

Employment intermediaries and false self-employment



There are many legitimate reasons why a worker is engaged on a self-employed basis. However, there are also times when someone who should be an employee is engaged as self-employed. In order to drive compliance with Self-Employment and offshore working in the UK, HMRC implemented the Onshore and Offshore Intermediaries legislation.

ONSHORE INTERMEDIARIES LEGISLATION

On the 6th April 2014, the government introduced the Onshore Intermediaries Legislation which affects employment intermediaries, recruitment agencies and contractors who had previously operated as self-employed individuals.

The legislation is designed to ensure that only those that are deemed to be genuinely Self-Employed operate via Self-Employment and those that are deemed to be Employed operate via Employed solutions paying full Income Tax and National Insurances.

Certain qualifying conditions must exist for the Agency Legislation to be applicable. These are:

- The worker must personally provide services to the client
- There must be a contract between the client (or a person connected with the client) and a person who is not the worker, the client, or a person connected with the client and under or in consequence of that contract:
 - (i) the worker's services are provided,
 - or (ii) the client or any person connected with the client pays, or otherwise provides consideration for the services
- The worker must be subject to (or to a right of) supervision, direction, or control as to the way they provide their services
- Remuneration receivable by the worker in consequence of providing the services does not constitute employment income/ employed earners earnings before the agency legislation is applied.

HOW DOES IT AFFECT CONTRACTORS?

A contractor who works under a PAYE scheme via an intermediary will not be affected by the legislation because the income constitutes employment income. The same applies for a contractor working under an umbrella solution.

For any contractors who are engaged as a self-employed individual via an intermediary, the supply chain must ensure that the subcontractor is not under any form of Supervision, Direction and Control (SDC), otherwise they would be required to change their status to employed.

Self-employed contractors who deliver their services without any control from a third party will be able to continue as a self-employed individual if they work via an intermediary, provided that the absence of the right to control is provable.

For Sapphire's CIS Self Employed service, as part of our own compliance checks and in line with FCSA's code of conduct, we would carry out our own SDC tests with the contractors during onboarding as well as carrying out on-going Employment Status tests to minimise the risk for our Agency clients and the rest of the supply chain.

The majority of our Agency clients would also carry out their own status checks to ensure that the contractors are able to operate as Self-Employment sub-contractors.

The liability for False Self Employment falls to the first intermediary which is usually the recruitment agency, so it's key that agencies understand the legislation and have robust processes in place to assist in determining SDC.



OFFSHORE INTERMEDIARIES LEGISLATION

Over the course of time, offshore intermediaries had utilised existing legislation whereby they were outside of the HMRC reporting loop and their schemes may not be liable for Income Tax & NIC deductions. Problems existed because it is the UK based intermediary who has ultimate responsibility for deducting PAYE and NIC - under the existing rules however, many were oblivious that an offshore intermediary was involved in supplying the worker and they were unaware that they were failing to meet their statutory obligations.

The legislation is designed to make the UK intermediary (the last in any chain of intermediaries) which is involved in the supply of the workers the employer for PAYE and NIC purposes.

In circumstances where there is no UK based intermediary, the UK based end user will be responsible for the PAYE and NIC deductions of the worker.



REPORTING TO HMRC

In April 2015 HMRC implemented a second phase to the legislation and now require UK intermediaries to liaise with them on a quarterly basis to report on all workers who they do not directly pay themselves.

This includes individuals who work via Umbrella companies, those who are Self Employed and contractors who own/operate Personal Service Companies.

The intermediary will be required to provide HMRC with the following data:

- Worker name and National Insurance number
- Worker Date of Birth and Gender
- Worker Address and Postcode
- Details of how engaged (Self Employed / Umbrella/PSC)
- Start date and end date of engagement
- The fees, currency and whether VAT is included
- Name, address and Companies House registration number of the company paid by the agency for the workers service

If the worker is engaged on a Self Employed or PSC basis, the following additional information must also be provided:

- Unique Taxpayer Reference (where self-employed or a member of a partnership)
- Amount paid for the workers services inclusive of VAT
- Has income tax been deducted from these payments
- Reports must be filed quarterly according to a schedule set out by HMRC

Sapphire work alongside hundreds of Recruitment Agencies on a regular basis to ensure all legislation is followed for both the agencies and contractors, whether that is onshore or offshore.

Get in touch today
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