



# IR35 - Are you ready?

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What it means for health club and leisure centre operators working with 'freelance' Personal Trainers and instructors



# Overview

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Before this date, the responsibility to decide on the freelancer’s employment status rested with the intermediary.

By intermediary we mean where freelance Personal Trainers or instructors have set themselves up as a limited company e.g. Joe Bloggs operates through Joe Blogg’s Limited or are supplied via an employment agency/business.

This change may sound familiar – it had been due to take place last April, but because of COVID-19, it was pushed back a year.

## What is IR35

IR35 is a reference to tax legislation, which applies where individuals provide their services to an organisation through an intermediary company where, if it wasn’t for that company in the middle, the individual would be regarded as an employee for national insurance and tax purposes.

The effect of IR35 is to collect the same amount of income tax and national insurance contributions as would have been paid if an individual had been employed directly by the client.



## What it means for health club and leisure centre operators working with freelance Personal Trainers and instructors?

Many Personal Trainers (PTs) across the UK operate in health clubs and leisure centres as “off-payroll” gym or class instructors (via their own limited company) in lieu of paying floor rent to operate their business. They are often required to carry out activities such as inductions, classes and even cleaning, which are dictated by their managers and organisations.

### These Personal Trainers typically;

- Have to ask for time off
- Have to ‘make up’ any uncompleted ‘gym floor’ hours
- Work their PT business around a shift rota and appointments set up and made by the club and not the PT working hours
- Have the service they deliver for the club (cleaning, inductions, classes) dictated to them (when, where and how it will be delivered)

All the above tend to be indicative of someone HMRC (and an Employment Tribunal) might deem a “worker” or “employee” if challenged, leaving the organisation exposed to the risk of becoming responsible for deducting and passing on Income Tax and NICs to HMRC, as well managing the increased costs and responsibilities attached to the various employment/worker rights the individual may be entitled to.

So the financial impact of these IR35 changes can be significant, reducing a Personal Trainer’s net income by up to 25%, amounting to thousands of pounds in additional income tax and NICs.

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## Will these new rules apply to all operators?

No. As set out above, the changes relate to freelancers providing services to operators via an intermediary company.

The Government has also said the changes won’t apply to small organisations and so operators who do not meet at least two of the following criteria will not be affected by the forthcoming changes:

- **Annual turnover of more than £10.2 million**
- **Balance sheet total of more than £5.1 million**
- **More than 50 (F/T equivalent) employees**

Beware, however, when looking at size. If you are part of a corporate group, the overall group turnover must be considered and you may still fall within the scope because of the size of the corporate group.

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## If the new rules apply how can you prepare?

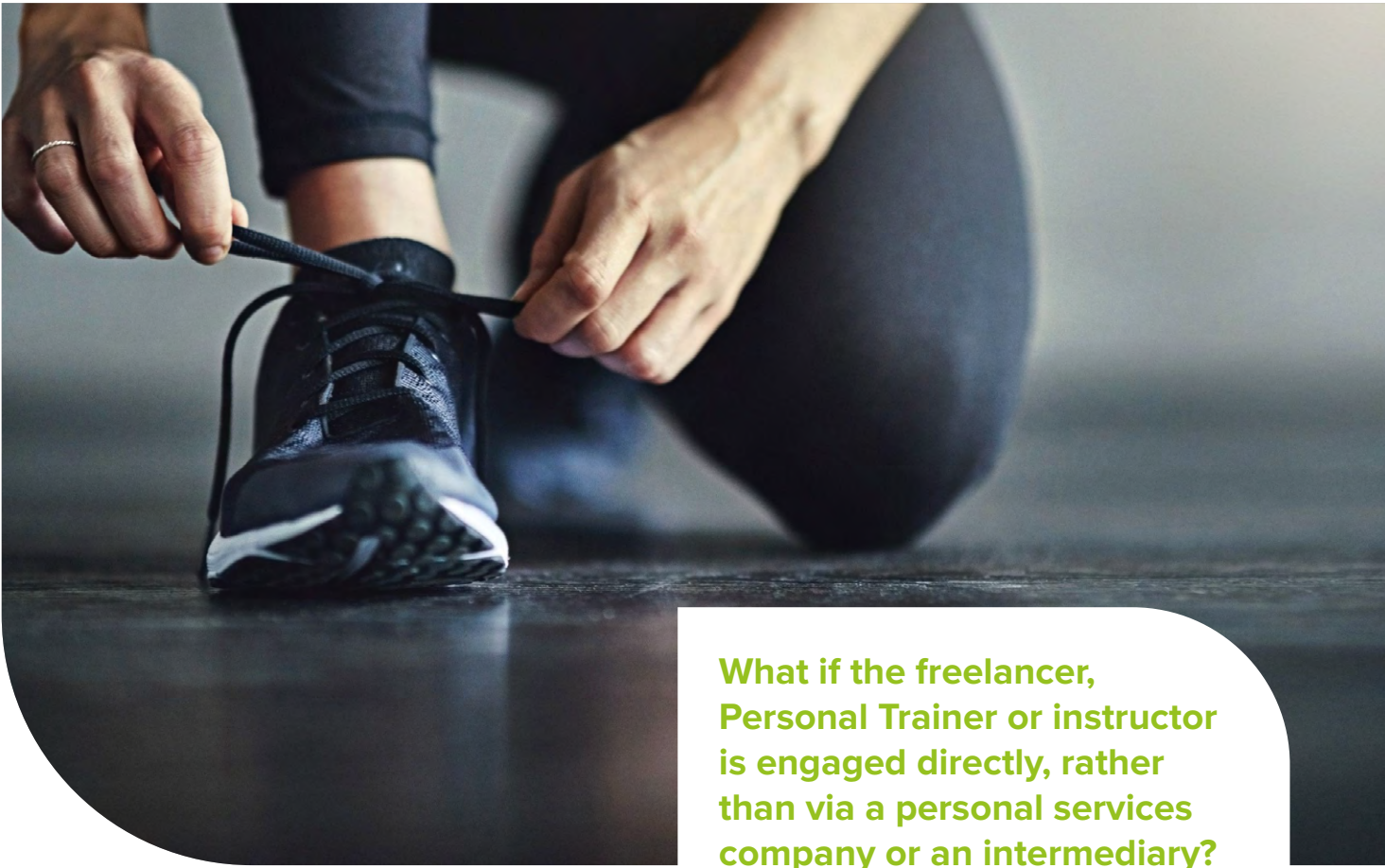
This will depend on whether you are the operator, an intermediary in the payment chain or the person making the payment to the worker.

Either way, preparation is key, because introducing appropriate policies and procedures will be extremely time consuming. The legislation applies to payments made after 6 April 2021, so will apply to any invoices paid after that date, even if the work is carried out much earlier. You therefore need to be up and running by 6 April 2021.

## To ensure compliance you will need to consider:

- 01** Do you fall within the definition of 'small'? If so, you won't need to make any changes provided you remain small in each subsequent tax year.
- 02** If you are caught by the rules, you need to identify any freelance Personal Trainers or instructors (who operate via an intermediary) and provide a status determination. This can be time consuming as you will need to consider information for each individual relationship, such as how often the services are provided, do they provide their own equipment, do they provide their training services to other establishments, for example. HMRC has already warned against blanket assessments being done, and to do so opens operators up to a bigger exposure and criticism for not undertaking a proper assessment.
- 03** Decide who within your organisation will be responsible for determining the correct status of your service providers. Do they need additional training to understand how to make a proper and full assessment? HMRC has an online tool to assist with these determinations known as CEST, but this has been subject to some scrutiny and criticism for providing inaccurate outcomes, so we advise also seeking professional advice so your practices can be accurately assessed with you.
- 04** Freelance Personal Trainers and instructors may appeal or challenge the status you allocate. Decide how you will deal with those appeals. Will they be heard by the same person who made the initial determination? And how will you ensure you comply with the strict time limits set out in the legislation (i.e. within 45 days to respond to the appeal with your finding)?
- 05** Do the existing contracts you have with Personal Trainers allow you to withhold tax? Will any tax and NICs due be an additional cost you have to meet or can you renegotiate terms so the cost is factored into the rates charged by the Personal Trainer?
- 06** Review how the payment processes within your business will work. Many businesses use straightforward purchase ledger payments. However, under the new arrangements the Personal Trainers' invoices will need to be split between fee and VAT, with PAYE and NIC deductions calculated on the fee element with a net payment made to the PT and PAYE/NIC to HMRC.

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### What if the freelancer, Personal Trainer or instructor is engaged directly, rather than via a personal services company or an intermediary?

**07** Do you need to set up a separate PAYE scheme to handle these payments? Organisations will have to process these payments through the PAYE scheme under the real-time information (RTI) arrangements, which means they must be on an RTI submission to HMRC on or before the payment is made. Many organisations operate payments to suppliers on a different timeframe to employee wages and so using the same payroll scheme could become very complicated

**08** Do you need to advise Personal Trainers and freelance instructors potentially caught by these rules, to let them know you'll be reviewing your internal processes? There's been a lot of publicity around these changes and so they may be concerned about how they will be affected. In some cases, you may want to ask them to become an employee if they are critical to your business.

The changes do not apply. But we would still recommend you consider assessing your relationship and practices with personal trainers and instructors you engage directly on a freelance basis. You may already have an obligation and historic exposure for not properly deducting and accounting for tax and NICs to HMRC, and any audit, which HMRC can undertake at their own will, could leave you exposed to years of liability. By acting now, you may be able to address any inaccurate practices and minimise future risk.

In such cases, because there is no intermediary company sitting in the middle of the relationship, it is also much easier for an individual to claim worker/employee status and the rights attached to it.





## Where can you go for further advice, support & compliance?

This can be quite a laborious task for any sized organisation to complete in time for April 6th 2021. Organisations up and down the country will be focusing on reopening health clubs and leisure centres, getting people back to work and helping to get the nation healthy once more, which leaves very little time to complete the IR35 checks and complete any compliance in time for the deadline.



**Irwin Mitchell is a multi-award winning, nationally acclaimed law firm providing a full range of legal services to individuals and businesses.**

The team at Irwin Mitchell have a huge amount of experience in dealing with IR35 across a number of sectors, and can help with any stage of the process; offering a competitive fixed fee for an IR35 team (comprising both an employment lawyer and tax lawyer)

### Irwin Mitchell can help:

- Review your working practices, and provide a traffic light report showing where there are risks and whether the engagement falls inside or outside of IR35
- Review contracts and suggest amendments or further clauses to protect your position, and/or prepare contracts if none are in place
- Prepare a status determination statement
- Provide an appeal service in the event of a status determination appeal
- Provide training on IR35



**For further information and to find out more about how Irwin Mitchell LLP can help please contact Padma Tadi**

[Contact Padma](#)



**YOUR Personal Training, the UK's largest PT Management company operates in over 400 facilities and is not classed as an intermediary.**

YOUR PT has already consulted and supported gym operators around the UK on IR35, including Simply Gym, Sport Aberdeen and many others during the last few months, helping these operators to pivot their personal training provision to be compliant, whilst also helping to improve Personal Trainers' business practices and overall success.

YOUR Personal Training offers a zero-cost, full management service, with all governance and compliance (including IR35) in place for:

- Leisure trusts
- Private sector health clubs and gyms
- Independent clubs and spa's
- Corporate gyms
- Hotel and residential building fitness facilities
- Personal training, yoga and fitness studios

YOUR Personal Training's model offers an additional revenue line and member engagement level to operations; providing a wide range of services to complement existing health and fitness delivery including:

- ✓ Improved financial performance - profit share of personal training revenue, plus secondary revenue opportunities
- ✓ Recruitment of suitable Personal Trainers - to ensure all PTs are suitably qualified, DBS checked and insured
- ✓ A dedicated Regional PT Manager - YOUR Personal Training's team is an extension of yours
- ✓ Innovative technology - digital service offerings to clubs and their members
- ✓ Co-branded marketing solutions
- ✓ Current health and fitness staff professional development
- ✓ Personal training team education, business support and development



**For further information and to book a no obligation call with YOUR Personal Training, please contact Aaron McCulloch**

[Contact Aaron](#)



**YOUR Personal Training**

Contact: Aaron McCulloch

[aaron.mcculloch@yourpersonaltraininguk.co.uk](mailto:aaron.mcculloch@yourpersonaltraininguk.co.uk)

**Irwin Mitchell LLP**

Contact: Padma Tadi

[www.irwinmitchell.com/our-people/padma-tadi](http://www.irwinmitchell.com/our-people/padma-tadi)

