

Freelancing versus contracts

Issued by [Freelancers Writing Services](#)

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I have had a question come in from freelancers about the benefits of contract work, as opposed to freelancing and whether agreeing to contract work means you are no longer a freelancer.

There are two aspects to consider here – one is the idea of independence and the other the tax implications.

Tax

There is a belief that the percentage amount earned from one client determines the status of independence but this is not how SARS defines an employee. SARS has a bulletin devoted to this subject, which should be read carefully by ‘employees’ (www.sars.gov.za).

The tests provide for a deeming provision that a person shall not carry on a trade independently if the services or duties are required to be performed mainly at the premises of the client and –
the worker is subject to the control of any other person as to the manner in which the worker’s duties are or will be performed, or as to the hours of work; or
the worker is subject to the supervision of any other person as to the manner in which the worker’s duties are or will be performed, or as to the hours of work

Where any of these tests apply positively, the independent contractor is deemed not to be an independent contractor and the amount so received by him or her is, therefore, not excluded from remuneration. It is not necessary for both tests to be applicable in a particular situation. The application of only one of them would trigger the deeming provision.

Example<

Freelancer A is a subeditor – however A has to go to the employer’s place of work on specific days for a set period and A’s work is under the control or supervision of the employer. Freelancer A is an employee and the employer must deduct tax and must give A an IRP5 for tax submission.

Freelancer B is a subeditor – B works exclusively from home at hours that suit B – the only requirement being delivery of material by the following morning. There is no control or supervision – B decides on the nature and style of editing and whether to edit or reject material and, if B goes on leave, work stops, as does the payment. B is an independent contractor and is responsible for tax submissions.

Independence needs a contract

Entering into a client contract with another consultancy to provide services ‘under the radar’ is not uncommon in freelancing. This could be providing photography or design services; PR or writing services or editing services and is often offered by publishers, PR consultants and the media. A client allows you stability to pursue other avenues of income or creativity, while covering basic needs.

What is critical is the contract - specifying services offered; remuneration; payment dates; breach clauses; and contract termination. Provided you do not meet the SARS definition of an employee, you will not be taxed at source but have to submit quarterly as a provisional taxpayer (get a bookkeeper to help you with that; it is worth it)

In the ideal world, we would all be totally independent; sourcing our next assignment from ‘out there’, free as a bird, but that

is tough in the current economic climate and contract clients smooth the way.

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Gwen Watkins - freelance writer, editor, subeditor and author with 35 years international experience in industrial journalism offers her Master NLP Practitioner skills to aid brand communication and native advertising.

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