

Altion Law

Construction Intermediaries – HMRC rule changes and what it means to you

What's legally changed?

On 6th April 2014, Section 16 of the Finance Bill 2014 came into effect and the Government began clamping down on the use of intermediaries to facilitate what it believed was 'bogus' employment. HMRC believes that where a worker is employed via an intermediary, there will be supervision, direction or control of the worker. If this is not the case, the intermediary must either hold evidence that there is no such control or it must operate PAYE.

Why have the government done this?

The Government believed that 'bogus' self-employment was depriving the Exchequer of Class 1 NIC contributions and that impacted workers were being deprived of important employments rights.

For a number of businesses this is a small tax change of limited interest in certain sectors such as Construction or Retail Delivery this is having a significant impact on the supply and structure of workers to the industry.

Why is the Construction Industry struggling?

Under the old rules, where contractors engaged workers through an agency, the agency deducted tax and NIC and paid secondary class 1 National Insurance Contributions (NICs) only if the worker 'personally provided', and was under a contractual obligation personally to provide, services to a contractor. By including a provision that permitted the worker to send a substitute, agencies could often circumvent the PAYE obligation, even if the substitution would never happen in practice. Practically this new change now means that workers (who would be employees if you

took out the intermediary from the equation) are now classed as employees of the end user because they are under the supervision, direction and control of the client. Large employment businesses are essentially being asked to put these workers on their books for tax purposes or state that they will not continue to supply these workers anymore and the end user or client must take them onto the books as employees instead.

For the end employees, the impact of the change is that the compliance burden has moved up the channel to the actual employment business or agency that has contracted with the worker.

How does this fit with the Construction Industry Scheme (CIS)?

How does this impact me?

Companies must be aware that the PAYE burden can transfer along the agency supply chain from Agency to Agency and so to protect against the risk of a significant and unexpected tax bill, checks and processes to establish a workers employment status's must be put in place. Additionally, there is now be a quarterly reporting requirement to give details of any workers for whom tax has not been deducted and the reason for non-deduction, often with evidence. This reporting requirement starts from April 2015 and penalties will come into force at this point.

There is also a Targeted Anti-Avoidance Rule (TAAR) which means HMRC has recovery provisions that can enforce PAYE debts directly against directors and shareholders of the offending company and this may have

implications for Directors and Officers Liability insurance coverage, which you must check with your insurer.

How do I know if my company is affected?

It's worth asking yourself a basic question. Is the worker under the supervision, direction and control of the end user client? If so, then these reporting and tax change will impact your business and you should take action.

Is there a cost to me?

It depends upon how your business operates and your contracting arrangements. This is a tax change is a great example of a disproportionate impact on certain sectors. The potential additional cost will be that contracting clients will now have to pay the 13.8% Class 1 NIC contributions for workers that are being taken onto books for the first time. There will be an inflationary impact as these costs will be passed down the line to consumer and clients of those contractors generally.

What do I do now?

You must ensure you have the necessary reporting requirements, clear contracts and compliance checks in place and ensure your accountants or bookkeepers are also aware of these changes.

What can Altion Law do to help?

Altion Law can help ensure your company is protected against unexpected tax bills through clear contracting and full compliance with the new changes as well as handling any HMRC investigations or appealing penalties for non-compliance.

About Altion Law

Altion Law Ltd provides day to day commercial legal advice and assistance with disputes or issues that occur in general business trading. For expert legal advice call us on 01908 414990 or contact us online at www.Altion-law.co.uk and we'll be happy to help you.



Altion Law

At Altion Law we provide clear, no-nonsense, expert legal advice and representation to help you get the best result.

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