

## Self Employment

### Determining whether a client is employed

If a client is trading as a small limited company, or as a subcontractor or sole trader it is always advisable to review the position of the business against the definitions of IR35.

There are no hard and fast rules and each case is dealt with on an individual basis, although there are some questions that can be asked that may help clarify the position of a client/subcontractor.

A client who can answer “yes” to all or most of the following questions is probably employed

- Does your client carry out the work themselves?
- Is your client told what work to do and are the hours of work defined?
- Is the client told how the work is to be completed and where applicable, where the services are provided?
- Does the client move from task to task?
- Does the client get overtime or bonus payments?
- Is the client paid by the hour/week or month?
- Does a client generally only work for one client for prolonged periods of time?

The facts need to be looked at as a whole.

Within some professions contracts can be quite long in duration, and subcontractors can become part of the “team”. Another good indication of employment is where the subcontractor is part of the Departmental chart!

One of the key areas to think about is Mutuality of Obligation (MOO). Does the employer/contractor have an obligation to supply on going work to the employee/subcontractor? If the answer is yes, then this is in reality a situation where employment exists, regardless of what a contract may say (Synaptex Case 2003)

The three main tests should be

- Substitution
- Mutuality of Obligation
- Control of the work undertaken