



TAX FOR FREELANCERS

A guide for BECTU members

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Introduction

This booklet gives an outline of UK tax for BECTU members. It concentrates on the issues which you are most likely to encounter.

Since most BECTU members are self-employed, this booklet only considers tax issues which are relevant to the self-employed.

It has sections on [income tax](#), the new [cash basis](#) for small businesses, [employment status](#) (including the [special rules](#) for Film and TV), [National Insurance Contributions](#), [VAT](#) and [using a limited company](#).

There are many areas it doesn't cover – such as the taxation of employees, capital gains, other income (such as interest or rent), overseas issues, inheritance tax, residence and domicile, tax credits and partnerships.

It is designed to be used both in printed form and online. There are hyperlinks within the booklet, connecting 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 of the hyperlinks don't work any longer, please send us an email.

Remember that tax is complex and changes often; this booklet only provides an outline of the position as at April 2013: it should not be used instead of professional advice.

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

General

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?](#)

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 [business income](#).

If your turnover (total business income) is, or soon will be, above the [VAT threshold](#), you may have to charge [VAT](#) on the work you do.

As a self-employed worker, you are required to [register](#) with HMRC. Failure to register can lead to penalties. Separate [registration](#) is required for VAT.

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 2013 and will finish on 5 April 2014. 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](#).

2013-14 onwards: the cash basis

For tax years 2013-14 onwards, there is a new and simpler way for small businesses to work out their profits for tax purposes. This is called 'the cash basis'. 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 is more about the cash basis, and how to start using it [here](#).

Years before 2013-14: the accruals basis

For years before 2013-14, you had to use the 'accruals' basis to work out your profits. This meant you had to include in 'income', not only the cash you had actually received, but amounts you had billed but hadn't been paid. If you are part-way through a job, you might also have to include an estimate of the value of the work you had done but hadn't not yet invoiced.

The accruals basis is complicated and almost every small business had to obtain professional help from an accountant. From 6 April 2013 you can still use the accruals basis if you choose to do so; the cash basis is optional.

VAT

If you are registered for [VAT](#), different rules apply. In particular, for many years the VAT rules have allow small businesses to account for VAT on the [cash basis](#). The rules for the VAT cash basis are different from those for income tax, so be careful not to get confused.

Income tax

Income tax is charged on your profits. It is also charged on [bank interest](#) and profits from [letting property](#). Special rules apply to [dividends](#).

For the tax year 2013-14, no tax is charged on the first £9,440 of your income¹. This is your personal allowance. If your income is over £100,000, your personal allowance is withdrawn. Pensioners may be entitled to a slightly higher personal allowance. The slice of income between £9,441 and £41,450 is taxed at 20% (the basic rate). Income above £41,450 and up to £150,000 is taxed at 40% (the higher rate). Income of £150,000 and above is taxed at 45%² (the additional rate). For more detail and the figures for the previous two years, see the HMRC [website](#)

¹ For 2012-13, the personal allowance was £8,105

² In 2012-13, the additional rate was 50%

Accounting periods and tax years

Every business has to make up its accounts every 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 2012 are £40,000 and those for the tax year 30 April 2013 are £50,000.

Because the accounting year ending 30 April 2012 *ends in* the tax year 2012-13, the £40,000 are her profits for 2012-13. And because the accounting year ending 30 April 2103 ends in the tax year 2013-14, 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 [here](#).

Your accounting profits will need adjusting for tax purposes, see [allowable expenses](#).

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, 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.

Business records should be kept for five years from 31 January following the end of the tax year. So your records for the tax year 2012-13 must be kept for five years from 31 January 2014, ie until 31 January 2019.

Filing self-assessment returns

Once you have registered with HMRC you'll receive a Self-Assessment (SA) tax return to complete each year. Use this to provide HMRC with details of your profits and any other taxable income.

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 if you are filing [online](#).

So the SA return for the 2012-13 tax year must be filed by 31 October 2013 if on paper, and by 31 January 2014 if you are filing online. If you file late you will incur [penalties](#).

When to pay the tax under SA

The normal tax payment date for self-employed people is 31 January after the end of the tax year. So the tax for the 2012-13 tax year has to be paid by 31 January 2014.

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 2010. Her first year was thus 2010-11. The tax filing deadline is 31 January after the end of that tax year, so it is 31 January 2012.

She filed her SA return on 31 December 2011, in good time for the deadline of 31 January 2012. It showed that tax of £10,000 is due.

On 31 January 2012 she had to pay:

For the tax year 2010-11	10,000
First payment on account for 2011-12 (50% of the 2010-11 figure)	<u>5,000</u>
	<u>15,000</u>

On 31 July 2012

Second payment on account for 2011-12 (50% of the 2010-11 figure)	<u>5,000</u>
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On 31 January 2013

Maria's tax calculation showed that her tax for 2011-12 was £18,000. Her payments on account were £10,000, so she has a further £8,000 to pay for 2011-12.

In addition, she had to pay £9,000 (50% of £18,000) as a payment on account for 2012-13.

So the total tax she had to pay on 31 January 2013 was £17,000 (£8,000 + £9,000)

It is a good idea to file your tax return before 31 January so that you know how much tax you will have to pay. If you wait until 31 January to file the return, and find that your tax is higher than you were expecting, you may not be able to pay it all. 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.

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](#).

You can pay your tax electronically or by other more traditional means. HMRC also provide [guidance](#) on this.

The cash basis for tax

Introduction

For tax years 2013-14 onwards³, there is a new and simpler way for small unincorporated businesses to work out their profits for tax and NICs⁴ purposes, called 'the cash basis'⁵. For all earlier tax years, businesses had to use the ['accruals basis'](#).

As with the rest of this BECTU guidance, this chapter is only an outline. Moreover, the rules for the cash basis are very new and may still change, so you should discuss the position with your accountant before you decide whether or not to use the cash basis. It is expected that you can choose to be in the cash basis simply by ticking a box on your tax return.

The cash basis isn't compulsory but it is a lot simpler than the accruals basis. Before you can use the cash basis you need to check that your profits are under the [threshold](#) – only small businesses can use the cash basis.

If you are already in business, 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 can necessarily use it for VAT, and vice versa. In this section of the BECTU guidance, the 'cash basis' means the cash basis for income tax.

How does the cash basis work?

³ Note that all the references in this section are from the 2013 Finance Bill, and so will not be law until after that Bill has Royal Assent, towards the end of July 2013. They will thus not be found in the statute until after that date.

⁴ Social Security and Benefits Act 1992, s 15 (1) taken together with Income Tax (Trading and Other Income) Act 2005 (ITTOIA), Part 2 as amended to include the cash basis rules.

⁵ ITTOIA, s 25A

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. If you are on the cash basis, you must use it for all trades or professions which you carry out during that tax year⁶.

There are no capital gains or capital losses on business assets if you are in the cash basis⁷. Instead, you simply include your sale proceeds in your receipts.

Who is allowed to use the cash basis?

You can start using the cash basis if your receipts for the tax year 2013-14 are below the VAT threshold⁸, which is £79,000 for 2013-14. Once you are on the cash basis, you can stay on that basis until the year after your receipts reach twice the VAT threshold⁹. These relatively high thresholds mean that many small businesses will always stay on the cash basis.

If you are a recipient of Universal Credit¹⁰, you **must** use the cash basis for Universal Credit purposes and can also use it for tax as long as your receipts do not exceed twice the VAT threshold¹¹.

You can use the cash basis if you are an individual ('sole trader') or work in a traditional partnership¹². 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 categories¹³. You also can't use the cash basis if you work through your own [limited company](#).

Moving to the cash basis

⁶ ITTOIA s 31A(3)(b)

⁷ Taxation of Chargeable Gains Act 1992, s 47B

⁸ ITTOIA s 31A

⁹ ITTOIA s 31B.

¹⁰ For more on Universal Credit, see <http://www.dwp.gov.uk/policy/welfare-reform/universal-credit/>

¹¹ ITTOIA s 31B(5). For 2013-14, twice the VAT threshold is £158,000

¹² But not one including a corporate partner, see ITTOIA s 31C(2). The position of partners is not covered in this BECTU Guidance.

¹³ ITTOIA s 31C, see p 7, para 12 at www.hmrc.gov.uk/budget-updates/march2013/simpler-income-tax-tech-note.pdf

When you move to the cash basis, the law aims to stop income being taxed twice (once on the old accruals basis and once on the new cash basis). Similarly, it also aims to prevent a double deduction for costs¹⁴.

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 been able to deduct in your tax returns – you can deduct this unrelieved expenditure in the first year of the cash basis¹⁵.

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 to do your work, such as for equipment, rent, heating etc. However, note the following points:

- interest is only allowed up to a maximum of £500¹⁶.
- 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](#)¹⁷. But this rule doesn’t apply for cars¹⁸. You can either claim [capital allowances](#) or [fixed deductions](#).
- Because you have only included cash received, you can’t deduct bad debts or doubtful debts¹⁹.
- You also can’t deduct the cost of entertaining or most gifts²⁰.
- If you make a loss, you can carry it forward for one year; you can’t carry it back or obtain sideways relief²¹.

¹⁴ ITTOIA s 227A

¹⁵ Capital Allowances Act 2001, s 240C

¹⁶ ITTOIA s 57A

¹⁷ Capital Allowances Act 2001, s 1(4)

¹⁸ ITTOIA s 33A(1)(b)

¹⁹ ITTOIA s 32A

²⁰ These are also disallowed under the accruals basis.

²¹ Income Tax Act 2007, s 74E. This is much more restricted than under the normal, accruals basis see www.hmrc.gov.uk/manuals/bimmanual/BIM75400.htm

Interactions with VAT

If you are not VAT registered you include in your costs any VAT included in the price you have paid for goods and services.

If you are VAT registered, HMRC say²² that you can either:

- exclude the VAT you charge on your invoices from your income, and also exclude the VAT on your inputs from your costs; or
- include the VAT you charge on your invoices and include the VAT you incur on your costs.

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

Leaving the cash basis

You have to leave the cash basis in the year after the one in which your receipts exceed twice the VAT threshold for that previous year²³. If, exceptionally, your receipts in the following year are below the VAT threshold (not below twice the threshold) you can remain in the scheme.

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 basis²⁵.

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

²² HMRC Note on the cash basis, see p 8, para 16 at www.hmrc.gov.uk/budget-updates/march2013/simpler-income-tax-tech-note.pdf

²³ ITTOIA s 31B

²⁴ ITTOIA s 31D

²⁵ HMRC Note on the cash basis at page 7 para 10 at www.hmrc.gov.uk/budget-updates/march2013/simpler-income-tax-tech-note.pdf

you so choose.²⁶ If it is capital expenditure, it may be eligible for capital allowances²⁷.

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

²⁷ Capital Allowances Act 1991, s 66A

Expenses

Allowable expenses

The self-employed are taxed on profits – trading income less allowable expenses. Your allowable expenses are money you have spent with the sole purpose of earning the profits. They might include:

- Travel to and from your engagements (if your base is at home²⁸) – such as rail fares, petrol and parking costs.
- 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 what 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 purposes²⁹.

Part-business, part-private: household expenses

You can't deduct personal expenses for tax purpose. However, if you have spent money partly for business and partly for your private benefit, you may be able to claim a [fixed deduction](#) (from 2013-14) or else to apportion the cost.

For example, many of the bills for household expenses cover both business and private use. The part of the cost attributable to business use is allowable³⁰.

²⁸ In a recent Tax Tribunal case, the Tribunal took a very narrow view of when a self-employed person can claim travel to and from a place where he regularly works, see *Samadian v R&C Commrs* [2013] UKFTT 113(TC) at <http://www.financeandtaxtribunals.gov.uk/Aspx/view.aspx?id=7024>. This case is likely to be appealed.

²⁹ Income Tax Trading and Other Income Act (ITTOIA), section 45

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

Fixed deductions for expenses³¹

For 2013-14 onwards³², 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 mile³³. You can't claim these fixed deductions if you have already claimed capital allowances or other relief on the vehicle expenditure³⁴.
- Business mileage for motor bikes at 24p per mile³⁵.
- Business use of home³⁶. 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 business³⁷. 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 everyone³⁸, whether or not you are on the [cash basis](#).

³⁰ ITTOIA s34 (2)

³¹ The references in this section are to the new provisions introduced by Finance Act 2013, so they will be included in ITTOIA after Royal Assent to the Finance Act, probably around the end of July 2013.

³² HMRC may agree that they can be used for earlier years.

³³ ITTOIA s 94F

³⁴ ITTOIA s 94E

³⁵ ITTOIA s 94F

³⁶ ITTOIA s 94H

³⁷ ITTOIA s 94I

Purchase of assets

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'. If you are on the [cash basis](#), then you don't have to worry about capital allowances, you can deduct the cost of most business assets³⁹ when working out your profits.

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

For expenditure after 1 January 2013 to 31 December 2014, the AIA allows you to deduct up to £250,000⁴⁰ of plant and machinery expenditure from your profits. A lower figure applied before this. So if you buy a new computer for £2,000, you can deduct this in full from your trading income.

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 HMRC website, but capital allowances are complex and you are likely to need the help of a tax adviser.

³⁸ But not partners in a partnership which includes a corporate partner, see ITTOIA s 94D

³⁹ But not cars. You must either claim a fixed deduction or capital allowances, usually after apportioning between business and private use.

⁴⁰ Confusingly, this is not tied to tax years.

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.

The figures in this section are those for 2013-14. HMRC provide the equivalent amounts for years [2011-2013](#) and [2007-2010](#).

Class 2 NICs

Class 2 NICs are charged at a flat rate of £2.70 per week. If your profit is below £5,725 you don't have to pay Class 2, as long as HMRC have granted you a 'small earnings exception'. To obtain an exception you must complete form [CF10](#). You also don't have to pay Class 2 if you are above the [state pension age](#).

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

When you start your self-employment, you have to [register for tax](#). This also includes registration for Class 2. HMRC also provide [advice](#) on the way you can pay Class 2.

Class 4 NICs

You pay Class 4 NICs at 9% on all profits between £7,755 and £41,450. There is no relationship between the threshold for starting to pay Class 4 and the threshold for paying tax (the [personal allowance](#)).

Once your earnings reach £41,450, your Class 4 NICs drop to 2% on all profits above that limit. This is the same point where you move from [basic rate tax](#) to [higher rate tax](#)⁴¹.

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](#).

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-employed⁴². They pay Class 1 NICs at 12% on earnings between £7,755 and £41,450 then a further 2% on earnings above that. In addition, employers⁴³ must pay Class 1 employers NICs at a rate of 13.8% on all earnings above £7,696, with no upper limit⁴⁴

The NICs difference between employment and self-employment is one of the reasons why it is very 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 or your engager if they think you should really have been classified as an employee, see '[Am I self-employed](#)'.

⁴¹ There was no similar link in recent previous years.

⁴² These are the figures for tax year 2012-13. HMRC provides the figures for [2010-2012](#) and for [2007-2010](#).

⁴³ For 2014-15 there will be an Employment Allowance which eliminates the first £2,000 of employer NICs. This was announced in the 2013 Budget and few details are available. It is expected to apply per employer per year.

⁴⁴ These are the figures for tax year 2012-13. HMRC provides the figures for [2010-2012](#) and for [2007-2010](#).

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 Pay As You Earn (PAYE). This gives you a cash flow advantage over employees.

You can also deduct more [expenses](#) from your [income](#), so you pay tax on a lower amount. You will pay lower National Insurance Contributions ([NICs](#)) than employees, but as a result you are likely to be entitled to fewer benefits if you are out of work⁴⁵.

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 decide to operate via a [company](#), which provides further tax planning opportunities.

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. This 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.

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

⁴⁵ Benefits are as complex as tax. The Department of Work and Pensions has an interactive [website](#) which may help you establish if you are entitled to benefits.

self-employment but also are entitled to holiday pay, pension contributions, the national minimum wage and certain other protections from your status as a worker. For more about the employment law rights of workers, see the Directgov [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](#), [National Insurance](#) 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 from the courts. From this case law various principles have been established. These 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.

The employment status indicator (ESI)

The status tests are complicated. HMRC have provided a helpful [online test](#) which you can take to see if you are self-employed. If your engager completes this online test honestly, and it says you are self-employed, he can rely on this if there is a later investigation into your status by HMRC. If you complete it, rather you're your engager, then HMRC say that the test is 'indicative'.

The ESI is anonymous. Instead, the computer allocates a ten digit ESI reference number (look for it in the top left of the screen). When you/your engager have completed the ESI, you/your engager should print or save copies of the 'Enquiry Details' screen and the 'ESI Result screen', showing the ESI reference mentioned above. If your status is questioned in the future, HMRC will only be bound by the ESI outcome if these copies can be produced. Remember that if the person who completes the ESI is you rather than your engager, then HMRC are not necessarily bound by it.

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 have tried to make things simpler for those

working in film and TV. They provide engagers (such as the BBC and other film or TV companies) with a list of [‘self-employed grades’](#). If your job is within one of these grades, you don’t need to worry about the case law, you can rely on the list of self-employed grades.

If your grade is not on the list, that doesn’t mean that you are an employee. Remember that the grade list is a shortcut for HMRC and engagers. It isn’t the law. 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 [ESI](#).

[Lorimer letters](#)

If you work in film and TV, but are not in a ‘self-employed grade’, you may nevertheless be given a ‘special authority letter’ by HMRC’s Film Industry Unit (FIU). These special letters are also known as ‘Lorimer letters’ or ‘LP10’ letters.

If you have a Lorimer letter, you are accepted as 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. For more on this topic, including how to get a Lorimer letter, what happens if your letter is out of date, or HMRC refuse to give you a letter, see [Lorimer letters](#).

In addition to Lorimer letters, FIU also Issue ‘specific opinion letters’ (previously called ‘specific authority letters’ which relate only to a single engagement, so can’t be taken to your next job. These depend on your individual circumstances.

7 day rule

If you work in film or TV, HMRC will also 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 is known as the ‘7 day Rule’ and is set out in HMRC’s [Film Industry Guidance](#)⁴⁶.

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

⁴⁶ At paragraph 2.3.

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.'

HMRC say that the purpose of the 7 day Rule is to prevent you having too much tax deducted from a succession of engagements under the PAYE system. They also say that Rule does not apply for National Insurance purposes so [Class 1](#) (employee) NICs may still be payable.

However, if you often make use of this 7 day Rule, it would be surprising if you did not qualify for a Lorimer letter. HMRC accept that the reason for the Rule is that 'many employed workers in the Film, Production & TV Broadcasting Industry have short engagements with a succession of different employers' – in other words, for the same reason that Mr Lorimer was held by the courts to be self-employed. See [Lorimer letters](#) for more on the background to Mr Lorimer's case.

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 and you do not have a Lorimer letter.

If you continue to disagree with HMRC, you have a right to [appeal](#) to the First-tier Tax Tribunal. It is suggested that you obtain advice from a tax specialist before doing so. BECTU would 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 change as society develops. They are the main way in which the question of whether you are employed or self-employed is decided.

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?⁴⁷ 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.

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 employee⁴⁸. 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 real⁴⁹.

⁴⁷ *Market Investigations Ltd v The Minister of Social Security* (1968) 2 QB 173

⁴⁸ *Express and Echo Publications Ltd v Tanton* [1999] IRLR 367

⁴⁹ *Autoclenz v Belcher* [2011] UKSC 41

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, then this isn't sufficient, on its own, to make you self-employed⁵⁰.

Hiring staff

If you have your own employees or sub-contractors, you are very likely to be in business on your own account. You will thus be self-employed and not an employee of your engager⁵¹.

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 law⁵² 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 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 you have to carry it out, are an intrinsic part of the work, and the 'control as to where' and control as to when' 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 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.

⁵⁰ *MacFarlane and Skivington v Glasgow City Council* [2000] EAT/1277

⁵¹ *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

⁵² *Ready Mixed Concrete (South East) Ltd. v. Minister of Pension and National Insurance* [1968] 2 QB 497

Financial risk and opportunity to profit

If you are paid on a fixed fee basis rather than 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 almost certainly self-employed⁵³. 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-employed⁵⁴. If you only supply 'small tools' this is a neutral factor, ie it is unlikely to help decide the question one way or the other⁵⁵.

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 work⁵⁶ – for instance, because employees of your engager report to you, you conduct appraisals, go on team-building events and/or attend employee functions⁵⁷. 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.

Lots of engagers – the *Lorimer* case

⁵³ *Global Plant Ltd v. Secretary of State for Social Services* [1972] 1 QB 139

⁵⁴ *Humberstone v Northern Timber Mills* [1949] 79 CLR

⁵⁵ *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

⁵⁶ *Stevenson, Jordan & Harrison v MacDonald & Evans* [1952] RPC 10.

⁵⁷ *Future Online Ltd v Faulds* [2004] STC (SCD) 237 and *Castle Construction (Chesterfield) Ltd v Revenue and Customs Comrs* [2009] STC (SCD) 97

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](#).

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.

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 was a vision-mixer who worked for a large number of clients. HMRC argued that Mr Lorimer was self-employed. The judge rejected this, saying he 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 a large number of companies (increasing from 5 in the first year to over 20 by the third year). After Mr Lorimer won his case, HMRC changed their [guidance](#). The same approach is reflected in the [FIU Guidance Notes](#), which say (at 2.2):

‘where a worker has a business structure that includes a number of separate, short engagements, a worker may be regarded as self-employed, even though each of his engagements, viewed in isolation, would suggest that he was an employee.’

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

⁵⁸ (1993) 66 TC 349

To help engagers, HMRC's Film Industry Unit ([FIU](#)) issue two sorts of 'Authority Letters'. If an engager takes on someone with an Authority Letter, he doesn't need to worry about checking that person's employment status himself – he can simply rely on the Authority Letter.

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 BECTU 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 get paid gross and don't have PAYE and NICs deducted, and your engager doesn't have to worry about employment status for tax.

How do you get a Lorimer Letter?

You need to provide the [FIU](#) 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.

You are likely to get a Lorimer Letter if you meet some or all of these criteria:

- Have a lot of different engagers
- Work for a short time for each
- Spend time and money travelling to the sites
- Run your business in an organised way
- Own or lease equipment you use for your work
- Negotiate your rates. Fixed fee is very strong evidence of self-employment, but many self-employed people are paid an hourly rate
- Are paid by invoice
- Are hired to do a specific task and can'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:

1. The letters are valid up to a certain date. In the old days, they were open ended, but more recent letters all have an end date. You need to renew your letter in good time – if it goes out of date, it will cease to be valid.
2. HMRC 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 May 2012, and the

FIU provide one, the letter is only valid from 1 May 2012. 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 FIU should backdate the letter – refusing to do so causes all sorts of problems, including for VAT. These are discussed below)

3. The Lorimer letter can only be used for engagements which are expected to last for ten days or less. This isn't necessarily ten consecutive days. If the engagement looks as if it will stretch 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.
4. 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 the FIU 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 are correct. If you are carrying out your work on a self-employed basis, and meet the [status tests](#) and/or operate like Mr Lorimer, then you are not engaged under a contract of employment.

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

So what should the engager do if I don't have a Lorimer letter?

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](#). He can also use the online [Employment Status Indicator](#), and rely on the outcome, as explained [here](#).

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](#). The [FIU Guidance Notes](#) open by reminding engagers that 'it is your responsibility to correctly determine the employment status of your workers.'

One possible 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 were 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.

What can you do about being treated as employed?

If, despite your best efforts, the engager insists on paying you as if you were an employee, what can you do?

The law decides whether you are employed or self-employed, not the Lorimer Letters. So not having a letter doesn't mean you are employed.

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 from you by the engager. You also need to consider the [VAT position](#).

Can you 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. You may want to offer an indemnity if that would help (see above for more on indemnities).

The engager can reverse wrongly deducted PAYE and NICs in the same tax year⁵⁹. If the deduction was in the previous tax year, specialist advice should be taken.

How do I get the tax back?

All self-employed people have to complete a [self-assessment](#) tax return. There is no place on the 'self-employment' pages for this sort of wrongly categorised income. The best place to put it is in Box 16 in the main part of your return. This box is called 'other taxable income – before expenses and tax taken off'. Put the gross amount you have been paid in this box.

Then put any expenses relating to this income, such as travel, equipment hire etc. in box 17, and the PAYE deducted in box 18. Then explain what you have done in box 19 – 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.

How do I get the NICs back?

You need to work out how much [Class 4 NICs](#)⁶⁰ you would have paid on the profits (income less expenses) if the engager had treated you as self-employed. If the NICs deducted by the engager are more than the Class 4 NICs, you can write to HMRC and claim a refund⁶¹, because the NICs were deducted in error by the engager from your self-employed earnings.

What about [VAT](#)?

VAT is more difficult still. 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.

⁵⁹ See www.hmrc.gov.uk/payerti/reporting/errors.htm.

⁶⁰ It is assumed that you will have paid Class 2 in any event.

⁶¹ Reg 52 of the Social Security (Contributions) Regulations 2001

Depending on the contractual position, the two routes are that you (1) treat your gross pay as including VAT, or (2) invoice your engager for the gross amount plus VAT. See below for a worked [example](#).

Example

Damon is VAT-registered and self-employed. His Lorimer letter is out of date. He works for TVCo for five days in October 2011. He is paid £1,000 a day, so his gross earnings are £5,000. His expenses are £50 a day.

TVCo treat him as employed, and deduct £1,000 of PAYE (£5,000 x 20%) and £165⁶² of employee NICs.

Damon puts the £5,000 in box 16 of his tax return, £250 of expenses in box 17 and the PAYE in box 18. He works out that he would only have paid £100 of Class 4 NICs (£5,000 x 2%) so he writes to NICO to reclaim the other £65.

For the VAT Damon may, depending on his contract:

1. Include £5,000 as his gross sales including VAT. He must pay £833.33 of VAT to HMRC, leaving a net receipt of £4,166⁶³.
2. Invoice TVCo for £5,000 + VAT of 20% = £6,000. Add a note to say that of the £6,000, £5,000 has been received, but £1,000 is outstanding. £1,000 of VAT is paid to HMRC, leaving a net receipt of £5,000.

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

Tell BECTU

BECTU are concerned about HMRC's current Lorimer letter procedures. It would be much easier if the FIU were able to be flexible about their Lorimer letters, so that they were backdated if the evidence supported this. After all, the Lorimer letters simply reflect the legal position, they don't change it. Please let us know if you have any difficulties with Lorimer letters and we will consider what action we can take.

⁶² $12\% \times (817-139) = 81.36$; $2\% \times (5,000 - 817) = 83.66$; $81.36 + 83.66 = £165$. The thresholds are those for 2011-12 not the current tax year.

⁶³ $£4,166 \times 20\% \text{ VAT} = 833$. $£4,166 + £833 = £5,000$

Appeal to the Tax Tribunal

If you continue to disagree with HMRC, you have a right to [appeal](#) to the First-tier Tax Tribunal. It is suggested that you obtain advice from a tax specialist before doing so. Again, BECTU would like to know if you are considering taking legal action in this way so we can consider whether we can help.

Value Added Tax

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 £79,000) then you **must** register for VAT. 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, and some are zero-rated (meaning that you charge a nil rate) and a few are at 5%⁶⁴. The rules for cross-border transactions are particularly complex and you should get professional advice⁶⁵.

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).

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. This is obviously very expensive. HMRC may also charge 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)⁶⁶. If the goods are no longer being used for

⁶⁴ HMRC [guidance](#) explains the distinction between standard rated, exempt and zero-rated supplies

⁶⁵ There is [guidance](#) about supplying services overseas on the HMRC site, but this is a very complex area.

⁶⁶ The difference between the four year and six month limit may not be consistent with EU law, but you would need to take expert legal advice on this point.

the business, or have been consumed (such as electricity supplies) then you cannot reclaim the VAT.

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 you can only deduct the VAT on your purchases when you pay your supplier, see Example [VAT1](#).

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 you are *below* the VAT threshold at the point you start using the cash basis⁶⁷
- You can stay in the cash basis for income tax until the year after your turnover is twice the current VAT threshold

⁶⁷ 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

- You can stay in the cash basis for VAT as long as your turnover is below £1.35m

Example VAT1

Stefan builds sets for film and TV companies. He is categorised as 'general building and construction'. In the year to 31 December 2012⁶⁸ 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.

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.

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.

The percentage depends on the category of business you are in. 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%.

⁶⁸ For simplicity, this example ignores the usual VAT return periods. These are normally quarterly.

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%
Computer repair services	10%
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.

To see how the flat rate works, see example [VAT2](#).

Example VAT2

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 [National Insurance](#).

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 too, and it is recommended that you read the HMRC [guidance](#) if you are considering using it.

Using a limited company

Why use a limited company?

Many self-employed people are happy to continue as they are. However, using a limited company brings with it significant tax advantages. A company may also reduce the risk of being sued if something goes wrong – because the supplier of services is the company and not you personally. The disadvantages of using a company are largely administrative.

Anti-avoidance legislation (known as [IR35](#)) prevents some people accessing the tax advantages.

How to operate via a limited company

If you operate via a limited company, all contracts for services must be with that company. You may need to amend the draft contracts sent to you by your engager or agent, and you are advised to get legal help with this.

You will normally be a director and employee of your company, and will normally 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 you personally. For you to have a right to the money, the company must decide to pay it to you as salary or as a dividend. The tax and National Insurance 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

If you are self-employed you are taxed on your profits at the [income tax rates](#). These are 20%, 40% and 45%⁶⁹, depending on your total income level. You also have to pay [Class 2](#) and [Class 4](#) National Insurance.

If you have a company, the company pays tax on its profits at the small companies rate of 20% (the same as the basic rate for individuals). There is no 40% or 50% rate.

An efficient way to take money out of the company is to pay yourself a small salary, just over the 'lower earnings limit' of £5,668 pa⁷⁰ (which entitles you to a qualifying year for state pension purposes⁷¹ along with certain other benefits) but not over the threshold of £7,696⁷². Salaries below that threshold do not attract either [employer or employer NICs](#).

A salary of this level is also below the [personal allowance](#) limit (£9,440 in 2013-14) and so the company normally does not have to deduct PAYE⁷³. However, you must put your salary on your tax return along with other taxable income.

The rest of your income can be withdrawn as dividends, which are paid free of National Insurance. As a result you make a NIC saving.

If you have transferred some of the 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 is taxable at 20%. Transferring shares and then paying a dividend can therefore avoid you having to pay tax at 40% or 45%.

⁶⁹ In the previous year the additional rate was 50%.

⁷⁰ The figures given are those for 2012-13. They change each year.

⁷¹ The [Directgov](#) website gives some further information about qualifying years.

⁷² See the HMRC [table](#) of the different thresholds and limits.

⁷³ However, if you have other taxable income, your company may be issued with a tax code that requires tax to be deducted. Even if there is no PAYE due on the salary, the company still has to operate a PAYE scheme.

However, there are sometimes complications with these arrangements, so before you transfer shares to a spouse or partner, you should seek specialist advice.

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

Other tax planning can involve pension payments, the transfer of your existing business into the company, and the efficient use of expenses. If you are interested in using a company for tax planning you should take further advice from a tax specialist.

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 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?](#)'

If you would have been an employee of your engager if you didn't use the company, then you are 'caught' by IR35. This means that your company has to deduct roughly the same PAYE and NICs as your client would have had to pay if he had engaged you directly (ie not through your company) . The amount your company has to pay includes not only [employee NICs](#) but also employer NICs. So it is very expensive to fall foul of IR35. In addition, the HMRC investigation and enquiry process is often lengthy and can be costly.

If HMRC decide that your company is caught by IR35, and you don't agree with their decision, you can [appeal](#) it to the First-tier Tax tribunal. It is suggested that you obtain advice from a tax specialist before doing so.

Appendix 1

HMRC list of self-employed grades

The self-employed grades accepted by HMRC and listed in their [guidance](#) are set out below. The list included in this booklet is for information only, and should not be taken to imply that BECTU agrees with HMRC policy on employment status classification generally, or with the comments HMRC make on ‘substantial provision of materials/equipment’ and/or ‘tools of the trade’, which are set out below.

If your grade is not on this list, but you think you might be self-employed, see [‘Am I self-employed.’](#)

HMRC NOTES

Grades marked with an **ASTERISK** are self-employed as long as the individual is engaged on a freelance basis and the engagement is:

- **for a one-off production** such as a feature film or single drama or documentary. If the worker is to be engaged on a separate production following the completion of the one off production then where this is known at the outset of the second production PAYE should be considered from the commencement of the second production. If this happens after a break, where it can be shown that the worker was seeking or worked elsewhere then the worker can be treated as self employed. Note – a break is a natural break rather than a contrived one such as Christmas holiday, annual vacation.

OR

- **for a programme strand or series of less than 9 months** (if the worker is engaged for 9 months on a series and a second series is commissioned then as the series are linked the worker can continue to be treated as self employed on the second series)

OR

- longer periods on a programme strand/series for which authority has been given by HMRC.

Assistant grades are NOT included unless specifically identified in the list.

Many items on the list include the phrases 'premises provided by the engager' and/or 'substantial provision of materials/equipment by the engager' and/or 'provision of facilities by worker'. These are defined by HMRC as follows:

Premises provided by the engager

These embrace studios, locations or any other facilities provided by or at the direct expense of the engager, whether or not the engager is occupier of those premises.

Substantial provision of materials/equipment

This means the provision of major items which play an important and fundamental role in the work of the grade in question and which are of significant value, such provision being an integral requirement of the contract of engagement. It does not include tools of the trade (see below). The significance of the provision of equipment in determining tax status is the financial risk which such provision entails. It follows that in general equipment must be owned by, or at the permanent disposal of the worker. Provision of hired equipment, whether or not hired in the worker's name, is relevant only if obtained entirely independently of the engager. Such provision should be disregarded if the financial risk is effectively underwritten by the engager. If a worker is treated as self-employed by virtue of the substantial provision of equipment, the engager must retain full details of the equipment provided for production to this office on request.

Tools of the trade

It is customary for most craftsmen to provide their own tools, whether engaged as employees or as self-employed contractors. Such tools should be disregarded in considering the value of equipment provided, even though the contents of a joiner's or electrician's toolbox may have substantial intrinsic value.

Provision of facilities by worker

This means that the work is performed mainly away from the engagers premises and/or that the worker provides office equipment, other relevant equipment and the necessary space to facilitate the relevant work activities

THE GRADE LIST

Advance Rigger	Where the contract requires substantial provision of equipment
*Animal Handler	
*Animation Director	
*Animation Production Co-ordinator	

Animator	Where the work is performed other than on premises provided by the engager AND the contract requires substantial provision of equipment
*Animatronic Model Designer	
Archive Researcher	
*Art Director	
Assistant Art Director	Where the work is performed other than on premises provided by the engager
*Associate Producer	Except where engaged primarily for general research
*Auditioner	
Background Artist	Where the work is performed other than on premises provided by the engager
Camera Operator	Where the contract requires substantial provision of equipment
*Casting Director	
*Chaperone/Tutor	
*Choreographer	
*Composer	
Construction Manager	Where the contract requires substantial provision of equipment.
Continuity	Where script breakdown is an integral part of the contract
Contributor	Where payment is made on a per contribution basis
*Co-producer	
Costume Designer/Assistant	

Costume Designer/Costume Supervisor	Where the work is performed other than on premises provided by the engager OR the contract requires the substantial provision of materials
*Cricket scorer	
Digital Set Designer	Where the work is performed other than on premises provided by the engager
*Director	
*Director of Photography	
Dressmaker	Where the work is performed other than on premises provided by the engager
Driver	Where the contract requires the driver to provide his own vehicle
*Editor	
*Executive Producer	
*Fight arranger	
*Film/Photographic Stylist	
*First Assistant Director	
Foley Artist	Where the contract requires substantial provision of equipment
Gaffer	Where the contract requires substantial provision of equipment
Graphic Artist/Graphic Designer	Where the work is performed other than on premises provided by the engager.
Grip (incl Key Grip)	Where the contract requires substantial provision of equipment by the individual
Hairdresser	Where the contract requires substantial provision of equipment (including wigs) by the hairdresser or 50% or more of the work is

	performed other than on premises provided by the engager.
*Head of Art Department	
Head of Department Rigger	Where the contract requires the provision of substantial equipment
Language Assessor	Where used on an occasional basis to check style and delivery of foreign language broadcasts
Lettering Artist/Lettering Designer	Where the work is performed other than on premises provided by the engager
Lighting Director/Lighting Cameraperson	Where responsible for designing lighting or photography
*Line Producer	
Location Manager	Where the worker completes preliminary planning, arranges accommodation, sets the stage, restores the site to original condition; within this role should provide a complete office service; may hire staff and equipment.
Make Up Artist	Where the contract requires the provision of a standard make-up kit by the artist OR where 50% or more of the work is performed other than on premises provided by the engager
*Matron	
Model Camera	Where the contract requires substantial provision of equipment
Model Designer/Model Maker	Where the contract requires provision of facilities AND equipment/materials by the individual.
*Modeller	

Musical Arranger /Musical Copyist	Where the work is performed other than on premises provided by the engager
*Musical Associate/Director/Score Reader	
*Nurse	
*Post Production Supervisor	
*Producer (including co-producer and executive producer)	
Production Accountant	Where the contract requires the provision of relevant facilities by the individual
Production Assistant	Where script breakdown is an integral part of the contract
*Production Buyer	
*Production Designer	
*Production Manager	
*Production Supervisor	
Property Master/Prophand	Where the contract requires substantial provision of equipment (including props)
Provider of occasional information (including Legmen)	Embraces tip-offs, racing tips, sports news and similar information
*Publicist	
Scenic Artist/Designer	Where 50% or more of the work is performed other than on premises provided by the engager
Script Reader	Where the work is performed other than on premises provided by the engager
Script Supervisor	Where script breakdown is an integral part of the contract
*Scriptwriter	Excluding reporting scripts

*Sculptor	
*Senior Floor Manager	
*Senior Special Effects Technician	
Set Decorator/Set Dresser	Where the contract requires set design performed other than on premises provided by the engager
Sound Maintenance Engineer	Where the contract requires the substantial provision of equipment
Sound Recordist/Mixer	Where the contract requires the substantial provision of equipment
Special Effects Supervisor	Where contract includes provision of necessary equipment by the worker
Special Effects Wire Person	Where the contract includes provision of necessary equipment by the worker
Specialist Researcher	Where the worker has either an existing profession outside the film industry (eg Academic, Legal Adviser, Doctor etc) OR with specialist knowledge of the programme subject to be researched AND who is engaged for a specific project and is not a regular contributor
*Sport Statistician	
Stage Manager	Where the contract requires the provision of equipment (including props)
Stills Photographer	Where contract requires provision of all cameras by the worker
Storyboard Artist	Where the work is performed other than on premises provided by the engager
*Story Writer	Excludes news reporting
*Stylist	Film or photographic styling

Transcript Typist	Where the work is performed other than on premises provided by the engager
Translator	Where the work is performed other than on premises provided by the engager
Transport Manager	Where worker provides vehicles
*Tutor	
Unit Manager	Where the contract requires provision of facilities by the worker.
Video Technician	Where the contract requires the substantial provision of equipment
Wardrobe (including Wardrobe Supervisor and Stylist)	Where the work is performed other than on premises provided by the engager OR the contract requires the substantial provision of materials
*Warm up	
Wig Maker	When engaged for work undertaken in premises other than those provided by the engager
Wire Person	Where the contract requires the provision of equipment by the individual
*Writer	Excluding reporter

Appendix 2: HMRC Contact details

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.

Self-assessment

For general [self-assessment](#) enquiries call 0845 900 0444. The helpline is open from 8.00 am to 8.00 pm Monday to Friday & and 8.00 am to 4.00 pm Saturday

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 should write to them, quoting your NI number

HMRC Self Assessment
PO Box 4000
Cardiff
CF14 8HR

VAT

For advice on [VAT](#) contact 0845 010 9000. The helpline is open 8.00 am to 6.00 pm, Monday to Friday.

Film and TV

For advice and information on issues relating to film and video (including producing TV adverts), such as [employment status](#), [expenses](#), [Lorimer letters](#) and the [7 day rule](#), contact:

For **film** - the Film & Production Unit:

HM Revenue & Customs
Film & Production Unit
Floor 2
Weardale House
Washington
Tyne and Wear NE37 1LW

Telephone: 0191 419 8800 Email: a.filmproductionunitmailbox@hmrc.gsi.gov.uk

For TV and Radio

For queries relating to TV and radio work, again including [employment status](#), [expenses](#), [Lorimer letters](#) and the [7 day rule](#), contact:

HM Revenue & Customs
TV Broadcasting and Radio Unit (Manchester)
LC NW& Midlands,
Trinity Bridge House,
Manchester M3 5BH
0161 – 261 -3254/3255/3691

National Insurance Contributions

For advice on NICs ([small earnings exception](#), changes to [self-employment](#), paying [Class 2](#)) contact 0845 302 1479 between 8.00 am to 5.00 pm, Monday to Friday. If you have a query about [Class 4](#) you need to contact the self-assessment part of HMRC – Class 4 is dealt with in the same way as a tax.

Problems paying tax or VAT

If you can't pay your tax or VAT on time, you should call the Business Payments Support service [before the deadline](#). The number is 0845 302 1435. The helpline is open from 8.00 am to 8.00 pm Monday to Friday & 8.00 am to 4.00 pm Saturday and Sunday. There are more details on their [website](#).

If you don't 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).

IR35

For advice on [IR35](#), you can contact 0845 303 3535 between 8.30 am to 4.30 pm, Monday to Friday, or email enquiries ir35@hmrc.gov.uk. There is further advice [here](#).