

**HM Revenue & Customs (HMRC) consultation document  
Employment Intermediaries and Tax Relief for Travel and Subsistence  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 We welcome the opportunity to respond to this consultation document into the proposals to restrict the tax relief for travel and subsistence for workers employed by employment intermediaries and engaged on assignment based work contracts.
- 1.2 Our response concentrates on those areas which are of relevance to both the taxation of those on low incomes and their entitlement to state benefits.
- 1.3 HMRC and the Department for Business, Innovations and Skills (BIS) should adopt a single consistent policy to ensure that lower paid workers are not unknowingly involved in complex arrangements the main aim of which is to benefit the providers of such arrangements rather than the workers.
- 1.4 HMRC should commit not to pursue individual workers for underpayments arising from their involvement in such arrangements. We would also wish to see such a commitment in respect of liabilities that arose prior to 6 April 2016.
- 1.5 Any legislation needs to apply fairly to all entities and individuals. This includes a robust approach by HMRC to challenging perceived and real avoidance.
- 1.6 HMRC and the Department for Work and Pensions (DWP) should consider alternative means for assisting low-paid employees with work related travel costs so as to mitigate any effect the changes will have on a claimant's benefit and tax credit payments and provide some recognition for essential work travel costs.

- 1.7 It is essential that any changes do not affect the current relief for expenses incurred in the normal course of an employee's duties and particularly that any such relief is not limited to expenses reimbursed to the employee.

## **2 About Us**

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

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

- 3.1 Our understanding is that the policy objective is to restrict the perceived abuse of the relief for travel and subsistence expenses when a worker travels to a temporary workplace.
- 3.2 Historically such engagements were one-off arrangements. However, changes to the labour market have meant that groups of workers are now being contracted to carry out short term engagements under identical terms and conditions often at the same time. During the course of a year each worker might have multiple short term engagements.
- 3.3 Presumably each 'employment arrangement' would have to be considered separately. It is not clear to us how HMRC have decided to operate the proposed structure from a practical perspective. If most engagers and employment intermediaries take the path of least resistance and stop operating the relief then presumably the policy objectives will have been met. HMRC will, however, need to ensure that they take appropriate action in respect of employment intermediaries who continue to apply the relief in circumstances where, under the proposed legislation, it is not due. With effect from 6 April 2016 it will be the responsibility of the payer to determine whether such expenses are allowable and can

therefore be paid without the deduction of tax and National Insurance Contributions (NIC). If this means that each employment arrangement will need to be considered and pursued separately by HMRC then enforcing the legislation will take considerable resources.

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

4.1 We cannot comment on this question from a practical perspective.

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

5.1 We would make the point that the word “profession” implies “any type of work that needs special training or a particular skill, often one that is respected because it involves a high level of education”.<sup>1</sup> We believe that the use of this word shows a lack of understanding about the circumstances of the majority of workers who will be affected by these proposals. Chapter 3 of our report “Travel expenses for the low-paid – a time for a rethink?”<sup>2</sup> sets out our research findings that the majority of workers who will be affected by these proposals are not professionals but low skilled workers, perhaps younger, with low levels of education or poor English. These workers have been forced to turn to temporary work sourced through employment agencies as they have not been successful in finding permanent work.

5.2 Many of these workers are earning at or near the minimum wage. The nature of their work means that they are unable to budget accurately for their travel costs, for example to take advantage of season tickets or similar. The increase in their take home pay if they use these arrangements is proportionally much greater than for higher paid individuals even after the employment intermediaries’ fees have been deducted

5.3 Therefore we would suggest that the vast majority of individuals who will be personally affected by these changes are low paid, often vulnerable individuals. As we have previously suggested we believe that there is a strong argument for considering alternative means of assisting low-income workers with work related travel costs. This might be achieved by including an amount for travel when calculating an individual’s entitlement to tax credits or Universal Credit. We believe that this is particularly important when an individual’s benefits can be restricted or stopped if they refuse employment.

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<sup>1</sup> <http://dictionary.cambridge.org/dictionary/english/profession>

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<http://www.litrg.org.uk/Resources/LITRG/Documents/2014/11/LITRG%20PAYE%20report%20FINAL.pdf>

**6 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 would be the impact for the workers concerned?**

- 6.1 We are concerned that other structures will evolve which will lead to greater complexity for all workers. Low-paid workers are usually those least able to negotiate the conditions under which they work; they will be offered jobs on a “take it or leave it” basis. They are most likely to be forced into alternative structures, for example their own PSCs or employment arrangements such as the Elective Deductions Model, which will remove the few employment rights that they already have.
- 6.2 Whilst we understand that HMRC consider that it is the responsibility of BIS to consult and legislate on protection for such workers, we believe that the Government should adopt a single, consistent policy across the board on this issue. We note that BIS has not yet issued any formal consultation on how workers can be provided with greater transparency in relation to the terms under which they are employed as set out in the Red Book for the March 2015 Budget.<sup>1</sup>

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

- 7.1 One of the reasons put forward by HMRC and the Government for the need to introduce the proposed legislation is to address their perception that there is an inherent unfairness in some individuals being able to claim travel and subsistence expenses whilst others in similar circumstances are not. We note that it is the intention that entities which provide composite services, so that the supply of labour is a subsidiary undertaking, will not be affected by these proposals. We see an inherent unfairness in this approach; multi-national organisations will remain able to structure their employment arrangements in such a way that the relief will be available to their employees on assignments of less than 24 months either within their own group or when providing staff to clients. Insofar as international assignments are concerned these arrangements often include the use of a global employment company. Such individuals are usually highly paid and their travel and subsistence expenses are usually reimbursed by their employer. Thus large multi-national organisations and their high paid employees will be able to benefit from the legislation whilst the low paid will not.

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<sup>1</sup> Section 1.251 of

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/416330/47881\\_Budget\\_2015\\_Web\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416330/47881_Budget_2015_Web_Accessible.pdf)

**8 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?**

- 8.1 It is probable that our constituency of low paid workers will be subject to supervision, direction or control in the work they undertake. However, we believe that example 1 given on page 15 of the consultation document indicates the possible difficulties that might arise in respect of highly skilled individuals with specific skills. Whilst in example 1 the proprietor might not be able to understand how the website works we would expect him to have, at least, the right of direction over the work the IT consultant is doing.
- 8.2 It is possible that, over the course of a longer engagement, the nature of the supervision, direction and control will change.
- 8.3 Turning to the definition of “personal services”, we believe the legislation should make clear that this applies when the worker is personally providing services, or is obliged to do so, and that this is irrespective of the nature of the services provided.

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

- 9.1 Under Option 1 both the engager and the employment intermediary will be jointly and severally liable and both can be pursued for the debt. This is the option we would favour.
- 9.2 Under Option 2 the employment intermediary would remain solely responsible for the debt unless he can prove that the engager has provided him with false information. HMRC will need to provide guidance on the level of information which the engager needs to provide to determine whether or not a worker is under supervision, direction or control.
- 9.3 We are concerned that, as a result of the changes, low paid workers will be pushed into PSC arrangements. Our understanding is that agency businesses’ expectations are that, when legislation is introduced, engagers will insist upon indemnities and that these indemnities will be replicated throughout the contractual chain. In these circumstances the end of the chain would be the PSC which may itself be an employment intermediary. We would wish to see the definition of employment intermediary replicate the provision of “specified employment intermediary”<sup>1</sup> so that entities where only one individual provides services are excluded. This would ensure that the liability for the debt could not be pushed down to the worker even if working through a PSC
- 9.4 One of our concerns when responding to HMRC’s previous discussion document on this subject was the lack of a robust approach by HMRC to counter the perceived avoidance. As we pointed out, it is our experience that rather than HMRC pursuing the employers (by way

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<sup>1</sup> section 84E 2003/2682 IT (PAYE) Regulations 2003

of a Regulation 80 determination) HMRC seek to recoup the tax from the worker by pursuing him by way of a P800 calculation or other follow-up activity. We would wish it to be explicit in the legislation that the worker can no longer be pursued.

- 9.5 If a change of the kind envisaged in either option 1 or option 2 was made there remains still the possibility that workers could be pursued for tax underpayments for years up to 5 April 2016. We would like to see HMRC and the Government commit not to pursue individuals workers for underpayments arising under the complex schemes that we have seen used.

## 10 General

- 10.1 Any change must not affect the ability of workers to claim relief for expenses incurred in the normal course of their duties. The consultation document identifies travelling professionals and area workers as two sectors whose entitlement to tax relief on the travel expenses they incur in performing the duties of their employment will not be affected. We believe it is essential that this relief is maintained. In addition, we note that the consultation documents says such individuals "... will still be entitled to tax relief on the travel and subsistence payments they receive for these journeys. This will remain the case ...". It is our experience that many lower paid workers, for example those in the care industry, do not receive specific reimbursement for travel and subsistence expenses but are expected to meet such travel expenses out of the wage which they receive.<sup>1</sup> It is essential that tax relief for travel expenses is not restricted merely to **reimbursed** expenses. Indeed, workers who are not reimbursed by their employer are already disadvantaged as, in these circumstances, the relief available to them as individuals is limited solely to tax relief and does not extend to class 1 NIC. This disadvantage is of course worse for those individuals whose income is below the personal allowance as they receive no relief at all.
- 10.2 We understand that HMRC have considered alternative methods of restricting the availability of the relief, for example by specifying either the types of jobs that would be deemed to be under supervision, direction or control or a minimum length of engagement above which the relief would not be available. We recognize that using such criteria might be open to abuse, however they do have the advantage of simplicity. In particular the length of an engagement is fairly clear cut. We believe HMRC should consider including such criteria in the legislation.

LITRG  
28 September 2015

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[http://www.litrg.org.uk/Resources/LITRG/Documents/2015/01/150202\\_LITRG%20Response\\_FB2015\\_reimbursed%20expenses\\_FINAL.pdf](http://www.litrg.org.uk/Resources/LITRG/Documents/2015/01/150202_LITRG%20Response_FB2015_reimbursed%20expenses_FINAL.pdf)