

Treasury targets construction contractors with false self-employment consultation

Construction contractors face renewed scrutiny from [HM Treasury](#), which may have an impact on the application of [IR35 legislation](#). However, according to contracting sector commentators, contractors genuinely [in business in their own right](#) should have nothing to fear.

The consultation, targeting the estimated 300,000 subcontractors supplying labour only services, suggests that construction contractors must satisfy one of three tests in order to retain their status as 'self-employed', otherwise they may be deemed to be employed.

If the main thrusts of the Treasury's proposals end up in law, then a third of a million construction contractors could find themselves on PAYE, regardless of their trading vehicle. This would mean that years of case law successfully used to defend 'self-employment' would be swept away, including that relating to [IR35](#).

New tests of self-employment

Appearing to demonstrate a lack of knowledge about how the construction sector operates and its project based nature, the Treasury claims in its [consultation](#) that there is no reason why construction should have a disproportionately higher number of self-employed workers than other sectors – 34% versus 11% – and seems determined to reduce this.

The consultation's proposed tests of self-employment are referred to as the 'deeming criteria', which sounds similar to IR35 jargon. They include:

- o "Provision of plant and equipment – that a person provides the plant and equipment required for the job they have been engaged to carry out. This will exclude the tools of the trade which it is normal and traditional in the industry for individuals to provide for themselves to do their job;
- o Provision of all materials – that a person provides all materials required to complete a job; or
- o Provision of other workers – that a person provides other workers to carry out operations under the contract and is responsible for paying them."

The consultation says that a construction contractor needs to meet one or more of these criteria; otherwise they will be automatically "deemed to be in receipt of employment income."

[Analysis by Phil Richards](#) at BFCAs Chartered Accountants suggests that genuine contractors in business in their own right should have no fears. And the consultation is quite specific in this respect: "The purpose of the legislation is not to deem a worker's income to be employment income where it is clear that the worker is carrying on a business and would otherwise be treated as self-employed."

As Richards highlights in his blog, the treatment of knowledge workers within the construction sector is likely to prove problematic, and any legislation resulting from the consultation will override IR35.

Is this a slippery slope?

The Treasury estimates that it can recover an additional £350m in PAYE and National Insurance Contributions by applying the new tax legislation contained in the consultation, and there would be no recourse to law for those contractors affected.

Plus the consultation, which closes on 12 October, suggests that the Treasury is keen to see implementation of any resulting legislation as early as possible. Given its poor track record of devising tax laws in the contracting sector, the Treasury's haste does not bode well for contractors.

The emphasis on genuine contractors proving their status as in business in their own right has never been greater. So, contractors wishing to retain their self-employed contracts and working arrangements will have to ensure these can in no way allow them to be viewed by the taxman as "deemed employees",

By using careful language, avoiding saying 'employee' by using the word 'worker', it seems that the Treasury is again intent on making contractors pay for the privilege of employed status. At the same time, by circumventing employment laws, the Treasury is also stopping such contractors from being able to access the rights and benefits that would come from them being employees.

Once again, it would seem that contractors could be faced with the worst of all possible deals. Those with views on the subject are urged to respond to the Treasury's consultation before 12 October.

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