



Tax relief for travel expenses: temporary workers and overarching employment contracts

Response from the Recruitment and Employment Confederation: October 2008

1. Introduction

- 1.1 This paper sets out the role of the REC, key concerns with the consultation paper and then seeks to answer the questions posed by the consultation.
- 1.2 The response has been supported by the REC Employment Policy Committee. In addition to this all members were given the opportunity to respond to an online survey on the use of travel schemes in the temporary workforce.

2. About the Recruitment and Employment Confederation

- 2.1 The REC represents around 8000 recruitment company branches, estimated to constitute half of all branches by number but a higher proportion by turnover. Over 85% of the industry are small businesses. In 2006/7 the recruitment industry generated a turnover in excess of £26 billion and placed 1.3 million people into temporary jobs every week. In addition to this nearly 800 000 permanent placements were made by the recruitment industry.
- 2.2 REC members sign up to our Code of Professional Practice and we take complaints against the Code. In recognition of the need to cement REC as a brand of quality recruitment four enforcement officers randomly inspect our membership.
- 2.3 The REC divides its membership into specific divisions to serve the different sector interests of the labour market. The REC divisions particularly affected by this legislation include the IT & Comms, Construction, Engineering and to some extent Medical and Drivers Divisions. These sectors have been asked for their input in response to this consultation.

3. Key concerns of the REC regarding the consultation paper

Fairness in the taxation system (6.7-6.8)

- 3.1 REC believes there are circumstances where it is proper for temporary workers to receive tax relief for their travel. Whilst they may be doing the same job as a permanent member of staff who does not receive relief, they are not in the same situation as that worker. A temporary worker is much more mobile and therefore it is not equitable to treat them in the same manner as someone who has a stable employment relationship.
- 3.2 It may also be in the wider interests of the economy to ensure that a small number of temporary workers are encouraged to travel regularly, whether it is to provide labour at short notice, where it is not available locally, or to provide skills across the country.

The extent of abuse

- 3.3 Further work should be completed to identify the extent of the abuse. REC members do come across umbrella companies and competitors who seem to have very wide ranging travel dispensations which are not available to themselves. This does distort the market. However the extent to which this is a problem should be considered when looking at remedies for this situation. We are concerned that some of the options for tightening up on this problem could be very burdensome for very little gain.



3.4 Paragraph 4.18 refers to an estimate that 100 000 temporary workers work through umbrella companies this appears to be a low proportion of the temporary work force. We estimate that 1.3 million workers are placed into temporary assignments every week. Over a year many millions of workers will have completed temporary assignments as the population of temporary workers changes rapidly (REC research shows around one third of temporary workers choose to work on that basis as a lifestyle choice. The remaining two thirds are likely to use temporary work as a stop-gap or a bridge in the labour market into permanent work. As a result there is a large turnover in the population of temporary workers).

Drivers for the use of temporary workers

3.5 4.25 suggests that temporary workers could be used to replace permanent workers. Our research surveying clients shows that most use temporary workers for a temporary reason, not to replace permanent staff. Also the temporary worker is unlikely to be cheaper as an agency fee still needs to be paid. Most interestingly employers rate the need to use temporary workers to cover busy periods, flexibility and covering short term absence above the need to keep costs down.¹

3.6 The issue of drivers for the use of temporary workers is also considered in 6.11 on 'casualisation of the workforce'. REC completely refutes the suggestion that temporary work is being used to replace permanent work, as stated above, employers largely use temporary workers for a temporary need. With regard to such structures encouraging the casualisation of the workforce, this assertion is not supported by labour market data.

The wider economic context

3.7 The labour market is changing rapidly in the current economic climate. Temporary work is providing businesses a vital source of labour at a time when they may not be able to commit to taking on permanent staff. In addition to this recruitment agencies are working hard to minimise costs in the current environment so that they do not need to lay off their own staff. The impact of the changes to current schemes should be seen in this context.

4. Response to the consultation questions

Chapter 4 the use of umbrella companies

a) What influences workers to use umbrella companies? How significant are these factors in relation to each other? Why do workers choose umbrella companies over alternative options?

From REC members' experience workers may use umbrella companies for legitimate reasons such as:

- They are a contractor who works through a number of agencies. Having one umbrella company as their employer simplifies their tax status, rather than having to claim a P45 from each agency before moving to a second one.
- A worker may travel a great deal to assignments but their agency does not offer a travel scheme. They could therefore choose to be employed by an umbrella company.
- The employment agency largely operates at the high end and most of their workers are engaged as limited company contractors. An umbrella will allow the agency to engage workers on an employed taxation status basis without having to set up a PAYE payroll themselves.

REC also recognises that in some cases workers are choosing to work through umbrella companies to abuse over generous travel dispensation schemes. In other cases workers may have been transferred from an MSC company structure into an umbrella following the MSC legislation in April 2007.

¹ Evidence from REC/BMG Tracking survey of the views of agency workers, agencies and clients which has run from January 2006. The survey collects data on a monthly basis and is published quarterly.



In response to other matters raised in Chapter 4, paragraphs 4.10 – 4.13 consider the introduction of the Agency Workers Directive. This, in itself is unlikely to have an impact on the decision to employ temporary workers or not as the right to equal treatment on pay and working time will apply to all temporary agency workers, regardless of contract type.

Case study 4.4 is indeed worry, but we do not think this is a wide spread problem.

b) What is your view of the Government's assessment of the number of umbrella companies and workers using them? If your assessment is different, on what basis have you reached your conclusion?

REC surveyed a small number of recruitment agencies (55). However it is clear from this small sample that there is no consensus on the numbers of umbrella companies in the market with equal numbers of agencies estimating that there are 0-50, 50-100 or 200+ umbrella companies operating in the UK. This suggests that there are a limited number of well known umbrella companies, with perhaps a larger number of smaller umbrellas which perhaps only operate in a specific region or sector. Only larger recruitment companies would then have come across this larger number. It is also worth bearing in mind in this estimation that the definition of 'umbrella company' is not used in a similar manner in all segments of the recruitment market and so some CIS umbrella schemes could be included in these figures.

Chapter 5 Employment agencies

a) What influences agencies to use overarching contracts of employment?

An agency may use an overarching contract of employment for the following reasons:

- **To stand out in the market place by offering temporary workers employment rights:** most recruitment agencies engage temporary workers on a contract for services. Larger recruiters in particular have used contracts of employment over a number of years to emphasise the employee benefits temporary workers will then receive (such as the right to claim unfair dismissal and redundancy pay).
- **To put clients at ease regarding employment status claims:** some recruitment agencies will engage workers on a zero-hours contract of employment. Clients have become increasingly nervous about employment status claims over the past few years and believe that if the temporary worker has an employment contract with the agency this will help mitigate this risk. REC believes that recent case law, such as *James v. Greenwich*, along with the correct management of temporary workers should not lead to employment status claims against the end user of the agency worker, regardless of the contract type. However many end users are, in practice, extremely risk adverse on this issue and will ask for employment contracts.
- **To comply with on-site agreements with trade unions:** Detailed rates of pay and employment arrangements are found in some national agreements with the trade unions, for example those from the National Joint Council for the Engineering Construction Industry. Agencies supplying to sites which have signed up to these agreements will use an overarching employment contract in order to comply with these agreed rates and conditions.
- **To enable temporary workers to claim tax relief for travel expenses:** REC believes there are circumstances where it is proper for temporary workers to receive tax relief for their travel. A temporary worker is much more mobile than a permanent member of staff and should have access to these benefits. In addition to this some contracts involve a great deal of travel and the granting of tax relief for this travel and subsistence (especially when staying away from home is required) is a vital incentive to attract workers to these contracts.
- **A reluctance to deal with the umbrella company market:** Umbrella companies tend to offer workers a range of products when they are approached. Some of these may be a simple PAYE umbrella model, with travel dispensations attached, where as others may prove more risky. Since the advent of the MSC legislation employment agencies are increasingly



concerned about dealing with the Umbrella market, with some agencies simply refusing to pay any temporary workers through umbrellas. The operation of off-shore products is also of concern to the recruitment industry who worry about the risk this could expose them to. In these circumstances an employment agency would need to run its own travel scheme, with an overarching employment contract, if its workers are to benefit from tax relief for travel expenses.

It is important to recognise that employment agencies may use over-arching employment contracts without arranging tax relief for travel expenses. It should not be assumed that the number of workers employed on an over-arching employment contract is the same as the number of workers accessing a travel scheme.

b) How prevalent is the use of overarching contracts in the agency sector (number of agencies and number of workers)? How prevalent is the use of these contracts by smaller employment agencies? On what basis have you reached your conclusions?

Of REC's brief survey 13 agencies (out of 55) said that they ran their own travel schemes. However whilst an agency may have all of its temporary workers contracted under over-arching employment contracts this does not mean that they are all claiming tax relief for their expenses or that the relief claimed is at the maximum level allowed by the dispensation. One large firm said that only 60% of those engaged on over-arching employment contracts receive benefits from their travel scheme. This firm estimates that there are around 100 000 workers on over-arching employment contracts, but only around 60% of these would be claiming tax relief.

c) Has the use of overarching employment contracts increased recently and do you expect it to grow?

Traditionally only larger agencies have used overarching contracts of employment as this imposes costs, in terms of employees' liability insurance, as well as risks in terms of potential employment tribunals. In addition the requirement to guarantee a certain number of hours work a year means that many smaller agencies (who dominate the market) do not enter this field. However REC understands anecdotally that there has been some uptake of the use of these schemes at the lower end of the market where margins are tighter. Further anecdotal evidence suggests that where the granting of travel dispensations has been tightened up, with HMRC carefully considering the appropriate level of dispensation, that this inappropriate growth has been stymied.

Chapter 6 Potential Problems with overarching contracts

a) What is the extent of the problems outlined?

REC believes there are circumstances where it is proper for temporary workers to receive tax relief for their travel. Whilst they may be doing the same job as a permanent member of staff who does not receive relief, they are not in the same situation as that worker. A temporary worker is much more mobile and therefore it is not equitable to treat them in the same manner as someone who has a stable employment relationship.

It may also be in the wider interests of the economy to ensure that a small number of temporary workers are encouraged to travel regularly, whether it is to provide labour at short notice, where it is not available locally, or to provide skills across the country. An example is that of workers in the utilities sector involved with outage work or the closing down of old power stations. This is specialised work where skills shortages are experienced. In addition many power stations are located at more isolated parts of the UK. In these circumstances permanent workers will claim tax relief for travel from their main workplace. Specialised contractors who work on a temporary basis can only do so through schemes that are currently available. A further example given to REC is that of staffing a hospital in a rural setting. In order to attract skilled workers who could work elsewhere it is vital to be able to offer tax relief for the extra travelled incurred in working in that location.



Regarding the 'casualisation of the workforce' considered in 6.11 the REC completely refutes the suggestion that temporary work is being used to replace permanent work, as stated above, employers largely use temporary workers for a temporary need. With regard to such structures encouraging the casualisation of the workforce, this assertion is not supported by labour market data. REC research shows that the number of temporary workers in the economy has been relatively stable this decade with the number of temporary workers placed on a weekly basis averaging around 1.4 million. This is supported by data from the Labour Force Survey that shows the proportion of workers engaged on a temporary basis (this includes other forms of temporary contracts beyond temporary agency work) has not changed greatly in the last decade.² In order to tackle the misuse of tax relief schemes for temporary workers it is vital that the understanding of the temporary work market is improved within the Treasury and HMRC. REC would be delighted to assist in this matter. In addition it should be noted that the Department for Business Enterprise and Regulatory Reform has conducted research into this area which could be drawn upon by Treasury officials.

With regard to non-compliant umbrella operators REC does concur that there is some abuse of current travel dispensation schemes. REC believes that workers should be able to choose the way in which they are paid and believes that some workers may have been 'oversold' travel schemes, particularly by umbrella companies.

b) Are there any further problems?

REC is not aware of any further problems. However it believes that there needs to be clear advice from HMRC on the interaction between salary-sacrifice schemes and national minimum wage rules.

c) What is the extent of non-compliance with travel expense rules?

This is impossible to estimate.

d) What factors are contributing to the abuse of travel expense rules? What practical measures could be taken to address this?

The biggest contributory factor in the misuse of travel expenses rules is the overly generous dispensations which HMRC has granted companies in the past. In order to address this situation REC would think it would be advisable for HMRC to risk-assess the dispensations granted to date and then follow up with companies it fears may be abusing the current rules. The number of umbrella companies in the market is not that significant and could be tackled.

In addition to this REC is aware that the Labour Provider Unit in HMRC may have further intelligence on the misuse of travel dispensation schemes and this should be built upon when assessing where the risk to the exchequer may lie.

7. Action to address the problems identified.

a) How well would each option address the problems highlighted in chapter 6?

Allow the existing arrangements to continue but introduce legislation to tackle non-compliance

The suggestion to transfer debt liabilities would have to be carefully managed. REC would support that those responsible for companies that run non-compliant schemes should be held to account. This could help tackle 'phoenixing' issues. However the debt should not be transferred to third parties who are not involved in the provision of non-compliant products.

Remove the entitlement to tax relief for travel expenses for umbrella companies and employment agencies using overarching employment contracts

² See data at http://www.statistics.gov.uk/downloads/theme_labour/LFSHQ/STable24.xls



REC does not support this suggestion. We do not believe that temporary workers should be barred from claiming tax relief for travel expenses where this is appropriate. We also believe that the removal of this option could have wider adverse effects on labour supply. This position is supported in the response above.

Alternative courses of action

See response to question d above. In addition HMRC could consider asking companies that operate dispensations to keep some evidence in the form of receipts etc to prove that the dispensation was being used at an appropriate level. So that this was not too onerous a company could be asked to keep a random sample of expenses from across its workforce rather than every single claim.

- b) What effect would each option have on:**
- a. the temporary labour market?**
 - b. end clients?**
 - c. employment agencies?**
 - d. umbrella companies?**
 - e. workers?**

Allow the existing arrangements to continue but introduce legislation to tackle non-compliance

- a. temporary labour market*
Efforts to tackle non-compliance would increase the cost of temporary workers in some parts of the market, however REC would support this move to a level playing field where currently some agencies and umbrella companies are competing unfairly against other compliant companies.
- b. end clients*
End clients would not be impacted unless the transfer of debt provisions were very wide.
- c. employment agencies*
See comments above on the temporary labour market. Employment agencies would not be impacted unless the transfer of debt provisions were very wide; a move which would not be supported by the REC.
- d. umbrella companies*
See comments above on the temporary labour market.
- e. workers*
If efforts to tackle non-compliance are successful some workers, currently in non-compliant schemes, will have their take home pay reduced. This could lead them to demand higher wages from their companies.

Remove the entitlement to tax relief for travel expenses for umbrella companies and employment agencies using overarching employment contracts

- a. temporary labour market*
This will unfairly raise costs in the temporary labour market at a time of economic uncertainty. Current data from the REC/KPMG Report on Jobs suggests a rapid decline in the permanent and temporary jobs market. REC counsels against adding costs to the temporary labour market. In addition to the economic environment the introduction of the agency workers directive into UK law is likely to add further costs to the placement of temporary workers.
- b. end clients*
Removal of entitlement to tax relief for travel expenses will raise the cost of temporary staff to clients as temporary workers are unlikely to travel long distances from their home without being fairly compensated.



- c. *employment agencies*
Please see comments above on the temporary labour market.
- d. *umbrella companies*
This would remove PAYE umbrella schemes from the market. However many umbrella companies offer alternative tax-efficient schemes, such as those setting up personal services companies and off-shore products. REC would be concerned if workers were transferred to these schemes inappropriately.
- e. *workers*
The removal of the entitlement to tax relief for travel expenses would leave temporary workers in an unfair position as they would not be able to claim tax relief for expenses incurred, when workers in permanent positions would be in a position to do so. REC is also concerned about the transferring of workers into new schemes, as outlined above. Finally agencies may decide under these circumstances to abandon overarching employment contracts completely meaning that workers could lose their employment rights and be re-engaged by the employment agency on a contract for services.

Alternative courses of action

REC proposes improving compliance within the current system. REC does not believe that this option has been given enough thought in the consultation document and that it could result in a better compliance regime without a significant impact on the temporary labour market, clients, employment agencies or workers. Certainly umbrella companies and employment agencies that operate a travel scheme would have to ensure that they were applying their travel dispensations correctly, however REC believes that legitimate operators already go to great lengths to ensure that this is the case and so this would result in the best solution.

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