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This month Robert Bradley takes a look at the issues around self employment v employment and the rules the government have brought in to counter tax avoidance.

The government continues to target businesses who are using the tax advantages of being self-employed to avoid tax. Currently they are targeting the construction industry.

Their approach is similar to the that applied in relation to managed service companies in that income paid to the worker will be deemed to be employment income unless certain conditions are met.

Where the worker provides his or her services via a personal service company, the proposed construction industry deeming provisions will take precedence over the Intermediaries Legislation (IR35) rules. To escape the deeming provisions the worker would need to meet one of the following criteria:

- 1) Provision of plant and machinery: the person must provide the plant and equipment required to do the job that they have been engaged to carry out. This will exclude the tools of the trade that it is normal and traditional in the industry for individuals to provide to do their job.
- 2) Provision of all materials: the person must provide all the material required to complete a job.
- 3) Provision of other workers: a person must provide other workers to carry out operations under the contract and be responsible for paying them.

These are familiar criteria and fall under what are more generally known as the badges of trade. The question of whether a worker is employed or self-employed is relevant not only to companies in the construction industry but also affects any business which engages or intends to engage sub-contractors.

If they have doubts about the employment status of their sub-contractors businesses should obtain tax references in order to satisfy themselves that the subcontractors are legitimately self-employed. If they are found to be mis-classified for tax purposes the burden could potentially fall on the shoulders of the business which engaged them. In summary it is best to take a prudent approach.

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