

20 PRSI contributions by the self-employed

20.1 Pay Related Social Insurance (PRSI) contributions are payable in respect of earnings of almost all persons of working age.¹ PRSI contributions are paid into the Social Insurance Fund, which funds a range of social insurance benefits and pensions.² In 2016, almost €9.2 billion was collected in PRSI receipts.

20.2 There are different classes of PRSI contributions with differing rates. In general, PRSI contribution classes are decided by the nature of a person's employment. A person's PRSI classification is important because it affects the rate of PRSI which they pay on their salary or income and the social insurance benefits and/or pensions to which they may become entitled. Therefore, a key risk to PRSI receipts is the incorrect classification of liable persons.

20.3 The Department of Employment Affairs and Social Protection (the Department) has responsibility for the PRSI system and is the final arbiter in all insurability matters. The Revenue Commissioners (Revenue) collect PRSI on behalf of the Department under an agency agreement.³

20.4 This examination reviews

- PRSI classification and recent trends in PRSI contributions
- the procedures adopted by the Department to gain assurance that PRSI classifications set by employers and self-employed individuals are appropriate
- the adequacy of the arrangements in place between the Department and Revenue in relation to the collection and reconciliation of PRSI receipts.

1 Unearned income may also be liable for PRSI.

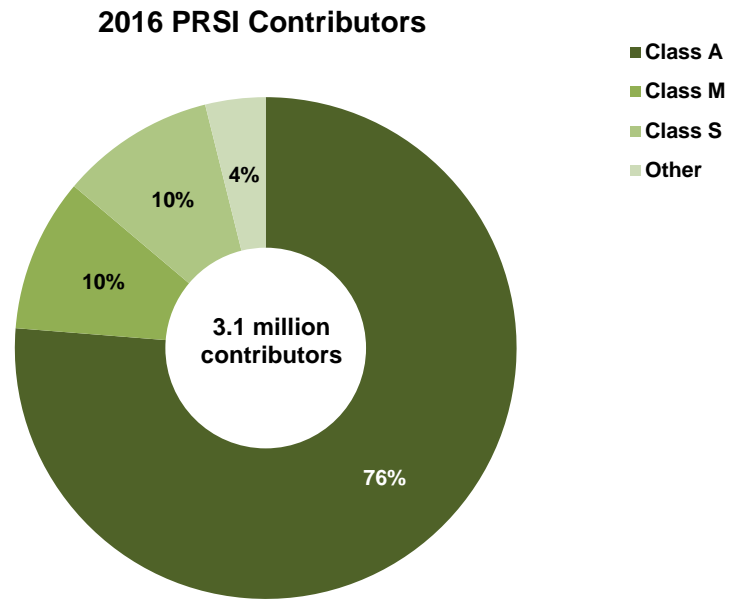
2 Entitlement to benefits is conditional upon claimants having a certain number of contributions paid or credited in a specified period of time.

3 The Department pays Revenue an annual agency fee in relation to expenses incurred by Revenue in the collection of PRSI. The fee is a charge on the Social Insurance Fund.

PRSI classifications

20.5 There are eleven different classes of PRSI (see Annex 20A). PRSI classification follows a self-assessment approach. Each person/employer determines the PRSI class that applies. PRSI classes A, S and M make up 96% of the number of contributors of PRSI in 2016 (see Figure 20.1).

Figure 20.1 PRSI contributors by class, 2016^{a, b, c}



Source: Department of Employment Affairs and Social Protection

- Notes:
- a 2016 data is provisional.
 - b Individuals can be classified for PRSI in more than one class. The number of contributors above is by predominant class for each individual.
 - c 'Other' comprises PRSI classes B, C, D, E, H, J, K, P and voluntary contributors.




20.6 The category of class M has a nil contribution liability and relates in the main to earnings of employees under 16 or 66 and over, and persons in receipt of an occupational pension. Occupational injuries benefit is the only benefit that class M contributors may qualify for.

20.7 While the rate of employee contribution is the same for both classes A and S (at 4%), there is no employer contribution for class S. The current employer contribution for class A is 10.85% and employers are liable to pay this on the reckonable pay of their employees.¹ Approximately 74% of PRSI receipts are paid by employers.

20.8 The difference in employer contribution rates may create an economic incentive for an individual to be treated as self-employed. Figure 20.2 presents a summary of the tax and PRSI implications of a hypothetical PAYE employee, self-employed individual and individual operating through a company structure (Annex 20B contains the full analysis). It should be noted that while persons who are self-employed are liable to a lower rate of contribution, this is coupled with an entitlement to a narrower range of social insurance benefits (see Annex 20A).

¹ The National Training Fund Levy (0.8%) is included and collected alongside employer PRSI for classes A and H. Where an employee's weekly earnings are less than €376, the employer contribution rate is 8.6% including the National Training Fund levy.

Figure 20.2 Summary – Illustration of the effect of employment status on tax and PRSI due

	PAYE worker 	Self-employed individual 	Operating through a company structure 
Income	€100,000	€100,000	€100,000
Tax due	€29,790	€26,070	€26,779
PRSI due — employee	€4,000	€3,578	€3,200
— employer	€10,850	–	–
Total receipts	€44,640	€29,648	€29,979

Source: Analysis by Office of the Comptroller and Auditor General

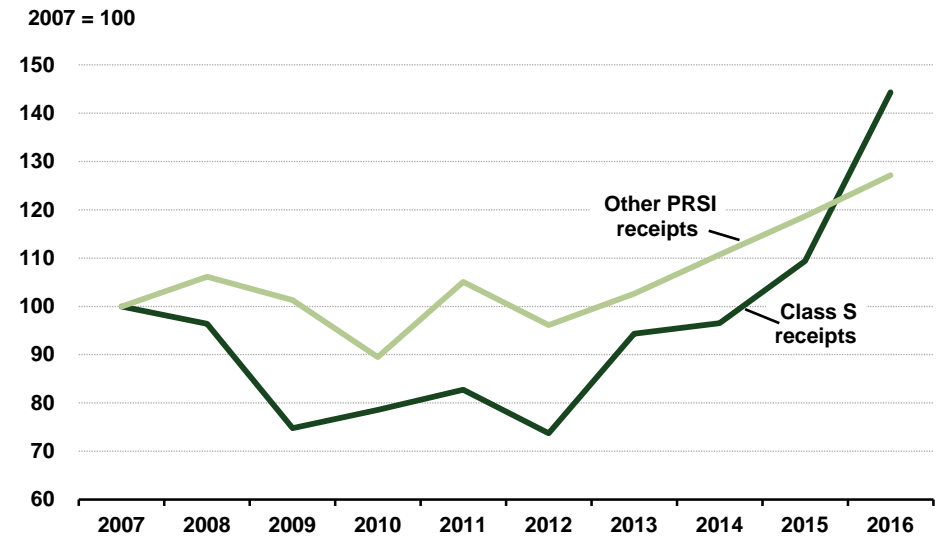
PRSI receipts

- 20.9** Revenue collects PRSI receipts on behalf of the Department. In the main, income received by employees is referred to by Revenue and for tax purposes as 'Schedule E' income. Employers make regular returns to Revenue setting out the relevant deduction made to an employee's income for employee contribution towards PRSI and the employer's contribution towards PRSI. Class A falls into this category.
- 20.10** In the case of income relating to self-employment, the term 'Schedule D' income is mainly used. PRSI at class S is applied to this income. Class S contributors include
- sole traders, people in partnerships, contractors and sub-contractors
 - people with income from investments, rents or maintenance payments
 - employees who are also self-employed
 - certain company directors, and others, who pay tax through the PAYE system
 - certain artists and childminders who are exempt from income tax.

Recent trends in PRSI receipts

20.11 Figure 20.3 (below) illustrates the trends in class S PRSI and other PRSI receipts transferred into the Social Insurance Fund for the period 2007 to 2016.

Figure 20.3 Index of class S PRSI receipts and other PRSI receipts, 2007 to 2016

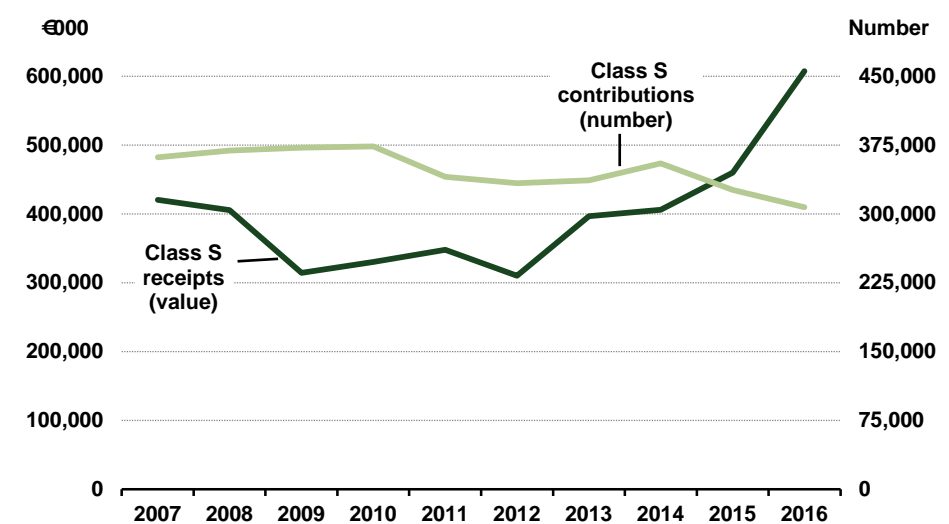


Source: Department of Employment Affairs and Social Protection

Note: a Class S PRSI as set out above includes class P PRSI, which in 2015 comprised 10 contributors.

20.12 While class S contributors account for 10% of all contributors in 2016, the associated receipts account for just under 7% of all PRSI receipts collected in 2016 (see Figure 20.4 below).

Figure 20.4 Class S receipts and number of contributors, 2007 to 2016



Source: Department of Employment Affairs and Social Protection

Note: a The Department produces statistics on PRSI receipts by employee, employer and self-employed. Self-employed PRSI receipts are assumed to be class S receipts. The Department does not analyse PRSI receipts by class.

Procedures to gain assurance that classifications are appropriate

- 20.13** Employers are responsible for ensuring that their workers are correctly classified for PRSI when they commence employment. Similarly, individuals that self-assess as self-employed are responsible for ensuring they are correctly classified for PRSI purposes. The Scope Section of the Department will provide a determination on the correct classification, if requested.¹
- 20.14** Employment relationships can be divided into two types, which potentially affect how they are treated for PRSI purposes
- a **contract of service**² — where a person works as an employee
 - a **contract for services** — where no contract of services exists and where usually there is an agreement between a self-employed individual and a business to carry out an assignment or project.
- 20.15** Social welfare legislation gives statutory power to Deciding Officers of the Department to determine insurability for social insurance purposes. In situations where the Department must make a determination as to whether an individual is self-employed, it relies on available evidence and case law. A code of practice based on case law sets out additional guidance.

Irish law precedents

- 20.16** The terms 'employed' and 'self-employed' are not defined in Irish law. Four main tests which have evolved from case law are used by the Department in establishing the difference between a contract of service and a contract for services.³
- the **control test** — is the person under the control of another person who directs as to how, when and where the work is to be carried out?
 - the **integration test** — has the worker become 'part and parcel' of the organisation?
 - the **test of mutuality of obligation** — is there a mutual obligation between the parties to provide or accept the work offered?
 - the **test of economic reality** — this test incorporates all of the above to establish whether the worker is in 'business on his/her own account'.

Code of Practice

- 20.17** The *Code of Practice for Determining Employment and Self-Employment Status of Individuals* was drawn up by a Government appointed expert group in 2001.⁴ The group was set up due to a growing concern that there may be an increasing prevalence of individuals classified as self-employed when indicators exist that employee status may be more appropriate. The criteria set out in the Code for determining self-employment are contained in Annex 20C.
- 20.18** Each case is decided on its own merits. The Department decides whether the employment is insurable under the Social Welfare Acts or not, and if so, which PRSI classification applies and who the employer is.

1 The functions of the Scope Section are to make determinations and provide information on the insurability of employment in accordance with the law.

2 The term 'contract of service' has not been statutorily defined. It is in effect a concept of common law, based on principles formulated in court decisions.

3 Social Welfare Appeals Office, *Annual Report 2015*.

4 The Code was updated in 2007 by the Hidden Economy Monitoring Group.

Classification of company directors for PRSI

- 20.19** Directors of registered limited liability companies who perform duties solely as a director and receive payment of fees are considered to be self-employed for social insurance purposes. However, it is not unusual for a company director to also perform executive duties in the company and to receive remuneration which is independent of fees received for the directorship, and may be treated as income received as an employee for social insurance purposes. Determining whether income should be treated as self-employed income or employee income is dependent on the degree of ownership and the nature of the work.
- 20.20** A director who is employed in a company under a contract of service (whether written or oral, expressed or implied) should be treated as self-employed for PRSI purposes where he/she is able to control 50% or more of the ordinary share capital of that company, or is the 'beneficial owner' of that company.¹

1 Section 16 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013. Prior to this, classification of company directors for PRSI was determined on a case by case basis by the Department.

2 The Prohibition of Bogus Self-Employment Bill was introduced into the Dáil in March 2018. This is a private members bill and is intended to disincentivise employers from entering into bogus contracts for services and to provide workers with a right to redress if they are party to a suspected bogus contract for services. The Protection of Employment (Measures to Counter False Self-Employment) Bill 2018, which is also a private members bill, is currently at committee stage in the Seanad.

3 *The use of intermediary-type structures and self-employment arrangements: Implications for Social Insurance and Tax Revenues* – Departments of Finance and Employment Affairs and Social Protection (January 2018)

4 In many cases where intermediary structures are used, individuals are legitimately self-employed.

5 Revenue provided the examination team with sectoral data for approximately half of all self-employed PRSI contributors on the basis of taxpayers that had non-PAYE income greater than PAYE income.

Types of self-employment arrangements

- 20.21** The changing nature of employment and labour markets in recent years has led to an emergence of new forms of service relationships. Some types of employment arrangements may be open to exploitation for the purposes of avoiding tax and PRSI liabilities while also reducing employment rights and responsibilities. These types of arrangements are sometimes referred to as 'disguised employment', 'bogus self-employment' or 'false self-employment'.²
- 20.22** Intermediary arrangements can be used as a means of disguising employment relationships. There are two main types of intermediary structures.^{3,4}
- Personal service companies (PSC) — A contract for services is agreed between the employer and an intermediate company (the PSC) which is owned/directed by the worker. Payments for services are made to the PSC and so tax and PRSI deductions are the responsibility of the worker who can decide how much to declare as wages as opposed to profits. In some circumstances, such arrangements can amount to a mechanism that enables both the employer and the worker to avoid tax and PRSI which would be otherwise due.
 - Managed service companies (MSC) — This arrangement involves setting up a company, generally structured with a number of workers (who become shareholders of the company) who may or may not be involved in delivering similar services to the same employer. Typically, a third party agent facilitates the administrative functions of the company but is not deemed to be an employment agency. As such, the agent is not regarded as the employer and tax and PRSI deductions are the shareholders' responsibility.

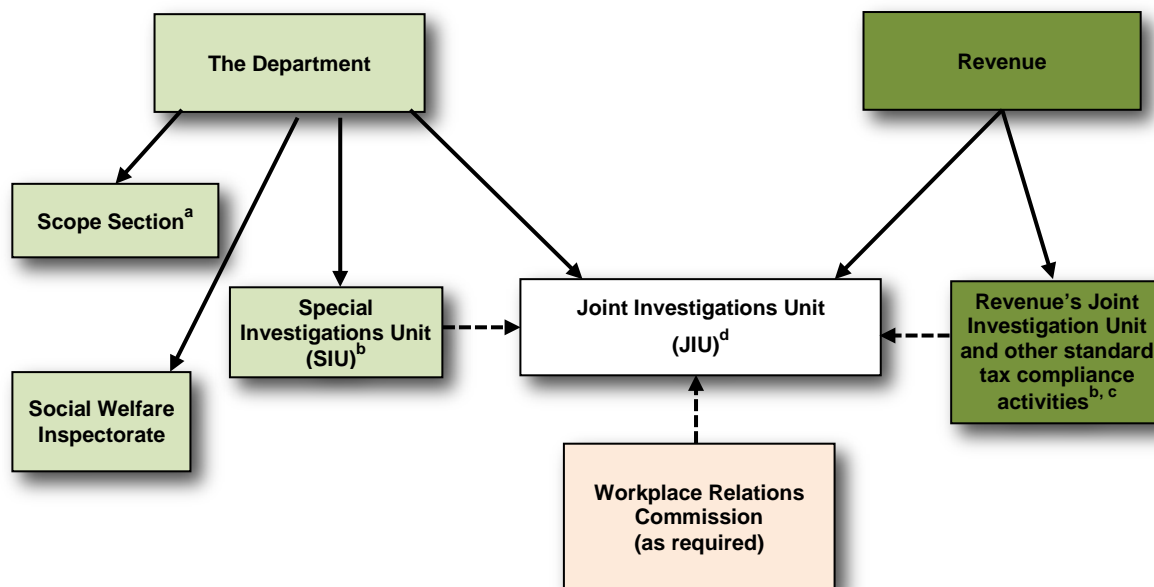
Sectoral trends

- 20.23** As part of this examination, an analysis of the sectors in which class S contributors operate was requested from both the Department and Revenue. However, a complete set of sectoral data was not readily available for self-employed contributors, as neither the Department nor Revenue maintains a database of class S contributors by sector of activity.⁵

Compliance Activity

20.24 Both the Department and Revenue engage in compliance activity in relation to PRSI. Figure 20.5 shows sets out the various units and activities involved.

Figure 20.5 PRSI compliance — units with a role



Source: Office of the Comptroller and Auditor General

- Notes:
- a The Scope Section is dedicated to PRSI determinations. It does not undertake non-PRSI related work.
 - b The Department draws officers from its SIU and Revenue draws staff from its Joint Investigations Unit to work on JIU investigations (investigations involving Revenue, the Department and the WRC, as required).
 - c While Revenue has no role in determining or checking that individuals have been allocated the correct PRSI classification, errors that may come to light during a compliance intervention are addressed.
 - d As set out in the 2008 memorandum of understanding, the Department and Revenue agreed to continue to operate the JIU. Joint investigations activities referred to in this report are activities of this unit.

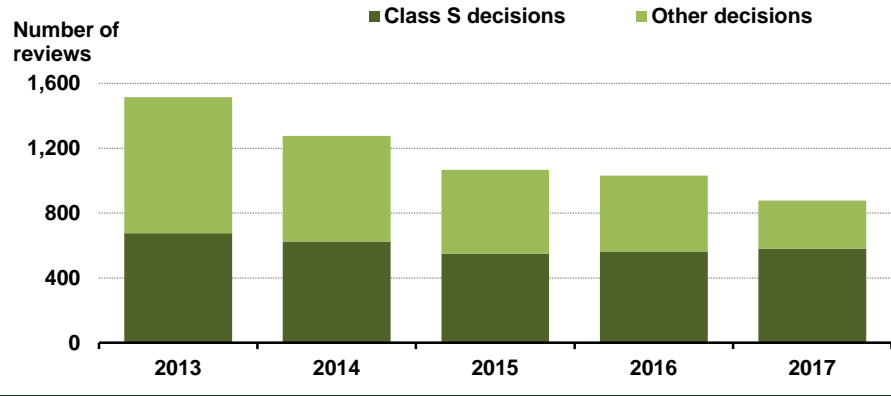
Scope Section

20.25 The Department's Scope Section conducts reviews of classifications when determinations are requested by

- an individual or their employer
- social welfare inspectors who may identify the need for a determination in the course of their work
- Department staff in the course of claims processing
- Revenue.

Figure 20.6 Departmental reviews of PRSI classifications, 2013 to 2017

The total number of determinations issued by the Department declined year-on-year....



Source: Department of Employment Affairs and Social Protection

1 The Social Welfare and Pensions Act 2014 amended 'excepted self-employed contributors' to include the spouse/civil partner of a self employed contributor who also participates in the business and performs the same or ancillary tasks but is not a business partner, allowing them to be treated as class S.

2 A retrospective partnership is recognised when it is proven to the social welfare inspector that a partnership has existed and the assessable spouse made tax returns as a sole trader farmer/shop keeper and, some years later, both spouses claim that they are in a partnership for many years. The aim of this provision is to build up a PRSI record for each spouse.

3 Class K and class M decisions that incorporate periods up to the end of 2010 are recorded by the Department as K/M to take account of the health levy, which was abolished at the end of 2010.

20.26 The Department states that the decline in determinations was due to a sharp increase in determinations following the introduction of legislation in 2013 which deemed director employees with a 50% shareholding to be class S contributors for social insurability purposes. The number of determinations has now returned to the levels that prevailed prior to the introduction of the legislation.

Results of review

20.27 As part of this examination, a sample of 35 determinations made by the Scope Section in 2017 was randomly selected for review. The files reviewed contained evidence which supported the basis on which the Scope Section had made its determinations.

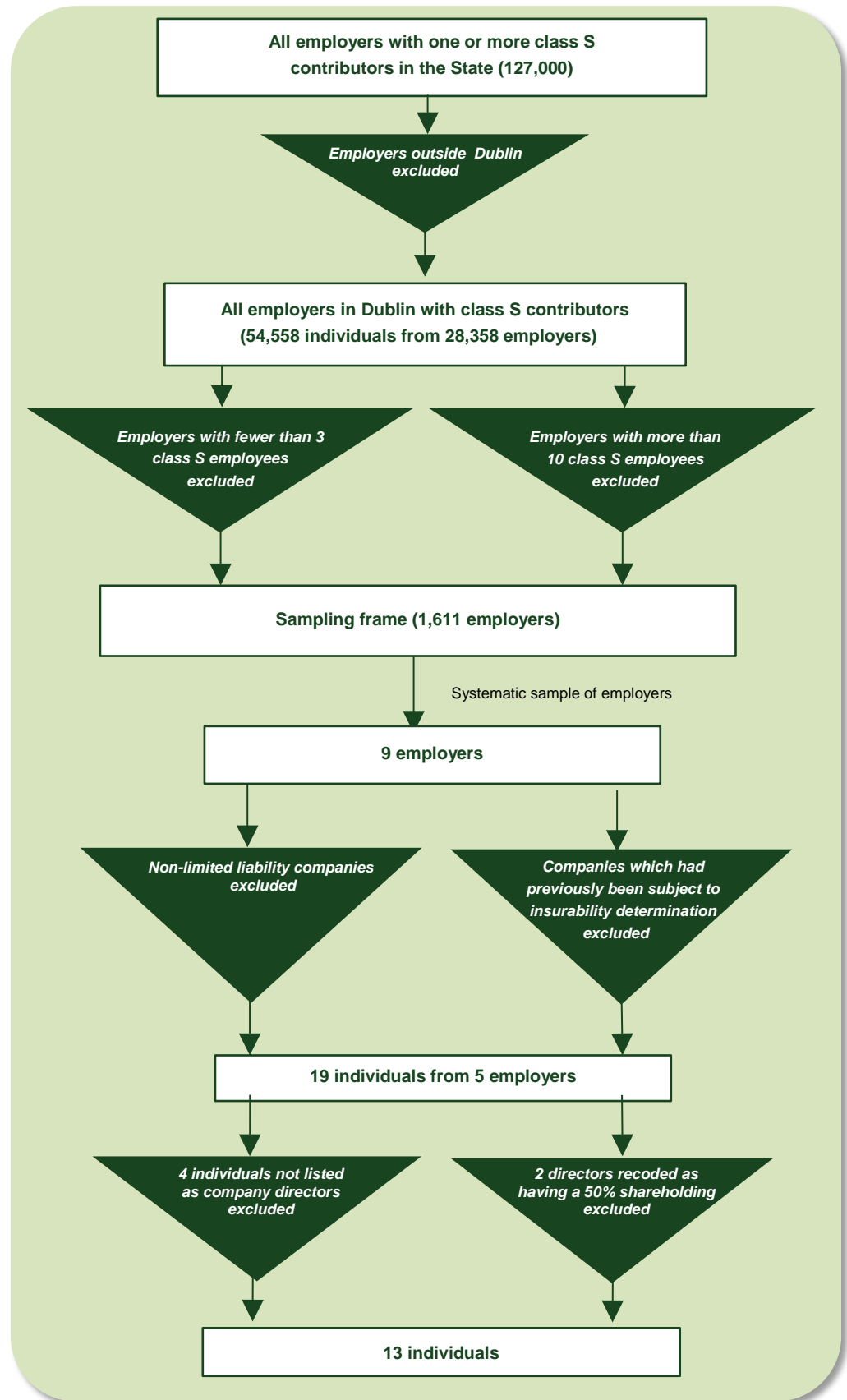
20.28 The outcome of 34 out of 35 cases was a determination of the individual's classification as class S. The remaining case was determined as class M as the employee was employed by their spouse/civil partner. In 14 of the cases reviewed, class S status was automatically given as a director owned over 50% shares in the company. Two of the other class S cases were excepted self-employed contributors.¹ Seven cases were in respect of retrospective partnerships.² No cases were reclassified from class S self-employed to class A employed. None of the determinations reviewed were appealed.³

20.29 In 24 of the cases reviewed, the employer was issued a refund of previously paid class A PRSI. In the retrospective partnership cases, PRSI which was previously paid for a sole trader was split between partners.

Departmental pilot review of company directors

- 20.30** The Scope Section implemented a pilot review of the social insurance class of company directors in late 2017 with a view to ascertaining the merit of an annual review. A sample of employers with class S contributions was selected for review. Figure 20.7 sets out the case selection process used. The Department has stated that the review was intended to assess the suitability of using random sampling rather than to select a sample representative of the full population.
- 20.31** The Department's basis for excluding employers with one or two class S employees was that these employees were likely to be company directors that own over 50% of the company. Employers with more than ten class S employees were then excluded, on the basis that these include financial institutions that are paying self-employed PRSI contributions on approved retirement funds, along with legal and other specialist companies providing corporate services. Only employers registered in Dublin were included in order to manage the number of employers identified and to facilitate potential involvement by social welfare inspectors.
- 20.32** The case selection process resulted in just 13 individuals' cases being examined. The results of the Scope Section's review were that all those directors reviewed were correctly classified as class S.
- 20.33** A number of administrative difficulties emerged during the review process, such as reliability of recorded contact details, individuals no longer with the same company and the identification of working directors being an arduous process. Given these difficulties and the fact that no misclassification was identified, the Department considers that the Joint Investigations Unit and the normal programme of investigations of the Department's social welfare inspectorate is a more beneficial way to review the classification of company directors.

Figure 20.7 Departmental review of company directors — case selection process



Source: Department of Employment Affairs and Social Protection. Analysis by Office of the Comptroller and Auditor General.

Special and Joint Investigations Units

- 20.34** The Special Investigations Unit (SIU) in the Department is tasked with investigating and reporting on social welfare fraud including PRSI non-compliance. The Unit's emphasis is on direct intervention, high visibility activity and direct engagement. The SIU currently has 110 staff, including 17 members of an Garda Síochána who are seconded to the Unit.
- 20.35** In addition to this, the Department and Revenue collaborate in joint investigation activity through a Joint Investigations Unit (JIU). Staff for this unit are drawn from the Department's SIU, from Revenue's own Joint Investigations Unit, as well as from the Workplace Relations Commission.¹ The JIU provides an integrated, multi-agency approach to the investigation of social welfare fraud, tax non-compliance and breaches of employment law. The Department and Revenue agree the annual work programme, with an emphasis on targeting shadow economy sectors where social welfare fraud, tax non-compliance and employment law breaches are most prevalent. The transport and construction sectors, restaurants and fast food outlets were some of the sectors focused on in 2017.
- 20.36** Revenue's focus in a joint operation is on non-compliance related to taxes, duties and Universal Social Charge (USC) obligations. Where tax and PRSI irregularities are detected by Revenue, an estimate will be raised for both the tax and PRSI due. These estimates may be appealed to the Tax Appeals Commission. The Department is responsible for PRSI non-compliance and determining if PRSI is due even where Revenue raises the estimate. The Department raises estimates in relation to irregularities identified by joint investigation activity which relates solely to PRSI. Such estimates can be appealed through the Social Welfare Appeals Office. The Workplace Relations Commission focuses on identifying and tackling employment law breaches by employers.
- 20.37** In 2017, the construction sector featured prominently in joint investigation activity as well as Revenue's own compliance interventions. As a result of that activity, the construction sector yielded €60.2 million in 2017 for Revenue. Payroll taxes were part of this. In 2017, Revenue led 855 unannounced visits to construction sites that included joint investigations with the Department and the WRC. Outcomes were interviews with 5,017 contractors, sub-contractors and employees. 484 sub-contractors were subsequently reclassified as employees. Also, 749 individuals were subsequently registered as new employees.
- 20.38** Over the period 2013 to 2017, an average of just over 1,100 employer reviews were conducted by the SIU (including the joint investigations activities) and an average of just over 1,700 employer reviews were conducted by the Social Welfare Inspectorate.² The proportion of cases which resulted in savings in relation to the SIU and JIU reviews, ranged from 4% in 2017 to 12% in 2013. The proportion of cases which resulted in savings in relation to the Social Welfare Inspectorate reviews, ranged from 12% in 2017 to 48% in 2013.
- 20.39** As part of this examination, five SIU cases and five JIU cases were reviewed. €188,000 additional tax and PRSI was collected as a result of these investigations. The examination team did not note any issues regarding the investigation process in relation to this sample.

¹ There are 35 personnel in Revenue's Joint Investigations Unit. In total, Revenue has approximately 2,000 staff engaged in compliance activities.

² Social Welfare Inspectors are appointed under Section 250 of the Social Welfare (Consolidation) Act 2005 and are required to investigate and report on claims and carry out inspections of employers to ensure they are complying with the PRSI system.

- 20.40** Issues relating to self-employment can also be identified through means other than the SIU and the JIU. Figure 20.8 provides a case study of self-employment arrangements at RTÉ.

Figure 20.8 Case study — Self-employment arrangements at RTÉ

In 2017, RTÉ engaged a consultant to carry out an independent review of individuals hired on contracts for services. This review followed complaints by unions that some individuals were hired by RTÉ as self-employed freelancers rather than as PAYE workers with a contract of service employment. RTÉ's Director of Human Resources informed the Committee of Public Accounts that the contractual engagements were reviewed from an employment law perspective with reference to Revenue and Workplace Relations Commission guidelines.

Of 433 contracts for services reviewed, 25% were assessed as having attributes akin to employment. The report stated that these contracts require individual review. A further 12% were found to have attributes akin to both employment and self-employment and were also worthy of review. The report recommended that RTÉ introduce a new policy around hiring freelancers, and develop clear guidelines on how and when it engages contractors or employees.

RTÉ informed the Public Accounts Committee in May 2018 that in 2017, 81 of the individuals hired on contracts of service were paid through incorporated limited companies.

Source: www.rte.ie and Committee of Public Accounts debates — 3 May 2018

Co-operation between the Department and Revenue

Memorandum of understanding

- 20.41** Revenue performs agency work on behalf of other government departments and agencies. This includes the collection of PRSI on behalf of the Department. In 2017, PRSI collected by Revenue accounted for 84% of total receipts collected on behalf of other agencies.
- 20.42** There is a memorandum of understanding in operation between the Department and Revenue on co-operation and mutual assistance, which deals with a range of issues including PRSI. The memorandum was updated in 2017. A high level governance group comprising of senior management from the Department and Revenue is also in place. This group first met in December 2009 and is responsible for reviewing the memorandum at the end of each year. The purpose of the group is to deepen the interaction at a strategic level as well as to ensure effective collaboration between both organisations.
- 20.43** The memorandum sets out agreed service standards, including service standards applying to
- the provision of and access to accurate customer information and data between the organisations
 - the timely collection and transfer of PRSI by Revenue on behalf of the Department
 - active joint co-operation in combating fraud.

- 20.44** The Department and Revenue have agreed to ensure that, as far as possible, consistent interpretations on insurability and contract of service issues are made. It is intended that this objective will be facilitated through national and local liaison arrangements.

Collection and reconciliation of PRSI receipts

- 20.45** Revenue makes daily payments to the Department in respect of PRSI receipts collected under Schedule E income.¹ Self-assessed receipts paid under Schedule D (self-employed income) include income tax, USC and PRSI. Revenue makes a single payment each month to the Department in respect of PRSI receipts associated with Schedule D income.² Some payments received by Revenue are in such a form that it is not possible to distinguish immediately between PRSI and income tax elements. A pre-determined split, which is calculated by Revenue's Statistics and Economic Research Branch, is applied to these amounts to determine interim amounts to be paid over to the Department in relation to PRSI. A balancing amount is calculated when final income data becomes available.
- 20.46** Annex 20D contains a diagram which presents an overview of the PRSI collection and reconciliation process. The memorandum of understanding sets out that Revenue will, where possible, provide explanations for abnormal variations in the payments to the Department. However, there is no structured process for the exchange of information between the Department and Revenue on the causes of variations in PRSI receipts from forecasted amounts.
- 20.47** The Department checks PRSI receipts on a monthly basis to its forecasts. When variations are noted, the Estimates Unit in the Department usually phones Revenue to query the cause of the variation. There can be lengthy delays in determining the reason for any variations because tax returns for self-assessed cases are filed almost a year in arrears and analysis of the tax returns is not conducted by Revenue until early the following year.

Strategic initiatives

- 20.48** The Department and the Department of Finance published *The use of intermediary-type structures and self-employment arrangements: Implications for social insurance and tax revenues* in January 2018. Revenue was part of the working group that prepared the report. The purpose of the report was to identify and estimate any potential loss of tax and PRSI resulting from intermediate-type structures and certain self-employment arrangements. The report recommends

- Reducing the differential in social insurance rates thus reducing the financial incentive.
- Clear public information is needed so both workers and employers are aware of the mechanisms available to them. As a result of this recommendation, the Department launched an advertising campaign in May 2018 promoting the services of its Scope Section in issuing determinations on social insurance classifications.
- Exploring the feasibility of treating the worker as a class A contributor, with the employer contribution paid by the end-user of the relevant service, and exploring the feasibility of treating payments made by an end-user either to defined classes of intermediary or to defined classes of individual, to be a payment made to the worker and so liable to tax under Schedule E.³

¹ Schedule E PRSI receipts, include self-employed directors who file and pay PRSI on a similar basis to employed contributors.

² With the exception of November when an interim payment is made soon after the payment date for self-employed tax payments.

³ Administrative difficulties were identified with these options during the consultation period. Notwithstanding this, the group recommended that these options be further explored.

- 20.49** Revenue compliance programmes include a focus on the risks of false self-employment. Revenue primarily address risks relating to false self-employment through the JIU. The construction sector is identified as a significant high risk sector, with risks of both tax and social insurance evasion.¹
- 20.50** The Minister for Finance and for Public Expenditure and Reform established an inter-departmental working group to examine and report on options for the amalgamation of USC and PRSI in February 2018. Its terms of reference include the simplification of the taxation and social insurance systems.

Conclusions and recommendations

- 20.51** There is no employer contribution for class S PRSI contributors. This creates an economic incentive for certain individuals to be improperly treated as self-employed. Despite apparent changes in employment relationships, there has been no significant increase in the proportion of earners in PRSI class S over the past ten years.
- 20.52** The Department undertook a pilot review of company directors and concluded that such a review did not need to be repeated. The approach used to inform this decision involved a very narrow sampling frame. Although not intended to be a fully representative sample, the fact that only 13 individuals were reviewed limits the conclusions which can be drawn from the review.
- 20.53** There is scope for the Department to increase the level of compliance activity. In particular, although the Department's Scope Section issues around 1,000 determinations each year, it does not usually initiate reviews of classifications. Targeted investigations recently undertaken by the SIU and the JIU in the construction sector detected a significant incidence of misclassification.

Recommendation 20.1

The Department should consider the introduction of a random programme of reviews of PRSI classification. Such a programme would provide the Department with a level of assurance as to the accuracy of PRSI classifications, particularly with regard to self-employed contributors, and an estimate of the baseline loss of revenue. Such a programme of reviews may also serve as a deterrent, which is of particular importance given the onus on employers for ensuring that their workers are correctly classified for PRSI when they commence employment.

Accounting Officer's response

Part-agreed.

Following from its awareness campaign on false self-employment which commenced in May 2018, the Department is intensifying its activity in relation to employer inspections by its social welfare inspectorate and SIU staff and it is anticipated that a significantly larger number of employer inspections with a particular emphasis on insurability for PRSI purposes will be carried out in the latter half of 2018 and 2019. These inspections will include ones with a particular focus on identifying false self-employment and should lead to increased numbers of requests for determinations to Scope Section. Random sampling may be carried out within a targeted approach to reviews based on industry sectors and intelligence received e.g. companies reported to Scope Section/ the Department during the awareness campaign and on an ongoing basis. This work will continue into the future with the Department increasing its focus on all aspects of PRSI.

¹ A construction sub-group was established during the preparation of the intermediary-type structures report and existed until the report was finalised.

- 20.54** The Department was unable to provide sectoral data in relation to self-employed PRSI contributors. In addition, a breakdown of PRSI receipts by class was not readily available.

Recommendation 20.2

The Department should consider compiling sectoral data on self-employed contributors and data on receipts by class with a view to conducting analysis of trends. This information will assist in the Department's oversight of this area. It may also assist in targeting the Department's compliance activity as emerging trends are identified.

Accounting Officer's response

Agreed.

The current situation is that industry sector (NACE) data are compiled by Revenue for both employers and the self-employed, but are only provided to the Department for employers.

The Department will engage with Revenue to review the metadata on the self-employed, to ensure that sectoral (NACE) data and other relevant analysis are available to the Department, and to investigate the extent to which analytical best practices may be shared and mutually developed.

A breakdown of PRSI contributors by class is regularly published as part of the Department's Annual Statistical Information Report (Table A8), and the Department plans to publish a breakdown of PRSI receipts by class alongside this in 2019.

- 20.55** While both the Department and Revenue are operating within the parameters of the memorandum of understanding, the memorandum lacks sufficient detail around the PRSI receipts reconciliation process. In particular, no time lines are set out for the provision of explanations regarding variances.

Recommendation 20.3

It is recommended that as part of the annual review of the memorandum of understanding, the memorandum should be revised to incorporate a structured process to resolve queries on variations in PRSI collected, compared to estimated receipts. Such a process should include a liaison structure, a formal mechanism to log queries and timeframes for response. The review should also consider the merits of establishing a mechanism whereby Revenue can share the rationale for its estimate that sets the pre-determined split with the Department. Cooperation and the sharing of information in this area will add rigour to the Department's forecasting process.

Accounting Officer's response

Agreed.

The operation of the memorandum of understanding is reviewed annually by the high level group which includes senior officials from the Department and Revenue. The high level group will discuss a formal liaison structure for logging of queries in relation to variations in PRSI collected. The Department will engage with Revenue to investigate the extent to which modelling and forecasting best practices can be shared and mutually developed. Revenue's PAYE modernisation programme will present opportunities for more timely exchange of data between Revenue and the Department.

Revenue Chairman's response

Part-agreed.

Revenue can provide factual information on collection amounts and dates of collection but we are not in a position to suggest reasons for variances from the collection amounts to the Department's forecasts as we are not involved in the forecasting process. Revenue can agree to have a structured process in place to log queries and provide responses. More broadly, any procedures put in place should also reflect the introduction of PAYE real-time reporting from 1 January 2019, as provided for in Finance Act 2017. This will improve quality and timeliness by giving Revenue significantly improved visibility on PRSI deductions for employed persons, as employers will be reporting these deductions (both employer and employee contributions) at the level of each employee, every time the person is paid. The data will provide information on PRSI deductions much earlier in the process than is currently the case, where the monthly employer return (for monthly remitters) is made by the middle of the following month and consequently, will facilitate more accurate and speedier forecasting by the Department and the Department of Finance.

Annex 20A

Figure 20A.1 PRSI classes — 2018

Class	Applicable rates ^a		Covers
	Individual	Employer	
A	4%	10.85%	Employees under the age of 66 in industrial, commercial and service-type employment who have reckonable pay of €38 or more per week from all employments as well as public servants recruited from 6 April 1995.
B	4%	2.01%	Permanent and pensionable civil servants recruited before 6 April 1995, registered doctors and dentists employed in the civil service and Gardaí recruited prior to 6 April 1995.
C	4%	1.85%	Commissioned officers of the defence forces and members of the army nursing service recruited before 6 April 1995.
D	4%	2.35%	Permanent and pensionable employees in the public service, other than those mentioned in classes B and C recruited before 6 April 1995.
E	—	—	Minister of religion employed by the Church of Ireland representative body.
H	3.9%	10.15%	NCOs and enlisted personnel of the defence forces.
J	Nil	0.5%	People in private sector employments with reckonable pay of less than €38 per week from all employments. However, a small number of employees are insurable at class J, no matter how much they earn, such as employees aged 66 or over or people in subsidiary employment.
K	4%	Nil	Since 2011, certain public office holders pay PRSI at a rate of 4% on all income, where their income is over €5,200 a year. Public office holders with weekly income of €100 or less should be returned at class M.
M	Nil	Nil	People with a nil contribution liability such as employees under 16, people 66 or over (including those previously liable for class S), persons in receipt of occupational pensions or lump-sum termination payments and public office holders with a weekly income of less than €100 a week.
P	—	—	Self-employed people whose main income comes from share fishing.
S	4%	Nil	Self-employed people, including certain company directors, certain people with income from investments and rent, and certain local authority members.

Source: Department of Employment Affairs and Social Protection

Note: a Rate applicable is dependent on the amount of weekly pay. The applicable rates displayed above are the highest rate payable in each case.

Figure 20A.2 Summary of benefits for each insurance class — 31 December 2017

Benefit / Class	A	B, C, D	E	H	J, M	P	S
Jobseeker's benefit	✓			✓		✓ ^b	
Illness benefit	✓		✓	✓		✓ ^b	
Maternity benefit	✓		✓	✓			✓
Paternity benefit	✓		✓	✓			✓
Adoptive benefit	✓		✓	✓			✓
Health and safety benefit	✓		✓	✓			
Invalidity pension	✓		✓	✓			✓
Widow's, widower's or surviving civil partner's (contributory) benefit	✓	✓	✓	✓ ^c			✓
Guardian's payment (contributory)	✓	✓	✓	✓			✓
State pension (contributory)	✓		✓	✓			✓
Treatment benefit	✓		✓	✓ ^c		✓	✓
Occupational injuries benefit	✓	✓ ^a			✓		
Carer's benefit	✓	✓	✓	✓ ^c			
Partial capacity benefit	✓		✓	✓			✓

Source: Department of Employment Affairs and Social Protection

- Notes:
- a There are limited occupational injuries benefits available to those insured under class B and none available to class C.
 - b Jobseeker's Benefit and Illness Benefit is limited for those insured under class P.
 - c Widow's, widower's or surviving civil partner's (contributory) benefit, treatment benefit and carer's benefit are the only benefits paid during service for those insured under class H.

Annex 20B

Figure 20B.1 Illustrations of impact of employment, self-employment and corporate structures on tax and PRSI payable

	Scenario 1	Scenario 2	Scenario 3
	PAYE	Self-employed	Through a company structure
	€	€	€
Income	100,000	100,000	100,000
Allowable expenses	—	10,550	10,550
Salary	—	—	80,000
Total income after expenses	100,000	89,450	9,450
less Corporation tax due @ 12.5%	—	—	1,181
Profit after tax	—	—	8,269
Tax payable at 20% (up to €34,550)	6,910	6,910	6,910
Tax payable at 40% (balance)	26,180	21,960	18,180
Total tax payable	33,090	28,870	25,090
Tax credits:			
Single person tax credit	(1,650)	(1,650)	(1,650)
Employee tax credit	(1,650)	—	—
Earned income tax credit	—	(1,150)	(1,150)
= tax due on salary	29,790	26,070	22,290
Income tax on distribution of profit @ 40%	—	—	3,308
PRSI			
Employee PRSI at 4%	4,000	3,578	3,200
Employers PRSI at 10.85%	10,850	—	—
Total PRSI due	14,850	3,578	3,200
Total tax and PRSI due	44,640	29,648	29,979

Source: Office of the Comptroller and Auditor General

- Notes:
- a Allowable expenses in the example are running costs of vehicles €3,000, capital allowance (vehicle) €3,750, interest on a business loan €2,000, legal and accountancy fees €1,000, bank charges €300 and phone charges €500.
 - b 2018 tax credits and tax rates used.
 - c In all 3 scenarios, tax thresholds and credits are assumed to be for a single individual.
 - d In scenario 3, the person drawing the salary is assumed to be self-employed. Close company surcharge has not been considered in the illustration. It is assumed that profit after tax is fully distributed.
 - e The company structure is assumed to be in line with a typical PSC/MSc structure.
 - f USC has not been calculated in the above examples.
 - g Allowable expenses in respect of an employee are normally paid directly by the employer. However, where the employer does not pay the expenses directly or reimburse the employee, the employee can claim an income tax deduction.

Annex 20C Criteria to determine whether a person is self-employed

While all of the following factors may not apply to the job, an individual would normally be self-employed if he or she:

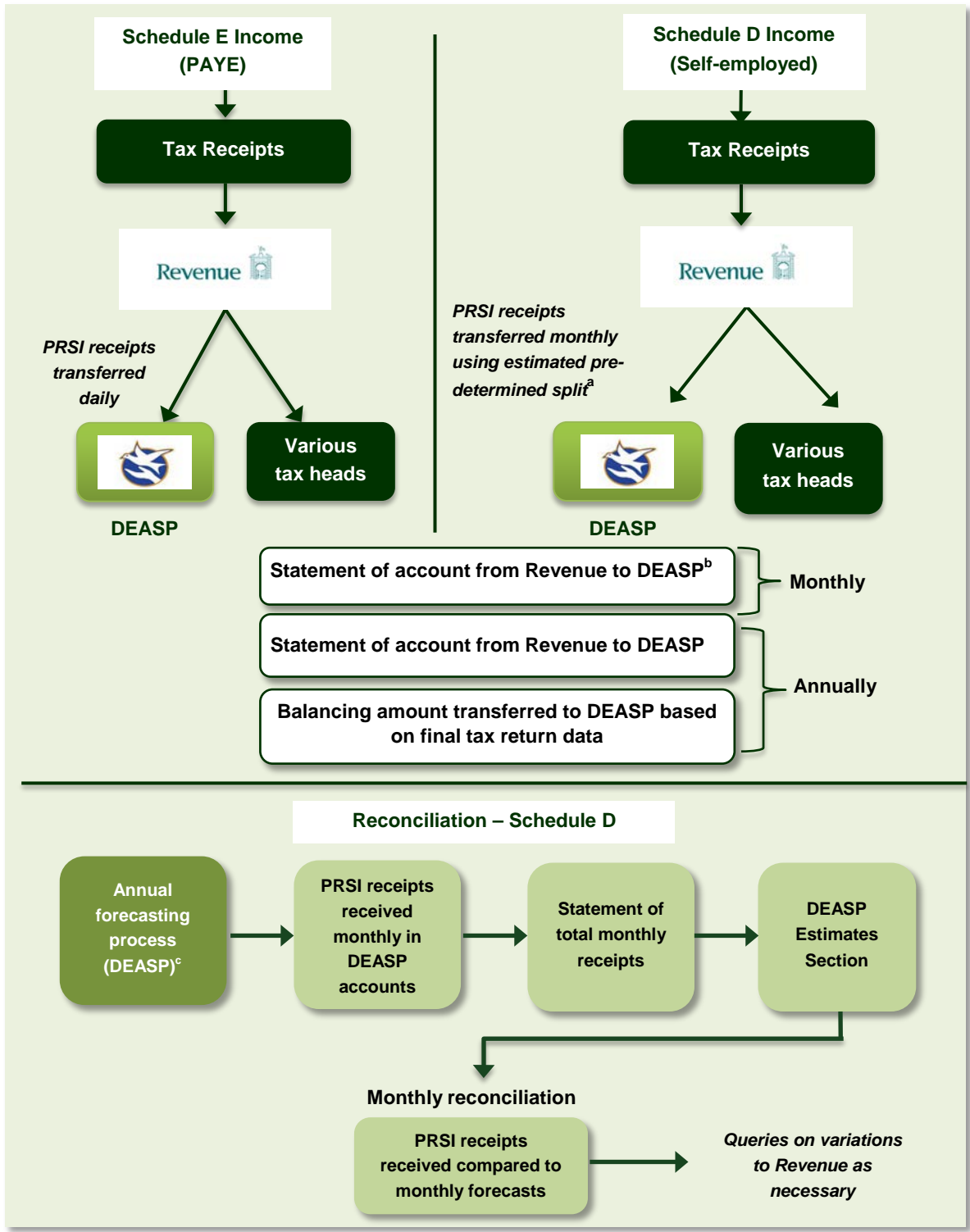
- Owns his or her own business.
- Is exposed to financial risk by having to bear the cost of making good faulty or substandard work carried out under the contract.
- Assumes responsibility for investment and management in the enterprise.
- Has the opportunity to profit from sound management in the scheduling and performance of engagements and tasks.
- Has control over what is done, how it is done, when and where it is done and whether he or she does it personally.
- Is free to hire other people, on his or her terms, to do the work which has been agreed to be undertaken.
- Can provide the same services to more than one person or business at the same time.
- Provides the materials for the job.
- Provides equipment and machinery necessary for the job, other than the small tools of the trade or equipment which in an overall context would not be an indicator of a person in business on their own account.
- Has a fixed place of business where materials, equipment etc. can be stored.
- Costs and agrees a price for the job.
- Provides his or her own insurance cover e.g. public liability cover, etc.
- Controls the hours of work in fulfilling the job obligations.

Additional factors to be considered:

- Generally an individual should satisfy the self-employed guidelines above, otherwise he or she will normally be an employee.
- The fact that an individual has registered for self-assessment or VAT under the principles of self-assessment does not automatically mean that he or she is self-employed.
- An office holder, such as a company director, will be taxed under the PAYE system. However, the terms and conditions may have to be examined by the Scope Section of the Department of Social Protection and Family Affairs to decide on the appropriate PRSI class.
- It should be noted that a person who is a self-employed contractor in one job is not necessarily self-employed in the next job. It is also possible to be employed and self-employed at the same time in different jobs.
- In the construction sector, for health and safety reasons, all individuals are under the direction of the site foreman/overseer. The self-employed individual controls the method to be employed in carrying out the work.

Source: Code of Practice for Determining Employment or Self Employment status of Individuals – Employment Status Group established under the Programme for Prosperity and Fairness and updated in 2007 by the Hidden Economy Monitoring Group.

Annex 20D Overview of the transfer and reconciliation of PRSI receipts



Source: Office of the Comptroller and Auditor General

- Notes:
- a Revenue uses a micro-simulation tax modeller which uses macro-economic data from the Department of Finance, tax return data and other parameters to estimate the percentage split to be applied for the following two years.
 - b DEASP receives a statement of account around three weeks after the end of each month. The monthly statement of account provides an analysis of receipts based on the calendar year in which the receipts are due, which is different to the contribution year, for example, receipts due in January each year relate to the previous December.
 - c DEASP uses macro-economic employment and wage trend data from the Department of Finance, as well as prior year collections to populate a model used to produce a forecast of PRSI receipts for the following two years.

