

# **A QUICK GUIDE TO EMPLOYMENT STATUS & THE CONSTRUCTION INDUSTRY TAX SCHEME**

**MARCH 2004**

## **EMPLOYMENT STATUS – THE CONUNDRUM**

Employment status – is someone employed or self employed - is one of the biggest grey areas in the UK tax system, and for businesses one of the most expensive areas to get wrong in terms of higher labour costs or unexpected back tax bills.

Issues surrounding employment status affect all businesses, regardless of the sector they operate in. Even if your workers are not self employed, your competitors might be and that may be enough to give them competitive advantage.

Closely allied to this is the Construction Industry Scheme(CIS). For employers in the Construction Industry this adds extra regulation concerning status onto businesses.

## **SOME DEFINITIONS**

*CIS – Construction Industry Tax Scheme*

*Status – whether a worker is employed or self employed*

*Engager – the business engaging a worker on an employed or self employed basis*

*Worker – the person working for the engager*

*Employed – the worker is an employee of the engager, and subject to employment rights, pay, benefits and deduction for tax/National Insurance.*

*Self Employed – the worker is an independent business in a business to business relationship with the engager, and paid a fee for their services, normally without any deduction.*

*Status tests – the tests the Inland Revenue use to work out whether a worker is employed or self employed*

## SO WHY IS STATUS SO IMPORTANT

It is really a matter of competitiveness and cost; in a self employment situation the Inland Revenue collect less. For this reason they are keen to tackle self employed status where they think there is a chance they can prove employed status. Likewise businesses are keen to demonstrate self employed status, and therefore minimise labour costs.

Let's look at some figures – suppose Jack engages Jill, for an agreed payment of £2,000 per month (£24,000 pa). What is the cost to Jack, Jill's take home pay and the Inland Revenue payment under an employed versus self employed scenario?

		Employed £	Self Employed £
Jack (Engager)	Wage cost	24,000	24,000
	National Insurance	<u>2,481</u>	<u>-</u>
	Total	<u>26,481</u>	<u>24,000</u>
Jill (Worker)	Wage	24,000	24,000
	Income Tax	4,030	4,030
	National Insurance	<u>2,132</u>	<u>1,655</u>
	Take home	<u>17,838</u>	<u>18,316</u>
Total Inland Revenue payment (2003-04 tax rates)		<u>8,643</u>	<u>5,684</u>

It can be seen that on a self employed basis the payment to the Inland Revenue is much less; the largest saving being on employers National Insurance.

Of course, there are many variations on this; for example Jack may decide to maintain his costs at £26,481, and pass all the savings to Jill, i.e.

		Employed £	Self Employed £
Jack (Engager)	Wage cost	24,000	26,481
	National Insurance	<u>2,481</u>	<u>-</u>
	Total	<u>26,481</u>	<u>26,481</u>
Jill (Worker)	Wage	24,000	26,481
	Income Tax	4,030	4,575
	National Insurance	<u>2,132</u>	<u>1,853</u>
	Take home	<u>17,838</u>	<u>20,052</u>
Total Inland Revenue payment (2003-04 tax rates)		<u>8,643</u>	<u>6,429</u>

Alternatively Jill may have some expenses which she incurs whether she is employed or self employed, but under a self employed scenario she can deduct these against her tax and NI, i.e.

		Employed £	Self Employed £
Jack (Engager)	Wage cost	24,000	24,000
	National Insurance	<u>2,481</u>	<u>-</u>
	Total	<u>26,481</u>	<u>24,000</u>
Jill (Worker) (£2,000 of expenses deductible under self employment)	Wage	24,000	24,000
	Income Tax	4,030	3,590
	National Insurance	<u>2,132</u>	<u>1,495</u>
	Take home	<u>17,838</u>	<u>18,916</u>
Total Inland Revenue payment (2003-04 tax rates)		<u>8,643</u>	<u>5,084</u>

It can be seen that under all these permutations the Inland Revenue lose, and in varying ways, the engager and worker win.

## FEATURES OF EMPLOYMENT AND SELF EMPLOYMENT

<u>Employment</u>	<u>Self Employment</u>
Various employment protection rights	Little in the way of employment rights
Cannot easily be dismissed	Hire and fire very easily
Workplace health & safety protection	Workplace health & safety protection
Redundancy protection	No redundancy protection
Paid holidays	No paid holidays
(normally) Sick pay	No sick pay
Paid under deduction of PAYE (National Insurance and Income Tax)	Normally paid with no tax deducted (but see CIS rules)
Employers National Insurance incurred by engager	No employers NI
Workers NI at employment rates	Workers NI at lower self employed rates
Little chance for the worker to claim tax deductible expenses	Worker can claim an assortment of expenses against tax

## STATUS TESTS

Having seen that self employment offers tax/NI savings over employment, an attraction for both engager and worker, and also has less regulation and restriction, usually an attraction for the engager, how is employment status determined, and how do you influence this?

Alas, there are no statutory tests as to whether a worker is employed or self employed, but over the years the courts have refined a series of rules known as the **status tests**. The status tests are used to reach a conclusion about employed v self employed status; no one test is determinative in its own right, but some are more important than others.

- Mutuality of obligations – mutuality of obligations points towards employment, i.e. the engager is obliged to offer the worker work and the worker is obliged to accept it – non mutuality points towards self employment. Mutuality can occur by custom and practice rather than an express contract.
- Freedom to delegate, substitute and sub-contract – contracts of employment do not have rights of delegation, substitution or sub-contract, collectively known as non-personal services rights. Where these rights are included in the contract then it is a strong indicator of self employment. A recent Court of Appeal judgement, *Express & Echo Publications v Tanton* (1999), held that where a contract allowed services to be carried out by someone other than the worker then it was a contract for services (i.e. self employment) rather than a contract of service (i.e. employment). However the case law also recognises that where the non personal service rights are a side issue, then they do not carry much weight, eg *MacFarlane v Glasgow City Council* 2001. Therefore if you are trying to prove self employed status, the non personal service rights must be wide ranging; it is acceptable for any proposed substitute or delegate to be approved by the engager, but they must actually be paid by the worker providing them.
- Control – if the worker is subject to control as to how the work is carried out then this points towards employment – if there is merely measurement against agreed outcomes/deliverables and the worker can provide the work in their own manner then this points towards self employment.
- Integration – if the worker is integrated into the engagers organisation then that indicates employment – no integration indicates self employment. Integration in this context could be work as part of a team, inclusion by name on the employers stationary or promotional literature, being on call rotas, inclusion in internal directories, ability to represent the engager to outside parties.
- Method of payment – if the worker is paid by the hour/day/week then that points to employment – being paid for a project or task points towards self employment. Equally the use of time sheet to record hours points towards employment.
- Working hours – if the worker is contracted to work set hours then that points to employment – if the worker is contracted by reference to outcomes/deliverables then that points to self employment.

- Simultaneous contracts – if the worker has only one customer/engager then that points towards employment – if the worker has a number of customers/engagers, and even better if they overlap, then this points towards self employment.
- Risk – little or no commercial risk taken indicates employment – risk indicates self employment. Risks could be responsibility for rectification of errors and mistakes or financial risk of a project overrun.
- Responsibility for losses as well as profits – if the worker is isolated against losses then that points towards employment – if there is a risk of losses then that points towards self employment. Of course with a labour only service, making a loss is difficult, but the general flavour of the contract must be for risk to sit with the worker.
- Provision of equipment – if the engagers equipment is used then that points towards employment – if the equipment is the workers then that points towards self employment. Obviously it is not practical for some very small businesses to provide large items, but PCs for working at home, hand tools, etc, point towards self employment.
- Bearing cost of correcting defective work and errors – if the worker does not bear the risks of correcting defective work and errors then this indicates employment – if the worker does bear this risk, eg by having to carry out remedial work in unpaid time or as part of a fixed price/outcome contract, then that is an indicator of self employment.
- Freedom to choose where and when the work is carried out – being tied to the engagers site and working hours indicates employment – the ability to work at home, or to set ones own hours, self employment.

By themselves none of these points are decisive, but taken together they help to paint a picture.

The important factors are generally held to be:

- Control
- Integration
- Mutuality of obligations
- Economic reality (eg financial risk, responsibility for bearing losses, investment made in training / tools)

## **ESTABLISHING AND MAINTAINING SELF EMPLOYED STATUS**

So, if it is desired to establish or maintain self employed status, how is this done?

First and foremost the important thing is having a self employed contract in place. This should cover most of the issues set out in the section above on status tests.

A strong contract will defeat many attacks by the Inland Revenue. However, it is important that this contract is backed up by real practice and acknowledged by both parties to be effective. To this end it is important that both sides understand the clauses in the contract and their implementation. However the mere fact that a clause isn't implemented doesn't mean it's not valid, eg:

Suppose a contract between Bill (the engager) and Ben (the worker) had a right of substitution within it which lets Ben send someone else to carry out his work.

The Inland Revenue examine the contract during an inspection, and ask Bill, "What would happen if Ben sent a substitute". If Bill replies "I would accept that substitute and let him carry out the work unless he wasn't capable of doing so, in which case I would tell Ben", then all is well, even if the right is never used. However if Bill replied something like "Well, we never intended to use the clause in practice, it was just something the accountant told us to put in there" then, of course, the Inland Revenue will seize on this and claim the clause is invalid.

Likewise if they asked Ben "What would you do if you couldn't work one day, would you be allowed to send someone in your place?", Then if Ben answered "Yes, I would find someone else to work for me" then all is well. However if Ben answered "No, Bill has said he only wants me" then the clause may well fail.

The importance of this example is to show that not only must the contract in place be favourable to self employment, but both engager and worker must understand why it's in place and what it means in practice. However the understanding and the willingness to implement the pro self employment clauses are just as important as actual implementation.

The following are good practices to follow to preserve or establish self employed status:

- **Contract** - it is important that all self employed operatives have a contract with the engager. In the case of partnerships and limited companies the contract should be between the partnership/company and the engager, not the worker and the engager.

A suitable specimen is in the appendix - you are free to copy or use this, and we can provide blanks on request. The specimen can be altered if necessary, but we would recommend you stick to its contents as closely as possible; if you make changes it would probably be sensible to let us review them. The specimen is provided on the strict understanding that we are not employment or contractual law experts - you must seek advice from an expert in such matters if you have any concerns or queries about your rights or obligations.

- **Invoicing** - it is important that self employed workers invoice the engager for the work they do and they are paid against invoices.

- Advertising – self employed workers contractors should periodically advertise their services in the local press, shop window, etc, and keep copies of the adverts.
- Business organisation – self employed workers who can demonstrate they have the trappings of a business organisation will fare better in proving self employment. Such trappings could be a business phone line, a business mobile phone, headed paper, using an accountant, sign written van, advertising, business insurance.
- Differing engagers - if self employed workers work for different engagers it will make their case stronger. This could be achieved by them sub contracting for each other, with them taking turns at "leading" on jobs. Even better, some of the different engagements should be simultaneous.
- Price work - submitting tenders for jobs and working to price, and showing evidence of this, will assist.
- Provision of loose tools and overalls.

The above points will not guarantee to protect all self employed workers status but they will tip the balance quite considerably in favour of self employment, and may well lead the Inland Revenue to conclude that there are easier targets to pick on.

## **WHAT IF AN INLAND REVENUE CHALLENGE IS LOST**

During the course of tax inspections – either routine PAYE examinations or enquiries into tax returns – the Inland Revenue may question whether a self employed worker is really self employed (or in theory the opposite question). This is referred to as a status challenge.

The Inland Revenue generally rely on fear and intimidation with these challenges, and for a properly represented business who have contracts, etc, in place with self employed workers there is little to fear. However this, like many areas of the tax system, is an area where the Inland Revenue will home in if there is a weakness or they feel the business may waver.

Over recent years the Inland Revenue have not had a lot of success in the courts with status matters, and most of the case law that exists is in favour of the engager or worker trying to prove self employed status. To this end the Inland Revenue will try and agree a “quick” settlement with the business/engager, and it is at this time that a firm defence is needed to present positive evidence to the Inland Revenue and, all being well, fend them off.

In most Inland Revenue status challenges where there is a credible case, and the worker and engager have made efforts to prove self employment, then the Inland Revenue can be beaten.

However sometimes the evidence isn't there – contracts have not been completed, invoices haven't been received, etc, and the case is lost. Generally this means that the engager has to pick up the cost of tax and NI that should have been deducted under PAYE, on the basis of the wage paid being equivalent to take home pay.

EG - suppose Jack engages Jill, for a an agreed payment of £2,000 per month (£24,000 pa). The engagement is structured on a self employed basis, but the Inland Revenue re-categorise it as an employment relationship:

		Self Employed £	Re- categorised £
Jack (Engager)	Wage cost	24,000	32,120
	National Insurance	-	3,521
	<b>Total</b>	<b>24,000</b>	<b>35,641</b>
Jill (Worker)	Wage	24,000	32,120
	Income Tax	4,030	5,816
	National Insurance	1,655	2,304
	<b>Take home</b>	<b>18,316</b>	<b>24,000</b>
Total Inland Revenue payment (2003-04 tax rates)		<b>5,684</b>	<b>11,641</b>

The Inland Revenues tax take increases to £11,641 pa, from £5,684 pa. But worse, from Jacks point of view, is that he is expected to pay it – his costs increase from £24,000 pa to £35,641 pa. Dependant on his relationship with Jill, she may re-pay him the £8,120 she was going to pay in tax and NI, but Jack probably has no legal way of forcing her to pay this. Alternatively the Inland Revenue may allow what Jill has already paid as an offset but, again, this is discretionary and Jack cannot rely on it.

In short; although self employed status provides savings to both engager and worker, the engager is bearing a risk if it all goes wrong. This emphasises how important it is from the engagers point of view to have contracts in place and working practices in line with those contracts.

However there is an important variation to the above where the worker is not an individual. This is covered later in the section on workers with Companies or Partnerships.

## PLAYING SAFE AND EMPLOYING ALL WORKERS

In light of the costs to the engager of getting it wrong, the engager may decide to directly employ all staff anyway, and have no self employed workers.

Whilst this is commendable for playing safe, it does mean that tax payments will be higher than they need be and a raft of employment protection legislation and bureaucracy will apply, maybe unnecessarily.

It is probably better for the engager to take professional advice about whether workers are employed or self employed and, if appropriate, what can be done to preserve or prove self employed status. Often some simple contracts and some small changes to working practices are all that's needed.

## WORKERS WITH COMPANIES OR PARTNERSHIPS

As seen above, where the worker is an individual the risk of extra tax and NI if the Inland Revenue successfully dispute the workers status is with the engager.

However if the worker operates as a partnership or limited company then the risk is with the worker. This is under a set of rules known as IR35.

IR35 is considered to be one of the worst thought out and implemented pieces of tax legislation in many years, but in essence is quite simple – it extends the existing status tests which apply between an engager and a worker to situations where the worker operates via an “intermediary” (i.e. limited company or partnership). The status tests are then applied on a hypothetical basis between the worker and the engager, and if they fail then the intermediary, or failing them, the worker, has to bear the extra Tax and NI cost; the engager is protected. In these cases the liability of the worker and the intermediary are only merged where the worker has a significant stake (as a shareholder or partner) in the intermediary.

For example, same figures as above, but Jill is operating via Jill Limited:

		IR35 does not apply £	IR35 does apply £
Jack (Engager)	Wage cost	24,000	24,000
	National Insurance	-	-
	<b>Total</b>	<b>24,000</b>	<b>24,000</b>
Jill (Worker) via Jill Limited	Wage	24,000	24,000
	Income Tax	-	3,546
	National Insurance (employees)	-	1,891
	National Insurance (employers)	-	2,198
	Corporation Tax	2,233	-
	<b>Take home</b>	<b>21,768</b>	<b>16,365</b>
Total Inland Revenue payment (2003-04 tax rates)		<b>2,233</b>	<b>7,635</b>

NB assumes under the self employed scenario that Jill draws a £4,600 salary and remainder as dividend

It can be seen that Jacks costs remain the same, but Jill has a lot more tax and NI to pay and is much worse off.

## OUTLINE OF THE CIS SCHEME

What we have covered above applies to all workers; this next section applies to the Construction Industry only.

Because of the itinerant labour force, many years ago special rules were introduced by the Inland Revenue to require business (called contractors) in the construction industry to deduct tax from certain self employed workers (usually called sub contractors).

Basically there are three classes of workers in the construction industry:

Directly employed	Paid with deduction of tax and NI under PAYE. Considered an employee of the engager.
Self employed – net paid	Paid with a flat rate deduction of 18% for tax/NI. Not considered an employee of the engager. Completes own tax return and accounts each year and pays difference between 18% and actual tax/NI liability.
Self employed – gross paid	Paid gross, with no deductions. Not considered an employee of the engager. Completes own tax return and accounts each year and pays tax/NI liability then.

To be self employed in the construction industry, an individual must be registered with the Inland Revenue. If they are not registered then they can only work as a direct employee.

Happily there are no real bars to registration, and more or less anyone can register to be self employed in the construction industry.

Initially any registration will be set up on a net payment basis, i.e. with 18% deducted. The registrant will be given a CIS 4 registration card, which is a photographic ID card allowing them to work in the construction industry on a self employed basis, with 18% deductions made by the engager.

If the individuals income (less materials supplied) is over £30k pa on a three year average, or over £21k in any six months, then they can be registered with a CIS 6 card, which allows them to be paid gross, i.e. with no tax deduction.

It is important to note that just because an individual has a CIS 4 or CIS 6 card, that does not automatically mean they are self employed; the CIS scheme cuts in after the status tests in the earlier part of the document have been cleared, and if those status tests fail then even if a CIS 4 or CIS 6 is held the engagement is a direct one and the worker must be treated as a employee, and PAYE operated.

It often comes as a shock to businesses in the construction industry that even if they have been stopping 18% from a sub contractor, or collecting CIS 24 vouchers, the engagement can still be re-classified as employment with the type of devastating cost as outlined earlier in these notes.

## **WHAT WORK IS CAUGHT BY THE CIS SCHEME**

The scheme applies to contracts between businesses in the construction industry. For example an electrician carrying out work for a builder is included whereas the same electrician carrying out work for a haulage contractor or for a private household is not included.

Likewise a builder carrying out work for another construction company or a developer is included, but the same builder carrying out work for a grocery shop or a private household would be excluded. There is one exception here: if the grocery shop is part of a chain and spends on average £1m a year or more on construction work then it is deemed to be a contractor and falls within the scope of the scheme.

Local authorities, government departments and public bodies are also deemed to be contractors if they spend £1m a year or more on buying in construction services.

The scheme only applies to the provision of labour related construction services; an electrician supplying electrical services to a builder is covered but a wholesaler supplying electrical materials only is not included. An auto mechanic supplying services to a builder, with or without materials is excluded; this work is not a construction service.

Professional services such as architectural or surveying services are excluded from the scheme.

The scope of services included in the scheme can be surprising; a contract cleaner or a gardener who works on a construction project is caught for example.

If there are doubts over the scope of the scheme then please contact us or the Inland Revenue for advice; there is a detailed list available of the ins and outs, and the Inland Revenue will rule on uncertainties.

The scheme works in an almost identical fashion regardless of whether the contractor/engager or the worker/sub contractor are individuals, limited companies or partnerships, and it is possible to be both a contractor and sub contractor at the same time, eg if A does work for B and A gets C to do some of the work, then the chain is B > A > C, and A is both a sub contractor (to B) and a contractor (to C).

## CIS TERMS

The CIS scheme brings a language all of its own: some of the main forms and terms are:

- CIS 1 - Employers registration and stationery request.
- CIS 2 - Application form for Sole traders/partnerships (CIS 9 for additional partners).
- CIS 3 - Application form for Companies (CIS 8 for additional directors).
- CIS 4(P) - Registration Card.
- CIS 4(T) - Temporary Registration Card.
- CIS 5 - Construction Certificate (normally only for companies with a £1m turnover)
- CIS 6 - Sub Contractor Certificate (equivalent to the pre 1999 714 card)
- CIS 23 - Gross payment voucher for CIS 5 card holders
- CIS 24 - Gross Payment Voucher (equivalent to pre 1999 715)
- CIS 25 - Taxed Payment Voucher (equivalent to pre 1999 SC60)
- CIS 36 - Annual return to the Inland Revenue (up to 5 April each year, submitted by 19 May or else penalties are incurred)

## CIS IN PRACTICE – VOUCHERS, CARDS AND PAYMENTS

As can be seen CIS is a kind of half way house between self employment and full employment.

The final tax bills and cost to engager and worker are the same as self employment, but the tax deduction obligations and documentation are similar to PAYE and employment.

The documentation is, of course, different for gross and net payments.

### Gross payments – CIS 6 holders

In most cases gross payments will be made to holders of CIS 6 subcontractors certificates.

At the start of the engagement the CIS 6 card must be shown to the contractor (engager) who must make a note of its details, and in particular its expiry date; when it expires they must ask to see it again. As it is a photographic card it must be shown personally.

Each month:

The subcontractor is obliged to complete a three part form, a CIS 24, and send two copies to the contractor (engager) and retain one copy.

The contractor (engager) adds their tax reference and sends one copy on to the Inland Revenue and retains the other.

The voucher covers all payments made during the month.

#### Gross payments – CIS 5 holders

CIS 5 cards are only given out to large companies, or businesses where the normal CIS 6 rules would be onerous in terms of the number of trips needed to show the card personally. Therefore CIS 5 cards are shown by post, and unlike a CIS 6 or CIS 4 card do not have photographic details

Again monthly vouchers are needed. A two part CIS 23 form is prepared by the subcontractor, who sends one copy to the Inland Revenue and the other to the contractor.

#### Net payments – CIS 4 holders

Like the CIS 6 cards, the CIS 4 must be shown personally to the contractor (engager) who must record details from it.

Each month the contractor prepares a three part CIS 25 voucher, with details of gross payments made and tax deducted.

One copy is retained by the contractor, one is given to the subcontractor and the other is sent by the contractor to the Inland Revenue.

The 18% deduction is made on the amount due to the sub contractor, but excluding vat and materials.

EG if a non vat registered subcontractor presents an invoice for labour only services of £1,000, then the deduction is £180 and a net payment of £820 is made to the subcontractor.

EG if a vat registered sub contractor presents an invoice for £1,000 plus vat, £1,175 total, including materials of £200 plus vat, then the deduction is made on the £800 labour element only, £144. The balance of £1,031 (£1,175 less £144) is paid to the sub contractor.

The contractor is required to remit deductions to the Inland Revenue monthly, along with PAYE deductions from direct staff. For companies only (not individuals) any inward CIS deductions can be offset against the amount due.

EG X Limited has deducted £500 from CIS 4 card holders and £300 under PAYE during a month, so owes the Inland Revenue £800. However they have suffered deductions themselves from their customers of £350 (they hold a CIS 4 card). They therefore only have to remit £550 to the Inland Revenue.

## Offsetting CIS deductions

Deductions made to CIS 4 holders are offset as follows:

- Where the holder is an individual or partnership – against the end of year tax liabilities under Self Assessment.
- Where the holder is a company – against PAYE/NI/CIS due, with any excess being refunded.

## Applying for a card

Application forms are obtained from a local tax office, and generally have to be made in person because of the photographic ID.

More or less anyone can obtain a CIS 4 card so long as they have an NI number.

CIS 6 cards will only be issued where the turnover requirements are satisfied, either:

- £30,000 of turnover after materials over a three year average; or
- £21,000 turnover after materials in any six months

NB these thresholds are for an individual. For a partnership or company they are multiplied by the number of partners/shareholders.

Additionally CIS 6 cards will only be issued where the applicant has shown themselves to be reliable in the past, and therefore if they persistently submit returns or payments late, a CIS 6 will be refused. CIS cards are issued for a fixed time period and renewals will be refused where a CIS 6 holder shows a bad compliance record during their time holding the card.

## **STATUS AND CIS**

It is worth re-iterating what was said earlier in these notes; holding a CIS 4 or CIS 6 card does not automatically make someone self employed. In the eyes of the Inland Revenue It is perfectly feasible that one engagement could be self employed (in which case the CIS 4 or 6 card is used) and another could be employed (and therefore subject to PAYE).

## REFORM OF THE CIS SCHEME

It has been announced that the scheme will be reformed from April 2007 onwards; the Inland Revenues commentary on the intended revisions scheme says:

*The Government has set three broad aims that a revised scheme should meet. They are:*

- 1. To reduce the regulatory burden of the Scheme on construction businesses;*
- 2. To improve the level of compliance by construction businesses with their tax obligations;*
- 3. To help construction businesses to get the employment status of their workers right.*

*Proposed Scheme:*

*The new scheme will dispense with cards, certificates and vouchers. Briefly, it will look like this:*

**Registration Process:** *Subcontractors will continue to register with the Inland Revenue but, in addition to calling into a local office, they will be able to do this electronically or by phone. They will be informed whether they should receive payments gross or net. They will not be issued with a card or certificate.*

**Verification Process:** *On engaging a subcontractor who has not worked for them for a set period of time, the contractor will no longer have a card or certificate to look at. Instead they must contact the Inland Revenue to (a) confirm that the contract is one of self-employment, and (b) to ascertain whether the subcontractor should be paid net or gross.*

**Payment by Contractor to Subcontractor:** *The contractor will make payment to the subcontractor – in accordance with the net or gross instructions given by the Inland Revenue.*

**Recording and Reporting Payments:** *The contractor will submit a monthly return to the Inland Revenue showing, for all subcontractors to whom payments have been made, the amount paid and, in net cases, the amount of materials and deductions.*

*Work is continuing on the proposals in consultation with industry representatives.*

*We will provide regular updates as to the progress of the consultation process.*

The greatest concern with the revised scheme is the statement “...they must contact the Inland Revenue to (a) confirm that the contract is one of self-employment...” – it is feared that this is an intention on the part of the Inland Revenue to take more interest in the employed v self employed decision, and make further inroads into clamping down on self employment in the construction industry.

## **MORE INFORMATION**

Alas there is little reliable information available on status issues, and the vexed question of employed or self employed. The Inland Revenues guidance is at:

<http://www.inlandrevenue.gov.uk/pdfs/ir148.htm> and

<http://www.inlandrevenue.gov.uk/pdfs/ir56.htm>

which are leaflets IR148 and IR56 respectively; however their presentation is rather biased towards the Inland Revenues wish to have all workers as employees under PAYE.

For the CIS scheme, try:

<http://www.inlandrevenue.gov.uk/leaflets/c7.htm> - Index of Inland Revenue CIS leaflets

<http://www.inlandrevenue.gov.uk/pdfs/ir14-15cis.htm> - IR14-15, the Inland Revenues main CIS guide

<http://www.inlandrevenue.gov.uk/pdfs/ir40cis.pdf> - conditions for getting a CIS 6

## APPENDIX – MODEL CONTRACT

This is a model self employed contract. It can be altered if necessary, but we would recommend you stick to its contents as closely as possible; if you make changes it would probably be sensible to let us review them. The specimen is provided on the strict understanding that we are not employment or contractual law experts - you must seek advice from an expert in such matters if you have any concerns or queries about your rights or obligations.

If you would like an electronic copy for alteration, please let us know.

- 1) The parties to this contract are CONTRACTOR NAME of BUSINESS ADDRESS (hereinafter the Contractor), and NAME of ADDRESS [NAME could also read NAME PARTNERSHIP or NAME LIMITED] (hereinafter the Sub Contractor).
- 2) The Subcontractor will provide [type of services].
- 3) As this is a self employed contract, the Subcontractor is not entitled to sick pay, holiday pay or any form of employment protection other than work place Health and Safety.
- 4) The Subcontractor will be entitled to send a substitute or delegate at his absolute discretion to undertake the services to be provided, although the Subcontractor will be responsible for paying the substitute or delegate, and for the quality of their work. In the event of the Subcontractor being unable to carry out contracted work, and where requested by the Contractor, the Subcontractor is obliged to supply a substitute.
- 5) The Subcontractor is entitled to hire assistance at his own expense. The Subcontractor will be responsible for the cost of such assistance and the quality of the assistants work.
- 6) The Contractor will not control, nor have any right to control, in any detailed manner, how the Subcontractor is to fulfil his obligations, and the Subcontractor will use his own initiative to complete the services to be rendered. This does not prevent the Contractor from specifying the working standards to be adhered to.
- 7) The Contractor will not set hours to be worked by the Subcontractor. Performance will be reviewed periodically. The Subcontractor can choose how and when to complete the services to be rendered so long as performance is satisfactory.
- 8) The Subcontractor will be paid on a basis to be agreed between the parties and reviewed from time to time.
- 9) The Subcontractor will be able to benefit from his own efforts and sound management.
- 10) For the purposes of clarity both the Contractor and the Subcontractor consider and intend this business relationship to be one of self employment and not one of master and servant. Specifically both parties acknowledge that the Contract for Services does not give rise to a contract of employment. Both parties consider the Subcontractor to be in business on his own account.
- 11) The Subcontractor is responsible for his own tax and National Insurance.

- 12) The Subcontractor is responsible for maintaining public liability insurance.
- 13) The Subcontractor is responsible for providing his own overalls, protective clothing, hand tools and consumables.
- 14) The Subcontractor will be responsible for correcting any defective work at his own cost.
- 15) Both parties acknowledge that the Contract for Services can be terminated at any time without notice and will be periodically reviewed in any event. The Subcontractor is not under an ongoing obligation to provide services and the Contractor is not under an ongoing obligation to contract for such services.
- 16) There is no restriction on the Subcontractor working for third parties whilst this contract is in force, subject to the contract services being completed on time and to the satisfaction of the Contractor.
- 17) If the services are of a construction nature, it is intended that each CIS voucher represents a new contract.

Agreed by \_\_\_\_\_ (Sub Contractor)

Agreed by \_\_\_\_\_ (Contractor)