismissal rights;
- redundancy pay after two years of continuous employment;
- 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 or belief and 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.

## 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, notwhere a client engages an individual worker directly. A worker can be engaged by a client through an intermediary (an employed or self-employed person).

Although the IR35 rules also apply to engagements through intermediaries other 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 who are engaged to work for their client, they may be engaged directly by their client, or through an intermediary (an individual, company or other legal entity). If a worker is engaged through an intermediary, the worker could, in some circumstances, be involved as part of the arrangement as an intermediary. If a worker is engaged through an intermediary, the worker could, in some circumstances, be involved as part of the arrangement as an intermediary. If a worker is engaged 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.

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## INTERMEDIARY AND IR35

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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 "PSC" but a PSC is an intermediary which has one Director and the Company Secretary (who may be the same person, but need not be, husband and wife). There are normally no employees, and the only worker providing services is the worker. The PSC earns its income 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) in the form of share dividends from 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 began to supply their services through a PSC. The PSC having to pay Corporation Tax, but the worker drew remuneration only or mostly in the form of share dividends, and often (depending on the amount) there might be no tax to pay on dividends. A PSC can build up significant reserves for future distribution in the form of share dividends, as opposed to paying a substantial salary, on a regular basis.

### 3. The intermediaries legislation

The "IR35" legislation first came into effect in 1997, and has since then been 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 who provide their services through intermediaries.

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

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"PSC" (see paragraph 4 below) typically will have two Directors, or more, but need not be, husband and wife, but need not be, husband and wife. There are normally no employees, and the only worker providing services is the worker. The PSC earns all, or almost all, of its income 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) in the form of share dividends from the PSC rather than any substantial salary.

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

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

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

they are treated as if they were an employee 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 their 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 paid by 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 from 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 their client, and/or aligning income tax and NICs with employment (see below) where they are not an employee of their client, and/or aligning income tax and NICs with employment (see below) where they are not an employee of their 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” may be any company or individual, *this Note is prepared for the purposes of IR35.*

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*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 services will be provided to the client. “More than 5% of the ordinary business of the PSC is to provide services to the client’s “associate(s)”.

## 5. Employed/self-employed

IR35 requires the underlying nature of the relationship. A crucial test is whether the worker would have been an employee if they had contracted with the client personally. IR35 will not be an easy test to apply. Each case depends on its own facts. 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, each instance depends on its own facts. There is no reference to, or discussion of, IR35 in any of the cases. It should be noted that case law emerging on this is still in its early stages.

In general, if arrangements made with a PSC allow someone else to do any of the work that the worker would have done if they were self-employed – see “Indicators of self-employment” above. However, where the PSC provides services” but the worker does not substitute someone else for the services, the PSC will not be taken into account for IR35 purposes when determining whether the worker is employed or self-employed.

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 PSC provides the worker with 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
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relationship with a client to be considered. The worker will be an employee of the client if they would have been an employee if they had contracted with the client personally to carry out the particular work. 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).

question of whether IR35 applies to the worker. It is not because the position in each case is different. Assistance when considering IR35 is therefore not included in this note. It is of relevance to IR35 but it should be clarified on some points.

client allow the worker to substitute someone else to do any of the work that the worker would have done if they were self-employed” and “Indicators of self-employment” and the worker *in fact* “personally provides services” but the worker does not substitute someone else for the services, the PSC will not be taken into account for IR35 purposes when determining whether the worker is employed or self-employed.

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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 earned by the worker is regarded as the worker's earnings and subject to Class 1 NICs, called the PSC. IR35 includes long and short-term contracts. At the time of receipt of this deemed "employment" payment, the PSC.

IR35 also impacts other areas of tax, such as when dealing with

In order to avoid lengthening this document, we will not deal with IR35 in relation to benefits received by PSCs/workers. In mind that IR35 also covers such situations, it is important 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 is engaged through a PSC but through some other type of entity (e.g. an agency or a company), then other rules will or might apply, so it is important to consider the rules of IR35.

So, if you engage a freelancer who is not working 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", this is a difficult task, aggravated by the fact that HMRC's view of status in a case cannot necessarily be regarded as authoritative. In the past, tax tribunals have contested the status of

HMRC provide a tool, the Check Employment Status (CES) tool, which you can reach by clicking [here](#) that clients may use to assess employment status. Due to concerns previously expressed, HMRC has revamped the tool, making it more biased towards finding that an individual is an employee.

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work personally will therefore tend to indicate deemed employment (rather than being an employee) in the IR35 context.

work carried out for the client is regarded as the worker's earnings and subject to Class 1 NICs, called the PSC. IR35 includes long and short-term contracts. At the time of receipt of this deemed "employment" payment, the PSC.

IR35 also impacts other areas of tax, such as when dealing with

In order to avoid lengthening this document, we will not deal with IR35 in relation to benefits received by PSCs/workers. In mind that IR35 also covers such situations, it is important to tax and NIC liability.

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

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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 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 rules” business. Where those rules apply NIC is paid correctly for workers. “agency rules” at [www.gov.uk/guidance](http://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 contracts 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 HMRC will document them appropriately for the purposes of the claimed self-employed status is generally not sufficient to avoid employment protection rights.

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

## C. CHANGES TO IR35

### 1. Scope of this Section

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

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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 be used to avoid the IR35 rules. Consequently, from 6 April 2021, if a client is a public sector entity, the responsibility for assessing the status of the contractor has shifted to the public body concerned, so that it, not the PSC, is responsible for identifying such “disguised employment” situations. Where the client is a private sector entity, the PSC must operate PAYE and pay the tax and National Insurance on the payments, whereas previously it would have been the client's responsibility to do so. This has moved the tax risk from the PSC to the client.

## 3. The 6 April 2021 changes

The IR35 2021 rule changes extend to both the public and private sectors as well, but the April 2021 changes apply only to the private sector client (not the public sector client). The private sector client (not the PSC) must determine whether the contractor is a “disguised employee” and the PSC must operate PAYE and pay the tax and National Insurance on the payments if it determines that IR35 does not apply. If the client determines that IR35 does 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 client is responsible for operating PAYE.

However, these April 2021 rules do not apply to “small” private sector clients. The April 2021 rules 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 is “small”, the responsibility for determining the freelancer's status remains with the PSC (just as it was before 6 April 2021), and if appropriate the PSC has to operate PAYE and pay the tax and National Insurance on the payments received.

For this purpose, “small” means that the client 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.

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ate, the rules do not apply to it if it falls within at least two of the following criteria:

- Its balance sheet total is less than £10 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 was in the public sector, it had to tell the entity it contracted with of its determination of the freelancer's status. From 6 April 2021, the IR35 rules require not only public sector clients, to inform both the entity and the freelancer or PSC of their determination (a “Status Determination Statement”) and the client's reasons for it. Determinations must be made on a “reasonable care” basis. (See [here](#) or [here](#) for our template which is an example of a Status Determination Statement for a public sector client and there is only one intermediary in the labour chain.)

The IR35 rules as amended require the client to pass the SDS (i.e. those in the labour chain other than the client and the intermediary) to the person with whom they contract.

The April 2021 rules for the private sector require the client to pass the SDS (i.e. those in the labour chain other than the client and the intermediary) to the person with whom they contract. Where a client does so without reasonable care, it will be liable for tax and NI, even if the liability 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 might be affected if you are a PSC or other intermediary. The effects might include an increase in the cost of that extra administration work, practical difficulties in operating in a new set of rules, and the commercial and financial impact on your business if 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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c sector.

#### Anti-avoidance

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anisms for a PSC to challenge a decision that the freelancer is within the IR35 rules (a “Status Disagreement Process”). Where a client does so without reasonable care, it will be liable for tax and NI, even if the liability cannot be collected from the next entity in the labour supply chain.

#### 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 measures to determine those freelancers’ status. It may not be immediately evident that a freelancer is dealing with you through an agency. To make sure you are aware of any agency or other supplier, to whom you are paying, you may wish, in your arrangements with any agency or other supplier, to require them to inform you where a freelancer is working for you through a PSC or other intermediary to give you other information 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 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 be able to use your PSC for some clients but not others, but in all cases you should assess the effect of the rules and the impact of the rules on your net income. Some factor organisations might not deal with PSCs at all, and so if you use a factor organisation that you cannot use it to contract with some clients. Some major banks and other regulated organisations might do this. Other clients might try to reduce the rate that they pay to PSCs if those clients are aware of the increased expense of engaging the PSC.

### Further steps

It is advisable that you seek advice from a professional in view of the April 2021 changes to the rules. We recommend that you seek advice or guidance on these from advisers or other sources of appropriate services which include reviewing contracts.

## **D. Template documents**

The Business and Employment folders in Simply-Docs include templates which can be used to create contracts between a client and a freelance worker/intermediary company. Click on the links below to view the templates:

### Business folder

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

### Employment folder

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## **Simply Docs**

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