

RE: BUSINESS – THE AUTO-ENTREPRENEUR STATUS
SUBJECT: PITFALLS, OPPORTUNITIES AND STRATEGIES FOR THE AUTO-ENTREPRENEUR

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The *auto-entrepreneur* status is a simplified way of creating and running a self-employed activity, which is encountering confirmed success in a difficult economic context. It is ideal for those who want to test an activity or earn additional income on top of a salary or retirement pension.

Registering online is quite simple— a few clicks is all you need in order to opt for the new *auto-entrepreneur* status and get a SIRET number, your passport to a new entrepreneurial life, within a week. However, this status is not suited to all business needs. Time should be taken for reflection and preparation, and seeking professional advice.

Not all activities can be carried out as an auto-entrepreneur

The activity must benefit from the *Micro-entreprise* tax regime which is not available for **business annual receipts exceeding the following limits in 2010:**

- € 80.300 for sale of goods, hotels and restaurants, *gîtes ruraux*, *meublés de tourisme* and *chambre d'hôtes* ;
- € 32.100 for services including furnished letting activities other than those above.

Micro-entreprises are *en Franchise de TVA*: they cannot invoice nor recover VAT. Thus, **activities subject to VAT by law** are defacto excluded from the micro regime and *auto-entrepreneur* status. This is the case of activities subject to *TVA immobilière* (*marchands de biens*, property developers, estate agents).

The following **activities subject by law to the *regime réel*** are not eligible under *auto-entrepreneur* status:

- Unfurnished rental of real estate for business purposes;
- Letting of materials or durable consumer goods;
- Professional traders on financial or commodity future markets (subject to *Déclaration contrôlée*).

Activities subject to specific social regimes are also excluded from *auto-entrepreneur* status:

- Agricultural activities subject to the *Mutualité Sociale Agricole* (landscapers or gardeners);
- Activities subject to the *Régime general* for the salaried (*journalists, intermittents du spectacle vivants, artistes-auteurs*);
- Regulated *professions libérales* (*notaires, huissiers, lawyers, medical and paramedical professions, experts-comptables, auditors*).

Specific cases

Warning: The *auto-entrepreneur* status cannot be chosen in the case of a **dependent activity carried out under a relationship of subordination**. There is a risk of such relations being re-qualified as employment contracts, unless the working conditions are defined exclusively by the worker or by contract.

Gîtes and B&B activities, generally do not have to register as a business with the self-employed social organizations. Consequently, *auto-entrepreneur* status is

of no interest, although it may be considered as a cheaper alternative for 'early retirees', compared with the cost of private health cover or of *Couverture Maladie Universelle (CMU)*.

It is also a solution to be considered for **free-lance artists or journalists working for foreign 'employers'** who cannot be covered under the *Regime general* as those working for French employers can be.

Existing *micro-entreprises* can opt for the *autoentrepreneur* status by 31st of December for the following year. Exceptionally, ***Professions libérales* created before 2009** have until 28/02/2010 to opt for the *autoentrepreneur* status for 2010.

How much does it cost tax wise?

It should be remembered that the *auto-entrepreneur* cannot deduct any of the business-related expenses (car, premises, communication, social levies, marketing expenses, fittings and equipments, documentation, training, etc.). This is a major drawback of the Micro regime.

As an auto-entrepreneur, you can opt for payment of income tax at source, with the social levies, at a set percentage of quarterly **takings** (not profit).

The alternative is taxation under the Micro regime, which deducts a flat percentage of business takings in place of itemized expenses. The expense deduction is 71% for sales of goods or unfurnished letting, 50% for commercial services and 34% for non commercial activities. The resulting profit is then subject to income tax at the progressive tax rate, along with the household's other sources of income.

Every Euro of income received as an *Auto-entrepreneur* will automatically increase your income tax liability. Worse: it not possible to show a loss and deduct it from other taxable income or carry it forward against future profits.

In addition, as the auto-entrepreneur is necessarily exempt from VAT (*regime de franchise*), VAT cannot be recovered on purchases or expenses.

Fiscally, the auto-entrepreneur status can therefore prove unadvisable when the chosen activity requires heavy investments, which the *auto-entrepreneur* will not be able to depreciate. Similarly, it may seem foolhardy, if not impossible, to employ someone in these conditions.

What risks are involved?

Courts are already starting to receive complaints from unhappy clients for uncompleted works ordered from and paid for to *auto-entrepreneurs*. Certain clients are also reluctant to pay, in view of the poor quality of the service sometimes supplied.

Artisans were the first to denounce this risk, and point out that it is a form of unfair competition. They have finally obtained satisfaction.

Autoentrepreneurs setting up a **craft activity (*artisans*)** after 1/4/2010 will need to register on the ***Repertoire des Métiers*** and prove that they have suitable qualifications or experience. They will benefit from a 2 year exemption from the tax for *frais de chambre de metiers*.

In addition, certain activities require an approval (*services à la personne*), authorization or financial guarantees to be obtained, which are not always accessible to an *auto-entrepreneur*.

Finally, whatever the activity, the need for professional insurance must be underlined for *auto-entrepreneurs*, who are responsible personally for their acts and commitments.

What social cover?

As any entrepreneur, *auto-entrepreneurs* will not benefit from *assurance-chômage* for their activity in case of failure.

While in activity, their social cover is necessarily reduced, as the reduced social levy payments correspond only to the mandatory regimes.

Auto-entrepreneurs benefit from basic health cover (reimbursement of doctor's fees and medicine expenses). But they do not receive *indemnités journalières* (which applies to traders and artisans only) in case of sick or maternity leave during the first year of activity.

Old age pension entitlements will depend on the level of levies paid, and therefore on the business takings. For a full year, *auto-entrepreneurs* validate at least one quarter, even in the absence of takings.

A retired person (who already has health cover and cannot validate additional pension rights) will pay full-rate social levies as *auto-entrepreneur* for no additional benefits.

Reduced and simpler social levies

The simplified calculation and payment of social levies is the major advantage of the auto-entrepreneur regime compared to the many inconvenience and uncertainties of the normal regime.

Under the *micro-social* regime, social levies are calculated at a set percentage of takings (not profits) depending on the activity.

Takings are declared on a monthly or quarterly basis and the corresponding social levies paid. In the absence of any takings, no payment is due and no declaration is required.

The micro-social option is valid for one year and renewable automatically.

Warning: The *autoentrepreneur* option is lost if no turnover is declared for **36 months** (initially 12).

Activities	Examples of activities	Turnover limit	Pension fund	Social levies (Micro-social simplifié)	with option for income tax (<i>versement libérateur de l'IR</i>)
Sale of goods or provision of lodging (BIC)	Gîtes, B&B, trader, second hand goods dealer, sale on internet...	€80,300	RSI	12%	13%
Services (BIC)	Hairdresser, plumber, builder, personal services...	€32,100	RSI	21.30%	23%
Services (BNC)	<i>Agent commercial</i> , home hairdresser, taxi driver, astrologer...	€32,100	RSI	21.30%	23.50%
<i>Professions Libérales</i> (BNC)	Consultant, free-lance journalist, photographer, secretary at home, teacher, translator, interior designer, ...	€32,100	CIPAV	18.30%	20.50%

What book-keeping?

Invoices need to be produced and kept for 10 years. They will need to show the wording “*TVA non applicable, article 293B du CGI*”.

A *Livre de recette* needs to be kept with details of takings in chronological order, the origin and mode of payment, cross referenced with dedicated bank account statements and documentary support (invoices, notes etc...).

A *Registre des achats* (purchase ledger) is also required for activities of sale, restaurants and hotels.

Main advantages

- No provisional levies payable in the absence of takings.
- Easy calculation and payment of social levies.
- Possible to opt for single payments of social levies and income tax.
- Payment of income tax at set rate is usually interesting (except for households with modest income).
- No VAT to invoice or declare (more competitive prices and fewer formalities)
- Ultra-streamlined book keeping:
- No registration on the *Registre de Commerce et des Sociétés* (NB *Agents Commerciaux* still need to register on the *Registre Special des Agents Commerciaux*).
- No mandatory management course for artisans.

The *auto-entrepreneur* status is totally suited to persons:

- Starting up a small independent activity
- needing little investments or stock
- presenting no particular risks

- for whom the non recovery of VAT does not represent an inconvenience (i.e. small purchases and private clients)
- whose main objective is not to bother with red-tape.

And major drawbacks

- Social levies are calculated on takings and not on business profit.
- Business-related expenses (including stocks, insurance premium, transport costs etc...) cannot be deducted.
- Investments cannot be depreciated.
- You cannot show a loss, deduct it from other taxable income, or carry it forward.
- It is impossible to recover the VAT paid on stock, purchased goods or services.
- For activities charging VAT at the reduced rate of 5.5% and paying it on their purchases at 19.6%, it may be worth being VAT registered.
- You will not be able to benefit from any of the income tax exemptions available to new businesses in certain priority zones (*Zones de Revitalisation Rurale*, etc..).

The *auto-entrepreneur* status is therefore not suited to persons who:

- work for business clients
- need to purchase stock, material, fittings, machines, insurance, transport...
- anticipate rapid growth.

In such situations, setting up a self-employed business under the *régime réel* or a limited company should be envisaged.

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