

Contractors' legitimate travel expenses must be safeguarded, says PCG to Treasury

The [threat of HM Treasury scrapping travel expenses](#) allowances for contractors working through umbrella workers has been tackled head-on by the [Professional Contractors Group](#) (PCG).

With the 13th October 2008 deadline looming for submissions to the Treasury in response to its consultation over contractors' travel expenses, the PCG has released its own response and recommendations.

According to the PCG, [umbrella companies](#) fulfil an obvious and important need in the contracting sector, by providing an option for contractors who do not want to run their own limited companies or who are new to the contracting way of working.

However, just because these contractors and freelancers have employment contracts with their umbrella companies and pay tax and National Insurance Contributions at source under PAYE, the PCG is keen to point out it does not mean that such contractors do not have a wholly commercial relationship with their clients. This is a fact the Treasury does not fully acknowledge, says PCG.

Abuse by some umbrellas

The PCG admits that some umbrella companies use aggressive marketing techniques that rely on the message that expenses claims can be maximised by contractors using their services.

"PCG supports the presence of umbrella companies in the marketplace," says PCG's managing director John Brazier. "We do not want to see any heavy-handed action that would make them unviable. At the same time, we are aware that the way some umbrellas use expenses policies is a genuine problem."

One option is for the Treasury to ban travel expenses for contractors, but as with most other legislation targeting the contracting sector – such as [IR35](#) and the [income shifting proposals](#) – the fall-out would impact on many other businesses, such as consultancies.

The result may be a wholesale migration of contractors and freelancers from umbrella companies into their own [limited companies](#), and there is considerable doubt as to whether HMRC would have the resources to police this new constituency.

Consistent policy across the tax system

PCG is hugely concerned that if legitimate contractors and freelancers were denied the opportunity to claim for travel expenses when working away from their permanent place of work, this would put them at a significant competitive disadvantage to other business service providers.

In addition, the Treasury's consultation paper specifically excludes contractors and freelancers working through their own limited companies, meaning that umbrella company contractors would be similarly disadvantaged when competing with limited company contractors.

And when the Treasury plays the 'fairness' card, PCG reminds them that umbrella company contractors are by no means gaining an advantage over permanent employees by claiming travel expenses.

Contractors' commercial risks

Contractors and freelancers are still taking commercial risks, even when working through umbrella companies. Plus, they receive none of the benefits and statutory protection under law that are enjoyed by permanent employees.

The Treasury's suggestion to extend the a debt transfer regime to umbrellas might also prove to be unwise, as the PCG points out that the debt transfer mechanism under the [Managed Service Companies \(MSC\) legislation](#) is still untested and may prove unworkable.

In addition, the use of flexible workers by end-user clients by no means denies permanent workers of job opportunities. Clients engage contractors' services for specific and often short-term needs that would not be appropriate for a permanent employee.

"Freelancers must continue to be entitled to tax relief on genuine expenses, even if they use umbrella companies," says Brazier. "The government has pledged not to interfere with expenses for freelancers using their own limited companies, and there can be no justification for attacking umbrella workers either.

"Employees of large consultancies can still claim expenses; independent freelance consultants must not be put at a competitive disadvantage."

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John Brazier, Managing Director, PCG

Possible solutions

The PCG has suggested four potential solutions to be adopted by HMRC and the Treasury in combating the umbrella companies that are abusing the current expenses and dispensation regime.

These comprise the following, which are not necessarily mutually exclusive:

- o HMRC tightening-up its enforcement activities, for which powers are already in place and further legislation would not be required
- o Removing all [dispensations for umbrella companies](#), and grasping the nettle of defining umbrella companies in statute – a challenge as umbrellas share many characteristics with consultancies
- o HMRC providing dispensations to umbrellas that only use genuine employment contracts as contracts of services, although this could prove problematic with the current lack of a definition of employment status
- o Altering the definition of what constitutes a 'temporary workplace', with a designated permanent workplace such as a home office specified in expenses claims, which HMRC can use as part of the verification process when checking on compliance.

The last option would mean the [24 month rule](#) no longer applies to contractors and freelancers, although it would still apply to employed workers.

Double-whammy for Treasury?

Despite all the effort and money going into this current Treasury consultation, many question the very reasons for having it in the first place.

The concern is that the Treasury and HMRC [may end up scoring an own goal](#), potentially prompting a mass migration of contractors into limited companies; the results would almost certainly be the double-whammy to the Treasury of increasing HMRC costs and decreasing tax revenues.

And given the current economic climate, where the amount of money that the Treasury could hope to claim is a small fraction of a percent of the sums currently being thrown at the banks, surely the government has greater concerns than attempting to over-regulate and restrict the contracting sector.

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