

Construction companies are at risk of hefty tax bills because some providers of payroll services are passing the buck in the wake of recent HMRC rules on 'False self-employment'

By Graham Jenner, Director, NoPalaver Group, a leading provider of accounting services to contractors.

HMRC introduced new tax regulations in April to tackle what it saw as the exploiting of self-employment for tax purposes when workers are not genuinely self-employed. These changes were particularly targeted at what HMRC perceived as "false self-employment" in the construction sector.

The "Onshore Employment Intermediaries" legislation defines that workers supplied through an intermediary payroll organisation that are under someone's "supervision, direction or control" will be treated as employed for tax purposes by HMRC. It is the intermediary that is responsible for deducting tax and National Insurance as if the worker is an employee.

Some payroll intermediaries have responded to the new regulations by launching schemes requiring the construction businesses and their workers to sign letters or contracts declaring that self-employed contractors are not under "supervision, direction or control". The intermediary then continues to treat the worker as self-employed.

However, some of these schemes put the construction businesses that use them at risk of hefty tax bills and fines. Any construction company that signs such a letter could leave itself exposed to a big bill for PAYE, NICs and penalties and interest in an HMRC investigation.

The intermediary can rely on the declaration signed by the construction company to show they are not liable in an HMRC investigation. Effectively, the construction company is being induced into signing a letter that HMRC could view as fraudulent. This passes the liability for tax and national insurance on the income to the construction company.

The recent changes to the rules about self-employment are very radical but some of the schemes being marketed to construction businesses don't reflect this. There are a lot of options open to construction businesses that meet the new rules. However, the shake-up to the rules may mean that construction companies may have to completely overturn long-standing ways of paying self-employed staff.

Schemes that seem simple but which require a disclaimer to be signed about whether workers are under 'supervision, direction or control' are very worrying, as these would put the construction company directly into HMRC's firing line in the event of an investigation.

Construction companies used to pay workers through an intermediary, even where they were fairly happy the worker was genuinely self-employed, as this eliminated the risk that the worker would be treated as their employee.

Ironically, under the new rules, if the construction company thinks that the worker is genuinely self-employed, it is probably less risky for the construction company to pay them direct than use a payroll services intermediary.

That worker, when paid through a payroll services intermediary only has to be subject (or subject to the right) to supervision, direction or control by someone for the new rules to apply and they are then treated as an employee for tax purposes.

Where the construction company has given a declaration that the worker isn't supervised, directed or controlled, they could be exposed to the very tax and NI liability they thought they were protecting themselves from the risk of. Construction businesses should be very wary of signing a disclaimer like this because, if HMRC investigates, the scheme is highly unlikely to offer the construction company the protection that it expects or that the intermediary promised.

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