

Tax
Talk

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The driver service dilemma

The trucking industry is always under pressure to save money, and one way companies try to do it is through the use of self-employed drivers or “driver services.” By contracting a driver, the fleet can add or subtract capacity without the obligations and costs of having an employee.

There are good and bad sides for both the carrier and the driver in this type of arrangement.

First, let's state the obvious: Canada Revenue Agency hates the concept, and rarely does a driver-service relationship stand up to a CRA review. 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. Primarily, they look for the level of control the payer has over the worker, including:

- Does the worker provide his own tools and equipment?
- Can the worker subcontract the work or hire assistants?
- What is the worker's degree of financial risk?
- What is the degree of responsibility for investment and management?
- What is the worker's opportunity for profit?

Whether a worker is an employee or a self-employed individual goes beyond who pays taxes. It affects how a worker is treated under the Canada Pension Plan, the Employment Insurance Act, Income Tax Act, Workers Compensation, and other labour rules. Another point that catches people off guard is that 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. Some may argue that if the self-employed driver is taking a load from Canada to the US, the service is zero-rated. However, CRA has deemed that the delivery of the “service” is considered delivered to the carrier's office. Assuming the carrier is Canadian, GST/HST applies to driving a truck to the US and back.

I can't tell you how many times I've run into small carriers paying self-employed drivers and refusing to pay GST/HST to them on their gross earnings. I mean, they're already taking a risk trying to avoid the whole employee issue so why take another risk and not pay the GST/HST? They'll get it back on their returns anyway. The real crime here is that the driver is responsible for charging GST/HST on his services.

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HST, in an audit CRA is going to hand you the bill.

On the other hand, I recently had a client using driver services that was burned by some of his drivers.

They all had GST/HST numbers but a few of them closed their accounts. Not knowing this, my client continued to pay them HST on their earnings, and when he was audited, he had to repay CRA all the HST he had paid these guys and had received as refunds. The drivers? They didn't get in trouble for receiving HST on cancelled accounts.

If a worker or payer is not sure of the worker's employment status, either party 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*.

Whether you're a driver or a fleet manager, a driver-service arrangement can give you flexibility, tax advantages, and help keep certain costs in check. But only if all parties involved are clear about their obligations and responsibilities. ●

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DRIVER SERVICES: PROS AND CONS

	Pros	Cons
Payer	<ul style="list-style-type: none"> No need to hold funds No reporting or filings with CRA No forms or filings upon termination No cost for benefits (EI, CPP, WSIB, health plans) No labour rules for dismissal 	<ul style="list-style-type: none"> Faces CRA penalties if relationship is determined to be employment/not self-employment
Worker	<ul style="list-style-type: none"> Bigger paycheques (no tax, EI or CPP withheld) May be able to expense costs that could lower taxes 	<ul style="list-style-type: none"> Responsible for paying tax on his own Must file GST/HST returns More complicated tax returns May lose meal claim No entitlement to EI benefits