



Onshore employment intermediaries: false self-employment

Who is likely to be affected?

Onshore employment intermediaries and the workers engaging with them.

General description of the measure

The measure is aimed at preventing employment intermediaries being used to avoid employment taxes and obligations by disguising employment as self-employment.

Policy objective

This measure supports the Government's anti-avoidance strategy and its fairness agenda by helping to ensure that employment intermediaries and workers pay their fair share of employment taxes.

Background to the measure

The Government announced at Autumn Statement 2013 that it intended to strengthen existing legislation to prevent false self-employment facilitated by employment intermediaries.

A consultation document, *Onshore Employment Intermediaries: False Self-Employment* was published on 10 December 2013 setting out the proposal to tackle the level of avoidance from false self-employment.

Detailed proposal

Operative date

This measure will have effect from 6 April 2014.

Current law

For Income Tax, the relevant legislation is known as the Agency Legislation and is found at Chapter 7 Part 2 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003. This legislation places the responsibility for deducting income tax and National Insurance contributions (NICs), and paying this to HM Revenue & Customs through RTI and paying employer NICs, on the agency that has a relationship with the worker. However, for this legislation to apply a number of criteria need to be met, including an obligation for the worker to be providing personal service.

For NICs, the relevant legislation is contained within The Social Security (Categorisation of Earners) Regulations 1978 and The Social Security (Categorisation of Earners) (Northern Ireland) Regulations 1978. These regulations dictate that a person, the worker, will be treated as being an employed earner for the purpose of NICs when all of the stipulated conditions are met, including, again, that the worker provides (or is under obligation to provide) their personal service.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to amend Chapter 7, Part 2 ITEPA 2003 to remove the need for personal service and the obligation for personal service for recruitment businesses and other intermediaries based in the UK.

It also introduces a power for regulations to be made in respect of record keeping, return requirements and penalties.

The required NICs legislation will be made using existing vires.

Summary of impacts

This table represents the Government's current understanding of the impact of tackling false self-employment facilitated by onshore intermediaries.

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
<p>-</p> <p>+520</p> <p>+425</p> <p>+380</p> <p>+415</p> <p>+445</p> <p>These figures are set out in Table 2.1 of the Autumn Statement and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Autumn Statement.</p> <p>This measure supports the Exchequer in its commitment to protect revenue.</p>						
<p>Economic impact</p>	<p>The measure will increase NICs liabilities for employment intermediaries whose workers are registered as falsely self-employed by a small amount, with the impact expected to be focused on the construction sector.</p>					
<p>Impact on individuals and households</p>	<p>Around 200,000 workers in the construction sector, and 50,000 in other sectors, are reckoned to be engaged with and through onshore employment intermediaries.</p> <p>By virtue of being treated (correctly) as employees, all qualifying workers within this measure will gain Statutory Payments such as statutory sick pay and maternity pay and some will be eligible for National Minimum Wage (NMW). In the majority of cases the worker will also gain the benefits of being an employee for employment rights purposes, although this will depend on them being within the case law tests set out by the courts.</p> <p>These workers will face higher tax and NIC liabilities, but will no longer be paying service charges (which can be as high as £1,250 per year) to an intermediary company. Some workers will gain overall although for others there will be a net loss.</p>					
<p>Equalities impacts</p>	<p>No equality groups have been identified as being impacted differently from this change.</p>					
<p>Impact on business including civil society organisations</p>	<p>As the status of false self-employed workers will change to employees the onshore employment intermediaries will have to pay Class 1 employer NICs. The measure is not expected to have a significant impact on other businesses or civil society organisations.</p> <p>There are known to be approximately 10,000 Business Services companies and it is expected that most of these are likely to be affected in a small way by this measure. There are no expected impacts, either one-off or ongoing in terms of requiring new IT or training as these businesses are expected to already be employers and thus will be already operating PAYE.</p>					

Operational impact (£m) (HMRC or other)	The operational impact of this measure is expected to be negligible.
Other impacts	<u>Small and micro business assessment</u> : the impact on small or micro businesses is expected to be negligible. Other impacts have been considered and none have been identified.

Monitoring and evaluation

This measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact Robert Burton on 03000 526659 (email: robert.burton@hmrc.gsi.gov.uk).