

Company Name _____

Employee or Self-Employed?

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Business relationship: a verbal or written agreement in which a self-employed individual agrees to perform specific work for a payer in return for payment. There is no employer or employee. The self-employed individual generally does not have to carry out all or even part of the work himself. In this type of relationship, a contract for services exists.

Employee: an individual who serves an employer.

Employer: an organization or individual who is required to pay a salary or other remuneration for services rendered by an employee.

Employer-employee relationship: a verbal or written agreement in which an employee agrees to work on a full-time or part-time basis for an employer for a specified or indeterminate period of time, in return for salary or wages. The employer has the right to decide where, when, and how the work will be done. In this type of relationship, a contract of services exists.

Non-arm's length relationship: according to the Income Tax Act, a relationship between individuals connected by blood, marriage, adoption, or otherwise. A non-arm's length relationship may also exist between individuals and partnerships or corporations.

Self-employed individual: an individual who has a business relationship with a payer.

Introduction

Use this pamphlet if you are a payer or worker and you want to know whether you are in an employer-employee relationship or a business relationship.

Each one's responsibilities are different according to the type of employment relationship that exists. In addition, if the type of employment relationship is not correctly established from the beginning, there could be consequences for the payer and the worker.

Warning This pamphlet is strictly a tool to assist you in determining if a worker is an employee or a self-employed individual. It does not replace the formal ruling requests. If you are still in doubt after you use this pamphlet, contact your tax services office.

Chapter 1 - Business relationship or employer-employee relationship?

This chapter sets out a method that should, in most cases, allow payers and workers to determine the nature of their relationship.

Each employment is unique and must be examined and analyzed individually, based on the facts, taking into account the context of the employment.

To determine if a worker is an employee or a self-employed individual, and thus if there is an employer-employee relationship or a business relationship, you have to examine and analyze the terms and conditions of the worker's employment as they relate to the following four factors:

1.1 Control

Analysis of facts

1.2 Ownership of tools

Analysis of facts

1.3 Chance of profit/Risk of loss

Analysis of facts

1.4 Integration

Analysis of facts

1.1 Control

Begin by looking at the terms and conditions of employment as they relate to control, as this is the most important factor.

Generally, in an employer-employee relationship, the employer controls, directly or not, the way the work is done and the work methods used. The employer assigns specific tasks that define the real framework within which the work is to be done.

If the employer does not directly control the worker's activities, but has the right to do so, the notion of control still exists.

The degree of control exercised by the employer may vary depending on the type of work to be done and the employee's experience and skill.

Generally, the payer exercises control if he has the right to hire or fire, determines the wage or salary to be paid, and decides on the time, place, and manner in which the work is to be done.

Specifically, the payer may control:

- the hours of work;
- the assessment of the quality of the work;
- the worker's periodic activity reports;
- the list of clients and the territory covered;
- training and development.

The fact that the payer controls the worker's activities does not imply that the payer must know how to do everything that the worker is required to do.

In short, the payer exercises control if he has the right to decide where, when, and how the work will be done.

In a business relationship, however, the payer does not usually exercise control over the worker's activities. The worker can decide how the work will be performed.

Analysis of facts

The following questions will help you determine whether the payer does exercise control over the worker. If it is obvious that the payer controls the worker's activities, it is highly indicative of an employer-employee relationship.

Analysis of facts related to control	Payer	Worker	N/A
Who is responsible for planning the work to be done?			
Who decides how and how much the worker is to be paid?			
Who decides on the time frames?			
Who decides how the work is to be done?			
Who decides on the hours of work?			
Who decides on the work location?			
Who assigns the individual tasks?			
Who supervises the tasks?			
Who sets the standards to be met?			
Quality?			
Volume?			
Time frame?			
Who decides whether work must be redone?			
Who covers the related costs?			
Who decides on the territory to be covered?			
Who decides on periodic activity reporting?			
Who decides if the work is to be done by the worker himself?			
Who hires helpers?			

If you answer "Payer" to most of these questions, it means that the payer exercises control over the worker. An employer-employee relationship probably exists. Otherwise, it indicates that a business relationship may exist.

1.2 Ownership of tools

Proceed with the analysis of the terms and conditions of employment as they relate to the ownership of tools.

The main points to consider are:

the amount invested;
the value of equipment and tools; and
the rental and maintenance of equipment and tools.

In an employer-employee relationship, the employer generally supplies the equipment and tools required by the employee. In addition, the employer covers the following costs related to their use: repairs, insurance, transport, rental, and operation (e.g., fuel).

In some trades, however, it is customary for employees to supply their own tools. This is generally the case for garage mechanics, painters, and carpenters. Similarly, employed computer scientists, architects, and surveyors sometimes supply their own softwares and instruments.

In a business relationship, workers generally supply their own equipment and tools and cover costs related to their use. When workers purchase or rent equipment or large tools that require a major investment and costly maintenance, it usually indicates that they are self-employed individuals, because they may incur losses when replacing or repairing their equipment.

Analysis of facts

The following questions will help you determine who risks incurring losses related to the ownership of equipment and tools.

Analysis of facts related to ownership of tools	Payer	Worker	N/A
Who supplies the heavy equipment or covers its rental cost?			
Who supplies the specialized equipment or covers its rental costs?			
Who covers equipment maintenance costs?			
Who supplies the large tools or covers their rental costs?			
Who supplies the specialized tools or covers their rental costs?			
Who supplies the small tools?			
Who covers tool maintenance costs?			
Who supplies the materials?			
Who has invested in the equipment and tools?			

If you answer "Payer" to most of these questions, it means that by supplying the tools and equipment, the payer exercises control over the worker. There is no risk of loss for the worker. An employer-employee relationship probably exists. Otherwise, it indicates that a business relationship may exist.

1.3 Chance of profit / Risk of loss

Proceed with the analysis of the terms and conditions of employment in terms of the chance of profit and risk of loss.

You have to examine the worker's financial involvement. Determine if the worker:

has the chance of making a profit;
risks incurring losses due to bad debts, damage to equipment or materials, or unforeseen delivery delays; and
covers operating costs.

Generally, in an employer-employee relationship, the employer alone assumes the risk of loss. The employer also generally covers operating costs, which may include office expenses, employee wages and benefits, insurance premiums, and delivery and shipping costs. The employee does not assume any financial risk, and is entitled to his full salary or wages regardless of the financial health of the business.

The income of an employee paid by the piece or on commission does not depend on the losses or profits of the employer's business. The employee is paid the same per-unit amount no matter how many pieces the employer requires him to produce or sell.

In a business relationship, the self-employed individual may make a profit or incur a loss. He also covers operating costs. There is no guarantee of a steady income because the self-employed individual's income depends on the results achieved by the end of the contract.

Analysis of facts

The following questions will help you determine if the worker has the chance of making a profit or risks incurring losses.

Analysis of facts related to chance of profit/risk of loss	Payer	Worker	N/A
Who covers the costs of damage to equipment or materials?			
Who covers the costs of liability insurance?			
Who covers office expenses?			
Who covers rental costs?			
Who covers delivery and shipping costs?			
Who covers costs related to bad debts?			
Who assumes responsibility for ensuring that guarantees relating to materials are honoured?			
Who assumes responsibility for the performance of the work?			
Who guarantees the quality of the work?			
Who covers the costs incurred by the worker in carrying out the work?			
Who covers the costs of the worker's benefits (paid vacation, sick leave, life insurance premiums, etc.)?			

If you answer "Payer" to most of these questions, it means that there is little involvement on the part of the worker, and that his income does not depend on the results achieved at the end of the contract. An employer-employee relationship probably exists. Otherwise, it indicates that a business relationship may exist.

1.4 Integration

If you were not able to determine the nature of the relationship between the payer and the worker with the first three factors, you have to pursue the analysis. The final factor, integration, should settle the question.

Integration has to be considered from the point of view of the worker, not the payer.

Where the worker integrates the payer's activities to his own commercial activities, a business relationship probably exists. The worker is acting on his own behalf, he is not dependent on the payer's business and he is in business for himself.

Where the worker integrates his activities to the commercial activities of the payer, an employer-employee relationship probably exists. The worker is acting on behalf of the employer, he is connected with the employer's business and is dependent on it.

Analysis of facts

The following questions will help you determine if the worker is in business for himself and, thereby, if an employer-employee relationship or a business relationship exists.

This last analysis consists of a global review of the first three factors.

Integration	Payer	Worker
What was the answer to most of the questions related to the <u>control factor</u> ?		
What was the answer to most of the questions related to the <u>ownership of tools factor</u> ?		
What was the answer to most of the questions related to the <u>chances of profit/risk of loss factor</u> ?		

If you answer "Worker" to these questions, it indicates that the worker integrates the payer's activities to his own activities. A business relationship probably exists. Otherwise, it is reasonable to conclude that an employer-employee relationship exists.

Still in doubt?

If, after analyzing facts relating to the four factors, you still can not determine the nature of the relationship between the payer and the worker, contact your tax services office, where you can obtain a ruling request form. You have until June 30 of the following year to request a ruling.

Compliments of



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