



HM Revenue
& Customs

Employment Intermediaries and Tax Relief for Travel and Subsistence

Consultation document

Publication date: 8 July 2015

Closing date for comments: 30 September
2015

Subject of this consultation:	Proposals to remove home-to-work travel and subsistence tax relief where a worker is employed through an employment intermediary and under the supervision, direction or control of any person.
Scope of this consultation:	This consultation seeks views on the detail of how these proposals would work and how they can best be implemented.
Who should read this:	All interested parties from the contracting, temporary work and employment industry, including individual workers and contractors and their representative bodies, or any other interested parties.
Duration:	This is a 12 week consultation, published on 8 June 15 and closing 30 Sept 15
Lead official:	Philip Horswill, Employment Status Team, HMRC
How to respond or enquire about this consultation:	Written responses should be submitted by 30 Sept 15, via email to: consultation.intermediaries@hmrc.gsi.gov.uk Or in writing to: HM Revenue and Customs Employment Status Team Room 1E/10, 100 Parliament Street London SW1A 2BQ
Additional ways to be involved:	All enquiries regarding the content or scope of consultation can be addressed as above. HM Revenue and Customs will be holding roundtable stakeholder events. If you would like to be involved with these please email consultation.intermediaries@hmrc.gsi.gov.uk , places will be limited. Only written responses to the consultation will be accepted by HMRC.
After the consultation:	Responses will be used to develop the proposals and inform implementation, a response document will be published later this year. Any consequential legislative changes will be announced at Autumn Statement 2015, to be taken forward in Finance Bill 2016.
Getting to this stage:	This government has already taken a number of steps to ensure a level playing field for tax in the temporary labour market. These include, introducing rules to tackle onshore intermediaries used to facilitate false self-employment, bringing in rules that tackle the use of offshore intermediaries and new rules, to be introduced 6 April 2016, preventing the use of salary sacrifice schemes to avoid tax and National Insurance contributions.
Previous engagement:	These proposals follow a HM Revenue and Customs discussion document which closed 10 February 2015 and informed the current consultation proposals.

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On request this document can be produced in Welsh and alternate formats including large print, audio and Braille form.

Foreword

Flexible labour plays an important role in the UK economy and in ensuring business has access to the individuals, skills and services it needs to encourage growth and rapidly respond to new demands.

It is an important aim of this government to ensure that the tax system reflects the key role flexible labour now plays in the UK and how businesses and labour markets are operating. Recognising the different ways individuals are now working, whilst ensuring the tax system provides no individual or business with an unfair advantage.

We are committed also, to ensuring the tax system is not exploited by businesses and individuals seeking to pay less tax and are continuing to tackle tax avoidance, tax evasion and address unfair outcomes as a priority.

At Budget 2015 the Chancellor announced that the government will restrict tax relief on home-to-work travel and subsistence expenses for workers engaged through an employment intermediary, such as an umbrella company or a personal service company, and working under supervision, direction or control. This will bring those individuals employed through an employment intermediary in line with others, as tax relief on home-to-work travel and subsistence expenses is not generally available to other workers. These proposed changes would ensure that all workers under supervision, direction or control and akin to an employee, will be treated equally; whilst protecting the genuinely self-employed who will be unaffected by these changes.

By ensuring fairness within the tax system we are better able to meet our other commitments, in particular reducing the tax burden on the low paid. We have already achieved this through significant increases to the personal allowance and at Budget 2015, the government announced further increases in the personal allowance. By 2017-18, the first £11,000 of an individual's income will be tax free and we will continue to ensure that no one working for 30 hours a week on national minimum wage pays tax. Further to this we have also committed to prevent rises in income tax, VAT and national insurance during the current Parliament.

This consultation sets out the detail of the government proposals to implement these changes in order to ensure a level playing field for all workers and businesses paying tax and National Insurance Contributions.



David Gauke MP
Financial Secretary to the Treasury

1. Introduction

About this Consultation

At Budget 2015 the government announced its intention to consult on proposals that will restrict tax relief for the cost of home-to-work commuting for those employed through an employment intermediary and working under the supervision, direction or control of any person.

This consultation sets out the government's proposals for amending the rules for tax relief on travel and subsistence for those working through employment intermediaries. The government intends to remove workers' eligibility for home to workplace travel and subsistence tax relief where they are engaged through an employment intermediary, such as an umbrella company or a personal service company (PSC), and are working under the right of supervision, direction or control.

The consultation sets out:

- The issues to be addressed, and the case for change;
- An outline of the government's proposals for tackling the issues set out;
- Proposed options for a transferal of liability to engagers in certain circumstances;
- A summary of the key questions for external stakeholders;
- A statement on HMRC compliance activity.

Alongside this consultation HMRC will hold roundtable discussions on the proposed changes.

Responses to this consultation will be used by the government to finalise proposals with a further announcement planned at Autumn Statement 2015. This will be followed by publication of draft legislation, with changes to be introduced in the Finance Bill 2016 and implemented with effect from 6 April 2016.

Context

Labour markets shift and adapt, both in response to the economic climate and to meet the changing needs of individuals, industry and business. It is vital that the government responds to these changes to ensure that income tax and national insurance contributions are fair for all workers and support the effective operation of the labour market.

In the last 5 years, the government has taken steps to address a number of shifts in the labour market, particularly in relation to the use of employment intermediaries to achieve unfair tax advantages. Most significantly, in the Finance Bill 2014 we introduced new rules to tackle the use of offshore intermediaries to avoid employment taxes and rules to prevent the use of onshore intermediaries to facilitate false self-employment.

In recent years, and partly as a result of the above changes, there has been a substantial increase in the number of workers recruited through employment intermediaries (including umbrella companies, employment businesses and PSCs). In some circumstances, these arrangements enable workers to access tax relief on their home-to-work travel and subsistence expenses that they would not otherwise be eligible for. This measure continues progress in removing unfair tax driven advantages from the labour market and ensuring a level playing field for our customers.

It is a long established principle of the UK tax system that people should not be able to claim tax and NICs relief for any travel and subsistence costs relating to their regular travel from home to work. Most workers cannot claim tax relief on any costs related to commuting to work, or on subsistence (such as lunch costs) whilst attending their permanent workplace.

Whilst many travel and subsistence expense relief claims made by workers employed through employment intermediaries are both fair and compliant, the increase in the use of employment intermediaries now means a large number of workers are able to access tax relief that the majority of workers cannot, even when these workers hold very similar jobs.

HMRC previously issued the discussion document 'Employment Intermediaries: Temporary workers – relief for travel and subsistence expenses' to examine its understanding of employment intermediaries and their use of travel and subsistence expenses, as well as exploring possible future options. Responses to that document and the surrounding discussion confirmed the need for action, as well as informing the proposals within this consultation. A summary of the responses received can be found at chapter 9.

These proposals are part of a strategic approach to clarify the differences between employment and self-employment, and the use of employment intermediaries. This will ensure those who are in an employment relationship are taxed as employees, on a fair and consistent basis.

Employment Status and Pay Transparency

This consultation is focused on the issue of employment intermediaries and tax relief for travel and subsistence. Responses to the previous HMRC discussion document highlighted wider issues in relation to employment intermediaries, in particular umbrella companies. These concerns included the question of whether individuals employed by umbrella companies always understand exactly how or what they are paid, due to the complexity of the payslips they are sometimes given and the number of intermediaries that can be involved.

This matter is being considered further by the Department of Business, Innovation and Skills (BIS) who will consult on ways to improve transparency for those paid through an umbrella company.

Travel and Subsistence Review

Following the Office of Tax Simplification's report into travel and subsistence, the government is undertaking a review of the tax rules for travel and subsistence expenses with a view to modernising these rules to reflect current practices. This is a wide ranging review looking at the rules as a whole; any changes will take some time before being introduced. The government believes that the rules for tax relief on travel and subsistence expenses for those working through employment intermediaries need to be updated in a much shorter timeframe.

2. The Issue

Travel and Subsistence Tax Relief

Tax and NICs relief on travel and subsistence payments, is generally only available for travel in the performance of a worker's duties (such as the travel undertaken by a travelling salesperson or travel between two places of work), or for travel between a worker's home and a 'temporary workplace.'

There is no tax relief, for ordinary commuting - travel between home (or a place that is not a workplace) and a 'permanent workplace'.

There are a number of criteria for determining whether a workplace is temporary or permanent, but in general a workplace will always be a permanent workplace if the worker:

- Goes to the same workplace in the course of a period of continuous work which lasts, or is likely to last, for more than 24 months; or,
- Goes to the same workplace for all or almost all of the time for which the worker is likely to hold, or continues to hold, the same employment. This will normally be the case if the worker is employed to work at one place on a fixed term contract, for example.

Direct Employees and Agency Workers

When people are employed directly by their employer, either permanently or temporarily, they will usually have a permanent workplace. They would not usually be eligible for tax relief on their home-to-work travel, or any subsistence costs incurred.

Temporary agency workers, who are contracted with an employment business or umbrella company, on an assignment based work contract, may attend several different locations to work at different jobs. Under these arrangements each work placement is treated as a separate employment contract for tax purposes and so each work location is likely to be treated as a permanent workplace. Therefore, these workers are not usually able to claim tax relief for travel between home and work.

Employment Intermediaries

Employment intermediaries are any company or entity that sits between the worker and the engager, including umbrella companies and PSCs. They can serve a number of purposes, will usually be the employer of the worker and may take on the administration of payments and costs, including taxes.

In certain circumstances the use of an employment intermediary can result in workers being eligible for relief on their home to work travel and subsistence expenses; in particular, when intermediaries such as employment businesses or umbrella companies use overarching contracts of employment (OACs). These allow a worker to

be employed by an employment intermediary on a single set of terms and conditions, whilst they work in multiple locations for different engagers.

The umbrella company, or employment business, is the employer of the worker who is treated as if they are in a single continuing employment, rather than a series of separate engagements. The workplaces they attend will often be temporary workplaces provided the worker expects to work there for less than 24 months.

Workers and contractors employed in this way, are eligible to claim tax relief on their home-to-work travel and subsistence expenses. So, even where they are performing the same duties as an employee of the engager, a worker employed through an intermediary will be eligible for tax relief on travel and subsistence that a direct employee cannot access.

Employment through PSCs may also permit the claiming of tax relief on travel and subsistence costs between home and work, as the worker is either a director of the company, or employed by it (often both) and the PSC acts as an intermediary between the worker and the engager. Again, this will mean that the workplaces that the worker attends can often be treated as temporary workplaces, even when each workplace is attended regularly for the majority of the contract period. This allows tax relief to be applied to payments made to the worker for home-to-work travel and subsistence.

There is no statutory definition of a Personal Service Company (PSC); these are generally considered to be small limited companies through which an owner/director provides their own personal services.

Growth in the use of Intermediaries

The number of workers now employed through intermediaries has increased significantly in the last few years. In particular, there has been a substantial increase in the use of OACs, particularly by umbrella companies.

Umbrella companies were used by specialist contractors and similar workers, but they are now increasingly being used by employment businesses to supply workers, shifting the employment businesses' administration and costs. Stakeholders and responses from the discussion document have told us that workers who are placed in umbrella companies in this way tend to have less specialised skills and their work will often be more akin to that of permanent employee or agency worker.

The government is also aware, through correspondence and evidence provided in responses to the discussion document, that increasingly some umbrella companies are marketing themselves, at least in part, on the basis that they allow individuals to legitimately maximise their income through the use of travel and subsistence tax and NICs relief.

These recent trends and the increase in the use of employment intermediaries were not anticipated by Parliament when the current rules were introduced and it was never Parliament's intention to allow most temporary employees to be able to claim relief for the full cost of ordinary travel for all their journeys from home to their place of work.

The government intends to respond to these changes to provide a level playing field for all workers and employment businesses for income tax, NICs and travel and subsistence reliefs regardless of the employment structures put in place.

Previous Discussion Document

A discussion document was issued 16 December 2014. Several issues were raised in the responses to this document; with one key concern being that any narrow action against the increasing use of tax reliefs by umbrella company employees in particular, would still allow those employed through PSCs to claim tax relief on travel and subsistence costs, in potentially similar circumstances.

As a consequence of the different treatment for different employment models, there were concerns that large numbers of contractors and agency workers would establish PSCs, leading to a potential loss to the Exchequer. The government recognises these concerns and has adapted the original proposals.

3. The Proposal

Proposal Overview

The government is proposing to remove tax relief for ordinary commuting (in general, home-to-work travel and subsistence expenses) for workers who are:

- supplying personal services,
- engaged through an employment intermediary (including umbrella companies, certain employment businesses and personal service companies); and,
- subject to (or to the right of) the supervision, direction or control of any person.

The effect of this will be that individuals whose relationship with their engager is such that they look and act like employees, cannot claim relief on the everyday cost of travelling to work, when employed through an intermediary. This will ensure a level playing field for access to tax relief for travel and subsistence.

Ordinary Commuting and permanent workplaces (section 338-339) of the Income Tax (Earnings and Pensions) Act 2003 and the National Insurance Contributions disregard

Tax relief for travel and subsistence expenses is available for workers travelling in the performance of their duties (such as the travel undertaken by a travelling salesman) or for travelling to or from a place they have to attend in the performance of their duties (such as travel to a meeting at a client's premises). This relief is available, provided that the journey is not ordinary commuting or private travel. There is a corresponding NICs disregard.

Ordinary commuting is defined in Section 338(3) of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) as travel between the employee's home and a permanent workplace and home, or a place that is not a workplace and a permanent workplace.

Expenses for travel to a temporary workplace can be paid free of tax and NICs. A temporary workplace is a place which a worker attends in the performance of their duties for the purpose of performing a task for a limited duration, or for some other temporary purpose.

If the workplace is attended for a temporary purpose or a task of limited duration, but the worker goes to the same workplace for all or almost all of the time for which the worker is likely to hold, or continues to hold, the same employment, then it is considered a permanent workplace. This will normally be the case if the worker is employed to work at one place on a fixed term contract and means that a temporary worker should not be eligible for tax and NICs relief on the costs of their ordinary commute. However, as explained above, those working through employment intermediaries are sometimes eligible for tax relief, even where this was not envisioned when the legislation was first introduced.

The government's intention is that where a worker is employed through an employment intermediary, then they will not be entitled to tax and NICs relief on travel and subsistence expenses incurred for home-to-workplace travel. Although only where they are supplying personal services to an engager, and under the right of supervision, direction or control of any person.

In future, where a worker's employment meets the criteria set out above, the services the worker provides on each engagement will be treated as being a separate employment for the purpose of section 337, 338 and 339 of ITEPA. For the purposes of these sections the worker will therefore be treated in the same manner as those on temporary agency contracts.

Therefore, where a payment is made to a worker, employed through an employment intermediary for travel between their engagers' workplace; and:

- the workers home, or,
- any other place the worker visits for non-work reasons, or,
- any place where the worker performs the duties of another job, or engagement

and,

- the worker is under supervision, direction or control in their employment,

then,

- these payments will likely be treated as earnings from employment, and therefore subject to Income Tax and NICs.

These proposals will put workers, employed through an intermediary on the same terms as other workers, contracted directly or through an employment business.

The intention is that the rules for ordinary commuting in section 338 will remain the same. So a journey that is for practical purposes substantially the same as ordinary commuting will also be treated in the same way as any other ordinary commuting journey. A worker, employed through an employment intermediary will not be able to turn an ordinary commuting journey into a business journey simply by arranging a business appointment along the way. Similarly, an engager will not be able to turn an ordinary commuting journey into a business journey by requiring the worker to stop off on the way to carry out the business tasks such as making telephone calls.

Any new legislation will sit within Part 2 of ITEPA.

Definition of an Employment Intermediary

For the purposes of these changes, an employment intermediary will be defined as an entity, including a company, a partnership, or an individual, which interposes itself between a worker and the engager, as part of an arrangement for the worker to provide their personal services to the engager.

An employment intermediary's business must be substantially in the supply of labour services. Employment businesses, umbrella companies and PSCs will be within the definition. However, professional service firms that second staff to clients will not be caught by the new rules, as their business is not substantially in the supply of labour.

Current position

PSC: under supervision, direction or control	Employment Intermediary using OAC: under supervision, direction or control	Employment Business using OAC: under supervision, direction or control	Temporary Work Contract	Direct Employment
PSC: not under supervision, direction or control	Employment Intermediary using OAC: not under supervision, direction or control	Employment Business using OAC: not under supervision, direction or control		
Can be paid tax and NICs free travel and subsistence for home to work Travel			Cannot be paid tax and NICS free travel and subsistence for home to work travel	

Proposed position

PSC: under supervision, direction or control	Employment Intermediary using OAC: under supervision, direction or control	Employment Business using OAC: under supervision, direction or control	Temporary Work Contract	Direct Employment
PSC: not under supervision, direction or control	Employment Intermediary using OAC: not under supervision, direction or control	Employment Business using OAC: not under supervision, direction or control		
Can be paid tax and NICs free travel and subsistence for home to work Travel			Cannot be paid tax and NICS free travel and subsistence for home to work travel	

Personal Services

The intention is that the worker must personally provide their services to another person (the engager) or be obliged to do so.

Supervision, Direction or Control

The intention is that any party to the arrangements must have (or have the right of) supervision, direction or control over the manner in which the worker provides their services. This test will be applied in a similar way to that currently used for agency workers in Section 44(2) of ITEPA (Further details can be found in the HMRC Employment Status Manual:

<http://www.hmrc.gov.uk/manuals/esmmanual/ESM2029.htm>)

The worker can be subject to (or to the right of) supervision, direction or control in their work by anyone for the proposal to apply. This isn't limited and can include an engager or a subsidiary of that engager, an employment business or other employment intermediary, independent project managers and consultants. The right to supervision, direction or control would not need to be exercised in practice for the proposed changes to travel and subsistence tax relief to apply, someone only needs to have the right to supervise, direct or control the work.

HMRC consider the definition of the terms supervision, direction and control as follows:

- **Supervision** is someone overseeing a person doing work, to ensure that person is doing the work they are required to do and it is being done correctly to the required standard. Supervision can also involve helping the person where appropriate in order to develop their skills and knowledge.
- **Direction** is someone making a person do his/her work in a certain way by proving them with instructions, guidance, or advice as to how the work must be done. Someone providing direction will often co-ordinate how the work is done, as it is being undertaken.
- **Control** is someone dictating what work a person does and how they go about doing that work. Control also includes someone having the power to move the person from one job to another.

To determine whether supervision, direction or control applies HMRC will consider the worker's arrangements overall. This will include the terms of the engagement and the way the work is actually done in practice. It will not be enough that the terms of the contract imply a lack of supervision, direction or control, but in reality the worker is supervised.

HMRC will consider factors such as the work being performed by the worker, whether the worker is able to decide when or where they carry out the work and whether the worker can decide how the work is done. Where there are procedures, methods and instructions which must be followed, it is likely there will be supervision, direction or control over the manner in which the services are provided. However, being required to comply with statutory requirements like health and safety procedures is not determinative, as all workers, regardless of status must comply with this.

This definition and approach will align with that already taken in Section 44(2) of ITEPA and is further explained in the Employment Status Manual (section 2029).

Example 1 – Working through an employment intermediary following the proposed changes

An independent retailer requires their own website to market and sell their products online. The proprietor contracts with an employment agency to supply them with an IT consultant to design, build and release the website on-line.

An IT consultant is sent along to meet the proprietor, who explains their requirements. Having no expertise in IT, the proprietor gives the IT consultant photographs of the product range and the price list and tells the IT consultant they have a free reign to undertake the work as they choose. The IT consultant works at the retailer's premises during the engagement and completes the job after which the engagement ceases.

In this example, the proprietor had no right of supervision, direction or control over the manner in which the IT consultant provided their services. As such, the IT consultant is able to claim tax free travel and subsistence expenses for their travelling between home and the retailer's premises and for lunch costs, regardless of whether they work through an Employment Intermediary, including a PSC or an Umbrella Company.

Example 2 – Working through an employment intermediary following the proposed changes

A local authority need an IT consultant to provide 4 months cover for a permanent employee who is on maternity leave. The local authority contract with an employment agency to send along an IT consultant to provide the cover.

The job entails the IT consultant working within the local authorities own IT department alongside permanent employees, undertaking the same duties. Throughout the engagement the manager of the IT Department assigns the work to the IT consultant and gives instructions as to how that work must be done. The IT manager monitors the IT consultant's work, as they do with the permanent employees work.

In this example the IT manager had a right to supervise, direct and control the manner in which the IT consultant provided their services and that right was exercised. Therefore, the IT consultant is not able to claim tax free travel and subsistence expenses for travel between home and the local authority's premises and lunch costs. The local authority's premises is regarded as the IT consultant's permanent workplace for the duration of the engagement.

PSCs and IR35

The proposals set out above will apply to all employment intermediaries, including those limited companies or partnerships who have to also consider whether IR35 applies to their contracts (the most common intermediaries, for whom this applies are generally known as Personal Service Companies, or PSCs).

In general, those who have contracts that fall within IR35 will no longer be eligible to apply tax relief to travel and subsistence payments received for ordinary commuting in respect of those contracts. The same rules and definitions will apply as above, including the definition and application of supervision, direction or control.

The intention of these proposals is that personal service and the exercise of (or right to) supervision, direction or control will be the only criteria HMRC will consider when ensuring the appropriate application of the new rules for travel and subsistence. This will differ from the current application of IR35 where a broader range of factors are considered when deciding the status of a contract, including financial risk and substitution (whether a worker can send someone else to fulfil their obligation).

Transfer of Liability

A recurring concern raised in response to the earlier discussion document was that a minority of non-compliant employment intermediaries are misusing tax relief for travel and subsistence applying it to inappropriate and false claims. This allows them to undercut their competitors and gives them a market advantage.

This issue is compounded by the fact that some engagers continue to use these employment intermediaries despite knowing that they may not be complying with the rules on travel and subsistence tax reliefs; or, without carrying out the appropriate checks to ensure that the employment intermediary they have engaged is compliant.

To support increased compliance and protect against market distortions the government is proposing to introduce one of two options that will, in certain circumstances transfer the liability for the debt incurred from misuse of travel and subsistence tax reliefs to the engager.

Option 1

- It will be the engager's responsibility to confirm with the employment intermediary whether the contracted worker will be under the right of supervision, direction or control, to allow for the appropriate tax relief to be available. If HMRC identifies that the rules for travel and subsistence tax reliefs have not been applied compliantly, and that inappropriate or false claims have been made, the engager for whom the worker provides their personal services, will be jointly and severally liable to HMRC for any outstanding obligations.
- This will allow HMRC to pursue the engager for any debt that arises for travel and subsistence tax relief misuse where the employment intermediary can show that they were misled by the engager with regards to the manner in which

the worker's employment would be carried out, or, if appropriate, where HMRC are unable to pursue the employment intermediary for any reason.

Option 2

- It will be the engager's responsibility to confirm with the employment intermediary whether the contracted worker will be under the right of supervision, direction or control, to allow for the appropriate tax relief to be available.
- The employment intermediary will remain responsible for any debt incurred from misuse of travel and subsistence tax reliefs, except in circumstances where the engager has provided false information about the manner in which a worker will provide their personal services and in particular, whether the worker's services will be subject to the right of supervision, direction or control. In these circumstances the engager will be held liable for any tax and NICs due as a result of the incorrect application of the rules.

Finance Act 2015 Changes

Currently when intermediaries pay allowable expenses they can do so without accounting for tax and NICs where they have agreed a dispensation with HMRC. This will be changing from 6 April 2016. After then payments can still be made without accounting for tax and NICs, but the payer will have to determine whether relief would be due. It will be the responsibility of the intermediary to determine that relief is, in fact, due. So they will have to be confident that the worker is not subject to supervision, direction or control in order to pay expenses without the deduction of tax and NICs.

Stages for Introduction

The government plans to introduce new legislation in the Finance Bill 2016, with the intention that any changes to the travel and subsistence regime will come into force from 6 April 2016. Changes to the rules in relation to NICs will also be made to ensure that that NICs position continues to mirror the tax treatment from 6 April 2016.

Legislative Changes Summary

The government proposes to:

- Within Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and under a new section set out a definition of employment intermediaries for the purposes of tax relief for travel and subsistence and limit the meaning of this term to businesses mainly in the supply of labour.
- Define those to whom the new rules apply as individuals:
 - who supply personal services to another person (the engager),
 - where a third party whose business is mainly in the supply of labour (the intermediary), sits between the worker and engager and is part of the arrangement for the worker to provide services to the engager; and,

- who provide services in a manner which is subject to (or to the right of) supervision, direction or control of any person.
- Provide that any services provided within an engagement by workers who meet the criteria set out above are, for the purposes of sections 337, 338 and 339, to be treated as being provided under a separate employment with that engager.
- Include powers, in line with one of the options set out above, that will transfer the liability for any outstanding obligations where a worker is engaged through an intermediary and tax relief for travel and subsistence is incorrectly given
- Mirror the tax treatment in NICs legislation.

Questions:

Question 1: Do you agree that the structure of the proposed legislative changes will achieve the policy objectives?

Question 2: Will there be any consequential difficulties in administering each engagement as a separate employment?

Question 3: Are there any particular professions who will be significantly affected by these proposals?

Question 4: Will these changes result in a significant shift in the way those affected are employed? If so, what would this shift be and what would be the impact for the workers concerned?

Question 5: Would the definition of employment intermediary as proposed cause any practical difficulties? Please provide details and examples.

Question 6: Do you agree with the definition of the terms supervision, direction and control and will these definitions cause any practical or commercial difficulties? If so, what will these difficulties be?

Question 7: Which option for a transfer of liability would work best to ensure future compliance, Option 1 or 2?

4. Impact of the Proposal

Engagers/End Clients

The proposed changes will remove temporary workers' and contractors' eligibility for travel and subsistence tax relief if they are working through an employment intermediary and are subject to the supervision, direction or control of any person.

In general, this change should not impact on businesses engaging workers through employment intermediaries, as they are not responsible for paying these workers a salary, or for reimbursing the cost of their travel and subsistence.

Some businesses engaging workers under supervision, direction or control, through employment intermediaries may see an increase in the rates they pay for these workers, in order to offset the increased levels of tax and NICs.

Umbrella Companies

To pay expenses with tax relief, umbrella companies will have to be confident that an individual worker is not under supervision, direction or control whilst undertaking work for an engager. As these proposals align with the agency regulations introduced to tackle false self-employment, this should be a familiar concept, particularly where the relevant work has been found through an employment business.

Personal Service Companies

Individuals working through a PSC, who are under the supervision, direction or control of any person, will no longer be eligible for tax and NICs relief on their home to workplace travel and subsistence.

For engagements where a worker is providing their services through a PSC and is not under the supervision, direction or control of any person, there will be no change. However, the PSC must still consider whether IR35 applies to each contract.

Temporary Workers

This proposal will remove tax relief for home to work travel and subsistence expenses for temporary workers employed through employment intermediaries, where they are working under the right of supervision, direction or control. Workers in these circumstances who have been claiming for a tax and NICs deduction for their home-to-work travel and subsistence could therefore see a reduction in their take home pay.

5. Summary of Impacts

Exchequer impact (£m)	2016-17	2017-18	2018-19	2019-20
		+155	+175	+160
Economic impact	This measure is expected to have negligible impact on the economy.			
Impact on individuals and households	This measure may affect some families with low income and family member's ability to play a full role in family life including with respect to parenting and other caring responsibilities. This is due to the reduction in net income this measure may have for individuals working in the temporary labour market who are affected.			
Equalities impacts	<p>The government does not have evidence to suggest this measure will have a significant or disproportionate impact on groups with legally protected characteristics as recognised in The Equality Act 2010 other than gender as men make up a disproportionately higher number of umbrella company workers.</p> <p>This measure may reduce the net income of some individuals working in the temporary labour market. This may therefore reduce the household income for a number of families which would make it harder for government to meet the Child Poverty Act targets.</p>			
Impact on businesses and Civil Society Organisations	Employers could see a rise in the cost of hiring temporary and contract staff as the take home pay of workers subject to the supervision, direction or control of any party will no longer be subsidised by tax reliefs.			
Impact on HMRC or other public sector delivery organisations	This measure may result in small changes to the labour market, including decreases in the use of umbrella companies and increases in the use of other types of employment intermediaries. This may lead to minor operational changes in HMRC.			
Other impacts	None			

6. Effect on Individual Sectors

Community/District Nurses and other travelling professionals

Workers employed through intermediaries and working under supervision, direction or control will still be entitled to travel and subsistence relief on the full cost of travel incurred for necessary attendance at a workplace in the performance of their duties, where this travel is not ordinary commuting from home-to-work.

Those working in a travelling role for one engager, where travelling from location to location each day is an intrinsic part of the duties of the role (such as district nurses or travelling sales persons) will still be entitled to tax relief on the travel and subsistence payments they receive for these journeys. This will remain the case, even where they are employed through an employment intermediary and working under the supervision direction or control.

This is because this relief is given under section 337 of ITEPA which these proposals do not affect, and which apply in the same way to all employees regardless of how they are engaged.

Area Workers

If a worker has duties that are defined by reference to an area where, in the performance of their duties, the worker attends different places within that area and they have no permanent workplace in that area, then the whole area may be a permanent workplace for the worker. Where this is the case travel and subsistence relief will not be available for travel between the workers home and the area of the workplace, but will be available for travel within the area of the workplace in the performance of the duties of the role.

Tax and NICs relief would also be available for travel beyond the workplace area to another workplace if it is necessary for the worker to attend that workplace in the performance of their duties.

Depots and Similar Bases

Where a worker attends a workplace as a base from which they work, or in order for their tasks to be allocated, and where these workers are employed through an employment intermediary and are subject to the supervision, direction or control of any party they will not be eligible for travel and subsistence relief on their journey from home to this workplace.

Tax and NICs relief will continue to be available on travel and subsistence payments received for travel between the engager's workplaces.

Overseas Travel and Travel Abroad

There will be no change to the rules for travel and subsistence relief on travel abroad, this includes where a worker is employed through an employment intermediary and working under the supervision, direction or control of any person.

Professional Service Firms

For the purposes of these proposals employment intermediaries' will be defined, in part (the complete definition proposed is contained above), as a business primarily in the supply of labour services. As such the definition will not include professional service firms that second staff to clients, as their business is not primarily in the supply of labour.

Work on more than One Engagement

For those who work on more than one engagement through an employment intermediary and who are under supervision, direction or control at each of these engagements, travel and subsistence tax relief will not be available for travel between home and any of their engagements. Neither will travel between the workplaces of separate engagements be eligible for travel and subsistence relief. This approach is in line with that set out for employees with two employments.

Working Rule Agreements

If a worker is employed through an employment intermediary and subject to supervision, direction or control they will no longer be due tax relief on their home-to-work travel and subsistence.

Where that worker is employed in the construction and allied sectors under a Working Rule Agreement, then the special taxation procedures that HMRC has agreed that allow travel and lodging allowance paid under such agreements to be paid tax and NICs free will not apply. Tax relief will still be due on a case by case basis where a worker can demonstrate that they are entitled to relief under the statutory rules.

This will only affect the tax and NICs treatment of travel and lodging allowances and the other terms and conditions of employment included in Working Rule Agreements will be unaffected.

7. Summary of Consultation Questions

Question 1: Do you agree that the structure of the proposed legislative changes will achieve the policy objectives?

Question 2: Will there be any consequential difficulties in administering each engagement as a separate employment?

Question 3: Are there any particular professions who will be significantly affected by these proposals?

Question 4: Will these changes result in a significant shift in the way those affected are employed? If so, what would this shift be and what would be the impact for the workers concerned?

Question 5: Would the definition of employment intermediary as proposed cause any practical difficulties? Please provide details and examples.

Question 6: Do you agree with the definition of the terms supervision, direction and control and will these definitions cause any practical or commercial difficulties? If so, what will these difficulties be?

Question 7: Which option for a transfer of liability would work best to ensure future compliance, Option 1 or 2?

8. Compliance

Tackling Avoidance

The government will take action to prevent tax avoidance wherever it is identified and will ensure no individual or business benefits from an unintended tax advantage. To achieve this we continue to improve our approach to tackling areas of the tax system where avoidance behaviour is widespread or there are opportunities to level the playing field for compliant businesses.

Over the past 5 years the Government has introduced a number of measures to tackle the avoidance of employment taxes. In 2011 new rules were introduced to tackle avoidance by those providing employment income through disguised remuneration (where benefits are provided through a third person to avoid, or defer employment tax) ensuring an immediate income tax charge is imposed where payments are made or assets transferred, or earmarked for individuals.

In November 2013, effective compliance with these rules was supported by changes in the Disclosure of Tax Avoidance Scheme (DOTAS) regulations. People who promote tax schemes that are intended to provide a tax advantage have to register any scheme with HMRC. Failure to register such a scheme can now result in fines up to £1 million.

We continue to develop new ways in which avoidance can be tackled. In Finance Act 2014, the government introduced new rules to tackle the use of offshore intermediaries to avoid income tax and NICs and new rules to deal with onshore intermediaries used to facilitate false self-employment. These changes have brought around 250,000 workers out of false self-employment, to be treated, correctly, as employees.

To support these new rules, intermediary return regulations have also been introduced. These returns will ensure robust compliance activity by providing HMRC with new information that HMRC will use to ensure those who are not acting in accordance with the rules are identified and tackled. This will form part of an improved HMRC risk and intervention strategy that is focussed around false self-employment status and offshore working.

Further action was taken in 2014 to support compliance work against disguised employment in Limited Liability Partnerships. And following the Office for Tax Simplification Review in 2011 the administration of IR35 has been simplified to help customers ensure they remain compliant, allowing HMRC enforcement teams to focus on those deliberately trying to avoid tax.

Enforcing Compliance

As part of its risk based compliance activity, HMRC is undertaking enquiries into a substantial number of employment intermediaries, including umbrella companies and employment businesses. We have a number of ongoing investigations into businesses

that we regard as high risk and we continue to look at a range of ways of tackling non-compliant employment intermediary arrangements.

HMRC has published a statement confirming that the payday-by-payday umbrella model is non-compliant and dispensations could be revoked if this model was discovered. We are committed to identifying the users of such schemes, opening enquiries to recover the tax and NICs due and when appropriate pursuing cases to litigation.

HMRC also continues to centralise and coordinate its enforcement and compliance activities to better focus on risk and intervention, as well as increasing the amount of resource available to tackle non-compliant employment intermediaries. This includes centralising the granting and monitoring of dispensations to improve identification of those who are not compliant with the rules.

9. Summary of Responses to Discussion Document

Summary

HMRC issued a discussion document in December 2014 to inform its understanding of the employment industry, the use of employment intermediaries and its interaction with travel and subsistence tax relief.

85 responses to the discussion document were received; these have been broken down in the table below. Overall responses to action in this area were mixed, with many umbrella companies and Personal Service Companies in particular, opposed to restrictions on travel and subsistence tax relief.

A significant number of responses did recognise there were issues and unfairness with the current system for travel and subsistence tax relief and that action would be needed. A few agreed that the suggested options as set out within the discussion document, would tackle these issues, but many respondents felt there were fairer, more targeted ways to deal with these issues, minimising wider consequences.

Many of the responses raised issues which were out-of-scope of the discussion document's proposals. These included wider concerns relating to the employment and contracting sectors, in particular issues were raised about umbrella companies and confusing payslips, unclear wages, a lack of employment rights and sometimes failure to pay national minimum wage.

Respondent Categories	Number of Respondents
Accountants	12
Umbrella Companies	24
Personal Service Companies (PSCs)	14
Private Individuals	3
Professional Service Companies	3
Recruitment agencies	11
Trade Associations/Representatives	15
Trade Unions	3

Key Themes

Several key themes were identified in the responses to the discussion document, these are outlined below.

A. Legitimate business advantages: A large number of responses highlighted the legitimate business advantages of employment intermediaries, particularly umbrella companies, arguing that these are the only drivers for using these arrangements.

- B. Minority of non-compliant companies:** A significant number of respondents accepted that there were tax issues within the employment intermediary sector, but many felt these were confined to a minority of non-compliant companies and should be dealt with in a targeted way.
- C. Exploitive employment model:** Despite the above points, a significant proportion of responses felt that the main purpose of employment intermediaries, particularly umbrella companies, was to exploit tax deductions on travel and subsistence costs and some to avoid other employment costs. They argued in particular, that because of the fees charged by companies the benefits rarely go to the worker.
- D. Lack of enforcement:** A large number of responses highlighted enforcement as an issue. Many suggested that a considerable number of the problems identified were the results of non-compliant models and as such, could be tackled by increased compliance activity.
- E. Temporary workers should be entitled to dispensation:** A number of responses suggested temporary workers should be able to claim tax relief for travel and subsistence, to offset the additional risk and cost that may arise from temporary work i.e. having to travel varying distances and not being able to move closer to work, or benefit from season tickets.
- F. The lower paid:** A substantial number of responses highlighted their concerns that any restriction on tax relief for temporary workers could impact negatively on the low paid.
- G. Damage to flexible workforce:** It was suggested that contractors may have to turn down work if they cannot claim travel expenses; this might limit employers' ability to recruit temporary and mobile workers and therefore presents a significant risk to business and the economic recovery. It will also disadvantage UK business against others in Europe. With workers unable to take as many jobs, the number of individuals on benefits will also rise.
- H. PSCs:** A significant number of respondents felt that PSCs shouldn't be included in any measure, as their travel and subsistence are genuine business costs and they should be able to claim this tax relief, as they felt that larger companies could claim this for their employees. Some PSC respondents did feel however that this could be applied to some PSCs and many acknowledged that unless they were included any restriction on other intermediaries could be easily circumvented.
- I. Competitive Distortions:** A significant proportion of the Employment Businesses that responded to the consultation were supportive of the proposals on the basis that the use of employment intermediaries can give a competitive advantage to agencies that use them, over those that don't. Those using schemes can supply staff at lower rates, because some of their costs are subsidised by travel and subsistence tax relief. Several agencies described losing business as a result of this distortion.

Response to key points raised

- A.** The government recognises that many employment intermediaries are used for legitimate business purposes. Any change to the rules will not undermine the effective operation of intermediaries that do not rely on tax relief for travel and subsistence costs.
- B.** The government accepts that non-compliance is limited to a minority of companies. However, although compliant, recent trends and the increase in the use of employment intermediaries goes well beyond what was anticipated by Parliament when the current rules were introduced. There is therefore a need to respond to these changes in the market to ensure the system remains fit for purpose.
- C.** HMRC recognises and shares concerns in relation to these arrangements and is planning to introduce restrictions in this area that will ensure tax relief is a level playing field for all individuals and businesses. The Department of Business, Innovation and Skills will be consulting on ways to improve transparency for those paid through an umbrella company, such as pay slip transparency.
- D.** HMRC are involved in several ongoing investigations into companies running non-compliant business models and will continue to take action against the non-compliant.
- E.** It is an established principle in the tax system that people should not be able to claim travel and subsistence expenses with respect to their regular travel from their home to work. In line with this, ordinary commuting costs incurred by the vast majority of workers are not tax deductible.
- F.** The impact of any changes will vary depending on the circumstances of individual workers and employment intermediaries. Since 2010 the government has decreased the tax burden of the lowest paid through increases to the personal allowance for tax. This approach is fairer and more successful than subsidising certain individuals through travel and subsistence tax reliefs.
- G.** The government has received no evidence that changes in this area will impact negatively on the flexible workforce and we do not believe this will be the case.
- H.** HMRC recognises that the travel and subsistence of many PSCs are legitimate business costs and accepts that any action should not undermine genuine arrangements. However, we must also ensure that any changes will not result in workers merely shifting into PSCs.
- I.** The government shares concerns about the competitive advantages misuse of tax relief for travel and subsistence can secure for some businesses. This remains a key driver for action in this area.

10. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework.

There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 7.

Responses should be sent by 30 September 2015, by e-mail to:

consultation.intermediaries@hmrc.gsi.gov.uk; or by post to:

**HM Revenue and Customs
Employment Status Team
Room 1E/10, 100 Parliament Street
London
SW1A 2BQ**

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes.

These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the government's Consultation Principles. HM Revenue and Customs will also be holding roundtable stakeholder events during the consultation period, if you would like to be involved with these please email:

consultation.intermediaries@hmrc.gsi.gov.uk

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Oliver Toop, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

11. Glossary

- **Employer**

An employer is the entity which directly employs the worker, it is responsible for paying the worker a salary and for deducting the worker's income tax and NICs and paying these to HMRC. It is also responsible for other employer statutory responsibilities, such as holiday pay.

- **Employment Business**

An Employment Business (also known as an employment agency) provides staff who do not become employed by the hirer, but who are seconded or supplied to a client employer (Employment Agency Act 1973 (amended 2004)).

- **Engager**

An engager is an entity that uses the labour or services provided by the worker. It can be an employer of the worker or may be the entity that the intermediary ultimately supplies to. There can be more than one engager in an employment relationship.