

New Revenue Guidelines for Determining Employment Status for Tax Purposes issued May 2024

Information Session

Introduction

- This presentation is not meant in any way to be taken as advice, it is an information session and all individuals should take advice specifically relating to their particular circumstance.
- The Revenue guidance is not directed specifically to the film and TV industry and is applicable across all sectors.
- Due to the film tax credit support for this industry production companies will always be conscious of Revenue interventions and being fully tax compliant at all times is a condition of qualification for the film tax credit.
- It is clear from this Guidance that Revenue believe more people should be engaged under payroll contracts – out of 19 examples provided only 3 result in self-employed status.
- It is not the individual who determines self-employed status, but rather the particular engagement and therefore the facts and circumstances of each engagement need to be carefully considered.
- It is possible for an individual to be employed and self-employed at the same time.



Introduction

- It has not always been clear cut to determine self-employment v employment - current guidelines have been issued following Supreme Court ruling in case of Revenue Commissioners v Karshan (Domino pizza drivers case). The fact that the Revenue took the case all the way to the Supreme Court shows how important this ruling is for them.
- Guidance sets out implication of this case for businesses when engaging employees, workers, contractors or sub-contractors.
- Previous guidance on employed v self-employed last updated in 2021 was joint Revenue Commissioners, WRC and Dept of Social Protection document. This is just a Revenue Commissioners document, however Revenue do state they are working with partners to update the joint document.
- The Karshan case provided an extensive review of case law to date and arrived at a decision making framework which we will look at.

Two Important Points to Note at outset

- SCOPE Determinations
- Many individuals have been receiving SCOPE determinations and productions have been happy to encourage this and indeed to rely on same.
- This document clearly states that Revenue will not be bound by SCOPE determinations now.
- SCOPE = PRSI class
- Revenue = Taxation
- Limited Companies
- Revenue's treatment of the use of services provided via personal services companies or other limited companies has not changed.
- Revenue do not look through corporate structures except in very limited circumstances, therefore this new Guidance concerns itself only with engagement of individuals directly.

5. Decision Tree

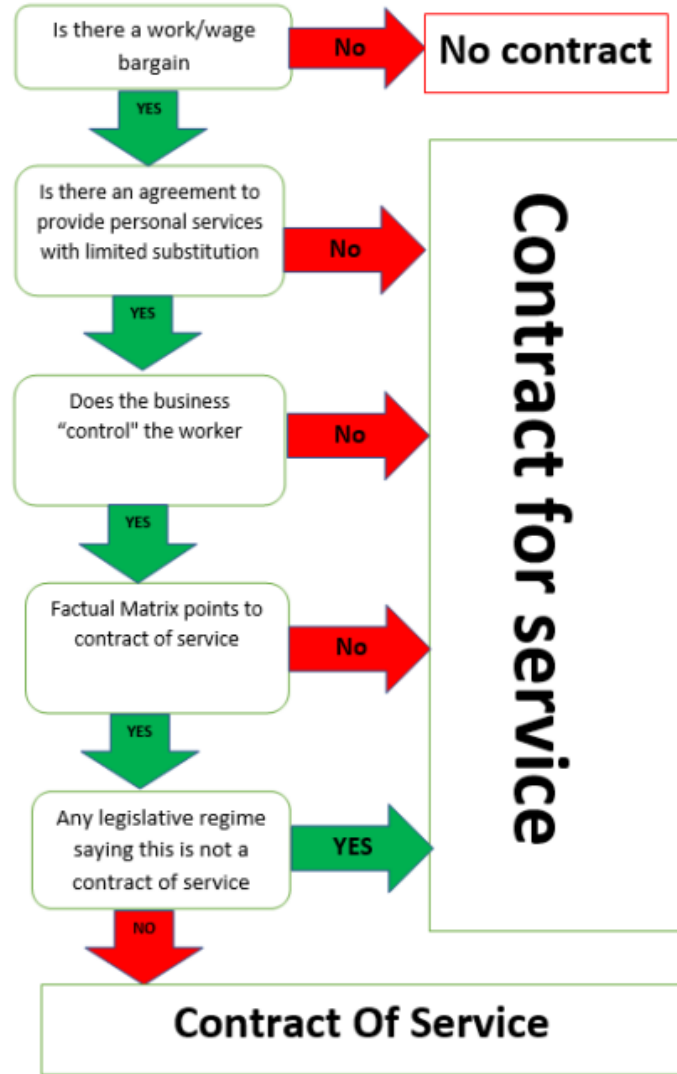
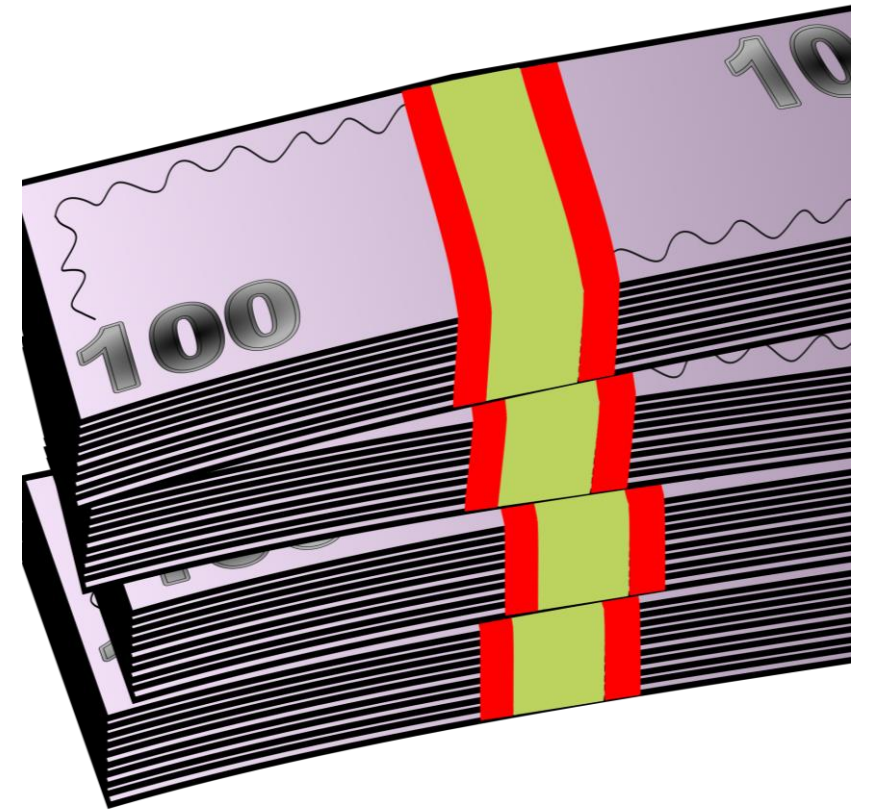


Figure 1 Decision Tree

Is there a work /wage bargain?

- Simply put here is there an arrangement in place whereby the individual is receiving a payment in return for work undertaken.
- The duration of the work undertaken or length of the contract is not relevant, the only relevant question is whether there is a payment in return for a service.
- This means that one day's work, one shift, one 'gig' engagements are capable of being employee.



Personal Service

- Does the engaging entity want a service or the services of a specific individual?
- Can the worker send a substitute to do the work – if there is conditionality around substitution this test is likely not met, for example –
 1. Does the substitute need to be approved by the engaging entity?
 2. Does the engaging entity pay the substitute?
 3. Does the substitute need to be pre-approved?

Control

- Does the engaging entity have ability, authority or right to exercise control over the individual.
- There needs to be a min level of control before employment status can be applied.
- Degree of control varies depending on the service required and specialism of the role.
- Specialist skilled workers, who most working as Sch D in our industry are, will not require direction as to how to provide the service.
- So main questions are – will the individual be told where to provide the service or when – for example shooting crew, specific locations, working to deadlines.



Enterprise test/Integration

- When looking at control must also consider the enterprise test – is the individual in business in their own account or in the account of the engaging entity.
- Who bears financial risk associated with the service?
- Has the individual the capacity to profit materially from their own skill under the contract?
- Does the individual invest significantly in their ability to provide the service, is there a requirement to provide tools, equipment, materials.
- How integrated in the business of the engaging entity is the individual – do they need to be mindful of production budgets, do they manage individuals who are employees of the engaging entities, do they review those employees, would they be involved in discipline of those employees, do they hire or fire those employees.

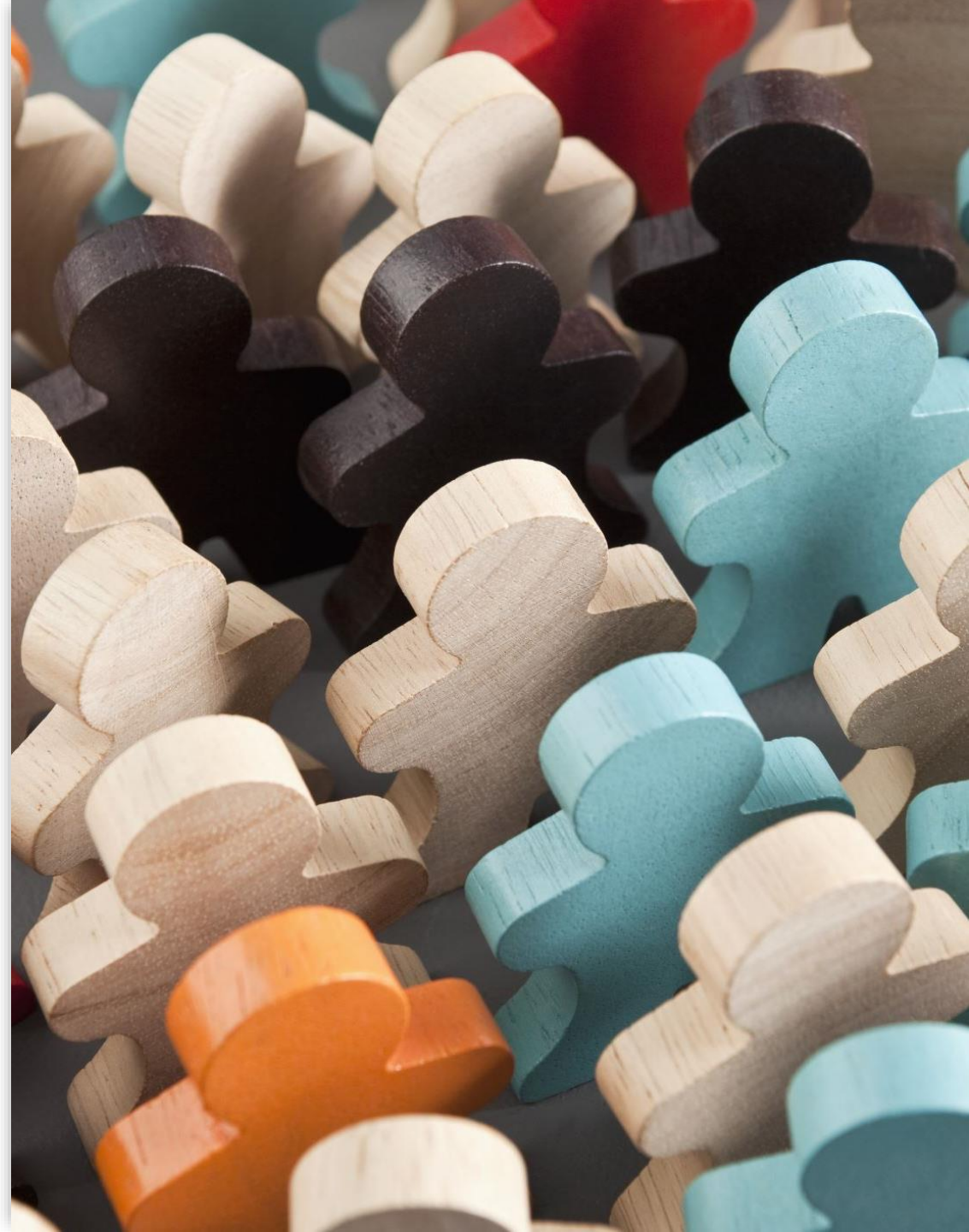
Factual Matrix = Contract

- Does the contract entered into between the individual and the engaging enterprise support an employed or self-employed arrangement?
- Contract is very important, if you agree previous questions are all No answers but then contract includes clauses to contradict this then you will still land in employee status.
- Note – contracts cannot be worded to circumvent the actual arrangements.



Legislative Context

- Simply put if you land at this question to determine whether an employee employer relationship exists it needs to be determined whether this could be inferred by legislation –
- For example – employment rights legislation, EU directives on certain categories of workers or specific legislation on officers of companies having to be employees.



Example – Production Office Personnel



- Revenue example looks at IT professional but circumstances could easily apply to Line Producer/ Co-Ordinator/Producer .
- Anne is engaged to work as Line Producer on production on fixed term contract. Contract states Anne should devote all of her time, attention and ability to the production, she has been engaged for her personal experience and ability.
- She has been engaged for 10 weeks to work on the production and is expected to work full time. Anne can send a substitute in very limited circumstances with production paying the substitute and that person being approved in advance. If Anne cannot attend work she is required to let the Producer know.
- No significant equipment is needed as part of the service.

Example – Production Office Personnel

- When we look at the decision tree and apply to Anne –
 1. Is there a payment for the service – Yes test is met
 2. Is this a personal service – limited substitution – Yes test is met
 3. Is there control placed by ABC DAC on Anne – Anne is very experienced skilled line producer who determines how to do the work, however she is required to work set hours per week at production office, unless with prior agreement of production - Yes test is met
 4. All circumstances of engagement – Anne cannot profit from this engagement, her time commitment means she cannot work for other productions at the same time, she is heavily integrated into the business of ABC DAC with company email and support staff working for her - Yes test is met
 5. Legislative basis – there is no legislation to supplement the questions above.

All 'Yes' answers above indicate this is an employment contract.

Example – Camera Op



- Anne is engaged to work for ABC DAC as B Camera Operator on production. She has some camera equipment but not all that is required and all materials (stock) associated with the job are provided by ABC DAC. Anne is required to work shoot hours.
- When we look at the decision tree and apply to Anne –
 1. Is there a payment for the service – Yes test is met
 2. Is this a personal service – limited substitution provided for in contract but in practice not available to Anne – Yes test is met
 3. Is there control placed by ABC DAC on Anne – Anne is experienced camera operator who knows how to do the work, however she is required to work shoot hours at specific shoot locations all determined by ABC DAC – Yes test is met.
 4. All circumstances of engagement – Anne cannot profit from this engagement, her time commitment means she cannot work for other productions at the same time, she cannot control her hours as they are set by production - Yes test is met
 5. Legislative basis – there is no legislation to supplement the questions above.

All 'Yes' answers above indicate this is an employment contract.

Example – Construction Crew – Electrician/Plasterer/Other



- Individuals are engaged by Construction Manager to work for ABC DAC.
- Some equipment is provided however all materials are provided by ABC DAC.
- Individuals are hired to provide personal service based on their individual skill sets – any substitutes are required to be approved by ABC DAC and are paid for by ABC DAC.
- Individuals are paid weekly rate in line with union agreements including overtime and other benefits.
- Individuals are told where work is to be undertaken and to what deadlines, some element of flexibility is made available to the worker but set deadlines must be met.

Example – Construction Crew – Electrician/Plasterer/Other

- When we look at the decision tree and apply to these crew –
 1. Is there a payment for the service – Yes test is met
 2. Is this a personal service – limited substitution provided for in contract but substitute requires approval and would be paid for by ABC DAC – Yes test is met
 3. Is there control placed by ABC DAC– All are skilled workers but they are working long hours and to specific deadlines at specific identified locations and will be paid overtime in line with union agreements – Yes test is met.
 4. All circumstances of engagement – Individuals cannot profit from this engagement, her time commitment means she cannot work for other productions at the same time, although some investment is made in equipment and skills, safe passes and all materials are paid for by ABC DAC- Yes test is met
 5. Legislative basis – there is no legislation to supplement the questions above.

All 'Yes' answers above indicate this is an employment contract.

Example – Costume Designer

- Anne is costume designer and has invested over the years in costume stock and design stock. She has premises /workshop where she continually works on designing and it is stocked with equipment and materials. Anne has been asked to design costumes for ABC DAC, she provides all equipment and materials necessary to do so.
- When we look at the decision tree and apply to these crew –
 1. Is there a payment for the service – Yes test is met
 2. Is this a personal service – Yes as Anne is being engaged for her skill as costume designer.
 3. Is there control placed by ABC DAC– Anne is not required to work set hours, she has costumes that must be designed but she can do this from her own premises with her own materials and at hours that suit her. She can at the same time engage with other clients and work for them. No test is not met.
 4. All circumstances of engagement – Anne can work for other productions at the same time, she will provide not only service of costume designer but also a number of costumes from her stock. She can profit from this enterprise by providing these additional costumes and may engage people at her own cost to work with here to ensure the costumes required are met. - No Test is not met.
 5. Legislative basis – there is no legislation to supplement the questions above.

Three No answers, therefore on balance this is a self-employed contract.



Summary

- The previous examples are written to give an idea of how the new guidance may be applied in fictitious circumstances.
- This is new guidance deriving from a Supreme court case and so must be considered to be a key risk area in Revenue interventions.
- It is not directed at the film industry specifically but it should be clear it has impacts for all operating within this industry.
- It will be challenging for some that is acknowledged.
- Remember the individual does not set their tax status, the engagement sets the status for that engagement contract.
- Please take advice!