

IR35

A guide for UK productions

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Introduction to IR35

Don't let IR35 keep you up at night

Following a legislative change in April 2021, the IR35 rules now apply to medium and large companies in the private sector. This means that end clients have to assess the employment status of anyone they engage through a loan-out to determine whether they are employed or self-employed for tax purposes before they begin work.

- > The IR35 rules have the potential to create process and paperwork headaches.
- > Most importantly, should you incorrectly treat a contractor as self-employed, the tax liability could lie with you as the “deemed” employer.

This guide will help you to understand the rules and the processes you should have in place to ensure compliance.



We'll also show you how the Production Portal helps you to simplify compliance and create a secure, audit-ready trail to assist your IR35 process.

Key IR35 terms

Check Employment Status for Tax

Or CEST, is an HMRC digital tool to help companies decide whether a contractor should be classed as employed or self-employed for tax purposes. This tool is not specific to any particular industry; it is meant as a broad tool for all kinds of companies to use.

End client/the client

The organisation in the supply chain that ultimately receives the contractor's services.

Fee payer

The party in the supply chain paying the contractor, loan-out, limited company or other intermediary (this may or may not be the end client).

HMRC

Her Majesty's Revenue & Customs.

Inside IR35

A term for when a contractor is considered, for tax purposes, an employee or deemed employee of the end client and subject to PAYE.

Intermediary

Usually a company that the contractor controls, also known as a "personal service company," "loan-out" or "limited company."

Loan-out

An industry term for personal service companies of contractors.

Lorimer Letter/LP10 letter

A letter from HMRC for contractors showing they're classed as self-employed contractors and don't have NICs deducted.

National insurance contributions

Or NICs, are a tax that help to pay for, and give the payee entitlement to, some state benefits.

Off-payroll working

How HMRC describes the situation where a person provides services through a personal service company to an end client. Also known as "IR35."

Outside IR35

A contractor who is considered self-employed, operates as their own business and is responsible for paying their own income tax and NICs.

Personal service company

Or PSC, is a limited company set up by a contractor to provide their services to clients and which meets the statutory criteria for such (ie, a limited company in which the contractor holds a material interest, such as a 5% stake or more in the share capital of the company). Often called an "intermediary" in relation to IR35.

Pay As You Earn

Or PAYE, is an HMRC system where income tax and NICs are deducted from the employee's salary by the end client.

Schedule D

An older term sometimes still used in production for someone who is self-employed.

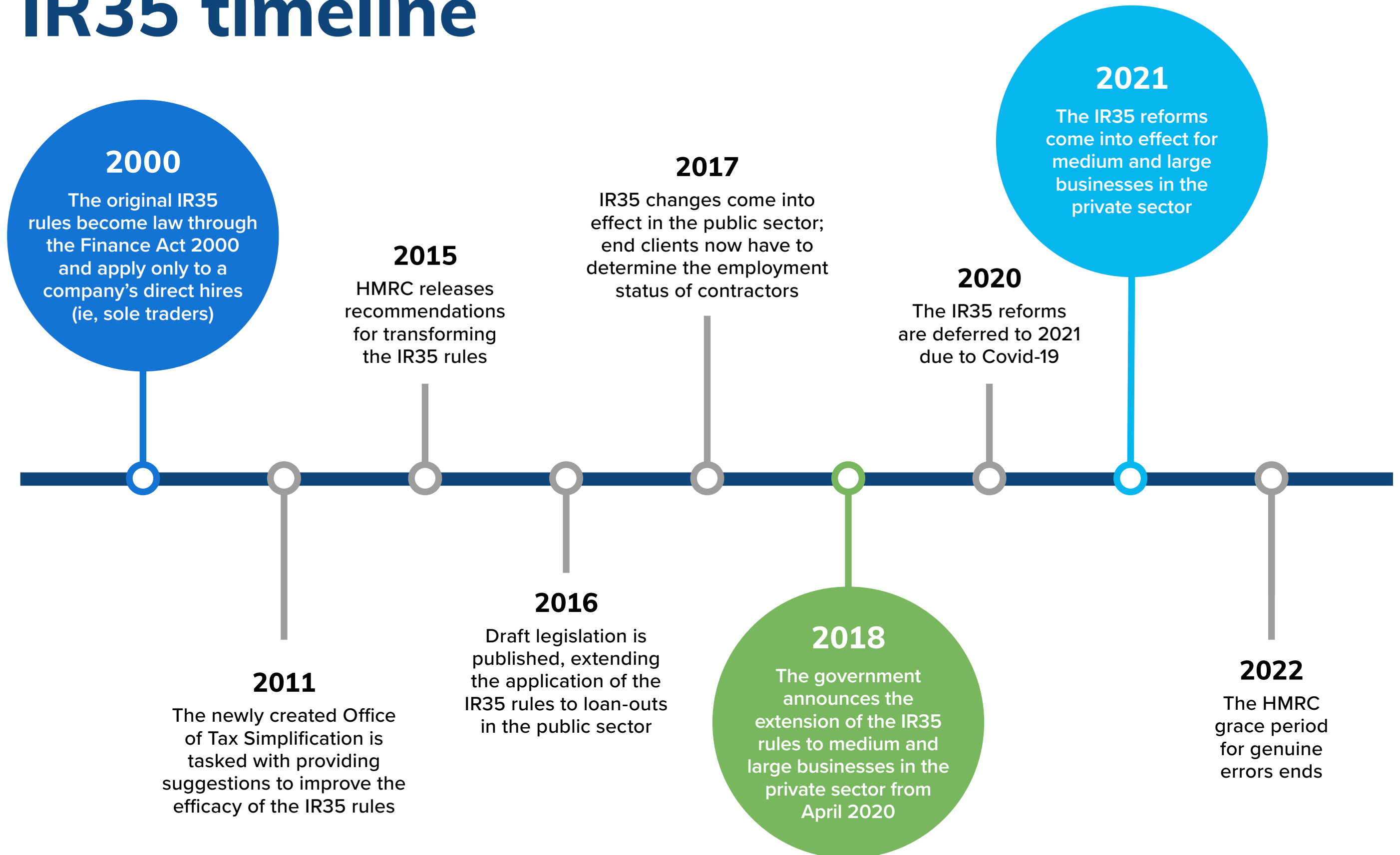
Seven-day rule

A rule that states that when a contractor is engaged for six days or less, the end client doesn't need to deduct income tax, but they do pay NICs.

Status determination statement

Or SDS, is a statement from the end client that declares a contractor's employment tax status after assessment and states the reasons.

IR35 timeline



What is IR35?

The IR35 rules are anti-avoidance tax legislation which act to ensure that individuals who work like employees pay broadly the same tax as employees, regardless of how they're set up to work.

Historically it was up to the person providing their services through an intermediary (such as a loan-out) to determine whether they were inside or outside the IR35 rules, and for the intermediary to account to HMRC for any resulting tax liability accordingly. The changes that came into effect on 6 April 2021 have had a considerable impact on both individuals and companies as that responsibility has shifted to companies (ie, the entity that receives services from the individual).

What changed?

The legislative changes dictate who makes the decision and the administration that goes along with it. The assessment determining whether a contractor is employed or self-employed is not directly affected.

Medium and large companies that engage contractors through intermediaries are now responsible for applying the IR35 rules. If the assessment deems the contractor employed for tax purposes, they can still be engaged through an intermediary but the fee payer (usually the employer, unless there is an agent involved) is responsible for making deductions for income tax and NICs and paying these to HMRC, although due care should be given to the accounting and contractual complexities of this approach.



Following the end of the grace period for genuine errors in April 2022, HMRC may fine companies that don't comply with the IR35 rules.

What kinds of contractor does IR35 apply to?

There are typically two types of contractor to whom the IR35 rules apply:



Contractors supplying services to an end client through an intermediary, such as a personal service company or loan-out.



Contractors supplied by an agency or through a consultancy but working through their own personal service company, limited company or partnership.

More generally, the IR35 rules also apply to direct hires (ie, those not contracted via a loan-out) who will, therefore, also need to be assessed for UK employment tax purposes.

Does IR35 apply to my company?

The IR35 changes only affect large and medium-sized businesses in the private sector. A company (or group of companies where relevant) will be deemed a large or medium business for these purposes if two or more of the following criteria are met:

- > You (or your parent company) have an annual turnover of more than **£10.2m**.
- > Your (or your parent company's) balance sheet is more than **£5.1m**.
- > You (or your parent company) have more than **50 employees**.

Note that if your company is part of a group, the test applies to your parent company. That means that **even if you're a small subsidiary, the IR35 rules may apply**.

If you set up and use special purpose vehicles (SPVs) to run single productions, the IR35 rules apply if the SPV's parent company is a medium or large business.

Does IR35 apply to my company?

In broad terms, those to whom the IR35 rules **may not apply** include:

- > Small companies (which do not fall within the previously mentioned criteria).
- > New companies (other than subsidiaries).
- > Those engagements where you're using an employment agency or umbrella company that organises PAYE and NIC payments for your contractors.

However, the rules are complex, so do seek professional advice. HMRC provides some useful guidance on umbrella companies [here](#).



Note that for new companies (which are not subsidiaries of medium and large companies), and for those small companies who are on the cusp of qualifying as medium, special “transitional” rules apply.

Why do I need to think about IR35?

If you engage contractors, you need to be prepared to assess them fully before they begin work so that you know whether they fall inside or outside the IR35 rules.

HMRC has made it clear that you can't treat all contractors in the same way: they must be assessed individually on a case-by-case basis. You need to introduce robust and accurate IR35 assessment, communication and dispute processes and store everything securely in the event that your assessments are challenged by HMRC.

To further mitigate potential financial exposure, you should also consider implementing appropriate policies and procedures to ensure the correct tax is deducted, if necessary, from payments to contractors. It is also advisable to have proper contractual protections in place – this may mean amending your template contracts.

Your IR35 checklist

Over the next few pages, we'll walk you through how to assess your contractors, determine their IR35 status, issue an SDS and handle disputes.

If the IR35 rules apply to you, this checklist can help you to determine whether you have a solid IR35 process in place.

- ✓ Have you introduced a process for hiring contractors so that you can identify crew who needs an IR35 assessment?
- ✓ Have you introduced an assessment process?
- ✓ Have you introduced a process for creating, distributing and storing SDS?
- ✓ Have you provided adequate training to your production office teams on how to complete assessments, create and send SDS and securely store all of your communications? Consider whether any new staff require training or whether refresher training is needed for existing staff.
- ✓ Have you developed an IR35 dispute resolution procedure that aligns with your statutory obligations?
- ✓ Have you let all of your contractors know about the IR35 rules and how you handle them?
- ✓ Have you introduced a system for maintaining oversight of the IR35 processes on your productions and do you have mechanisms in place to course correct if necessary?



Remember: this guide is an introduction to IR35; you should perform your analyses independently, diligently and with the advice of the appropriate experts. HMRC also provides a [useful summary](#) in its guidance about the appropriate steps that it expects end clients to take in the context of the IR35 rules.

A woman with long brown hair, wearing an orange turtleneck and large black headphones, is operating a professional video camera. The camera is mounted on a tripod and has a large lens, a microphone, and a viewfinder. She is looking through the viewfinder. The background is a blurred outdoor setting with a brick building and some trees.

IR35 in practice for production

What does IR35 mean for production?

Companies which fall within the scope of the IR35 rules must have processes in place to manage assessments, communications, tracking and disputes and maintain oversight and visibility of their risk.

What are the risks?



If IR35 is found to apply following an assessment or an HMRC enquiry, **you will need to pay HMRC the tax and NICs owing, as well as any penalties and interest due on these amounts.** You could face penalties for initial outstanding liability, and they'll probably be relative to the scale of non-compliance, up to 100% of the initial outstanding liability.

A 12-month grace period was in place until April 2022 to allow companies time to embed their new processes. Going forward, this is likely to be an area of increased scrutiny by HMRC because of the high volume of crew members who operate through personal service companies.

When do I need to do an assessment?

Once you've chosen your production team, you'll need to:

- > Assess their IR35 status before the start of their contract.
- > Review that assessment:
 - > On a regular basis throughout the term of the contract (eg, every six months or so); or
 - > When there's a material change to how you work with them (the terms of their contract) or to their circumstances if you're working with them on a long-term basis.

How should I do an assessment?

There are different ways you can decide whether someone falls inside or outside IR35. You can start with the HMRC guidelines that outline whether a contractor is, generally, self-employed, outside IR35 and therefore shouldn't be paid through PAYE.

HMRC guidelines ask whether the following statements are true:

- ✓ The individual is in business for themselves, responsible for the success or failure of their business and can make a loss or a profit.
- ✓ They can decide what work they do and when, where or how to do it.
- ✓ They can hire someone else to do the work.
- ✓ They're responsible for fixing any unsatisfactory work in their own time.
- ✓ Their employer agrees to a fixed price for their work - it doesn't depend on how long the job takes to finish.
- ✓ They use their own money to buy business assets, cover running costs and provide tools and equipment for their work.
- ✓ They can work for more than one client.



If the answer to most of these statements is **yes**, then it's likely the individual is outside IR35.

Other factors to consider

One of the other key risk factors that HMRC will consider when assessing a contractor's employment tax status is mutuality of obligation. This means that there is an obligation between the end client and the person doing the work, where the client is obliged to provide work and the worker is obliged to accept and complete the work. This is usually what happens between employees and employers, so a genuinely self-employed person outside IR35 should never expect it.

HMRC has helpfully provided a list of **roles normally treated as self-employed** in the production world. This was originally called "Appendix 1" and continues to be colloquially known as such. Appendix 1 provides the media sector with a list of behind the camera roles, each with a specific set of conditions which, where those conditions are met, HMRC will accept as self-employed for tax purposes. The Appendix 1 list was updated in 2020 with extensive industry input to reflect newer roles and modern working practices in film, TV and theatre.

However, HMRC states that this list doesn't cover all roles and, importantly, it does not automatically mean that a contractor is self-employed if their role is on the Appendix 1 list. Nor does it automatically mean that an individual is an employee just because they don't appear on the list. A person's job duties and responsibilities are more important factors than their job title or grade. After reviewing Appendix 1, it's a good idea to use further tests, applying the general principles and risk factors identified above, to decide a contractor's status.



Remember: end clients cannot rely on Appendix 1 alone as determinative; the end client must still perform their own IR35 assessments.

What are the IR35 assessment tests?

As well as the general self-employment guidance and Appendix 1, there are other tests you can use to decide whether someone is inside or outside IR35. You'll need to give reasons for your IR35 decision in an SDS, so you need to apply tests until you are clear about where a contractor falls.

HMRC has stated that you must take reasonable care when carrying out these assessments. You'll need to be able to evidence that you have robust processes and controls in place, that every relevant contractor gets reviewed promptly and (where necessary) regularly throughout the contract term, and that you have considered any employment status indicators such as the ability to hire someone else to do the work (right of substitution) or paying for and providing their own equipment.

Tests you can use include:

- > Lorimer Letter – LP10
- > HMRC Check Employment Status for Tax (CEST)
- > Bespoke assessment
- > Seven-day rule

Forms of tests

1

Lorimer Letter - LP10: There are some behind camera contractors that don't appear on Appendix 1 but work on a series of short-term engagements with a large number of clients. In 1993 the case of *Hall v Lorimer*¹ determined that these contractors can be treated as self-employed in certain circumstances. HMRC has to provide a Letter of Authority, also known as a "Lorimer Letter" (or "LP10"), to say that they are self-employed. However, Lorimer Letters only cover a specified time period and detail particular engagements. And as HMRC has limited capacity to issue these letters, they are rare.

2

HMRC Check Employment Status for Tax (CEST): You can use HMRC's **CEST online tool** to make assessments. You can use it to check the status of sole traders and contractors who work through intermediaries like loan-outs or personal service companies. As long as you input all of the information correctly and it remains accurate, HMRC will stand by the determination produced by CEST. The system weighs up where the financial risk lies, either with the contractor or end client, and then gives a determination based on the information you have entered. But this tool isn't specific to the film and TV production industry and many companies find that it doesn't provide an accurate assessment or give a clear end determination.

3

Bespoke assessment: If you're unsure about your assessment or using the CEST tool, you can explore bespoke tax assessments. There are lots of them out there, usually provided by tax specialists. Although they say they're accurate, that doesn't mean they're binding in a tax tribunal. You need to make sure that there's sufficient evidence in any SDS to back up your decision.

¹ *Hall (Inspector of Taxes) v Lorimer, Court of Appeal (Civil Division)* – [1994] 1 WLR 209.

What is an SDS?

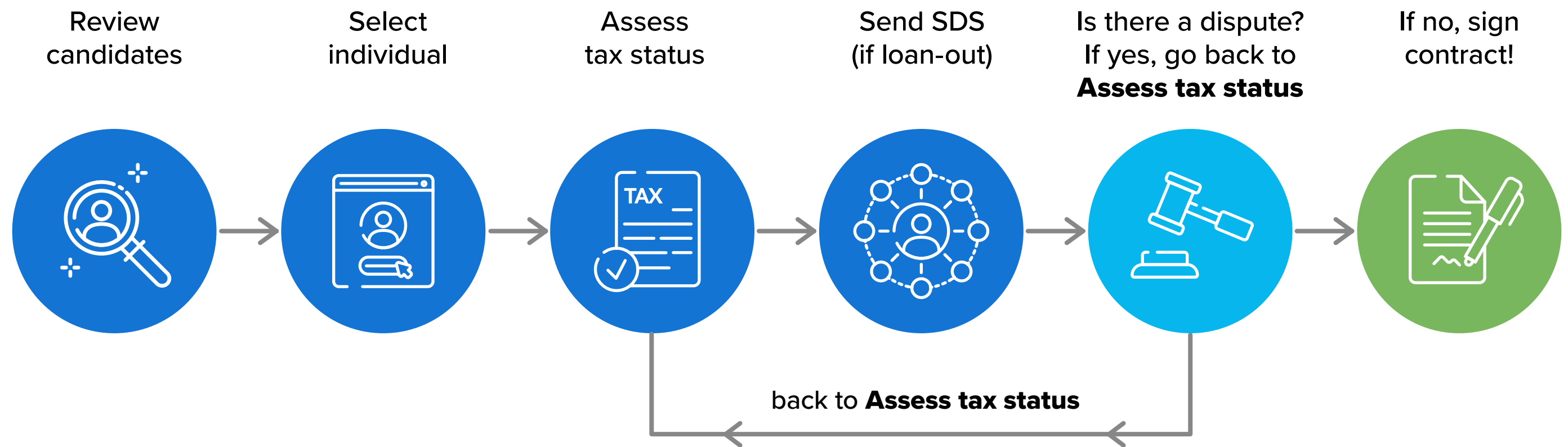
After you finish your assessment, you need to give the contractor an SDS before they start work. This shows their tax status – whether they are inside or outside IR35 – and reasons for the assessment.

- > It's important that the SDS is communicated in writing (eg, by email to the contractor) and that you are able to track when you sent it to the contractor.
- > If there is a dispute or HMRC audit, you'll need to show that you've fully complied with the process.
- > The statement doesn't have to be long. But you must detail your reasons to both the contractor and any agencies, such as agents, between you as the end client and the contractor..
- > You should also make it clear who operates PAYE and pays employer NICs (known as the fee payer).
- > You'll need to repeat the assessment and issue a new SDS when you start a new contract with a contractor.



The Production Portal
digitises the SDS process.
Find out more on
[Page 27.](#)

What process should I follow?



Post-assessment

> What should I do if an assessment is inside IR35?

Being inside IR35 means that off-payroll working rules apply, HMRC views that person as an employee and, for tax purposes, you'll need to treat them as one. You'll be responsible for deducting income tax and NICs through PAYE.

> How should I deal with IR35 disputes?

Sometimes a contractor might disagree with your status determination. The HMRC Employment Status Manual states that you must have a dispute process, known as a “client-led status disagreement process,” in place. Once you receive their objections, you have to respond within 45 days to either confirm or change the original decision, including the date from which it applies. You should redo the assessment process, include the reasons you came to that decision and create a new SDS. While this is happening, you should continue to handle your contractor's tax status based on your original decision.

> What happens if I don't apply IR35 correctly?

If you've applied the relevant risk factors and/or criteria correctly and determined a contractor's status with reasonable care, you're in a strong position. But HMRC may occasionally decide that a status determination is inaccurate. In that case, you'll need a well-documented process as you'll have to show that you took all of the necessary steps. If you can't, the fee payer may be liable for outstanding tax, NICs and possible additional fines from HMRC. You may be able to recover some of these payments when the contractor submits their self-assessment tax return, but having the right processes and contractual protections will prevent this from happening before it becomes an issue.

How can I support my contractors?

You can support your contractors by:

- ✓ Explaining what IR35 is and what it means for contractors from a tax status point of view.
- ✓ Informing contractors that they need to provide accurate information so that you can clearly determine their tax status.
- ✓ Explaining the dispute process and how it works.
- ✓ Explaining in simple terms how IR35 might affect contractors' rates.



How the Production Portal can help

How can the Production Portal help with IR35?

The Production Portal is the workforce management platform for smarter production in the UK. It streamlines and connects your operations, giving you full visibility across your productions.

In the face of complex legislation, the Production Portal helps you to reduce your exposure and manage your risk. Although it's not a tax assessment tool, it includes built-in functionality to help simplify compliance and create a secure, audit-ready trail to assist your IR35 process.

The Production Portal's IR35 functionality includes:

- > Deal warning flags.
- > A digitised SDS.
- > A tax compliance report.

Deal warning flags

Smart automatic flags help your production teams to consider compliance from day one. The flags alert your teams to potential IR35 risk during the deal creation process, helping them to get set up without time wasting error corrections and amendments.

1 SDS flag to remind your production teams that an SDS may be required before crew contracted as a loan-out start work.

2 Grade match to HMRC list flag to alert your production teams when a loan-out crew member's grade doesn't appear on the HMRC list of grades "normally treated as self employed," as an assessment is especially important and should be carefully performed where a role does not appear on the HMRC list.

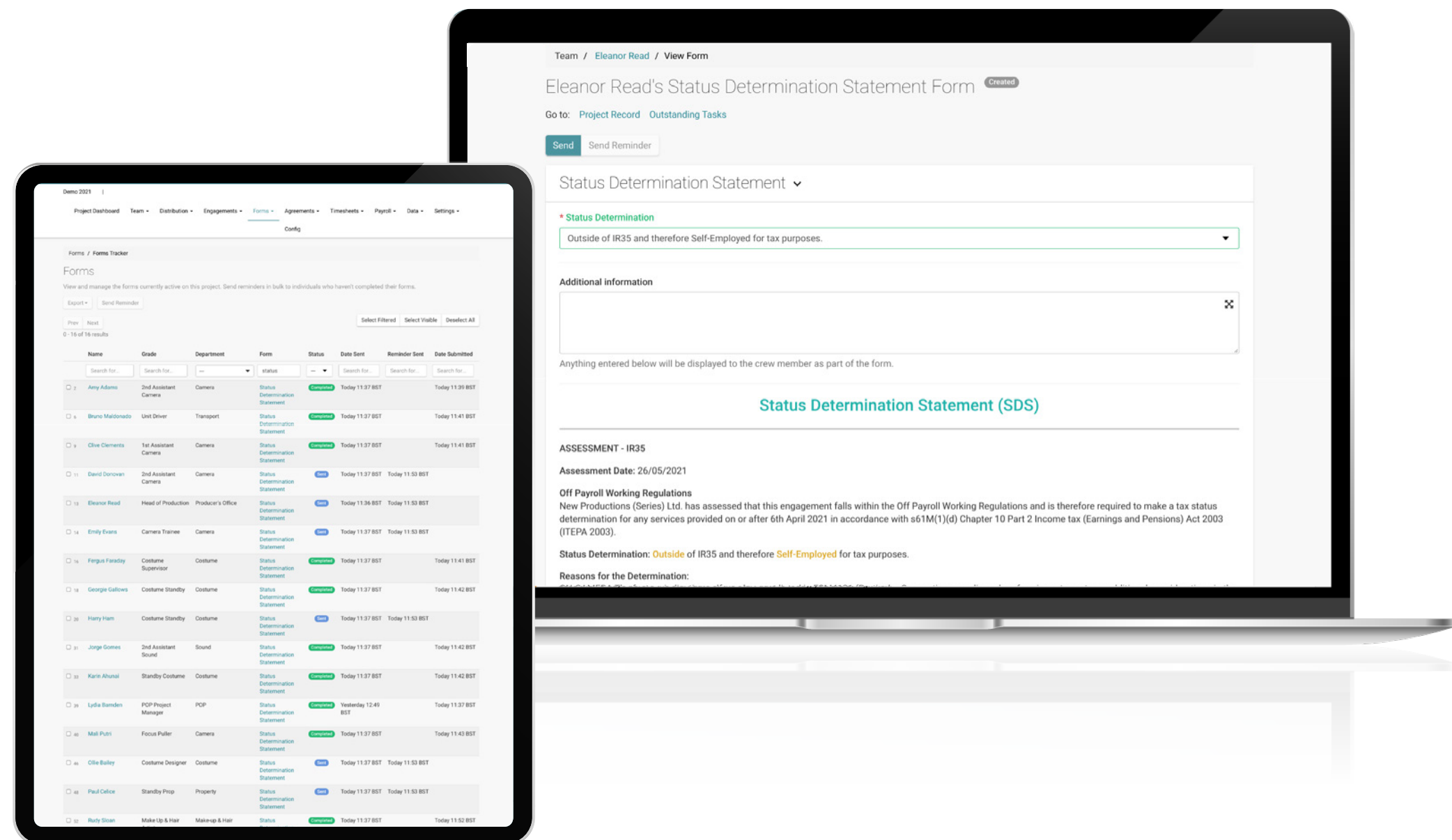
3 Grade override flag to highlight potential risk for further investigation when your production team overrides with a special grade.

Digitised SDS

The Production Portal allows you to create, send, store and track your entire SDS process in one place, giving you full visibility. If a dispute does happen, all of your communications are securely stored in one place ready to be provided to HMRC.

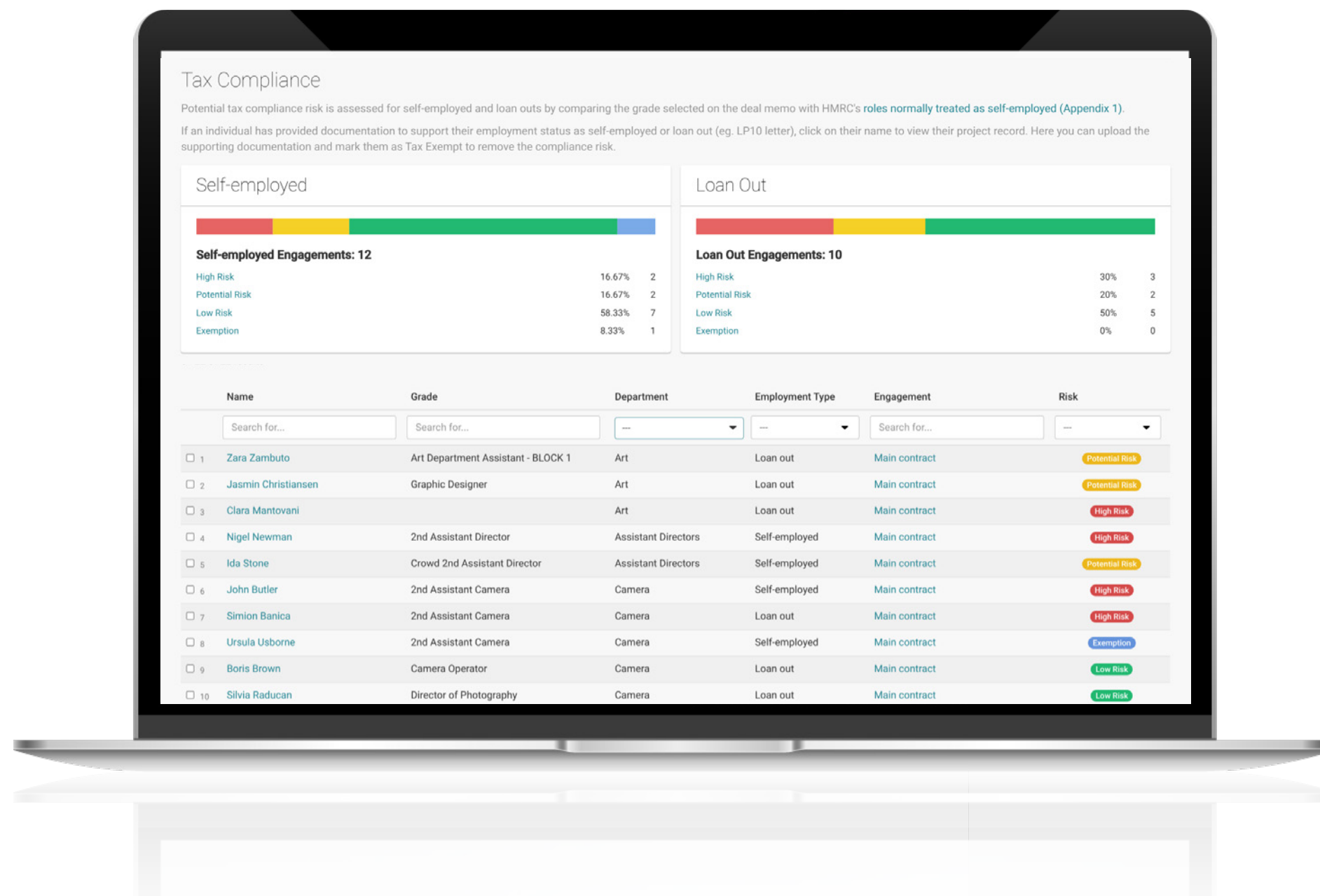
For high-end TV shows, a digitised version of the Pact standard SDS is available. For all other productions, we can configure a bespoke approach to your SDS which suits your needs.

Whatever your approach to SDS, you'll always know what was sent, to whom, and when.



Tax compliance report

Get an instant view of what's happening on your productions, so that you can see how much risk you're carrying and course correct if needed (without having to chase your production team or trawl through files and spreadsheets).





With 45 years of experience, Entertainment Partners (EP) is the global leader in entertainment payroll, workforce management, residuals, tax incentives finance and other production management solutions.

The EP Production Portal powers the leading UK productions. Today, over 30 studios and production companies – including Sky Studios, Studio Lambert and Bad Wolf – are powering smarter productions through the Production Portal.

Productions don't have to be a scramble.

To see how the Production Portal helps with quick and compliant contracting, [**get in touch today.**](#)