

What is the Onshore Employment Intermediaries Legislation?

In April 2014 legislation was introduced to tackle false self-employment arrangements.

The legislation states that if a worker is under (or subject to the right of) **supervision, direction or control** of anyone in the contractual chain (e.g. the end user/client or managed service provider) the worker must be taxed on an employed basis.



Which payroll services are affected?

Umbrella

An umbrella is a PAYE solution so the legislation will not affect these arrangements.



Personal Service Companies

PSCs should not be affected by the legislation and IR35 will continue to apply.



Construction Industry Scheme

CIS has not been excluded. Any workers that stay in the CIS scheme will **potentially** be accruing liabilities for agencies from April 2014.



Who is liable?

Agency / RPO

Liability will remain primarily with the first intermediary i.e. the agency or an RPO. An agency will not be able to say it thought someone was genuinely self-employed and escape liability even where it has carried out extensive due diligence. The only exception to this is where there has been fraud in the contractual chain.

Where the RPO / agency has been provided with fraudulent documents by someone (claiming fraudulently that there is either no control over a worker or that the worker is paid on a PAYE basis), the liability will sit with the company providing the fraudulent documents.



Provider

If a provider has told an agency that the workers are paid on a PAYE (umbrella) basis but are really paid on a self-employed basis the provider would be liable – this is fraud.

Where a provider has told an agency that the workers are paid under the CIS scheme and that the provider believes they are self-employed, the agency will remain liable if the worker is found not to be genuinely self-employed – this is not fraud.



What is control?

HMRC has produced guidance to illustrate the control test. This includes examples of where HMRC would consider the manner in which the worker provides their services and is not subject to supervision, direction or control.

Supervision

Is someone overseeing a person doing work, to ensure that person is doing the work they are required to do and it is being done correctly to the required standard? Supervision can also involve helping the person where appropriate in order to develop their skills and knowledge.



Direction

Is someone making a person do his/her work in a certain way by providing them with instructions, guidance or advice as to how the work must be done? Someone providing direction will often coordinate how the work is done, as it is being undertaken.



Control

Is someone dictating what work a person does and how they go about doing that work? Control also includes someone having the power to move the person from one job to another.



Next steps...

Q1. Do we have any workers using self-employed schemes?

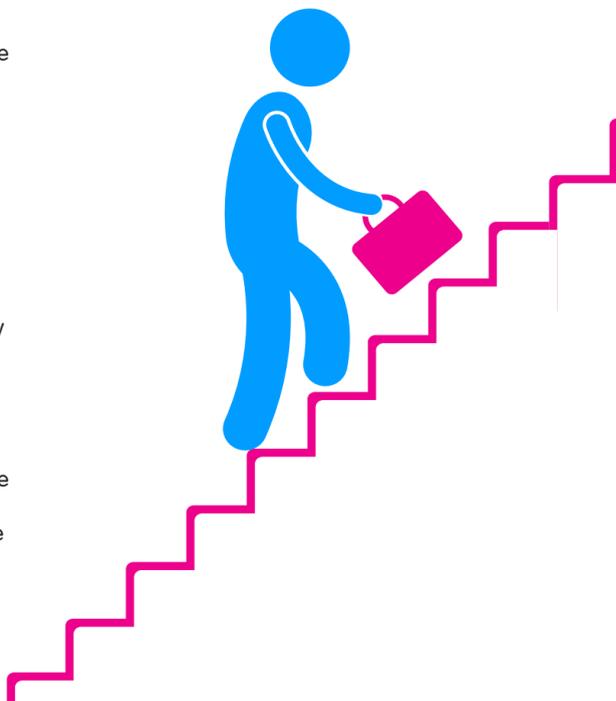
For those operating in the construction sector it is likely that some of their workers will be using the CIS scheme. Some providers also offer self-employed solutions which pay contractors gross. These schemes are caught by the new legislation. A decision needs to be made whether to switch the workers to umbrella or agency payroll, or to gather evidence (that will satisfy HMRC) that the worker is genuinely self-employed.

Q2. Do we have any workers using offshore schemes or LLPs (limited liability partnerships)?

New rules on offshore schemes and LLPs (not discussed here) also came into effect in April which could result in a tax liability for an agency.

Q3. Do you operate a strict PSL?

If you already operate a strict PSL for umbrellas and PSCs there is probably very little to do. For those agencies that do not operate a strict PSL and allow workers to choose how they are paid an urgent review of arrangements is advised for the reasons given above.



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