



# **East Riding Voluntary Action Services (ERVAS) Limited**

## **Community Accountancy Service**

Delivering quality accounting services and training to the voluntary sector

### **Good Practice Guide:**

### **20 – Employment Status: Employed or Self-Employed**



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## **Introduction**

A worker's employment status, that is whether they are employed or self-employed, is not a matter of choice. Whether someone is employed or self-employed depends upon the terms and conditions of the relevant engagement.

If you work for someone else, it is important to know whether you are working for that person in an employed capacity or in a self-employed capacity as an independent contractor. If you are an engager, it is your responsibility to correctly determine the employment status of your workers.

A worker's employment status will determine the charge to tax on income from that employment or self-employment. It will also determine the class of NICs, which are to be paid.

## **Employed or self-employed?**

In order to answer this question it is necessary to determine whether the person works under a contract of service (employees) or under a contract for services (self-employed, independent contractor). For tax and NICs purposes, there is no statutory definition of a contract of service or of a contract for services. What the parties call their relationship, or what they consider it to be, is not conclusive. It is the reality of the relationship that matters.

In order to determine the nature of a contract, it is necessary to apply common law principles. The courts have, over the years, laid down some factors and tests that are relevant, which is included in the overview below.

As a general guide as to whether a worker is an employee or self-employed; if the answer is 'Yes' to all of the following questions, then the worker is probably an employee:

- ⊗ Do they have to do the work themselves?
- ⊗ Can someone tell them at any time what to do, where to carry out the work or when and how to do it?
- ⊗ Can they work a set amount of hours?
- ⊗ Can someone move them from task to task?
- ⊗ Are they paid by the hour, week, or month?
- ⊗ Can they get overtime pay or bonus payment?

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

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

It is beneficial to HM Revenue and Customs (HMRC) to classify persons as employed as opposed to self-employed since the charity (Employer) would have to deduct tax and national insurance under the PAYE system. HMRC has powers to review the situation as far back as 1944 when the PAYE was introduced in order to re classify persons as employees with all the consequences of penalties, fines and back taxes.

### **More Information**

For more information on this please see HM Revenue and Custom's website at [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

HMRC also have an Employment Indicator Tool on their website which you can use.



For further information please contact:

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