

# The Onshore Intermediaries Legislation 2014 "False Self-employment"

*Frequently asked  
questions and what you  
need to know*



**DUTTON**  
INTERNATIONAL

Specialist Recruitment Services



## What is the new Legislation?

### **FINANCE BILL 2014; FALSE SELF-EMPLOYMENT/ON SHORE INTERMEDIARIES**

Officially known as the “On Shore Intermediaries Legislation” this new ruling is becoming colloquially known as the False Self-Employment legislation which many organisations feel better describes its nature.

Essentially, the Treasury has been missing out on revenue for many years which they feel should have rightfully been claimed through PAYE Tax and National Insurance, but has been avoided by way of a worker claiming to be “Self Employed”.



**HM Treasury**

*“We are committed to tackling areas of the tax system where avoidance behaviour is widespread. In the last few years we have made a great deal of progress in preventing the avoidance of employment taxes with the disguised remuneration rules, the employee benefit trust settlement opportunity and the changes to the intermediaries (IR35) legislation. This is the next step in creating a level playing field for all businesses engaging workers in the UK and stopping unfair arrangements. We will continue to seek out avoidance of employment taxes and act to stop it.”*

**Danny Alexander**

*Chief Secretary to the Treasury*



## *Why has it been introduced?*

The Treasury estimate that each year they are missing out on over £600m of revenue which would typically be generated through the deduction of PAYE Tax and National Insurance from workers who they believe are inaccurately stating their employment position as “Self Employed”.

Self employed tax is also paid after the year of work, whereas PAYE is paid monthly during the year of work. The more workers who are taxed through PAYE, the better the Treasury cash flow.

## *What does it mean?*

The Treasury basically want to collect this missing revenue, and are actively pushing legislation towards taxing the vast majority of workers as if they are “employed”.

It will be the responsibility of HMRC to collect the missing revenue. As we have seen in recent years, HMRC have been challenging various payroll schemes where tax revenues are low, and changing legislation to stop such schemes. This is the latest step, and one of the most significant to date.

## *Who does it affect?*

Everyone who currently works as self employed, either directly with the end contractor or through a payroll provider.

The legislation assumes you are ‘guilty until proven innocent’. That is, it assumes you are an employed worker unless you can prove otherwise. The legislation is also so far reaching that almost any type of work undertaken is, in its eyes, employed work.

If you can’t satisfactorily prove you are self employed, but continue to operate as such, HMRC will deem it to be “False Self Employment”.



## What then do HMRC deem to be 'employment'?

**HMRC are using Supervision, Direction or Control as their litmus test.**

If there is any element of Supervision, Direction or Control in the services provided, then HMRC will deem that contractor to be employed **for tax purposes**. It is important to note that you can remain self-employed in all other respects.

Furthermore the legislation is so wide-reaching that virtually all work based scenarios will have some element of Supervision, Direction or Control. For example, simply having to adhere to a company's health and safety regulations will be a measure of control.

## Can I remain self-employed at all?

As mentioned, you are 'guilty until proven innocent'. You will have to prove beyond all doubt that you are genuinely self-employed, otherwise by default HMRC will deem you to be employed and therefore liable to be taxed under PAYE.

It has been suggested that a questionnaire at the start of each assignment will demonstrate someone's self-employed status, and that will be enough for HMRC. **It will not.**

HMRC will perform site visits to determine the employment status where there is any doubt. If you have declared yourself to be self-employed yet HMRC find you not to be, this is 'False Self-Employment'.

Please note this only relates to your tax status - you can remain self employed in all other regards.

## What will HMRC do?

HMRC have made it clear they will be actively and strongly enforcing this legislation. Anyone found to be falsely declaring self-employment will be penalised as well as liable to pay the undeclared Tax.

Because of the revenues involved, and the cash flow implications, HMRC will be making full use of their anti-avoidance measures in pursuing this.



## *How will it be enforced?*

There are a multitude of ways in which this latest bill will be enforced by the Treasury and HMRC.

HMRC continually audits patterns, changes and trends across all Employers and Employees via its internal systems. Add to this; whistle-blowers, financial anomalies, employment tribunals and spot-checks, HMRC has a variety of ways through which it is able to monitor all aspects of taxation covering a range of legislations as well as this latest one.

**The legislation comes into force on April 6<sup>th</sup> 2014 and anti-avoidance measures (fines and legal action) will be backdated to that date.**

## *What should I do now?*

**Talk to your consultant straight away. They are fully versed in this legislation change and the impact it will have on you.**

As one of the market leaders, Dutton International has invested a lot in studying the legislation closely, and seeking professional and legal advice on this issue. As a result we believe that the ruling on 'Supervision, Direction and Control' means that everyone who was self-employed will now be deemed by HMRC to be employed for tax purposes.

We will therefore be ensuring Tax and NI contributions will be deducted from all workers as a matter of course, whether this is directly or through an intermediary. **Safeguarding you is our primary aim.**

Only in the rarest of circumstances would a worker be truly deemed self-employed, if you genuinely feel this may apply to you then we will be happy to look at this with you.



## *What are the benefits to me?*

You may feel you are being unfairly penalised by HMRC with these changes. However, there are a number of benefits which our approach will give you:

- No need to pay accountancy fees for a year end tax return, or spend hours of your own time wrestling with self assessment;
- Your take home pay is yours alone – no need to put some aside for a tax bill later down the line. No nasty surprises!
- By claiming the appropriate expenses your tax liability will be mitigated.
- Security and peace of mind.
- National Insurance contributions will enhance your long-term state pension pot.



## *Peace of mind and security with Dutton International*

Ultimately, when the HMRC seeks to recoup any avoided Taxation, they have the ability to seek recourse from whoever they deem liable, putting the Recruiter, the worker and the Client at risk. No one is safe!

As a business we are keen to ensure both our clients and workers are able to work in the safe and secure knowledge they do not have to be looking over their shoulders worrying about a HMRC investigation now or in the future.

Staff within all of our Branches have been trained to establish the most appropriate practices according to all factors of the new law and will be able to review each assignment our Contract Workers undertake to ensure that they are fully compliant at all times.

### **Consultation**

Ahead of the April 6<sup>th</sup> implementation of this legislation we have done our utmost to consult with all of our existing Workers and Clients to inform them as in-depth as possible as to the ramifications of this new ruling. In the future, we will continue to communicate this same issue to any new Clients or Workers we take on, as we have done in the past when Employment Law has changed.

This FAQ document represents one step in the process of consulting and informing everyone we work with.

After April 6<sup>th</sup>, we will also make this document available via our website so that others can see the lengths that we go to as an Agency to protect our stakeholders.

- *We take no responsibility for the information contained herein. This document is for guidance only and does not represent the views of the company. Independent advice should be sought.*