

**Written Submission for the Pre-Budget Consultations in
Advance of the Next Federal Budget**

By: Travailleurs Autonomes Québec

- **Recommendation 1:** That the government legally recognize self-employed workers in order to end discrimination
- **Recommendation 2:** That the government clearly define self-employment so that all Canadian institutions can take self-employed workers into consideration without discrimination
- **Recommendation 3:** That the government require self-employed workers to register in order for their status to be legally recognized
- **Recommendation 4:** That the government amend the *Income Tax Act* to clarify the rules governing self-employed workers
- **Recommendation 5:** That the government eliminate the Goods and Services Tax threshold to put self-employed workers on an equal footing

Recommendation 1: That the government legally recognize self-employed workers in order to end discrimination

Given the disparity in the approaches taken by different Canadian federal institutions, it is apparent to us that there is no specific rule for distinguishing an employee from a self-employed worker, because the latter's status is not recognized. To determine whether a worker is self-employed, certain generally recognized criteria must be used:

- Effective control/subordination
- Ownership of tools
- Economic or financial reality
- Integration of activities
- Specific result
- Parties' attitude

Legal recognition of status is very important, because the tax liability will be significantly different if the client hires an employee as opposed to a self-employed worker. For the person doing the work, the tax implications are very different for an employee versus a self-employed worker.

Many institutions, such as Canadian banks, do not recognize self-employment income when assessing the solvency of a self-employed worker.

Recommendation 2: That the government clearly define self-employment so that all Canadian institutions can take self-employed workers into consideration without discrimination

After an extensive review of the literature and research on self-employed workers, we concluded that there is no unanimous definition of self-employment in Canada. Based on our research and deliberations, we have established a framework that could serve as a consensus for developing a definition that is clear, simple and non-discriminatory.

Whereas the courts use a variety of different criteria to assess the facts and determine whether an individual qualifies as a self-employed worker, such as:

Four criteria at the **federal** level:

- **Control/subordination**
Subordination refers to the level of control that the payer exercises over the individual.
Subordination means that directives and standards established by the principal are applied to determine the actual framework in which the work is executed. This is the most important criterion for assessing whether an individual qualifies as self-employed.

- **Ownership of tools**
Normally, a self-employed worker owns the tools and will supply all the tools needed to carry out the work, unlike an employee.
“Tools” refers to all objects, instruments, vehicles and other equipment that the self-employed worker needs to carry out the work.
- **Chance of profit and risk of loss** (economic reality)
The economic reality refers to whether the individual has a prospect of realizing a profit or incurring a loss. If there is no chance of profit or risk of loss, the individual is a salaried employee. A self-employed worker is compensated for their services but also has to shoulder costs. That means the worker incurs a risk, the same way a company would.
- **Integration**
If the task carried out by an individual is an integral part of the company’s activities, the individual is considered to be an employee, since self-employed workers are normally only hired to carry out incidental tasks.

Two more criteria in **Quebec**:

- **Results**
For a self-employed worker, when a particular task ends, the relationship ends. When a self-employed worker is hired, it is usually for a specific task (e.g., installing a computer system), and the worker is free to choose the method they wish to use to achieve the desired results.
- **Parties’ attitude**
This is a catch-all criterion, as it encompasses all other considerations not covered by any of the other criteria. For instance, it may include the following:
 - Whether the principal pays CNESST premiums on the wages paid;
 - The overall interpretation of the contract of employment;
 - The parties’ actual behaviour towards the contract of employment;
 - The existence of counter letters amending the contract; and
 - The parties’ attitude to renewing the contract of employment or for services.

Whereas the definition of self-employed worker varies from one Government of Canada department to another,

Whereas the definition given by the Canada Revenue Agency is discriminatory in that it specifies that the self-employed worker supplies their own workspace and does substantial work from that site, thus excluding all workers who work on their clients’ premises,

Whereas the definition of self-employed worker given by Statistics Canada in section 2.2 of the analytical studies document filed under Catalogue No. 11F0091M – No. 407 reads as follows:

“Traditionally, broadly defined self-employment in the literature is a very disparate group” and “the unincorporated self-employment is replaced by the term ‘self-employment’ and the incorporated self-employment, by ‘business ownership,’”

We propose the following definition, which takes into account the six generally recognized criteria (set out above) and the considerations listed above, and we call on the government to do justice to self-employed workers by issuing a clear definition along the lines of our proposal:

A self-employed worker is a natural person who is registered in the business registry, who works independently as defined by the six independence criteria, and whose experience is recognized by their peers or who is a member of an association of self-employed workers.

Recommendation 3: That the government require self-employed workers to register in order for their status to be legally recognized

Since our definition suggests that self-employed workers be registered in the business registry, we urge the government to make it MANDATORY for self-employed workers to register in a business registry in order to be recognized as self-employed.

Recommendation 4: That the government amend the *Income Tax Act* to clarify the rules governing self-employed workers

The phrase “self-employed worker” is not defined anywhere in tax law. There is no specific rule for distinguishing an employee from a self-employed worker.

The *Income Tax Act* contains no rules for determining whether an individual is an employee or a self-employed worker. In the absence of specific rules, authorities are using determining criteria established by the courts. The test case is *Wiebe Door* (FCA 1987 DTC 5028 – June 18, 1986).

Recommendation 5: That the government eliminate the Goods and Services Tax threshold to put self-employed workers on an equal footing

We want self-employed workers to be required to start charging the Goods and Services Tax (GST) from the first dollar they earn. That means eliminating the \$30,000 income threshold for charging GST. This will reduce under-the-table work done by a percentage of self-employed workers, increase competition among self-employed workers, and increase the government’s monetary returns. Our thought is that, “If you want to be a self-employed worker and be treated like a business, you have tax obligations to meet like any other people in business.” It is worth noting that the \$30,000 threshold has not been raised once since it was first introduced. If it were adjusted for today’s levels, it would probably be around \$75,000, which is unthinkable.

As for competition between the self-employed, we have observed that within a given field, some self-employed workers charge GST and others do not because of the \$30,000 threshold. It may

be that some clients, patients or service users who are not charged tax on goods and services believe they are getting a discount for a similar service. However, that is not true. It is not a discount. Eliminating this threshold would put all the self-employed workers in a given sector on an equal footing.