

# The Onshore Employment Intermediaries Legislation

## What is it?

The Onshore Employment Intermediaries Legislation ("OEI") was introduced in April 2014 to tackle false self-employment arrangements to save tax.

OEI states if a worker is under (or subject to the right of) Supervision, Direction or Control of anyone in the contractual chain (e.g. the end user/client or service provider) the worker must be taxed on an employed basis.

## Who is affected?

This would affect anyone working via CIS or as a self-employed/sole trader.

## Who is liable?

### Agency

Liability will remain primarily with the first intermediary i.e. the agency. An agency will not be able to say it thought that someone

was genuinely self-employed and escape liability even where it has carried out extensive due diligence. The only exception is where there has been fraud in the contractual chain.

Where an agency has been provided with fraudulent documents by someone (claiming fraudulently that there is either no control over a worker or that a worker is paid on a PAYE basis), the liability will sit with the body providing the fraudulent documents.

### Provider

If a provider has told an agency that the workers are being paid on a PAYE (umbrella) basis but are really paid on a self-employed basis the provider would be liable – this could be deemed to be fraud.

Where the provider has told an agency that the workers are paid under the scheme and that the worker believes they are self-employed, the agency will remain liable if the worker is found not to be genuinely self-employed – this is not fraud.

## What is Control?

### SUPERVISION

Someone overseeing a person doing work to ensure the person is doing the work as required and to the required standard and helping the person in order to develop their skills and knowledge.

### DIRECTION

Someone making the person do their work in a certain way by providing instructions, guidance and advice and/or co-ordinating how the work done is undertaken.

### CONTROL

Someone dictating what work a person does and how they go about it and having the power to move the person from one job to another.



## The Next Steps

Look at your contractor base. Are any of the workers being paid gross through a self-employment scheme or through CIS? If so, these could be caught by OEI. If you are unable to gather evidence to satisfy HMRC that the worker is genuinely self-employed then you will need to decide whether you want to switch your workers to a compliant umbrella or process their payments in-house on your own PAYE payroll.

Operate a strict PSL – Review the service providers with which your workers are processing their payments. You want to ensure that these providers are compliant and working with you in these times of ever changing legislation.

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