

## Chapter 1 – Business relationship or employer-employee relationship?

This chapter sets out a method that should, in most cases, allow payers and workers to determine the nature of their relationship.

Each employment is unique and must be examined and analyzed individually, **based on the facts**, taking into account the context of the employment.

To determine if a worker is an employee or a self-employed individual, and thus if there is an employer-employee relationship or a business relationship, you have to examine and analyze the terms and conditions of the worker's employment as they relate to the following four factors:

1. Control

2. Ownership of tools

3. Chance of profit/Risk of loss

4. Integration

### 1.1 Control

Begin by looking at the terms and conditions of employment as they relate to control, as this is the most important factor.

Generally, in an **employer-employee** relationship, the employer controls, directly or not, the way the work is done and the work methods used. The employer assigns specific tasks that define the real framework within which the work is to be done.

If the employer does not directly control the worker's activities, but has the right to do so, the notion of control still exists.

The degree of control exercised by the employer may vary depending on the type of work to be done and the employee's experience and skill.

Generally, the payer exercises control if he has the right to hire or fire, determines the wage or salary to be paid, and decides on the **time, place, and manner** in which the work is to be done.

Specifically, the payer may control:

- the hours of work;
- the assessment of the quality of the work;
- the worker's periodic activity reports;
- the list of clients and the territory covered;
- training and development.

The fact that the payer controls the worker's activities does not imply that the payer must know how to do everything that the worker is required to do.

In short, the payer exercises control if he has the right to decide where, when, and how the work will be done.

In a **business** relationship, however, the payer does not usually exercise control over the worker's activities. The worker can decide how the work will be performed.

### Analysis of facts

The following questions will help you determine whether the payer does exercise control over the worker. If it is obvious that the payer controls the worker's activities, it is highly indicative of an employer-employee relationship.

<b>Analysis of facts related to control</b>	<b>Payer</b>	<b>Worker</b>	<b>N/A</b>
Who is responsible for planning the work to be done? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides how and how much the worker is to be paid? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides on the time frames? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides how the work is to be done? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides on the hours of work? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides on the work location? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who assigns the individual tasks? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who supervises the tasks? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who sets the standards to be met?			
– Quality? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
– Volume? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
– Time frame? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides whether work must be redone? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
– Who covers the related costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who is responsible for training? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
– Who covers the related costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides on the territory to be covered? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides on periodic activity reporting? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides if the work is to be done by the worker himself? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who hires helpers? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answer “Payer” to most of these questions, it means that the payer exercises control over the worker. An employer-employee relationship probably exists. Otherwise, it indicates that a business relationship may exist.

## 1.2. Ownership of tools

Proceed with the analysis of the terms and conditions of employment as they relate to the ownership of tools.

The main points to consider are:

- the amount invested;
- the value of equipment and tools; and
- the rental and maintenance of equipment and tools.

In an **employer-employee** relationship, the employer generally supplies the equipment and tools required by the employee. In addition, the employer covers the following costs related to their use: repairs, insurance, transport, rental, and operation (e.g., fuel).

In some trades, however, it is customary for employees to supply their own tools. This is generally the case for garage mechanics, painters, and carpenters. Similarly, employed computer scientists, architects, and surveyors sometimes supply their own softwares and instruments.

In a **business** relationship, workers generally supply their own equipment and tools and cover costs related to their use. When workers purchase or rent equipment or large tools that require a major investment and costly maintenance, it usually indicates that they are self-employed individuals, because they may incur losses when replacing or repairing their equipment.

### **Analysis of facts**

The following questions will help you determine who risks incurring losses related to the ownership of equipment and tools.

<b>Analysis of facts related to ownership of tools</b>	<b>Payer</b>	<b>Worker</b>	<b>N/A</b>
Who supplies the heavy equipment or covers its rental costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who supplies the specialized equipment or covers its rental costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers equipment maintenance costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who supplies the large tools or covers their rental costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who supplies the specialized tools or covers their rental costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who supplies the small tools? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers tool maintenance costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who supplies the materials? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who has invested in the equipment and tools? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answer “Payer” to most of these questions, it means that by supplying the tools and equipment, the payer exercises control over the worker. There is no risk of loss for the worker. An employer-employee relationship probably exists. Otherwise, it indicates that a business relationship may exist.

### 1.3. Chance of profit/ Risk of loss

Proceed with the analysis of the terms and conditions of employment in terms of the chance of profit and risk of loss.

You have to examine the worker's financial involvement. Determine if the worker:

- has the chance of making a profit;
- risks incurring losses due to bad debts, damage to equipment or materials, or unforeseen delivery delays; and
- covers operating costs.

Generally, in an **employer-employee** relationship, the employer alone assumes the risk of loss. The employer also generally covers operating costs, which may include office expenses, employee wages and benefits, insurance premiums, and delivery and shipping costs. The employee does not assume any financial risk, and is entitled to his full salary or wages regardless of the financial health of the business.

The income of an employee paid by the piece or on commission does not depend on the losses or profits of the employer's business. The employee is paid the same per-unit amount no matter how many pieces the employer requires him to produce or sell.

In a **business** relationship, the self-employed individual may make a profit or incur a loss. He also covers operating costs. There is no guarantee of a steady income because the self-employed individual's income depends on the results achieved by the end of the contract.

#### **Analysis of facts**

The following questions will help you determine if the worker has the chance of making a profit or risks incurring losses.

<b>Analysis of facts related to chance of profit/risk of loss</b>	<b>Payer</b>	<b>Worker</b>	<b>N/A</b>
Who covers the costs of damage to equipment or materials?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers the costs of liability insurance?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers office expenses?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers rental costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers delivery and shipping costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers costs related to bad debts? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who assumes responsibility for ensuring that guarantees relating to materials are honoured?..	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who assumes responsibility for the performance of the work? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who guarantees the quality of the work?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers the costs incurred by the worker in carrying out the work? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers the costs of the worker's benefits (paid vacation, sick leave, life insurance premiums, etc.)? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answer “Payer” to most of these questions, it means that there is little involvement on the part of the worker, and that his income does not depend on the results achieved at the end of the contract. An employer-employee relationship probably exists. Otherwise, it indicates that a business relationship may exist.

**Chance of profit/Risk of loss**

## 1.4 . Integration

If you were not able to determine the nature of the relationship between the payer and the worker with the first three factors, you have to pursue the analysis. The final factor, integration, should settle the question.

Integration has to be considered from the point of view of the worker, **not** the payer.

Where the worker integrates the payer’s activities to his own commercial activities, a **business** relationship probably exists. The worker is acting on his own behalf, he is not dependent on the payer’s business and he is in business for himself.

Where the worker integrates his activities to the commercial activities of the payer, an **employer-employee** relationship probably exists. The worker is acting on behalf of the employer, he is connected with the employer’s business and is dependent on it.

### Analysis of facts

The following questions will help you determine if the worker is in business for himself and, thereby, if an employer-employee relationship or a business relationship exists.

This last analysis consists of a global review of the first three factors.

Integration	Payer	Worker
What was the answer to most of the questions related to the control factor? .....	<input type="checkbox"/>	<input type="checkbox"/>
What was the answer to most of the questions related to the ownership of tools factor? .....	<input type="checkbox"/>	<input type="checkbox"/>
What was the answer to most of the questions related to the chances of profit/risk of loss factor?.....	<input type="checkbox"/>	<input type="checkbox"/>

If you answer “Worker” to these questions, it indicates that the worker integrates the payer’s activities to his own activities. A business relationship probably exists. Otherwise, it is reasonable to conclude that an employer-employee relationship exists.

### Still in doubt?

If, after analyzing facts relating to the four factors, you still can not determine the nature of the relationship between the payer and the worker, contact your tax services office, where you can obtain a ruling request form. You have until June 30 of the following year to request a ruling.

## Summary table

In the following table, we brought together all of the questions that appear in the first 3 tables of this chapter. You might want to copy this sheet, which gives you a summary of the preceding pages.

	Payer	Worker	N/A
Who is responsible for planning the work to be done? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides how and how much the worker is to be paid? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides on the time frames? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides how the work is to be done? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides on the hours of work? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides on the work location? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who assigns the individual tasks? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who supervises the tasks? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who sets the standards to be met?			
– Quality? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
– Volume? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
– Time frame? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides whether work must be redone? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
– Who covers the related costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who is responsible for training? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
– Who covers the related costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides on the territory to be covered? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides on periodic activity reporting? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who decides if the work is to be done by the worker himself? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who hires helpers? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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**Summary table (cont.)**

	<b>Payer</b>	<b>Worker</b>	<b>N/A</b>
Who supplies the heavy equipment or covers its rental costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who supplies the specialized equipment or covers its rental costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers equipment maintenance costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who supplies the large tools or covers their rental costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who supplies the specialized tools or covers their rental costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who supplies the small tools? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers tool maintenance costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who supplies the materials? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who has invested in the equipment and tools? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers the costs of damage to equipment or materials? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers the costs of liability insurance? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers office expenses? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers rental costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers delivery and shipping costs? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers costs related to bad debts? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who assumes responsibility for ensuring that guarantees relating to materials are honoured? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who assumes responsibility for the performance of the work? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who guarantees the quality of the work? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers the costs incurred by the worker in carrying out the work? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Who covers the costs of the worker's benefits (paid vacation, sick leave, life insurance premiums, etc.)? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 2 – Responsibilities

### Employer-employee relationship

Where an **employer-employee** relationship exists, the employer must:

- register to Revenue Canada Business Number (BN);
- withhold income tax, Canada Pension Plan (CPP) or Quebec Pension Plan (QPP) contributions, and Employment Insurance (EI) premiums on amounts paid to employees;
- remit the amounts withheld as well as the required employer's share of CPP/QPP contributions and EI premiums to Revenue Canada (and *le ministère du Revenu du Québec* if applicable);
- report the employees' income and deductions on the appropriate information return; and
- give the employees copies of their T4 slips **by the end of February of the following calendar year.**

For more information on this subject, see the pamphlet entitled *The Business Number and your Revenue Canada Accounts* and the *Employers' Guide to Payroll Deductions – Basic Information*.

The employer is also responsible for registering with the relevant provincial organizations if applicable (Work Place Safety and Insurance Board (WSIB), for example).

#### Note

Generally, the employee could be eligible for EI benefits. The employee can also be eligible for employee benefits, such as sick leave, wage loss replacement plan, profit sharing.

If a payer considers a worker as a self-employed individual while the worker is in fact an employee, the payer will have to pay both parts of EI premiums and CPP/QPP contributions for the complete duration of the employment. Penalties and interest can also be charged. It is therefore very important to correctly determine the type of employment relationship.

### Business relationship

Where a **business relationship** exists, and where the self-employed individuals' income exceeds \$500 or income tax has been deducted, the payer must:

- report the self-employed individuals' income and tax deductions, if any, on the appropriate information return; and
- give the self-employed individuals copies of their T4A slips **by the end of February of the following calendar year**, if applicable.

For more information, see chapter 6 of the *Employers' Guide to Payroll Deductions – Basic Information*.

Self-employed individuals must pay both shares of CPP/QPP contributions. They may also have to pay their income tax and CPP/QPP contributions in instalments. For more information, see the guide entitled *Paying Your Income Tax by Instalments*.

#### Note

Generally, self-employed individuals are not eligible for EI benefits.

### Special situations

Special rules concerning EI, CPP/QPP, and income tax may apply for certain categories of self-employed individuals, including:

- barbers and hairdressers;
- drivers of taxis and other passenger-carrying vehicles;
- fishers; and
- placement and employment agency workers.

For a complete list of the situations where special rules may apply, or for more information, see chapter 8 of the *Employers' Guide to Payroll Deductions – Basic Information*.

## Chapter 3 – Excluded Employment and Non-Arm’s Length Relationship

### Excluded employment

As a rule, an **employee** pays Employment Insurance (EI) premiums and may be entitled to receive EI benefits. However, if the employment is **excluded employment** under the *Employment Insurance Act*, the employee does not have to pay premiums and is not eligible for EI benefits.

Employment may be excluded for a number of reasons. One of them is a situation where the employee and employer are in a non-arm’s length relationship (see the glossary).

### Non-arm’s length relationship

The purpose of excluding employment where a non-arm’s length relationship exists is to minimize occurrences where a person would simulate an employment

situation for a parent, a close friend, or a partner solely to obtain that a request for employment insurance premiums be accepted.

Under the *Employment Insurance Act*, employment that is excluded because of a non-arm’s length relationship can still be included, if the Minister of National Revenue (or his representative) is satisfied that the terms and conditions of employment are reasonable.

Where the Minister (or his representative) examines the terms and conditions of employment, he analyzes a number of factors, including:

- the remuneration paid;
- the terms of employment (e.g., hours of work, duties);
- the duration of work performed; and
- the nature and importance of work performed.

After the analysis, if the Minister (or his representative) is satisfied that it is reasonable to conclude that the employer would have offered a substantially **similar** contract of employment to an unrelated person, the employment is no longer considered to be excluded.

For a complete list of the types of employment that are excluded, or for more information, see chapter 3 of the *Employers’ Guide to Payroll Deductions – Basic Information*.

### Analysis of facts

The following are examples of questions that the Minister (or his representative) will ask to determine if it is reasonable to conclude that the employer would have offered a **similar** contract of employment to an unrelated person.

Is the employee's salary comparable to that of other employees with similar tasks in the business?

Is the employee's salary comparable to that of employees with similar tasks in similar businesses in the area?

Is the employee's salary reasonable given the tasks performed?

Does the employee receive his salary regularly?

Did the employee invest in the business? If yes, was it a major investment?

Are the employee's hours of work comparable to those of other employees with similar tasks in the business?

Are the employee's hours of work comparable to those of employees with similar tasks in similar businesses in the area?

Are the employee's tasks comparable to those of other employees with similar jobs in the business?

Are the employee's tasks comparable to those of employees with similar jobs in similar businesses?

Are the employee's tasks necessary to the well-being of the business?

Is the employee's work duration comparable to that of other employees of the business, considering low activity periods?

Is the employee's work duration comparable to that of employees with similar jobs in similar businesses in the area, considering low activity periods?

Does the employee perform tasks related to his employment (e.g., bookkeeping, public relations, attendance at conventions, sales) during his periods of inactivity?

Is the employee's work duration related to the business's real operational requirements?

Is the importance of the employee's work comparable to that of other employees of the business?

Is the employment essential to the business?

Is the nature of the employee's work comparable to that of other employees of the business?