

SOLE TRADERS

Overview

A sole trader operates in his personal capacity. This carries the risk of unlimited personal liability for the debts and legal obligation of the business.

If a business trades as a sole trader in the UK, no registration with Companies House is necessary. If a business name is used, it may be necessary to register it with Companies House. See our note in relation to business names.

There are various tests operating in both employment and tax law in relation to whether an individual is employed or is an independent "self employed" contractor. Generally, this distinction will depend on the extent to which the individual has a say on how the business is run, whether he is risking its own money, is responsible for losses, provides its own equipment, is free to hire other people and delegate its work or has legal responsibility for the services. Generally if the individual cannot answer "yes" to most of the above questions, it is likely that the arrangement will be treated as an employment arrangement.

Taxation

If the business has a branch or place of business within the UK, it is necessary to register with HMRC as a sole trader. This will bring trading profits directly within the scope of UK income tax. If the individual continues to be or is ordinarily resident in Ireland, then double taxation considerations may arise. Class 2 National Insurance contributions are payable by a UK based sole trader See our guide in relation to UK taxation and the Irish tax aspects of UK trading.

It is necessary to register a business for VAT, if its turnover has or is expected to exceed £67,000 in the year. In this instance, it is necessary to charge VAT and return it to HMRC every three months. Under certain circumstances, such as where there are significant distance sales, it may be necessary to register for UK Vat even though there is no branch or place of business in the UK.

A sole trader may need to register as an employer and pay income tax and NICs on behalf of his or her employees. It should be borne in mind that one can be deemed to be a sole trader, if one has a self employed status. Self employed individuals will sometimes appear to have functions very similar to employees. The law will designate an arrangement to be an employment arrangement if in substance it is an employment.

An employer must deduct income tax and National Insurance contributions for all employees, directors and office holders. This applies to full and part time employees and temporary and casual employees. No obligations will generally arise in respect of self employed contractors, but it is necessary to be satisfied that they are genuinely self employed.

On taking on an employee it is necessary to notify HMRC of the employee. It is necessary to obtain the employee's P45 and National Insurance Number and set up payroll and identify correct deductions. It is legally necessary to give an employee a statement of employment within two months of the start date.

If this is the first employee, the company/business will need to register as an employer with HMRC (the UK Revenue Commissioners). The HMRC provide packages and details allowing methods of recording employee's details, calculating income tax and National Insurance contribution and facilitating keeping of records.

Part 3 of the P45 must be sent to the HMRC. If the Form P45 has been lost or is not available or this is the employee's first job the Form P46 is used to set up the employment with HMRC.

Statutory Duties of Employers

An employer has certain specific statutory responsibilities to employees under a range of headings. These obligations are additional to those which may arise under a contract, custom or a collective agreement. The obligations apply regardless of whether the employees are full time or part time.

The following basic responsibilities will apply:-

- Employees must be given a written statement of the main terms and conditions of their contract of employment;
- Employees must be given an itemised pay statement before each payment;
- Their working environment must be safe and secure;
- Employers must take out insurance against claims for illness, injuries and diseases;
- Employers must register with HM Customs and Revenue to set up a pay roll, deduct tax and National Insurance Contributions (PAYE) and make the relevant returns;
- Employees will be entitled to a minimum level of paid holidays, a maximum length of working week and minimum rest breaks;
- If staff are sick for more than 3 days they will be entitled to statutory sick pay;
- If an employee is pregnant or about to become a parent they will be entitled to maternity/paternity or adoption leave;
- Employees must be treated fairly and must not be subjected to discrimination.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.