

Umbrella company contractors could lose ongoing expenses tax relief from April 2016

Contractors who operate through umbrella companies may have restrictions imposed upon their ability to claim tax relief on travel and subsistence expenses on an ongoing weekly or monthly basis, when the March 2015 Finance Act comes into effect in April 2016.

This is due to a surprise clause that will prevent umbrella contractors from claiming legitimate tax relief at source. According to Freelancer and Contractor Service Association (FCSA) CEO Julia Kermode, this means that, from next April, any expenses will instead need to be claimed at the end of the tax year via a self-assessment tax return.

"The clause was inserted and announced in March 2015 without allowing time for a consultation, and it has since surfaced that HMRC amended the legislation with the deliberate intention to encompass umbrella contractors."

The FCSA has been lobbying MPs to oppose the legislation, and [Lord Palmer of Childs Hill](#) recently appealed for a repeal to the amendment in the House of Lords.

What does the clause say?

The clause, within [Finance Act Section 289A](#), identifies workers for whom: "the amount of other general earnings or specific employment income received depends on the amount of the payment or reimbursement," as being amongst those operating a 'salary sacrifice arrangement'.

[Umbrella company contractors](#) fall into this category, which according to the legislation would mean they would be unable to continue claiming expenses at source. Kermode believes that HMRC has intentionally tweaked its definition of a 'salary sacrifice arrangement' to encompass umbrella contractors: "If you check HMRC's definition of salary sacrifice on its website, it's different to the definition that is provided for the purposes of this specific part of the law."

Underhand tactics from HMRC

The original draft legislation was published on 10 December 2014, and didn't feature the clause in question. The clause was then inserted on 24 March, two days before the Bill was passed by the Houses of Parliament on 26 March, without leaving sufficient time for a consultation to take place.

HMRC has itself conceded that it always intended to encompass umbrella contractors within its wording, and made the late amendment after feedback from the initial draft made it apparent that it didn't capture umbrellas.

However, as Kermode highlights, the Treasury's intentions weren't made clear within its original consultation document: "HMRC's intention by bringing in this clause was never clear. If they intended for it to have such a significant impact as it is set to have, it really should have been made clear and there should have been a proper consultation."

What does this mean for umbrella company contractors?

FCSA estimates that somewhere in the region of 400,000 umbrella company contractors will be left out of pocket as a result of the new measures, with calculations suggesting that the impact will be of greater significance to many families than the loss of tax credits.

This is expected to cost umbrella contractors between £60 and £120 per week on average, which is equivalent to a reduction of income by more than £3,120 each year. Whilst contractors will be able to eventually recoup expenses via self-assessment, they will be out of pocket as they wait for the end of the tax year.

"It also defies the notion of working through an umbrella company, of which the primary incentive for contractors is to avoid having to deal with tax affairs," Kermode adds.

It is anticipated that many contractors will ultimately fail to make a claim at all. Further costs could also be incurred to contractors who may now need to employ an accountant, whilst HMRC will also feel the sting in the form of many hundreds of thousands of additional tax returns each year.

Request for a repeal

Umbrella contractors and FCSA have received substantial support on this matter. Notably, Lord Palmer brought the issue to light in the House of Lords. Whilst calling for the legislation to be repealed, [Lord Palmer argued](#):

"Umbrella companies are a critical element in supporting the UK's flexible workforce, offering workers the platform to work without the worry of running their own companies while offering employers, directly or through an agency, the flexible workforce they require."

"Lord Palmer clearly understands the damage such legislation will do, not just for umbrella employers and contractors but on the UK economy as a whole," notes Kermode. "I hope ministers will pay attention and I look forward to continuing our discussions with policymakers over the coming months."

What can umbrella contractors expect to hear next?

"Getting a Lord to deliver the speech is a real coup, but it is unclear on what the next steps might be," concedes Kermode. "There was no direct response from the Government minister during the session as time ran out. Lord Palmer has suggested that this clause be considered for repeal or delayed implementation so it is a case of seeing if that will happen."

Meanwhile, FCSA is keeping up the pressure on all of the various MPs it has developed relationships with, and is also pursuing HMRC for maladministration, on the basis that the intention to target umbrella contractors through the legislation was not clearly communicated to the sector.

"HMRC has shown a total lack of willingness to engage with FCSA and they haven't accepted the economic impact of the Finance Act," concludes Kermode. "Either way, we need to keep on banging the drum and drawing attention to it."

"The biggest frustration is that there's no fiscal impact of it. Deferring payment of tax relief until the end of the year doesn't make any difference to the Exchequer at the end of the day, so I cannot understand why contractors can't continue to claim it at source."

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