CHAPTER 33

AGENCY

33.1 Introduction

There is no definition of 'agent' in the legislation. An agent is someone who acts for, or represents, someone else (the principal) in arranging supplies of goods and services. Supplies arranged by an agent are made by or to the principal represented. The principal cannot avoid any liability to account for VAT on supplies, or to pay VAT on purchases, by using an agent. However, whether or not a person is an agent for another person depends upon the actual arrangement between them and not simply upon the trading titles adopted. For example, 'motor agents and distributors' usually trade as principals and travel agents and employment agencies are not usually agents in all their activities. Solicitors and architects are normally principals but may occasionally arrange supplies as agents for their clients.

An agent/principal relationship exists if both parties agree that it does and the agent has agreed with the principal to act on his behalf in relation to the particular transaction concerned. The agreement may be written, oral or merely inferred from their general relationship and the way their business is conducted. Whatever form this relationship takes, the following conditions must be satisfied.

(a) It must always be clearly established between the agent and principal, and acceptable to HMRC, that the agent is arranging transactions for the principal, rather than trading on his own account.

(b) The agent must never be the owner of the goods or use any of the services bought or sold for the principal.

(c) The agent must not alter the nature or value of any of the supplies made between the principal and third parties. VAT Notice 700, Para 22.2

In C & E Commrs v Johnson, QB *[1980]* Woolf J took agency as the 'relationship which exists between two persons, one of whom expressly or impliedly consents that the other should represent him or act on his behalf and the other of whom similarly consents to represent the former or so to act'.

33.2 Agents and VAT

An agent will usually be involved in at least two separate supplies at any one time.

- The supply of own services to the principal for which the agent charges a fee or commission.
- The supply made between the principal and the third party.

The VAT liability on the supply of agent's services will not necessarily be the same as the liability of the supply between the principal and the third party.

In determining whether an agent is liable to be registered for VAT, turnover includes the value of services to the principal and the value of any supplies which the agent is treated as making through acting in his own name.

33.3 Agents acting in the name of their principals

An agent may only take a minor role in a transaction and simply introduce the principal to potential clients or suppliers. Alternatively, the agent may be more closely involved and receive/deliver goods, make/receive payment and possibly hold stocks of goods on behalf of the principal. However, provided that the invoicing for the supply is between the principal and the customer, the only VAT supply made by the agent is the provision of services to the principal.

33.4 Agents acting in their own name (undisclosed agents)

An agent may be empowered by a principal to enter into contracts with a third party on behalf of the principal. In such cases, particularly where the principal wishes to remain unnamed or undisclosed, the agent may receive and issue invoices in his own name for the supplies concerned. In such circumstances, although in commercial terms the transaction remains between the principal and third party, for VAT purposes special rules apply as set out below.

Goods

Where an agent acts in his own name in relation to a supply and either

(a) goods are imported from outside the EC by a taxable person who supplies them as agent for a non-taxable person, or

(b) goods are acquired from another EC country by a non-taxable person and a taxable person acts as agent in relation to the acquisition, and then supplies the goods as agent for that non-taxable person, or

(c) where neither (a) nor (b) above applies in relation to a supply, goods are supplied through an agent

then the goods must be treated, as the case may be, as imported and supplied by the agent, acquired and supplied by the agent or supplied to and by the agent as principal. For these purposes, a person who is not resident in the UK and whose place (or principal place) of business is outside the UK may be treated as being a non-taxable person if as a result he will not be required to be registered under VATA 1994.

VATA 1994, s.47(1)(2)(2A)

33.5 Accounting for VAT – Non-EC and intra-EC supplies

In order to put the VAT treatment of UK undisclosed agents on the same footing as that for commissionaires elsewhere in the EC, an undisclosed agent who is involved in non-EC or intra-EC supplies is seen as taking a full part in the underlying supply of any goods. There is no separate supply of the agent's own services to his principal and the commission retained is seen as subsumed in the value of the onward underlying supply. This treatment is for VAT purposes only and has no impact on the legal status of agents or the way in which they are treated for the purposes of other taxes or legislation.

Illustration

A UK undisclosed agent sells goods to final customer for £100. He retains £20 as commission and pays £80 back to his overseas principal. All figures are net of VAT.

If the goods are imported, the VAT value at importation is arrived at in the normal way. If the goods are acquired from a principal in another EC country, the VAT value at acquisition is £80 based on the value of the invoice raised by the principal to the agent. The agent must account for VAT on the acquisition.

The agent can recover import/acquisition VAT, subject to the normal rules. He then makes an onward supply in his own name to the customer for £100, and accounts for output tax. The commission of £20 is treated as subsumed in the value of the onward supply of the goods and is not treated as a separate supply of own services to the non-UK principal. Effectively the £20 commission is ignored and VAT is only accounted for on the £100 onward supply.

Cost incurred in the UK (e.g. warehousing and handling) can be treated as supplied to the agent who can recover the input tax on them (subject to the normal rules).

Business Brief 9/00 provides useful guidance.

33.6 Accounting for VAT – Domestic supplies

Subject to below, there is an underlying supply between the principal and customer and a separate supply of agent's services to the principal. The agent reclaims input tax and must account for output tax on the supply of the goods but as the nature or value of the supply is unchanged the amount of input and output tax is normally the same. The deemed supplies to and by the agent are simultaneous and he cannot reclaim the input tax on the supply to him in one period but defer the time when he is required to account for output tax to a later period in which he invoices the supply made by him (*Metropolitan Borough of Wirral v C & E Commrs*. The VAT liability of the supply of agent's services is not necessarily the same as the liability of the supply of goods.

However, if he wishes, an undisclosed agent may also adopt the VAT treatment set out above for non-EC and intra-EC supplies for his domestic transactions.

33.7 Services

Where an agent who acts in his own name arranges a supply of taxable services and both the agent and supplier are registered for VAT, HMRC may, if they think fit, treat the supply both as a supply to the agent and by the agent. *VATA 1994, s 47(3)*.

Accounting for VAT – International supplies

As before, in order to put the VAT treatment of UK undisclosed agents on the same footing as that for commissionaires elsewhere in the EC, where an agent is involved in international services the services are treated as supplied to the UK agent as though he was a principal and supplied on by him. The agent's commission is seen as subsumed in the value of the onward supply and he is not regarded as making a separate supply of his own services to the principal. This applies to services being supplied both to and from the UK.

If the supply is to a business customer, the place of supply is where the customer belongs.

Where the agent's customer is not a relevant business customer, the agent's supply is treated as made where the underlying supply is made e.g. if the agent arranges a supply of legal services from a lawyer in Spain to a private individual in the UK, the place of supply will be Spain and Spanish VAT may be chargeable i.e. the UK customer cannot avoid VAT in Spain by using an agent to acquire the services.

Accounting for VAT – Domestic supplies

Subject to below, there is an underlying supply between the principal and customer and a separate supply of agent's services to the principal. The agent reclaims input tax and must account for output tax on the supply of the main services but as the nature or value of the supply is unchanged the amount of input and output tax is normally the same.

The deemed supplies to and by the agent are simultaneous and he cannot reclaim the input tax on the supply to him in one period but defer the time when he is required to account for output tax to a later period in which he invoices the supply made by him *Metropolitan Borough of Wirral v C & E Commrs.* The VAT liability of the supply of agent's services is not necessarily the same as the liability of the supply of the main services.

However, if he wishes, an undisclosed agent may also adopt the VAT treatment set out above for international supplies of services for his domestic supplies.

33.8 Disbursements

Where a supplier incurs incidental costs (e.g. travelling expenses, postage, telephone) in the course of making the supply and charges these items separately on the invoice to the client, such costs must be included in the value when VAT is calculated. However, where amounts are paid to third parties as agent of a client, such payments may be treated as disbursements if all the following conditions are satisfied.

(a) The agent acted for his client when paying the third party.

(b) The client actually received and used the goods or services provided by the third party. This condition usually prevents the agent's own travelling expenses, telephone bills, postage, etc being treated as disbursements for VAT purposes.

(c) The client was responsible for paying the third party.

(d) The client authorised the agent to make the payment on his behalf.

(e) The client knew that the goods or services would be provided by a third party.

(f) The agent's outlay must be separately itemised when invoicing the client.

(g) The agent must recover only the exact amount he paid to the third party.

(h) The goods or services paid for must be clearly additional to the supplies made to the client.

If a payment qualifies as a disbursement, it can be treated in either of the following ways.

- The disbursement can be passed on to the client as a VAT-inclusive amount (if taxable) and excluded when calculating any VAT due on the main supply to the client. The agent cannot reclaim VAT on the supply (since no goods or services have been supplied to him). Unless the VAT invoice for the disbursement is addressed directly to the client, the client is also prevented from reclaiming input tax as he does not hold a valid invoice. Generally, therefore, it is only advantageous to treat a disbursement in this way if no VAT is chargeable on the supply by the third party or the client is not entitled to reclaim the VAT.

- If an agent does treat a payment as a disbursement in this way, he must keep evidence to enable him to show that he was entitled to exclude the payment from the value of his supply to his client. He must also be able to show that he did not reclaim input tax on the supply by the third party.

- The goods or services can be treated as supplied to and by the agent under 31.4 above. The agent can then reclaim the related input tax (subject to the normal rules) and charge VAT on the onward supply if appropriate.

VAT Notice 700, Para 25.1

33.9 VAT representatives and agents for overseas principals

Under s.48(1) VATA 1994, HMRC may direct a person to appoint a VAT representative to act on his behalf for VAT purposes in the UK where that person

(a) is a taxable person or, without being a taxable person, makes taxable supplies or acquires goods in the UK from one or more other EC countries;

(b) is not established, and does not have a 'fixed establishment', in the UK;

(c) is established in a country or territory

- which is neither an EC country nor part of such a country; and
- with which it appears to HMRC that there is no provision for mutual assistance similar in scope to the assistance provided between the UK and other EC countries under *FA 2002, s 134* and *Sch 39* (recovery of VAT due in other EC countries, and

(d) in the case of an individual, does not have his 'usual place of residence' in the UK.

A person is treated as having been directed to appoint a VAT representative if HMRC have served notice of the direction on him or have taken all such other steps as appear to them to be reasonable to bring the direction to his attention. Voluntary appointment. A person who has not been directed by HMRC to appoint a VAT representative to act on his behalf under the above provisions, but who satisfies the conditions in (a), (b) and (d) above, may with the agreement of HMRC appoint a VAT representative to act on his behalf.

Effect of appointment

Subject to below, any person appointed as a VAT representative

- is entitled to act on his principal's behalf for all purposes relating to VAT;
- must ensure (if necessary by acting on his behalf) that his principal complies with, and discharges, all his obligations and liabilities relating to VAT; and
- is jointly and severally liable with his principal for complying with UK VAT law.

A VAT representative is not, by virtue of the above, guilty of any offence committed by his principal unless he has consented to it or connived in its commission, its commission is attributable to any neglect on his part, or the offence is a contravention by the VAT representative of an obligation which, under those provisions, is imposed on both him and his principal.

Failure to appoint a VAT representative

Where a person fails to appoint a VAT representative when directed to do so, HMRC may require him to provide such security, or further security, as they think appropriate for the payment of any VAT which is or may become due from him. A person is treated as having been required to provide security if HMRC have served notice of the requirement on him or have taken all such other steps as appear to them to be reasonable for bringing the requirement to his attention. Where any such security has been required and is not lodged, it can be recovered by distraint on goods (in Scotland through diligence) as if it were VAT due. There may also be a liability to a criminal penalty.

Notification of appointment and changes

Any person appointed a VAT representative of another must notify his appointment to HMRC on the appropriate form within 30 days of the appointment first becoming effective. Evidence of the appointment must also be sent. The principal being represented must complete the normal VAT registration forms (Form VAT 1 and, if a partnership, Form VAT 2) and both the principal and tax representative must complete a Form VAT 1TR (or Welsh version Form VAT 1TR(W)) authorising HMRC to accept that the representative is acting on the principal's behalf. HMRC must then register the name of the VAT representative against that of his principal in the register kept for the purposes of *VATA 1994*.

Once appointed, the VAT representative must, within 30 days, notify HMRC in writing of any changes in the name, constitution or ownership of his business or of his ceasing to act as his principal's VAT representative or of any other event which would require a change in the register.

The date of cessation is the earliest of the times when

- HMRC receive notification from the principal of the cessation of the existing tax representative or the appointment of a different tax representative,
- HMRC receive notification of the appointment of a different tax representative or the cessation of the existing tax representative under the above provisions, or
- a tax representative dies, becomes insolvent or becomes incapacitated (which, in the case of a company, includes going into liquidation or receivership or administration)

although if HMRC has received no notification but another person has actually been appointed as VAT representative, HMRC may treat the date of cessation of the existing tax representative as being the date of appointment of that other person.

Records to be kept

Although his principal is established abroad, a VAT representative must keep all the records required to be kept under UK law as the principal is making taxable supplies in the UK. The VAT representative must set up and maintain a separate VAT account for each principal represented and keep documents such as VAT invoices to show how the VAT account is built up.

33.10 Employment bureaux

The bureau will act in one of the following ways.

(a) As a principal, supplying its own staff to the client. Workers may be employed by the bureau under a contract of service or may be self-employed and engaged by the bureau under a contract for services. In either case, they supply their services to the bureau which makes an onward supply as principal to the client.

The bureau makes one supply of staff which is normally standard-rated. Output tax is due on the full charge made to the client. Where the client asks the bureau to act on its behalf in paying the travelling and subsistence expenses of candidates attending interviews, the bureau may treat these payments as disbursements for VAT purposes.

The Conduct of Employment Agencies and Employment Business Regulations 2003, made by the Department of Trade and Industry and applying with effect from 6 July 2004, set out new rules governing the conduct of employment businesses and the rights of workers using them. Under normal circumstances any temporary workers supplied by an employment bureau will have a contractual relationship with the bureau supplying them (either being an employee of the bureau under a contract of service or self-employed and engaged by the agency under a contract for services) and not the client hiring them. In either case, the bureau will be acting as a principal for VAT purposes and VAT will be due on the full amount received from the client, including salary and associated costs in relation to the temporary worker.

Before 1 April 2009, a staff hire concession (which allows employment bureau hiring out its own staff not to charge VAT on salary costs if the client pays the staff direct) applied. (b) As agent for the client, finding workers who enter into a direct contractual relationship with the client. The bureau must account for VAT on the commission charged to the client. Any payments of a worker's wages by the bureau are made on behalf of the client and may be treated as disbursements by the bureau. HMRC Brief 8/09 confirms that this treatment can continue provided the relevant conditions are met.

(c) As agent for the worker, finding employment openings for the worker who then enters directly into a contractual relationship with his or her new employer.

Output tax is due only on the commission charged to the worker for the bureau's supply of services. Where the worker is not registered for VAT, the bureau must not issue VAT invoices. However, some workers may be registered for VAT and in such cases the bureau may issue VAT invoices on their behalf under the provisions in *VATA 1994, s 47(3)*. This applies mainly to fashion models, where social legislation does not prevent the bureau charging a commission to the worker and where earnings are more likely to be high enough to exceed the VAT registration threshold.

(d) As agent for both the employer and the worker, supplying its agency service to both parties. Once it has brought the parties together, it usually withdraws and the continuing contractual relationship is directly between worker and employer. VAT must be accounted for on the bureau's charges made to both parties, although, where this situation occurs, the bureau normally only charges commission to the employer and the supply to the worker is made for no consideration.

33.11 Principal or agent?

There is a common theme running through a large number of VAT cases about:

- taxi firms;
- driving schools;
- hairdressers;
- escort agencies;

as well as other types of business. A customer receives a service directly from an individual worker, but it may not be clear whether the individual worker is providing the service as principal or as agent for an organisation or collective of other workers. Suppose the customer pays £100 for the service and the worker keeps £60 of it. This could represent:

- a supply by the worker to the customer for £100, and a supply by the organisation to the worker for £40;
- a supply by the organisation to the customer for £100 and a supply by the worker to the organisation for £60;
- a supply by the organisation to the customer for £40 and a supply by the worker to the customer for £60.

It is generally reasonably easy to identify the flow of cash in the transactions, but the flow of cash may not directly match the supplies. One person may receive the cash as agent for another.

The importance of the distinction lies in several different areas:

- just getting the VAT accounting right;
- measuring the turnover for registration tests;
- the amount of VAT charged in total to the customer, because often the individual worker will be below the registration threshold;

- the nature and liability of the supplies concerned.

Recent cases

Christopher James Denyer

Where a hairdresser's salon provides facilities to a number of self-employed stylists there are two main VAT issues:

- whether the payments by the customers are consideration for the salon itself or for the stylists – as they are usually below the registration threshold, this makes a substantial difference to the overall VAT cost;
- if the payments are turnover of the stylists, are the facilities provided by the salon to the stylists exempt as licences to occupy land or taxable as the provision of general facilities?

If the "chair rent" paid by the stylists constitutes consideration for a licence to occupy land, it is likely that the salon will not have to register. HMRC resist the argument strongly, arguing that the salon generally provides facilities which cannot be restricted to a licence to occupy.

In a recent case, the Tribunal considered a salon which provided space to four stylists. HMRC had ruled that the payments for "chair rent" were taxable and assessed for £80,000 plus a £6,000 belated notification penalty.

The Tribunal found the following facts:

- there was no written contract between the salon and the stylists;
- each stylist had her own area around the chair in which to work and had her own key to the premises;
- each stylist had her own list of prices displayed and her own customers, used her own tools and bought her own supplies;
- each stylist set her own hours and arranged her own holiday cover;
- each stylist displayed a notice giving business details (service of documents, insurance) and had her own separate business stationery.

In addition to the charge of chair rent there was a 75p per customer levy as a contribution to rates, heat, light, water, use of telephone and laundry. Those would be taxable services on their own, and the provision of those services has been held in the past to be the principal supply to which the chair rent is ancillary.

The Tribunal held that the principal supply here was the provision of the space alone. It was "conferring on the person concerned, for an agreed period and for payment the right to occupy property as if that person were the owner, and to exclude any other person from enjoyment of such a right". The other elements were ancillary to the supply of the chair rent. The assessment, registration and penalty were quashed.

Holland (trading as The Studio Hair Company) v Revenue and Customs Commissioners Vigdor Ltd v Revenue and Customs Commissioners 2008

The taxpayers in the two appeals operated hairdressing salons. Both had entered into agreements with self-employed hairdressers whereby the latter were permitted to conduct their businesses out of the taxpayers' premises in return for certain payments. Facilities including, inter alia, heating, water, towels and hair products were also supplied by the taxpayers. The terms of the agreements in issue in the first appeal, differed slightly to those in the second appeal. The VAT & Duties Tribunal (the tribunal) subsequently ruled that the supplies by the taxpayers to self-employed hairdressers (or stylists) did not include 'the leasing or letting of immovable property' so as to fall within the within the exception provided for in item 1 in Group 1, Pt 2 of Sch 9 to the VATA 1994. It was common ground that Sch 9 of the 1994 Act had to be interpreted in accordance with the meaning and purpose of art 13B(b) of Council Directive (EC) 77/388 (the Sixth Directive), which it implemented.

In the alternative, the tribunal held that, even if the supplies did fall within the exception, they fell properly to be characterised as single supplies of hairdressers' facilities which were standard-rated for VAT purposes. The tribunal characterised the supply in the first appeal as that of an 'up-and-running hairdressing and styling salon' or 'the services of a hairdressing business' and, insofar as they made such a characterisation in the second appeal, as that of 'salon facilities.' The taxpayers appealed.

The essence of the matter, as could be seen from the relevant jurisprudence, was that the exemption created by art 13B(b) of the Sixth Directive (which was to be strictly interpreted) did not extend to a licence to occupy land, which was but one element of a package of supplies made by the taxpayer/lessor to his customer in consideration of a payment or payments by that customer where the supplies in question were commercial in nature or were best understood as the provision of a service and not simply as the making available of property. If that was the nature of the supply – a service rather than simply the making available of property – there was no exempt licence—the licence element in the supply was standard-rated. Whether the resulting supply was properly to be regarded as a single indivisible economic supply which it would be artificial to split and, if so, how that supply was to be characterised for VAT purposes were issues that did not matter if all of its constituent elements were in any event standard-rated.

Spearmint Rhino Ventures UK Ltd v HMRC

A company operated six clubs at which women in a state of undress danced for customers. The customers paid to enter the club, and then paid the dancers for dances (£10 topless, £20 naked) which were performed in booths on an individual basis. The customers could also pay for an hour's conversation with the dancer (£250). The dancers were required to pay the club for the opportunity to dance, and also paid tips to doormen and waitresses for introductions to particularly wealthy customers.

The VAT argument was whether the club was providing VATable services to the customers in relation to the whole amounts that they paid for services supplied by the dancers (acting as principal), or only acting as an agent in arranging for the dancers to supply services to the customers directly.

The Tribunal upheld HMRC's assessment in principle, holding that the contractual framework was in reality a provision of services by the club to the customers using the dancers as agents. All the standard fees were therefore subject to VAT. The appeal was adjourned for further discussion of tips which might be paid by customers to dancers over and above the standard rates.

The High Court has allowed the company's appeal against this ruling. Although the dancers were under close control and formed part of the business operation of the trader, there was nothing in the documentation between the dancers and the club to suggest that they were appointed as agents; and it was not realistic to suppose that the dancer was concluding an agreement between the club and the customer when she agreed to perform for him. The receipts of the dancers did not form part of the club's turnover for VAT purposes.
Joppa Enterprises Ltd

After the salacious case of *Spearmint Rhino* reached the High Court, the same issues were examined again – with even more openness and the same result – by the Tribunal in a recent case. A company ran a sauna at which customers paid for admission; they then made separate payments to prostitutes for sexual services on the premises. HMRC argued that the whole amount paid by the customer was the company's VATable turnover, but the Tribunal agreed with the company that the prostitutes were acting as independent principals in providing their services.

The company argued that the Tribunal should "*distinguish between the legal services provided by the appellants and services which it would be illegal for the appellants to provide*", making the point that was thought important by the Tribunal in the case of *Polok*: prostitution is not illegal, but living off immoral earnings is. However, the illegality issue was not considered by the Tribunal – only the "VAT technical" issue of who was contracting with whom.

The Court of Session agreed with the Tribunal that the full amount of door money constituted a taxable charge for admission by the company. It was for entry to the premises and the right to enjoy the facilities inside, including the opportunity to negotiate for further services with the women present. These further payments were not the company's turnover in line with the decision of the High Court in Spearmint Rhino, but the whole of the door money belonged to it.

A1 Lofts Limited and A1 Loft Conversions

The Tribunal recently overturned a piece of VAT planning implemented by a loft conversion company in an attempt to avoid charging and paying VAT on the principal supply. The VAT at stake was in the region of £1.2m for the periods July 2002 to November 2004.

The company's argument was that it provides 'project management services', the money for which they put in a client account. It was taken out of this account to pay project management fees on which the company paid VAT, and to pay the costs of the project. These costs were treated as disbursements. Some money was retained in the client account to cover the possible costs of claims under a ten-year guarantee. Such money would not be subject to VAT until much later when it was released to the project manager.

Although the contracts reflected the intended arrangements, it was clear from witnesses/clients that they did not believe they had individual contracts with each of the tradesmen. If there had been a problem they would have expected the company to put it right. As a result, the company was supplying the loft conversion service itself and was liable to output tax on all its receipts. This case has been remitted back to the Tribunal by the High Court on the basis that the Tribunal misdirected itself.

33.12 Employment status

For VAT purposes we need to be dealing with non-employee relationships when considering agent v principal issues. An "agent" must not be an employee of the "principal". The agent and principal must be in business on their own account for any of the above provisions to apply.

The tax legislation itself does not tell us whether a person is employed or self-employed, so the distinction between the two is based on case law and on HMRC practice.

In the vast majority of instances it is obvious whether an individual is an employee or whether he is in business on his own account as a self-employed trader. However there is a considerable grey area in between the two.

The "MICE" test

To differentiate between employed or self-employed, we apply what we call the **MICE** test:

Mutual obligations
Integration
Control
Equipment

"M" stands for mutual obligations.

If a worker is an employee, his employer is under an obligation to provide him with work, and the employee is under a similar obligation to accept the work and to perform the tasks delegated to him. However, if a worker is self-employed, he will have no guarantee of work and even if work is offered to him he is under no legal obligation to accept the work offered. The existence of any mutual obligation between the parties will usually be obvious from any service contract between the two parties. Employees usually have an employment contract which sets out the terms and conditions under which they are to perform duties for their employer.

"I" stands for integration.

An employee will be integrated into the business of his employer. By this we mean that the **employee will usually have his or her own desk,** a **designated computer terminal** at which to work, **his or her own stationery**, access to **normal employee facilities** such as the staff restaurant, and will have unrestricted access to the employer premises. Employees will also be allowed to join company pension schemes and receive invitations to staff functions such as Christmas parties. Contrast this with the position of a self-employed person, who will not be integrated into an employer's business and will not have a desk or a computer or access to the employer premises.

"C" stands for control.

In a typical employer/employee relationship, the **employee will exercise very little control over what he or she does on a day-to-day basis.** An employer will typically tell an employee what to do, how to do it and when to do it by. There is typically a master/servant relationship between an employer and an employee. On the other hand, a self-employed person will have far more control over the jobs that he or she undertakes and the deadline for completion of those jobs.

"E" stands for equipment.

When considering whether a worker is employed or self-employed, HMRC will look at who provides the tools of the trade. An **employee is rarely responsible for providing his or her own equipment**. When we turn up for work we expect our employers to provide us with a computer, a telephone, a fax and some stationery etc. A self-employed person, on the other hand, will customarily be responsible for providing the equipment to enable him to undertake the work offered.

Other criteria

There are a few other criteria HMRC will apply in determining whether a worker is employed or self-employed. They will look at the **degree of financial risk** taken by the worker. If the worker has no financial risk, has no opportunity to directly profit from the work undertaken and is not responsible for bearing any

losses incurred in the course of his work, it is highly likely that that individual will be an employee. Typically self-employed people are genuinely responsible for how their business is run, will risk capital in their business and will have to meet any losses which arise.

The **number of paymasters** is also a determining factor. A typical employee has one paymaster – he is paid by his employer and no-one else. However, if a worker typically performs services for a number of different companies, he is more likely to be able to persuade the Revenue that he is self-employed.

Finally, the **ability to provide a substitute** has been something HMRC has looked at very closely when deciding whether a worker is employed or self-employed. An employee will have no freedom to send along a substitute in his or her place if, for whatever reason, they are unable to perform their duties. On the other hand, if a self-employed person has contracted to do a job and is either sick or double-booked, that self-employed person will have the freedom to provide a substitute to complete the job in his place.

This was a crucial factor in the case of *Hall v Lorimer*. In this case the Court, after much deliberation, concluded that a vision mixer was a self-employed person largely because on a handful of occasions, he had been able to provide a substitute to fulfil particular contracts.

When considering whether a worker is employed or self-employed, it is important to **take a "balance of probabilities approach"**. This means that no individual factor can be conclusive in its own right. HMRC will look at the facts and circumstances of each case, apply the various criteria which we have just looked at, and, on balance, decide whether the worker is likely to be an employee or whether he is more likely to be self-employed.

The majority of Tax Offices will have a designated "status" Officer whose job it is to look at whether workers are employees or not.