

## 2. Tax employment status

If you decide to take on a personal assistant (PA), one of the first things you will need to do is work out what their tax employment status is. This factsheet explains what tax employment status is, why it is important and how to decide the tax employment status of your PA. We also tell you where you can get further help.

### What is tax employment status?

Tax employment status means whether your PA is employed or self-employed.



### Why is it important?

Tax employment status is very important.

It affects the type of tax and National Insurance contributions (NIC) a person pays and how they pay them. Employed and self-employed people pay different tax and NIC.

If tax employment status is wrong, it may mean the wrong amount and/or type of tax and NIC are being paid.

### What is the difference between an employee and self-employed person?

This table shows the main differences between employment and self-employment:

	EMPLOYMENT	SELF-EMPLOYMENT
<b>Contracts</b>	An employee has a contract of service. You (the employer) will most likely have control over what they do and when they do it.	A self-employed person has a contract for services. They are often described as 'working for themselves' and will often provide services to other people as well as you. They will probably send you an invoice for their services.
<b>Tax</b>	An employee will pay tax on earnings from their employment.	They will pay tax on the profits of their trade, profession or vocation.
<b>Payment of tax</b>	An employer collects tax from their employee's pay and sends it to HM Revenue & Customs (HMRC). Tax is paid on earnings throughout the year.	A self-employed person is responsible for paying their own tax. They do this by filing a tax return each year under the Self Assessment system.
<b>National Insurance</b>	Employees pay Class 1 NIC on their earnings. These are deducted and paid to HMRC by the employer. The employer may also have to pay secondary Class 1 NIC which is an extra cost for the employer.	Self-employed people are responsible for their own NIC. They pay Class 4 NIC based on their profits and Class 2 NIC based on the number of weeks of self-employment, usually alongside their income tax after the end of the tax year.
<b>Expenses</b>	It is difficult for an employee to get a tax deduction for any employment expenses.	The test for expenses for the self-employed is less strict than for employees and they can deduct more by way of expenses.

## Who decides the status of your PA?

It is your responsibility to correctly decide the tax employment status of your PA.

You cannot just pick an employment status because it is better for either you or your PA. Tax law can override what either you or your PA intended.

This means that even if you have a contract with your PA that says they are self-employed, if the facts indicate otherwise, they could be found by HMRC to be your employee.



## How do I decide if my PA is employed or self-employed?

HMRC say that in most cases it is generally straightforward to decide tax employment status.

The general rule is that your PA will be:

- *Employed* if they work for you and do not have the risks of running a business.
- *Self-employed* if they run their own business on their own account and are responsible for the success or failure of that business.

When it is not clear cut, HMRC have produced a series of tests (called indicators) that help you decide.

*If the answer is 'Yes' to all or most of the following questions, then the worker is probably an employee:*

- Do you tell them what work to do as well as how and when to do it?
- Do they have to do the work themselves?
- Can you move them from task to task?
- Are they contracted to work a set amount of hours?
- Do they get regular pay or salary, even if there is no work available?
- Can they get overtime pay or bonus pay?
- Do they get benefits such as paid leave or pension as part of their contract?

*If the answer is 'Yes' to all or most of the following questions, it will usually mean that the worker is self-employed:*

- Can they hire someone else to do the work for them or engage helpers at their own expense?
- Do they decide what work is done, when and where or how it is done?
- 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 it takes to finish the job?
- Do they use their own money to buy business assets, pay for running costs and so on?
- Can they make a loss or a profit?

## How do I apply the test?

You will need to carefully consider each of the factors above and come to an overall decision based on the relationship you have with your PA.

If you have more than one PA, you will need to decide the status of each of them separately. Your PA may also have another job. You need to work out their status solely on the work they do for you.

A person can be employed and self-employed at the same time. For example, they may be employed by you during the day as a PA but they may teach music as a self-employed person in the evening.



## What help is available with tax employment status?

HMRC can help you determine the tax employment status of your PA.

They offer an online tool called the Employment Status Indicator (ESI) which you can use to help you: <https://www.gov.uk/employment-status-indicator>

It will ask you a set of questions about the situation and at the end of it will give you an indication of your PA's status for tax.

### **IMPORTANT NOTE**

You can rely on the ESI tool answer as evidence of your PA's status for tax and NIC providing you answered the questions accurately based on the terms and conditions under which the person provides their services to you and the tool has been completed by you or your authorised representative. You should print or save a copy of the 'enquiry details screen' and the 'ESI result screen' so that if there are any questions from HMRC at a later date you can show these as evidence that you ran a tax employment status check.

You can also contact the HMRC customer service team to request a written opinion about your situation. Their contact details are on the GOV.UK website:

<https://www.gov.uk/government/organisations/hm-revenue-customs/contact/status-customer-service-team>

**You can find more help about tax employment status on our website:**

<http://disabilitytaxguide.org.uk/tax-status/tax-employment-status>

## Getting it wrong

If you take on a PA who is genuinely self-employed, you will not have the responsibility of being an employer for tax purposes.

You must be very careful if your PA insists that they be hired on a self-employed basis as it is your responsibility to determine their status.

If you do not deduct tax and NIC because you think your worker is self-employed but HMRC later disagree with this because in reality they are an employee, you could find that you have to pay over the unpaid tax and NIC to HMRC and also a penalty.

**You can find more information on our website:** <http://disabilitytaxguide.org.uk/tax-status/tax-employment-status/getting-tax-employment-status-wrong/>



## Employment Law

Employees enjoy the highest level of protection under employment legislation.

Their rights will include being given written details of employment, statutory sick pay, written reasons for dismissal and notice on termination. Where they have at least two years' continuous service, they will also benefit from the right not to be unfairly dismissed and, in a redundancy situation, they will be entitled to a statutory redundancy payment.

Status for employment law is not the same as status for tax law. You will need to work out the status of your PA separately for each. For employment law your PA could be employed, self-employed or a third status which is that of worker. This third status does not exist in tax law.

**We point you to more help with employment law on our website.**

[www.disabilitytaxguide.org.uk/employment-law](http://www.disabilitytaxguide.org.uk/employment-law)

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