TAX TREATMENT OF SELF-EMPLOYED WITHOUT PERSONNEL

Country Surveys

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SCOPE OF THE SURVEY

We are pleased to provide you with a survey of the tax treatment of self-employed without personnel (hereinafter: ZZPs) in the following jurisdictions:

- Austria;
- Belgium;
- Denmark;
- France;
- Germany;
- Ireland;
- Poland;
- Spain;
- Sweden; and
- the United Kingdom.

For each of the foregoing jurisdictions, the survey addresses the following questions:

Question 1:	Is the concept of ZZP known in the relevant jurisdiction?
Question 2:	If the answer to Question 1 is in the affirmative, how is the term defined? What are the requirements for being treated as a ZZP? What are the major differences with respect to other types of employment?
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This survey is based on information available as at 15 July 2008. It is intended for general information only and should not be construed as advice with respect to any specific transaction or matter. IBFD expressly disclaims any liability for action or inaction based on information in this survey.

AUSTRIA

1. QUESTION 1

The concept of ZZP is unknown in Austrian tax law. There is no distinction, for the purposes of tax, between a self-employed person and a self-employed person "without personnel". Income derived by an individual who is self-employed generally falls under the category of professional services, regardless of whether or not that individual employs other persons.

However, it has to be determined whether an individual shall be treated as self-employed or employed. In the latter case, the income falls under the category of employment income. Further, a taxpayer could be classified as self-employed in respect of certain activities, while being treated as employed with regard to others.

Austrian law is not always clear whether income from a taxpayer's activities qualifies as employment income or income from professional services. Although the relevant tax regime for self-employed and employed individuals is similar (e.g. same tax rates, but minor differences in computing the taxable income), the determination of the status is decisive for the contributions to the social security scheme (see (8) below). Taxes and social security contributions for self-employed individuals are not withheld at source.

Employment is assumed if the employee conducts his work under the supervision of the employer or must follow the employer's instructions. The definition of an employee for tax purposes does not correspond to that under Austrian employment law. The main criteria for an activity to fall under the category of employment income are (1) existence of an employer-employee relationship, and (2) the legal status thereof. However, apart from the contractual relationship between the parties concerned, the tax authorities would normally take into consideration the actual facts and circumstances of each case. The following factors would normally be considered:

- whether the individual is integrated in the organization of the client's business;
- whether the individual is required to work at the client's premises;
- whether the individual's work is supervised by the client;
- whether the individual has to follow the employer's instructions;
- whether the individual is subject to regular working hours;
- whether the individual provides equipment needed to do the job;
- whether a remuneration is paid for the services, independent from any specific result;
- who bears responsibility for correcting any errors made by the individual; and
- whether the individual is entitled to regular holidays.

The tax authorities take an overall view of all the facts, giving due weight to the relative significance of various factors, and then decide on the status of the individual. Where an individual has been wrongly classified as self-employed, the tax authorities are empowered to reclassify that individual (even with retrospective effect), and demand from the employer any tax or social security contributions that should have been deducted during the period of the incorrect classification.

2. QUESTION 2

As stated in (1) above, the concept of ZZP does not exist in Austrian tax law.

3. QUESTION 3

As stated in (1) above, there is no special category of "self-employed without personnel". However, self-employed persons are taxed under the normal income tax regime. No special regime exists for self-employed persons as such.

4. QUESTION 4

As stated in (3) above, the income of a self-employed person is taxed under the normal income tax regime. The Austrian Income Tax Act provides the general rules for the taxation of various sources of income. Resident taxpayers are subject to income tax on 7 categories of income. These are (1) agriculture and forestry; (2) professional services; (3) trade or business; (4) employment income; (5) capital investment income; (6) rents, lease payments and royalties; and (7) certain other specified income, including certain annuities and capital gains from the disposition of privately held property. The income of a ZZP may be classed either (1) as income from professional services, or (2) as trade or business income.

5. QUESTION 5

The concept of ZZP does not exist in Austrian tax law (see (1) above). With regard to self-employed persons, as explained in (4) above, the normal income tax rules apply. The income of self-employed persons may be classed either as (1) income from professional services, or (2) as trade or business income.

6. QUESTION 6

As mentioned above, it must be determined whether the respective activities of an individual fall under the category of trade or business income or professional services, although the same rates of income tax apply to income from both categories. Since Austria has abolished the municipal business tax, the difference between the two income categories is of minor importance. However, for individuals providing certain professional services, the lump sum deduction for business expenses is lower than that for individuals deriving income from trade or business.

Moreover, there are differences in computing the income from the two categories. Trade or business income is generally calculated using the net equity comparison method. Under the net equity comparison method, profit is the difference between net equity of the business at the end of the business year and that at the end of the immediately preceding business year, increased by the value of withdrawals from capital and reduced by the value of contributions to capital during the business year. Income from professional services is generally determined according to the cash method, unless the taxpayer opts for the net equity comparison method. Under the cash method, taxable income is computed by reducing the gross income by income-related expenses in accordance with the cash receipts and disbursements method.

There is no definition of "professional services" in Austrian law. However, there is a negative differentiation in relation to business income, according to which any independent and lasting activity exercised with the intention of earning profit by participating in the open market, which does not qualify as professional or agricultural or forestry activities, is considered as business income. The Austrian Income Tax Act stipulates that income from professional services includes income derived from the following activities: scientific, artistic, literary, teaching or educational activities, the professional activity of state-certified engineers or a similar activity, physicians, veterinarians and dentists, attorneys-at-law, patent attorneys, notaries public, certified public accountants, business consultants, actuaries, arbitrators in arbitration proceedings, photographic reporters and journalists, interpreters and translators, activities of graduated psychologists, midwifery and certain medical services. The list of professions is not exhaustive. The main characteristics

of professional activities are that they require high intellectual input, as well as the attainment of high qualifications. Also relevant is the fact that these professions are usually subject to professional regulations. The personal element in the exercise of such activity is of particular significance.

If a professional is assisted by professionally trained staff who do not possess the qualifications required for that particular profession, income derived through the assistance of that staff also constitutes professional income, subject to the proviso that the professional is in charge of his staff, and is acting under his own responsibility.

The following two types of income are also deemed to be professional income: (1) income from the administration of property (e.g. property management or as a trustee or member of a supervisory board of directors), and (2) salaries and other forms of compensation of any kind granted by a corporation to substantial shareholders in consideration for an engagement which includes all the features of employment. A person is deemed to be a substantial shareholder if his share of the share capital of the corporation amounts to more than 25%. A participation via a trustee or a company is treated as a direct participation. Salaries and other forms of compensation of any kind that are granted for previous activities of former shareholders also constitute income from other professional services.

Income derived by partners of a professional partnership constitutes solely professional income, if (1) the activity of the partnership is to be viewed solely as independent professional services, and (2) each partner performs professional services. This requirement does not apply where the rules on professional conduct permit association with non-professionals.

Income categories are determined per activity, if it is possible to identify separate activities. If business and professional activities cannot be separated, because they are interconnected or dependent on each other, the tax authorities would normally take an overall view of all the facts, giving due weight to the relative significance of both activities, and then decide, on a case by case basis, under which category the income from such activity falls.

7. QUESTION 7

As stated in (1) above, the concept of ZZP does not exist in Austrian tax law. Thus, there are no special tax incentives for ZZPs.

8. QUESTION 8

As stated in (1) above, the concept of ZZP does not exist in Austrian tax law. Both employees and employers contribute to the Austrian social security system at a flat percentage rate of remuneration, up to a certain maximum amount (ceiling). Employers must pay social security contributions for all employees whose place of work is in Austria. Contributions are due from an employee's remuneration up to EUR 47,160 per year or EUR 3,930 per month (a separate ceiling of EUR 7,860 applies for special remuneration, such as the 13th or 14th month's salary). Contributions payable by self-employed persons are based upon taxable income of the third preceding year. If income is less than a minimum amount (EUR 6,453.36 per year; EUR 4,188.12 for those who conduct a “registered trade or business”), the contributions are based on that amount.

9. QUESTION 9

Such uncertainty does indeed exist in Austria. The problems arising from uncertainty and incorrect classifications may be avoided by obtaining certainty in advance, as explained in (10) below.

10. QUESTION 10

Before an individual commences his own business (i.e. the conduct of a trade, or the provision of professional services), he must notify the respective competent tax authorities, which should request the taxpayer to submit a form (Fragebogen für natürliche Personen) for the purpose of fiscal registration. After approval of the form, the tax authorities should provide the taxpayer with his tax number. During this process, doubts about the qualification of the taxpayer's activities may be clarified in consultation with the tax authorities.

11. QUESTION 11

For tax purposes, the individual may obtain certainty after receiving the approved form and his tax number from the tax authorities, as described under (10) above. The individual's classification for tax purposes is decisive for the purposes of social security contributions (see (8) above). If the individual is classified as self-employed, he must register for the relevant social security scheme by filing an insurance declaration for the self-employed.

12. QUESTION 12

As to how certainty is provided, see (10) above. On submitting a form for the purpose of fiscal registration, the taxpayer should be registered with the tax authorities based on the information he provided.

The tax authorities conduct tax audits on a regular basis. The tax authorities are empowered to reclassify individuals who have been wrongly classified as self-employed (even with retrospective effect) and demand from the employer any tax or social security contributions that should have been deducted during the period of the incorrect classification.

13. QUESTION 13

For the legal status, see (10) above. Advance ruling requests may be addressed to the local tax office, to the regional fiscal directorate or to the Ministry of Finance. Rulings obtained from the Ministry of Finance or the regional fiscal directorate are never binding. Rulings of the local tax office are binding on the tax administration on the principle of good faith as long as there are no contradicting legal provisions. However, rulings are generally not binding on the taxpayer and on the courts. The taxpayer cannot appeal against a ruling.

BELGIUM

1. QUESTION 1

In Belgium, the term ZZP is used as a term of ordinary language and means an individual who works independently and does not employ personnel. The term is not defined in Belgian tax law, which only uses the concept of self-employed. No distinction is made between self-employed and self-employed without personnel. A taxpayer classified as self-employed for tax purposes is automatically subject to the tax rules for the self-employed, regardless of whether or not he employs personnel.

By statute, the term "self-employed" is defined only for the purpose of social security contributions as “any individual who exercises a profession in Belgium and who is not bound by an employment contract or a statute".

For fiscal law purposes, the term "self-employed" is defined in the case law as “an individual who exercises activities on his own account". Tax law provides only for a definition of income derived by a self-employed, i.e. “income from a liberal profession, a function or position and any other income from a profit-seeking activity, other than business profits or employment income”.

The tax regime applicable to self-employed taxpayers does not differ substantially from that applicable to employees. The same tax rates apply. In addition, documented expenses incurred by employees and self-employed are deductible for tax purposes. Actual deductible expenses of a self-employed person include rental costs and depreciation of tangible and intangible fixed assets.

If no proof of expenditure is available, both employees and self-employed are entitled to the same lump sum deductions.

However, the self-employed enjoy a substantially more beneficial social security regime (see (8) below).

A taxpayer may have multiple capacities, i.e. he could be treated as employed in respect of part of his activities, and as self-employed with regard to others. In particular, it is crucial to determine taxpayer’s main activities for social security purposes (see (8) below).

The Belgian tax authorities are vigilant to reclassify as self-employment, an arrangement that suggests a *de facto* employment relationship. However, according to settled Belgian case law, if a company and a service provider (either an individual or a management/service company) enter into a contract on independent cooperation, this contract is valid towards third parties. This line of case law suggests that the individual concerned should be classified as self-employed, even where a *de facto* employment relationship exists.

In order to counter hidden employment relationships, a list of criteria to distinguish between employed and self-employed persons was published in 2006, and applies from 1 January 2007.

The following criteria should be considered in order to distinguish between employed and self-employed individuals:

Self-employed	Employed
The individual is free to arrange his work, without the need to follow the instructions of his principal.	The individual is obliged to follow the instructions of his employer.
The individual can arrange his own working hours.	The individual is subject to regular working hours.
The individual is not supervised by his principal.	The individual is under the hierarchical supervision of his employer.

The name of the relevant contract, registration with the social security institutions or in the company register, VAT registration or the manner of declaration of income with the tax authorities are not decisive for the determination of the individual's status.

In addition, from 1 January 2008, the following facts are taken into account in order to determine whether or not an individual conducts himself as self-employed:

- a self-employed person must be able to prove that he is running a business, which supplies goods and services, and must also behave accordingly when dealing with third parties;
- a self-employed person is responsible for running his business and taking managerial decisions;
- a self-employed person must bear entrepreneurial risks;
- a self-employed person must own or rent his premises;
- a self-employed person shall not be entitled to a fixed fee or salary, since this would imply that no business risks are borne; and
- a self-employed person may hire his own staff, and appoint his own representative.

Finally, additional criteria may be set out for each branch of activity by virtue of a Royal Decree.

If the application of the tests results in a reclassification of employment status, serious consequences may arise for taxpayers. However, these consequences are mitigated by the Program Law of 2006, see (10) below. As a result of the entry into force of this law, unpaid employer's social security contributions are no longer subject to penalties and late payment interest. It is still not clear, however, whether or not the employer must also pay wage taxes.

2. QUESTION 2

As indicated in (1) above, the term ZZP is not defined in Belgian law; it is used only as a term of ordinary language.

3. QUESTION 3

As indicated in (1) above, no special tax regime exists for the self-employed without personnel. The self-employed are taxed under the normal income tax regime.

4. QUESTION 4

The income of a self-employed person is taxed under the normal income tax regime. The Income Tax Code contains general rules for the taxation of the different sources of income. A distinction is made between the following sources of income:

- income from immovable property;
- income from movable property, including dividends, interest and royalties;
- earned income, including business income, professional income, employment income and pension income; and
- miscellaneous income.

The specific tax rules applicable to each source of income apply to any individual receiving such income, regardless of his capacity (status). This means, for example, that a self-employed receiving business or professional income is taxed under the income tax rules applicable to the relevant income category.

5. QUESTION 5

The concept of ZZP is not defined in Belgian tax law (see (1) above). As indicated above, the concept is used only as a term of ordinary language. With regard to self-employed persons, as explained in (4) above, the normal income tax rules apply, and tax law does not provide for a separate category of income for the self-employed, as such.

6. QUESTION 6

For the main sources of income, see (4) above.

Business income is defined as income derived from industrial, commercial and agricultural enterprises carried on by individuals. It includes profits derived from the business activities, the director's salary and benefits in kind, capital gains realized on assets or decreases in the value of liabilities, latent reserves on financial fixed assets and portfolio securities or resulting from an intentional undervaluation of assets or overvaluation of liabilities. Business income is taxed on an accruals basis.

Professional income from the exercise of a profession, a function or a position or any other profit-seeking activity covers all receipts in cash or in kind from the activity, capital gains realized on assets used for the exercise of the activity and any payments received as a compensation for a decrease in activities or gains. Professional income is taxed on a cash basis.

Miscellaneous income includes, inter alia, profits resulting from activities outside any professional, trading, employment relation or other business activity. Transactions in the daily course of management of private property are, however, exempt.

Net business income is computed in four steps:

First, gross profits are reduced by business expenses. Business expenses include all expenses incurred in the taxable year in order to obtain or maintain business income if those expenses are substantiated by the taxpayer by way of supporting documents or any other acceptable means of proof. Business expenses include rent, financial charges, wages and other salary costs, depreciation, travel costs, taxes other than income taxes, publicity and entertainment expenses. In the case of professional income, business expenses may be computed on a lump sum basis (see (1) above). Second, income from different business activities is combined and any current losses from business activities are set off within that income category. Third, business losses from previous years may be deducted. For the fourth step, part of the income of a self-employed person may be deducted and taxed in the hands of a spouse who helps the taxpayer in his business.

The distinction between the various categories of income is also relevant for the purpose of loss relief. Losses may only be set off against the category of income in respect of which they have been incurred.

Income categories are determined per activity. This is in particular relevant for social security considerations, as the amount of contributions differs depending on the taxpayer's main activity (see (8)).

7. QUESTION 7

There are no special tax incentives for ZZPs under Belgian tax law. However, the self-employed can benefit from certain incentives. The incentives for 2008 (assessment year 2009) are described below.

Every self-employed person is entitled to an investment deduction of 13.5% of the amount of the investment in respect of investments in patents, R&D investments and energy savings investments, and

20.5% for investments in safety measures. If the entire deduction cannot be used in any year, a limited carry-over applies. The maximum carry-over amounts to EUR 821,380 or 25% of the carry-over of the unused part if it exceeds EUR 3,285,500.

Taxpayers declaring profits are entitled to a tax credit if the profits increase the company's assets. The credit is equal to 110% of the difference between the fiscal value of taxpayer's assets at the end of the taxable period and the highest amount of his assets at the end of any of the three preceding assessment periods. The maximum amount of the credit is EUR 3,750.

In case of a joint assessment, the amount of this deduction is determined per spouse.

Furthermore, a tax credit is granted for low income from professional activities. The tax credit is calculated with the following table:

Net income (EUR)	Amount of tax credit (EUR)
up to 4,320	0
4,320 - 5,760	580 x $(I-L_1)/(L_2- L_1)$
5,760 - 14,410	580
14,410 - 18,370	580 x $(I-L_1)/(L_2- L_1)$
over 18,370	0

Legend: I = the income derived; L_2 = Upper limit of the brackets; L_1 = Lower limit of the brackets.

In case of a joint assessment, the amount of this deduction is determined per spouse.

In addition, the self-employed enjoy a more preferential social security regime (see (8) below).

8. QUESTION 8

A different social security regime applies as between employed and self-employed individuals.

Employees' income is subject to mandatory social security contributions.

The social security contributions payable by employees are as follows:

Contribution	Rate (%)
Pensions	7.5
Sick leave payments	1.15
Health insurance	3.85
Unemployment	0.87
Total	13.07

The contributions are based on the employee's gross remuneration. However, in respect of "blue-collar workers", the computation base is multiplied by 1.08. The contributions are deductible for income tax purposes.

If an individual is subject to the Belgian social security system, a special non-deductible social security contribution is levied depending on his income. The contribution is also levied on the total income of spouses if one spouse is subject to the Belgian social security system, but the other is not. For 2008, the maximum contribution is EUR 731.28.

A self-employed person who has reached the age of 18 must also participate in the mandatory social security scheme.

For self-employed persons, social security contributions are generally calculated on the basis of the income earned in the third preceding year, adjusted for inflation.

Furthermore, the amount of contributions differs depending on whether on not self-employment is the taxpayer's main activity.

The following annual contributions are due in 2008 if self-employment is the taxpayer's main activity:

Taxable income (EUR)	Contribution (EUR or %)
up to 11,329.41	0
11,420.41	2,512.49
11,420.41 - 49,315.46	22%
49,315.46 - 72,675.38	14.16%

In respect of income from ancillary self-employment, no contributions are due if that income does not exceed EUR 1,263.48. For ancillary income exceeding EUR 1,263.48, contributions are payable at the same rates as for the principal activity (see above). However, minimum quarterly contributions are due on the excess amount as follows: EUR 64.75 in the first year, EUR 66.33 in the second year, EUR 67.91 in the third year, and EUR 69.49 in the fourth year. The maximum contribution is EUR 3,539.29 per quarter.

Social security contributions paid by the self-employed are deductible for income tax purposes.

9. QUESTION 9

Such uncertainty does indeed exist in Belgium. The problems arising from uncertainty and incorrect classifications can be avoided by obtaining certainty in advance, as explained in (10) below.

10. QUESTION 10

The Program Law of 2006 provides for two new measures to obtain certainty in advance. First, specific criteria may be formulated per branch of activity by the trade unions of employers and employees to determine whether or not an employment relationship exists. These criteria must be published in a Royal Decree and they must not contravene the general criteria stated in the law.

Second, an advance ruling may be requested from the newly established Committee for the Regulation of Labour Relations (*Commissie ter regeling van de arbeidsrelatie*) (hereinafter: Committee), which has a normative and an administrative chamber.

The normative chamber consists of six representatives from the Government department for social affairs, the Directorate-General for self-employed or the Social Security Institution for self-employed, six representatives from the Government department for Employment, Labour and Social Consultations or the General Institution for Social Security for employees, the Directorate-General for Social Policy and the Government Department for Social Security, and four independent experts. It determines whether or not uncertainty exists with respect to the classification of a labour relationship. It also gives advice to the institutions as to the necessity of formulating specific criteria for a particular branch of activities, and issues draft lists containing such specific criteria.

A clarification from the normative chamber may also be requested by the ministers responsible for Social Affairs, Labour or Small and Medium-Sized companies if uncertainty exists with respect to a certain branch or profession. The ruling received will afterwards be submitted to the Supreme Council for Self-employed and Small and Medium-Sized Companies (*Hoge Raad voor de Zelfstandigen en Kleine en Middelgrote ondernemingen*) and the National Labour Council (*Nationale Arbeidsraad*). These councils will advise on

the application of specific criteria to the case at hand.

The members of the administrative chamber are appointed by the ministers responsible for Small and Medium-Sized Companies and for Social Affairs and Employment. The chamber consists of employees of those ministries and/or employees of the Belgian social security institutions. It issues the so-called "social rulings" on the classification of a labour relationship as employment or self-employment, and determines whether or not the classification of the activities is in accordance with the factual circumstances. The social rulings are, in principle, valid for a period of three years.

The functioning of the above system will be evaluated in 2010 by the National Labour Council and the Supreme Council for Self-Employed and Medium-Sized Companies.

11. QUESTION 11

Such certainty can be obtained in respect of both taxation and social security issues, as explained in (10) above.

12. QUESTION 12

With respect to income tax, no private rulings or declarations are issued.

A social ruling from the administrative chamber of the Committee (see (10) above) may be requested by:

- both parties to a labour relationship which was entered into on or after 1 January 2008, or the date of publication of a Royal Decree containing specific criteria for the relevant branch;
- a party to a labour relationship and a professional (before the start of the contractual relationship), provided that such request is made at the time of registration with one of the social security institutions; and
- a party intending to conclude a contract with a principal, if it is unclear whether he will be treated as an employee or as self-employed.

However, no ruling will be issued in the following situations:

- if, at time of lodging the request for a ruling, the social security institutions have already initiated an investigation or criminal proceedings; or
- the case has been decided by a Labour Court.

13. QUESTION 13

Social rulings are binding on all institutions represented in the administrative chamber (see (10) above) and all social security funds. If the conditions for the exercise of labour activities change, the ruling ceases to be valid as from the day those conditions changed. If a ruling is based on false or incomplete information, it is deemed never to have been valid. The ruling becomes binding if not appealed within one month of its being issued.

DENMARK

1. QUESTION 1

The concept of ZZP is unknown in Danish tax law. There is no distinction for the purposes of tax between a self-employed person and a self-employed person "without personnel". A taxpayer who is treated as self-employed for tax purposes is automatically subject to the tax rules applying to that status.
However, the issue of whether a self-employed person actually employs personnel will together with numerous other criteria be included in the examination of facts and circumstances of whether a person can be regarded as self-employed or as an employee.

Self-employment is characterised by carrying on a business of financial character at one's own risk with the purpose of making a profit.

However, in the Danish tax law, there is no provision as to how the activity of an employee should be characterised.

The determination may in case of doubt be made by a total evaluation of the specific employment.

However, it is possible to list some general guidelines as to how the determination is to be made.

When evaluating whether the salary earner is self-employed, the following may be important:

a) The salary earner organises, manages, distributes and supervises the work without any further instructions from the employer beyond those given when the order is made.

b) The employer's obligation to the salary earner is limited to the specific order.

c) The salary earner is, in consequence of the order, restricted from performing work for other employers at the same time.

d) The salary earner is financially responsible to the employer for the performance of the work or in other respects he undertakes an independent financial risk.

e) The salary earner has employed personnel, and he is free to take on assistance.

f) The fee is paid on a time basis, and the entire fee will not be paid until the work has been performed as agreed, and possible defects have been repaired.

g) The income is received from an indeterminate number of employers.

h) The income depends on a possible profit.

i) The salary earner owns the instruments, machines and tools etc used.

j) The salary earner provides all or some of the material to be used for the performance of the work.

k) The salary earner has set up in his own premises, e.g. a shop, workshop, office, clinic, drawing office etc. and the work is wholly or partly performed from that place.

l) The salary earner's practice requires a separate authorisation, permission or the like, and the salary earner has such a permission.

m) The salary earner indicates by advertising, signs etc that he is a specialist and that he undertakes to perform work of a specified kind.

n) The salary earner is registered for VAT according to the Act on Value Added Tax, and the work has been invoiced to take account of VAT.

o) The liability for a possible accident during performance of the work lies with the salary earner.

The relationship between the salary earner and the specific employer shall be evaluated. This means that the salary earner at the same time may be regarded as an employee in relation to some employers, and may be regarded as self-employed in relation to other employers.

2. QUESTION 2

The concept of ZZP does not exist in Danish tax law, as stated in (1) above.

3. QUESTION 3

The concept of ZZP does not exist in Danish tax law, as stated in (1) above.

4. QUESTION 4

The concept of ZZP does not exist in Danish tax law, as stated in (1) above.

5. QUESTION 5

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6. QUESTION 6

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7. QUESTION 7

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8. QUESTION 8

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9. QUESTION 9

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10. **QUESTION 10**

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11. **QUESTION 11**

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12. **QUESTION 12**

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13. **QUESTION 13**

The concept of ZZP does not exist in Danish tax law, as stated in (1) above.

FRANCE

1. QUESTION 1

The concept of ZPP is unknown in French Law. There is no distinction for purposes of tax between a self-employed with or without personnel.

In order for a taxpayer to be treated as a self-employed for tax purposes, he has to choose the appropriate legal structure for his enterprise.

There are two different regimes a self-employed individual may opt for:

- *Entreprise individuelle* (i.e. individual enterprise). The entrepreneur (who must be an individual) must engage in the activity in his own name. He must personally direct and control the company's operations. The entrepreneur accepts unlimited legal liability for the company's debts in relation to all his assets; i.e. not only the enterprise's assets but also those 'privately' owned by the owner of the enterprise. The entrepreneur may have employees.
- *Entreprise Unipersonnelle à Responsabilité Limitée* (i.e. single member limited liability company – 'EURL'). One director, who must be an individual, runs the operations of the company. The associate (may be the director as well) is an individual or a legal entity (except in the case of another EURL). Liability for the debts is limited to the amount of the associate's contribution and any guarantees that might have been given. The liability of the director running the company may be extended to his private assets when the company is not being properly run. The EURL may have employees.

Further, certain formalities should be complied with the order for the self-employed regime to apply:

- registration with the tax authorities and payment of the duties;
- the registration application must be addressed to the Business Formalities Centre (*Centre des formalités des entreprises*) of the district where the taxable enterprise is established; and
- the filing of the statutes and other compulsory documents with the Commercial Court (*Tribunal de Commerce) (when the activity is commercial*).

[N.B.: The "fake self-employed": to avoid social charges or application of the labor law, an enterprise may decide to employ a "fake self-employed". In that case, the enterprise who hires the fake self-employed is liable to criminal and civil sanctions.]

2. QUESTION 2

As stated above in (1) above, the concept of ZZP does not exist in French Law. The options for individuals carrying out activities outside the scope of an employment agreement are described in (1) above. The taxation of income earned outside the scope of an employment agreement is described below.

3. QUESTION 3

In the case of an individual enterprise, the self-employed is subject to the ordinary income tax regime. The applicable tax rates are progressive and depend on the number of persons who constitute the *foyer fiscal* (i.e. tax households), as a result, the general rule of taxation for a family (tax household) assumes that both spouses enjoy equal status and are held jointly liable for income tax on both incomes (and that of their

dependent children). Each family subject to income tax must complete detailed tax returns showing the family's overall income for the preceding year. The individual entrepreneur shall personally direct and control the company's operations. He is responsible for the company's debts to an indefinite extent in relation to all its assets.

The tax administration considers the director of the EURL as a sole trader (i.e. he is subject to the normal income regime). The director may, however, opt to be taxed as a company, and pay corporate tax. See (6) above.

4. QUESTION 4

The self-employed individuals are subject to income tax (i.e. *impôt sur le revenu*) on three categories of income: industrial and commercial income (i.e. *Bénéfices Industriels et Commerciaux BIC*), professional business income (i.e. *Bénéfices Non Commerciaux BNC*), and agricultural income (i.e. *Bénéfices Agricoles BA*).

5. QUESTION 5

As stated in (4) above, self-employed individuals are taxed under different categories of income.

6. QUESTION 6

Generally, the determination of the income category depends on the types of activities, the legal structure, and on the total annual turnover. However, different rules may apply. For example, an architect's income is taxed as BNC, even if he has industrial and commercial income or agricultural income (normally taxed as BIC or BA).

There are several applicable regimes:

- *Déclaratif simplifié or "Micro-BIC"*: the taxable profit is the annual gross turnover with a standard deduction of 71 % (50 % for services);
- *Micro-BNC*: the taxable profit is the annual gross turnover with a standard deduction of 34%;
- *Réel normal*: net taxable profit; and
- *Réel simplifié*: simplified *Réel normal* regime.

Industrial and commercial income (i.e. *Bénéfices Industriels et Commerciaux, BIC*)

Average annual turnover (EUR)		Regime	
Goods	Services	Automatically	Option
up to 76,300	up to 27,000	"Micro-BIC"	"Réel simplifié" or "réel normal"
76,300 - 763,000	27,000 - 230,000	"Réel simplifié"	"Réel normal"
over 763,000	over 230,000	"Réel normal"	No option

Professional business income (i.e. *Bénéfices Non Commerciaux, BNC*)

Average annual turnover (EUR)	Regime	
	Automatically	Option

up to 27,000	"Micro-BNC "	Controlled declaration
27,000 or more	Controlled declaration	No option

Agricultural income (i.e. *Bénéfices Agricoles BA*)

Average turnover for 2 years (EUR)	Regime	
	Automatically	Option
up to 76,300	Fixed regime based on land usage for agricultural purposes	"Réel simplifié" or "Réel normal"
76,300 - 350,000	"Réel simplifié"	"Réel normal"
350,000 or more	"Réel normal"	No option

7. QUESTION 7

There are no special tax incentives for self-employed individuals without personnel. However, different incentives may generally apply to self-employed individuals engaged in new starts-ups:

- Tax exemptions on business income when the new enterprise is located in a land settlement zone (*Zone de Revitalisation Urbaine (ZRU)*);
- State aid for innovation from the Ministry of Industry;
- Aid to develop new business (*Encouragement au Développement des Entreprises Nouvelles (EDEN)*);
- Exemption of social charges for 1 or 3 years;
- Interest-free loan;
- Regional and municipal aid depending on the local councils rules;
- Local tax exemptions for 2 years;
- Tax credit for research and development for Innovative New Enterprises, and for Academic New Enterprises; and
- Certain aids to facilitate employment for e.g. young people or disabled people.

8. QUESTION 8

The self-employed individuals engaged in business activities in France are required to pay social contributions that offer social security coverage. The following social security regimes exist:

A social regime for employees (*travailleurs salariés (TS)*)

Employees are required to subscribe to a health insurance fund, an industrial injuries fund, an old age pension fund, the child benefit fund, and a supplementary pension. He may voluntarily subscribe to an unemployment fund. The subscription premiums are based on the gross salary. The employer contributions represent about 40% of the gross salary and the employee contributions represent about 20% of the gross salary.

A social regime for non-salaried workers (*travailleurs non salariés (NTS)*)

Non-salaried workers are required to subscribe to the health insurance fund (*Régime Social des Indépendants*, i.e. Independent Social Regime), the child benefit fund, old age insurance, disablement insurance, and a "whole" life insurance. There is no obligation to subscribe to an unemployment fund. The

subscription premiums are based on the taxable income before tax deductions. The premiums are linked to the French social professional categories.

Self-employed individuals are covered by the social regime for non-salaried workers with respect to both the individual enterprise, and the EURL. However, in the case of the EURL, if the associate is not the director, the other regime applies to him (the social regime for employees (TS)).

9. QUESTION 9

This uncertainty is addressed through the requirement of selecting an appropriate legal structure.

10. QUESTION 10

See (9) above.

11. QUESTION 11

After having registered the company (see (12) below), certainty is obtained with respect to both taxation and social security premiums.

12. QUESTION 12

In order to start business, it is necessary to register with the Trade and Companies Registry (*Registre national du Commerce et des Sociétés, RCS*) to obtain an identification number. A person may self-employed only if he obtain such identification. In addition, if the activity is regulated, it may be necessary to comply with special conditions (diploma, experience, etc.). The identification number is on the RCS certificate, K-bis.

13. QUESTION 13

A K-bis certificate is a virtual corporate identity card and the only official legal document that certifies the legal existence of an enterprise. A K-bis certificate provides information about the company's business activity and the identity of the executive officers, directors and auditors.

GERMANY

1. QUESTION 1

The concept of ZZP is unknown in German tax law. There is no distinction, for the purposes of tax, between a self-employed person and a self-employed person "without personnel". Income derived by an individual who is self-employed generally falls under the category of independent personal services, regardless of the fact whether or not that individual employs other persons.

However, it has to be determined whether an individual shall be treated as self-employed or employed. In the latter case, the income falls under the category for dependant personal services (employment). Further, a taxpayer could be classified as self-employed in respect of certain activities, while being treated as employed with regard to others.

It is difficult to determine whether income from a taxpayer's activities qualifies as employment income or income from independent personal services. Although the relevant tax regime for self-employed and employed individuals is similar (e.g. same tax rates, but minor differences in computing the taxable income) the determination of the status is decisive for the contributions to the social security scheme (see (8) below). Taxes and social security contributions for self-employed individuals are not withheld at source.

The determination of income falling within the relevant category takes place per activity. The Income Tax Act does not define the term "employment income". The main criterion for an activity to fall under the category of employment income is the existence of a *de facto* employer-employee relationship. However, apart from the contractual relationship between the parties concerned, the tax authorities would normally take into account the actual facts and circumstances of each case. Indications for an employment relationship include (1) the fact that the taxpayer is integrated into a client's business and is bound by his instructions, and (2) the lack of entrepreneurial risk borne by the taxpayer. On the other hand, indicators for self-employment include (1) the fact that the individual works for several clients, (2) the individual does not have regular fixed working hours, (3) there is no statutory holiday entitlement, (4) the individual uses his own working materials, (5) the individual employs his own workers, and (6) the individual is not supervised by the principal.

The tax authorities take an overall view of all the facts, giving due weight to the relative significance of various factors, and then determine the status of the individual. Where an individual has been wrongly classified as self-employed, the tax authorities are empowered to reclassify that individual (even with retrospective effect), and demand from the employer any tax or social security contributions that should have been deducted during the period of the incorrect classification.

2. QUESTION 2

As stated in (1) above, the concept of ZZP does not exist in German tax law.

3. QUESTION 3

As stated in (1) above, there is no special category of “self-employed without personnel”, however, self-employed persons are taxed under the normal income tax regime. No special regime exists for self-employed persons as such.

4. QUESTION 4

As stated in (3) above, the income of a self-employed person is taxed under the normal income tax regime. The German Income Tax Act provides the general rules for the taxation of various sources of income. Resident taxpayers are subject to income tax on 7 categories of income. These are (1) agriculture and forestry, (2) trade or business; (3) independent personal services, (4) employment (dependent personal services), (5) investment of capital (e.g. interest and dividend income), (6) rental income from real estate or other assets, and (7) other income, including annuities, private capital gains and, income of a recurring nature. The income of a ZZP may be classed either (1) as income from independent personal services, or (2) as trade or business income.

5. QUESTION 5

The concept of ZZP does not exist in German tax law (see (1) above). With regard to self-employed persons, as explained in (4) above, the normal income tax rules apply. The income of self-employed persons may be classed either (1) as income from independent personal services, or (2) as trade or business income.

6. QUESTION 6

A determination must be made as to whether the respective activities of a taxpayer fall under the category of trade or business income or of independent personal services. Although the same rates of income tax apply to both categories, individuals deriving business income are also liable to municipal business tax on their business. The business tax is levied on a taxpayer's business income and is not deductible for income tax purposes. A lump-sum credit against individual income tax is granted, up to the amount of tax due on the business income.

There are also differences in computing the income from the two categories. Trade or business income is calculated using the difference in net worth at the end of the business year and that at the end of the preceding business year (net worth comparison), subject to adjustments for items such as capital contributions or other non-taxable receipts. Furthermore, withdrawals by owners or stockholders and disbursements for non-business purposes or otherwise unallowable deductions are disregarded. The Commercial Code and the Income Tax Act require every business to keep certain books and records, and, at the end of each business year, to draw up financial statements. Accounting records must generally be kept for 10 years.

Income from independent personal services is generally determined according to the net income method, unless the taxpayers opt for the net worth comparison method (see above). According to the net income method, taxable income is computed by reducing the gross income by income-related expenses in accordance with the cash receipts and disbursements method.

There is no definition of "independent personal services" in German law. However, there is a negative differentiation in relation to business income, according to which any independent and lasting activity exercised with the intention of earning profit by participating in the open market, and which does not qualify as professional or agricultural or forestry activities, is considered as business income. The Income Tax Act stipulates that income from independent personal services includes income derived from professional activities, e.g. scientific, artistic, literary, teaching or educational activities which includes: activities of state certified engineers, architects or similar professions; physicians, veterinarians and dentists; attorneys-at-law, patent attorneys, notaries public, certified public accountants; business consultants, tax advisors, auditors; photographic reporters and journalists; interpreters and translators; and other similar activities, e.g. activities of graduated psychologists; activities of experts; certain medical services and certain advisory activities in tax and law affairs. The list of professions is not exhaustive. The main characteristics of

professional activities are that they require high intellectual input, as well as the attainment of high qualifications. Also relevant is the fact that these professions are usually subject to professional regulations. The personal element in the exercise of such activity is of particular significance.

The local chambers of commerce of the federal states publish an index, indicating which professions are considered to fall under the category of business income, and which are considered to qualify as personal independent services.

If a professional is assisted by professionally trained staff who do not possess the qualifications required for that particular profession, income derived through the assistance of that staff also constitutes professional income, subject to the proviso that the professional is in charge of his staff, and is acting under his own responsibility.

Income categories are determined per activity, if it is possible to identify separate activities. If the business and professional activities cannot be separated, because they are interconnected or dependent on each other, the tax authorities would normally take an overall view of all the facts, giving due weight to the relative significance of both activities and then decide on a case-by-case basis under which category the income from such activity falls.

Professional services (e.g. legal services) may also be rendered by partnerships. However, in this case, all partners must be professionals, must be in a managerial position, and must personally be responsible for their work. If one partner of the partnership is not a professional or is a corporation, e.g. a limited liability company, the income of all the partners will be categorized as business income.

7. QUESTION 7

As stated in (1) above, the concept of ZZP does not exist in German tax law. Thus, there are no special tax incentives for ZZPs.

8. QUESTION 8

As stated in (1) above, the concept of ZZP does not exist in German tax law.

The German compulsory social insurance scheme includes pension insurance, unemployment insurance, health insurance and nursing insurance for disability and old age. Employees are subject to the compulsory social security system. However, the costs are shared equally between the employer and the employee. The employer withholds the employee's contribution from wage and salary payments. From 1 January 2008, the monthly rates are applied to the actual monthly income, subject to a ceiling.

Self-employed persons are not subject to the compulsory German social security scheme. If they opt to contribute to the scheme on a voluntary basis, they must pay both the employer's and the employee's part. However, from 1 January 2009, all individuals should be subject to a mandatory health insurance scheme.

If self-employed individuals employ personnel, they are liable to pay contributions into the compulsory social security system for their personnel, and to withhold the employee's contribution from wage and salary payments.

9. QUESTION 9

Such uncertainty does indeed exist in Germany. The problems arising from uncertainty and incorrect classifications may be avoided by obtaining certainty in advance, as explained in (10) below.

10. QUESTION 10

Before an individual commences his own business, he is obliged to notify the respective municipality where he intends to set up his business. The municipality will notify the competent tax authorities, which should request the taxpayer to submit a form (Fragebogen zur steuerlichen Erfassung) for the purpose of fiscal registration. After approval of the form, the tax authorities should provide the taxpayer with his tax number. During this process, doubts about the qualification of the taxpayer's activities may be clarified in consultation with the tax authorities. The same applies to individuals who receive income from independent personal services. However, they must request the form directly from the tax authorities without first notifying the municipality.

Moreover, taxpayers and possible employers may apply to the Federal German Pension Fund for a formal status ruling concerning the taxpayer's classification for the purposes of the compulsory social insurance scheme. Such ruling is binding upon the parties. The request should be made in writing to the Federal German Pension Fund. The relevant document for a ruling request is available at http://www.deutsche-rentenversicherung.de.

11. QUESTION 11

For tax purposes, the individual may obtain certainty after receiving the approved form and his tax number from the tax authorities, as described under (10). As to his status for the purposes of the social security scheme, he may obtain certainty by requesting a status ruling from the German Pension fund as described under (10).

12. QUESTION 12

As to how certainty is provided, see (10) above. The taxpayer should receive a written answer/declaration after requesting a status ruling for the purposes of the social security scheme. After filing a form for the purpose of fiscal registration, the taxpayer should be registered with the tax authorities based on the information he provided.

The tax authorities conduct tax audits on a regular basis. The tax authorities are empowered to reclassify individuals who have been wrongly classified as self-employed (even with retrospective effect) and demand from the employer any tax or social security contributions that should have been deducted during the period of the incorrect classification. The statute of limitation is 4 years. However, in case of fraud, e.g. the employee was intentionally classified as self-employed, the statute of limitation is 30 years.

13. QUESTION 13

For the legal status, see (10) above.

IRELAND

1. QUESTION 1

The concept of ZZP is unknown in Ireland. Irish tax law does not distinguish between an individual who is self-employed with personnel, and one who is self-employed without personnel. Once self-employment status has been established, it is immaterial whether or not the individual employs any personnel.

The term "self-employed" is not defined in Irish tax legislation. However, the Revenue (i.e. the Irish tax authorities) states that a self-employed person works "in business on his own account". The Code of Practice for Determining Employment Status (see (10) below) provides for an economic test, namely whether the person is a free agent with economic independence of the person engaging the service.

The term "employee" is also not defined in the tax legislation. However, the Revenue have provided some guidance, stating that an employee is someone who works "under the control of or as part of the business of another".

The Revenue cites with approval certain guidelines laid down by the courts in determining employment status. Under the guidelines, an individual is more likely to be an *employee* if he:

- is under the control of another person who directs him as to how, when, and where the work is to be carried out;
- supplies his labour only;
- receives a fixed hourly/weekly/monthly wage;
- cannot sub-contract the work;
- does not supply materials for the job;
- does not supply equipment other than the small tools of the trade;
- is not exposed to personal financial risk in carrying out the work;
- works set hours or a given number of hours per week or month;
- works for one person or for one business;
- is entitled to sick pay/holiday pay/pension etc;
- receives expense payments to cover subsistence and/or travel expenses; and
- is entitled to extra pay or time off for overtime.

The Revenue notes that an individual may have considerable freedom and independence, and yet be regarded as an employee. In determining employment status, the Revenue looks at the totality of the circumstances, i.e. the whole picture. The Revenue states, for example, that an individual may be classed as an employee despite the fact that he may be paid by commission, or by piecework, or that he works outside the employer's premises. The important thing is to examine the arrangement as a whole. By the same token, where an individual has more than one undertaking (e.g. working in two or more places), each undertaking will be examined separately.

Under the guidelines, an individual is more likely to be self-employed if he:

- owns his own business;
- is exposed to financial risk, by having to bear the cost of making good faulty or substandard work carried out under the contract;
- has control over what he does, how he does it, when and where he does it, and whether he does it himself;
- is free to hire other people, on terms of his own choice, to do the work that he has agreed to undertake;
- can provide the same services to more than one person or business at the same time;

- provides the materials for the job;
- provides equipment and machinery necessary for the job, other than the small tools of the trade;
- has a fixed place of business where he stores materials, equipment etc;
- costs and agrees a price for the job;
- provides his own insurance cover e.g. public liability etc; and
- controls his own hours of work in fulfilling the job obligations.

The fact that an individual has registered for self-assessment or VAT does not automatically mean that the Revenue has accepted his status as self-employed.

2. QUESTION 2

As explained in (1) above, the concept of ZZP does not exist in Irish tax law.

3. QUESTION 3

As explained in (1) above, there is no special category of "self-employed without personnel", however, self-employed persons are taxed under the normal income tax regime. Self-employed individuals with and without employees are subject to undifferentiated personal tax treatment. However, individuals with employees will have to register as an employer for the purposes of PAYE (see (4) below).

4. QUESTION 4

The trading income of the self-employed is taxed under Case I of Schedule D in the schedular system, as opposed to Schedule E for employment income. As a result, a number of differences in tax treatment arise, one of the most important of which is the application of the self-assessment system rather than PAYE (which applies to employment income). PAYE (Pay As You Earn) is the system of withholding whereby an employer deducts tax and social insurance contributions from the employee's salary, and pays this over to the Revenue.

Tax is levied in the same manner on the total income of the employed and self-employed, and the same bands and credits (with the exception of a PAYE credit) apply.

5. QUESTION 5

As explained in (1) above, the concept of ZZP does not exist in Irish tax law. Self-employed persons are taxed under the normal tax rules, their taxable income being subject to the particular rules of the Schedule within which it falls (see 4) above. The tax legislation does not provide for a separate category of income for the self-employed, as such.

6. QUESTION 6

Ireland operates a schedular system of income tax, so income is taxed according to the rules of the Schedule under which the particular income falls.

Set out below is a list of Schedules under which some of the main sources of income are taxed:

- trading income: Schedule D Case I;

- professional income: Schedule D Case II;
- interest, annuities and other annual payments: Schedule D Case III;
- rent in respect of land or premises in Ireland: Schedule D Case V; and
- employment income: Schedule E.

Schedule D Case IV charges tax in respect of annual profits or gains not within any other Case of Schedule D, and not charged by virtue of any other Schedule.

Each Schedule has its own rules on the computation of income, allowable deductions, and loss relief, etc. A detailed examination of these rules is beyond the scope of this work.

Where income falls within a particular Schedule or Case, it is taxed according to the rules of that Schedule or Case. It matters not whether the income arises to a self-employed individual, or to any other taxpayer. There is no separate tax regime for the self-employed, as such. In order to determine the taxing rules for any particular income, the important thing therefore is to look at the source of the income, and not at the employment status of the individual.

7. QUESTION 7

The concept of "self-employed without personnel" is unknown in Irish tax law (see (1) above), however self-employed persons enjoy certain tax advantages not available to employees.

Employees have income tax and PRSI (i.e. social insurance contributions) deducted at source from their salaries on a monthly basis. The self-employed are required to pay their income tax and PRSI in two stages: a preliminary payment of 90% of the tax due at the end of October of the year of assessment, with the balance due at the end of the following October. This gives a cash-flow advantage to self-employed individuals.

Because of the rules on commencement, self-employed people are not required to pay preliminary tax in their first year of trading or carrying on a profession.

Self-employed individuals can choose their year-end for taxation purposes. This can give rise to a significant cash-flow advantage. For example, if a person makes up his accounts to a date early in the year (such as 31 January), then he would not have to pay preliminary tax in relation to that year until 31 October. This is 9 months after the accounting period has ended, and the money has been earned. The balance of income tax payable is then not due for a further 12 months.

Employees may only deduct expenses that they are necessarily obliged to incur and which are wholly, exclusively and necessarily incurred in the performance of their duties. On the other hand, the self-employed may deduct expenses that are wholly and exclusively expended for the purposes of their trade or profession. For self-employed individuals, therefore, the absence of the word "necessarily" means that they can obtain certain deductions not available to employees.

The self-employed can avail of capital allowances on equipment used in the trade or profession (such as computers, software, reference books, etc.), whereas employees cannot.

Self-employed people can provide themselves with benefits (loans, use of car etc.) from their business without additional exposure to income tax. Employees are liable to PAYE and PRSI on all perks or benefits-in-kind received from their employers, unless there is a specific exemption. However, there are certain benefits that employees can receive tax-free (and for which their employer will get a deduction) that the self-employed cannot claim.

The self-employed generally have more control over their pensions, and more options on retirement.

The rates for social insurance contributions differ between the employed and self-employed (see (8) below).

8. **QUESTION 8**

Both employed and self-employed persons are liable to pay PRSI (pay-related social insurance).

The self-employed pay PRSI and levies at the rate of 5% (3% PRSI and 2% health contribution levy, rising to 2.5% for salaries over EUR 100,000).

The rate for employees is 6% (4% PRSI and 2% health contribution levy, rising to 2.5% for salaries over EUR 100,000).

There is no income limit for PRSI for self-employed persons, and PRSI is payable on the full amount of income (as opposed to the first EUR 50,700 for employees). This can give rise to a higher overall PRSI liability for high earners. If a self-employed individual employs personnel, he must pay employers' PRSI of 10.75% on the salary paid (8.5% on income of EUR 356 per week or less). This does not apply where payments are made to self-employed contractors.

9. **QUESTION 9**

Such uncertainty also exists in Ireland. To this end, the Employment Status Group was launched under the auspices of the Programme for Prosperity and Fairness. The Group was set up in response to concerns that individuals were avoiding their correct tax liability by sheltering under self-employed status when they were, in fact, employees.

10. **QUESTION 10**

The Employment Status Group (see (9) above) has published a Code of Practice in Determining Employment Status. The Code of Practice sets out the various factors to be taken into account in determining the employment status of taxpayers. These factors were listed in (1) above. The Code of Practice was updated in 2007 by the Hidden Economy Monitoring Group. The Code states that its aim is to provide clarity and eliminate misconceptions. It is not intended to classify as employed, taxpayers who are genuinely self-employed.

The guidelines set out in the Code of Practice were developed based on court decisions over the years (see (1) above). Where there is uncertainty as to the tax status of a taxpayer, further guidance may be sought from the local Revenue Office or the local Social Welfare Office. A taxpayer may also seek advice from the Scope Section in the Department of Social and Family Affairs (DSFW). Where doubt remains, the Revenue Deciding Officer or the Scope Deciding Officer (as the case may be), will consider all the evidence, and having established the relevant facts, will issue a written decision as to the status of the taxpayer.

11. **QUESTION 11**

A decision by one Department is generally accepted by the other, provided that all the relevant facts were supplied at the time, that the circumstances remain the same, and it is accepted that the correct legal principles were applied to the facts established. However, the Revenue states that "because of the varied nature of circumstances", as well as differing statutory provisions, it may well be the case that consensus between both Departments may not always be possible.

12. QUESTION 12

See (10) above.

13. QUESTION 13

A taxpayer does not have to accept the decision on his status given by either a Revenue Deciding Officer or a Scope Deciding Officer (see (10) above).

A decision by a Revenue Deciding Officer may be appealed to the Appeal Commissioners. A decision by the Appeal Commissioners may then be appealed to the courts.

A decision by a Scope Deciding Officer may be appealed to the Social Welfare Appeals Office, an independent body dealing with social welfare appeals. Decisions by this body may be appealed to the High Court on a point of law.

POLAND

1. QUESTION 1

The concept of ZZP is unknown in Polish law. There is no distinction, for the purposes of tax, between a self-employed person and a self-employed person "without personnel".

Polish tax law, labour law and social law do not use or define the term "self-employment". When referring to the sources of income derived from “self-employment” (as opposed to an employment relationship), the Individual Income Tax Law (IITL) uses the terms (1) "entrepreneurship" (business activity) and (2) "personally performed professional activity". As such, the "self-employment" may be carried on either under entrepreneurship (business activity) or personally performed professional activity. While entrepreneurship generally implies employment of personnel, personally performed professional activity is, by definition, an activity performed by the taxpayer and does not imply the employment of personnel.

Under the IITL, entrepreneurship is defined as any non-agricultural business activity, including the activities performed by individual entrepreneurs (business activity may also have other forms, e.g. civil law company) carried out on their own account and in an organized and uninterrupted manner.

Personally performed professional activity includes, inter alia:

- independently performed artistic, literary, scientific, educational, sports and journalistic activities;
- independent activities of professionals rendered under service (freelance) contracts, unless these activities qualify as business activities;
- activities of Polish arbitrators participating in arbitration proceedings involving non-resident parties;
- activities of members of management committees, boards of directors and other decision-making bodies of legal entities; and
- activities performed under managerial contracts or other similar agreements (including managerial contracts concluded by the self-employed in the framework of their business activities).

The IITL expressly provides that independent activities of professionals, such as physicians, dentists, lawyers, engineers, architects, translators and accountants, are treated as personally performed professional activities, if they are carried out exclusively for legal entities, partnerships or entrepreneurs (under service or similar contracts). If performed by registered individual entrepreneurs, these activities qualify as business activities.

In addition to significant employment cost savings, employers are not subject to labour law regulations as a result of entering into a self-employment relationship with former employees. Due to the common practice of replacing employment relationships by fictitious "self-employment", the definition of business activity in the IITL has been revised. From 1 January 2007, "self-employment" is treated as entrepreneurship if the following criteria are jointly met:

- the taxpayer is not liable to third parties for his performance and the services/work provided to the customer;
- the services/work are performed under the supervision and at the place and time indicated by the customer; and
- the taxpayer does not bear the entrepreneurial risks related to his business activity.

In practice, from 1 January 2007, the tax authorities may reclassify taxpayers registered as entrepreneurs (business activity) as "professionals personally providing their service/work" (i.e. another form of self-employment - see above). Serious tax (see (3) below) and social security (see (8) below) consequences may arise for the taxpayer as a result of such reclassification.

2. QUESTION 2

As stated in (1) above, the concept of ZZP does not exist in Polish law.

3. QUESTION 3

As stated in (1) above, there is no special category of "self-employed without personnel". However, self-employed persons are taxed under the normal income tax regime. No special regime exists for self-employed persons as such.

4. QUESTION 4

As stated in (1) above, the tax implications of activities performed under the self-employment status depend on the form of self-employment, i.e. (1) entrepreneurship (business activity) or (2) personally performed professional activity under service or similar contracts.

In the case of "entrepreneurship", individual entrepreneurs may opt for a 19% flat tax rate, as opposed to regular progressive tax rates of 19%, 30% and 40%. The taxable income is calculated under the general rules, i.e. gross income less deductible costs; however, however, only mandatory social security contributions are deductible as expenses. No personal allowance may be claimed and no joint taxation of spouses/partners is possible. If the individual entrepreneur does not opt for the flat tax regime, he will be taxed at progressive tax rates, with the possibility of deducting allowable costs based on actual expenditures.

Small-scale individual entrepreneurs, whose prior-year annual income did not exceed EUR 150,000, may opt for taxation under a simplified regime. In this case, depending on the type of activity, the tax is levied at the rates of 20%, 17%, 8.5%, 5.5% or 3%. No deduction of related expenses is allowed.

Individuals personally providing professional services/work are taxed under the normal tax regime subject to progressive tax rates (19%, 30% and 40%). In most cases, lump-sum expenses (20% of income) may be deducted; higher expenses are deductible based on actual expenditures. For income from activities of members of management committees, boards of directors and other decision-making bodies of legal entities and activities performed under managerial or similar agreements deductible expenses are the same as for employment income.

If an individual provides services and/or work under various categories, e.g. under entrepreneurship and a service contract or employment contract, the income will be taxed separately under each category. If, for instance, an employee has a separate service contract with the employer for a given task, which falls out of the scope of his employment contract, this income will be reported and taxed under a different category than employment income.

If an individual provides services both under the registered business activity and a civil contract he will, in principle, be taxed separately on these two sources of income, unless his "entrepreneurship" fails to meet the criteria referred to in (1) above and is thus reclassified.

5. QUESTION 5

As stated in (1) above, the concept of ZZP does not exist in Polish law. With regard to self-employed persons, as explained in (4) above, the normal income tax rules apply and their income may fall under different categories.

6. QUESTION 6

See (4) above. To determine the category of income, i.e. whether it is derived from self-employment (i.e. either entrepreneurship or personally provided service), or employment, the tax authorities would likely start with the statutory criteria contained in the IITL (see (1) above). Thus, the factual circumstances, rather than contractual provisions, are considered.

7. QUESTION 7

As stated in (1) above, the concept of ZZP does not exist in Polish tax law. Thus, there are no special tax incentives for ZZPs.

8. QUESTION 8

There are different social security charges imposed on income of employees, self-employed professionals and individual entrepreneurs. The most beneficial system applies to individual entrepreneurs, but self-employed professionals also pay lower social security contributions than employees.

Employees pay social security contributions on their gross income (as defined for income tax purposes). Employee's contribution is 13.71% (9.76% - old-age, 1.50% - disability, 2.45% - sickness and maternity), whereas employer's contribution is 14.93% (9.76% - old-age, 4.50% - disability, 0.67% - injury). For old-age pension and disability insurance, a maximum base (ceiling) applies (PLN 85,290 in 2008, approx. EUR 23,100).

Self-employed professionals providing services/work on the basis of service or similar contracts are subject to the same social security contributions as employees, with the exception of sickness and injury charges, which they are generally not required to pay. However, due to a broader definition of the term "employee" for Social Security Law purposes, professionals providing services/work on the basis of service or similar contracts concluded with their employers are also subject to sickness and injury charges.

A significantly different social security system applies, however, to the individual entrepreneurs acting under the registered business. Their total social security charges amount to 31.09% (19.52% - old-age, 6% - disability, 2.45% - sickness and maternity, 2.45% - labour fund, and 0.67% - injury). The assessment base is the amount declared by the taxpayer, but on a monthly basis the base may not be lower than 60% of the officially published average monthly salary of the previous quarter (currently PLN 1,790.39; approx. EUR 530). As a result, high-income entrepreneurs may be subject to lower social security charges.

Individual entrepreneurs who recently started their business activity can benefit from a preferential computation base, i.e. 30% of the minimum monthly salary (currently PLN 337.80, approx. EUR 100) for an initial period of 24 months. However, this incentive cannot be claimed if the entrepreneur provides services to his former employer.

9. QUESTION 9

Such uncertainty does indeed exist in Poland. However, the situation has improved as a result of the inclusion in the IITL of a more precise definition of business activity in 2007.

Taxpayers may apply to the tax authorities for a private ruling, in order to clarify their particular situation. Special forms must be completed by taxpayers and submitted to one of the designated tax chambers (second tier of tax administration).

In the request, the taxpayer must present the actual facts or planned events, put forward the question and give his own opinion on the case at hand. The private ruling must generally be issued within 3 months of the date of filing.

From 2007, the tax authorities are no longer bound by their interpretations. Nevertheless, even in these circumstances, the tax authorities are not permitted to commence tax proceedings or impose tax penalties for the periods covered by the ruling, subject to the proviso that the taxpayer strictly followed the ruling and the factual situation reflected in the ruling occurred after its receipt.

10. QUESTION 10

See (9) above.

11. QUESTION 11

The rulings are, in principle, issued only with respect to tax matters.

12. QUESTION 12

See (9) above.

13. QUESTION 13

See (9) above.

SPAIN

1. QUESTION 1

The concept of ZZP is generally unknown in Spanish tax law. However, the new Self-Employment's Statute Act introduced, from 12 October 2007, a new category of self-employed individuals, i.e. "financially dependent self-employed (autonomous) workers" (hereinafter: FDSWs). One of the requirements for being treated as a FDSW is the lack of any employees.

2. QUESTION 2

A self-employed person is defined as an individual who regularly, personally and directly carries out an economic or professional activity, with or without employees, which does not involve other persons' organization and management.

FDSWs are defined as persons who regularly, personally and directly carry out an economic or professional activity, predominantly for one individual or legal entity (referred to as a "client"), generating at least 75% of their employment and business income from work performed for and therefore financially dependent on that client.

Although in its definition of business income the Individual Income Tax Law refers to "entrepreneurial and professional activities", rather than "economic and professional activity" (see above), both laws essentially address the same factual circumstances.

To be regarded as a FDSW, the following cumulative requirements must be met:

- FDSW should have no employees. He should not subcontract all or part of his activities to third parties. He should carry out his activities in a manner that could be distinguished from an employment relationship;
- FDSW should use his own equipment needed to do the job;
- FDSW should be responsible for organization of his work, while following possible technical specifications received from the client; and
- FDSW should receive a consideration for his activity under the terms agreed with the client, while bearing the relevant risks.

This regime is not available to those who have an establishment or business premises open to the public, or all those professionals who carry out their activity jointly with other professionals through a legal entity or any other kind of legal form recognized by law.

There are no definitions of self-employed and employed for tax purposes; both concepts are defined in labour law. However, the Individual Income Tax Law provides for specific criteria for the classification of income from certain activities as employment income, professional income or entrepreneurial income. While both professional and entrepreneurial income are considered as business income, the most important difference for tax purposes is the obligation to withhold tax in the case of professional income that does not exist in the case of entrepreneurial income.

The following activities are deemed to generate employment income, unless the taxpayer disposes of the means of production and/or human resources required for the production and distribution of goods or services:

- giving courses, seminars, lectures, etc.;

- production of literary, artistic and scientific works, provided that the author transfers the intellectual property rights;
- personal services provided by the founders of a company if they are remunerated through special economic rights reserved for them;
- grants and scholarships when they are not exempt;
- humanitarian or social activities promoted by charitable entities;
- activities performed under one of the special labour contracts (i.e. high management, professional sportsmen, trading representatives, domestic service, artists in public shows). If the requirements of the Royal Decrees regulating these special labour contracts are not fulfilled and the taxpayer organizes by himself the material and human resources of his activity, the income will be considered as professional income; The circumstances that indicate the existence of a labour contract include (1) the use of the premises of the company (even though the employee can use some of his own resources, e.g. vehicle), (2) lack of personnel, and (3) the fact that the self-employed follows the instructions and orders of the company (e.g. timetables, routes, prices or how to place the orders); and
- activities of administrators and member of the board of directors of a company; the income from these activities is considered as employment income subject to a special withholding tax rate of 35%, regardless of the applicable social security regime (see (8) below).

Under the Individual Income Tax Law, professional income includes:

- in general, the income derived from the activities included in its Chapters 2 and 3 and subject to the local tax on economic activities;
- in particular, the income derived by, inter alia:
  - authors or translators of works protected by intellectual or industrial property rights, subject to exceptions; and
  - commission agents facilitating the conclusion of contracts; if they also bear the risks of commercial transactions, their activity is considered as an entrepreneurial activity.

3. QUESTION 3

There is no special regime for FDSWs as such. FDSWs are taxed under the normal income tax regime.

4. QUESTION 4

As stated in (3) above, the income of a FDSW is taxed under the normal income tax regime. Depending on its nature, the income of a FDSW may fall under the category of employment income, business income, capital income (passive income, rental income) or capital gains.

5. QUESTION 5

As explained in (4) above, the normal income tax rules apply to the income of FDSWs; such income may fall under different categories.

6. QUESTION 6

As stated above, it shall be determined whether the relevant activities of a FDSW fall under the categories of employment income, capital income, business income or capital gains. The determination takes place per activity.

In particular, employment income comprises any remuneration, in cash or in kind, which (1) arises directly or indirectly from the provision of dependent services by a taxpayer and (2) does not constitute business or professional income.

Business income is defined as income derived from labour and/or capital, which involves the organization by the taxpayer of control of the means of production and/or human resources for the production or distribution of goods or services. Professional income qualifies as business income and is computed according to the normal business income rules. However, salaries or wages derived by an individual who is carrying out his functions in an enterprise under a labour law contract, and who must register with the appropriate professional body (e.g. lawyer) is not treated as professional income, but as employment income. Agricultural and forestry income constitutes business income and is computed according to the normal business income rules. All the income from assets used for business or professional activity falls under the category of business income; however, capital gains from the disposal of such assets are taxed separately (see below).

There is currently a tendency for employers to replace employees with self-employed persons due to the lower costs for the companies (in terms of social security contributions, unemployment compensations, etc.). The tax law has addressed this development, and therefore there is a new specific allowance the amount of which is equal to that provided for employment income, applicable when the difference between employees and self-employed is not clear (see (7) below). But it is understood that it is not up to the tax legislation to stop these situations of extending the situations of pretended self-employment to labour contracts. The qualification as employee or as self-employed will be given by the labour legislation in most of the cases.

There are two different methods for computing business income derived by FDSW:

Direct computation method

As a general rule, business income or profit is computed in accordance with the corporate tax rules and the ordinary accounting principles on the basis of the taxpayer's financial statements (i.e. the so-called direct method of computation). To this end, a businessman is statutorily required to keep certain accounting books (depending on the method of computing net income). The direct method has two different specialties:

– *Normal direct method*: Under the normal direct method, net income is computed with reference to the rules applicable to companies. It must be independently computed in respect of each of the taxpayer's activities. Net income is the balance of gross turnover (including self-consumption of goods and any grants or subsidies) less income-related (necessary) expenses and depreciation of income-related assets.

– *Simplified direct method*: Businessmen and professionals with maximum EUR 600,000 turnover may determine their assessable base under the simplified tax regime, which involves fewer formal obligations than the normal direct method. Under this regime, the fixed assets are depreciated according to the official rates and 5% of the net profits may be deducted as notional expenses. This notional deduction is not compatible with the net business income allowance.

Objective computation method

For businessmen and professionals with a small or medium-sized turnover and whose professions are listed annually in a decree of the Minister of Finance, a special computation regime based on parameters (*estimación objetiva*) is available. Under the computation scheme based on parameters, businessmen engaged in listed activities (coffee houses, bars, pubs, 1 and 2-fork restaurants, taxi services, pharmacies and retail food and drink shops) must determine their net income, separately for each activity, by reference to the standards set out by the Ministry of Economy and Finance for the listed activities (e.g. area of premises, employees, tables, Kw consumption, km driven per year for taxis, gaming machines, all multiplied by a notional amount per year), unless this scheme is waived and the taxpayer elects to be taxed

according to the direct method.

The income resulting from the parameters will be lowered applying an index (0.80, 0.75 or 0.70 according to the population of the city where the activity is located) if (1) the activity is carried out by an individual, (2) without personnel, (3) in a single premises, and (4) with no more than a vehicle which has less than 1,000 kg of maximum authorized weight.

In calculating net income under either scheme, the taxpayer must exclude capital gains or losses from assets attached to his business or professional activity. In addition, income generated over more than 2 years is reduced by 40%.

The tax differences between the different categories of income can be summarized as follows.

Deductibility of expenses

Business income: According to the direct method, businessmen and professionals may deduct virtually all duly substantiated and necessary income-generating expenses, the appropriate allowances for depreciation, doubtful debts, etc., and the pertinent tax credits for entrepreneurs.

Employment income: The only allowable expenses are: contributions to the Social Security; dues paid to the trade unions; fees paid to professional associations when the membership is compulsory, up to a limit of EUR 500 per year; and the legal expenses derived from litigation between the employer and the employee, up to a limit of EUR 300 per year.

Withholding taxes

Business income: Trading or entrepreneurial activities are not subject to withholding tax unless their income is estimated under the objective method, or the income derives from agricultural, cattle raising or forestry activities. Professional activities are subject to a 15% withholding tax on the gross income. The Individual Income Tax Regulations refer to the classification of the local Economic Activities Tax to distinguish between trading or entrepreneurial activities and professional activities. According to this classification, whenever an activity recognized as professional is carried out through an entity, with or without legal personality, it has to be considered as entrepreneurial for the local tax purposes. This is not the case for Individual Income Tax where if the professional activity is carried out through certain entities (in most cases without legal personality and always look-through entities for individual income tax purposes), the activity is still considered to be professional.

Employment income is subject to withholding tax according to the personal and family circumstances of the taxpayer. The withholding tax rate ranges from the minimum 2% to the maximum 43%.

Advance payments

Self-employed professionals and businessmen are required to file quarterly returns and make advance payments by 20 April, 20 July and 20 October of the current year, and 30 January of the following year. These advance payments are creditable against the final income tax liability for the current year. However, self-employed professionals who had at least 70% of their last year's income subject to withholding are exempt from this obligation. The statutory maximum of each prepayment is:

- for businessmen and professionals computing their net income under the direct method, 20% of the difference between income and deductible expenses relating to the portion of the current calendar year less any prepayments made for the preceding quarters of the year and, in the case of professionals, the payments on account and withholding tax for the quarter in question; professionals whose income is for at least 70% subject to withholding, are not required to make advance payments;
- for farmers, 2% of the gross turnover in the quarter (excluding current subsidies) less any related withholdings and payments on account, unless 70% of their income has been the object of withholding

(at 1% or 2%, depending on the case);
- for fishermen, 2% of the gross turnover in the quarter (excluding current subsidies) less any related withholdings and payments on account; and
- for businessmen (not professionals) computing their net income under the special scheme based on parameters (objective method): 4% of the net yield resulting from application of such scheme on the basic figures for the first day of the year to which the advance payments relate or the day of commencement of a new business activity or, if this is not feasible, the immediately preceding year; 3% if they have only one employee; 2% if they have no employees; and 2% of the gross turnover or receipts in the quarter in both cases less any related withholdings, in all other cases.

A negative return must be filed where there is no advance payment to be made.

7. QUESTION 7

There are no specific tax incentives for the self-employed without personnel. The incentives for similar categories of self-employed are stated below.

Employment legislation provides for compensation for unemployment in a lump sum payment if the receiver invests the compensation in starting an economic activity as self-employed or as a partner of a labour corporation or of a cooperative. The Individual Income Tax Law exempts this lump sum up to EUR 12,020, provided that the activity or the participation in the corporation or cooperative is held for at least 5 years.

The new Individual Income Tax Law, in force since 1 January 2007, establishes a new fixed allowance based on the net business income (NBI) for those activities whose net income is determined through the direct computation method. The final amount cannot be negative. Any unused part of the allowance is definitively lost. The allowance is the same as that provided for employment income. The beneficiaries of the allowance are not exactly self-employed without personnel but a similar kind of self-employed, because to qualify for the allowance, the following requirements must be met:

- all the goods delivered, or the services rendered, must be made to a single non-related individual or legal person;
- the total amount of deductible expenses corresponding to all the business activities of the taxpayer can not exceed the 30% of the gross income;
- the taxpayer must fulfill all the formal accounting obligations imposed by the Individual Income Tax Law;
- the taxpayer should not receive any employment income in the taxable year. If the taxpayer receives unemployment income or any other income derived from the welfare system, the allowance is still available, provided the amount does not exceed EUR 4,000 per year;
- at least 70% of the income should be subject to withholding tax; and
- no business activity should be carried out through an entity subject to the attribution of profits regime.

If the net income is assessed through the simplified direct estimation method, the allowance is incompatible with the deduction of the notional expenses (5% of the net profits).

The allowances are the same as those for employment income:

- taxpayers with NBI up to EUR 9,180: EUR 4,080;
- taxpayers with NBI over EUR 9,180 and up to EUR 13,260: the result of the following formula: 4,080 - (0.35 x (NBI - 9,180)); and
- taxpayers with NBI over EUR 13,260, or with income other than business income over EUR 6,500: EUR 2,652.

Some Autonomous Communities (Andalucía, Asturias, Castilla-León and Galicia) have established a

specific tax credit for the promotion of self-employment. The tax credits range from EUR 66 to EUR 1,020 and are targeted to new enterprising people younger that 35 or 35 years and women who start a business for the first time.

Beyond the scope of the tax legislation, and in addition to the possibility of asking for the unemployment compensations in a lump sum payment (see second paragraph in this section), all those starting a new activity as self-employed are entitled to the following subsidies within the Program for the Promotion of the Self-employed Work:

- general subsidies subject to an investment in the new activity made by the beneficiary of no less than EUR 5,000 between the 3 months before commencing the activity and 6 months after:
  - EUR 5,000: without any special condition;
  - EUR 6,000: young unemployed (up to 31 years);
  - EUR 7,000: unemployed women;
  - EUR 8,000: handicapped unemployed;
  - EUR 10,000: unemployed handicapped women; and
  - in the case of female victims of sexist violence, the amounts are increased by 10%;
- financial subsidy: The amounts are the same as seen above and the subsidy will be equal to a reduction of 4 points in the interest rates;
- technical assistance subsidy: 75% of the cost of the services rendered with up to EUR 2,000; and
- training subsidy:75% of the cost of the courses up to EUR 3,000.

8. QUESTION 8

There is a special regime in the Social Security system regarding the self-employed or autonomous workers, with or without personnel (*Régimen Especial de Trabajadores por Cuenta Propia o Autónomos, RETA*). The affiliation and the payment of the contributions to this regime is compulsory. The general contribution rate is 29.80 %. The contribution rate is applicable on the contribution base chosen by the self-employed, between a minimum base of EUR 817.20 and a maximum base of EUR 3,074.10. Different contribution bases apply in case of self-employed older than 49 years. As a general rule, payment for protection in case of temporary disability is voluntary. If the self-employed decide not to avail of this protection, the contribution rate is 26.50%. Besides the general contribution, there is a specific protection regarding industrial accidents and occupational diseases. This is also voluntary.

However, the new Self-Employments Statute Act of 2007 establishes that the FDSW will always have to include and pay contributions for temporary disability, industrial accidents and occupational diseases. This law also foresees the possibility of different contribution bases for the FDSW but the article has not yet been developed.

9. QUESTION 9

The existence of an employment contract (oral or written) and the affiliation to the general regime of the Social Security identify the income derived from the activity as employment income. The difference between employment income and business income may, depending on circumstances, be difficult to establish. The key element is whether the taxpayer carries out the activity under independent conditions or under the organization and direction of another person. The relevant social security contribution scheme will, in principle, be the criterion to differentiate between the two kinds of income for tax purposes. If the person is subject to the Special Regime of Self-employed or Autonomous Workers (see (8) below), his income will be qualified as business income. By contrast, if the General Regime applies to the person, his income will be considered as employment income.

10. QUESTION 10

There are no specific procedures to deal with uncertainty regarding the taxation of the self-employed and/or employees. Any doubts should be resolved through the general mechanism of the advance rulings that taxpayers may submit to the tax authorities. The answer given by the Administration is binding for the organs and entities in charge of the implementation and application of taxes.

In relation to Social Security contributions, no specific regulated mechanism exists to deal with this issue. The existence of an employment contract that should be registered and the corresponding affiliation to the General Regime of the Social Security are the elements that establish the difference between being an employee or being self-employed.

11. QUESTION 11

See (10) above.

12. QUESTION 12

See (10) above.

13. QUESTION 13

See (10) above.

SWEDEN

1. QUESTION 1

The concept of ZZP is unknown in Swedish tax law. There is no distinction, for tax purposes, between a self-employed person with or without personnel. A taxpayer who is treated as self-employed for tax purposes is automatically subject to the tax rules applying to that status. The term "self-employed" is not defined in the law. Guidance published by the Tax Agency provides that a business activity arises for tax purposes as soon as an individual taxpayer carries out any form of business activity. If the business activity is carried out by the individual in his own capacity, i.e. not by a legal entity, the individual is taxed on all income from the business under the regular individual income tax regime. Social security contributions are deemed to be paid provided that the business income is treated as active, see (6) below. In this case, the taxpayer is treated as self-employed and, therefore, social security contributions are levied accordingly (for details see (6) below).

2. QUESTION 2

As stated in (1) above, the concept of ZZP does not exist in Swedish law.

3. QUESTION 3

As stated in (1) above, there is no special tax regime for ZZPs; their income is taxed under the normal income tax regime.

4. QUESTION 4

Income from a business activity derived by self-employed individuals is generally taxed as business income. However, if the income does not meet the conditions to be classified as business income, it is generally taxed as either (1) capital income or (2) employment income.

5. QUESTION 5

The concept of ZZP does not exist in Swedish tax law (see (1) above). With regard to self-employed persons, as explained in (4) above, the normal income tax rules apply, and the tax laws do not provide for a separate category of income for the self-employed as such.

6. QUESTION 6

Income is treated as business income provided three conditions are satisfied: (1) the activity from which the income is derived must be an independent activity, (2) the activity must be a commercial activity and (3) the activity must be carried out with the purpose of making a profit. If one or more of these conditions is not fulfilled, the income (e.g. independent services income or income from the sale of goods) is deemed to be employment income or income from capital.

Business income earned by an individual taxpayer may be classified as either active or passive income depending on the nature of the underlying activity. . Business income is treated as active if the taxpayer has

participated in the work to a significant degree, which generally means that he should have worked more than one third of full-time working hours in the business. This distinction is important in determining the type of social security contributions the taxpayer is liable to pay (see (8) below).

The distinction between active and passive income is also of importance with regard to losses, as a loss corresponding to one source may generally only be set off against income from the same source (e.g. active losses may only be set off against active business income).

All business income (active and passive) is earned income and is taxed accordingly. With respect to active business income, social security contributions are also levied (see (8) below). Social security contributions are not levied with respect to passive income. Instead a special salary tax, currently 24.26%, is levied on passive income. . The social security contributions are deductible when calculating taxable business income. Special rules apply to individuals born in 1937 or earlier. A special deduction is also granted for businesses carried out in certain regions.

Furthermore, the owner of a business is liable to tax on imputed interest in respect of the value of his shares in the business. In addition, income retained in the business is subject to a 28% expansion reserve tax.

Taxable business income for individuals is calculated according to the Income Tax Act. Provisions included in other statutes may, however, affect the computation in some instances (see (13) below).

The following items are, inter alia, taxable as business income:

- gains arising on the sale of current assets;
- income from professional services such as leasing goods or immovable property, consultations, etc.;
- gains arising on the sale of fixed assets, except immovable property and shares;
- recovery of depreciation and certain other deductions when immovable property is sold; and
- interest and gains from financial assets, such as bank accounts or bonds if the assets belong to the business.

The following items are excluded from business income and are instead taxed as income from capital:

- gains arising on the sale of fixed assets when the asset is immovable; and
- dividends on shares that are fixed assets.

Expenses incurred for the purpose of acquiring or maintaining business income are generally deductible.

7. QUESTION 7

There are no special tax incentives for self-employed taxpayers, apart from those mentioned in (6) above.

8. QUESTION 8

Self-employed persons who are active in a business pay social security contributions (30.71%) on income derived from their business. These contributions result in future benefits only to a limited extent and should therefore partly, and in some cases fully, be deemed to constitute taxes. Consequently, there is a special complementary tax on employment and business income in those cases where social security contributions are not levied. A special social security contribution (the pension insurance premium) is paid on earned income up to SEK 387,360 (2008): the rate is 7%. This contribution is partially deductible from earned income (the limitation is linked to a tax credit of the remaining amount).

The social security contributions for self-employed persons consist of seven different components (including a general salary tax). Payments for the retirement pension insurance and health insurance result in increased benefits. However, those benefits are not computed on income (i.e. income less the compulsory 7% pension insurance premium) over SEK 360,000; nevertheless, payments must be made on income over this amount. That means that for income over SEK 360,000, the social security contributions effectively function as taxes. The other five components of the social security contributions (including the general salary tax) always function as taxes. The social security contributions are levied under the Social Security Contributions Law (SAL) and the Law on General Salary Contributions.

In addition, self-employed individuals must pay a pension insurance premium of 7% according to the Law on General Pension Contributions. This payment results in benefits, i.e. it should not be considered as a tax. It is computed on net business income, subject to a ceiling of SEK 387,360.

A special salary tax is also payable on deductible pension premiums paid by self-employed persons in respect of a private pension for either themselves or their employees. Social security contributions and the special salary taxes are generally deductible for national and municipal income tax purposes. They are included in the general income tax assessment.

9. QUESTION 9

The laws regulating the taxation of income from business activities, as well as the payment of social security contributions, are fairly clear (see (8.) above). As regards social security contributions the law makes a clear distinction between employed and self-employed, and between active and passive income.

10. QUESTION 10

See (9) above.

11. QUESTION 11

See (12) below.

12. QUESTION 12

The Tax Agency (*Skatteverket*) issues binding regulations and non-binding guidelines on how to apply and interpret the legal rules including the rules on social security contributions. The guidelines are issued each year. There is however no special procedure for obtaining any specific declaration.

13. QUESTION 13

See (12) above.

UNITED KINGDOM

1. QUESTION 1

The concept of ZZP is unknown in UK tax law. There is no distinction, for the purposes of tax, between a self-employed person and a self-employed person "without personnel". A taxpayer who is treated as self-employed for tax purposes is automatically subject to the tax rules applying to that status; it matters not whether he employs other people.

A self-employed person is defined as someone who is "in business on his own account". This is a definition that has arisen from case law. UK tax and social security legislation does not define the term "self employment". Case law draws a sharp distinction between a "contract of service" (i.e. an employment contract) and a "contract for services" (which indicates self-employment).

The tax regime applicable to self-employed taxpayers differs in part from that applicable to employees. Notwithstanding that the rates of tax are the same, certain taxpayers prefer self-employment status, for example, because of the more generous rules on deduction of expenses. Also, the capital allowances scheme (under which taxpayers obtain relief for depreciation of capital assets) is more generous for the self-employed. In addition, there is a cash-flow advantage for self-employed persons, as, unlike employees, their taxes and social security contributions are not withheld at source. Self-employed persons also enjoy a more advantageous social security regime (see (8) below). As such, Her Majesty's Revenue and Customs (HMRC - the UK tax authorities) are concerned to ensure that taxpayers do not reduce their tax liability by claiming self-employment status when they are in fact employees. So even though the concept of the ZZP is unknown in the UK, special rules apply in order to determine the status of the taxpayer (i.e. whether employed or self-employed), and also to defeat artificial schemes set up by taxpayers to circumvent the application of the employment taxation rules.

It is possible for a taxpayer to have multiple capacities, i.e. he could be classed as self-employed in respect of a particular undertaking, and as employed in respect of another. HMRC look to the particular circumstances of each undertaking in order to determine the exact status of the taxpayer.

HMRC apply "employment status" rules in order to determine whether or not an individual is, in actual fact, an employee. They look, not only at the contract between the parties, but also at what happens in actual practice. The factors they consider include the following:

- whether the individual is required to work at the client's premises;
- whether the individual's work is supervised by the client;
- whether the individual works a set amount of hours;
- whether the individual works for other people as well;
- whether there is "mutuality of obligation" (i.e. that the engager is obliged to provide work, and that the worker is obliged to perform it);
- whether the individual provides the main items of equipment needed to do the job;
- whether a fixed price is paid for the services, regardless of how long it takes;
- whether the individual has the right to substitute someone else to do the work for him;
- who bears responsibility for correcting any errors made by the individual;
- whether the individual has the opportunity to profit from sound management; and
- whether the individual is entitled to any benefits, such as holiday pay.

This is not a definitive checklist, and no single factor is determinative of either employment or self-employment. Rather, following the decision in Hall v Lorimer 66 TC 349, HMRC must take an overall view of all the facts, giving due weight to the relative significance of various factors, and then decide on the status of the individual.

HMRC have also published lists of certain occupations that, in their view, lend themselves more to self-employed status. A special regime exists for workers in the construction industry.

Where an individual has been wrongly classified as self-employed, HMRC are empowered to reclassify that individual (even with retrospective effect), and demand from the employer any tax or social security contributions that should have been deducted during the period of the incorrect classification. For further details on the complications arising from such a situation see (9) below.

2. QUESTION 2

As stated in (1) above, the concept of ZZP does not exist in UK tax law.

3. QUESTION 3

As stated in (1) above, there is no special category of "self-employed without personnel", however, self-employed persons are taxed under the normal income tax regime. No special regime exists for self-employed persons as such.

4. QUESTION 4

As stated in (3) above, the income of a self-employed person is taxed under the normal income tax regime. The Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005) provides the general rules for the taxation of various sources of income. These include rules on the taxation of trading income, property income, miscellaneous income, etc. These rules apply to any person carrying out these activities, in whatever capacity (i.e. whether as a sole trader or as a partnership). For example, therefore, in the case of a self-employed person carrying on a trade, he will be taxed under the income tax rules applicable to trading income. There is no separate category of income for a self-employed person as such.

HMRC are vigilant to catch taxpayers who claim self-employment status, when in actual fact, they are employees. The tests applied by HMRC are set out in (1) above. The issue may arise as a result of a taxpayer or employer contacting the tax office for advice on the status of the taxpayer. It may also arise as a result of reviews undertaken by HMRC. For further details on HMRC reviews, see (10) below.

Apart from the obvious benefits of claiming self-employment status (as set out in (1) above), taxpayers sometimes seek to avoid being classed as employees, even though not claiming self-employment status. It is not so much the tax benefits of self-employment, but rather what some see as the disadvantages (from a tax point of view) of being an employee. As such, an avoidance industry grew up whereby taxpayers sought to circumvent the employment tax rules by offering their services through an intermediary. Although self-employment was not at issue in these cases, the tests used to determine whether an individual was employed or self-employed, have been heavily relied upon by HMRC.

One such area relates to the anti-avoidance rules for "personal service companies". The regime targets the situation whereby an individual provides services to a client through an intermediary in circumstances where, if that intermediary did not exist, that individual would be classed as an employee. The intermediary could be another individual, a partnership, or a company, although more commonly, it is a company.

The incentive for the taxpayer to operate in this way was to ensure that he did not have a direct contract of employment with the client. What commonly happened in practice would be that the taxpayer would set up a company ("the intermediary") in which he held all (or almost all) the shares. The intermediary would then contract with a client to provide certain services. The individual would provide the services. The client would pay the intermediary for the services, and the taxpayer, as shareholder, would extract the payment from the

intermediary in the form of a small salary (so as to use up the tax-free personal allowance), and substantial dividends.

This arrangement was favourable to the taxpayer as dividends are taxed at a lower rate than trading or employment income. In addition, dividends do not attract a national insurance contributions (NIC) charge, so the appeal is evident. The arrangement was favourable to the client because it would not have to deduct income tax or social security contributions, as it would have been required to do had the individual been working directly for it. It would also not have to pay employers' national insurance contributions.

The anti-avoidance rule targeted arrangements of this sort by looking at the actual facts of the case. In doing so, the "employment versus self-employment" tests are brought into play. The idea is to determine whether, but for the presence of the intermediary, the individual's relationship with the client would be treated as an employment relationship. In order to determine that, the intermediary is disregarded, and the tests in (1) above apply in respect of the individual and the client.

If, after applying the tests, it emerges that the individual's relationship with the client appears similar to that of an employee, the anti-avoidance rules kick in, with the following consequences:

the intermediary (commonly a company) is allowed a flat rate deduction for overhead costs of 5%;
the intermediary is deemed to have paid a salary to the individual;
the intermediary must account for employers' national insurance contributions (NICs) in respect of the deemed salary;
the intermediary must also deduct tax and employee's NIC in respect of the deemed salary.

The effect of the anti-avoidance rules is, in many cases, to deem the worker to have received earnings amounting to 95% of the fees paid by the client.

In sum, once the anti-avoidance regime is engaged, the normal rules for the taxation of employment income apply, with the individual being deemed to be an employee of the intermediary.

5. QUESTION 5

The concept of ZZP does not exist in UK tax law (see (1) above). With regard to self-employed persons, as explained in (4) above, the normal income tax rules apply, and the tax laws do not provide for a separate category of income for the self-employed as such.

6. QUESTION 6

As explained in (3) above, ITTOIA 2005 provides the income tax rules applicable to different sources of non-employment income. The main sources of income listed in ITTOIA 2005 are:

- trading income (also includes income from a profession or vocation);
- property income (UK real property income and overseas real property income);
- savings and investment income; and
- miscellaneous income (including receipts from intellectual property, income from film and sound recordings, certain income from trusts, etc).

If a taxpayer obtains income on a self-employment basis under any of the above heads of income, he will be taxed according to the rules pertaining to that income. There are very detailed tax rules that apply to each category, and the following paragraph contains a very brief summary in respect of the trading income and property income rules.

With respect to both trading income and property income, the amount on which an individual is assessed to

tax is calculated in much the same way. Deductions are given for revenue (i.e. not capital) expenditure incurred wholly and exclusively for the purposes of trade. Capital allowances are available in respect of capital expenditure incurred for the purposes of the business. As to some of the differences, a "wear and tear" allowance is available in computing taxable income from real property (i.e. property income), but not for trading income. Special rules also exist in respect of the taxation of lease premiums. Also, loss relief provisions differ as between trading income and property income. Trading losses are available for set-off against total income. They may also be carried back one year for set-off against total income, and also carried forward indefinitely for set-off against future profits from the same trade. However, losses from a property business may generally be carried forward for set-off against profits from that business. There is also a separate regime for furnished holiday lettings, some of the rules of which are similar to those for trading income. However, a discussion of that regime is beyond the scope of this work.

The determination as to whether an individual is self-employed takes place per activity. Indeed, HMRC are very clear in stating that the fact that a taxpayer has been classified as self-employed in one area does not mean that he will be so classified in every other undertaking in which he is involved. There is a common misapprehension among taxpayers that, if a person supplied the bulk of his services to one client in such a way as would imply an employment relationship, he could nevertheless avoid being classified as an employee if he took on a few extra assignments with other clients. However, HMRC have stated that, in applying the employment status tests, they look instead at all the activities carried out by the individual. It is therefore possible (and frequently occurs) that an individual is classified as an employee in respect of one undertaking, and as self-employed in respect of another.

7. QUESTION 7

There are no special tax incentives for "self-employed without personnel", as that concept does not exist in UK tax law. However, a self-employed person (whether or not with personnel) may take advantage of more generous deductions than those available to an employed taxpayer earning the same income. The effect of ITTOIA 2005 s 34 is that a self-employed person may deduct expenses incurred "wholly and exclusively for the purposes of the trade". However, an employee is subject to a much stricter test. The Income Tax (Earnings and Pensions) Act 2003 s 336 provides that deductions may be made for amounts "incurred wholly, exclusively and necessarily in the performance of the employment". The presence of the words "and necessarily" implies greater limitations than those available to self-employed persons.

As explained in (1) above, there is also a cash flow advantage for self-employed persons over employees. Also, there is a greater national insurance contributions (NIC) liability in respect of employees (see (8) below).

8. QUESTION 8

A different social security regime applies as between employed and self-employed persons. Self-employed persons are liable to pay Class 2 and Class 4 national insurance contributions, while employees are liable to pay Class 1 national insurance contributions.

Self-employed persons are liable to pay national insurance contributions. As stated in (1) above, it is immaterial whether or not they employ personnel. Obviously, if a self-employed person employs personnel, he is liable to pay employers' NICs in respect of their earnings. He is also liable to deduct and pay over to HMRC, employee's NICs in respect of those earnings.

A self-employed person who has no personnel is liable for his own NIC payments. As stated above, self-employed persons are liable to pay Class 2 NICs and Class 4 NICs. Class 2 NICs are calculated at a fixed weekly rate. The rate for the 2008-09 tax year is GBP 2.30 per week. Class 2 NICs provide access to incapacity, maternity, and long-term benefits.

Class 4 NICs are calculated based on the amount of profits made by the self-employed person. Profits between GBP 5,435 and GBP 40,040 are taxed at 8%, and amounts over that, at 1%.

Employees are subject to Class 1 (Primary) NICs. The first GBP 5,435 is tax-free. Amounts between GBP 5,435 and GBP 40,040 are taxed at 11%, and amounts exceeding that, at 1%.

The NIC implications of employment do not end with the employee's liability. Employers also pay NICs on behalf of their employees. With regard to salary, employers are liable to pay Class 1 (Secondary) Contributions. The rate is 12.8%. With regard to benefits-in-kind, employers are liable to pay Class 1A Contributions. The rate is also 12.8%.

The NICs paid by self-employed are lower than those arising from employment, especially when one takes into account the employer's contribution. On the other hand, employees' NICs lead to social security entitlements, while Class 4 NICs do not. In this respect, Class 4 NICs are, in effect, an additional tax. Also, one must not overlook the Class 2 NICs paid by self-employed persons.

It is clear from the above that self-employment status would be very attractive from a NIC point of view. However, HMRC have been relentless in resisting attempts by taxpayers to claim self-employment status for this reason.

9. QUESTION 9

Such uncertainty does indeed exist in the United Kingdom. See (10) below for an explanation of how HMRC (the UK tax authorities) deal with uncertainty in employment status matters.

The consequences of uncertainty (and of an incorrect classification) can be dire, as testified to by the facts in Demibourne Ltd v Revenue and Customs Commissioners [2005] UKSPC00486 (23 June 2005). Mr Bone was employed by Demibourne's organisation (a hotel) until April 1993 when he turned 65. The hotel's policy was for employees to retire at 65, but as both parties wished to continue to work together, Mr Bone was re-engaged to carry out the same duties, but on a self-employment basis. Mr Bone then began to pay his income tax on a self-assessment basis, and the hotel did not withhold any income tax or national insurance contributions on his behalf. This arrangement continued until 2002, when a compliance officer conducted a review and concluded that Mr Bone was an employee. At that point, the hotel reclassified Mr Bone as employed and began deducting tax and national insurance contributions. HMRC then issued a determination in respect of the income tax that the hotel should have withheld from Mr Bone's salary for the period between 1993 and 2002, as well as for employers' secondary NICs.

The hotel argued before the Special Commissioner that its tax bill (in respect of the income tax it should have deducted) should be reduced by the self-employed tax paid by Mr Bone during those years. However, the case highlighted the fact that HMRC do not have the discretion to transfer from the employer to the employee the liability to deduct and pay income tax. The legislation was clear that, save in narrow exceptions, this responsibility lay with the employer. The problem highlighted by Demibourne was that there was nothing to stop a person, who had been mistakenly classified as self-employed, from claiming back, on the grounds of "error or mistake" (and within the stipulated time limits) the tax he had paid as a self-employed person. The employer would be left with no remedy; it would have to pay to HMRC the tax it had failed to withhold, but would be unable either to receive a credit in respect of the self-employed tax paid by the employee (which the employee could already have reclaimed under "error or mistake"), or to require reimbursement from the employee.

The Government has addressed the Demibourne problem by issuing regulations that grant to HMRC, in such cases, the authority to transfer the liability from the employer to the employee. However, as these regulations are relatively new, there is not much guidance on how they will work in practice.

The Demibourne issue relates only to the income tax liability. In respect of social security contributions, HMRC already have power to offset self-employed NICs against employees' NICs. So, if an individual was wrongly classified as self-employed, and paid both Class 2 and Class 4 contributions, these can be credited against the employee NICs that would be payable when he is later reclassified as an employee.

The problems arising from uncertainty and incorrect classifications can be averted by making obtaining certainty in advance, as explained in (10) below.

10. QUESTION 10

Taxpayers may apply to HMRC for a formal status ruling if they are unsure of their classification for tax purposes. In giving a ruling, HMRC are bound by the terms of their Code of Practice 10. COP 10 sets out the circumstances in which HMRC will give information or advice.

The request should be made in writing to the relevant tax office. HMRC have employer compliance staff (and Status Inspectors) who can advise taxpayers on their proper classification. These officials are based in local tax offices, and the taxpayer will typically contact his local tax office in order to obtain their contact details. After furnishing all the facts about the situation, the taxpayer will be given a written opinion about his status. This opinion is not binding on the taxpayer; the taxpayer does not have to agree to it. HMRC will reconsider their opinion if the taxpayer furnishes them with relevant additional information. Where an affected party does not agree with HMRC's opinion, that party may appeal to the Commissioners.

HMRC guidance provides that HMRC officials should treat as binding on HMRC a written opinion which they had previously given, except where it can be shown that the information provided was misleading and/or incorrect, or that the facts have changed materially since that opinion was given. If HMRC give an opinion that is technically incorrect, they would consider themselves bound by it for the past, but would seek to change it for the future.

- HMRC state that they are not bound on the status of an individual simply on the basis that that person has:
- registered for VAT;
- made returns assuming self-employment;
- applied and been accepted to pay self-employed NICs, or
- received a decision from an Employment Tribunal.

HMRC officials frequently conduct Employer Compliance Reviews in respect of selected businesses etc. There are detailed procedures that HMRC must follow. Issues relating to wrongly classified individuals are often identified during such reviews. Following a review, an official may give a written ruling (known as an "opinion") on the status of the individual. The opinion must cover both the tax and NIC aspects of the case. In some cases, an individual may be classified one way for tax purposes, and another way for NIC purposes (see (11) below).

A person wishing to hire someone for services may present the written contract to a status officer for advice on whether it is a contract for services (therefore indicating self-employment). In such a case, the status officer may give an opinion, but he must qualify it with the following statement:

"My view assumes the written terms reflect the true arrangements. If the contract is not fully acted upon in practice or there are other oral or implied conditions which have not been presented to me, my opinion may be modified. As part of its normal compliance activities, HMRC reserves the right to check that the working arrangements are as set out in the contract."

Such a statement may not be given if the status officer is presented with a draft contract. He may also not give advice where an employer is seeking to change the status of existing employees.

HMRC have published an Employment Status Manual for use by its inspectors and officers in determining employment status. It provides guidance for HMRC officials engaged in employment status work, and covers topics such as how to conduct fact-finding, the importance of contracts, the application of the "in business on their own account" test, and also the factors mentioned in (1) above that indicate either employment or self-employment. Although the Manual is addressed to tax officials, it is very helpful for taxpayers and tax advisers as it gives a good indication of the reasoning of HMRC. There has, however, been criticism of the Manual on the grounds that it is selective in content. The Manual contains discussion of relevant case law, but the observation has been made that some important cases favourable to the taxpayer have been omitted from the Manual.

If it is found that someone has been wrongly classified as self-employed, when in actual fact, he was an employee, HMRC will issue, using a standard form of a written opinion, determinations in respect of the income tax and social security contributions that should have been deducted at source, as well as for the employers' social security contributions that should have been paid.

11. QUESTION 11

Such certainty can be obtained in respect of both taxation and social security issues. HMRC are empowered to make a decision as to the status of an individual for taxation and NIC purposes. In fact, when HMRC give a status opinion, it must cover both the tax and NIC aspects of the case. Such a decision may be challenged before the General or Special Commissioners. In deciding whether an individual is employed or self-employed for NIC purposes, the same considerations apply as in deciding the question for tax purposes (see (1) above). For example, the lists of occupations used by HMRC to indicate self-employment status for tax purposes (see (1) above) are also used to indicate the same for NIC purposes. Affected individuals may appeal against these lists.

Under the Social Security (Categorisation of Earners) Regulations 1978, SI 1978/1689, individuals performing particular services are categorised as employees for NIC purposes, irrespective of whether they have contracts of employment, or are chargeable to employment income tax. These include: office cleaners, certain kinds of agency workers, ministers of religion, and certain actors, musicians and other performers. The regulations also provide that, in certain cases, examiners, moderators and invigilators be treated as self-employed.

It is therefore possible for an individual to be classified differently for tax and NIC purposes.

12. QUESTION 12

As to how certainty is provided, and the possibility for a taxpayer to obtain a declaration, see (10) above.

It is worth mentioning, at this point, the Employment Status Indicator. The Employment Status Indicator (ESI) is an online tool provided by HMRC to help taxpayers determine their status. It can be found at http://www.hmrc.gov.uk/calcs/esi.htm. The ESI is intended to relieve the administrative pressure on HMRC to provide formal rulings. The idea is that it should provide adequate guidance in straightforward cases. The ESI may be used by workers wishing to determine their status, as well as by persons wishing to hire them. It may be used in relation both to current and future engagements. In determining whether an individual is employed or self-employed, the ESI asks questions about the nature of the business, the trade of the worker, as well as some of the questions referred to in (1) above. When all the questions have been answered, the ESI gives a conclusion on the status of the worker, together with reasons for that conclusion. The ESI does not provide a conclusive, legally binding decision, but rather an indication of employment status. It was HMRC's intention to provide, at some point in the future, the ability for the ESI to give legally binding conclusions. However, for that to be possible, the tool would need to capture the personal details of

the affected taxpayer, and it does not yet have that functionality. Some tax experts have suggested caution in using the ESI, because the results effectively accord with HMRC's view, which is, of course, open to challenge. In addition, there has been criticism that HMRC give undue weight to certain factors, and this may not lead to an accurate result. As HMRC's classification can be challenged by a taxpayer, this must mean that the tool should not be the last word in classification issues. The ESI is also not appropriate for certain cases, such as agency workers (*uitzendbureau*). Notwithstanding the ESI, HMRC specialist staff (i.e. employment compliance staff) continue to provide advice on a case-by-case basis.

13. QUESTION 13

For the legal status of HMRC's opinions, see (10) above. For the legal status of results given by the Employment Status Indicator, see (12) above.