



**DTBB/005/2016**

**Domestic Taxes Business  
Brief 005 (2016):  
Distinction between  
Employee and Independent  
Contractor**

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## **Purpose**

The purpose of this brief is to explain to interested parties the distinction between an Employee and an Independent Contractor with reference to the provisions of the Income Tax Act 2000 as amended.

## **Who should read this?**

- Government Ministries, Departments and Agencies
- Organisations that employ foreign and local staff including Non-Governmental Organisations (NGOs)
- Donor Organisations, International Organisations and Donor Funded Projects
- Embassies and Consulates
- United Nations and its Agencies
- Companies operating in and outside Sierra Leone that are registered in Sierra Leone
- Permanent Establishments including branches of foreign companies
- All other organisations and businesses employing staff on a contract basis

## **Background**

It has been observed over the years that quite a number of employers do not deduct the correct tax from the emolument of their employees because they are treated as independent contractors instead of employees. This has led to a huge loss in revenue overtime. The authority now deems it fit to give a clear distinction between an employee and an independent contractor in order to enhance an understanding of the law and increase compliance.

## **Current Position**

### **Who Is An Employee?**

Section 2 of the Income Tax Act 2000 as amended defines an "employee" as an individual who receives employment income and includes any individual engaged for short-term or part-time work other than an individual acting as an agent.

Employees receive employment income which is defined as a payment or benefit arising from past, present or prospective employment.

### **Who Is An Independent Contractor?**

An **independent contractor** is a natural person, business, or corporation that provides goods or services to another entity under terms specified in a contract or within a verbal agreement. Unlike an employee, an independent contractor does not work regularly for an employer but works as and when required, during which time he or she may be subject to law of agency. Independent contractors are usually paid on a freelance basis. Contractors often work through a limited company or franchise, which they themselves own, or may work through an umbrella company.

People such as doctors, dentists, veterinarians, lawyers, accountants, contractors, subcontractors, public stenographers, or auctioneers who are in an independent trade, business, or profession in which they offer their services to the general public are generally referred to as independent contractors.

### **Distinction Between Employee And An Independent Contractor?**

The determination of whether a person is an employee or independent contractor involves looking at a number of factors:-

- a. Whether the hirer has a legal right to control the manner in which the work is to be performed; and
- b. The degree of integration of the service provider within the hirer's business.

The latter point will depend on the following:-

- Whether the service provider is engaged on a continuous basis?
- Where the service is performed?
- Whether the hirer controls the timing and scheduling of work?
- Whether the hirer provides the working tools and relevant facilities?

These points are relevant in the determination of who is an employee.

### **Distinction between Contract of Service and Contract for Service**

A ***Contract of Service*** is an agreement whereby a person agrees to employ another as an ***employee*** and the employee agrees to serve his employer as an employee. For the purpose of the minimum wages, a collective agreement is also a contract of service.

A ***Contract for Service*** is an agreement whereby a person is engaged as an ***independent contractor***, such as a self-employed person, vendor or freelancer carrying out an assignment or a project for his establishment. For example, a house owner engages services of a painter, a plumber or a grass-cutter for his residence.

The table below highlights the differences between Contract of Service and Contract for Service:

| <b><i>Contract Of Service</i></b>                                    | <b><i>Contract For Service</i></b>   |
|--|--|
| Employer-Employee relationship                                       | Client-Independent Contractor relationship   |
| Usually a continuous relationship                                    | A relationship organised around the completion of a one-off piece of work            |
| A duty of care owed to employees, as the employer                    | A duty of care, arising from occupiers' liability                                    |
| The employer is generally liable for the vicarious acts of employees | The client is generally not liable for the vicarious acts of independent contractors |
| Protective legislation applies to contracts                          | In general, protective legislation does not apply                                    |

| <i>Contract Of Service</i>                                | <i>Contract For Service</i>  |
|---|--|
| Wages/Salary payment method                               | Various methods of payment, including lump sum per job                         |
| Provision of equipment and tools for work by the employer | Independent Contractor provides his own tools and equipment for work performed |
| Employer determines the working hours of the employees    | The Client does not determine the hours of work of the Independent Contractor  |

## **Tax Treatment for Contract of Service and Contract for Service**

### ***Contract of Service – Employee Status***

Since this relates to employment contracts, it is taxed under Section 23 of the Income Tax Act 2000 as amended.

The Tax Rates are detailed under Part 1 of the First Schedule of the Income Tax Act 2000 as amended.

### **FIRST SCHEDULE**

#### **PART I**

Rates of tax applicable to individuals resident in Sierra Leone for the year of assessment commencing 1<sup>st</sup> January, 2016 and each succeeding year of assessment.

| <b>Chargeable income</b>                    | <b>Taxable rate</b> |
|---|---------------------|
| Below Le 6,000,001.00 per annum             | Nil                 |
| Le 6,000,001.00 to Le 12,000,000 per annum  | 15%                 |
| Le 12,000,001.00 to Le 18,000,000 per annum | 20%                 |
| Le 18,000,001.00 to Le 24,000,000 per annum | 30%                 |
| Over 24,000,001.00                          | 35%                 |

For employment income, there is a threshold on non- taxable allowance of Le 6,000,000.00 (six million) Leones per annum or Le 500,000.00 (five hundred thousand) Leones per month.

### ***Contract for Service – Independent Contractor Status***

This relates to independent contractors and the tax provisions are highlighted under Section 117 of the Income Tax Act 2000 as amended.

The Tax Rates are detailed under Part IV of the First Schedule for resident contractors and Part II of the Second Schedule of the Income Tax Act 2000 as amended for non-resident taxpayers.

## **FIRST SCHEDULE**

### **PART IV**

*(Sections 117, 118, 119, 120 and 121)*

#### **Rates of tax to be withheld from payments made to residents**

##### **Type of payment Rate**

|   |           |
|---|-----------|
| <i>Payments to contractors (section 117)</i>      | <b>5%</b> |
| Dividends (section 118)                           | 10%       |
| Interests (section 119)                           | 15%       |
| Rents   | 10%       |
| Royalties (section 120)                           | 25%       |
| Pensions and annuities (section 121(2) (a))       | 15%       |
| Natural resource payments (122)                   | 25%       |
| Real property (section 123)                       | 10%       |
| Winnings of Le 500,000 and above from any lottery | 10%       |

Please note that the 5% tax withhold from resident contractors is not a final tax, the contractor is taxed on his global income and the tax withheld is deducted from the tax established on his global income to established his balance tax payable if any

## **SECOND SCHEDULE**

### **PART II**

*(Sections 116, 117, 118, 119, 120, 121, 122 and 123)*

#### **Rates of tax to be withheld from payments made to non-residents:**

|   |            |
|---|------------|
| Employment income (section 116)   | 25%        |
| <i>Payments to contractors (section 117)</i>  | <b>10%</b> |
| Dividends (section 118)   | 10%        |
| Interest (section 119)  | 15%        |
| Rents and royalties (section 120)   | 25%        |
| Pensions and annuities (section 121)  | 25%        |
| Natural resource payments (section 122)   | 25%        |
| Payments to or applications for the benefit of non-resident beneficiaries (section 123) | 25%        |

## **Conclusion**

This Business Brief has detailed the differences between employees that have a Contract of Service and Independent Contractors working under a Contract for Service to ensure that organisations and businesses fully understand the differences.

The tax rules as detailed are different and all organisations and businesses should ensure they are applied as stated in the Income Tax Act 2000 as amended.

## **Where can I get further information**

For further information please contact the Domestic Taxes Helpline on Telephone Numbers 078/025/030/044- 970844.

The Domestic Taxes Helpline is available Monday to Friday, 8am to 5pm.

We can also be contacted through [dtd@nra.gov.sl](mailto:dtd@nra.gov.sl).

Information on Domestic Taxes and other taxes can be found on the NRA website [www.nra.gov.sl](http://www.nra.gov.sl).