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Umbrella Contractors NMW Expenses Loop Hole To Close

Following a recent HMRC consultation looking at how some umbrella providers are using a loop hole in the legislation to boost the expense claims for their workers; amendments to the rules will come in to effect in January 2011 to prevent this action.

HMRC released a consultation earlier this year after they became aware that a number of umbrella providers were using a loop hole in the National Minimum Wage rules to allow excessive expenses claims.

Where this was in operation it meant that many workers were being paid a salary below the National Minimum Wage and the provider was using the expense claims to bring the overall income in line with NMW. HMRC confirmed that was never the intention of the NMW rules and made clear they would take steps to prevent this from continuing.

They have announced that the rules will be amended from January 2011 preventing this practice from continuing.

We would like to confirm that Professional Passport audited and approved umbrella providers have never operated such schemes.

If you have operated through an umbrella who offers such a scheme this is likely to be considered high risk and will probably get close attention from HMRC. Whilst technically the loop hole existed, many of the provider schemes fell short in their overall operational processes and procedures and could leave contractors exposed to HMRC enquiries; in extreme examples providers could even be caught by MSC legislation leaving both contractors and recruitment companies exposed.

Contractors should ensure that their umbrella provider pays them a minimum taxable salary equivalent to the numbers of hours worked multiplied by the National Minimum Wage, currently £5.80 for all workers aged 22 and over.

Allowable expenses can only be allocated where additional funds are available after this payment has been made.

We have seen an increasing number of pay advice slips that fail to detail the hours worked and just show pay as a unit; in all cases you should ensure you receive confirmation from your umbrella that you are being paid the NMW before any expenses are allocated.

Where a provider operates the expenses loop hole it can appear that the contractor is receiving around the same amount of total take home pay; what contractors are often unaware of is that they are potentially missing out on credits towards state benefits and pensions. Furthermore it is the provider that typically benefits the most as many retain the additional employers National Insurance savings these schemes provide.

If you are concerned and want independent advice on your current arrangements professional members can call our independent **members helpline**.



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Don't Leave Yourself Exposed

With announcements on the review of IR35 it is important that contractors do not ignore the current rules.

We are seeing, almost on a daily basis, announcements from Government which promise reviews of current rules or changes to existing legislation. During these fast changing times it is easy to interpret these as a sign that the existing rules are now irrelevant and can be safely ignored - this is simply not the case.

There has been a frenzy of press activity around the proposed review of IR35 with suggestions ranging from the current rules remaining through to a complete abolishment; the truth is no one knows what the outcome will be.

The Government has made it clear that there will be a review of the rules carried out by the newly formed Office of Tax Simplification, and they will consult on this during the summer months with the objective of producing a report and recommendations in time for the Budget in 2011.

The reality is that the current rules are still in place and even if these rules are abolished; as a result of the review, HMRC still have powers to go back up to 6 years and apply the rules that were in place at that time.

Whilst everyone is united in wanting a simple, clear and definitive approach resulting from the review; until the full arrangements are published, second guessing could prove a costly mistake for

contractors.

Our approach to the review is that it must go beyond a simple review of IR35. The principles of IR35 are now embedded in many other pieces of legislation, including the very recently announced incentive to new employers to save employers National Insurance announced in the latest budget, and these other pieces of legislation must also be considered as part of the process.

The Agency Workers Regulations due to come in to effect in October 2011 also contain the principles of IR35 in aspects of the tests which will also need to be considered as part of the overall review.

What is clear is that the review will not be as simple as just reviewing the IR35 rules, any amendments will have wide reaching implications across many aspects of legislation and these will have to be addressed at the same time.

As we have covered previously, we must be careful what we wish for as our belief is that abolishing the rules whilst still achieving the Government's stated objective of a revenue neutral position is likely to result in many contractors being worse off.

Many of the alternative options considered at the time of implementing IR35 are now far more workable than before.

For example; one considered approach was to put National Insurance on dividends paid by closed companies. At the time this would have had far reaching implications catching many more companies than originally intended. Now with Q6 on P35's and the additional questions on SATR this could be a more targeted approach and result in many contractors being worse off.

We must be careful what we wish for and simply wishing for IR35 to be abolished may not prove to be the utopian position.