

## Contractor or Employee

When you are faced with the decision of taking on an employee versus a contractor, you may find the experience an extremely daunting prospect especially given the amount of recent case law on this very area. It is worth understanding the differences between contractors and employees and depending on the nature of your business and services or products that you offer, you may want to consider other options before deciding to recruit an employee.

### *Contractor*

The use of a contractor is very appealing for organisations where there is not a permanent requirement for an employee or where there are restrictions relating to head count, however be aware of the issues that Companies face when engaging an employee guised as a contractor. Clearly where there is a requirement for an individual or his/her company to carry out adhoc or project work, or where the work is short term and of a specialist nature the use of a 'true' contractor makes perfect sense. It is important that any contractor who carries out work for you must comply with the IR35 requirements, further information about this can be found on the HM & Customs (HMRC) website: [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

Contractors will be self employed and should be engaged on a Contract **for** Services. This will define your expectations of the Contractor, the scope of the work he/she is expected to carry out, the length of time the project or work will take and payment that the Contractor will receive. It is also recommended that the Contract contains information regarding notice periods, expenses payments (if applicable), provision of equipment and access to premises. You may also consider including clauses relating to confidentiality and intellectual property. It is important that you seek advice on the content and development of a Contract for Service.

There are distinct advantages to using a contractor, however where an individual is carrying out work solely for you on a regular basis it is unlikely that they could be considered as being self employed.

The HMRC defines a self employed person as 'someone who is in business on his/her own account and bear the responsibility for the success or failure of that business'.

It is also worth noting that there have been situations where the HMRC will argue that a contractor is really an employee, but that this decision has had no bearing on how an Employment Tribunal has viewed the individual, which is not helpful!