

Self Employment

Determining whether a client is self employed

This is a very topical area for discussion in the accountancy media. The whole issue relates to IR35 and whether a person is genuinely self employed and taking the risks and rewards, or in fact employed and the employer is avoiding the payment of employers national insurance and any employee rights to holiday/sick/maternity/paternity pay and benefits.

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 self employed

- Can someone else be supplied by your client to carry out the work that has been contracted?
- Does your client risk their own money?
- Does your client supply items of equipment necessary to complete the contract (not just small hand tools)?
- Does the client dictate what work to do, when and how that work is completed and where applicable, where the services are provided?
- Does the client work for a number of different people on a regular basis?
- Does the client have to correct sub-standard work at their own cost?

The facts need to be looked at as a whole.

Within some professions it would not be possible to supply the equipment as it is so specialist and expensive, and in those cases other tests may have a higher weighting.

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 (Synaptek Case 2003)

The three main tests should be

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