

Contractor T&S changes: Who is liable for unpaid tax and NICs?

Umbrella contractors who claim travel and subsistence (T&S) expenses tax relief and are subsequently determined by HMRC to be under '[supervision, direction or control](#)' (SDC) will not be liable for any outstanding Income Tax or National Insurance Contributions (NICs). This is unless they are found to have deceived their umbrella through the provision of incorrect information.

Instead, the liability will rest with the umbrella company, whose directors will be pursued by HMRC if the company can't afford to pay the outstanding amount, due to debt transfer rules. This added financial risk for umbrella companies and their directors has prompted some firms not to offer T&S expenses to their contractors.

Fortunately, [SDC Testing](#) allows umbrella companies to continue processing contractor expenses without exposing themselves to financial risk. The new solution, developed by ContractorCalculator and [Qdos](#), helps ensure that the umbrella company is conducting due diligence whilst also guaranteeing compliance with SDC.

"SDC Testing is fully automated, meaning it drives down the in-house processing cost for umbrellas by batch testing thousands of contractors at a time," explains ContractorCalculator CEO [Dave Chaplin](#). "It's also the safest compliance solution on the market, as umbrellas can also insure the contractors they choose to process expenses for."

T&S and SDC - in a nutshell

In April 2016, legislative changes meant contractors employed via an intermediary and deemed to be subject to the supervision, direction or control of anybody in the supply chain would [no longer qualify for T&S expenses tax relief](#).

HMRC guidelines stipulate that the intermediary must prove that SDC doesn't apply to a contractor's working arrangement before they can compliantly process their expenses. However, HMRC doesn't explain what evidence it will accept as decisive.

Experts claim that firms that aren't seen to have exercised due diligence are likely to face long HMRC investigations, whereas umbrellas that can prove that they have taken steps to ensure compliance will attract less attention from the taxman.

Notably, HMRC legislation refers to SDC applying 'as to the manner' [\[ESM2055\]](#) in which the contractor works. This suggests that a contractor can be subject to supervision to some extent, provided nobody has the right to provide them with detailed instruction as to how to carry out the task or move them from task to task to work on other things not originally agreed in the contract.

Non-compliance - who's liable?

Umbrella contractors who claim T&S and are honest about their affairs have little to worry about. They will not be liable for tax back payments if they are later found to be under SDC, unless they are found to have tried deception to demonstrate the SDC test isn't met.

As it is up to the intermediary – or umbrella company – to prove that the SDC test isn't met, if the evidence be deemed unsatisfactory [\[ESM2037a\]](#) HMRC will recover Pay As You Earn (PAYE) Income Tax and NICs due from them. Debt transfer rules mean the umbrella company directors will be deemed liable if the company is unable to pay, with the agency that engaged the contractor next in line after that.

Whilst honest contractors have nothing to lose, the financial risk imposed upon umbrella companies and their directors has led some to opt for low cost models that don't offer T&S. Those that continue to process expenses will need to have proper compliance processes in place.

Contractors who are legitimately outside of SDC will be able to claim T&S relief, but they will need to choose an umbrella that is willing to continue providing a solution for them.

SDC Testing: How does it work?

The new online SDC testing tool from ContractorCalculator and Qdos provides a risk-free solution that enables umbrella companies to quickly and efficiently process thousands of contractors to determine their SDC status. Underwritten insurance for contractors whose expenses are processed is also provided. This insulates both the umbrella company and the agency against any negative judgment by HMRC.

The umbrella company registers for SDC Testing, and can then invite contractors to take its automated compliance test. The contractors receive an email from SDC Testing, asking them to complete the test, consisting of over 50 questions. Their answers are then analysed using a bespoke algorithm, based on expert knowledge of tax and employment legislation and case law.

The contractor will then receive an assessment, with a risk profile and compliance recommendations. The umbrella company will use this to determine whether or not to process the contractor's expenses.

To guarantee all-round protection, umbrellas are also able to insure contractors who are claiming expenses. The insurance package includes protection against a negative judgement in a HMRC investigation, as well as a rigorous tax defence.

SDC Testing: What are the benefits?

With its combined test and insurance offering, SDC Testing is the only solution that can provide umbrella companies with complete protection. Developed by industry experts, it offers guaranteed compliance to contractors without incurring significant overheads for umbrella companies who wish to continue processing contractor expenses compliantly.

This is a far superior alternative to resource intensive manual testing, enabling risk-averse umbrellas to continue to process expenses for their contractors with minimum risk and hassle. In turn, more contractors can continue to claim the T&S expenses relief they deserve whilst the umbrellas strengthen their marketing position.

Firms can also integrate their systems with SDC Testing via an API, enabling them to minimise their workload further by integrating back office systems, further reducing the administrative burden.

SDC Testing: Security of data

SDC Testing's system is created in the cloud on the secure platform Amazon Web Services AWS, as used by many major blue chip companies, including Netflix. All data is backed up and fully retrievable at a later date.

The tool also includes a 'Candidate Privacy Option' for umbrellas who don't wish to share their contractor's details. This means umbrella companies can import thousands of contractors using only a unique worker reference. Each contractor will then have a unique test link, which umbrella firms can distribute using their own systems.

Firms that do enter the workers email into the SDC Testing tool can take advantage of the automatic emailing of tests and reports to their workers.



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Dave Chaplin is a former IT contractor in the City of London, and is founder and CEO of ContractorCalculator, and author of the Contractors' Handbook.

Started in 1999, ContractorCalculator (this site) is the leading independent website for the UK contracting industry – most of whom are highly skilled knowledge workers. [Read Full Profile...](#)

[View all our experts](#)

If you are a contractor, please ask your umbrella company to [contact the SDC Testing team](#) to discuss them making use of the system so you can continue to claim expenses. Alternatively, if you are an umbrella company looking for a safe, cost-effective method of processing SDC compliance for all your workers, please [get in touch](#).



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