



ACCOUNTING SERVICES FOR THE VOLUNTARY SECTOR

FACTSHEET NUMBER 10 - EMPLOYMENT AND SELF EMPLOYMENT

“A worker's employment status, that is whether they are employed or self-employed, is not a matter of choice.” (HMRC)

1. General

It is most important for any business to correctly identify whether persons who provide services do so as employees or are self-employed. If employees are mistakenly regarded as self-employed, there are two major potential consequences:

- The individuals in question may have enforceable employment rights (e.g. holidays, redundancy, protection against unfair dismissal) about which management are unaware
- Management will be in breach of its obligations to deduct PAYE and National Insurance, and to pay Employers National Insurance but will be still be liable for the sums involved.

Employment status is generally determined by considering a number of criteria with a view to establishing if an individual is providing services generally (employment) or a specific service (self-employment). This is something on which courts and tribunals have frequently adjudicated and it is important to understand that they no hesitation in ignoring a contract if they decide that it does not reflect the reality of a relationship. Thus, an agreement that a relationship is not employment is of no value whatsoever if it is not supported by the facts.

Unfortunately, the rules for establishing the employment status of an individual are not identical for taxation and employment law purposes. This factsheet therefore provides a brief outline of both areas of law. If you have any concerns about these matters, specialist advice should be obtained.

2. Taxation

HMRC provides valuable guidance in this area (see www.hmrc.gov.uk/employment-status), and these are the criteria they provide for consideration:

As a general guide as to whether a worker is an employee or self-employed; if the answer is 'Yes' to all of the following questions, then the worker is probably an employee:

- Do they have to do the work themselves?
- Can someone tell them at any time what to do, where to carry out the work or when and how to do it?
- Do they work a set amount of hours?
- Do they get overtime pay or bonus payment?
- Can someone move them from task to task?
- Are they paid by the hour, week, or month?

HMRC has on its website an online questionnaire known as an employment status indicator (ESI) which should be used in all cases of doubt. The results of this may be kept and, provided the questions have been properly answered, it will become valid evidence of a person's status for taxation purposes.

3. Employment law

The following are some of the key tests used to determine status for the purposes of employment law. They do overlap closely with the taxation tests.

- **Personal services** – self employed do not have to provide services themselves, they can send a substitute
- **Control** – self-employed have more choice about how they go about their work
- **Integration** – employees are closely integrated into the organisation – e.g. attending general meetings
- **Mutuality of obligations** – in employment, an employer has to offer work if possible and the employee has to take it on. There is no such understanding with self-employment
- **Independent business test** – does the individual really run their own business?
- **Remuneration** – is it a general payment, akin to salary or a fee related to specific work
- **Intention of the parties** – not critical, but significant in the event of doubt.

4. Self-employed taxation

Individuals who are self employed must register with within three months of their self employment beginning and they must start paying Class 2 National Insurance.

5 Use of Personal Companies as Intermediaries

Legislation, known as **IR35**, exists to ensure that, if the relationship between the worker and the client would have been one of employment had it not been for an intermediary the worker pays broadly tax and NICs on a basis which is similar to what an employee of the client would pay.

6. Umbrella Companies

An alternative sometimes used by contractors where self-employed status is in doubt which does have the general approval of HMRC is the Umbrella Company (“UC”). Here the contractor enters into an employment contract with the UC or who bills the client themselves. The contractor gets paid for their time under PAYE (subject to a deduction for UC's costs) with the added advantage and the expenses of travelling to and from the client may be tax allowable.

Disclaimer

This factsheet is for general information only and is not intended to be advice to any specific charity. Professional advice should be taken in respect of individual circumstances. The checklist represents my understanding of charity and taxation law and practice as at December 2010, which is subject to change.