

# Boost for self-employed in construction industry



A major area targeted by HMRC in recent years has been the employment status of workers, particularly in the construction industry, where the emphasis has been on the labour-only workforce, and the conversion of that workforce to PAYE.

On 3 December 2008, the Special Commissioners ruled that of 321 workers engaged by Castle Construction (Chesterfield), 314 were self-employed subcontractors, and allowed their appeal against a determination by HMRC that they were all employees.

Castle does building work, generally on projects where it is not the main contractor. As is common in this industry, it hired workers on a sub-contract basis.

The workers were paid solely for hours worked. They were not paid if bad weather or illness prevented them working, though they received holiday pay under the provisions of the Working Time Regulations, albeit "rolled up" in the hourly rate.

The commissioner commented on the fact that Castle described itself in as the "employer", saying

that there was no non-legalistic word to describe the principal in a principal/subcontractor relationship, so no significance should be attached to the word.

While "control" was discussed, the change of emphasis was welcome. The commissioner maintained that the more relevant aspect of control is that on how bricks were laid. Bricklayers argued that they knew how to lay bricks, and that no-one told them how to do so. Such instructions would not have been welcomed.

After a detailed consideration of all factors distinguishing employment from self-employment – provision of hand tools, exercise of control, rectifying bad work, mutuality of obligation, in business on their own account, substitution and the intentions of the parties – the commissioner ruled that they were self-employed.

Construction industry contractors need to be particularly careful about the employment status of workers, as they have to confirm each month in the Construction Industry Scheme return that they have considered this matter for every subcontractor they pay.



## Tax at 60p in the pound

The Pre Budget Report by Alistair Darling on 25 November introduced potential changes to the taxation of individuals if a Labour Government is returned to power at the next general election.

There are two points of note. The first details changes to personal allowances that would come into effect from 6 April 2010, when those earning between £100,000 and £140,000 would see their personal allowance reduced by £1 for every £2 of income over £100,000. This would continue until the personal allowance was reduced by half, effectively giving them the same "benefit" of this personal allowance as a basic-rate taxpayer.

It is anticipated that this point would be when income reached around £107,000. Someone earning between £107,000 and £140,000 today is likely to see their tax bill increase by more than £1,200.

The second, and perhaps less

obvious point, is in respect of individuals earning between £140,000 and £150,000. It was well publicised after the PBR that under these proposals, individuals earning more than £150,000 would pay a new rate of tax of 45 per cent.

This seems clear, but what about the hidden impact of the further restriction to personal allowances for those in the £140,000 to £150,000 bracket? For every £2 of gross income above £140,000 a further £1 of remaining personal allowance is forfeited. This means that by the time earnings are about £147,000, an individual will not have any personal allowance at all.

Those earning over £150,000 would pay tax at 45 per cent, but

those earning between £100,000 and £107,000 and also those earning between £140,000 and £147,000 are effectively paying 60p in the £1 tax, with the withdrawal of the personal allowance. The loss of £1 of allowance means that every £2 earned is taxed as though it were £3 of earnings – the rate is therefore pushed up from 40p in the pound to 60p.

These earners will also pay an additional 1 per cent NIC (1.5 per cent from April 2011), giving an effective rate of tax of 61p in the pound. Given the timescale of introduction, there is a window of opportunity to review the affairs of individual taxpayers and mitigate these punitive rates of tax.

# Sports clubs and staff hire



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It has been a busy time for VAT, with a number of major changes and interesting developments in addition to the cut in VAT from 17.5 per cent to 15 per cent.

The European Court ruled in the case of Canterbury Hockey Club that VAT exemption applied to income received from corporate bodies and associations as well as individuals. This ruling casts doubt on the restriction of VAT exemption for non-profit-making sports bodies that operate membership schemes (such as golf clubs).

It suggests that in the case of a membership club, visitor green

fees should be exempt and not standard rated. This change could provide an opportunity for some sports bodies to make retrospective claims for refunds of VAT to HMRC. However as it will increase the value of exempt income received it could result in additional irrecoverable VAT on day-to-day expenses and capital works performed in the last 10 years.

The VAT staff hire concession comes to an end on 1 April. This concession effectively allowed salary costs to be ignored when determining the value of the secondment for VAT purposes. The removal of the concession will

affect businesses in the financial, education, health and charity sector that use temporary staff. Such organisations can expect to incur additional VAT on charges for staff from agencies and other organisations. If this VAT is not recoverable in full it will result in an additional cost.

The cut-off date for businesses and organisations that want to obtain refunds of VAT (and interest) following the Fleming/ Conde Nast cases is 31 March. These cases confirmed that VAT overpaid or under-claimed before 1 May 1997 could still be recovered from HMRC as long as claims were made by that date.

Changes will be made to the place of supply of services, from 1 January 2010. The VAT changes include:

- Changes to the place of supply of services rules;
- An obligation to include intra-EU services in EC sales listing reports;
- Improvements to how Eighth Directive refund claims are made.

With just less than 12 months before these changes are implemented those affected will need to consider the impact the changes will have on their sales reporting. At worst, pricing policies, sales systems and procedures will all have to be amended.

## IR35 can hit non-executives too



The IR35 legislation on people who use a limited company or partnership to provide their services to others has been in force since 6 April 2000.

Much of the public interest has related to workers in the IT and engineering industries, but it affects people in any industry who work that way.

Tucked away in Sections 4 and 5 of the Income Tax (Employment and Pensions) Act 2003 is a definition of employment which specifically includes office holders. This

legislation widened the scope of IR35 to include remuneration received as an office-holder and will be relevant to non-executive directors (NEDs), as the definition of an office-holder includes them.

Added to this is the ever increasing levels of regulation and that in order to comply with the combined code on corporate governance, all FTSE 350 companies should have a majority of independent NEDs on their boards, making it more important than ever to get it right.

Where an NED has previously agreed with HMRC that providing services through a personal service company (PSC) was outside the scope of IR35, such agreement can no longer be relied on. HMRC will now regard the appointment of a director, in any role, as a personal appointment which is not transferrable to a PSC and any fees paid to the NED should be charged to tax and NIC through PAYE with the attendant employers NIC liabilities.

This would include

reimbursement of travel expenses to attend board meetings as these are usually taxable.

An NED may provide other services to the company, however, which could be regarded as genuine consultancy work, and therefore differentiated from NED duties. Fees for those services could be paid under a separate agreement outwith the payroll process.