

Travel and Subsistence Schemes for Temporary Workers

The good, the bad and the ugly – August 2009

Brian White, Tax Partner at Deloitte LLP, has extensive experience of PAYE, dispensations and travel and subsistence payments to employees and represents many companies in this area. Below he answers questions about travel and subsistence schemes for temporary workers within the recruitment sector.

Why have travel schemes become such a hot issue?

In August 2009 HM Revenue & Customs issued [guidance](#) for companies that employ temporary workers, on the subject of tax, national insurance and minimum wage legislation. This follows a consultation document it issued in 2008 about travel expenses paid to temporary workers, which concluded that changes to legislation were not required but that a greater focus on compliance was needed.

HMRC believes that there are some businesses – particularly recruitment businesses and umbrella companies – whose arrangements contravene or fail to comply with the legislation and exploit workers. It is looking to take action against such companies, which is welcomed by the whole industry including those operating legitimate schemes.

So what's the problem?

There is a real danger that all schemes through which temporary workers can claim travel expenses – the legal and illegal, the ethical and unethical – will be tarred with the same brush. HMRC must take care to adopt a balanced approach to ensure that those operating genuine travel and subsistence schemes, operating within the law, are not damaged.

Unfortunately, HMRC's recent guidance served to highlight how travel and subsistence arrangements can go wrong without explaining that there are many schemes operating legally. This has led many end users of temporary workers, and those in the supply chain, mistakenly to start believing that all such arrangements are illegal.

Why were these schemes introduced in the first place?

Travel schemes have been around for over 10 years, since HMRC changed the rules about travel expenses in 1998. The rules meant that employees who were site-based or working at temporary workplaces were eligible for tax relief on their travel from home to site. This was because temporary site workers incur significant and variable costs when getting to work, whereas a normal worker's travel costs are fixed.

In addition the rules meant that those employees eligible for tax relief on their travel costs could also claim daily tax-free subsistence allowances. These were normally based on scale rates negotiated by the employer with HMRC, but recently [benchmark subsistence rates](#) were published by HMRC in April 2009 at up to £10 per day depending on the length of the shift worked. For the last few years employers have sought ways to offer greater benefits to employees via cost-effective means, which has led to the increased use of salary-sacrifice arrangements under which the employee agrees to replace salary with a more tax-efficient benefit in kind. This is commonly used

within a flexible benefit package. The travel and subsistence arrangements are a part of this general theme and have been introduced in different industries where the employer has a number of workers who are mobile.

Some employers of temporary workers, who don't use such a travel scheme, say they're facing unfair competition. Do they have a point?

The only unfair competition is *illegal* competition. Legal schemes compete on entirely fair basis. If an employer chooses not to reimburse employee travel and subsistence, it should not challenge other businesses that have invested in the systems and processes required to operate such a scheme legally.

Can travel schemes that operate for low-paid workers be legal and ethical?

If the scheme is legal and increases workers' take-home pay, especially that of low-paid workers, then it is clearly ethical. Such schemes are benefiting low-paid workers, not exploiting them. It is also worth noting that the agency workers that are members of such schemes will be employed under a contract of employment, which gives them equal employment rights to those of permanent employees. This is something that is high on the agenda for the UK government, trade unions and employers alike.

Protecting the worker is at the core of national minimum wage legislation. Some schemes have already been reviewed in this area by both HMRC and national minimum wage specialists at HMRC, and have been approved accordingly.

Are travel schemes operated by "umbrella" companies legal?

In some cases they are. It depends on how much information the umbrella company disclosed to HMRC as part of its procedures for obtaining its tax-free dispensation. But HMRC will always scrutinise more closely, and are more likely to challenge, an umbrella company as it often does not source work for its employees.

Is there any financial risk in using a company that operates a travel scheme that has been reviewed by HMRC or the Gangmasters Licensing Authority?

There is no risk. Furthermore, there are no "transfer of tax liability" provisions in this area of the law.

How can end customers, such as retailers and others in the supply chain, check a scheme to ensure it complies with the law?

There are a number of complicated conditions that need to be satisfied, and this makes it difficult for an end user to judge. However, there are some practical things listed below that they can do to satisfy themselves that the arrangements comply with the law.

- Check that the schemes being operated are optional and not compulsory
- Check that workers are guaranteed to benefit from the scheme, and are not receiving less pay than they would had they not been a member of the scheme
- Check whether schemes have been implemented in conjunction with independent professional advisers

- Ask to see a copy of the company's HMRC's P11d dispensation
- Ask if the scheme is subject to regular internal audits and annual external audits by professional advisers
- Ask the company whether the scheme has been reviewed by HMRC in detail and the name of the professional advisers used by the company. In some cases HMRC will issue a letter of compliance at the end of a review and the end user should ask if such a letter exists and if it does ask to have sight of it. If there is no such document the professional advisers should be asked to produce a summary of the outcome of the review
- Check whether the company is licensed by the Gangmasters Licensing Authority (GLA)
- Check if there has been a recent GLA audit if appropriate. Ask if it focused on the travel scheme. Request the audit report. Check whether the audit raised any concerns or non-compliances under licensing standard 2.2, which relates to compliance with national minimum wage
- Check that the company is registered in the UK (it should be if the scheme is legal)
- Check whether all employees are actually employed under PAYE (they should be)
- Check whether employees are hosted via offshore elements (they shouldn't be)
- Check if the worker is employed on a self-employed basis (they shouldn't be)
- Check whether the travel scheme has been reviewed by any other regulator

Are workers actually benefiting from legitimate schemes and is there any benefit to the employer?

Workers are certainly benefiting. For example, some schemes allow employees to claim a certain amount for travel to temporary workplaces and in return, the employees give up some of their gross taxable pay. This means that all workers, and particularly low-paid workers, end up much better off.

There is certainly some benefit to the employer. When assessing the benefit to the employer, it is important to factor in the significant processing costs involved in running a scheme, the internal and external audit and compliance costs, the costs associated with granting workers full employment rights, and the costs of other benefits offered to members of the travel scheme which can include contributory pension and other flexible benefits.

What more should HMRC do to distinguish between legal, ethical schemes, and those that are neither?

HMRC knows the businesses that operate in this market place, to whom they have granted P11d dispensations, and through working with the GLA and Employment Agencies Inspectorate it could identify those operating schemes (either directly or through an umbrella organisation) that are doing so without the necessary HMRC dispensation. The onus should be on HMRC to undertake a detailed review of all schemes and stamp out those that are not operating within the law. This was its own conclusion when it reviewed the law in this area in 2008 and concluded that no changes were required. By taking such action an end user could very easily determine whether suppliers are operating legitimate arrangements by requesting sight of the relevant HMRC dispensation, which HMRC would withdraw from any business it found to be acting illegally.

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