

UNIVERSITY COLLEGE CORK
FINANCE OFFICE
TAX TREATMENT OF EMPLOYED VERSUS SELF-EMPLOYED INDIVIDUALS

1. Introduction

Due to the level of risk and potential tax liabilities for UCC if an individual's status is incorrectly determined this policy document sets out some of the main criteria which are used to help determine the status of an individual in UCC as employed or self employed.

While it is accepted that in most cases it may be clear at the outset whether an individual is employed or self-employed, it may not always be that obvious.

2. Difference in Tax Treatment

In general an employee will be liable to tax (PAYE/PRSI/USC & PRD where applicable) and all payments made to that individual should be processed through the payroll. Any expenses incurred wholly exclusively and necessarily in respect of that employment will be reimbursed in line with UCC employee expense policy.

A self-employed individual will be paid without the deduction of income taxes, (PAYE/PRSI/USC & PRD where applicable) and it is the responsibility of this individual to declare any payments received to Revenue in their tax return, if appropriate. PSWT or RCT may however be withheld from payments made to self employed individuals depending on the nature of the services being provided to UCC.

3. Guidelines

It is important to be aware that based on the terms of any engagement a person may be considered an employee even though they might hold themselves out as being self employed.

When considering whether an individual is self employed or not, it is important that the job as a whole is looked at, including working conditions and the reality of the relationship, when considering the relevant guidelines.

Regardless of how the parties may describe themselves all the possible factors (including written, oral and implied details) that bear on the relationship between the parties must be examined, given their proper weight and a judgment made on their overall effect.

To try to provide some clarity as to whether an individual is employed or self-employed, the Employment Status Group has published a Code of Practice for determining Employment or Self-employment status of Individuals. Outlined below are some of the main criteria outlined in the Code of Practice.

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4. CRITERIA WHICH INDICATES THAN AN INDIVIDUAL MAY BE AN EMPLOYEE

While all of the following factors may not apply, an individual would normally be an employee if he or she:

- Is under the control of another person who directs as to how, when and where the work is to be carried out.
- Supplies labour only.
- Receives a fixed hourly/weekly/monthly wage.
- Cannot subcontract the work. If the work can be subcontracted and paid on by the person subcontracting the work, the employer/employee relationship may simply be transferred on.
- Does not supply materials for the job.
- Does not provide equipment other than the small tools of the trade. The provision of tools or equipment might not have a significant bearing on coming to a conclusion that employment status may be appropriate having regard to all the circumstances of a particular case.
- Is not exposed to personal financial risk in carrying out the work.
- Does not assume any responsibility for investment and management in the business.
- Does not have the opportunity to profit from sound management in the scheduling of engagements or in the performance of tasks arising from the engagements.
- Works set hours or a given number of hours per week or month.
- Works for one person or for one business.
- Receives expense payments to cover subsistence and/or travel expenses.
- Is entitled to extra pay or time off for overtime.

Additional factors to be considered:

- An individual could have considerable freedom and independence in carrying out work and still remain an employee.
- An employee with specialist knowledge may not be directed as to how the work is carried out.
- An individual who is paid by commission, by share, or by piecework, or in some other atypical fashion may still be regarded as an employee.
- Some employees work for more than one employer at the same time. Some employees do not work on the employer's premises.
- Statements in contracts considered by the Supreme Court in the 'Denny' case, such as "*You are deemed to be an independent contractor*", "*It shall be your duty to pay and discharge such taxes and charges as may be payable out of such fees to the Revenue Commissioners or otherwise*", "*It is agreed that the provisions of the Unfair Dismissals Act 1977 shall not apply etc*", "*You will not be an employee of this company*", "*You will be responsible for your own tax affairs*" are not contractual terms and have little or no contractual validity. While they may express an opinion of the contracting parties, they are of minimal value in coming to a conclusion as to the work status of the person engaged.

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5. CRITERIA WHICH INDICATES THAT AN INDIVIDUAL MAY BE SELF EMPLOYED

While all of the following factors may not apply to the job, an individual would normally be self-employed if he or she:

- Owns his or her own business.
- Is exposed to financial risk by having to bear the cost of making good faulty or substandard work carried out under the contract.
- Assumes responsibility for investment and management in the enterprise.
- Has the opportunity to profit from sound management in the scheduling and performance of engagements and tasks.
- Has control over what is done, how it is done, when and where it is done and whether he or she does it personally.
- Is free to hire other people, on his or her terms, to do the work which has been agreed to be undertaken.
- Can provide the same services to more than one person or business at the same time.
- Provides the materials for the job.
- Provides equipment and machinery necessary for the job, other than the small tools of the trade or equipment which in an overall context would not be an indicator of a person in business on their own account.
- Has a fixed place of business where materials, equipment etc. can be stored.
- Costs and agrees a price for the job.
- Provides his or her own insurance cover e.g. public liability cover, etc.
- Controls the hours of work in fulfilling the job obligations.

Additional factors to be considered:

- Generally an individual should satisfy the self-employed guidelines above, otherwise he or she will normally be an employee.
- The fact that an individual has registered for self-assessment or VAT under the principles of self-assessment does not automatically mean that he or she is self-employed.
- It should be noted that a person who is a self-employed contractor in one job is not necessarily self-employed in the next job. It is also possible to be employed and self employed at the same time in different jobs.
- In the construction sector, for health and safety reasons, all individuals are under the direction of the site foreman/overseer. The self-employed individual controls the method to be employed in carrying out the work.

6. Points of Note

- The criteria outlined above can only be used as an indicator as to whether or not an employment status might exist. **It is not a definitive guide.**

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- It is Revenue's view, that a contract of engagement between two parties that states that the individual providing the duties/service is self-employed is **NOT** alone sufficient evidence that that individual is self-employed.
- Incorrect treatment may result in PAYE/PRSI liabilities for UCC.
- The fact that an individual has registered for self-assessment or VAT under the principles of self-assessment does not automatically mean that he or she is self-employed;
- A worker who is a self-employed contractor in one job is not necessarily self-employed in the next job. Each case should be considered on its individual facts.

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