

Employed or Self-Employed

A Guide for Tax and Social Insurance



I Employed or Self-employed?

How you pay your tax and what class of Pay Related Social Insurance (PRSI) you pay is determined by whether you are employed or self-employed. The class of PRSI you pay affects your entitlement to certain Social Welfare payments, e.g. disability benefit, widow's/widower's contributory pension, old-age contributory pension etc. It is important therefore that you know whether you are employed or self-employed.

The terms "employed" and "self-employed" are not defined in law. The decision as to which category you fall into must be arrived at by looking at what you actually do, the way you do it and the terms and conditions under which you are engaged, be they by written or verbal agreement or implied. It is not simply a matter of you or the person who employs you calling your job "employment" or "self-employment".

The questions at paragraphs 4 and 5 should help you to decide whether you are employed or self-employed although they are only a brief guide and do not cover every situation.

If you are in doubt or have any questions after reading this leaflet, you should get in touch with your local Revenue Office or Scope Section of the Department of Social and Family Affairs (DSFA) who will be pleased to help you. Having established all of the relevant facts, either Revenue or the Scope Section of DSFA will give you a written decision as to your status. A decision by one Department will generally be accepted by the other, provided you gave all of the relevant facts at the time and your circumstances remain the same. However, because of the varied nature of circumstances that arise and the different statutory provisions, such a consensus may not be possible in every case.

If you are an office holder, for example a company director, you will be taxed under PAYE as an employee anyway. However, there are special rules for company directors in relation to PRSI.

2 What difference does it make whether I am employed or self-employed?

Your status as an employee or self-employed person will effect:

- ▲ the way in which your tax and PRSI is payable to the Collector-General
- ▲ your entitlement to social welfare benefits, such as unemployment and disability benefits
- ▲ other rights and duties, for example, under the Employment Protection Acts such as your right to holidays, maternity leave and so on
- ▲ your liability to the public for the work you do.

3 Am I employed or self-employed?

In most cases it will be clear whether you are employed or self-employed.

You are an employee if you are working under the control of or as part of the business of another. An example would be where you are working for a company on a production line in the company's factory.

You are self-employed if you go it alone and set up in business on your own account. An example would be where you have your own business like a newsagent's shop and bear responsibility for the success or failure of that business.

You are also regarded as self-employed if you are in partnership, sharing in the control and in the success or failure of the business. However, it may not always be so obvious and you may find that you are unsure where the dividing line falls.

The Courts have laid down a number of guidelines over the years. These guidelines are mentioned in paragraphs 4 and 5 and should help you to come to a conclusion. It is important that you look at your job as a whole, including all your working conditions, when considering the guidelines. The same guidelines generally apply for tax and PRSI and employment protection purposes.

4 Guidelines on whether you are an employee

While all of the following factors may not apply to your work you would normally be an employee if you:

- ✓ are under the control of another person who directs you as to how, when and where the work is to be carried out
- ✓ supply your labour only
- ✓ receive a fixed hourly/weekly/monthly wage
- ✓ cannot sub-contract the work
- ✓ do not supply materials for the job
- ✓ do not supply equipment other than the small tools of the trade

- ✓ are not exposed to personal financial risk in carrying out the work
- ✓ work set hours or a given number of hours per week or month
- ✓ work for one person or for one business
- ✓ are entitled to sick pay/holiday pay/pension etc.
- ✓ receive expense payments to cover subsistence and/or travel expenses
- ✓ are entitled to extra pay or time off for overtime.

Some points to remember

- ▶ you could have considerable freedom and independence in carrying out your work and still remain an employee
- ▶ if you are paid by commission, by share, or by piece work, you may still be regarded as an employee
- ▶ some employees work for more than one employer at the same time
- ▶ some employees do not work on the employer's premises.

5 Guidelines on whether you are self-employed

While all of the following factors may not apply to your work, you would normally be self-employed if you:

- ✓ own your own business
- ✓ are exposed to financial risk, by having to bear the cost of making good faulty or

substandard work carried out under the contract

- ✓ have control over what you do, how you do it, when and where you do it and whether you do it yourself
- ✓ are free to hire other people, on terms of your own choice to do the work that you have agreed to undertake
- ✓ can provide the same services to more than one person/business at the same time
- ✓ provide the materials for the job
- ✓ provide equipment and machinery necessary for the job, other than the small tools of the trade
- ✓ have a fixed place of business where you store materials equipment etc.
- ✓ cost and agree a price for the job
- ✓ provide your own insurance cover e.g. public liability etc.
- ✓ control your own hours of work in fulfilling the job obligations.

Some points to remember

- ▶ Generally you should satisfy each of the self-employed guidelines above, otherwise you will normally be an employee
- ▶ while you may have registered for Self-Assessment or V.A.T. it does not automatically mean you are self-employed
- ▶ if you are an office holder, such as a company director, you will be taxed under the PAYE system anyway. However the

terms and conditions will have to be examined by the Scope Section of DSFA to decide on the appropriate PRSI Class

- ▶ there are special PRSI rules for the employment of family members.
- ▶ It should be noted that a person who is a self-employed contractor in one job is not necessarily self-employed in the next job. It is also possible to be employed and self-employed at the same time in different jobs. For example, you could be employed on a part-time basis as a shop assistant and spend the rest of the your time running your own business from home.

6 Casual, Short-term or Part-time Working

If you have more than one job, or you work for a number of different enterprises/individuals for a few days, or weeks at a time, you will need to consider the guidelines in paragraphs 4 and 5 for each job.

7 What happens about my tax and PRSI?

Employee

If you are an employee, your employer is responsible for:

- ▶ deducting your tax from your wages or salary under PAYE, and paying it over to Revenue
- ▶ deducting PRSI contributions and statutory levies and returning them in the same way

- ▶ issuing you with a certificate of pay, tax and pay-related social insurance after 31 December each year (Form P60) stating the amount of tax and PRSI you have paid during the previous year, or a certificate with the same information if you leave your employment during the year (Form P45).

It is important that your employer carries out these responsibilities correctly otherwise it may affect your own tax position and Social Welfare entitlement in due course.

Self-Employed

If you are self-employed, you are responsible for the payment of your own tax and PRSI. This means:

- ▶ registering with your local Revenue Office by completing TRI registration form
- ▶ “Pay and File”, paying your tax, PRSI and Health Contributions and filing a return of income by the 31 October each year under the Self-Assessment system.

8 General

If you are still in doubt as to whether you are employed or self-employed:

- ▶ you should contact your local Revenue Office or Scope Section of DSFA for assistance. In cases of any continuing doubt your Revenue Office or Scope Deciding Officer will look at the facts of your case and advise you on your status.

9 Appeals

Appeals against decisions made by either Revenue or the Scope Deciding Officer may be made, as appropriate, to either:

The Appeal Commissioners

who are an independent body and hear tax appeals. Tax appeals can be initiated on foot of an assessment which issues after the tax year to which it refers. Decisions made by the Appeal Commissioners can be appealed to the courts

The Social Welfare Appeals Office

who are also an independent body and deal with appeals on Social Welfare issues. Their decisions can be appealed to the High Court on a point of law.

10 Further publications available

Revenue Commissioners

IT 10 Guide to the Self-Assessment System for the Self-Employed

IT 11 Employee's Guide to PAYE

IT 48 Starting in Business

Department of Social and Family Affairs

SW 3 Employer's Guide to the PRSI Contribution System

SW 63 Employer's Guide to PRSI Special Collection System for non-PAYE Employees

SW 74 PRSI for the Self-Employed

SW 102 Family Employments and PRSI

A more detailed cross-body code of practice for determining employment or self-employment status of individuals is available on the Revenue website at www.revenue.ie/en/tax/it/leaflets/code-of-practice-on-employment-status.pdf and websites of other departments.

11 Contact Addresses

If you require any further information or you are uncertain about any part of this guide you should contact:

Your local Revenue Office, or www.revenue.ie

OR

Scope Section,
Department of Social and Family Affairs,
Oisín House,
Pearse Street,
Dublin 2.

Telephone: 01 - 673 2585
E-mail: scope@welfare.ie
www.welfare.ie

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