



Inland Revenue Leverage Exercise

The Inland Revenue notified ECA on 3 August 2004 of their "Leverage Exercise" to remind contractors and sub-contractors of their responsibilities to determine the correct employment status of workers, i.e. CIS4 sub-contractors or PAYE employees.

This exercise is being carried out under the existing legislation and appears to be an attempt by the Inland Revenue to regularise employment status prior to the launch of the new CIS.

Employment status is a major issue in the compilation of the new scheme and ECA as part of the industry side of negotiations has proposed that the Inland Revenue provide for the following: -

- Have a clear "In Business" test for the self-employed, preferably operated by the IR but definitely indisputable so that contractors can be certain that PAYE is applicable unless the "In Business" test is passed.
- Include proposals for easier PAYE procedures for casual workers.
- Include satisfactory assurances of enforcement.
- Ensure that the offset concession will remain in place and used in cases of genuine error and reasonable mistake.
- Include assurance that all those passing the "In Business" test with a good compliance record could be gross paid.

Text of letter from IR to ECA follows:

From:
Revenue Policy, Personal Tax,
New Wing, Somerset House
Strand, London, WC2R 1LB

3 August 2004

Dear

Leverage Exercise

This exercise is part of our programme to ensure that everyone in the industry understands and meets their obligations to apply the correct employment status to their workers.

Under this exercise, we have identified from the data that we hold those contractors who are taxing under the Construction Industry Scheme subcontractors who appear to have the characteristics of an employee. We are writing to those contractors to remind them of their responsibilities for determining the correct employment status and advising them of the consequences of ignoring the rules. We are also writing to

the subcontractors concerned to advise them of what is happening, and where to go for advice.

I am now in a position to inform you that last Wednesday we commenced a pilot scheme, where we issued 300 letters to contractors and 1200 to subcontractors. Our main exercise will commence the week beginning the 9 August, when approximately 13,000 letters will be issued to contractors and 44,000 to subcontractors.

This is the first phase of this exercise and the letters are being sent to contractors and sub-contractors across all regions. This will be followed by further batches of "leverage" letters being issued over the coming months.

We would ask that you encourage any of your members or colleagues that receive one of these letters to consider it carefully and review the employment status of workers if they have not done so already. And of course, those that you represent that are already complying with their obligations should be reassured that the compliance activity has increased significantly to work towards restoring the level playing field in the industry that you, as representatives, have asked us to help restore.

The letters have also been circulated to the "Working Together Group" which represents professional advisors so that they may alert their members in case some of their clients receive one of these letters.

I hope you find this letter of interest and I attach specimens of the letters for your information.

Yours sincerely

John Hinton

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Attachment 1: CONTRACTOR LETTER

Re: EMPLOYMENT STATUS AND THE CONSTRUCTION INDUSTRY SCHEME

Contractors area
S I name & telephone No
Personal reference No

Contractors address

Dear [insert lasered name]

The Inland Revenue is undertaking a review of employment status within the Construction Industry so that we can ensure that contractors are making the correct deductions from payments to their sub-contractors.

We've looked at our records and have some doubts about the employment status of some of your sub-contractors. Just so you are clear - it's the terms, conditions and facts of the engagement that determine whether a sub-contractor is employed or self-employed and not whether they hold a CIS card. As the law stand, if the terms of the engagement show that the sub-contractor should be treated as an employee it's your obligation to apply PAYE tax and Class 1 National Insurance Contributions to the payments you make. Alternatively, if the sub-contractor's engagement is correctly self-employed it's your obligation to deal with the payments under the Construction Industry Scheme.

You, as the contractor, are responsible for determining the correct employment status of your sub-contractors. That's why we're writing to all the contractors where our records suggest that the wrong tax treatment may be being applied. So we're asking you to:

1. review the terms of engagement of the people who work for you,
2. make sure you've got their employment status right, and
3. take action to change this if you've got it wrong.

If you incorrectly treat a sub-contractor as self-employed, you could have to pay the PAYE tax and Class 1 NIC that you should have deducted, plus interest as well. A penalty may also be payable, so it is in your interest to make sure your house is in order.

If you have an accountant or tax advisor who deals with the Inland Revenue on your behalf, you might wish to show them this letter and discuss the position with them.

Further information about employment status is also contained in leaflet 'IR56 - Employed or self-employed? - a guide to employment status for tax and National Insurance contributions which is available from your local Tax Office.

However, should you have any questions about this letter or wish to check the employment status of your sub-contractors please call me [insert name here] or a member of my team as shown above. It's better to make sure now that you are dealing with your sub-contractors correctly rather than letting things carry on.

Yours sincerely,

<name of SI>

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Attachment 2: **SUBCONTRACTOR LETTER**

Re: EMPLOYMENT STATUS AND THE CONSTRUCTION INDUSTRY SCHEME

Sub-contractors area
S I name & telephone No
Personal reference No
Sub-contractors address

Dear (Insert lasered name),

Did you know that the Inland Revenue is currently undertaking a review of employment status within the Construction Industry? The aim of our review is to ensure that all contractors get the tax status of the people who work for them right.

You should know that your employment status is whether you are employed or self-employed and is determined by the terms, conditions and facts of each of your engagements and not by whether you hold a CIS4 card or not. It's a legal requirement for your contractor to get this right.

We've looked at our records and believe that your employment status may have been declared wrongly and that it might be more appropriate for you to be on the books as an employee - that's 'cards in'.

If you can answer YES to more than one of the following questions and are currently classed as self employed, we really think you should speak to your contractor as it is likely that you should be taxed as an employee.

- Must the work be done only by you?
- Are you told what to do, where to work or when and how to do it?
- Do you use none or only a few of your own hand tools?
- Do you use none or only a small amount of your own materials?
- Does the contractor supply the bulk of the materials, plant and equipment needed on-site?
- Are you paid a set rate for your work or by the hour, week or month?

There are many advantages of being classed as 'cards-in'.

These include:

- Sick pay
- Improved benefits
- Possible pension schemes

You may want to discuss the contents of this letter with your contractor, or if you have a tax adviser or accountant, you may want to show them this letter and discuss it with them.

If you are worried or unclear about any of this or want more explanation you can also contact me on <number>.

Yours sincerely,

<name of SI>