



## GOVERNMENT UNVEILS TAX CRACKDOWN ON SELF-EMPLOYED CONSTRUCTION WORKERS

*-Shoddy workmanship of a veiled tax raid on a struggling industry, says MacIntyre Hudson-*

The Government has unveiled new tax proposals attacking the employment status of workers within the construction industry which could, if enacted, prove to be a 'body-blow' to the sector, say accountants MacIntyre Hudson.

The reforms outlined in a new HMRC consultation paper propose categorising all construction workers as employees unless they fulfil a new three-step test. In addition to the direct costs of any reform, the industry will be hit hard in view of the flexible labour market it enjoys and the large numbers of self-employed subcontractors working within the sector. The move is intended to crack down on alleged "false self-employment" within the industry, which the Government claims deprives the Exchequer of £350 million a year.

In its consultation paper, the Government asserts there are a large number of subcontractors who are to all intents and purposes acting as employees. The paper suggests that the true employment status of the individual is being disguised in carefully worded legal contracts and through the increasing use of third-party employment agencies by construction firms to mask the reality of the employment relationship.

However, the reaction from industry is likely to be fierce. The wrangle is over whether more workers should be classified in the first place as employed for tax purposes, yet HMRC has lost a number of actions of this sort before the Commissioner and the Courts.

### **Nigel May, Tax Principal at MacIntyre Hudson, comments:**

"The reality of this damaging proposal is that a number of legitimately self-employed workers will be socially engineered into a deemed employment status. In so doing, the new criteria being imposed may create distortions that favour particular kinds of construction activity over others, resulting in the unfair treatment of certain self-employed workers. Yet most worrying of all is the Government's false assumption that the high level of self-employed workers within the construction sector should automatically be treated with suspicion,



when it is the simple reflection of how the industry operates and the many skills with which it needs to engage.

“There are already well-established tests in law to determine the employment status of the individual. While the consultation paper alleges that many are falling foul of self-employment status, the reality is that the Treasury’s own reviews under the Construction Industry Scheme (CIS) have shown many workers to continue to fulfil the self-employed criteria. This means that the proper tax *is* being collected at source, and through a system unique to the construction industry which makes it easier for the Treasury to secure its funds. Meanwhile, HMRC has racked up a long list of losing cases brought before the Commissioners and the courts to challenge self-employment status. Indeed, the paper effectively concedes this point, citing the Government’s difficulty in being able to successfully challenge self-employment status as the prime reason for making reform. It would appear that the real reason for this reform is not to crack down on false self-employment but to undermine what is *genuine* self-employment as the HMRC has discovered in its many futile challenges. It is simply that in reclassifying more workers, the Treasury will be able to generate more revenue. This is not just a tax on jobs, but an unfair levy on a single, vulnerable industry.”

Under the Government’s proposals, workers will only be deemed as self-employed if they fulfil one or more of the following three criteria, providing: plant and equipment required for the job; all building materials to complete a job; other workers under the contract for whom the self-employed is responsible for paying. Crucially, the test excludes ‘tools of the trade’ which means that the self-employed will have to provide more substantial building materials and equipment. By contrast, under the current system, the self-employed is protected by a body of case law which will be applied to the specifics of the individual case, taking into account the nature of the work and the commercial relationship.

The consultation, which ends 12<sup>th</sup> October 2009, focuses on contracts where construction firms are commercially engaging with subcontractors. Small, private work, such as building renovations undertaken for a resident, will be unaffected. The measures are also restricted to focus solely on the tax treatment of workers, not their status for employment law purposes.

**Nigel May comments:**

“Not to alter the employment law status of the worker to employee, and yet to levy tax and National Insurance contributions as if they are such, is telling. Effectively, by introducing a stricter test, the Government recognises a worker may be self-employed by law, but intends to treat them differently under the tax system. Rather than challenging false self-employment, the Government is putting in place a system that creates false *deemed* employment!

“Fortunately, the Government is at least recognising the damage it will cause to an industry already on the floor, and thus is seeking feedback as to when any such reform should come into effect. Let us hope this is kicked into the long grass until the other side of the election and that any future Government will have the sense to reject it.”

–ENDS–

**For further information, or to speak with someone at MacIntyre Hudson, please contact:**

James Reynolds  
Marketforce  
Tel: 020 7608 3222 / 020 7760 8678  
Mobile: 07749 432331  
Email: [jreynolds@marketforce.eu.com](mailto:jreynolds@marketforce.eu.com)

Milly Saunders  
Marketforce  
Mobile : 07904 653 143  
Email: [msaunders@marketforce.eu.com](mailto:msaunders@marketforce.eu.com)

## **NOTES TO EDITORS**

**To download a copy of the HMRC Consultation Paper:**

[http://www.hm-treasury.gov.uk/d/consult\\_falseselfemploymentconstruction\\_200709.pdf](http://www.hm-treasury.gov.uk/d/consult_falseselfemploymentconstruction_200709.pdf)

### **Background information**

Under the current UK tax regime, there are benefits for both employers and employees in self-employed status. By engaging self-employed workers, employers can avoid making National Insurance contributions, while self-employed workers pay National Insurance contributions at a lower rate. These workers are also not subject to Pay as You Earn (PAYE) deductions, but instead taxed on the profits of their business rather than their income.

### **About MacIntyre Hudson LLP:**

MacIntyre Hudson LLP is a top 25 UK accounting firm, offering a full range of compliance and advisory services to entrepreneurial businesses, groups and multinationals with operations in the UK. The firm has 51 Principals and 400 staff in nine offices in London and the South East, and across East Anglia and the Midlands, servicing the whole country. The firm is the UK member of CPA Associates International Inc, a global association of independent accountancy and business advisory firms worldwide, and is registered to carry on audit work and regulated for a range of business activities by The Institute of Chartered Accountants in England and Wales.