Tax for freelancers

A guide for BECTU members

April 2021 edition

Dignity at work.

CONTENTS

INTRODUCTION

This Booklet gives an outline of UK tax for BECTU members who are working on a self-employed basis. It concentrates on the issues which you are most likely to encounter.

Remember that tax is complex and changes often; this Booklet only provides an outline of the position as at 6th April 2021 and it should not be used instead of professional advice.

If you sometimes work as an employee under PAYE and sometimes on a self-employed basis, you will need to consider both areas of taxation, so it is worth getting advice on both tax statuses, but this booklet primarily sets out information that is useful to Self Employed Sole Traders. If you are working through an agency, then special rules are likely to apply. If you are working through your own limited company as a personal service company (PSC), most of this Booklet does not apply to you, although there is some general guidance here.

This Booklet has sections on income tax, the cash basis for small businesses, employment status, National Insurance Contributions, VAT and using a limited company. There are many areas it doesn't cover – such as capital gains, rental income, overseas issues, inheritance tax, residence and domicile, stamp duty, tax credits and partnerships.

The Booklet is designed to be used both in printed form and online. It contains hyperlinks which connect the different sections. There are also external links to other sites, especially the guidance given by HM Revenue & Customs ('HMRC'). If you find that any hyperlinks don't work any longer, please send BECTU an email.

BECTU wants the Booklet to be as useful as possible, so if you think of a way it could be improved, please let us know and we will consider it.

TAX BASICS

This Booklet is written for BECTU members who are working for themselves. It assumes you are self-employed. If you are unsure whether you are employed or self-employed see: Am I self-employed?

As a self-employed worker, you are required to register with HMRC. Failure to register can lead to penalties.

A self-employed person working in the UK normally pays income tax and National Insurance Contributions ('NICs') on profits. You or your accountant first calculates your profits for accounting purposes, but different rules may apply for tax, so your taxable profit is not necessarily the same as your accounting profit. Taxable profits are what you have left after deducting business expenses from your taxable income.

If your turnover (total business income) is, or soon will be, above the VAT threshold, you may have to register for VAT and charge it on the work you do. Separate registration is required for VAT – it is not enough to have registered as self-employed.

TAX YEARS

The year for tax purposes is not the same as the calendar year. Instead, it begins on 6 April and ends on 5 April. The current tax year began on 6 April 2021 and will end on 5 April 2022. Tax years are sometimes called 'fiscal years'.

Tax rates and thresholds often change at the start of a new tax year. Accounting years and tax years are often different, see Accounting periods and tax years.

HOW TO RUN YOUR ACCOUNTS

Depending upon your turnover, there are two ways to determine the profit of your own small business, whether you are a Self Employed Sole Trader, or a personal service company (PSC).

1) The cash basis

In most cases, Bectu members would expect to work on the cash basis.

It is a simpler way for small self-employed businesses to work out their profits for tax purposes. Under the cash basis, money is only included for tax purposes when you have actually received it, and costs are only deducted when you have actually paid them. There is more about the cash basis, and how to start using it here. Self-employed workers are not legally required to produce full annual accounts but must declare income and business costs through a self-assessed Income Tax return, and have a book-keeping process in place to support their annual return.

2) The accruals basis

When you use the 'accruals' basis to work out your profits, which all limited companies are obliged to do, you have to include all invoices that you have issued as 'income' – even if you have not received payment yet. So, for example, if you are part-way through a job, you may have to include an estimate of the work that you have done but not yet invoiced.

The accruals basis is complicated and almost every small business has to obtain professional help from an accountant. You can still use the accruals basis if you choose to do so; the cash basis is optional for self-employed businesses.

VAT cash basis

The VAT rules have, for many years, allowed small businesses to account for VAT on a cash basis. The rules for the VAT cash basis are different from those for income tax, so be careful not to get confused, and limited companies are allowed to use it.

Under current VAT rules, many Bectu members may find that they are defined as Limited Cost Traders (LCTs) who can no longer take advantage of flat-rate tax payments which would offset their VAT charges to clients against assumed VAT on costs that they have incurred.

Small businesses including self-employed sole traders and PSCs do not need to register for VAT unless their turnover is at least £85,000 per year. Some members may find that their circumstances justify voluntarily registering for VAT below this threshold, especially if their business involves the purchase and sale of physical goods. We would advise members to seek professional advice from an accountant on this issue.

Income tax

Income tax is charged on the taxable profits from your self-employed income. It is also charged on various types of other income, including dividends , savings income and profits from letting property. The first two of these are discussed in separate sections of this Booklet; follow the hyperlinks for more information. There is some guidance about letting property on the government website and also here.

Scottish and Welsh taxpayers

If you are a Scottish taxpayer, your position may be different from that set out in this Chapter. What is meant by a Scottish taxpayer, and the differences from the rest of the UK, are set out here.

If you live for all or part of the year in Wales, you may be a Welsh taxpayer. However, at present there are no differences between the tax charged on Welsh taxpayers and English taxpayers. You can find out more about who is a Welsh taxpayer, and about Welsh income tax, by clicking on the links.[1]

Personal allowances

For the tax year 2021-22, no tax is charged on the first £12,570 of your income.[2] This is your personal allowance.

If your taxable income is over £100,000, your personal allowance is gradually tapered – this means that it is withdrawn so that for every £1 of extra income you lose 50p of your personal allowance. Above £125,140 no personal allowance is taken into account.

Tax thresholds and bands

The 2021-22 tax thresholds and bands are as follows:

- Income between £12,570 and £50,270 is taxed at 20% (the basic rate). So the basic rate band is £37,700 wide (£50,270 - £12,570).

[1] The information about Welsh taxes is provided by the very good charity, the Low Incomes Tax Reform Group ('LITRG'), which assists those on low incomes with their tax difficulties.
[2] For 2020-21, the personal allowance was £12,500

- Income between £50,270 and £150,000 is taxed at 40% (the higher rate). So the higher rate band is £99,730 wide (£150,000 - £50,270).
- Income of £150,000 and above is taxed at 45% (the additional rate).

However, this fairly straightforward position is now complicated by the personal savings allowance, the starting rate for savings and the dividend allowance, all of which are discussed in other parts of this Booklet, and also by the separate income tax rates and bands for Scottish taxpayers. In addition, you may be entitled to receive £1,000 of property income (a 'property allowance'), without paying tax on it[3]. There is more about this allowance here.

For the figures for the previous three years, see the government website.

		2020-21		2021-22	
		From	To	From	To
Personal allowance	0%	£0	£12,500	£0	£12,570
Basic rate	20%	£12,500	£50,000	£12,570	£50,270
Higher rate	40%	£50,000	£150,000	£50,270	£150,000
Top rate	45%	£150,000		£150,000	

Accounting periods and tax years

Every business has to make up its accounts each year. You can choose when to start and end your accounting year. You don't have to use the fiscal year.

The normal rule is that you are taxed on the profits of your accounting year based on the tax year in which your accounting year ends, see the example Laura.

Example: Laura

Laura has been in business for many years. Her accounting year runs from 1 May to 30 April. Her profits for the accounting year ending 30 April 2020 were £40,000. This *ends in* the tax year 2020-21, so her profits for that tax year are £40,000.

Her profits for the accounting year to 30 April 2021 are £50,000. This ends in the tax year 2021-22, so her profits for that tax year are £50,000.

Special rules apply for the years you start up in business, and for the years when you finish. These are outside the scope of this Booklet, but there is some guidance from HMRC about the early years here and about cessations here.

[3] The government has also introduced a £1,000 'trading allowance' but it is unlikely that this will be relevant to freelancers who are earning their living on a self-employed basis. There is information here.

SCOTTISH TAXPAYERS

Since 6 April 2017, Scottish taxpayers have paid Scottish income tax.

WHO IS A SCOTTISH TAXPAYER?

The general rule is that if you live in Scotland for more than half of a tax year, you are a Scottish taxpayer. There is more detailed guidance on the government website here.

WHAT ARE THE DIFFERENCES?

If you are a Scottish taxpayer, you pay Scottish income tax on all your profits from self-employment, pension income and/or profits from renting out property, and any employment income.

Instead of the three bands for UK income tax (basic rate, higher rate and additional rate), Scottish taxpayers now have five bands. The basic rate band has been split into three: the starter, Scottish basic and intermediate rate bands.

Other differences are that:

- The higher rate is 41% compared to 40% in the rest of the UK.
- The higher rate threshold is lower than in the rest of the UK, so you start to pay higher rate tax on less income.
- The additional rate has been renamed the 'top rate'.
- The top rate is 46% compared to 45% in the rest of the UK.

However, Scottish taxpayers have the same personal allowances as the rest of the UK, and those personal allowances are tapered away once a person's income reaches £100,000, just as in the rest of the UK.

For dividend income and savings income Scottish taxpayers continue to pay tax at the main UK rates, and use the main UK bands. They also pay capital gains tax by reference to UK rates and thresholds.

The amounts of income within each band, and the rate of tax, are set out in the Table.

		2020-21		2021-22	
		From	To	From	To
Personal allowance	0%	0	£12,500	0	12,570
Starter rate	19%	£12,500	£14,585	12,570	14,667
Basic rate	20%	£14,585	£25,158	14,667	25,296
Intermediate rate	21%	£25,158	£43,430	25,296	43,662
Higher rate	41%	£43,430	£150,000	43,662	150,000
Top rate	46%	£150,000		150,000	

Example: Craig. Craig has employment income of £25,500 for 2020/21. He wants to check the amount of tax he can expect to pay during the year.

	Rate	Income (£)	Tax (£)
Employment income		25,500	
Personal allowance		(12,500)	
		13,000	
Starter rate	19%	2,085	396
Basic rate	20%	10,573	2,114
Intermediate rate	21%	342	71
Total tax			2,581

If Craig had lived in England, the whole of the £13,000 would have been taxed at 20%, so he would have paid £2,600 in tax. He is better off in Scotland by £17. However, the higher-paid face a greater income tax burden in Scotland compared to in the rest of the UK.

Scottish income tax and pension contributions

Taxpayers who contribute to a pension are generally entitled to have a basic rate tax credit added to their pension savings by the pension provider. So if an individual living in the rest of the UK pays £80 into his pension, the pension provider reclaims the basic rate credit of £20 from HMRC. This is the same as the 20% basic rate tax the individual has paid on that income[4]. However, for Scottish taxpayers the basic rate band has been split into three, so an individual may have paid 19%, 20% or 21% on income which was previously subject to 20% tax.

HMRC have said that they will give Scottish taxpayers the same basic rate credit as the rest of the UK. So a person who is paying tax at the starter rate of 19% will still receive a 20% credit paid into their pension fund. Those who are paying tax at the intermediate rate of 21% or the higher rate of 41% can claim the extra 1% or 21% via self-assessment or by contacting HMRC if they are not within self-assessment. Those who pay tax at 46% will be within self-assessment and can reclaim the extra 26% via their returns.

[4] Tax relief is also repaid at this rate to non-taxpayers, up to a maximum pension payment of £2,880, see the government's guidance here.

SAVINGS INCOME

Complicated rules apply to savings income (broadly, bank or building society interest), and those rules have also changed a lot recently.

Since 2016-17 there has been both a 'Personal Savings Allowance' and a 'starting rate for savings'. The position for earlier years is summarised here.

The Personal Savings Allowance

Since 6 April 2016, most people have been entitled to a Personal Savings Allowance ('PSA'), which is a slice of savings income taxable at 0%. The amount of your PSA depends on your 'adjusted net income'. This is your total taxable income (including savings income and dividends) less certain tax reliefs, for example gift aid donations and pension contributions.

- If your adjusted net income is up to £50,000, your PSA is £1,000, so you can receive £1,000 of savings income without paying tax. This is normally the position if you are a basic rate taxpayer.
- If your adjusted net income is between £50,001 and £150,000, your PSA is £500, so you can receive £500 of savings income without paying tax. This is normally the position if you are a higher rate taxpayer.
- If your adjusted net income is over £150,000, you have no PSA, so all your savings income is taxable. This is normally the position if you are an additional rate taxpayer.

The interaction between the PSA and the basic, higher and additional rate thresholds means that an extra £1 of income can cause you to lose part or all of your PSA, see the example James and John at the end of this section.

Starting rate for savings

- The starting rate for savings is a special 0% rate which applies to the income received from savings by people on a low income. It is very complicated and is unlikely to apply to people who are working on a regular basis on a full or part-time basis.
- It *only* applies to savings income, so if for example your adjusted net income is £18,500, of which £6,000 is savings income and £12,500 is profits from self-employment, then no tax is payable at all:
    - £12,500 is tax free because of the personal allowance.
    - £5,000 is tax free because of the 0% 'starting rate' for savings; and
    - £1,000 is tax free because of the PSA.
- If your non-savings income is £17,570 or more, you do not benefit from this 0% savings rate at all.
- If your non-savings income is below £17,570, but your adjusted net income is above £17,570, you may be entitled to have some of your interest income taxed at 0%.
- This is quite difficult to understand. It may help if you realise that the savings rate is intended to assist retired people who have a small pension (covered by their personal

allowance) plus interest from deposits in the bank or building society. The savings rate doesn't usually help those working full time.

- But the savings rate may be useful if your spouse or partner is not working at all, or is working part-time. If savings are in the name of your spouse/partner, then he/she may benefit from the savings rate (and from the PSA). But remember, if you transfer assets to your spouse/partner this is likely to have other consequences, such as if you were to split up. In other words, a transfer of assets does not only take effect for tax purposes.
- There is more about savings income here.

RECEIVING SAVINGS INCOME WITHOUT TAX DEDUCTIONS.

Because of the PSA, many people no longer pay tax on their savings income. As a result, since 6 April 2016 banks and building societies have paid their customers' savings income gross, in other words, without deducting tax. Previously, they deducted 20% basic rate tax. This means that since 6 April 2016 you will have received your bank or building society interest without tax having been deducted.

That doesn't necessarily mean that your savings income is tax-free. If you do have to pay tax on some or all of that income, because your savings income exceeds your PSA, you should do this via self-assessment.

Interaction between the PSA and tax thresholds

Because of the way the PSA interacts with tax thresholds, a £1 increase in income can produce an additional tax liability of over £100. The example James and John shows what happens where a person is at or around the higher rate threshold.

Example: James and John

In 2020-21 James has adjusted net income of £50,000. Of this, £1,000 is savings income and £49,000 is earnings from his employment.

The basic rate tax threshold is £50,070, so James is a basic rate taxpayer. As a result his PSA is £1,000.

He is not entitled to the starting rate for savings because his total non-savings income is £49,000. This is more than the limit of £17,570 so cannot benefit from that 0% rate.

His savings income is taxed as follows: £1,000 @ 0% = £0

In the same year, John has adjusted net income of £50,001, made up of £1,000 of savings income and £49,001 of earnings from his employment. Because the total is above £50,000, he is a higher rate taxpayer, so his PSA is £500. Like James, he is not entitled to the starting rate for savings because his non-savings income is too high. He is taxed as follows:

- £500 @ 0% = £0 - this is the limit of his PSA so the rest of his savings income is taxed at normal rates…
- £499 @ 20% = £99.80
- £1 @ 40% = £0.40

Tax on John's savings income is therefore £100.20

Where a person is at or around the additional rate thresholds, there is a similar effect: even £1 of income over the £150,000 threshold means that the person will not benefit from the £500 PSA which is available to higher rate taxpayers.

It may be possible to eliminate this problem by giving money to charity and claiming gift aid, or by making a pension contribution. Both should reduce your adjusted net income and so bring it below the threshold at which the PSA changes. However, pensions in particular are complicated and specialist advice should be taken.

DIVIDENDS

The rules for dividends are complicated and this Chapter only sets out some of the basics. In particular, it does not cover:

- dividends from overseas companies, to which special rules may apply; or
- the rules which applied before 6 April 2016.

WHAT IS A DIVIDEND?

A company is owned by its shareholders, so each shareholder owns part of the company. If the company makes profits, the shareholders can take those profits out of the company as a dividend.

The dividend is paid out of after-tax profits – in other words, the company has already paid corporation tax on the money used to pay the dividend.

THE TAXATION OF DIVIDENDS

For 2016-17 onwards there has been a dividend allowance. This was £5,000 for 2016-17 and 2017-18, but was reduced to £2,000 from April 2018 and it remains the same in 2021-22.

- Dividends up to the dividend allowance are taxed at 0%. However, they still count towards the basic and higher rate bands.
- However, dividends within the dividend allowance still count towards the basic and higher rate bands.
- To the extent that the dividend is more than the dividend allowance and falls in the basic rate band, it is taxed at 7.5%, known as the dividend ordinary rate.
- To the extent that the dividend is more than the dividend allowance, and falls in the higher rate band, it is taxed at 32.5%, known the dividend upper rate.
- To the extent that the dividend is more than the dividend allowance and falls in the additional rate band, it is taxed is 38.1%, the dividend additional rate.

This is quite complicated. It may be easier to understand via an example, see Example: Caroline. This example is set in the year 2021-22.

More examples can be found on the government website.[5] Note that these use 2016-17 figures and so there is a £5,000 dividend allowance and the tax rates and bands are those of that earlier year.

Although the dividend tax rates seem low compared to those on other types of income, which are 20%, 40% and 45% for most UK taxpayers[6], as explained here, remember that the company has normally already paid tax at the corporate tax rate on its profits, before they are paid out of the company as dividends.

The corporate tax rate has been 19% since 1 April 2017; it was previously 20%. This means that on profits of £1,000, a company will currently pay tax of £190, leaving £810 available for dividends. The dividend of £810 will be tax-free in the hands of the shareholder if he or she has not used up the

[5] https://www.gov.uk/tax-on-dividends
[6] the position for Scottish taxpayers is explained here – but it is treated in the same way as the rest of the UK.

dividend allowance. But if they have already used up that allowance, the dividend will be taxed at the Dividend Ordinary Rate, the Dividend Upper Rate or the Dividend Additional Rate.

Members with Personal Service Companies turning over more than £50,000 should note that Corporation Tax is due to increase from 19% to 25% in April 2023.

EXAMPLE: CAROLINE

Caroline was employed as a set designer from April to June 2021 and was paid a salary of £6,000 a month, before tax and NICs, so she earned £18,000.

On 1 July 2021 she forms her own limited company[7]. In the period to 31 March 2022, the company makes profits of £100,000 on which corporation tax of £19,000 (£100,000 x 19%) is due. This leaves £81,000 of profits available to be paid as dividends.

On 31 March 2022, Caroline is paid a dividend of £40,000. The other £41,000 remained in the company and could be paid out in the future.

Caroline's salary is treated as the first slice of her income. £12,570 is tax free because of her personal allowance. The balance of £5,430 is taxed at the basic rate of 20%, so the tax is £1,086.

The basic rate band is £37,700. Caroline's salary has used up £5,430 of that band, so she has £32,270 left. Of that, £2,000 relates to dividends covered by the dividend allowance taxable at 0%. That leaves £32,070 of dividends taxable at the dividend ordinary rate of 7.5%. Caroline therefore pays tax of £2,420 on those dividends.

The balance of her dividends is £7,730 (£40,000 - £32,270). These are in the higher rate band, and taxable at the dividend upper rate of 32.5%, or £3,512.

Caroline therefore has tax to pay of £1,086 + £2,420 + £2,512 = £6,018.

In addition, the company paid tax of £19,000 on the profits out of which the dividends were paid. The total tax bill is thus £25,018, of which part is paid by the company and part by Caroline.

[7] This example assumes that the tax avoidance rules known as IR35 do not apply to the engagements Caroline undertakes through her company. IR35 is discussed in the IR35 section of this booklet.

STARTING UP IN BUSINESS

REGISTRATION AND RECORD-KEEPING

When you first start up as self-employed, you must register with HMRC. You can do this online. If you fail to register by the 5th October of the second tax-year (April – April) that you been trading in, you may be charged a penalty.

You must also begin keeping records. HMRC provide guidance on what records you need to keep and for how long.

It is advisable to keep business records for at least five years from 31 January following the end of the tax year. So records for the tax year 2020-21 should be kept for at least five years from 31 January 2022, i.e. until 31 January 2027 (though Bectu would advise that you keep these records for further two years).

FILING SELF-ASSESSMENT RETURNS

Once you have registered with HMRC you'll need to complete a Self-Assessment (SA) tax return each year. This must include self-employment pages. There are two versions of these pages: a 'short' version, which can only be completed by those whose turnover is below the VAT threshold, and a 'full' version for all other self-employed businesses. Copies of the returns and the related notes can be found here.

You must file your SA return by 31 October after the end of each tax year if you are sending in a paper return, or by 31 January of the following year if you are filing online. So the SA return for the 2021-22 tax year must be filed by 31 October 2022 if on paper, and by 31 January 2023 if you are filing online.

You can pay your tax electronically or by other more traditional means. HMRC also provide guidance on this.

WHEN TO PAY THE TAX UNDER SA

The normal tax payment date for the self-employed is 31 January after the end of the tax year. So the tax for the 2021-22 tax year has to be paid by 31 January 2023.

However, most self-employed people also have to pay a percentage of their tax in advance. This is called 'payments on account'. How it works is shown in Example 'Maria'.

MARIA

Maria started her business in May 2019. Her first year was thus 2019-20. The tax filing deadline is 31 January after the end of that tax year, so it was 31 January 2021.

Maria filed her SA return online, on 31 December 2020, in good time for the deadline of 31 January 2021. It showed that tax of £10,000 was due.

On 31 January 2021 she had to pay:

For the tax year 2019-20		10,000
First payment on account for 2020-21	(50% of the 2019-20 figure)	5,000
Total tax demanded during tax year 2019-20		15,000

On 31 July 2021 she will have to pay:

Second payment on account for 2020-21 (50% of the 2019-20 figure) £5,000 (demanded 31/07/21)

On 31 January 2022 Maria's 2020-21 tax calculation expects to show that her tax is £18,000. She has already made payments on account of £10,000, so she has a further £8,000 to pay.

In addition, she has to pay £9,000 (50% of £18,000) as the first payment on account for 2021-22.

So her total tax payable on 31 January 2022 will be £17,000 (£8,000 + £9,000)

It is a good idea to file your tax return before the deadline, so that you know how much tax you will have to pay. If you leave it till the last minute to file the return, and find that your tax is higher than you were expecting, you may not have the funds available to be able to pay it all straight away.

If you pay the tax late, HMRC may levy a penalty based on a percentage of the overdue tax, as well as late payment interest. And if you file your return after the deadline late you are likely to incur late filing penalties in addition to the 'late payment penalties' chargeable if you pay the tax late. HMRC have an online tool which allows you to estimate the penalties you may be charged if you file and/or pay your tax late.

If you think you will be unable to pay all the tax by the due date, consider applying in advance of the due date for a 'Time to Pay' agreement by contacting the HMRC business payment support service.

THE CASH BASIS FOR TAX

INTRODUCTION

Since 2013-14 small unincorporated businesses have been able to work out their profits for tax and NICs purposes using what is called 'the cash basis'[8]. For all earlier tax years, businesses had to use the 'accruals basis'.

The cash basis isn't compulsory, but it is a lot simpler than the accruals basis. Before you can start to use the cash basis you need to check that your turnover is under the threshold. You inform HMRC that you are using the cash basis by ticking box 8 on the short self-employment tax return and box 10 of the full self-employment tax return .

If you are already in business, and haven't used the cash basis before, you need to transition from the accruals basis to the cash basis. You should also consider whether you want to use fixed deductions for expenses.

There is also a cash basis for VAT but it has different rules. Just because you use the cash basis for tax doesn't mean you necessarily use it for VAT, and vice versa. In this Chapter of the BECTU guidance, the 'cash basis' means the cash basis for income tax.

HOW DOES THE CASH BASIS WORK?

The cash basis means that money is only included for tax purposes when you have actually received it, and costs are only deducted when you have actually paid them.

There are no capital gains or capital losses on business assets if you are on the cash basis[9]. Instead, you simply include your sale proceeds in your receipts.

If you are on the cash basis, you must use it for all trades or professions you carry out during that tax year[10].

WHO IS ALLOWED TO USE THE CASH BASIS?

From 6 April 2017 you have been able to start using the cash basis if your receipts (not profits) are below £150,000. If you are a recipient of Universal Credit, you **must** use the cash basis[11] as long as your receipts are below £300,000.

In previous years you could start using the cash basis if your receipts for a given tax year were below the VAT threshold[12], and you could stay on it until the year after your receipts reached twice the VAT threshold[13].

[8] Income Tax (Trading and Other Income) Act 2005 (ITTOIA), s 25A
[9] Taxation of Chargeable Gains Act 1992, s 47B
[10] ITTOIA s 31A(3)(b)
[11] ITTOIA s 31B(5)
[12] ITTOIA s 31A
[13] ITTOIA s 31B.

You can use the cash basis if you are an individual ('sole trader') or work in a traditional partnership[14].

You can't use the cash basis if you are a partner in a limited liability partnership (LLP), or fall into a small number of other categories[15]. If you work through your own limited company, it cannot use the cash basis.

Moving to the cash basis

When you move to the cash basis, the law aims to ensure that income is not taxed twice (once on the former accruals basis and once on the new cash basis). Similarly, it also aims to prevent double relief for costs[16].

If you have claimed capital allowances in the past, and have 'unrelieved qualifying expenditure' which you are carrying forward – money you have spent but which you haven't yet been able to deduct in your tax returns – you can deduct this unrelieved expenditure in the first year of the cash basis[17].

Receipts and costs

Generally, you will need to include in your taxable income all amounts received from your self-employed work. This includes cash, cheques, bank transfers, card payments, insurance receipts from business claims and any money from selling an asset used in your business. Don't include money received as a loan.

You deduct payments you make in order do your work, such as for equipment, rent, heating etc. However, note that:

- Interest is only allowed up to a maximum of £500[18].
- If you work from home, either use a fixed deduction or apportion the cost.
- You deduct the cost of most business assets in full, so you don't claim capital allowances[19]. But this rule doesn't apply for cars or vans (provided the payload is over 1 metric tonne.[20] You can either claim capital allowances or fixed deductions for cars.
- Because you have only included cash received in your taxable income, you can't deduct bad debts or doubtful debts[21].
- You also can't deduct the cost of entertaining or most gifts[22].
- If you make a loss, you can carry it forward for one year; you can't carry it back or obtain sideways relief[23].

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[14] But not one including a corporate partner, see ITTOIA s 31C(2). The position of partners is not covered in this BECTU Booklet.
[15] ITTOIA s 31C
[16] ITTOIA s 227A
[17] Capital Allowances Act 2001, s 240C
[18] ITTOIA s 57A
[19] Capital Allowances Act 2001, s 1(4)
[20] ITTOIA s 33A(1)(b)
[21] ITTOIA s 32A
[22] These are also disallowed under the accruals basis.
[23] Income Tax Act 2007, s 74E

Leaving the cash basis

You can stay on the cash basis until the year after your self-employed turnover reaches £300,000, unless your turnover is below that threshold in the following year. When turnover goes £300,000 you must move onto the accrual basis. This means that if you have an unexpected upturn for a single year, you do not need to leave the cash basis, only to re-join it the following year.

You can choose to leave the cash basis if there is 'a change of circumstances' which makes it 'more appropriate' to move to the accruals basis[24]. HMRC say that an example of such a change would be if you wanted to claim tax relief for more than £500 of interest or make a type of loss claim which is not allowed on the cash basis[25].

When you leave the cash basis, there may be adjustments between the cash and accruals basis. This 'adjustment income' can be spread over a six year period, if you so choose[26].

Interactions with VAT

If you are not VAT registered, include in your costs any VAT which forms part of the price you have paid for goods and services.

If you are VAT registered, HMRC say[27] that you can either:

- exclude from your income, the VAT you charge on your invoices, and also exclude from your costs, the VAT on your inputs; or
- include the VAT you charge on your invoices and include the VAT you incur on your costs. You also need to include VAT payments to HMRC as expenses, and VAT repayments from HMRC as income.

One benefit of using the first method is that you have a lower turnover, so it is easier for you to stay under the cash basis threshold.

UK - MAKING TAX DIGITAL

This is a government initiative to move most routine tax reporting online. For individual self-employed taxpayers, or those working through small personal service companies, this will eventually mean filing of tax returns four times a year, using commercial software that will need to be rented or bought, rather than the HMRC web interface.

It is being introduced gradually, and was first applied to entities that were compulsorily registered for VAT (i.e. over the £85,000 threshold) in April 2020, followed by those below the threshold who had voluntarily registered in April 2021.

The next significant change will be the introduction of quarterly digital tax filing for all self-employed and small businesses in April 2023. There will be an option to pay tax on a quarterly basis, but, as yet, there is no plan to make this compulsory.

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[24] ITTOIA s 31D

[25] See BIM70055 - Cash basis: leaving the cash basis

[26] ITTOIA s 227A together with s 239A and 239B

[27] See https://www.gov.uk/simpler-income-tax-cash-basis/vat-registered-businesses

Bectu, along with many other membership organisations, has lobbied against the changes, and the government has postponed some parts of the initiative, but by 2023 the process of filing tax will look exactly as planned in 2015. The union hopes to offer members a substantial discount on one of the software products that have been written to help freelancers deal with a filing system that is technically demanding, and cumbersome.

EXPENSES

ALLOWABLE EXPENSES

The self-employed are taxed on profits – trading income less allowable expenses. But remember that special rules may apply if you work through an agency and that the position is different if you use your own limited company.

Your allowable expenses are money you have spent wholly and exclusively to earn the profits. They might include:

- Travel to and from your engagements – such as rail fares, petrol and parking costs. But the costs of travel to a regular place of work are not allowable, see travel and the Samadian case.
- Overnight accommodation away from your normal base
- Accountancy and legal fees
- Insurance
- Advertising
- Interest and charges on loans to buy business assets
- Interest and charges on a business credit card
- Stationery, postage and office expenses
- Rent, rates, power costs (see household expenses)
- Repairs of equipment used for the business
- Salaries of staff (but if you are paying a partner or relative, the rate of pay should be no more than the amount you would pay an unrelated third party for the same work)

Some genuine business expenses are not allowable. For example, the costs of business lunches or gifts are not normally allowed for tax purposes[28].

TRAVEL AND THE *SAMADIAN* CASE

If you have a base at home, but travel on a regular basis to one or more other workplaces, you cannot claim the cost of your travel or any related accommodation and subsistence, see the judgment of the Upper Tribunal in *Samadian*[29].

PART-BUSINESS, PART PRIVATE: HOUSEHOLD EXPENSES.

You can't deduct personal expenses for tax purposes. However, if you have spent money partly for business and partly for your private benefit, you may be able to claim a fixed deduction or apportion the cost. For example, some of the bills for household expenses may cover both business and private use. The part of the cost attributable to business use is allowable[30].

There are a number of different ways to work out the share of household bills which can be deducted for tax. These include time, floor area, or number of rooms. HMRC have provided some useful examples.

[28] Income Tax Trading and Other Income Act (ITTOIA), section 45
[29] *Samadian v R&C Commrs* [2014] UKUT 0013
[30] ITTOIA s34 (2)

Fixed deductions for expenses

You can use the following fixed deductions instead of working out the actual costs:

Business mileage for cars and vans at 45p per mile for the first 10,000 miles (per year) and then at 25p per mile[31]. You can't claim these fixed deductions if you have already claimed capital allowances on the vehicle expenditure[32].

- Business mileage for motor bikes at 24p per mile[33].
- Business use of home[34]. Add a fixed amount to your deductible costs for each month, depending on the number of hours you spend 'wholly and exclusively' on work done at home each month:
  - 25-50 hours per month £10
  - 51-100 hours per month £18
  - 101 hours or more per month £26
- Private use of premises used mainly for the business[35]. This works the other way round. You claim all the costs as a deduction and *add back* the following monthly amounts:
  - 1 occupant £350
  - 2 occupants £500
  - 3 or more occupants £650

These fixed deductions can be used by everyone[36], whether or not you are on the cash basis.

Purchase of assets

The tax treatment of money spent on assets for the long-term benefit of the business depends on whether you are on the cash basis or the accruals basis.

If you are on the cash basis, you can deduct the cost of most business assets when working out your profits. A key exception is the cost of cars – you must either claim a fixed deduction or else capital allowances (usually after apportioning between business and private use).

If you are on the accruals basis, you can't deduct the cost of business assets – such as new camera equipment – from your business profits, or depreciation on those assets. Instead you have to consider whether you can claim 'capital allowances'.

Capital allowances

You must first check if your asset qualifies for capital allowances. Furniture, computers and equipment used for your business are classified as 'plant and machinery' and so qualify for a generous capital allowance, called the annual investment allowance (AIA).

From the 01/04/21 to 21/03/23 the government has introduced a 'super deduction' for capital allowances whereby some businesses can recover in tax the equivalent of 130% of newly purchased

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[31] ITTOIA s 94F
[32] ITTOIA s 94E
[33] ITTOIA s 94F
[34] ITTOIA s 94H
[35] ITTOIA s 94I
[36] But not partners in a partnership which includes a corporate partner, see ITTOIA s 94C

plant and machinery and a 50% ‘Writing Down Allowance’ (WDA) on some assets. Then, once again, members are advised to seek advice from a tax specialist or an accountant.

For expenditure in the 2020 and 2021 calendar years, the AIA allows you to deduct up to £1m of plant and machinery expenditure from your profits, which reverts to £200,000 on 31/12/21. [37]

So if, for example, you buy a new computer for £5,000, you can deduct £5,000 from your trading income.

For the years from 2016 through to 2018, the annual limit was £200,000. If your accounting period is spread over two calendar years, the maximum amounts must be pro-rated[38], and they must be reduced if your accounting period is less than 12 months[39].

Note that different capital allowance rules apply to cars, and as the car is also likely to be used partly privately, the allowance is restricted.

There is some guidance on the gov.uk website, but capital allowances are complex and you are likely to need the help of a tax adviser.

[37] Capital Allowances Act 2001, s 51A(5)

[38] see ‘changes to the AIA’ here

[39] see ‘if your accounting period is more or less than 12 months’ here

NATIONAL INSURANCE CONTRIBUTIONS

THE SELF-EMPLOYED

The self-employed pay two sorts of National Insurance Contributions (NICs): a flat rate Class 2 contribution, and a profit-related Class 4 contribution[40].

The figures in this Chapter are those for 2021-22. HMRC provide the equivalent amounts for previous years here.

CLASS 2 NICS

When you start your self-employment, you have to register for tax. This also includes registration for Class 2.

Paying Class 2 gives you 'qualifying years' for the basic state pension, maternity allowance and bereavement benefit. But Class 2 NICs do not count towards jobseekers allowance or Statutory Sick Pay.

Class 2 NICs are charged at a flat rate of £3.05 per week. You don't have to pay Class 2 if your profits are below £6,515 for the year[41]. You don't have to pay Class 2 from the week following that on which you reach state pension age (note that state pension ages have changed, depending upon your date of birth so it is worth checking your own situation). Everyone who pays National Insurance or Tax now has an online Government Gateway account that allows you to check on NIC payments. '

Class 2 NICs are collected under self-assessment as part of the balancing payment due in the January following the end of the tax year. So the payment for 2019-20 was due on 31 January 2021, and that for 2021-21 will be due on 31 January 2022.

Note: The previous government (the one that ended with the 2019 General Election) had plans to abolish Class 2 contributions and create a system where Class 4 contributions would be a 'credit' towards Contributory Benefits for Self Employed Workers. However, the current government, during 2020-21 has made no statement about it's intentions.

CLASS 4 NICS

In 2021-22 the self-employed pay Class 4 NICs at 9% on all profits between £9,568 (the 'primary threshold') and £50,270 (the 'upper earnings limit'). HMRC provide the figures for previous years here.

Once your earnings reach £50,270, your Class 4 NICs drop to 2% on all taxable profits above that upper earnings limit. This is the same point at which you move from basic rate tax to higher rate tax.

Class 4 is collected along with your income tax, using the self-assessment mechanism. That also means you have to pay a Class 4 payment on account, just as you do for tax. If you fill in your tax return online, the HMRC computer will calculate your Class 4 NICs for you. You stop paying Class 4 in the tax year after the one in which you reach state pension age.

[40] The previous (pre-December 2019) government had planned to abolish Class 2 NICs. However, since the unexpectedly early 2019 General Election, there have been no new proposals to do replace Class 2 NICs with benefit credits linked to Class 4 NICs – for example, entitlement to the Single State Pension..

[41] See https://www.gov.uk/self-employed-national-insurance-rates

Class 4 NICs do not give you any entitlement to benefits and are basically just an extra tax.

NICS ON EMPLOYMENT AND SELF-EMPLOYMENT

Employees pay higher NICs than the self-employed. In 2020-21 they pay Class 1 NICs at 12% on earnings between £9,568 and £50,270[42], and then a further 2% on earnings above that.

In addition, employers must pay Class 1 employers NICs at a rate of 13.8% on the earnings of all employees above £8,840, with no upper limit. However, employers may benefit from an employment allowance which may reduce or even eliminate their employer NICs.

The NICs difference between employment and self-employment is one of the reasons why it is attractive for individuals to be self-employed, and why engagers may prefer to take people on a self-employed rather than an employed basis.

However, HMRC may challenge you and/or your engager if they think you should really have been classified as an employee, see 'Am I self-employed'.

RECLAIMING OVERPAID NICS

If you have been both employed and self-employed in a tax year, there is a complicated interaction between the NICs you pay as a self-employed person, and those payable as an employee.

HMRC should repay any excess to you automatically, but you can also request a repayment online or by writing to:

HM Revenue & Customs
Payment Reconciliation
National Insurance Contributions Office
Benton Park View
Newcastle upon Tyne
NE98 1ZZ

Make sure you sign your letter and include:

- your National Insurance number
- why you think you've overpaid
- which tax years and which class(es) of National Insurance contributions you think you overpaid
- a P60 or statement from your employer(s) showing the National Insurance contributions deducted during the tax year
- if you have had some self-employment during the year, include a copy of the accounts for the tax year which confirms the low earnings

If you need further help, you can call the National Insurance Enquiries for Individuals Helpline on 0300 200 3500. Lines are open Monday to Friday from 8.00 am to 8.00 pm, and from 8.00 to 4.00pm on Saturday.

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[42] Although the position is more complicated than set out here, because employee NICs are calculated on an earnings period basis, see the BECTU Booklet *Tax for Employees.*

OUTLINE OF SELF-EMPLOYMENT

TAX AND NATIONAL INSURANCE DIFFERENCES

For tax purposes, individuals are either employed or self-employed. Being self-employed rather than employed means you receive your income without deduction of tax or NICs. This gives you a cash flow advantage over employees.

You can also deduct more expenses from your income, so pay tax on a lower amount. You pay lower NICs than employees, but as a result you are likely to be entitled to fewer benefits if you are out of work.

It is up to you to register as self-employed, and you pay tax via self-assessment rather than under PAYE. Some self-employed people operate via a company, which may provide other advantages, including tax planning opportunities.

If you supply your services via an agency, you may be within the agency rules. These rules may deem you to be employed by the agency for tax and NICs purposes even if you are self-employed under the normal status tests. This means that you may be treated as an employee for tax purposes, and subject to PAYE and employee NICs.

EMPLOYMENT LAW

Being self-employed gives you tax advantages compared to employees, but employees have more legal protection. In particular, employment law gives employees the right not to be unfairly dismissed. That protection is not available to the self-employed.

Employment law also recognises an intermediate category of 'worker', which does not exist in tax law. You are a 'worker' if you have to provide your services personally (ie you cannot send a substitute to do the work instead), and are not 'in business on your own account'. Workers have the right to holiday pay, pension contributions and the national minimum wage ('NMW').

It is possible to be both self-employed for tax purposes, and a worker for employment law purposes. That means you have the tax and NICs advantages of self-employment but also are entitled to holiday pay, pension contributions, the NMW and certain other protections arising from your status as a worker. For more about the employment law rights of workers, see the entitledto website. If you don't know whether you are employed or self-employed, see 'Am I self-employed.'

AM I SELF-EMPLOYED?

CASE LAW STATUS TESTS

Being self-employed has consequences for tax, NICs and employment rights purposes. But there is no clear definition of what makes someone employed or self-employed. Instead, there is a complex collection of employment law and tax law decisions made by the courts. From this case law, various principles have been established, which are known as status tests.

If you satisfy the status tests, you are self-employed, and if you do not, you are employed. There is a grey area between the two where a person could be classified as either, depending on the importance a court gives to various factors.

However, if you supply your services via an agency, you may be within the tax agency rules. These may deem you to be employed by the agency for tax and NICs purposes and normally take priority over (a) the normal status tests including the Lorimer case and (b) the special Film and TV rules (including the grade list and the 7 day rule) which are explained below.

THE 'CHECK EMPLOYMENT STATUS FOR TAX' SERVICE

The status tests are complicated. HMRC have provided an online test, called 'Check Employment Status for Tax' or 'CEST' which you or your engager can take to see if you are self-employed. Bectu have a few concerns about this test – particularly on how it tests 'substitution' and how it assesses 'multiple engagers.'

If you or your engager complete this online test using accurate information, you can normally rely on the outcome, unless:

- a later HMRC compliance check shows that the information used to answer the questions was not accurate, or
- the result was achieved through 'contrived arrangements designed to get a particular outcome' from CEST. HMRC say that this 'would be treated as evidence of deliberate non-compliance, with associated higher penalties'.

CEST can be used for current or future engagements in the private or public sector. However, if there are changes to the engagement or the way the work is carried out, the CEST test should be repeated with the new information.

CEST does not take into account the agency rules, so won't help you decide whether those rules apply. As explained here, it also looks at employment status without taking into account the whole pattern of your work, so it may not give the correct outcome when you have a lot of different engagers.

CEST is anonymous and HMRC do not keep a copy. When you/your engager have completed the CEST, you/your engager should print or save copies of the outcome.

SELF-EMPLOYED GRADES IN FILM AND TV

Because of the grey area between employment and self-employment, and because the status tests are complex, HMRC's Film Industry Unit (FIU) produced a useful booklet called Film, Television and Production Unit Guidance Notes ('the FIU Guidance').

However, this has now been superseded by new pages in the HMRC Employment Status Manual, where there is an Entertainment Industry index. Key parts of this new guidance are reproduced in this guide at Appendix 2 and Appendix 3.

See this link for a page that is specific to the part of the entertainment industry covering TV and radio workers - behind camera workers, short term engagements.

THE GRADE LIST.

In the HMRC guidance is a grade list, which provided (such as the BBC and other film or TV companies) with a list of "self-employed grades". The ESM refers to this grade list[43], saying:

"The paper guidance contained an "Appendix 1" list of roles that HMRC considered to be normally self-employed roles. The Appendix was a handy guide for the industry, if the conditions were met, the roles would be self-employed for tax. That allows HMRC and the industry to concentrate on advising on less straight forward cases.

The list has been refreshed and updated to reflect modern roles and practices.

From 20 December 2019 treat individuals who meet these criteria as self-employed, this applies to new contracts, and extension of existing contracts.

This list is not exhaustive. **If the individual is not on this list it does not necessarily mean they are an employee** (BECTU emphasis). HMRC and engagers in the industry should use the full range of employment status indicators to decide the status of people not on this list. Employment Status Guidance ESM0500."

If your job is within one of the self-employed grades, you don't need to worry about the case law, you can rely on the fact that your job is included in the list, providing you meet any conditions there set out, and your engager is prepared to pay you as a self-employed worker.

If your grade is not on the list, that doesn't mean that you are an employee (BECTU emphasis). Remember that the grade list is a shortcut for HMRC and engagers. You are still entitled to assess your own employment status using the status tests, either with the help of a tax specialist or using the CEST online tool.

However, if your services are supplied to the film or TV company via an agency, then, as stated earlier, those rules will normally take priority over the special Film and TV rules, including the grade list.

LORIMER LETTERS

If you work in film and TV, but are not in a 'self-employed grade', HMRC may issue you with a 'Lorimer Letter', also known as an 'Authority Letter'. For more on this topic, see Lorimer Letters.

7 DAY RULE

If you work in film or TV, ESM4116 says that HMRC will allow you to be paid gross, even if your grade is not on the self-employed list and despite the fact that you do not have a Lorimer Letter – as long as your engagement is for 6 days or less. This was known as the "7-day rule".

[43] https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm4118

BECTU's view is that a person who is often engaged for short engagements of 7 days or fewer is very likely to be self-employed, for the same reason as Mr Lorimer, see the Lorimer case.

In the FIU Guidance, HMRC says that the reason for the 7 day rule is that *"some behind camera individuals may not meet the criteria in the list of roles normally treated as self-employed (for example if they are not providing their own equipment), but they might work on a succession of short term engagements with a large number of different clients."* – in other words, for the same reason that Mr Lorimer was held by the courts to be self-employed

The 7 days include weekends or breaks. The rule does not apply if, at the time of your engagement, it is known that you will be re-engaged at a later date by the same company and the total period is more than six days, or if there are arrangements for you to be re-engaged 'frequently or at regular intervals'. Note that the FIU Guidance also states that the Rule does not apply for National Insurance purposes, so Class 1 NICs may still be payable.

Disagreeing with HMRC

Because the rules about employment status are not clear cut, you and your adviser may be confident that you are self-employed, but HMRC may disagree. Or your engager may not be prepared to accept that you are self-employed, because your grade is not on the list (or because the list is no longer part of current guidance) and you do not have a Lorimer Letter.

If you continue to disagree with HMRC, you have a right to appeal HMRC's status decision, and if HMRC reject your appeal, to notify the appeal to the First-tier Tax Tribunal. It is suggested that you obtain advice from a tax specialist with experience of employment status before doing so. BECTU would also like to know if you are planning to taking legal action so we can consider whether we can help.

STATUS TESTS

Note: Before you read this page, you are advised to read '*Am I self-employed'*.

The status tests are not found in legislation but have been developed over time as cases have been argued in the courts. They are not fixed, but they change as society develops. They are the main way in which the question of whether you are employed or self-employed is decided.

However, remember that special rules apply if you are working through an agency. Those rules may deem you to be employed by the agency for tax and NICs purposes even if you would be self-employed under the normal status tests. The rest of this section assumes you are not working through an agency.

In business on your own account

The simplest way of deciding whether you are employed or self-employed is to answer the question: are you in business on your own account?[44] If you are running your own business, and can demonstrate that you have business premises (which can be a part of your home) and equipment; that you market your business and have a client base, you are likely to pass this test.

[44] *Market Investigations Ltd v The Minister of Social Security* (1968) 2 QB 173

However, if you don't have all the trappings of a business, you can still be self-employed. In other words, this is a one-way test: if you pass, you are self-employed; if you don't, you need to consider the other status tests. The main ones are set out below.

Personal service and substitution

If you do not have to do the job personally, but can send a substitute, you are not an employee[45]. This is because personal service is an essential ingredient of employment. However, simply putting a substitution clause in your contract is not a magic wand – the right to send a replacement must be real[46].

If the right to send a substitute is limited – so that, for example, you can only send a substitute from a list of approved people, and/or the engager pays the substitute, this isn't sufficient, on its own, to make you self-employed[47].

Hiring staff

If you have your own employees or sub-contractors, you are very likely to be self-employed[48].

Control

The level and type of control exercised by your engager over you is a key factor in deciding whether you are employed or self-employed.

The leading case law[49] says that you are an employee if you are subject to the control of your engager 'in a sufficient degree to make that other master'. It also says that rights of control are divided into control as to *how, when, where or what* is done - and all of these may need to be considered.

Because control is a question of degree, it is not a black and white test. You have to weigh up the amount and type of control which your engager exercises and see if it is sufficient to make you self-employed.

The more freedom you have as to where and when you carry out your work, and as to how you do it, the more likely you are to pass this test. But in some cases the location of the work, and the time at which you have to carry it out, are an intrinsic part of the work, and the 'control as to where' and control as to when' tests may then be irrelevant. So if, for example, you are engaged to do the lighting rig for a particular programme, the time and place are fixed by the nature of the job, and do not help to decide the employment/self-employment question. HMRC give useful guidance on the control tests in their Employment Status Manual at ESM0518 through to page ESM0529. The examples at pages ESM0525 and ESM0527 are particularly helpful.

Financial risk and opportunity to profit

If you are paid on a fixed fee basis rather than at an hourly rate - so you can make more money if you carry out your task quickly, and stand to lose money if you take longer than you expected – you are

[45] *Express and Echo Publications Ltd v Tanton* [1999] IRLR 367
[46] *Autoclenz v Belcher* [2011] UKSC 41
[47] *MacFarlane and Skivington v Glasgow City Council* [2000] EAT/1277
[48] *Australian Mutual Provident Society v Chaplin and Another* [1978] 18 Australian Law Reports 385 and accepted as an authority by the Privy Council in *Narich Pty Ltd. v. Pay-Roll Tax Commissioner* [1984] ICR 286
[49] *Ready Mixed Concrete (South East) Ltd. v. Minister of Pension and National Insurance* [1968] 2 QB 497

almost certainly self-employed[50]. However, the reverse is not true – if you are paid an hourly rate, that doesn't mean you are an employee. Many self-employed people, such as solicitors and accountants, are paid on a time basis.

If you can negotiate the terms on which you work, you are more likely to be self-employed – most employed people have limited or no freedom to negotiate the terms of their contract, but accept or reject the job which is offered.

Being paid only after you have sent the engager an invoice means that you are taking on more risk than employees, and is an indicator of self-employment.

Equipment

If you provide significant equipment which is essential to carry out your task, you are probably self-employed[51]. If you only supply 'small tools' this is a neutral factor, ie it is unlikely to help decide the question one way or the other[52].

Part and parcel

The 'part and parcel of the organisation' test means that you are more likely to be an employee if you are integrated within the organisation where you work[53] – for instance, because employees of your engager report to you, you conduct appraisals, go on team-building events and/or attend employee functions[54]. None of these on their own is sufficiently weighty to decide the question of whether you are an employee or self-employed, but they will be considered as part of the picture.

Mutuality of obligation

Mutuality of obligation exists when the worker is required to work and the engager required to pay. If there is no mutuality, there cannot be an employment[55].

There is extensive employment case law on mutuality, because for certain employment rights it is necessary to consider the gaps between periods of actual work to see if there is a 'global' or 'umbrella' contract linking the work periods. However, during the periods when work is carried out, mutuality normally exists[56].

Mutuality of obligation is therefore unlikely to assist when determining employment status for tax or NICs purposes, because the issues in dispute relate to the money earned during the periods when the person is actually working.

There is an exception to that general rule where a worker only works casually and intermittently for an employer. The Court of Appeal has held that the casualness and occasional nature of that work

[50] *Global Plant Ltd v. Secretary of State for Social Services* [1972] 1 QB 139
[51] *Humberstone v Northern Timber Mills* [1949] 79 CLR
[52] *US v Silk* [1946] 331 US, quoted with approval in *Ready Mixed Concrete (South East) Ltd. v. Minister of Pension and National Insurance* [1968] 2 QB 497
[53] *Stevenson, Jordan & Harrison v MacDonald & Evans* [1952] RPC 10.
[54] *Future Online Ltd v Faulds* [2004] STC (SCD) 237 and *Castle Construction (Chesterfield) Ltd v Revenue and Customs Comrs* [2009] STC (SCD) 97
[55] *Ready Mixed Concrete (South East) Ltd. v. Minister of Pension and National Insurance* [1968] 2 QB 497
[56] *Cornwall County Council v Prater* [2006] EWCA Civ 102

may justify an inference that when such a person works, he does so as an independent contractor and not as an employee[57]. This may be helpful to some BECTU members.

LOTS OF ENGAGERS – THE *LORIMER* CASE

Even if you don't meet the status tests set out above, you are likely to be self-employed if you have a lot of clients for whom you carry out work, see Lorimer Letters.

The determination of employment status (for both tax *and* employment purposes) is a very difficult area of law and, at the time of writing, the legal profession were still absorbing the Supreme Court judgement about Uber drivers which focussed on subordination and dependency as compelling indicators of a 'worker' relationship (i.e. not self employed *for the purposes of employment law*).

It is possible that an engager can determine that you are employed for tax purposes, but not for the purposes of employment law.

[57] *Quashie v Stringfellows* [2012] EWCA Civ 1735 at [12], a case involving a lap-dancer; and *Secretary of State for Justice v Windle & Arada* [2016] EWCA Civ 459 at [24], where the appellants were professional interpreters who occasionally worked for the courts

LORIMER LETTERS

Note: Before you read this page, you are advised to read '*Am I self-employed'*.

If you have a Lorimer Letter, HMRC accepts that you are self-employed, so no PAYE or NICs are deducted from your earnings. This applies to all engagements for as long as the letter is valid. So you can take the letter with you from job to job.

This Chapter explains when Lorimer letters were issued. However, HMRC are currently reconsidering whether to continue that practice. BECTU is liaising with HMRC on this and have emphasised the importance of Lorimer Letters to employers as well as to members. Until there is clarification of the position, members should be aware that it may not be possible to obtain a Lorimer Letter, or to have an existing letter renewed.

Remember too that special rules apply if you are working through an agency. Those rules may deem you to be employed by the agency for tax and NICs purposes even if you would be self-employed under the normal status tests. This means that you may be subject to PAYE and employee NICs. The rest of this Chapter assumes you are not working through an agency.

EMPLOYMENT STATUS IN FILM AND TV: THE *LORIMER* CASE

Whether you are employed or self-employed for any engagement depends on a range of factors, including the amount and type of control over you, the equipment you provide and the extent to which you take financial risk (such as by quoting a fixed price for the job or by invoicing rather than being paid via the payroll). These 'status tests' have been developed over time by cases going through the UK courts.

For many BECTU members, the leading case is *Hall v Lorimer*[58]. Mr Lorimer (supported by Bectu) was a vision-mixer who worked for many clients.

HMRC argued that Mr Lorimer was employed, largely because the production company 'dictates the hours to be worked, where he shall work, the date he shall work'.

The judge rejected this, saying Mr Lorimer was 'independent of a particular paymaster for the exploitation of his talents' and that the 'most outstanding feature' of the case was that Mr Lorimer worked for many companies (increasing from 5 in the first year to over 20 by the third year).

HMRC'S APPROACH

After Mr Lorimer won his case, HMRC changed their guidance, saying that:

'in reaching a balanced judgment on status, it is not appropriate to look solely at the terms and conditions of the individual engagements. The employment status may be affected by the way in which the worker generally carries on his occupation. In particular:

- the length of each engagement and the number of other persons for whom similar work is performed should be considered, and
- engagements need to be looked at in the context of the worker's business activities as a whole, including matters such as the worker's exposure to bad debts and the amount spent on organising, obtaining, or carrying out the work. In these circumstances many of the other

[58] (1993) 66 TC 349 – this showed that having many engagers was a helpful indicator of a self-employed status.

> factors that are normally associated with a contract for services may be absent (for example financial risk, provision of equipment, stock, employment of helpers, etc.). Nevertheless, when looked at in the round, the personal factors which are present may be sufficient to make the contract a contract for services.'

It is difficult for engagers to know whether an individual has a general pattern of short engagements, like Mr Lorimer. If the engager gets the employment status wrong, HMRC might pursue him for unpaid PAYE and NICs.

To help engagers, HMRC historically issued 'Lorimer Letters', also known as 'Authority Letters' or 'LP10' letters. This is very helpful, because if an engager takes on someone with a Lorimer Letter, he does not need to worry about checking that person's employment status himself – he can simply rely on the Lorimer Letter.

However, HMRC are currently reconsidering whether to continue to issue Lorimer Letters. BECTU are liaising with HMRC on this and have emphasised the importance of Lorimer Letters to employers as well as to members.

Specific opinion letter

The first type of Authority Letter is known as a 'specific opinion letter', or simply a 'specific letter'. These are issued to individuals working in a grade not normally recognised as self-employed in accordance with HMRC's published list of self-employed grades. In those cases the worker has 'successfully demonstrated to the Inland Revenue that self-employed status may be granted for this particular engagement only'. This Booklet doesn't give any guidance about 'specific' letters, as obtaining them depends on the facts of each case.

Lorimer Letter

The second type of Authority Letter is the 'special letter', often called a 'Lorimer Letter'. These are issued to workers who, although not usually working in a grade which HMRC have accepted as self-employed, have satisfactorily demonstrated that their overall pattern of activity amounts to self-employment.

If you are self-employed in the same way as Mr Lorimer (but don't fall within one of the HMRC approved grades), it is obviously very helpful to both you and your engager if you have a Lorimer Letter. You are paid gross and don't have PAYE and NICs deducted, and your engager doesn't have to worry about employment status for tax or NICs.

How do you get a Lorimer Letter?

HMRC's practice was to issue a Lorimer Letter if you could provide them with evidence to show that your position is similar to Mr Lorimer's, or that you meet other key self-employment status tests. Good evidence would be:

- The number of different engagers you had over a given period, and how long you worked for each of them.
- How far apart the different engagements are geographically and how much it costs you to get to each one.
- Information about how you run your business, including marketing, office equipment, website etc.
- Details of any equipment you own or lease, which you use for your work.

- How your pay for the work is decided: is it negotiated by you or your agent? Is it a fixed fee irrespective of how long the work takes? Is it an hourly rate?
- How you are paid: do you send in invoices or does the engager pay you without you needing to invoice?
- Whether you are hired to do a specific task so that you can leave when it is finished, or whether the engager can require you to do other jobs while you are there.
- HMRC typically issued a Lorimer Letter if a person met some or all of these criteria:
- Had a lot of different engagers
- Worked for a short time for each
- Spent time and money travelling to the sites
- Ran his business in an organised way
- Owned or leased equipment used for your work
- Negotiated the rate for the job. Fixed fee is very strong evidence of self-employment, but many self-employed people are paid an hourly rate
- Were paid by invoice
- Were hired to do a specific task and couldn't be required to do other jobs.

Things to watch out for with Lorimer Letters

Getting the Lorimer Letter isn't enough on its own. You need to be careful about the following:

- The letters are valid up to a certain date. Once upon a time they were open ended, but more recent letters all have an end date. You need to renew your letter in good time – if the Lorimer Letter goes out of date, it will cease to be valid.
- Assuming HMRC agree to issue more Lorimer Letters, they will only backdate a Lorimer Letter to the beginning of the month in which you apply. So if you apply for a Lorimer Letter on 15 April 2021, and FIU provide one, the letter is only valid from 1 April 2021. HMRC currently refuse to backdate letters to any earlier date, even if you provide evidence that your manner of working etc. was the same before the start date of the letter. (Note that BECTU don't agree with this approach – in our view, if the evidence of self-employment for the earlier period is clear, then HMRC should backdate the letter – refusing to do so causes all sorts of problems, including for VAT. These are discussed below).
- The Lorimer Letter can only be used for engagements which are expected to last for ten days or fewer. This isn't necessarily ten consecutive days. If the engagement looks as if it will stretches beyond the ten days, your engager – not you – must call HMRC and ask for their agreement that you can continue to be treated as self-employed. Your engager will need your full name and NI number, and the serial number on the Lorimer Letter. HMRC also require brief details of the nature of your engagement.
- If you have lots of short engagements with the same engager, the Lorimer Letter may cease to be valid – again, it is advisable for the engager to check with HMRC, giving the same details as set out in the above paragraph.

Am I an employee if I don't have a Lorimer letter?

People sometimes think that if you don't have a Lorimer Letter, you are an employee. Others think that HMRC requires engagers to treat every freelancer as an employee if they don't have an Authority letter, and don't fall within one of the approved grades.

Neither of these is correct. If you are carrying out your work on a self-employed basis, and meet the status tests and/or operate like Mr Lorimer, you are not engaged under a contract of employment.

It doesn't matter that you don't have a Lorimer Letter. Those Letters don't make you self-employed, they just show the engager that HMRC has checked your employment status, so the engager doesn't have to worry about it.

For instance, you may simply have forgotten to revalidate your letter for a month. That doesn't mean you have become an employee for that month. You remain self-employed and are entitled to recover the extra tax and NICs deducted by the engager.

What should the engager do if I don't have a Lorimer Letter?

Your engager should not treat you as an employee just because you don't have a Lorimer Letter. Treating you as an employee when you are really self-employed causes all sorts of problems, for instance for VAT.

Without a Lorimer Letter, your engager should himself check whether you are employed or self-employed using the normal case law tests, including the decision in *Hall v Lorimer*.

HMRC encourage engagers generally to use the online CEST and rely on the outcome. However, CEST only looks at the particular engagement, and not at the whole pattern of your work, so it is unlikely to give the right result if your position is similar to that of Mr Lorimer

If you don't have a Lorimer Letter but are sure you are working on a self-employed basis, one solution is for you to provide the engager with an indemnity. This allows him to recover the PAYE and NICs from you if, as a matter of law, you are not self-employed. The indemnity should be properly drafted with legal advice and form part of your contract. It should also include a clause allowing you to appeal a subsequent HMRC employment status ruling.

Can I get the PAYE and NIC deductions reversed?

If the engager has already deducted PAYE and NICs from your gross pay, you may be able to persuade him to reverse these deductions. You should explain to the engager that you are genuinely self-employed, and should be paid gross. HMRC provide advice to the engager on how to reverse wrongly deducted PAYE and NICs[59]. You may want to offer an indemnity (see above for more on indemnities).

How do I get the tax back?

This is a difficult issue, and you should discuss it with your accountant and/or with a specialist tax adviser. BECTU suggests that you may wish to consider two possibilities: appealing the PAYE coding notice and using your SA return.

PAYE coding notice

If the engager is unable or unwilling to reverse the PAYE deductions, you have a right to appeal against the PAYE coding notice issued to you.[60]

[59] See www.hmrc.gov.uk/payerti/reporting/errors.htm under 'correcting errors'

[60] Regulation 18 of the PAYE Regulations

You should do this by writing to HMRC, and explaining why you consider you're you are self-employed in relation to this engagement. You will need to refer the relevant case law as well as the detailed facts of your engagement, including any contracts you have signed with your engager.

Using the Self-Assessment system

As an alternative, or in addition, you may be able to reclaim the tax using the self-assessment (SA) system. Although there is no place on the 'self-employment' pages for this sort of wrongly categorised income, you could consider using Box 17 on page TR3 in the main part of your return[61].

That box is called 'other taxable income – before expenses and tax taken off'. You could put the gross amount you have been paid in this box. Then you could put any expenses relating to this income, such as travel, equipment hire etc. in box 18, and the PAYE deducted in box 19. Then explain what you have done in box 21, or in box19 on page TR7 – the 'any other information' box.

This solution isn't perfect – your self-employment income is understated, which may mean that other tax provisions don't work properly - and there will also be a mismatch with your accounts.

HMRC may also open an enquiry to check whether you are right to believe you are self-employed. So before you file your return on this basis, it is sensible to check with a tax specialist who is familiar with employment status, whether you are likely to succeed in claiming you are self-employed.

How do I get the NICs back?

If the engager is unable or unwilling to reverse the NIC deductions made from your payments, the first step is to work out how much Class 4 NICs[62] you would have paid on your taxable profits if the engager had treated you as self-employed. This isn't straightforward, because Class 1 NICs are payable on a weekly or monthly basis, and Class 4 on an annual basis.

If the NICs deducted by the engager are more than the Class 4 NICs, you can write to HMRC and claim a refund[63]. Be sure to state in your letter that the NICs were deducted in error by the engager from your self-employed earnings. As with tax, there is a risk that HMRC may open an enquiry to check whether they agree you are self-employed.

What about VAT?

VAT is even more difficult. If you have supplied services and are VAT registered, then you have to charge VAT.

The position will depend on what your contract with the engager says. If it is silent about VAT, then you may have to treat the amount you receive as inclusive of VAT. Another possibility is that there was an implied term in your contract that VAT would be charged.

Depending on the contractual position, the two routes are that you:

- treat your gross pay as including VAT, or
- invoice your engager for the gross amount plus VAT.

[61] These box numbers are taken from the 2017-18 return. Different box numbers may apply for other year.

[62] It is assumed that you will have paid Class 2 in any event.

[63] Reg 52 of the Social Security (Contributions) Regulations 2001

VAT raises other issues too. The amount incorrectly treated as employment income might, when added to your other self-employed earnings, mean you should have to registered for VAT. If you register late, you may trigger a penalty.

Appeal to the Tax Tribunal

If you continue to disagree with HMRC, you have a right to right to appeal to HMRC, and then to notify your appeal to the First-tier Tax Tribunal. It is suggested that you obtain advice from a tax specialist before deciding whether to do so. Again, BECTU would like to know if you are considering taking legal action so we can consider whether we can help but we would generally advise members to seek their own support from a qualified specialist.

The Tax Agency rules

BECTU members who supply their services via an agency may be within the tax agency rules[64]. As a result, you may be treated as an employee for tax and NICs purposes. This means you will be subject to PAYE and employee NICs, even if you are self-employed under the normal status tests.

What is an 'agency'?

An 'agency' includes any individual, partnership or company other than you and your end-client, so it is very widely defined.

Who is within these rules?

If you provide your services personally and are subject to 'supervision, direction or control' as to the manner in which you provide those services, the agency must treat you as an employee for tax and NICs purposes[65]. That means that the agency has to operate PAYE and NICs on your wages.

The position is the same if you are subject to *the right of* 'supervision, direction **OR** control'[66] as to the manner in which you provide those services – even if that right is not exercised in practice. This means that you can be self-employed under the status tests, but nevertheless treated as an employee under these agency rules.

What does 'supervision, direction or control as to the manner' mean?

HMRC's understanding of these words is set out in their guidance[67]. Note, however, that Bectu would stress that HMRC's guidance is not the law, and a court or tribunal may take a different view.

HMRC say that:

'Supervision over the manner in which the worker provides the services is the action or process of watching or overseeing what the worker does or how something is to be done. If a person checks or has the right to check the work the worker is doing to make sure it meets a required standard, the manner in which the worker provides the services is subject to supervision. Supervision can also involve helping the worker where appropriate in order to develop his skills or knowledge.

Direction is someone making a worker do his/her work in a certain way by providing him with instructions, guidance or advice as to how the work must be done. Someone providing direction will often co-ordinate how the work is done, as it is being undertaken.

Control is telling or instructing a worker about how they do the work. Control over how the worker does work also includes having the power to move the worker from one job to another. If someone can say 'don't do it like that' or 'do it like this' then he has a right of control as to the manner in which the worker works.'

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[64] These rules apply to both tax and NICs, but they are referred to only as 'tax agency rules' in this Booklet. for ease of reference

[65] Income Tax (Earnings and Pensions) Act 2003, s 44(2)(a) as amended.

[66] Please note there is an important distinction here between this Agency criteria and the criteria that is used to determine self-employment when not working for an agency – i.e. Supervision, Direction **AND** Control.

[67] www.gov.uk/government/publications/employment-intermediaries-personal-services-and-supervision-direction-or-control at ESM2055. .

HMRC have published a number of examples[68] explaining how their view applies.

What happens if I am within the rules?

If you are self-employed under the status tests, but treated as an employee under these agency rules, then:

- you will pay NICs at 12% rather than 9% on earnings which are above the primary threshold and below the upper earnings limit, see the section on Class 4 NICs
- some of your expenses will no longer be tax-deductible
- you will receive your earnings with tax already deducted, so will suffer a cash-flow disadvantage.

Who is outside the tax agency rules?

You are normally outside the tax agency rules and so do not need to worry about these changes if you:

- supply your services directly to your end-client, ie with no intermediate company, agency or other person being involved;
- supply your services via a personal service company ('PSC') and have been determined by your client to be outside of an employment relationship as defined by a Status Determination Statement (SDS) from your engager; or
- are employed by an umbrella company. An umbrella company is a company with which you have signed a contract of employment but for which you do not work directly. Instead, you work for a third-party business; the umbrella company invoices that third party and then deducts PAYE and employee NICs from your income before payment.

However, note the following points in particular:

If you supply your services to a client via a PSC *and* an agency – so that your PSC contracts with the agency, and the agency contracts with the client, the agency must send regular reports to HMRC which includes details of the payments made to your PSC[69].

If you are employed by (a) a PSC which is inside IR35, or (b) an umbrella company, most of the payments made to you for travel, subsistence and accommodation payments are taxable on the same basis as similar payments made to agency workers.[70]

From 6 April 2021, special rules on travel and subsistence and other expense claims apply to any worker provided services directly to a client through a Personal Service Company that is "caught" by IR35. However the fee is paid, after employment taxes are deducted, any expenses become "benefits in kind" under tax law, must be reported on the worker's P11D each year, and will be subject to taxation.

[68] See www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2037 and the linked pages
[69] See www.gov.uk/government/publications/employment-intermediaries-reporting-requirements/what-this-means-for-an-intermediary#personal-service-companies
[70] ITEPA s 339A.

What happens if the agency gets it wrong?

If the agency decides you are not in the tax agency rules because there is no supervision, direction or control, nor any *right* of supervision direction or control, and HMRC disagrees, the agency may suffer a heavy penalty. Many agencies do not want to take the risk, and so deduct PAYE and NICs from your earnings.

If the tax agency rules apply, but the agency has not deducted the PAYE and/or NICs, HMRC will normally try and recover any PAYE and NICs from the agency rather than you. However, HMRC may be able to collect any shortfall from you if they believe you knew that:

- the tax agency rules applied; and
- the agency was deliberately not deducting the PAYE (ie it was not a mistake on their part).

If you think that the tax agency rules apply to you, you should find out why the agency is not deducting the PAYE and NICs and then discuss their response with your accountant. You can also talk to HMRC directly and/or contact BECTU.

Can I be self-employed but still be caught by the tax agency rules?

Yes, if you are subject to 'supervision, direction or control' the tax agency rules treat you as employed, even though you may be self-employed under the normal status tests for self-employment – for instance, you may be able to send a substitute, provide significant equipment, or have the right to hire your own workers.

Will I get employment rights?

Simply being within the tax agency rules does not give you employment rights, but you may have rights as a 'agency worker' under the Agency Workers Regulations ('AWR'). These include the National Minimum Wage and holiday pay.

If you think you should be within the AWR, but the agency does not agree, you may wish to take advice, for instance from the Citizens Advice Bureau. There is some online guidance here and here:

What happens if I work partly through an agency and partly directly?

If you work partly on a self-employed basis directly for your end clients, and partly obtain work through one or more agencies and have PAYE and NICs deducted as a result, you should:

- complete the self-employment pages of your SA return for the self-employed work; and
- complete the employee pages of your tax return for the agency work. You will need a different set of pages for each agency. You should have been given a P45 if you left the agency during the year; otherwise you should have been sent a P60 form in July after the end of the tax year. Be sure to keep all these P45s and P60s, as you will need them when completing the return.

VALUE ADDED TAX (VAT)

REGISTERING FOR VAT

Unlike income tax, which is based on profits, VAT is based on turnover (sales). If your sales over the last twelve months have exceeded the VAT threshold (currently £85,000) you **must** register for VAT[71]. You must also register if you expect to exceed that threshold in the next 30 days.

So you need to track your turnover on a rolling twelve month basis as you start to approach this threshold. You can register online or on paper.

Once you have registered, you must charge VAT at 20% on most sales within the scope of VAT. Some sales are exempt, some are zero-rated (meaning that you charge a nil rate) and a few are at 5%[72]. The rules for cross-border transactions are particularly complex and you should get professional advice[73].

You can also register voluntarily. This allows you to reclaim the VAT on your purchases but you must then charge VAT on sales (subject to the rules for exemption, zero rating and cross border transactions). There is also the option of the 'Flat Rate Scheme', but many Bectu members will find that they are 'limited cost traders' and will recover little or no VAT on purchases.

If you fail to register, or register late, you will still have to pay all the VAT due from the time that you should have been registered. This means that you will have to work out the VAT you should have charged, and pay this to HMRC, even though you didn't collect it from your customers[74]. This is obviously very expensive. HMRC may also change you a penalty.

Once you have registered, you can claim back the VAT on some of the goods and services you purchased for your business before registration. The UK rules say that there is a time limit of four years for goods (such as computers) and six months for services (such as accountancy advice).

VAT can be made simpler using two HMRC schemes, the cash basis and the flat-rate scheme, which can be used separately or together. There are situations when neither scheme is appropriate, and you should take professional advice before using them.

CASH BASIS FOR VAT

When you work out your VAT, you usually have to pay over the VAT you have charged on bills you have sent out, even though you haven't yet received the money. You can also deduct the VAT on your costs, even though you haven't paid your supplier.

If you are on the cash basis for VAT, you only have to pay VAT when your customer has paid your bill. But equally you can only deduct the VAT on your purchases when you pay your supplier, see Example Stefan 1.

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[71] The government has announced that this threshold will remain the same for 2020-21 and 2021-22.
[72] HMRC guidance explains the distinction between standard rated, exempt and zero-rated supplies
[73] There is guidance about supplying services overseas on the HMRC site, but this is a very complex area.
[74] You may be able to issue 'VAT-only' invoices to collect the VAT you didn't charge. Your accountant or HMRC may explain how to do this.

Example Stefan 1

Stefan builds sets for film and TV companies, and is not using the flat-rate VAT scheme. because he is not a "limited cost trader"

In the year to 31 December 2020[75] he does 10 jobs and sends out invoices for £120,000 including VAT of £20,000. He pays out £24,000 for materials including VAT of £4,000.

On 31 December he has paid all his own bills but is still waiting for five of his clients to pay him. He has received £72,000 (including VAT of £12,000) out of the £120,000 billed.

Under normal VAT rules his VAT would be: £20,000 – £4,000 = £16,000

Under the cash basis his VAT would be: £12,000 – £4,000 = £8,000

Of course, the remaining £8,000 of VAT will be payable later – but only when Stefan has received the outstanding receipts from his clients.

Since most BECTU members have relatively low purchases compared to sales, cash accounting is normally beneficial. HMRC provide some helpful advice.

You will not be allowed to use the cash basis for VAT if you are not up to date with your VAT returns and payments.

Note that the cash basis for VAT is not the same as the cash basis for income tax. Just because you are on the cash basis for income tax doesn't mean that you are also on it for VAT, and vice versa. You need to consider both separately. In particular the thresholds are different:

- You can only start using the cash basis for income tax if your turnover is below £150,000 threshold[76]. You can stay in the cash basis for income tax until the year after your turnover is £300,000.
- You can start to use the cash basis for VAT as long as your estimated VATable turnover during the next tax year is not more than £1.35m[77], and you can stay in the cash basis for VAT as long as your turnover is below £1.6m.[78]

HMRC give more guidance on the cash basis here.

Flat-rate scheme

The flat-rate scheme is a simplified way of dealing with your VAT. Because it is simpler, it is less likely that you will make a mistake, because there are fewer rules to follow.

However, new rules were introduced from 1 April 2017, which make the flat-rate scheme very unattractive if you are a 'limited cost trader'– broadly speaking, if your VAT inclusive expenditure on goods is less than 2% of your turnover in a period, or less than £1,000 per annum. This is explained here.

[75] For simplicity, this example ignores the usual VAT return periods. These are normally quarterly.
[76] Unless you are on Universal Credit. You must use the cash basis for UC, and you are then allowed to use it for tax as long as your turnover is not more than twice the VAT threshold
[77] Regulation 58 of the VAT Regulations 1995
[78] Regulation 60 of the VAT Regulations 1995

HOW THE FLAT-RATE SCHEME WORKS

Instead of deducting the VAT on your purchases from the VAT on your sales, and paying the balance to HMRC, you apply a fixed percentage to your VAT inclusive sales.

Unless you are a limited cost trader, the percentage depends on your business category. Categories which may be relevant to BECTU members are set out on the next page. If you can't find a category which applies to your business on that summary list, you should check the full list here. The full list also contains two categories for those who don't fit into the others – 'business services not listed elsewhere', and 'any other activity not listed elsewhere'. Both of these categories currently have a percentage of 12%.

Categories likely to be relevant to BECTU members	
Film, radio, television, or video production	13%
Hairdressing or other beauty treatment services	13%
Computer and IT consultancy or data processing	14.5%
Photography	11%
Computer repair services	10.5%
General building or construction services (where materials cost at least 10% of the relevant turnover)	9.5%
Labour-only building or construction services (where the materials cost less than 10% of the relevant turnover)	14.5%

For the first year of VAT registration, you receive a further 1% discount on the rate set out in the list.

You can only join the flat-rate scheme if your turnover (excluding VAT) for the next year will be £150,000 or less. The flat-rate scheme has some disadvantages, and it is recommended that you read the HMRC guidance booklet if you are considering using it.

This is more detailed than the general overview on the gov.uk site, which is here. To see how the flat rate works, see example Stefan2 (below).

Example: Stefan 2 (Self Employed)

Stefan's supplies are categorised as 'general building and construction'. Assuming he is not using the cash basis:

- Under normal VAT rules his VAT would be: £20,000 – £4,000 = £16,000
- Under the flat rate scheme his VAT would be: £120,000 x 9.5% = £11,400

Reduction: £4,600

The £4,600 reduction is permanent: Stefan never has to pay it over to HMRC as VAT. But it increases his business profits, which are, of course, subject to income tax and NICs.

LIMITED COST TRADERS

A person whose VAT inclusive expenditure on goods is less than 2% of their turnover in a period, or less than £1,000 per annum, is a 'limited cost trader'. The flat rate percentage for all limited cost traders is 16.5%. HMRC have provided a calculator to help you to see if you are a limited cost trader[79].

The definition of 'goods' for these purposes includes moveable items or materials exclusively used in your business. Gas and electricity are also 'goods'. But 'goods' do not include any services, or capital items. For example, 'goods' do not include:

- travel and accommodation
- rent
- software you download onto your computer
- vehicle costs, including fuel
- rent, internet, phone bills and accountancy fees
- gifts, promotional items and donations
- goods you will resell or hire out, unless this is your main business activity
- training and membership subscriptions
- capital items, for example office equipment, laptops, mobile phones and tablets used in your business

The 16.5% rate means that using the flat rate scheme is likely to cause you to pay more VAT than if you used normal VAT accounting. HMRC has provided[80] the following useful examples:

Example 1

A business has a flat rate turnover of £10,000 a quarter. It spends £260 on relevant goods. This is more than 2% of the flat rate turnover and more than £250 so the rate they need to use is the sector rate for their business.

Example 2

A business has a flat rate turnover of £20,000 a quarter. It spends £325 on relevant goods. This is more than £250 but less than 2% of the flat rate turnover so the rate they need to use is 16.5%.

Example 3

A business has a flat rate turnover of £10,000 a quarter. It spends £225 on relevant goods. This is more than 2% of the flat rate turnover but less than £250 so the rate they need to use is 16.5%.

All examples here are expressed on a quarterly basis, because most Bectu members will be filing returns four times per year.

[79] See https://www.gov.uk/vat-flat-rate-scheme/how-much-you-pay under the heading 'if you spend a small amount on goods'.

[80] See the examples at www.gov.uk/government/publications/vat-notice-733-flat-rate-scheme-for-small-businesses/vat-notice-733-flat-rate-scheme-for-small-businesses#section4

USING A LIMITED COMPANY

WHY USE A LIMITED COMPANY?

Many self-employed people are happy to continue as they are. However, there may be tax advantages to using a limited company – often known as a personal service company (PSC).

However, there are significant risks, including HMRC deciding that you are within anti-avoidance legislation (known as IR35), which is aimed at preventing some people accessing the tax advantages.

You are strongly advised not to set up a PSC without taking professional advice.

HOW TO OPERATE VIA A PSC

If you operate via a PSC, all contracts for services must be with that company. Your tax adviser may need to agree amendments to the draft contracts sent to you by your engager or agent, to check that they are with the company and that their terms are compliant with IR35, and legal advice may also be advisable.

You will normally be a director and employee of your PSC, and own the shares. You can give or sell some of the shares to others, for instance, your partner or another family member. Then they will be a shareholder too.

The company will need to consider whether to register for VAT. You cannot use your existing self-employed registration.

The company will need its own bank account, and the money earned for your work legally belongs to the company and not to you personally. For you to have a right to the money, the company must decide to pay it to you, for example as salary or as a dividend. The tax and NICs implications are discussed below.

It is very difficult to operate via a company without professional help. So you are likely to need an accountant who can help you run the company and make sure you comply with the more demanding administrative requirements. For example, the company will have to file accounts and returns at Companies House as well as comply with the tax rules. HMRC give outline guidance on what needs to be done.

THE TAX AND NICS ADVANTAGES

As set out earlier in this Booklet, if you are self-employed you are taxed on your profits at the income tax rates. In most of the UK these are 20%, 40% and 45%, depending on your total income level, with different bands applying to Scottish taxpayers. You also have to pay Class 2 and Class 4 National Insurance.

Historically there have been advantages to using a company, subject to the anti-avoidance rules ('IR35'). The rest of the paragraphs under this heading ('the tax and NICs advantages') assume that IR35 does not apply to your engagements. IR35 is considered briefly here.

If you have a company, the company pays tax on its profits at 19%. There is no 40% or 45% rate for companies.

An efficient way to take money out of the company is to pay yourself a small salary, just over the 'lower earnings limit' of £6,515 pa[81] (which entitles you to a qualifying year for state pension purposes[82] along with certain other benefits) but not over the secondary threshold of £8,840. Salaries below that threshold do not attract either employer or employer NICs.

A salary of this level is also below the personal allowance limit (£12,570 in 2021-22). However, you must put your salary on the employee pages of your SA tax return.

Any profits remaining in the company can normally be withdrawn as dividends, which are paid free of NICs. As a result you make a NICs saving. However, the rate of tax on dividends has increased for those receiving more than £2,000 a year of dividend income. This means that the overall advantage of saving NICs has reduced and may be eliminated entirely. It is even possible that using a company will cost you money compared with working on as a self-employed basis.

If you have transferred some of the company's shares to a spouse or partner, dividends can also be paid to him or her. If that person has no taxable income, or a very low income, the first slice of these dividends is not taxable at all (because of the personal allowance) and the second slice of £2,000[83] is taxable at 0% because of the dividend allowance. The balance will be taxed at the dividend rates as explained here.

Transferring shares to your spouse/partner and then paying a dividend can therefore be tax efficient. However, remember that both the shares and the dividends belong to your spouse/partner, and not to you. There are sometimes complications with these arrangements, so before you transfer shares you should seek professional advice.

If you have a good year, you may decide not to pay out all the company's profits as dividends (perhaps because if you did, it might trigger higher rates of tax). You can keep the profits in the company and pay them out in a later year when business may not be so good, or (perhaps) tax rates have come down.

THE ANTI-AVOIDANCE LEGISLATION (IR35)

Anti-avoidance legislation (known as IR35) prevents some people accessing these tax and NICs advantages. However, IR35 will not apply to you if you would have been genuinely self-employed for an engagement had you operated as a sole trader (ie without a company). If you are not sure if you would have been self-employed, see 'Am I self-employed?'

The rules for IR35 changed from 6 April 2017 in relation to engagements with 'public sector' clients, including the BBC[84], and changed for medium and large private companies from 6 April 2021. The key change is that the liability for unpaid employment taxes, if the relationship between engager and worker turns out to be one of employment, transfers from the personal service company (PSC) to the engager.

[81] The figures given are those for 2021-22.

[82] There is some further information about qualifying years here.

[83] See the previous footnote.

However, small private sector enterprises who engage workers through PSCs are exempt from this change, and the tax risk remains with the worker's personal service company. A company is defined as 'small' if it meets two out of three criteria:

- Turnover below £10m;
- Balance Sheet below £5.1m;
- Fewer than 50 employees;

Following these changes, all public sector engagers, and all medium and large private companies operate under the same IR35 regime, including small private companies that are owned by larger groups.

How does IR35 work?

If you would have been an employee of your engager if you didn't use the company, then you are within IR35. This means that your engager has to deduct roughly the same PAYE and NICs as would have been paid if you had been a direct employee). This needs to be considered on an engagement-by-engagement basis, since some might be within IR35, while others might not.

If an engagement is within IR35, the amount your engager needs to pay PAYE, employers' NIC, and employees' NIC to HMRC, and will make the appropriate deduction from the freelance worker's fee..

Most travel, subsistence and accommodation costs reimbursed or paid to you by the PSC or another person (such as the client) are taxable as "benefit in kind".[85].

The combination of these rules means that it is very expensive to be caught by IR35 if you work for a small engager and carry the tax risk in your PSC. In addition, the HMRC investigation and enquiry process is often lengthy and can be costly. If your engager is a medium or large enterprise, follows the legal process laid down, and determines that a PSC worker is not in an employment relationship with them, the PSC is relieved of any tax risk, except in the unlikely event that their contract contained an indemnity clause ostensibly protecting the engager against any tax action by HMRC, but probably difficult to enforce. This, however, depends on future case law in the courts.

Whether the IR35 risk lies with an engager, or a PSC working for a small engager, if "caught", the "fee payer" who is last in the chain of payment above the PSC may have to pay 4 years of back tax and NICs, 6 years if found to have been 'careless' and as much as 20 years if found to have acted 'deliberately'.

If HMRC decide that your PSC is caught by IR35, and you don't agree with their decision, you can appeal to HMRC, and if HMRC reject your appeal, you can then notify the appeal to the First-tier Tax Tribunal. It is suggested that you obtain advice from a tax specialist before doing so.

IR35 in the public and private sectors for larger employers: April 6 2021 onwards

Where your PSC has an engagement with any client (unless they are 'small' – see below) new rules have applied from 6 April 2017 in the public sector and 6th April 2021 in the private sector. Under those rules, responsibility for deciding whether IR35 applies to an engagement rests on the client, not your PSC.

85 s 339A ITEPA and www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm5500

From 6 April 2021 the responsibility for deciding status transfers to engagers, with an exemption for small engagers (below two out of three of the following criteria:

- turnover below £10.2m p.a
- balance sheet below £5.1m
- fewer than 50 employees

If the client decides the engagement is inside IR35, it must deduct PAYE and employee NICs from the payment due for your services. It also must pay employer NICs to HMRC. This transfer of the worker's fee is complicated by the need for the PSC to have access to a payroll system that can submit a Full Payment Statement to HMRC in respect of the worker, and issue a P60 at the end of the tax year. In addition, the tax position of expenses like travel and subsistence if "caught" by IR35 is not favourable, and the application of VAT (if registered) to the remittance from the engager needs to be referred to an accountant.

Ultimately, if an engager insists that, despite working through a PSC, you are actually in an employment relationship, it will often be easier, and no more costly, to ask to be paid directly through their PAYE payroll system, and be given access to their expenses policy and process.

Unfortunately, being on PAYE purely for tax purposes does not necessarily guarantee the employment rights that an equivalent employee would enjoy, but it simplifies the accounting, expenses, and VAT problems that would otherwise ariseIf there is an agency or other intermediaries between your PSC and the end client, the actual fee-payer has responsibility for deducting the PAYE and NICs.

The client is still responsible for deciding your status, and must issue a Status Determination Statement to both the worker, and to the fee-payer (which may be the engager, or the last intermediary in the chain before the PSC receives payment).

The engager may decide for itself whether your engagement is inside or outside IR35; it may use CEST, or it may rely on a status review by an independent expert. Reference may be made to the HMRC grade list, or to the worker's Lorimer letter if there is one. Note that CEST assesses employment status without taking into account the whole pattern of your work, so it may not give the correct outcome when your PSC has a lot of different engagers, and so its position is similar to that of Mr Lorimer.

If the client wrongly categorises your engagement as outside IR35, HMRC will normally pursue the client (not the PSC) for the unpaid PAYE and NICs. However, if the engager has made its decision based on fraudulent information provided by you, a person connected to you, or an office-holder of the PSC[86], HMRC will instead pursue the PSC.

WHAT HAPPENS IF MY ENGAGEMENT IS WRONGLY CATEGORISED AS WITHIN IR35

If you think the client has wrongly categorised your engagement as inside IR35, BECTU suggests the following possibilities. However, it emphasises that the position is not straightforward and there is as yet no experience of how the courts or tribunals would respond to PSCs which seek to challenge

[86] Finance Act 2017, Sch 1, inserting s 61V into ITEPA

an incorrect categorisation. BECTU is therefore putting forward the following as suggestions only: members should obtain their own tax advice.

- First, contact your engager and ask why your engagement has been treated as within IR35. You have a legal right to make representations[87] and your engager has to reply within 45 days. If CEST has been used, you should ask for a copy of the audit trail, and can yourself test whether the answers given by the client are correct.
- Then, check that you are right that the engagement is outside IR35. The law is complicated and your engager may be correct. You should consider the status tests and the facts of your engagement, and talk to your accountant. You should also consider instructing a tax adviser who specialises in employment status. Remember that your employment status is determined by the relationship with your client during an engagement, and not by whether or not you have registered for self-employment, possess a UTR number, or have previously been treated as self-employed)
- If the specialist agrees the engagement has been wrongly categorised, provide your engager with that advice and see if that is sufficient for them to change their mind and reverse the PAYE deductions. There is guidance on how to do this here.
- If the engager does not change his/her mind, you have a right to appeal against the PAYE P2 coding notice issued to you[88]. You should do this by writing to HMRC, and explaining why you consider that this engagement is outside IR35. You will need to refer the relevant case law as well as the detailed facts of your engagement, including any contracts signed on behalf of your company.
- If HMRC do not agree with your objection, you can appeal that decision to the Tax Tribunal.
- As an alternative, you could try to recover the PAYE via the corporation tax ('CT') return for your PSC. Box 185 of the CT return is headed 'income from which income tax has been deducted' and the Notes to the CT return say that you should provide an analysis of any figure entered into that box, as part of the computation which accompanies the CT return.
- if HMRC then open an enquiry into the CT return (as is likely), you should provide HMRC with detailed reasons based on case law as to why the engagement is outside IR35. These could be taken from the specialist advice/opinion you have already obtained, or you may wish to obtain further advice at this point, to help with the drafting of your arguments in the context of HMRC's approach.
- If, having considered your reasons, HMRC do not agree, they will issue a closure notice and amend the CT return on the basis that engagement was inside IR35.
- Your PSC can appeal that decision but must do so within 30 days. If HMRC reject the appeal and confirm their decision, your PSC can ask for that decision to be reviewed. If the Review Officer agrees with the original HMRC decision, the PSC can notify the appeal to the Tribunal, but there is a further 30 day time limit.
- Late appeals may be allowed, but it is unwise to assume that permission will be given, as the rules are increasingly tight.

[87] ITEPA draft s 61N and s 61NA

[88] Regulation 18 of the PAYE Regulations

- You can take the case to the Tribunal yourself, but you are strongly advised to instruct a barrister or accountant specialising in employment status and tax who is familiar with Tribunal proceedings.

If you do challenge a public sector client in relation to their decision about the IR35 status of your engagement, please tell BECTU. This is a new and difficult problem and we may be able to assist.

APPENDIX 1: HMRC CONTACT DETAILS

This Appendix gives the HMRC contact numbers which were current when this Booklet was published. It can take time to contact HMRC by phone so be prepared to try several times, especially around key payment deadlines, such as 31 January. There is a list of other contact numbers and methods here.

General enquiries

You can call HMRC on 0300 200 3300 if in the UK, or on 0044 135 535 9022 if overseas, for questions about income tax or Class 4 NICs. You should have your NI number with you when you call.

You can also use twitter to get general advice, but obviously do not include any personal details. Start your tweet with @HMRCcustomers

Self-assessment

For general self-assessment enquiries call 0300 200 3310 or, if calling from outside the UK, call 0044 161 931 9070. The helpline is open from 8.00 am to 8.00 pm Monday to Friday; from 8.00 am to 4.00 pm Saturday and from 9.00 am to 5.00 pm on Sunday. It is closed on Bank Holidays.

You should have your NI number, and your Unique Taxpayer Reference (UTR) number with you when you call. These are on most letters and statements you receive from HMRC.

You may also be able to use HMRC's webchat service to discuss Self Assessment. Use this page and scroll down to get the appropriate link.

If you write to HMRC you should use the address on your self-assessment return or the Notice to File. If for some reason you don't have recent correspondence, you can write to them, quoting your NI number and UTR, at HMRC BX9 1AS.

If you are having difficulties with HMRC's online services, see the advice here.

TV, Film and Broadcasting Unit

The TV, Film and Broadcasting Unit is now part of the HMRC Employment Status team based at the Employment Status Customer Service Unit, S0733, Newcastle Upon Tyne NE98 1ZZ. Their contact telephone number is 0300 123 2326. It is open between 8.30am to 4.30 pm Monday to Friday.

VAT

For advice on VAT contact 0300 200 3700. The helpline is open 8.00 am to 6.00 pm, Monday to Friday. For more details, see the guidance here.

Complaints

HMRC have a range of numbers for complaints, which can be seen here.

Problems paying tax or VAT

If you cannot pay your tax or VAT on time, you should call the Business Payments Support service before the deadline. The number is 0300 200 3835. The helpline is open from 8.00 am to 8.00 pm Monday to Friday, and 8.00 am to 4.00 pm Saturday and Sunday. There are more details here.

If you obtain get an extension of time to pay, you are likely to be charged a penalty and there may be other distressing consequences (such as recovery proceedings in the court, and collection using bailiffs), see further guidance here.

APPENDIX 2: HMRC FILM AND TV GUIDANCE

ESM4115

PARTICULAR OCCUPATIONS: ENTERTAINMENT INDUSTRY: TV AND RADIO WORKERS: BEHIND CAMERA WORKERS ROLES TREATED AS SELF-EMPLOYED

Behind camera individuals in the media sector are roles such as cameramen producers, writers, directors, gaffers, carpenters, electricians and stage managers.

This guidance does not apply to actors and other performers. ESM4121

There are some roles where it has been agreed that self-employed status is appropriate provided the associated criteria in either Column A or Column B (if relevant) is fulfilled. For a full list of these roles see (Appendix 1) ESM4118

These roles can normally be regarded as self-employed provided either:

- any criteria listed in column A of Appendix 1 for the specific role is fulfilled,

or

- for those roles marked with an asterisk * in column B of Appendix 1, the engagement is on a "specific production" for a finite period

"Specific production" means either:

- a feature film, single drama, single documentary, commercial or music video,

or

- a single programme or series of programmes, at a specific interval for a fixed term

Where an individual is engaged for another series. Each time a programme is recommissioned the employment status of the individual should then be reviewed more thoroughly. Consider whether, if the engager re-hires the same person for further engagements, each of those engagements continues to be a separate agreement, or if the parties have created an overarching agreement for a longer-term commitment to each other. ESM0553

If the circumstances have changed, you should look at the whole picture and apply the general guidance.

The list of roles is not exhaustive. Where a role is not listed or the criteria is a more detailed exercise is required to consider the case applying general status rules. ESM0500.

ESM4117

PARTICULAR OCCUPATIONS: ENTERTAINMENT INDUSTRY: TV AND RADIO WORKERS: BEHIND CAMERA WORKERS SHORT TERM ENGAGEMENTS

Some behind camera individuals may not meet the criteria in the list of roles normally treated as self-employed (for example if they are not providing their own equipment), but they might work on a succession of short term engagements with a large number of different clients.

'Short' in this case means 10 days or less.

Where the work patterns and business structure are consistent with the circumstances of the Lorimer case, such individuals can be treated as self-employed. ESM4121

It can be difficult for an engager to verify such work patterns, the individual can seek confirmation from HMRC that an engager may treat them as self-employed. ESM4110

For behind camera individuals who do not meet the criteria in the list of roles normally accepted as self-employed, and where the engager has determined their status as employment, HMRC will permit NI only deductions to be made provided that:

- the individual is engaged for a period of 7 days or less, and
- there are no predetermined arrangements in place for the individual to be engaged frequently or at regular intervals (for example if the individual is to provide their services for the first week of every month)

NI only deductions means that National Insurance contributions are deducted but no tax.

The period of 7 days includes rest days and weekends if these fall between the first and last days of engagement. For example, if a worker is engaged for Wednesday, Thursday and Friday and for the following Monday, Tuesday and Wednesday, the weekend must be counted and the limit of 7 days will be exceeded.

ESM4118

Particular Occupations: entertainment industry – TV and radio workers - behind the camera workers roles normally treated as self-employed,

From 20 December 2019 HMRC has replaced its paper guidance notes "Film, television and Production Guidance "with content in this manual. ESM4100

The paper guidance contained an "Appendix 1" list of roles that HMRC considered to be normally self-employed roles. The Appendix was a handy guide for the industry, if the conditions were met, the roles would be self-employed for tax. That allows HMRC and the industry to concentrate on advising on less straight forward cases. The list has been refreshed and updated to reflect modern roles and practices.

From 20 December 2019 treat individuals who meet these criteria as self-employed, this applies to new contracts, and extension of existing contracts. This list is not exhaustive. If the individual is not on this list it does not necessarily mean they are an employee. HMRC and engagers in the industry should use the full range of employment status indicators to decide the status of people not on this list. Employment Status Guidance ESM0500.

APPENDIX 3: HMRC LIST OF GRADES (ESM4118)

Normally treated as self-employed on a single production or series, or subject to criteria (see ESM4115). Discussion continues with HMRC over possible additions to the list. See Film, Television and Production Guidance – Replacement for Appendix 1 list on the HMRC website. Read more about this here: ESM4118 - Employment Status Manual - HMRC internal manual - GOV.UK (www.gov.uk).