Temporary workers – relief for travel and subsistence expenses

Technical

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The CIOT, ATT and LITRG have responded to the HMRC discussion document, Employment Intermediaries: Temporary workers – relief for travel and subsistence expenses, in which views were sought as to a restriction to tax relief for holders of overarching contracts of employment (OACs). This topic is also discussed in Mark Groom's article.

Under an OAC, or 'umbrella' contract, several separate assignments are linked to form one employment contract. An employee may be paid a certain amount as ordinary pay (which must be equal to or more than the national minimum wage for the hours worked) and a separate sum referable to reimbursed travel expenses to the 'temporary' workplaces visited on each assignment comprised in the overarching contract, upon which tax and NIC relief is available.

The HMRC document proposes two limited options for consideration which appear to be based on the assumption that relief for expenses in an OAC arrangement is inherently unfair. However, all three responses noted that the situation was much more complicated than expressed by HMRC. Indeed, the scale of the complexity is perhaps evidenced by the fact that, after a consultation on the same matter in 2008, the rules were left unchanged.

LITRG recently published a report, Travel expenses for the low-paid – a time for a rethink?, looking at umbrella arrangements, particularly schemes used by low-paid agency workers. It questioned whether it was really unfair for such workers who may spend a few days at one workplace, a few days at another and so on, to use OACs to secure tax relief for their travel expenses, given that the current suite of outdated travel expense rules do not provide for them.

To secure and stay in work, these workers often have to accept assignments at a variety of premises (and at short notice) far from home. The unavoidable costs of travelling to their assignment locations to perform their duties can take up a disproportionate amount of their take-home pay – particularly when you remember that temporary workers do not have the luxury of being able to plan around the fixed costs of ordinary commuting. As such, LITRG believes that the long-term and sustainable solution here is for the authorities to acknowledge the position of low-paid agency workers and address the underlying anomalies in the framework that drive the need for them to use OAC arrangements in the first place.

ATT suggested that perhaps the greatest motivation for using OACs comes from the providers of the contracts in the ability to avoid employer liabilities. Despite many arrangements being somewhat opaque for the workers, those entering into these contracts are just trying to get work and probably, in most cases, do not appreciate the consequences. Without action of some kind, more businesses will feel obliged to offer OACs to remain commercial and competitive, causing market distortions and further tilts in the playing field. But there is a question over whether the introduction of another layer of targeted anti-avoidance legislation is the correct response – potentially causing unintended consequences and affecting taxpayers who are not the subject of HMRC's original concern.

CIOT's response knitted together the above themes, stating that OACs may legitimately afford benefits such as employment rights and access to tax relief to lower-paid workers. Although this means that a blanket restriction is not desirable, it does not mean that something should not be done to tackle arrangements where the benefits of travel and subsistence relief are weighted in favour of the employer (such as where there is a significant access fee levied on the worker by the OAC employer). This would prevent employers unfairly maximising their savings at the expense of their workers while providing fairness on the availability of tax relief for temporary staff and is something that the Department for Business, Innovation and Skills (BIS) should be looking at.

In summary, although there is clearly a case for action to be taken, the form this should take should be a matter for careful consideration by government. As such, we were slightly disappointed in the short time frame allocated for responding to the discussion document and hope that no hasty decisions will be taken.

Further, if the right course of action turns out to be (as it was in 2008) to target ‘abusive’ arrangements rather than legislating for the wholesale removal of the relief, we would urge far greater levels of compliance and enforcement activities by the authorities against the operators concerned. We question the level of effective HMRC activity in pursuing the employers and scheme providers, as there has been little apparent evidence of this from the outside perspective – particularly in regard to ‘pay day by pay day’ (PDPD) models involving OACs. These do not involve an explicit payment of expenses – instead, the employer applies tax and NIC relief via the payroll to a worker’s personally incurred travel and subsistence expenses. They were declared ‘non-compliant’ by HMRC in 2011, yet are still widely in operation – indeed any HMRC activity to date seems to have involved pursuing the workers themselves for under-deducted tax (by way of P800 tax calculations and follow-up collection activities) rather than the employers by way of a SI2003/2682 reg 80 determination. We think it is fair to say that this is unacceptable and we hope to be in contact with HMRC on this, and the outcome of the discussion document, in the months ahead.

The full LITRG response can be found on the LITRG website.

The full ATT response can be found on the ATT website.

The full CIOT response can be found on the CIOT website.