

Self-Employed or Employed

The controversy concerning the dividing line between employment and self-employment continues unabated. There are many facets to this issue about which we are pleased to advise, but the heart of the issue is that English law does not allow employers or employees to decide whether the relationship is one of employment or self employment. Instead the courts look at all the facts of the relationship then decide whether the contract is one of service (employment) or for the provision of services (self-employment). Many relationships fall in a grey area and it is up to the self-employed contractor and his customer to make sure that the contract between them (click here to view a model contract) and the way that they operate fall as clearly as possible on the side of self-employment. We list the rules upon which the divide is set below. If your relationship is one of employment then PAYE (and the dreaded 12.8% Employers N.I.) should be operated by the Employer!

For further advice please [contact us](#) and ask for Phil Needham.

The Multiple Test and Economic Reality Test

As described above these cover a whole host of matters which you would take in to account including the limited importance of control and integration.

The following items would all tend to indicate that a person was self-employed under the Multiple Test.

He is not subject to any major right of control.

He is not integrated into the contractor's organisation or premises.

Where it is appropriate to provide materials or equipment he does so.

He is able to send a substitute on his behalf to do the work and to hire helpers.

He undertakes work for more than one contractor and does not work for the same contractor consistently.

He invoices for work and advertises for work.

He is not entitled to holiday pay or sick pay.

There is no ongoing obligation on the part of the contractor to offer work week in week out and there is no ongoing obligation on the part of the subcontractor to accept work week in week out.

Both parties intend to have a self-employed relationship.

There is a written self-employed contract.

What might be described as trappings of self employment - the subcontractor is already regarded as self-employed, Class 2 and Class 4 national insurance, he has a self-employed pension, he has business stationery and has an office, however basic, at home. Other trappings of self-employment might be that he has a business mobile telephone, has sign writing on his van, is V.A.T. registered and has his own insurances.

Flexibility of how and when the work is done would indicate self-employment.

The need to correct faulty work in his own time at his own expense.

The person concerned is paid not by the hour but by the work done.

The person concerned has no right to notice before his services are dispensed with.

The person concerned agrees in writing to be responsible for his own tax and national insurance liabilities.

The person can benefit from his sound management of the work.