

# **Revenue Guidelines for Determining Employment Status for Taxation Purposes**

## **Part 05-01-30**

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## 1. Introduction

For tax purposes, the treatment of individuals who are engaged as employees ('contract of service') differs to those who are engaged as a contractor/self-employed ('contract for service'), although there is generally no difference in the tax rate which applies<sup>1</sup>.

Where an individual is engaged under a contract of service, i.e., as an employee taxable under Schedule E, income tax, USC and PRSI should be deducted from his or her employment income through their employer's payroll system on or before when a payment is made. He or she can claim a deduction through MyAccount for expenses incurred wholly, exclusively **and necessarily** in carrying out the duties of the employment. For the avoidance of doubt, "office holders" (e.g., Company Directors) are always subject to PAYE.

Where an individual is engaged under a contract for service, i.e., as a self-employed individual taxable under Schedule D, he or she will generally be obliged to register for self-assessment, to pay preliminary tax and file their own income tax returns using the Revenue Online Service (ROS). He or she can claim a deduction for expenses incurred wholly and exclusively for the purpose of his or her trade or profession.

Each business making payments to individuals needs to correctly determine whether individuals are employed or self-employed based on the facts and circumstances of each relationship and payment. While it is usually clear whether an individual is employed through a 'contract of service' or self-employed through a 'contract for service', it has not always been immediately obvious and it has led to confusion in relation to their employment status. There is no single, clear legal definition of the terms "employed" or "self-employed" in Irish or EU law.

These Guidelines are being issued to outline the tax implications of the Supreme Court judgment of 20 October 2023 in 'The Revenue Commissioners v Karshan (Midlands) Ltd. t/a Domino's Pizza' ("the case") in making such a determination. The judgment was delivered by Mr. Justice Murray and when referencing his analysis throughout this document, it is referred to as "the judgment". The full text of the judgment is available at the Court Service [website](#).

These Guidelines set out the key elements of the judgment and its implications for businesses engaging employees, workers, contractors or sub-contractors. It is

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<sup>1</sup> There is a 3% USC surcharge on non-PAYE income over € 100,000

important to stress that the case was concerned solely with the proper tax treatment of the workers concerned. The broader question of employment rights was not before the Court and was not considered by it.

While Revenue has responsibility for determination of employment status of a worker for taxation purposes, responsibility for determination of employment status of a worker for PRSI purposes falls to the Department of Social Protection. In general, self-employed individuals and certain company directors are liable to pay Class S PRSI, whereas employees generally pay Class A PRSI, with their employers also making a PRSI contribution. Each class has different PRSI rates and entitlements. If an employer or employee is unsure as to the correct PRSI class to apply to payments made to an employee, the case can be referred to Scope Section in the Department of Social Protection, Áras Mhic Dhiarmada, Store Street, Dublin 1 D01 WY03 for a determination. Further details can be obtained at [Operational Guidelines: Scope Section - Insurability for PRSI purposes](#).

Responsibility for a range of employment rights, such as employment equality, minimum wage rates, holiday pay, sick pay, maternal and paternal leave, sectoral pay agreements, etc., falls to the Workplace Relations Commission (WRC) under the aegis of the Department of Enterprise, Trade and Employment. The question of whether a person is an employee or is self-employed for the purposes of Irish employment rights legislation depends on the definition contained in each instrument, for example, the Equality Acts, health and safety legislation, the National Minimum Wage Act, the Unfair Dismissals Act, etc. The WRC's Adjudication Service and the Labour Court (on appeal) determine employment status as a preliminary issue when adjudicating on employment rights complaints. Information on employment rights can be obtained from the WRC, O'Brien Road, Carlow. Further details can be obtained at the [Workplace Relations Commission](#) website.

Each State body operates within its own legislative framework and a decision by one body is non-binding on the other two bodies. While Revenue endeavours to ensure consistency, occasionally, due to the separate legislative frameworks, differences arise. As a result, it cannot be assumed that the decision of one State body will be replicated by either or both of the other two.

The Code of Practice on Determining Employment Status ("the Code") was originally developed in 2001 by the Employment Status Group under the Programme for Prosperity and Fairness to address concerns around the number of individuals categorised as 'self-employed' where 'employee' status would have been more appropriate. It was updated in 2007 by the Hidden Economy Monitoring Group under the Towards 2016 Social Partnership Agreement.

In 2021, the Code was further updated by an interdepartmental working group comprising of the Department of Social Protection (DSP), Revenue and the WRC. The purpose of the Code is to provide a clear understanding of employment status, taking into account labour market practices and developments in legislation and caselaw. It aims to be of benefit to employers, employees, independent contractors and legal, financial and HR professionals, together with staff in the DSP, Revenue and the WRC.

Following the judgment, Revenue is working with colleagues in DSP and the WRC to update the Code.

The judgment provides an extensive review of caselaw to date in the area of determination of employment status, and succinctly summarises it through the provision of a decision-making framework. The decision-making framework consists of five questions that should be used to resolve the question of whether a contract is one of service (employee) or for service (self-employed). This will greatly assist businesses in determining the employment status of workers, i.e., whether they are employed or self-employed.

It has restated the position that the terms and conditions of an engagement as set out in a written contract should be considered when determining the status of the relationship. However, they may not be the sole determining factor as the facts and circumstances of that relationship may also have to be considered in the application of the decision-making framework.

It has also clarified that there does not need to be a continuity of service, in effect, a worker engaged to carry out one job, gig or shift, will generally be an employee for tax purposes for that one job, gig or shift.

The judgment was concerned with the tax treatment of delivery drivers who were treated as self-employed contractors. It is important to note that the judgment also applies across all sectors and not just delivery drivers. This is considered further in these guidelines. Revenue's treatment of services supplied through a Personal Services Company, or a Managed Services Company, which are common structures through which contracting services are supplied, has not changed. Revenue do not look through corporate structures, except in very limited circumstances specifically provided for in the Taxes Consolidation Act. In that regard, for tax purposes, the judgment only relates to individuals and there is no change in the tax position for businesses who engage companies to carry out work on their behalf.

Having considered the full facts and circumstances of the case, and applying the five-step framework, the Supreme Court unanimously confirmed Revenue's determination of the employment status for taxation purposes of the workers in the case as employees.

Some businesses have relied on previous decisions of Deciding Officers of the Department of Social Protection, to treat workers as self-employed for the purpose of tax. With the clarification from the judgment, such previous decisions cannot be relied upon for determining the correct taxation treatment. The five-step framework should be applied to each relationship to determine the taxation status of each worker.

As outlined throughout these guidelines, there are a number of workers across a number of sectors who will need to be treated as employees for tax purposes, where previously they have been treated as self-employed. It is essential that businesses urgently and comprehensively review arrangements with all workers and determine their employment status for taxation purposes. Where a business previously treated a worker as self-employed, rather than as an employee, and the review of these arrangements by reference to the five-step framework indicates that they are employees for tax purposes, the business must now rectify that position by treating the relevant workers as employees and operating PAYE.

Throughout these guidelines, the term 'business' is used to describe any recipient of a service and includes not-for-profit entities (such as sporting organisations and charities), and 'worker' is used to describe the service provider (i.e., the self-employed individual, or employee, as the case may be).

## 2. Decision-making Framework

The decision-making framework consists of five questions as follows:

- “1. Does the contract involve the exchange of wage or other remuneration for work?”. This is more commonly known as the ‘Work/Wage bargain’ and is explained in more detail in [Section 3.1](#).
- “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?”. This is more commonly known as ‘Personal Service’ and is explained in more detail in [Section 3.2](#).
- “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?”. ‘Control’ is explained in more detail in [Section 3.3](#).
- “4. If these three requirements are met, the decision maker must then determine whether the terms of the contract between the 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.”. ‘All the circumstances of the employment’ is explained in more detail in [Section 3.4](#).
- “5. Finally, it should be determined whether there is anything in the particular legislative regime under consideration that require the court to adjust or supplement any of the foregoing.”. ‘The Legislative Context’ is explained in more detail in [Section 3.5](#).

The first three questions are to be viewed as a filter. If any of these are answered negatively, there cannot be a contract of employment. If the first three questions are answered affirmatively, questions four and five must then be considered to determine if a contract of employment exists. The Decision Tree at [Section 5](#) provides a visual representation of how the framework should be applied.

[Section 3](#) analyses each of the five questions in more detail.

### 3. Understanding the Decision-making Framework

The five-question decision making framework is expanded on in this section. As detailed above, questions one to three must be answered 'yes' for there to be a contract of employment, with questions four and five then considered.

#### 3.1 Work/wage bargain

The Supreme Court reframed the 'mutuality of obligation' test as simply being a reasonable description of the work/wage bargain. It is necessary to establish if there is an exchange of work for remuneration before a working arrangement could be categorised as an employment contract.

The judgment considers that there has been unnecessary confusion caused in determining employment status by using the term "mutuality of obligation". The confusion caused is reflected in the judgment as follows:

"The fact is that the term 'mutuality of obligation' has, through a combination of over-use and under-analysis been transformed in employment law from what should have been a straightforward description of the consideration underlying a contract of employment, to a wholly ambiguous label. That ambiguity has enabled it to morph from merely describing the consideration that must exist before a contract is capable of being a contract of employment, to its being presented as a defining feature that in itself differentiates a contract of service from a contract for services. The consequence has been to assume that the 'mutual obligations' that subtend a contract of employment are in all cases necessarily and categorically different from those that underlie a relationship of employer and independent contractor. This is the fundamental error in Karshan's legal analysis."

The judgment ultimately concludes that the confusion:

"...will be most effectively avoided in future if the use of the phrase in this arena is discontinued."

It remains the position that there must be a wage or other consideration as otherwise there is no employment contract:



“The phrase [Mutuality of Obligation] should be viewed as doing no more than describing the consideration that has to be present before a working arrangement is capable of being categorised as an employment contract.”.

Thus, the first question to consider is whether there is actually a contract (whether express or implied) in place at all:

“It goes without saying that the first question a decision maker must broach when determining if the parties have entered into an employment contract, is whether they have entered into a contract at all. Arrangements lacking an intention to create legal relations (as may be the case in what are truly casual or domestic agreements) and/or which are unsupported by consideration (as may be the case with volunteers) will be immediately out-ruled.”.

Payment of expenses to volunteers solely to reimburse them for expenses incurred, up to civil service rates, to allow them to undertake their work for an organisation whose functions and aims are both altruistic and non-commercial, is not ‘consideration’ in the context of this work/wage bargain. Further detail on payments to volunteers is included on [revenue.ie](https://www.revenue.ie).

Similarly, arrangements that are truly casual or domestic in nature, e.g., where a family engages a person to attend their home to “mind” their child for a few hours on an ad-hoc basis would not create a legal relationship. However, where a family engages a child minder to attend their home for a fixed number of days per week at set times, etc., this would be indicative of a contract of employment, subject to the application of the framework.

The judgment outlines different types of arrangements where an employment contract may arise:

“For as long as a worker is actually undertaking work for which the employer is liable to pay them, there is consideration that may be characteristic of an employment contract: a single engagement can give rise to a contract of employment if work which has in fact been offered is in fact done for payment, and a contract which provides merely that a worker will be paid for such work as they perform is capable of being a contract of service.”.

Thus, a contract may consist of a regular wage for work bargain, a series of agreements governing the discharge of particular tasks, an agreement to complete one identified task, an ongoing agreement defined by an umbrella contract, or some combination of the foregoing. It is possible therefore that a worker can be

considered an employee in respect of one “job”, even where there is no continuity of obligation. This is explained further below.

The judgment clarifies:

“To qualify as an employment contract for the purposes of this initial hurdle, however, the consideration must involve a promise of some kind by the worker to work for the putative employer. That promise may be one to work at defined points into the future, it may be to work if called upon to do so, or it may be to work starting more or less contemporaneously with the agreement itself. It may be to work continuously, or over an undefined period as called upon, or for a defined period(s), or for the purposes of completing a specific task(s).”.

Turning then to the employer:

“The obligations on the employer may be to provide work, to pay for work, to retain the worker on the books and/or to confer some benefit on the worker which is non-pecuniary. These may, but **need not necessarily**, involve an ongoing or continuous obligation into the future to provide work.”

It is necessary to determine the terms of the contract to understand the work/wage bargain:

“In the course of that process, it will be necessary to determine what, precisely, the terms of the alleged contract are, and whether they derive from written agreement, oral agreement, are express, implied, or fall to be inferred from a course of conduct. There will, in some circumstances, be an issue of characterisation that this case shows can be important: is the contract a regular wage for work bargain with ongoing obligations to pay and work, is it a series of employment agreements governing the discharge of particular tasks, is it an agreement to complete one identified task, is it an ongoing agreement defined by an ‘umbrella’ contract, is it some combination of the foregoing and, indeed, is the agreement one for the exchange of labour for pay at all? In some cases involving a so-called triangular relationship, it may be necessary to very specifically identify which obligations are owed by which party to another.”.

However, there is no requirement for there to be an ongoing commitment:

“...the most important issue that arose before this court was the question of whether it is a sine qua non of such a relationship (i.e. employer and employee) that there be an ongoing reciprocal commitment extending into the future to provide and perform work on the part of the employer and worker respectively.”.

The judgment confirms that it may be important when deciding if there is continuous employment for the purposes of certain statutory regimes, but it is not a “sine qua non” (essential condition) of an employment relationship.

In summary, provided there is payment by a business to a worker for a service, whether agreed in writing or not, and whether the work is carried out on a once off basis, or on a continuous basis, or anything in between, there is a contract which is capable of being an employment contract. Indeed, the consideration of the judgment regarding the work/wage bargain would strongly suggest that the default position is that, for the purposes of this test, there is likely to be a contract of employment unless it can be clearly demonstrated otherwise. Examples indicative of being capable of being a contract of employment (subject to the other elements of the framework) include:

- An individual undertaking a security role at one sporting event for a set fee;
- An individual serving at a bar at one concert for a set fee;
- A labourer working for a week on a building site on an hourly rate.

Examples of where there is no work/wage bargain where the individual is not treated as an employee for tax purposes include:

- An individual providing stewarding services at one or a series of matches in an unpaid capacity;
- An individual on a rota working part-time every week in a charity shop as a volunteer in an unpaid capacity;
- A family member minding children full-time in an unpaid capacity.

Whether the agreement between the business and worker in the examples above is in writing or verbal, whether its terms are express or implied, and whether it's a single or 'umbrella' contract, will not alter the position. If the business has determined that the answer to this question is “yes”, it must proceed to examine the second question of the framework – personal service.

## 3.2 Personal Service

This question considers whether the worker has agreed to provide their services to the business personally. This is what is known as the 'substitution test'. Substitution concerns a worker's right to appoint someone else as a substitute if he or she is unable or unwilling to do all or part of the work, or never intended to do the work themselves. In other words, it concerns whether the worker can "subcontract" the work or hire assistants, and whether the agreement provides for personal service or can the worker independently arrange for someone else (a "substitute") to provide the service. An important question to ask when considering this test can be who does the work when the worker is absent?

The judgment reiterates the importance of this test by saying:

"This is more than just a matter to be 'taken into account', as the decision maker has to make a judgment having regard to the terms of the agreement and the facts as to whether the agreement is, or is not, one for personal service. This is the essence of an employment agreement."

It was indicated that it would be:

"...helpful to separate out the requirement of personal service so as to make clear that it is a requirement and not merely a factor to be put into the mix."

While some degree of limited substitution is consistent with a contract of service, the judgment notes that:

"Substitution clauses which impose substantive restrictions on the circumstances in which a worker can delegate the obligations they have assumed will thus not be inconsistent with employment status."

The judgment further refines the term by saying:

"A right of substitution available only where the worker is unable to carry out the work is consistent with personal performance. A right of substitution limited only by the need to show that the substitute is qualified to do the work is not consistent with personal service, while a right only with the consent of another person who has absolute and unqualified discretion to withhold consent will be consistent with personal performance."

The judgment summarises the foregoing by saying:

“But, in every case it is necessary to decide if the agreement is just one for personal services, whether it is an agreement for personal services with a conditional capacity for delegation, or whether it is an agreement that enables such unconditional delegation that it is not a contract for personal services at all.”.

Thus, an important factor in assessing the level of substitution possible includes a consideration as to whether and to what extent the business has a say in who the worker hires. Other important factors to consider are whether and to what extent the substitute is controlled and/or paid by the business or the worker. The judgment, in referring to *Pimlico Plumbers Ltd v Smith* [2017] EWCA Civ.51 states:

“An unfettered right to substitute is inconsistent with an undertaking to provide the workers service personally. A conditional right to substitute may or may not be inconsistent with personal performance depending on the conditionality, and in particular on the nature and degree of any fetter: a limited and occasional right will point to personal service.”.

A typical characteristic of an independent contractor or self-employed person is that they are free to hire other people, on his or her own terms, to do the work which has been agreed to be undertaken.

In situations where there are umbrella contracts such as existed in the *Karshan* case itself, the judgment states:

“...where the contract of employment is an individual assignment governed in part by an umbrella agreement, this means that the worker cannot both accept an offer of work in accordance with the umbrella contract, and then be permitted to unconditionally delegate it.”.

In summary, the more restrictions imposed on the freedom for a worker to appoint a substitute, the more indicative the arrangement is that of a contract of employment. The types of restrictions that may occur which indicate an employment relationship will be arrangements where prior approval of substitutes is required such that the business has an unfettered right of refusal, payment of substitutes is made directly by the business rather than the person they are providing cover for, or where substitutes are from a pool of preapproved workers.

Examples where the substitution test is indicative of a contract of employment (subject to the other elements of the framework) include:

- No ability to nominate a substitute, i.e., the business arranges someone to provide cover if necessary;
- A worker engaged as a child minder in the home of a family, where the worker cannot nominate a substitute;
- A delivery driver who can only nominate a substitute from a list of candidates provided by the business.

Examples where the substitution test is indicative of a self-employment contract include:

- A contract to run a bar at a racecourse with no provision included as to who will serve the drinks;
- A contract to install a gas boiler at a residential property without any specification that the work be undertaken by one named individual;
- A contract to provide landscaping services, whether at a private or commercial setting, without any specification that the work be undertaken by one named individual.

If the business has determined that the answer to this question is “yes”, it must proceed to consider the third question of the framework – control.

### 3.3 Control

Control refers to the ability, authority, or right of a business to exercise control over a worker concerning what work should be done, and how, when and where it should be done. The continuing importance of control was noted in the judgment as follows:

“While the meaning of ‘control’ has, as I have explained earlier, evolved, this long established feature of the Irish cases has never been questioned, and indeed Walsh J. in *Roche v. Patrick Kelly and Co. Ltd.* [1969] IR 100 at p. 108 (with whose judgment Ó Dálaigh CJ and Haugh, Budd and FitzGerald JJ. agreed) authoritatively restated it: “[w]hile many ingredients may be present in the relationship of master and servant, it is undoubtedly true that the principal one, and almost invariably the determining one, is the fact of the master’s right to direct the servant not merely as to what is to be done but as to how it is to be done. The fact that the master does not exercise that right, as distinct from possessing it, is of no weight if he has the right.”.

As the third filter of the decision-making framework, control is described as a “gateway”. It is not determining the issue of employment status but rather describing the legally minimum level of control before a relationship is capable of being an employment contract. The judgment notes that this level of control differs depending on the engagement:

“What this ‘legally minimum’ element of control is, will depend on the nature of the employment, and in some cases it may indeed prove to be a wide gateway. It is well and clearly expressed by MacKenna J. in *RMC*: the control involves a lawful authority to command ‘so far as there is scope for it’ (at p. 515). The question is thus directed to whether there is a sufficient framework of control in the sense of ultimate authority, rather than the concept of day-to-day control envisaged by the older cases (see *Montgomery v. Johnson Underwood Ltd.* [2001] EWCA Civ. 318, [2001] IRLR 269 at para. 19).”.

There must obviously be a minimum level of control before a relationship can be capable of being an employment contract. The judgment confirms this:

“...if the putative employer does not enjoy the power to direct the type of work the worker is required to do, the relationship will not be capable of constituting an employment relationship (Minister for Education v. The Labour Court and ors. at para. 9.13, and para. 102 of the reported judgment). Similarly if the service is provided to a person who has no entitlement to prescribe times by which the work is to be done, no power to determine where or in what conditions the work is to be done or, within an enterprise, the persons who were to do particular work, it is difficult to see how this requirement could be met.”.

When assessing the degree of control held by the business and the degree of independence held by the worker, it should be borne in mind that the **right of the business to exercise control is more relevant than whether they actually exercise this right**. The judgment states:

“...the decision-maker is concerned to establish a right of control, over what is to be done, at least generally the way in which it is to be done, the means to be employed in doing it, the time when and the place where it shall be done. That must take account of the nature of the employment and the control an employer would be reasonably expected to exert.”.

The actual degree of control will vary with the type of work and the skills of the worker. Deciding the degree of control that exists when examining the engagement of experts can be difficult. Due to their expertise and specialised training, they may need little or no specific direction in their daily activities. When considering the right of control over what is to be done and modern working with skilled and unskilled labour being examined, the judgment notes:

“If unskilled, close direction as to the means and manner by which the work is to be done is expected. While if skilled, the employer would not be expected to be in a position to direct the worker as to how to achieve the prescribed objective.”.



This is expanded on further:

“While in cases involving skilled work, it is to be expected that the employer will not have the right to direct how the work is to be done, the test requires that the employer retain some residual authority over it.”.

An example of such residual control would be the expectation to meet clearly defined deliverables, or meet clearly set targets, within defined deadlines. Control for skilled workers would generally not extend to how work is undertaken, rather what is required to be done by when.

An additional test to consider, as a subset of control, is the ‘**enterprise test**’, which considers which of the parties to a working relationship bore the economic risk:

“.... it is not possible to separate the question of control from the question of whether the evidence points to the worker carrying on business on their own account.”.

The following parts of the judgment provide detailed analysis of how this is to be examined:

“The need for this element has not been diminished, nor has the RMC test been supplanted, by a ‘business on his or her own account’ test as a result of the decision in *Henry Denny*”,

” ... the issue of whether a person is in business on their own account is relevant to the question of control, because the degree of control exercised by the employer over a person in business on their own account will, by definition, be less than that exercised over an employee.”,

“... if the service is provided to a person who has no entitlement to prescribe times by which the work is to be done, no power to determine where or in what conditions the work is to be done or, within an enterprise, the persons who were to do particular work, it is difficult to see how this (control) requirement could be met.”.

**Integration** (the extent to which a worker, and their work, form a coherent part of the business) was also not considered by the Supreme Court to be a stand-alone test and rather it can be, but does not always have to be, viewed within the context of control. The judgment states:

“It should be viewed as doing no more than articulating a possible feature of some employment arrangements that may negate or support control, and/or might otherwise suggest that the worker is so divorced from the employer’s undertaking that they cannot be properly viewed as being employed within it.”.

The judgment cites Lord Denning in *Stevenson, Jordan and Harrison v. MacDonald and Evans* [1952] 1 TLR 101 as first formulating the test:

“...One feature which seems to me to run through the instances is that, under a contract of service, a man is employed as part of the business and his work is done as an integral part of the business; whereas under a contract for services his work, although done for the business, is not integrated into it but is only accessory to it.”.

Determining this (i.e., the integration test) has its difficulties, which is why it is not treated as a stand-alone test:

“...the notion of which work is ‘integral’ to a business is not easily applied has been frequently observed (see for example *Deakin and Morris* at para. 2.14). So, a decision maker may be quite right in a particular case to examine the extent to which the worker and their work form a coherent part of the employer’s organisation but treating this as a stand-alone ‘test’ (with the implication that it must be interrogated in all cases) is neither necessary nor helpful.”.

**Additional matters** to consider when examining control include elements such as notice periods, whether and to what extent the business controls the method, and amount, of payment, and the working hours of the worker.

### 3.4 All the circumstances of the employment

If the first three “filter” questions on work/wage bargain, personal service and control are answered affirmatively, consideration then needs to be given to the entire factual matrix of the engagement. The basis for this ‘filtering’ approach was set out in the judgment as follows:

“While in many cases decision makers will always end up at the same point – looking at all relevant factors – I think the prescription of a method should at least assist in obtaining uniformity of approach, in both clearly identifying and removing from the inquiry at an early stage those situations which, in law, are incapable of amounting to a contract of employment and in describing the ‘pointers’ that suggest one way or another whether an arrangement between worker and employer should be viewed as consistent, or inconsistent, with the status of employment.”,

“.... I think the right approach is to view the first three questions I have just identified as a filter in the form of preliminary questions which, if any one is answered negatively means that there can be no contract of employment, but if all are answered affirmatively, allow the interrogation of all of the facts and circumstances to ascertain the true nature of the relationship. This is what Keane J. in *Henry Denny* described as the consideration of ‘all the circumstances of [the] employment.’”.

When reviewing all the facts and circumstances that should be interrogated to ascertain the true nature of the relationship, the judgment notes that:

“While many ‘tests’ have been formulated around the elements of an employment relationship, they all lead directly or indirectly to two closely related (and somewhat unremarkable) conclusions – first, that every case depends on the particular facts, and second that in distinguishing an arrangement that is a contract of employment from one that is not, it is necessary to assess all relevant features of that relationship, identifying those that are, and those that are not, consistent with an employment contract, and determining based upon the sum of those parts the correct characterisation. The role of the various tests is thus, ultimately, not as much to condition the content of that ‘multi-factorial’ analysis (although of course as the law has developed various important and helpful indicia that are, and are not, consistent with an employment contract have been identified in the cases) as it is to formulate a workable structure within which that analysis

can be conducted while, at the same time, enabling the early elimination of those arrangements that do not present the legally required minimum contents of such a contract.”.

The complete wording for this step of the framework is as follows:

“If these three requirements are met the decision maker must then determine whether the terms of the contract between the 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.”.

The judgment expands on four specific matters to be considered at this stage. The first two are as follows:

1. “First, while RMC looked to ‘the provisions of the contract’, the decision in Castleisland establishes that the contract itself must be interpreted (as, today, with all contracts) in the light of the factual matrix in which it was concluded. There is nothing new in that regard in Irish law, but insofar as the RMC test does not make this clear, it should be expressly stated.”.
2. “Second, both Henry Denny and Castleisland demand that in conducting that inquiry, the court must take into account the actual dealings between the parties. Keane J. thus referred in the first of these cases to the relevance of ‘the manner in which the work was done’, Murphy J. to ‘the facts or realities of the situation on the ground’ and (in Castleisland) Geoghegan J. stressed that the Appeals Officer whose decision was in issue in that case, was bound to examine ‘what the real arrangement on a day to day basis between the parties was’.”.

The judgment concludes that these statements:

“...mean that where an agreement purports to characterise the relationship between or the status of the parties, that description does not fetter the function of the court in determining what, as a matter of law, the agreement actually is. ...[.]. These statements also require that, as a matter of the general law, an agreement which says one thing when both parties in fact intend another will not be given effect to under the doctrine of sham, or perhaps mistake.”.

On that basis, while a detailed written agreement may carry significant weight, efforts to describe a relationship in a particular way which differs from the day-to-day reality, in order to circumvent or frustrate the operation of statutory provisions, will be challenged. Additionally, terms of a written contract, which seek to describe the legal consequences of rights and obligations or conclusions of law, rather than defining the rights and obligations of the parties to the contract, may be disregarded. Phrases such as “as a self-employed contractor you will be responsible for your own tax” will carry little weight.

However, it is worth noting that the judgment caveated this somewhat as follows:

“As I have alluded to, there may well be cases in which it is found that the parties elected to describe their relationship in a particular way in order to circumvent or even frustrate the operation of some statutory provision, which would engage both questions of statutory intent and the doctrine of sham. But outside that situation whether, and if so when, it is possible in Irish law to otherwise allow evidence of the conduct of the parties to override the consequences of detailed and written contract, have to await a case in which that question is properly in issue, and is argued in full.”.

The third and fourth elements to be considered are as follows:

3. “Third, the last clause in the RMC test is reframed in this formulation to make clear that this part of the inquiry does not depend on any presumption arising from the other parts. It is free standing, the onus of proof being in the ordinary way on the party who asserts any proposition of fact, law or mixed fact and law having regard to the statutory process in which the decision is made.”.
4. “Fourth, it is useful to remember that if the contract is not one of employment it is something else, and the question of whether it is within the former category cannot in reality be resolved without identifying what it actually is. ... the issue may, for example, be a choice between an employment relationship and one of copartners (as in *DPP v. McLoughlin* [1986] IR 355) or joint venturers, or (as in *RMC*) a contract of carriage or (as in *Cheng Yuen v. Royal Hong Kong Golf Club* [1998] ICR 131) a licence agreement permitting the worker to provide a service to third parties. Nonetheless, the effect of the *Market Investigations* case was to elevate the issue of whether the facts were consistent or not with the worker carrying on business on their own account, or whether they pointed to the worker conducting the business of the employer”.

After reviewing the complete factual matrix, consideration should be given as to whether the evidence is consistent with a contract of employment with the individual working for the business as an employee **or** whether the individual is self-employed. The question to be considered is whether the facts are consistent or not with the worker providing services on his or her own account, or whether the facts indicate that the worker is providing the services on behalf of the business. The judgment notes that:

“... the law makes it clear that the capacity to profit in a material way from their own skill, the need for the employee to invest significantly in their ability to undertake the work, and the requirement to bring tools or equipment to the task all lean against the existence of a contract of employment.”.

However, there are no “static characteristics” indicative of an employment contract, rather:

“What depends on the particular facts, however, is the place of those positives and negatives and the weight to be given to them, in the balancing exercise undertaken in a given case. That is a matter, when the relevant factors pointing one way or the other are identified, for the assessment of the decision maker.”.

The judgment states that it is appropriate that control be considered again at this stage:

“...as there will be cases in which it is so extensive as to point overwhelmingly in the direction of employment just as there will be cases in which it is so attenuated as to push the agreement towards another type of relationship.”.

[Section 3.3](#) above contains a detailed narrative on the control test.

### 3.5 The legislative context

In relation to the legislative context, the judgment states that consideration needs to be given to any legislation that requires an adjustment or supplement to any of the foregoing questions in the particular circumstances of the relationship being considered. This would occur where there are:

“...legislative provisions in which it is intended to carry a different meaning. This may be evident from the language used in the statute as a whole, or indeed its overall purpose and context.”.

This question opens the prospect that:

“...particular legislative schemes – in particular those involving the protection of particular employee rights – might require a modification of either the test, or (as was decided by the United Kingdom Supreme Court in Uber) to the approach adopted to the relationship between a written contract of employment and the practices of the parties in implementing it in a particular case, must be factored into the analysis.”.

While there was no such legislation requiring application of this part of the framework in the case, the judgment outlines this as one of the five questions for cases where it may be relevant.

As an example of how this question of the framework might apply, one could look to the EU Directive on Platform Workers. On 24 April 2024, the European Parliament adopted the Directive. The provisions currently provide how employment status will be determined for individuals working through digital platforms. The Directive aims to correct the employment status of those who have been misclassified as self-employed, improve transparency and regulate the use of algorithms and data in taking decisions about platform workers. Once the Directive is approved by the European Council and published in the Official Journal of the EU, all EU Member States have two years to bring their national legislation in line with the Directive. The Directive obliges EU Member States to establish a rebuttable legal presumption of employment at national level, aiming to correct the imbalance of power between the digital labour platform and the person performing platform work. The burden of proof lies with the platform, meaning that it is up to the platform to prove that there is no employment relationship.

Another example is the application of PAYE on office holder payments, where no application of the framework will be required, as application of PAYE on office holder income is provided for in section 112 of the Taxes Consolidation Act.



## 4. What does the decision mean for businesses?

### 4.1 Determination of employment status for taxation purposes.

A worker's employment status for taxation purposes is not a matter of choice - it depends on the terms and conditions of the role and whether the practical working arrangements between the business and the worker are consistent with the express categorisation of the contract. While it is usually clear whether an individual is employed or self-employed, it may not always be obvious. The judgment provides clarity on the determination of employment status of workers for taxation purposes.

Businesses who engage workers now have a clear decision-making model by reference to the five-question framework set out in the Supreme Court judgment to determine the employment status of each worker for taxation purposes. It is essential that businesses urgently and comprehensively review arrangements with all workers and determine their employment status for taxation purposes. It is clear that there are a number of workers across a number of sectors who will need to be treated as employees for tax purposes, where previously they have been treated as self-employed. For those re-classified as employees for tax purposes, the business will have an obligation to operate PAYE.

### 4.2 Who is an employee?

On foot of this judgment, it's expected that there will be an increase in the number of workers that will be determined to be employees for tax purposes once the five-step framework is applied to their facts and circumstances. For example, it is difficult to envisage how unskilled workers in the retail or hospitality sectors, or any worker providing labour only services in the construction or transport sectors, would be anything other than an employee when the framework is applied. Conversely, the provision of goods or tools together with labour will not always result in the relationship being classified as self-employment, particularly when the worker is engaged in the main by one business or a number of connected businesses.

Businesses have been encouraged to review arrangements and apply the framework to determine if a worker should be treated as an employee. While not being prescriptive, Revenue would expect evidence of the analysis done to apply the five-step framework when a worker is engaged, including, where appropriate, looking beyond the simple wording of the contract between the business and the worker. As relationships tend to change over time, it's important that businesses undertake a

regular review of the arrangements to ensure application of the framework at that later point in time would not result in a different determination.

It is the nature of the engagement that determines the relationship, so it is possible for a worker to have two or more employers. For example, a student may work as a food delivery driver two evenings per week and work as a labourer on a construction site on a Saturday. Having applied the five-step framework, the student can be an employee in both scenarios.

Also, the fact that there is only one shift/engagement undertaken by a worker does not in itself mean that a worker is self-employed, he or she can be an employee in respect of one piece of work, subject to the application of the five-step framework.

Some general commentary on some sectors is included below.

#### 4.2.1 Construction

The construction industry is one industry with a significant number of workers being treated as self-employed. Since 1970, payments made to these self-employed workers are subject to Relevant Contracts Tax (RCT) which is operated by the business paying the worker. Tax is deducted at a rate specified by Revenue, that being 0%, 20% or 35%. Since 2012, this deduction rate is updated and notified through ROS in real-time and is determined by the circumstances of the worker with compliant workers generally seeing 0% deducted, and non-compliant generally being subject to 20% or 35% deduction. This system reduces potential tax leakage if the workers fail to file their tax returns and make tax payments. It also operates in the meat processing and forestry sectors.

Some construction workers are engaged on a full-time, or near full-time, basis by a single entity or a group of connected entities and have no autonomy as to what work they do and when they work. On foot of this judgment, subject to the facts and circumstances and the framework being correctly applied, it is highly likely that such workers will be determined as employees for taxation purposes.

Other scenarios where a worker is likely to be determined to be an employee for tax purposes, following the application of the framework, include:

- An unskilled worker operating as, for example, a casual labourer paid an hourly rate, taking direction from the site foreman;

- A skilled worker (e.g., electrician, plasterer, roofer) who works alone (i.e., does not employ a team to work for him or her), uses material supplied by the business and is told what, where and when to do work;
- An individual fitting windows for one company or a group of connected entities, on a continuous basis, using equipment supplied by the business, and travelling in or driving a company vehicle.

There will always be workers in the construction sector who are properly treated as self-employed and paid through the RCT system. Examples include:

- An electrician who has his or her own firm with a team of workers, is engaged to wire a number of houses for a fixed fee, is free to send anyone he or she wishes to undertake the work and can profit if it's done more efficiently, i.e., in less time;
- Any worker who provides their service through a corporate, i.e., they are not engaged directly as an individual by the business (construction company), rather the business engages another company to provide a service, which is undertaken by the worker. In this case, the worker is an employee of the service company, rather than the construction company.

It is not unusual for skilled workers in the construction industry to be both an employee and self-employed, but not for the same or connected businesses. For example, an electrician who is an employee for the majority of the week but undertakes ad-hoc work for individual householders at the weekend would likely be self-employed in respect of the weekend work, subject to application of the framework.

All construction businesses should ensure they have reviewed all workers by reference to the framework and treat relevant workers as employees, except where they are clearly self-employed.

#### 4.2.2 Part-time, casual and seasonal workers

There was a perception that when workers were engaged on a part-time or casual basis, including specifically for one off shifts, they were not employees as there was no continuous employment obligation. These engagements are particularly prevalent in sectors such as agriculture (e.g., fruit pickers, drivers for silage contractors, relief milkers), retail (e.g., shelf stockers, till operators, fuel pump attendants), entertainment (e.g., extras on tv shows, ticket scanners in venues, parking attendants) and catering (e.g., waiters and waitresses, bar tenders, cleaners). Such workers are generally employed for their own service (i.e., they

cannot provide a substitute) and would be subject to significant control by the business. On that basis, it is expected that such workers would be determined as employees for tax purposes when the framework is applied.

All businesses employing such workers should ensure they have reviewed all workers by reference to the framework and treat relevant workers as employees, except where they are clearly self-employed.

#### 4.2.3 Workers engaged in a domestic setting

As mentioned earlier, casual arrangements where a family engages a person to attend their home to “mind” their child for a few hours on an ad-hoc basis would not create an employment relationship and obligation to apply PAYE. This equally applies to engaging trades people to do once-off tasks in the home, e.g., fix appliances, install a boiler, carry out landscaping work, etc.

Aside from those arrangements, other than one domestic employee in the employer’s private house paid less than € 40 per week<sup>2</sup>, there is no minimum threshold for the application of PAYE where a worker is engaged to carry out such services and, following the application of the framework, they are correctly classified as an employee.

Generally, subject to the application of the framework, if a person is engaged on a regular or an ongoing basis to care for a person or people in the home of the cared for, the payer will have obligations to register as an employer and deduct PAYE.

In relation to the exemption from income tax<sup>3</sup> for gross earnings up to € 15,000 per annum by individuals who provide a child-minding service for up to 3 children in the childminders own home, this exemption is only available to self-employed individuals, i.e., if applying the framework the childminder is determined to be an employee rather than self-employed, PAYE is to be applied to all income.

Carers engaged through corporates would generally not be employees of the family but of the corporate providing them. In such instances, the corporate agrees to provide a carer and should apply PAYE to the payments made to the employees.

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<sup>2</sup> Section 986(6) TCA 1997

<sup>3</sup> Section 216C TCA 1997.

Families and individuals engaging such workers should ensure they have reviewed all workers by reference to the framework and treat relevant workers as employees, except where they are clearly self-employed.

#### 4.2.4 Couriers and other transport providers

This sector has seen a lot of change with workers generally now generating a significant portion, if not all, of their income from a single courier firm. In such instances, workers generally have the logo of the courier firm on their vehicle, wear a uniform or clothing incorporating the courier firms' brand, are provided with a company mobile phone with the number provided to customers, undergo performance reviews, and undertake deliveries when, where and how (i.e., what order) as directed by the firm. They are also generally an integral part of the business of the courier firm. Applying the complete framework, such individuals would generally be employees rather than self-employed, which they were historically treated as. Indeed, removal of some elements identified above, e.g., provision of a company phone or wearing specific clothing, would not generally see a different determination being made.

It is noted that there are a minority of genuine self-employed couriers still in existence, providing ad-hoc services to a number of businesses who do not impose the same level of control over them as set out above. However, every business who engages couriers should apply the framework to ensure they have correctly determined the status of their couriers.

All courier firms should ensure they have, following application of the framework, reclassified appropriate workers as employees, except where they are clearly self-employed.

#### 4.2.5 Media

Personal service is the essence of the majority of engagements between a media outlet and its workers such as actors, presenters or journalists. As the business also generally controls when work is undertaken and where, they would also generally meet the control test. Due to the skilled nature of the roles, it's unlikely the workers will be told 'how' to undertake the work, but the level of residual control retained by the business will result in the control test being met. This is equally applicable to other workers in the sector such as camera persons, sound engineers and producers.

Free-lance journalists and photographers have been a long-standing feature of the media industry. Where a worker produces content of his or her own volition and

offers that content for sale to various media outlets, his or her status will, subject to the framework, generally be that of an independent provider subject to self-assessment as a self-employed worker. Commissioned work, i.e., where a media outlet engages a person to produce content, will, subject to the framework, generally result in the person being an employee of the media outlet in respect of the work.

It is noted that some workers in this sector provide their services through the use of personal service companies. Such workers will not be employees of the media outlet but will be subject to PAYE on payments from their personal service companies.

All media firms should ensure they have applied the framework to workers and reclassified the relevant directly employed workers as employees, except where they are clearly self-employed.

#### 4.2.6 Public sector

There are no special rules around determining whether a worker is an employee or self-employed in the Public Sector. The framework equally applies to public sector workers as all other workers.

It is expected that there may be some workers engaged by public sector bodies who were treated as self-employed that will, when applying the framework, need to be treated as employees.

All Public Sector bodies should ensure they have reclassified their directly employed workers as employees, except where they are clearly self-employed.

#### 4.2.7 Platform operators

Although the method of engagement of a 'platform' worker might be different from traditional methods because of the use of modern technology, such workers will still be categorised as being either an employee or self-employed using the same approach as is taken with workers in other sectors. Each engagement must be looked at based on the facts and circumstances of the case.

Platforms such as online food delivery platforms, with levels of control over workers in terms of appearance, delivery, substitution and equipment would suggest control consistent with employment. Similarly, where a business operating through a platform can supervise performance, including by electronic means, and exercise control over the distribution or allocation of tasks, it would be consistent with

employment. Control over working conditions and restrictions on choosing working hours will also display control consistent with employment.

While the EU Commission is progressing proposals on employment status in relation to the gig economy<sup>4</sup>, it is clear from the judgment that the Supreme Court has clearly established that gig workers can be employees for tax purposes. All businesses employing such workers should ensure they apply the framework and reclassify appropriate workers as employees, except where they are clearly self-employed.

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<sup>4</sup> Once domestic legislation is passed to implement the Directive in Ireland, these guidelines will be reviewed and updated if necessary.

### 4.3 Provision of workers through a Company

It is open to any worker to incorporate their business, at which point the business is a separate legal entity. Any engagement of companies by businesses cannot be contracts of service, or employments, for taxation purposes.<sup>5</sup> This judgment does not disturb this position.

However, the employment status of workers contracting with those companies will have to be considered having regard to the decision-making framework, bearing in mind that those who are office holders will always be subject to PAYE.

### 4.4 Provision of workers through an employment agency

Revenue does not regard the taxation of workers employed through agencies any differently to the taxation of workers employed by any other means. PAYE/PRSI/USC is operated by agencies where the agencies are obliged to pay the person placed with a business. In contrast, PAYE/PRSI/USC is operated by the business where the business is obliged to make the payment to the person placed with them.

The PAYE system provides for the concept of a “paying employer”, who may not be an employer in the strict sense. For example, a person in receipt of a pension can be an “employee” and the body paying the pension can be an “employer” for the purpose of operating the PAYE system.

The person who is contractually obliged to make the payment to an employed agency worker is the employer for the purpose of collecting income tax, USC and PRSI through the PAYE system. [Tax and Duty Manual 05-01-15](#) explains the tax treatment in more detail.

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<sup>5</sup> There are a number of provisions in Chapter 4 of Part 42, for example sections 985C to 985F, which provide for PAYE liabilities to arise to a person other than the payer.



## 5. Decision Tree

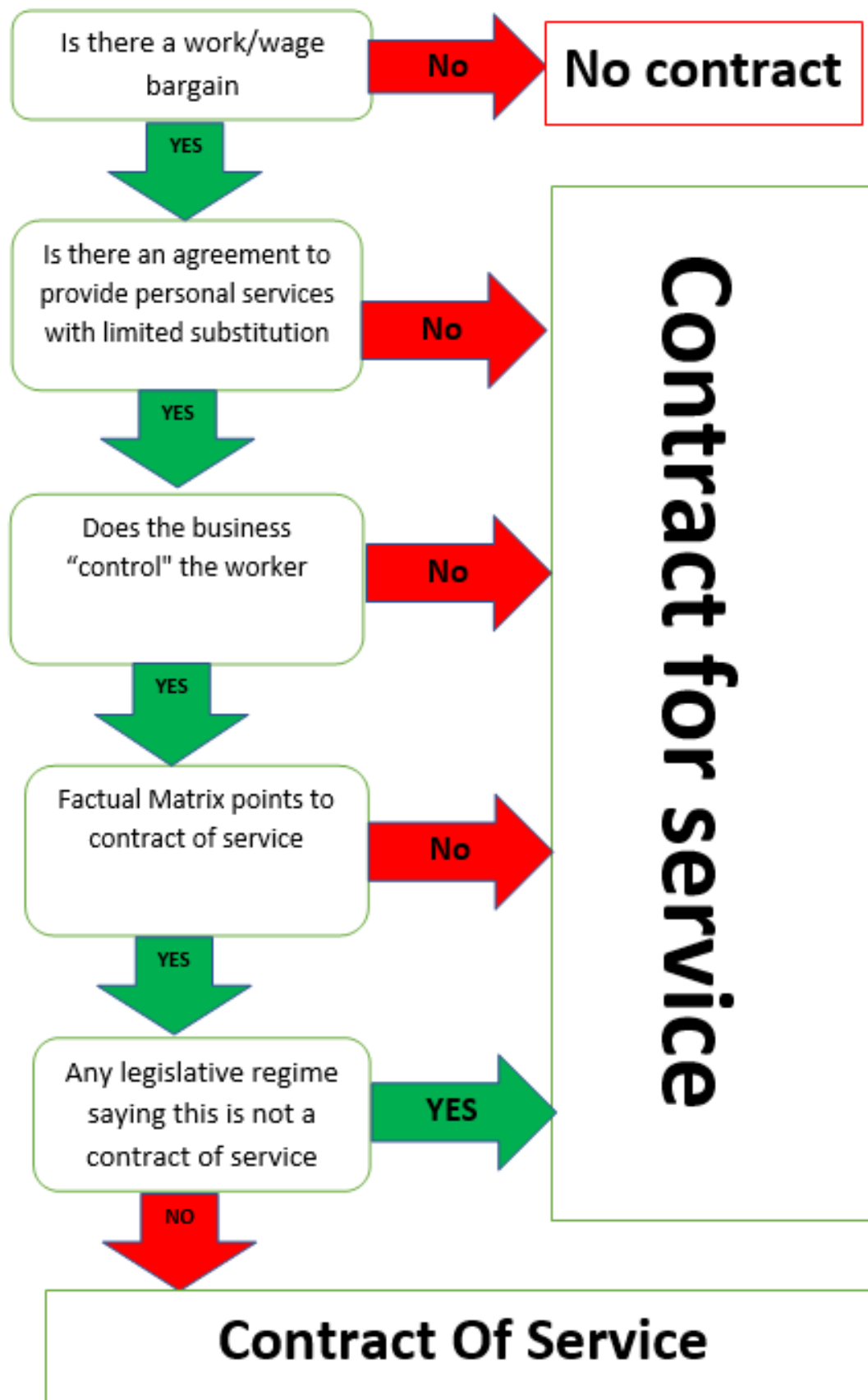


FIGURE 1 DECISION TREE

## 6. Examples

The examples included below are included for illustrative purposes only, and do not have universal application. Each case has to be examined in the light of its own facts and circumstances to determine the employment status of the worker for taxation purposes.

### Example 1

A construction company, C Co, engages a general labourer, James, to work on a site. James is to be paid an hourly rate. James cannot send someone else in his place. C Co's foreman determines the hours that will be worked. James does not supply equipment and supplies labour only.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	James is paid an hourly rate to undertake work
2	Personal Service	Yes	James cannot send someone else in his place
3	Control	Yes	The site foreman, on behalf of C Co, determines how, where, what and when the work is to be done.
4	All the circumstances of the employment	Yes	The contract of engagement is drafted as a self-employment contract with payments made to James reported through the RCT portal by C Co. The facts of the case do not support this position. In addition to the facts detailed under questions 1 to 3, James cannot profit beyond his set hourly rate, is told what he's being paid by the foreman, uses tools supplied by C Co and is insured similar to an employee.
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

James will be an **employee** based on the relationship and PAYE should be applied by C Co.

## Example 2

Richard works as a plasterer for B Co, a building company, on a labour only basis. He is paid on a daily basis. He takes his instructions from the site foreman. Richard is not free to provide someone else to perform his duties.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Richard is paid a set daily fee to undertake work
2	Personal Service	Yes	Richard cannot send someone else instead
3	Control	Yes	The site foreman, on behalf of B Co, tells Richard where, when and what to do. As a skilled tradesman, the foreman does not direct him how to do the work but this is the only element of the work which is controlled by Richard.
4	All the circumstances of the employment	Yes	The contract of engagement is drafted as a self-employment contract with payments made to Richard reported through the RCT portal by B Co. The facts of the case do not support this position. In addition to the facts detailed under questions 1 to 3, Richard cannot profit beyond his set weekly wage if he does things more efficiently. He is insured as an employee of B Co who include him in the CIF pension scheme. The materials used by Richard are provided by B Co.
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

Richard will be an **employee** based on the relationship and PAYE should be applied by B Co.

### Example 3

H Co, a company tax resident in Poland (note – similar position arises if H Co were based in Ireland), provides a team of six scaffolders under contract to B Co on a labour only basis. The scaffolders will be paid by H Co at a daily rate. The scaffolders take their instructions from the site foreman of B Co. The individual scaffolders are not free to provide someone else to perform their duties.

Similar to example 2, although B Co exercises a significant level of control over the scaffolders, and the contract between H Co and B Co is for the scaffolders' personal service, engagements between two corporates can never be under a contract of service, so B Co pays H Co for the six scaffolders under a contract for service.

We will now consider the contract between H Co and the scaffolders.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	The scaffolders are paid a set daily fee to undertake work.
2	Personal Service	Yes	The scaffolders cannot send someone else instead
3	Control	Yes	The site foreman, on behalf of B Co, tells the scaffolders where, when and what to do for H Co. As the work is specialised, the foreman does not direct them how to do it but this is the only element of the work which is controlled by them.
4	All the circumstances of the employment	Yes	The contract of engagement is drafted as a self-employment contract with payments made to the scaffolders reported through the RCT portal by H Co. The facts of the case do not support this position. In addition to the facts detailed under questions 1 to 3, the scaffolder cannot profit beyond his set daily wage if he does things more efficiently. The tools used, including the scaffolding, is provided by B Co as agreed in the contract between B Co and H Co.

5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.
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In the first instance, the individual scaffolders will be **employees** of H Co based on the relationship and PAYE should be applied by H Co.

However, if B Co is paying the scaffolders, the obligation to deduct PAYE would fall to B Co in the first instance.

#### Example 4

Peter works as an electrician for B Co. He supplies labour, materials and his own tools. He is paid a set fee to wire each house. He takes his instructions on what house to wire next from the site foreman. There are no restrictions on who undertakes the work Peter has been contracted to do.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Peter is paid a fee to undertake work.
2	Personal Service	No	There are no restrictions on who does the work so it's not a 'personal service'.
3	Control	As the answer was 'No' to one of the first three questions, the contract is not indicative of an employment contract, so the remainder of the questions do not need to be considered.	
4	All the circumstances of the employment		
5	Legislative context		

Peter will be **self-employed** based on the relationship and PAYE should not be applied by B Co. Payments made to Peter are reported through the RCT portal by B Co with RCT deducted as necessary.

### Example 5

Michael is engaged by a telecommunications company, T Co, to undertake work, building and installing new telecoms infrastructure, or repairing existing equipment. He is paid a fee per project. He provides his own tools and safety clothing and if it is provided by T Co, it is recharged back to him. He is assigned a body of work and is free to bring someone else in to do the work on his behalf or assist him in completing it on time. There are no restrictions on taking on other projects at the same time or with competitors of T Co.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Michael is paid a fee to undertake work.
2	Personal Service	No	There is no personal service as there are no restrictions on sending someone else to undertake or assist with the work.
3	Control	N/A	While this test does not need to be examined, commentary is included for completeness. Michael is told what to do and a deadline is agreed within which to do it. For H&S purposes, hours when the work can be undertaken are set by T Co together with how (from a safety perspective) it can be done. He is not an integral part of T Co's business. On balance, the 'control' test appears not to be met.
4	All the circumstances of the employment	N/A	While this test does not need to be examined, commentary is included for completeness. In addition to steps 1 to 3, Michael wears clothes with his own logo. He has his own business insurance which is a condition of the contract with T Co. He can benefit from work efficiencies. He is free to refuse offers of work, i.e., he only takes on projects he wishes to undertake. He provides labour and tools. He is free to provide substitutes. Training costs (e.g. Safe Pass) are incurred by Michael for himself and his substitutes. On balance, if this test was required to be applied, the indications are that the contract is not an employment contract.

5	Legislative context	N/A	While this test does not need to be examined, commentary is included for completeness. There is no legislation that requires an adjustment or supplement to any of the questions above.
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Michael operates an independent business (**self-employed**) based on the relationship and PAYE should not be applied by T Co. Payments made to Michael are reported through the RCT portal by T Co with RCT deducted as necessary.



### Example 6

Anne, an IT professional, provides her services to an IT Multi-National Corporation (MNC) through a limited company which is owned 100% by Anne, A Services Ltd. Although the IT MNC exercises a significant level of control over where and when Anne provides her services, and the contract between IT MNC and A Services Ltd is for Anne's personal service, any engagement between two corporates can never be under a contract of service (employment contract), so IT MNC pays A Services Ltd under a contract for service.

We will now consider the contract between A Services Ltd and Anne.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Anne is paid a set weekly wage to undertake work in IT MNC on behalf of A Services Ltd.
2	Personal Service	Yes	Anne cannot send someone else in her place
3	Control	Yes	IT MNC determines how, where, what and when the work is to be done by Anne for A Services Ltd.
4	All the circumstances of the employment	Yes	As Anne is the only shareholder and director of A Services Ltd., there is no written contract in place between herself and A Services Ltd. Anne cannot profit beyond her set weekly wage if she does things more efficiently – it is A Services Ltd who would benefit. Anne is insured as an employee by A Services Ltd and is a member of their employment pension scheme.
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above. However, as an office holder, Anne's remuneration would be subject to PAYE in line with section 112 of the Taxes Consolidation Act 1997, even if the response to any of the earlier steps was 'no', such that she would be self-employed under steps 1 to 4 i.e. step 5 would over-ride steps 1 to 4 with PAYE having to be applied.

Anne will be an **employee** based on the relationship and PAYE should be applied by A Services Ltd.

**Example 7**

Anthony is engaged on a fixed term contract by an IT consultancy company to provide IT consultancy services for a specific client. Anthony is paid a daily rate. The contract states that Anthony shall devote all of his time, attention and abilities to the business of the company. The services must be provided by Anthony or by such other person of equivalent qualifications and experience as may be approved by the company in advance, in writing, with the IT company paying the substitute. Standard weekly commitment as noted on the contract is Monday to Friday 09:00 to 5:30 pm or as directed by the client. If Anthony is unable to attend on-site for any reason, such as illness, he is required to contact the company before 08.30am and failure to do so may be considered a breach of contract. Anthony has his own professional indemnity insurance.

<b>Five Step Framework</b>			
<b>No.</b>	<b>Question</b>	<b>Answer</b>	<b>Explanation</b>
1	Work/wage bargain	Yes	Anthony is paid a standard daily rate to undertake work and is paid monthly.
2	Personal Service	Yes	Anthony can send someone else in his place but there are restrictions - the substitute must have equivalent qualifications and experience, must be approved in advance by the company and is paid by the company.
3	Control	Yes	Anthony is a skilled worker who determines how the work which has been set out for him to do, within a certain period of time and to a specified standard, is done. He is required to provide details such as time sheets to the IT consultancy company in relation to the performance of the services. He is also required to work set hours per week at the client's site unless otherwise agreed with the client. The IT consultancy company has ultimate authority over Anthony's work.
4	All the circumstances of the employment	Yes	The contract of engagement is drafted as a Consultancy Agreement. Anthony cannot profit beyond his set fee if he does things more efficiently and the standard weekly commitment is Monday to Friday 09:00 to 5:30 pm or as directed by the client. The

			contract states that Anthony shall devote all his time, attention and abilities to the business of the company. He has a company email address which he uses to engage with third parties on matters relating to the assignment. He has access to paid support staff to assist as necessary. Anthony has his own professional indemnity insurance.
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

Despite the contract being drafted as a consultancy contract and Anthony having his own professional indemnity insurance, the facts and circumstances determine that Anthony is an **employee** and PAYE should be operated by the IT Consultancy Company.

### Example 8

A dental practice engages Avril, as a dental associate, for four mornings per week. Avril is paid on a per session basis. The contract states that Avril is free to provide a substitute, but she must get written prior approval. The substitute will be paid directly by the practice. Avril is not an equity partner and does not participate in the management of the practice, in determining opening hours, or charge rates for procedures. The reception and appointment infrastructure is provided by the practice.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Avril is paid a set per session fee to undertake work.
2	Personal Service	Yes	While Avril can send someone else in her place, there are restrictions as to who it can be, and they are paid by the practice, not by Avril.
3	Control	Yes	The practice determines the patients Avril sees, the number she sees, and the amount to be charged for each treatment. Avril has to work from the practice surgery and her work has to be done to a set standard.
4	All the circumstances of the employment	Yes	There is a contract of engagement drafted as a self-employment contract between Avril and the practice. The facts of the case do not support this position. In addition to the facts detailed under questions 1 to 3, Avril cannot profit beyond her set per session fee if she does things more efficiently. She is insured as an employee of the practice and they pay her registration fee.
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

Avril will be an **employee** based on the relationship and PAYE should be applied by the dental practice. Additional information on the taxation of locums and dental associates is available in Tax and Duty Manual [05-01-20](#).

### Example 9

Lisa is engaged by a courier company, Deliveryco, to undertake deliveries for them using her own van. She is paid a fee per delivery calculated by Deliveryco based on the distance to be covered to undertake deliveries assigned to her. She is provided with a uniform. She is told what deliveries to make in what order each day and her contact details are provided to customers who receive a text letting them know the time their delivery will arrive. She can send a substitute on an exceptional basis (e.g., when sick, if her van is broken), but it has to be someone from a list of approved drivers provided by Deliveryco. Lisa cannot undertake delivery work for any other courier company.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Lisa is paid a fee to undertake work.
2	Personal Service	Yes	While Lisa can send someone else, there are restrictions as to who that can be.
3	Control	Yes	Lisa is told how, where, when and what to do as she is given a timed schedule of deliveries to undertake in a particular order.
4	All the circumstances of the employment	Yes	The contract of engagement is drafted as a self-employment contract with payments made to her reported annually on the Third Party Return Form 46G by Deliveryco. The facts of the case do not support this position. In addition to the facts detailed under questions 1 to 3, Lisa's role is integral to the business, and she is obliged to wear the uniform provided by the company. Her ability to undertake things more efficiently is severely limited. She cannot undertake deliveries for another delivery company.
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

Lisa will be an **employee** based on the relationship and PAYE should be applied by Deliveryco. Additional information on the taxation of couriers is available in Tax and Duty Manual [04-01-07](#).

### Example 10

For a pre-determined fee, Ben is engaged on a fixed term contract by a broadcaster to present a radio and TV show. He is not free to provide someone else to perform these duties. With advance agreement from the broadcaster, Ben can provide similar services to another broadcaster. When presenting on shows he is obliged to adhere to the broadcaster's editorial guidelines, accept the broadcaster's decision on programme content and accept instructions from production staff.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Ben is paid a fee to undertake work.
2	Personal Service	Yes	Ben cannot send someone else in his place
3	Control	Yes	The broadcaster has the right to control the provision of services and Ben does not have complete freedom to pursue other contracts.
4	All the circumstances of the employment	Yes	The contract of engagement is drafted as a self-employment contract. However, the facts of the case do not support this position. In addition to the facts detailed under questions 1 to 3, Ben cannot profit beyond his set fee if he does things more efficiently. He is provided with a paid support team to assist with the planning and running of the program. He is included in station advertising as a key member of the station.
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

Ben is an **employee** based on the relationship and PAYE should be operated by the broadcaster.

### Example 11

A public sector body engages a temporary worker, Breda, to provide cover for an absent employee. Breda has fixed hours and a set hourly/weekly rate. Breda cannot send someone else to perform the duties and is directed in their duties by a line manager.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Breda is paid a set fee to undertake work.
2	Personal Service	Yes	Breda cannot send someone else instead
3	Control	Yes	Breda's line manager tells her how, where, when and what to do.
4	All the circumstances of the employment	Yes	There is a contract of engagement drafted as an employment contract between Breda and the public sector body. The facts of the engagement do not differ from what's included in it. Breda cannot profit beyond her set weekly wage if she does things more efficiently. She is insured as an employee of the public sector body. The tools and uniform used by Breda are provided by the public sector body.
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

Breda will be an **employee** based on the relationship and PAYE should be applied by the public sector body.

Situations may arise where a public sector body fills roles using an employment agency. Where the employment agency is paying the temporary worker then the obligation to deduct PAYE would fall to the employment agency.

Additional information on the taxation of agency workers is available in Tax and Duty Manual [05-01-15](#).

### Example 12

Stephen provides Sea Captain services to a Public Sector entity. He is responsible for the daily operation and the safety of the boat and crew. The crew on the boat are a mix of employees and contractors of the Public Sector entity. Stephen is provided with the vessel, tools, and equipment to carry out the service. His fee is a set daily amount.

The contract states that Stephen is free to provide a substitute, but the substitute must meet certain standards, including relevant qualifications, and must be from an approved list. The Public Sector entity pays the substitute. Stephen holds his own public liability insurance.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Stephen is paid a fee at a set daily rate to perform duties.
2	Personal Service	Yes	The contract states that Stephen is free to provide a substitute, but the substitute must meet certain standards as agreed with the Public Sector entity, be from a pre-approved list, and is paid by the Public Sector entity. However a substitute has never been used.
3	Control	Yes	While Stephen is responsible for the daily operation and the safety of the boat and crew, he reports to the Operations Manager (Public Sector employee) who dictates where the ship is to sail to, and when it should sail.
4	All the circumstances of the employment	Yes	The contract of engagement is drafted as a self-employment contract. The facts of the case, on balance, do not support this position. In addition to the facts detailed under questions 1 to 3, Stephen cannot profit beyond his set daily fee if he does things more efficiently. He is provided with, and wears, Public Sector branded workwear. Stephen, as the Vessel Master, supplies the facts of the day that need to be reported back to the office. Stephen has Vessel Crew who report to him and such crew are a mix of



			<p>contractors and employees of the Public Sector entity.</p> <p>It is noted that Stephen does not receive holiday pay, sick pay, nor overtime pay. Furthermore, he does not participate in any employment benefit schemes and he is required to have his own public liability insurance.</p> <p>Stephen is engaged by the Public Sector Entity during periods, March to November each year. Outside of this period, Stephen provides Vessel Master services to non-Public Sector entities.</p> <p>Each engagement needs to be reviewed separately with the 5 step framework applied.</p>
5	Legislative context	N/A	<p>There is no legislation that requires an adjustment or supplement to any of the questions above.</p>

Stephen is an **employee** based on the relationship and PAYE should be applied by the Public Sector entity.

### Example 13

Julie provides archaeology services to a Public Sector entity. Julie carries out archaeological assessment reports and also carries out excavations in advance of building developments.

Julie works in conjunction with Public Sector employees, contractors, project managers, architects and engineers to provide suitable solutions with minimal impact on archaeological heritage. Ordinary working hours are full-time Monday to Friday and may involve some evening and weekend work. Julie is provided with a vehicle, tools, and equipment to carry out the service. Her fee is a set daily rate. The contract states that Julie is free to provide a substitute, but the substitute must meet certain standards, including relevant qualifications, and must be approved by the Public Sector entity.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Julie's fee is a set daily amount.
2	Personal Service	Yes	The contract states that Julie is free to provide a substitute, but the substitute must meet certain standards as agreed with by the Public Sector entity and the Public Sector entity shall have absolute discretion as to the suitability of any proposed replacement personnel and is free to reject someone they deem not suitable. However a substitute is never used..
3	Control	Yes	Julie has fortnightly project reviews with the contract manager (Public Sector employee) and what and when elements of the project have to be undertaken are set out and she has no control over this.  Julie has some flexibility as to when the work is performed however Julie cannot dictate her working hours when the Programme is engaging in fieldwork as this would need to be organised/coordinated in advance with other parties. However, for office-based work her hours are flexible and at her discretion.

4	All the circumstances of the employment	Yes	<p>The contract of engagement is drafted as a self-employment contract with PSWT being deducted from payments made to Julie. The facts of the case cannot support Julie being self-employment for this engagement. In addition to the facts detailed under questions 1 to 3, Julie cannot profit beyond her set daily fee if she does things more efficiently. A Public Sector entity vehicle, tools and equipment are provided to Julie for field work as required. Julie is required to wear Public Service entity branded workwear for fieldwork and such branding identifies her as authorised personnel when engaging with landowners.</p> <p>Julie has a Public Sector email address which she is required to use when emailing anyone in relation to the project, and to receive internal emails connected to her work. This also allowed Julie to access the systems, which require a username and password, and her email address is the username.</p> <p>Julie has her own website referring to herself as a Sole Trader, but there is no evidence that she undertook work elsewhere with other parties whilst working with the Public Sector entity.</p>
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

Julie will be an **employee** based on the relationship and PAYE should be operated by the Public Sector entity.

## Example 14

Andrew, an actor, was engaged to provide a workshop to transition year students in a secondary school. He provides his own material, his own insurance, can send a substitute to carry out these duties and informs the school of the rates and his availability. He is free to take up similar work at the same time with other businesses.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Andrew is paid a set fee to undertake work.
2	Personal Service	No	Andrew can send a substitute to provide the service.
3	Control	No	While this test does not need to be examined, commentary is included for completeness. Andrew is not directed by the school as to what work should be done, or how it should be done. As the workshops are carried out during school hours and given the nature of the work, the workshop has to be carried out in the school premises.
4	All the circumstances of the employment	N/A	The written agreement does not specify whether it is a contract for/of employment, however, applying the framework such that 2 of the filter questions are answered negatively, it is a contract for service.
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

Andrew is engaged on a self-employed basis based on the specific detail of the engagement therefore the school can pay Andrew on receipt of an Invoice and a tax clearance certificate without the operation of PAYE. Andrew is required to register as a self-employed individual and account for income tax in the normal manner.

Additional information on the taxation of part-time lecturers/trainers/trainers is available in Tax and Duty Manual [05-01-11](#).

## Example 15

Mary, a legal professional, was engaged to give a guest lecture on a specific legal topic for a fixed fee to students at a University at an agreed date and time. She cannot provide a substitute.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Mary is paid a set fee to undertake work.
2	Personal Service	Yes	Mary cannot send someone else instead
3	Control	Yes	The University tells her where and when to deliver the lecture, albeit that it was agreed with her. The content of the lecture is set by the University but delivery is within Mary's control and this is the only element of the work which is controlled by her as is consistent with skilled employees.
4	All the circumstances of the employment	Yes	The written agreement does not specify whether it is a contract of employment. Mary cannot profit from the engagement beyond her set fee if she does things more efficiently. The lecture is in the University and all overheads are covered by the University.
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

Mary will be an **employee** based on the relationship and PAYE should be applied by the University.

Additional information on the taxation of part-time lecturers/trainers/trainers is available in Tax and Duty Manual [05-01-11](#).

## Example 16

Luke and Emily both 'hire a chair' in a busy hairdressing salon. The salon also has full-time employees paid €800 per week.

Luke pays €250 per week to rent the chair. This covers his share of the overheads – Light, Heat, Cleaning, Advertising, Hot & Cold Water, Reservations & Receptionist, Rent & Rates, etc. He receives the balance of his takings which are recorded in the salon system. He has his own clients and sets his own charge for these and takes overflow from the salon when it's busy, charging the salon rates. He sets his own working hours within the salon opening hours. He can send a substitute and pays the substitute from his own resources.

Emily attends while the salon is open other than one agreed day off per week. Her prices are set by the salon and she receives the first €700 per week with the balance retained by the salon to cover the rent of the chair and her overheads. She is guaranteed a minimum of €550 per week. She cannot send a substitute.

Both Luke and Emily attend to private clients outside the salon, which they return as self-employed income under self-assessment through ROS.

Five Step Framework				
No.	Question	Answer		Explanation
		Luke	Emily	
1	Work/wage bargain	No	Yes	Luke is not paid by the salon – he is paid by his clients. Emily is paid a set amount by the salon to undertake work.
2	Personal Service	N/A	Yes	While this question does not have to be addressed for Luke, it is for completeness. Luke is free to send a substitute of his choosing and he pays them so there is no personal service. Emily cannot send a substitute and is providing a personal service
3	Control	N/A	Yes	While the question does not have to be addressed for Luke, it is for completeness. He has full control over when and how he works, what service he provides and how much to charge. Thus, the salon does not

				have control over him. Emily is told who to style, what to do, when to do it and where. Thus, she is under the full control of the salon.
4	All the circumstances of the employment	N/A	Yes	The contract with both is drafted as a chair rental contract with payments made recorded and reported annually on the Third Party Return Form 46G by the salon. The facts of the case do not support a self-employed position for Emily. In addition to the facts detailed under questions 1 to 3, Emily's role is integral to the business. Emily has no possibility to earn in excess of her weekly rate of €700, outside of tips.
5	Legislative context	N/A	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

Emily will be an **employee** based on the relationship and PAYE should be applied by the salon.

Luke will not be an employee based on the relationship and PAYE should not be applied by the salon. Luke should return all income as self-employed under self-assessment.

### Example 17

Sarah is a psychologist who works with a charity and provides counselling services to clients/service users of that charity. She works exclusively for that charity and is paid by them on an hourly basis. She attends the premises of the charity to provide the sessions. She is not free to provide someone else to perform her duties.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Sarah is paid a set hourly fee in respect of the provision of her professional services to charity clients.
2	Personal Service	Yes	Sarah cannot send a substitute and is providing a personal service
3	Control	Yes	While Sarah has control of the content of the sessions, i.e., how she performs her work as she is a skilled worker, she is directed by the charity as to which clients/service users to counsel, the hours of their sessions and the location of the sessions.
4	All the circumstances of the employment	Yes	The contract of engagement is drafted as a self-employment contract with payments made to Sarah reported by the charity in their Third Party Return Form 46G but the facts and circumstances do not support this.
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

Sarah will be an **employee** based on the relationship and PAYE should be applied by the charity.



### Example 18

Ronan is a psychologist with his own practice. A local charity engages him to provide workshops to their managers. He remains free to manage his other clients and the timing and numbers of charity workshops are agreed with him in advance. He invoices the charity for the workshops and is paid by the charity on an hourly basis. He attends the premises of the charity to provide the workshops. He is not free to provide someone else to perform his duties.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Ronan is paid a set hourly fee in respect of the provision of his professional services to specified charity managers only.
2	Personal Service	Yes	Ronan cannot send a substitute and is providing a personal service
3	Control	Yes	Ronan is advised on what to include in the sessions. The location of the sessions is set by the Charity (the Charity's premises) and the date is agreed with Ronan. The charity decide who will attend. The control test is met as the only think Ronan has control over is his method of delivery as is usual for a skilled worker.
4	All the circumstances of the employment	Yes	The contract of engagement is drafted as a self-employment contract with payments made to Ronan reported by the charity in their Third Party Return Form 46G but the facts and circumstances do not support this.
5	Legislative context	N/A	There is no legislation that requires an adjustment or supplement to any of the questions above.

Ronan will be an **employee** based on the relationship and PAYE should not be applied by the charity.

### Example 19

Rachel is self-employed as a partner in a solicitor practice and returns her partnership income under self-assessment. She takes a position on a State board, appointed by a Government Minister. She is paid on a session rate basis per half day. The duties of the board members are laid down in statute. Rachel is not free to provide someone else to attend the board meetings, but some duties in preparation for the meeting are carried out by the firm's staff.

Five Step Framework			
No.	Question	Answer	Explanation
1	Work/wage bargain	Yes	Rachel is paid a set fee to undertake work
2	Personal Service	No	While Rachel cannot send someone else to attend meetings, her staff carry out elements of her duties, including research, and she uses the resources of the practice to complete her work. Her access to these resources was one of the requirements for appointment to the Board and it's expected they would be used in this manner.
3	Control	Yes	The functions of the board are laid down in statute. Rachel has been engaged because of her specialist legal knowledge. As a skilled professional, Rachel is not directed as to how to do the work.
4	All the circumstances of the employment	N/A	As the answer to number two is 'no', this step does not need to be considered.
5	Legislative context	Yes	Board members of State Bodies are "office holders". Section 112 TCA 1997 provides that office holder income is always taxable as Schedule E income and subject to PAYE.

Rachel is an office holder based on the relationship and **PAYE should be applied** by the Department. Additional information on taxation of members of State boards and office holders is available in Tax and Duty Manuals [Part 42-04-56](#) and [Part 05-01-28](#).