

False Self-Employment in Construction Industry: Taxation of Workers

August 2009



Following the Government's announcement at Budget 2009, HM Treasury launched the above consultation on 20 July 2009 with a closing date of 12 October 2009. The scope is stated as "*The Government wishes to ensure that construction workers engaged in an employment relationship are taxed appropriately. The objective of this consultation is to develop the best legislative approach.*"

The European Labour Force Survey 2007 confirmed that 34% of workers in the construction industry are self-employed which compares to an 11% average across all other sectors. Whilst it is acknowledged that the varying range of skills within the industry lends itself to self-employment, the Government can see no obvious reason as to why the level is so high.

False self-employment is when workers are treated as self-employed rather than employees for the purposes of income tax and national insurance. The problems caused by this treatment are as follows:

- Exchequer – whilst false self-employment workers pay tax under the Construction Industry Scheme rather than income tax and national insurance this still results in an estimated loss of £350 million per annum.
- Construction industry – unfair competitive advantage for those allowing workers to work as self-employed workers rather than employees.
- Workers – whilst in the short term workers benefit from higher net earnings they can experience loss of entitlement to state benefits

The consultation sets out the Government's proposed solution to the problem by providing legislation to replace the current case law in order to aid determination of the status of workers. If the legislation is brought into force a worker will have to meet one or more of the following criteria in order to be deemed self-employed:

- 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;
- Provision of all materials – that a person provides all materials required to complete a job; or
- Provision of other works – that a person provides other workers to carry out operations under the contract and is responsible for paying them.

If you feel that this may affect you or your business please contact Lisa Boyd who will be happy to help you.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.