

## STATUS OF WORKERS – EMPLOYED OR SELF-EMPLOYED?

Many trainers have “self employed” people working in their yards and assume that the responsibility for getting the worker’s tax status right is that of the worker.

This is a dangerous assumption to make as it is firmly the employer’s responsibility to determine their worker’s tax status. If the tax status of the worker is wrongly determined then it is the employer who is responsible for any arrears of tax and National Insurance Contributions that may be due.

It is possible that an individual might be self employed in one capacity, but employed in another.

Where the self employed worker carries out the same duties as employed staff it is probable that he/she will be an employee for tax and NIC purposes. This is equally true for casual staff.

Employment status is currently an important issue for H M Revenue & Customs Employer Compliance Teams. If the arrears of tax go back several years the tax, NIC, interest and penalties can be considerable, so care and caution are needed.

**In most cases, the trainer will require to control the work and determine what is done and when. This will invariably mean the worker is an employee and will be subject to PAYE.**

**Individuals who just ride out are likely to be employees because of the control and direction exercised by the trainer. However, licensed jockeys riding out will be treated as self-employed, as this is considered part of their profession.**

In the case of a blacksmith or farrier the individual will be in business on their own account and the service they are providing is the service they are in business to provide. However in some yards trainers do employ their own full time blacksmith or farrier and they will then be employees of the trainer.

Below we have set out more information upon the “tests” the HMRC use to decide upon employment status. There is an HMRC employment status indicator and more information at <https://www.gov.uk/employment-status-indicator> which is designed to assist employers in checking the status of an individual or group of workers - that is, whether they’re employed or self-employed for tax, National Insurance contributions or VAT. It asks a series of questions about the role and relationship of the worker with the employer and then indicates the likely status

**In deciding upon the tax status of an individual the trainer needs to consider the following:-**

❑ **The Contract**

This can be written, oral or implied.

What are the terms and conditions of the contract?

What is the actual reality of the relationship?

❑ **Control**

The degree of control exercised by the trainer over the services to be completed, as to how, when and where the work is done.

Does the trainer have the right to control how the worker performs the service, what tasks have to be performed and when they are performed?

- *A self employed individual may agree to perform a particular task at a specific time and place but is unlikely he will be subject to any right of control.*

❑ **Equipment**

Does the trainer provide any of the equipment required by the worker?

- *A self employed worker will generally provide their own equipment.*

❑ **Personal Service and Substitution**

Is the specific individual worker required to carry out the work?

Can the worker provide someone else at his own expense, to carry out the work or task?

- *A self-employed worker is providing a service not personal skills and should be able to provide a substitute. So for example, if a particular person was due to ride out and could not, would they have the right to substitute someone else to do the riding out? This may never happen but the right to substitute someone else must be a genuine one should the situation arise.*

❑ **Mutual Obligations**

Is the trainer obliged to offer further work to the worker and is the worker obliged to accept the work.

- *An employer will try to make sure his employees have a continuous supply of work and also expect the employees to carry out the work when he requires. There is no such mutuality of obligation with a self-employed worker. Note, when work is regularly given and accepted over a period of time, HMRC may take the view that employee status has been created by custom and habit.*

❑ **Financial Risk**

- *A self-employed individual is responsible for how his business is run. He provides his own equipment and takes the financial risk.*

For further advice upon employment status and to discuss individual situations, particularly regarding the status and contracts for truly casual workers, please contact Dawn Bacchus at the National Trainers Federation or the NTF external helpline on 01488 71729.