



Building industry alert: new CIS scheme – the fines mentality

Our modern day inquisitors, Her Majesty's Revenue and Customs (HMRC), seem determined to rule the new CIS scheme, which come into operation next April, with fists of steel.

Any slight slip will be punished with non negotiable automatic fines. Punitive changes in your tax status can be imposed with little notice and hardly any grounds for appeal and what are considered major misdemeanours can lead to your own tax status being adversely affected with the new higher rate (30%) tax deduction being imposed on you.

Gone is the attitude that if the tax office can see you are trying to get it right they will let you off as long as you try harder next time – the fine is issued the day you are late. Basically the HMRC do not like the self employed option for sub contractors – they feel that many self employed subcontractors should be classified as employed and taken on to the books. They are willing to accept a CIS scheme only where it is rigidly adhered to and whiter than white.

As a builder employing sub contracted labour you will be required to complete a monthly return 14 days after the period end – failure to get it in on time will result in a £100 automatic fine – if you still delay the fines keep mounting. Tax will also have to be paid monthly, or quarterly if you are eligible – again being late will lead to an automatic fine. Being late is considered a minor misdemeanour – three minor misdemeanours in a year and HMRC can impose a 20% deduction rate if you have previously held a Gross Certificate. Any serious misdemeanours – such as claiming for someone as self employed when they should be classified as employed could result in a 30% tax rate being imposed; a very serious threat to cash flow. The latest thinking from the tax advisors is that the Revenue are gearing up for there being a lot more higher rate (30%) payers than anyone had anticipated.

Is that subbie really self employed?

The new scheme places an ever greater responsibility for ensuring that a worker is genuinely self employed on the employing builder. The employing builder now has to consider the position of each sub contractor he uses every month and complete a declaration to the effect that the person was genuinely self employed. Failure to do so will lead to fines, false declarations will result in more severe penalties.

The problem is that it is not easy to decide who is and who isn't self employed. The Revenue have

provided an internet based tool which if you correctly enter all the facts will issue a report which can be used to show that a particular sub contractor hits the right buttons to be identified as self employed. Most people however see this tool as heavily loaded down the route of driving builders to take more people onto the books rather than accepting them as self employed.

There are some determinants which indicate self employment but it is important to realise that interpretation is grey and a combination of factors may be needed. It is also the case that someone could be considered self employed for one job they are doing but employed for another depending on the nature of the job.

Often used indicators are:

- **Substitution:** If a sub contractor can not get the work done it is up to him to supply alternative labour – at his cost.
- **Risk:** If a job costs more than estimated the extra cost should be at the risk of the sub contractor
- **Working time:** The sub contractor does work at his own time
- **Own tools:** The subcontractor provides his own tools – this will often not be sufficient proof on its own especially if only hand tools are required
- The sub contractor has the right to refuse work offered

- The sub contractor does work for a number of different builders.

It is important that there is a written, signed, contract for each specific job. If the Revenue question self employment status it is harder for them if there is a correctly worded legal contract.

The penalty for the builder in getting it wrong is that it would be considered a major misdemeanour and seriously affect how the revenue would look at his tax status as a Gross Certificate holder.

The online advantage

Employer builders should give great consideration to getting online – in line with all Revenue interaction these days there are significant advantages to being on line.

One area where life can be easier is the monthly return you will need to make of the list of subbies used. By doing it online you will have a complete listing of the subbies you have previously used to check against – making it much harder to inadvertently miss one. If you use a new subbie after 5th April 2007 you will need to verify his status with the Revenue before you pay him. The information required to verify is the

subcontractor's name, national insurance number and unique tax reference. They will inform you of the rate to apply and also give you a verification number. It is important you keep a record of the verification details. This tax rate must be applied until you receive notification from the Revenue of any further change. This again is easier online through an email service.

There a number of software options available to help to organise employer builder's paperwork to ensure they comply. Our opinion is that these still require a lot of regular inputting and may be an unnecessarily expensive option for smaller companies – however if it instils a discipline which helps avoid penalty fines it may be a small price to pay.

Overseas labour

The use of overseas labour has been increasing rapidly over the past few years with the influx of Eastern Europeans. Many of these are able to work in this country on the basis that they are self employed. Employers and contractors need to be aware – there

are no special circumstances for overseas labour. They need to satisfy exactly the same criteria as any subcontractor and it is your responsibility as an employer to assess every month whether the work they do fits the category of self employment. To fail to do this could well lead to a major misdemeanour, fines and an adverse effect on your own tax status.

Old Mill Accountancy LLP

As accountants we look after the affairs of many building companies and sub contractors. We ensure that our staff always keep up to date with the latest activities of HMRC.

If you feel Old Mill may be able to help you then please contact us for a free, no obligation, initial meeting.

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