



## Employment vs. self-employment status

Updated Revenue guidance & evolving compliance program

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**Determining whether an individual should be treated as employed or self-employed for Irish tax purposes is a challenge for many businesses. Where misclassification arises, the business is generally required to settle the payroll withholding (PAYE) liability due on payments made plus interest and penalties. Whether or not these liabilities can be recovered from the individual will depend upon the contractual arrangements in place between the parties. Our Employment Tax team explore below.**

There have been significant changes to the process to be adopted when assessing whether a worker should be treated as an employee or self-employed for Irish tax purposes. These changes arise on foot of the Irish Supreme Court decision<sup>1</sup> on the employment status of pizza delivery drivers which found in favour of Irish Revenue. The case sets out the new 5-step process which should be applied when engaging an individual, other than through a direct employment contract, to perform services.

The 5 steps to be considered are outlined below:

1. Does the contract involve an exchange of wage or other remuneration for work?
2. If so, is the agreement one pursuant to which the worker is agreeing to provide their own services, and not those of a third party, to the employer?
3. If so, does the employer exercise sufficient control over the putative employee to render the agreement one that is capable of being an employment agreement?
4. If these three requirements are met the decision maker must then determine whether the terms of the contract between employer and worker interpreted in the light of the admissible factual matrix and having regard to the working arrangements between the parties as disclosed by the evidence, are consistent with a contract of employment, or with some other form of contract having regard, in particular, to whether the arrangements point to the putative employee working for themselves or for the putative employer.
5. Finally, it should be determined whether there is anything in the particular legislative regime under consideration that requires the court to adjust or supplement any of the foregoing.

## Revenue guidelines & manuals

Irish Revenue recently released a Tax & Duty Manual (“TDM”) entitled “Revenue Guidelines for Determining Employment Status for Taxation Purposes”<sup>2</sup>. This sets out their guidance on the new

framework to be applied and includes a number of examples and commentary specific to certain industries where individuals are commonly treated as self-employed e.g., construction; media; etc.

The Supreme Court considered the 5-step process solely from a tax perspective. While employment law and social security (PRSI) provisions may need to be considered separately, Irish Revenue issued a further update<sup>3</sup> to note that it will be working with colleagues in the Department of Social Protection and the Workplace Relations Commission to update the Joint Code of Practice relating to employment status. This would suggest that all parties involved in employment status assessment may look to adopt a similar and consistent approach.

Irish Revenue also recently updated other Manuals to reflect the new 5-step assessment process with examples. These Manuals include:

- [Taxation of Couriers](#)
- [Part-Time Lecturers/Teachers/Trainers](#)
- [Agency Workers](#)
- [Individuals Described as 'Locums' Engaged in the Fields of Medicine, Health Care and Pharmacy](#)
- [Taxation of Exam Setters, Exam Correctors, Exam Attendants, Invigilators, etc.](#)

While the 5-step process should be followed on a case-by-case basis, Revenue notes in some Manuals that their expectation is that certain types of workers should generally be considered employees e.g., Lecturers, Exam Setters, etc.

## Our insights

In general, where any of the first 3 steps in the 5-step process results in a negative answer, the end-user should not need to consider employment tax risk further and the individual should be treated as self-employed. If the first 3 steps are all positive, the additional steps need to be considered in order to finalise the analysis. All analysis should be documented.

When reviewing the position, businesses need to consider not just the contractual terms but also the actual working relationship and underlying substance of the arrangement.

## Exceptions

In general, where services are provided through a corporate by an individual, these are not generally viewed as being provided personally and therefore not within Step 2. There are two main exceptions to this:

1. Where the services of a statutory director of an Irish incorporated company are provided through a corporate entity, payments made in respect of such services remain an Irish PAYE matter for the payer.
2. Where an employee of a non-Irish corporate performs duties in Ireland (whether a group employee or not), their earnings can be secondarily liable to Irish PAYE withholding by the end-user unless the employee is not Irish resident and performs merely incidental duties here. The level of merely incidental duties that can be performed before a secondary PAYE withholding and/or reporting

obligation arises depends upon whether the employee resides in a country with which Ireland has a tax treaty and if the conditions for tax treaty exemption on employment income is available.

## **Reviewing contractor arrangements**

There can be significant complexity involved in analysing contractor arrangements especially where the relationship has been in place for a number of years or has evolved over time. Specialist advice should be sought especially in non-routine cases.

Irish Revenue are encouraging all businesses who engage individuals on a self-employed basis to familiarise themselves with the tax judgment and review their workforce model. Further they are encouraging business to make voluntary payroll settlements on foot of that review, where needed.

We are seeing a significant number of Level 1 and Level 2 PAYE compliance interventions issued to businesses in the last few weeks with a particular focus on contractor arrangements, resulting in prompted payroll disclosures for misclassified workers in some cases.

## **Key areas to focus on**

As there are reduced penalties available to businesses in making qualifying unprompted disclosures, we would recommend that all businesses actively review their current contractor profile with particular focus on:

- Identifying cases at risk of employment reclassification;
- Payments made to a corporate for directors' services which have not been captured in the PAYE system, and
- Employees of foreign companies (whether group employees or not) working in Ireland for the benefit of the end-user and for whom a secondary PAYE obligation could arise.

Further, as the payroll settlement lies with the end-user in the first instance, it is also an opportunity to consider the manner in which contractors are engaged by the business including relevant contractual terms and applicable tax indemnities.

## **Get in touch**

For help determining the employment status of your workforce, please contact our team below - we'd be delighted to hear from you.