

Contractor expenses should stay, as HMRC's proposal branded unworkable at tax summit

Contractors' rights to travel and subsistence tax relief should remain, and HMRC's proposals to restrict it are flawed. These were the conclusions of contracting sector experts gathered in Edinburgh on 15th September 2015 for the inaugural [Self-Employment Tax Summit](#).

Representatives from the Office of Tax Simplification (OTS), the Association of Independent Professionals and the Self-Employed ([IPSE](#)), and the Freelancer and Contractor Service Association ([FCSA](#)) were all in attendance at the event coordinated by [FreeAgent](#) to discuss HMRC's proposed legislation changes.

HMRC is proposing to restrict tax relief on travel and subsistence expenses for limited company contractors and [umbrella company contractors](#) who are under the [supervision, direction or control \(SDC\)](#) of their clients. The proposal closes on 30 September 2015.

Contractors are at risk from flawed proposal

Delegates identified a number of key issues with the proposed solutions put forward by HMRC. Of all the concerns discussed, one of the most prominent was the disadvantageous position that the removal of travel and subsistence relief would place contractors in, when compared with permanent employees.

"There was a general consensus that the concept of the level playing field - which is what the government has said it's trying to achieve - is actually fundamentally flawed, because employees don't bear the same level of risk as contractors," explains Emily Coltman, Chief Accountant at FreeAgent, who highlights risks associated with contracting such as acquiring contracts and chasing payments.

Contractors have different working patterns to employees

This disadvantage is most pronounced when considering the substantial distance that contractors often have to travel for work. While contractors are currently able to recoup losses on travel, the proposals would remove this right for many contractors, reducing their income in the process. FCSA CEO Julia Kermode considers this to be a major oversight on HMRC's part:

"The nature of the flexible workforce is that they tend to travel further afield than permanent employees, and it's with regards to this difference that I don't think HMRC has fully understood the impact that they could have. Tax relief is not the reason people choose to be contractors, but it does provide fairer compensation for the length of time spent travelling and the additional distance spent travelling to these short-term assignments."

There is abuse, but not by genuine contractors or service providers

Besides the obvious flaws evident within the current proposals, tax summit panellists acknowledged that abuse of current travel and subsistence rules does take place, and further work is required to find a solution that effectively tackles abuse whilst simultaneously providing protection for contractors who are genuinely flexible.

While it was agreed that the proposed legislation could prove effective in acquiring its primary aim, HMRC has been accused of taking a heavy-handed approach which would put a significant amount of contractors at risk in a bid to counter tax relief abuse.

"Yes there is abuse in this area, but equally, implementing this proposed change would be like using a sledgehammer to crack a walnut," claims Coltman.

What are the complications with 'Supervision, Direction or Control'?

HMRC's proposals say that relief on travel and subsistence expenses will be removed for any worker who is subject to Supervision, Direction or Control (SDC), or just the right of SDC, by the client or anyone in the supply chain. This test was heavily discussed at the summit. Delegates also argued that SDC rules compromise the very nature of contracting.

"We felt that SDC is very difficult to define," highlights Coltman. "It's hard to apply it in practice because nearly all projects undertaken by a contractor would be subject to some element of SDC, because you'll have a client who's going to be looking for a desired outcome on their project. The question is, how on earth do you find projects that aren't caught by SDC?"

Another issue raised is that SDC could change over the lifespan of a project. This means that contractors may not be able to determine whether the right to claim expenses exists until halfway through a project's lifespan, or indeed until it has finished.

Application and definition weren't the only criticisms of HMRC's SDC model. FCSA has voiced opposition to the use of SDC within the proposed legislation, as Kermode highlights:

"We think that SDC is largely irrelevant in terms of looking at whether someone should have tax relief on their travel, or not. It's vague, and nobody really takes on a worker without giving them some idea of what they want from them, so the whole test feels really arbitrary."

Overall, numerous issues with SDC were raised, with delegates concluding that it would be impossible to police as HMRC don't have sufficient resources to enforce it.

It was also deemed to be too much of a strain on accountants, who would struggle to give their clients a consistent message due to the varying circumstances of each contract. Further, the cost of issuing advice would be counter-productive for the contractor when considering the amount of tax at stake.

Who is liable for any unpaid tax?

The issue over who should be considered liable for deciding whether a circumstance falls within SDC has also proven contentious. One avenue that HMRC have been exploring is issuing liability to either the end engager or the client.

This has prompted concerns from FCSA that contractors could lose out as risk averse clients may take the default view that travel and subsistence relief would not be applicable for fear of getting it wrong and ending up being liable for the unpaid tax.

Intermediaries are another possible option, according to HMRC, in which case there is no guarantee as to how compliant the intermediary would be, and whether they would reach the correct conclusion in the worker's best interests.

Kermode insists that joint and several liability throughout the supply chain, coupled with a statutory excuse, would be the fairest application of this rule, should it come into play: "The real concern we have is that, by picking one element of the supply chain to be responsible for liability, it almost provides a weak link in the chain before you've even started a new regime. By statutory excuse, in law if you have acted in good faith based on the information available to you, you shouldn't be liable."

The wider impact on the UK's competitiveness and attractiveness

A major concern is the very real possibility that these measures, if implemented, could act as a deterrent for contractors across the country, as Coltman highlights: "[The proposed changes] could possibly drive people away from contracting.

"One thing that I personally think it is important for the government to remember is that for every contractor you have one fewer person claiming employment benefits."

At the very least, the restriction of travel and subsistence relief would perceptibly lessen the inclination on behalf of contractors to seek work further afield, the knock-on implications of which appear to have been overlooked by HMRC.

"Broadly, HMRC doesn't understand the value of the flexible workforce, or the impact that they have," claims Kermode. "Without that tax relief, we're very concerned that a number of workers will just not take the contracts that are further afield. In which case, it could lead to localised skills shortages, especially in less heavily populated areas."

The proposed setbacks to the contractor workforce couldn't come at a worse time for the economy as a whole. [Recent figures from the Office for National Statistics \(ONS\)](#) have highlighted that the UK output per hour and output per worker are both 20% below that of the other major G7 economies, representing the widest productivity gap since estimates began in 1991.

For Kermode, tightening the purse strings over a workforce which was largely credited with dragging the country out of recession could have serious adverse effects.

She concludes: "We know that UK productivity is now a political issue, and I'm really concerned that damaging the flexible workforce could cause further damage to our productivity. We need to up our productivity, and one way to do that is to enable businesses to be agile and to continue benefitting from contractors."

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