

TAX TALK

Independent assessment: Don't leave employment status to chance

I got a call from a truck driver who was recently let go by his employer. He was pretty upset – not about being out of work but because he was unable to collect Employment Insurance (EI).

The driver was hired as an “independent operator” (also known as a “self-employed driver” or “driver service”).

With carriers ramping up for the holiday freight season – and not knowing how long those jobs are going to last – it's a good time to look at the pros and cons of this type of hiring arrangement.

Having an employee carries all kinds of obligations, including holding or reporting funds for EI, Canada Pension Plan (CPP), and workers comp, and following a variety of rules for hiring and dismissal.

Characterizing a worker as ‘independent’ allows a company to sidestep these requirements. Payments to the worker are reported as normal business expenses, not payroll, and deducted against the business's income.

The worker is responsible for keeping his own records and paying his own income and self-employment taxes and insuring himself should he become injured.

This is a workable situation as long as all parties involved understand that the relationship is business-to-business and not employer-employee. Because if



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it's not clear, the tax and workers comp authorities will weigh in with their own opinion.

And they will: CRA favours making employer-employee rulings.

Improperly classifying employees as ‘independent operators’ is a large and costly component of Canada's underground economy, siphoning away billions of dollars in government revenue, remittances, and workers comp premiums each year.

Because independents are not issued earnings statements (T-4 slips), it makes it easy for them to underreport their taxable income. Furthermore, workers compensation coverage may not be required for independent operators, which can dramatically reduce an agency's revenues if the worker should be classified as an employee.

Then there's GST/HST. The self-employed driver must charge GST/HST for his services if he exceeds the annual \$30,000 gross limitation.

Where a self-employed driver does not use his own truck and does not assume liability for the supply of a freight transportation

service, the driver is not supplying a freight transportation service for GST/HST purposes. He is providing a driving service, which is taxable.

While I was sorry to have to explain to the driver that he shouldn't count on EI cheques – and that he probably owes tax on his earnings – the bigger risk involves the company that hired him.

An employer who fails to deduct the required CPP contributions and EI premiums must pay both the employer's share and the employee's share of any contributions and premiums owing, plus penalties and interest.

Now, who would alert the CRA or workers compensation board to such an oversight?

By far, the majority of audits to determine if workers are employees or self-employed are triggered by a worker who's mad that he can't get EI or workers comp.

CRA has a guidebook called *Employee or Self-employed (RC4110)* that provides the framework for how the agency evaluates whether a relationship is business-to-business or employer-employee. Here's what they look for:

- The level of control the payer has over the worker;
- Does the worker provide his

own tools and equipment?;

- Can the worker subcontract the work or hire assistants?;
- The worker's degree of financial risk;
- The degree of responsibility for investment and management held by the worker.

There are other relevant factors, such as written contracts and the worker's opportunity to profit. In most cases, the auditor doesn't need to look too far down the list to make a determination.

If you're not sure whether you or one of your workers are an employee or independent contractor, you can request a ruling to have the status determined.

Use Form CPT1, Request for a Ruling as to the Status of a Worker under the Canada Pension Plan and/or the Employment Insurance Act.

It may seem like a lot of work, but it's worth the time and effort to clarify employment status. □

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