



Mobile Worker Travel and Subsistence Schemes – HMRC compliance activity

In recent years there has been a growth in the use of salary sacrifice arrangements which successfully utilise employee tax/NIC exemptions to create enhanced remuneration packages, at little (even reduced) cost to the employer. In these recessionary times, this is good news for both employer and employee, particularly where using such arrangements can assist in retaining key workers and even avoid redundancies. However more recently, in an attempt to push the boundaries of such tax planning, there has been an increasing number of schemes which fail to meet the practical operational requirements necessary to obtain the tax/NIC 'breaks'. One such area relates to what may commonly be described as "Travel and Subsistence Schemes" or "Mobile Worker Schemes".

Are legitimate tax and NIC savings possible on 'mobile worker' schemes?

Tax and NIC savings are only likely to be achieved if there is an effective P11D Dispensation covering travel and subsistence payments (often based on scale rate or 'round sum' amounts). Such scale rate sums may then be paid with a 'reduced' wage (based on a salary sacrifice arrangement), which provides an increase in the overall take home 'pay' for the employee. In addition the employer (or the party responsible for the employer's NIC) saves costs as earnings are also reduced for NIC purposes. Where workers are naturally site based, this type of arrangement can be effective, provided there is an appropriate balance of pay and expenses, and the latter amount truly reflects the actual expenditure typically incurred by the workforce as a whole. In particular, these arrangements may be welcomed by many employees who previously have had to fund this type of expense out of their own net pay.

Ineffective schemes

However, HMRC has become increasingly concerned with schemes which they believe falsely implement 'overarching' employment contracts. These are commonly marketed by employment businesses and umbrella companies as tax and NIC saving arrangements for the workers, although the driver is often the employer's NIC which can be saved by the payer. The overarching contract may purport that the worker has been engaged to perform a succession of different tasks at different locations (i.e. having a variable work pattern typical of a site based or mobile worker). However if in reality the workers are usually taken on for a succession of separate stand-alone periods of employment, HMRC considers such arrangements ineffective.

HMRC has therefore undertaken compliance reviews to identify and take action against those companies it sees as "operating in contravention of tax, National Insurance or national minimum wage legislation". In addition to identifying potentially ineffective overarching contracts, and possible unlawful management processes, the key areas of concern appear to be:

- Invalid or wrongly applied P11D dispensations
- Practical failure to comply with the specific terms of the P11D dispensations
- Expenses being 'reimbursed' tax free (e.g. based on 'scale rates' or 'round sums') without that level, or any, expense being incurred
- Possible illegal deductions from pay
- Failure to meet national minimum wage payments

HMRC has made it clear that it will continue its compliance activity in this area with some determination, and indeed is working with other Government Departments to first of all identify and then penalise those businesses failing to comply with the relevant legislation. Part of this activity is 'working' with end users to advise them of the issues, and of course the potential consequences, including the "risk of damage to their reputation and their business if HMRC takes action". There is no doubt that HMRC is serious about tackling what it sees as abuse of the system, leading at the very least to a loss of revenue to the Exchequer.



HMRCs actions build on the platform established with previous legislation e.g. for Personal Service Companies ("IR35"). In addition, the Managed Service Companies (MSCs) legislation introduced in 2007 provides a possible route for HMRC to lift the 'corporate veil' and pass any unpaid liabilities up the supply chain, if the 'MSC' itself were to become insolvent.

HMRC now encourages whistle blowing

Interestingly, with this compliance activity, HMRC has asked individuals and businesses (e.g. workers, end users etc.) to provide details in confidence either through a nominated helpline or specific e-mail address. With this and other sources of information, HMRC will be able to identify cases to investigate further and take appropriate action where compliance failures have occurred.

What action should be taken?

Any organisation which either hires or uses temporary or 'mobile' workers should seek to identify the risks which may be faced if HMRC decides to investigate its engagements.

- The starting point would be to identify the typical contracts held between 'end users' and employment businesses, umbrella companies etc. These will usually be for the provision of workers on projects or sites where the need is perhaps of a temporary (which could be months or even years) nature, and could involve specialists such as engineers, IT consultants, construction workers etc.
- You will also wish to understand the typical contractual arrangements of the workers themselves (whether or not you hire them personally). 'End users' of services will wish to avoid the potential of being classed as the deemed employer (and with this all the obligations which follow), or that the payer is deemed to be an 'MSC',
- If you are satisfied that any overarching contracts genuinely represent the engagement of mobile/site based workers, then it may be possible to maintain (or introduce) tax and NIC savings from mobile worker salary sacrifice schemes. However, in such situations it is vital that HMRC dispensation is obtained before any sums are paid tax/NIC free. Remember that dispensations only cover the circumstances as stated and, without specific HMRC agreement to the contrary, are not transferrable from one business to another (a fact often conveniently 'overlooked' by umbrella payroll companies).

Whilst the above stages should put you in a position to reduce risks of significant exposure, there still remains the question of type of organisation you are doing business with? As part of the review this may reveal certain characteristics of these businesses which for themselves would put them in a very high exposure position and at least by association have a detrimental impact on your own business.

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