

## Subcontractors – getting the status right

From April 2007 new Construction Industry Scheme rules will apply which will involve yet more administration work. Furthermore, these new rules come with new penalties and either ignoring the rules or making errors could be very expensive.

This is the second in a short series of Newsletters dealing with the introduction of the new system. The first newsletter highlighted the changes in the system and how it will affect both Contractors and Subcontractors. This second Newsletter will consider the self employed tax status of Subcontractors and a final Newsletter will be issued in the New Year which will be aimed at Contractors to assist them to be ready for the new rules in April.

### Employed or Self employed – what difference will it make?

If you are the Contractor then you will find that it is far more expensive to take on an employee than a Subcontractor as you will be responsible for employers National Insurance contributions and also you would need to consider employment rights.

If you are a Subcontractor then your national insurance contributions would be much higher and you would no longer be able to claim many of the expenses that the self employed can offset against there tax liabilities.

### Status is not a matter of choice

A Contractor and his Subcontractor cannot simply agree on self employment. Your intentions will be a factor, but it will only be one of many such factors to take into account. In order for someone to be self employed then they must be in business on their own account and there are many factors to take into account.

### Is there not a simple rule to determine status?

Unfortunately there is no single factor or rule which will determine status, and although some factors will be more important than others, they will all need to be taken into account. Although this is not an exhaustive list the following are common questions to consider

**Control** – does the Contractor control not only the work to be done, but how it is to be done?

**Substitution** – does the Subcontractor have to do the work personally or can he send a replacement?

**Equipment** – who provides the equipment needed to undertake the work?

**Basis of Payment** – is there a fixed price for the Job or is pay calculated on an hourly or daily rate?

**Duration of contract** – does the contract last only a few days or months or years?

**Financial risk** – if the Subcontractor makes a mistake, then who pays to put it right?

**Own employees** – does the Subcontractor have is own employees or Subcontractors

**Insurance** – does the Subcontractor have his own indemnity insurance in place?

**Intention** – do you want to be treated as self employed?

Only once you have the answers to the above can you start to consider whether on balance someone is self employed or employed.

## **What happens if you get it wrong?**

It is the Contractor's responsibility to ensure he establishes the correct status and if the wrong amount of tax and national insurance is deducted the Revenue will generally seek to claim any shortfall from the Contractor.

The Contractor will have to complete a monthly declaration to state that he has considered the status of all of his Subcontractors and that none are really employees. If a false declaration is made then a penalty can be levied of £3,000 and this is in addition to the further tax and national insurance due.

In addition to the above, where the Contractor is also a Subcontractor then false declarations may result in him losing his status to receive gross payment.

## **Is there anything we should do now?**

Although the new CIS rules do not apply until April, the status question is relevant now as the status rules are not changing. What is changing is that from April Contractors will need to make a declaration to confirm the status of your Subcontractors. If you are a Contractor and consider that your Subcontractor is actually an employee then you need to take action now and start to operate PAYE.

As the new CIS system will not be introduced until April, now is the time to consider your status or the status of your Subcontractors to ensure that you will be complying with the rules. Undertaking a review now should allow you to establish whether your status or the status of the Subcontractors working for you is in doubt. By taking action now, you can clarify your rights and obligations and make sure that you are ready for the new CIS rules in April.

Both Contractors and Subcontractors should consider drafting a contract to set out the terms agreed between them as not only can this be used in the event of any disputes between them, but can also be helpful in dealing with any status queries raised by the Revenue.

If you are in any doubt about your own status or that of any of your Subcontractors then please contact us and we would be pleased to discuss matters with you in more detail.

*These notes are intended as a general introduction only and advice should be sought in respect of your own individual circumstances. Wilkinson & Partners Limited would be happy to discuss the subject with you in greater detail.*

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