

Umbrella Workers

April saw the introduction of new rules affecting all umbrella company workers.

The rules require the umbrella company to carry out a set of new tests to establish whether expenses would be allowed on each assignment.

There is further complexity as even where expenses could be allowed rules that were announced in 2015 also came in to effect in April. These rules restrict the ways in which an umbrella company can reimburse workers expenses.

We look at each of these rule changes from the contractors perspective and explain what they mean.

Supervision, Direction or Control [SDC]

In the past umbrella providers employing workers through overarching employment contracts where the worker also had the intention to carry out multiple assignments during that employment were able to assess each workplace as temporary. Where a workplace is temporary expenses can be claimed for both travel expenses to the workplace and subsistence costs for meals. In April these rules were changed and a new test was put in place.

Now only those workers that are outside of SDC will have the ability to recover these expenses against tax. [There is also the possibility for some workers who would be assessed as multi-site to also make claims which we cover later.]

The SDC test is that where any aspect of supervision, direction or control in the manner in which the work is carried out is present through any party then the workplace is now automatically deemed a permanent place of work. No expenses are allowed for travel or subsistence to a permanent place of work. This mirrors the tax treatment for full time employees.

The umbrella provider is required to assess the status and where they confirm that there is NO SDC expenses may be allowed. Contractors should be aware that both the umbrella company and its directors can be held liable for unpaid taxes should HMRC successfully challenge this status. As a result the umbrella provider is likely to require significant details from the workers, recruitment company and possibly the end clients to satisfy themselves of this.

Contractors should be prepared to provide detailed information on how they work and the terms of their relationship with their end client to allow the assessment to take place.

HMRC has also made clear statements of their position on this stating that in their opinion workers in education, the health service, users of expensive end client owned equipment as well as lower paid workers are unlikely to pass the assessment.

Contractors should be aware that providing false information could leave them personally liable to any unpaid taxes. Therefore it is in everyones interest to get the assessments correct.

Multi-site workers

There will be some instances where workers caught by SDC could still be able to claim expenses as they would travel to multiple work sites.

If you travel to more than one site during the course of your working day you should be able to claim for some, or all, of the journeys. In simple terms if you regularly attend a 'place of work' then these journeys would not be allowed as this would be seen as your permanent place of work. Journeys from there to other sites could be allowed where they were for a temporary purpose and of limited duration.

Multi-site workers will also have to provide more information on expense claim forms to allow the umbrella provider to demonstrate why they have made the assessments and allowed the expenses.

Claiming Expenses

Those that have used umbrella companies in the past will be familiar with the term dispensation. The majority of umbrella companies operated with a dispensation which effectively allowed the umbrella to relieve certain expenses without the need to report these to HMRC. There was also the ability for the umbrella to pay set amounts for subsistence based on the length of time a worker was away from their home during the working day. Claiming the expenses did require a worker to complete an expenses form and provide basic details but was a relatively simple process. In addition the umbrella would on occasions ask the worker to provide the receipts of expenses so they could comply with the terms of their dispensation and demonstrate that the contractor had actually incurred the costs claimed, a key requirement.

A significant part of this changed in April 2016.

Firstly in a move described as simplification dispensations were removed and employers were then allowed to reimburse certain allowable expenses without having to make reports to HMRC. The set HMRC approved amounts for subsistence remained, known as benchmark scale rates, and these could be paid where the qualification criteria was met. On the surface this did seem to be a simplification BUT HMRC added a layer of complexity specifically aimed at contractors who use umbrella providers.

A further test was added that prevented the reimbursement of expenses where the way they were reimbursed reduced the overall pay of the worker - precisely how the umbrella provider worked. This change suggested that even where a worker was outside of SDC HMRC were still trying to prevent them from obtaining tax relief at point of claim forcing the use of either P87 claims or completion of Self Assessment Tax Returns [SATR].

What you will see in the market place today is a range of offerings by umbrellas aligned to your status under the SDC tests and designed to assist you in making sure you obtain the full tax relief on expenses available to you either at point of pay or

through assisting in making the required returns.

The following is an overview of the arrangements. We accept that you will find variations on these although we have highlighted key points you should be aware of to ensure you are selecting a provider that is operating correctly.

Inside SDC and no expenses

Where you are assessed as under SDC and not multi-site no expenses can be claimed. There are still reasons why you would use an umbrella as you are an employee and therefore will be allowed to claim benefits such as sick pay etc.

Some workers who are able to claim some expenses may still select this model as the level of allowable expenses may not be worth the effort of making the claims.

If you disagree with the assessment made by the umbrella you will be able to make a claim for the tax relief directly to HMRC through a SATR at year end. If you choose to make this claim you should be aware that even if HMRC allow the relief unless you make it clear that you are making the claim as you believe your assignments were outside SDC HMRC could open an enquiry in to your return and where they disagreed with your assessment they could apply penalties and interest as well as recovering the tax relief provided. This could leave you in a worse position than if you had not made the claim. So only make those claims where you have clear evidence to support this.

Outside SDC with expenses

Where you are assessed as outside of SDC or a multi-site worker then there will be some expenses that can be claimed. Depending on the model offered by the umbrella together with the profile of your expenses will determine the most appropriate route for you.

We have provided a summary of the range of options available in the market where expenses are allowable together with what you will be expected to provide as evidence so the umbrella is able to provide this relief. In many cases you could find that it will be a mix of expenses relieved at point of claim and relief through SATR.

Mileage only umbrella

Mileage claims fall outside the test of expenses affecting the overall pay although they are still only claimable if you are outside of SDC or a multi-site worker.

This model is likely to suit workers who travel by their own vehicle to and from temporary workplaces.

Other forms of travel and subsistence payments cannot be relieved at point of claim through this arrangement although you will be able to claim these through your year end SATR.

To make the mileage claim you will be required to document each journey - the start point and end, why the journey had to be made, what you did at the site and who you did it for.

Many providers will automatically allocate the mileage based on recognised route planning software, or at least check your claim against this so you must ensure your mileage claims are accurate.

You will also need to provide fuel receipts as proof that you are using your vehicle for the miles claimed.

NOTE: You are only able to claim this where you use your own vehicle you cannot claim this allowance where you use a vehicle provided by your client.

Where you incur high mileage you may also be asked to provide further evidence of this which could include photos of the speedo readings at the start and end of the week you are claiming for.

In exceptional cases the umbrella may require that you stay away rather than claim mileage. This will mean incurring hotel costs which would need to be claimed back through your SATR. The reason for this is that the umbrella company are your employer and therefore subject to the many duties of care to employee obligations.

The more accurate the information you provide to your umbrella during your onboarding process then the more accurate the guidance that your provider will be

able to supply.

Fixed Deduction umbrella

Where you incur a range of expenses, which could also include some mileage, and these expenses are regular and predictable then this arrangement may suit you.

The important point here is that you need to be clear on what expenses you will incur and these need to be fairly consistent otherwise this arrangement will not work for you.

You would discuss the range of allowable expenses and the profile of these with your provider. You would then agree to a set amount being deducted before any payment calculation and this would be allocated for reimbursement of your expenses. It is always prudent to set this level below the anticipated expenses for periods that will become clear as you read on.

Each week you would submit your expense claim and the provider would be able to provide full relief up to the level of the agreed deduction.

This is a rolling calculation so if you claimed slightly less in a week then any remaining allowance would be brought forward.

If you claim above the allocated amount then in most cases these additional expenses relief would need to be claimed through your SATR.

WARNING: If you set your deductions too high and build a positive balance up in your expense allowance pot this cannot be repaid to you in any way other than through the reimbursement of allowable expenses. So if you let the umbrella at that point you would lose this money. This is not a trick run by umbrellas it is solely a requirement to comply with the legislation. It is for this reason that this model will not suit all workers.

Furthermore you can only change the agreed deduction level on a new assignment with a new client. Extensions or new assignments with the same client do not allow changes to the deduction.

Re-claiming relief from HMRC

Where your umbrella recognises that you will have expenses that will need to be claimed through HMRC they are likely to have a process that allows you to submit them to the umbrella with the supporting evidence. The umbrella will collate these for you at year end and provide you summary information that you require to complete your return to HMRC.

You should also be aware that when claiming the relief from HMRC you only receive relief on the PAYE element there is no relief on national insurance. This is why it is always worth using a structure that would allow you to claim your allowable expenses relief at point of pay as this prevents you from losing that national insurance element.

In theory there are two ways to claim relief for expenses direct from HMRC where the umbrella has been unable to provide this for you.

P87

The P87 is a form that your umbrella can assist in completing and is sent to HMRC asking for relief on those expenses that the umbrella has been unable to provide relief on.

It can only be used for claims up to £2,500, amounts over this must be claimed through the SATR.

Whilst this route is available we have seen many examples of HMRC rejecting these claims that would suggest it is an automatic rejection and therefore it may be simpler in all cases to use the SATR.

Self Assessment Tax Return [SATR]

This is likely to be the most common way that workers will claim their expenses relief from HMRC.

You will need to register to make a return, your provider will assist you with this.

As we have highlighted previously it is important that you only claim relief on those expenses that are allowable otherwise you could ultimately find yourself in a worse position overall. Once again your umbrella will be able to provide assistance and guidance on this.

Re-chargeable Expenses

This is an area that is often misunderstood.

Where you are able to recharge certain expenses back through your agency to the client this does not automatically mean that they are allowable expenses for tax purposes.

Your umbrella will receive this additional money, over and above the funds that relate to your 'paid work' and if you wish the umbrella to assess whether any of these attract tax relief you will need to submit an expenses claim to your umbrella. In reality this is likely to be a duplicate of the one submitted to the recruitment company although it must be on the official umbrella claim form.

The umbrella will then assess the expenses against the rules and can reimburse you with any allowable expenses tax free.

The big difference with these expenses is that they do fall outside the test of affecting pay as the amount is in addition to pay. As a result the umbrella will be able to reimburse allowable expenses across all categories up to the amount of the additional funds received from the recruitment company or client.

Summary

Whilst this was billed as a 'simplification' the majority of workers will see this as anything but simplification. Once again the sector has been singled out for special treatment without any real justification.

These moves do no more than suggest that the government fails to value and understand the real, significant and important contribution made by the UK's army of contractors.