

Employment Tax Status

Employed or self-employed?

"Can I hire somebody as self-employed?" is something our clients ask regularly. The main risk to your business is that if you hire an individual and incorrectly treat them as self-employed, then HMRC will demand PAYE and National Insurance Contributions (NICs) on the money you paid the person as if you had paid them their net salary!

It should be noted that all circumstances are different and this issue of Topical Tips is for general guidance only. Furthermore, it does not deal with employment law, which could take a contrary position.



Are you hiring a company or an individual?

If you are hiring a limited company to provide the services of the individual then you can usually treat this as not subject to PAYE or NIC (assuming that you receive an invoice from the limited company). However, that individual may be obliged to operate PAYE and NIC within their company if they are caught within the so-called IR35 rules. This will not impact upon you directly, but it might impact on an important worker in your business who is using their own personal service company. You might want to ensure that they have matters in hand so that the work they do for you is not interrupted if they have unexpected financial difficulties.

If you are hiring an individual, there is no defined test of self-employment. One rule you must remember as the hirer is that it is your decision alone on the employment status of the individual and not theirs. They might be correctly treated as self-employed elsewhere, but with you the circumstances may differ slightly and employment may be the correct status. In other words, it is the facts of your engagement alone, and not the existence of other "clients" that determine the treatment. Also, being registered for VAT, or being registered for tax as self-employed, has no bearing on your responsibility. HMRC's website usefully summarises the points to be considered. <http://www.hmrc.gov.uk/employment-status/index.htm#1>

Questions you will want to ask individuals

- Can they hire someone to do the work or engage helpers at their own expense?
- Do they risk their own money?
- Do they provide the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?
- Do they agree to do a job for a fixed price regardless of how long the job may take?
- Can they decide what work to do, how and when to do the work and where to provide the services?
- Do they regularly work for a number of different people?
- Do they have to correct unsatisfactory work in their own time and at their own expense?
- HMRC believe that they need to answer "yes" to all the above questions to be self-employed.

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- HMRC provides an Employment Status Indicator Tool on their website to help you decide on self-employment status. <http://www.hmrc.gov.uk/calcs/esi.htm>
- Check all new self-employed staff carefully to ensure you do not put your business at risk.
- Re-check all self-employed staff regularly as terms of engagement can develop over time to make someone employed.
- Review your insurance cover to ensure self-employed staff do not put you at risk (e.g. you might only have third party liability for acts of employees).
- Remember employment law and tax law definitions of self-employment are different.
- Ensure you have up to date terms and conditions for engagement that will protect you if challenged by HMRC.
- Beware that just because someone has a Construction Industry Scheme registration it is not sufficient for you to treat them as self-employed without asking the above questions.

Consult your Barnes Roffe LLP contact Partner for guidance in this important area.