

## Professional Passport Responds to HMRC Discussion Document

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## Professional Passport Responds to HMRC Discussion Document

Professional Passport has submitted a formal response to the HMRC Discussion Document:

Employment Intermediaries: Temporary workers - Relief for travel and subsistence

This response has been produced free of charge, as all our responses are, and aims to target where we believe the real issues are together with proposed solutions to address these issues.

The following is the Executive Summary provided in the response.

### Executive Summary

The Discussion Document is correct in identifying that an issue exists around the claiming of travel and subsistence expenses to a temporary place of work as well as there being issues around the classification of the workplace’s status.

We would however take issue with a number of the points contained within the Discussion Document:

- The data used is historic and fails to recognise changes that have occurred in the market following the introduction of the Offshore Employment Intermediaries Legislation and the Onshore Employment Intermediaries Legislation.
- The reduction in use of self-employment intermediaries in the general contracting marketplace.
- A polarisation of the market into:
  - i. Compliant payment intermediaries operating at the high end of the market working with recruitment companies who operate preferred supplier listings.
  - ii. Non complaint payment intermediaries targeting low paid workers and gaining access to the market through high financial incentives to the recruitment companies operating in these sectors.

- The Discussion Document also fails to recognise the significant changes in the market since the original T&S review was carried out in 2008.
- The increase in workers who consider contracting as a way of life and seek to build a long term career in contracting.
- The suggestion that the issue centres around the use of OACs and the umbrella providers is too simplistic and fails to identify, and address, the root cause of the problem.
- Traditional 'Agency Workers' wholesale movement to payment intermediaries that allow the claiming of significant levels of expenses.

The resulting conclusions not only fail to address this root cause but suggest a 'one size fits all' solution failing to recognise the complex make up and structure within the market.

This approach will damage the market and in certain sectors could drive specialist work away from the UK.

The result of this approach will be to create more unfairness within the market and it is also likely to provide further commercial advantages to non-compliant solutions.

The Discussion Document claims that the proposed actions will result in generating £400m of tax revenues to the Exchequer; these claims are wrong and fail to consider the reaction that will happen in the market should the new rules be implemented.

- The rules deliver £400m if all affected workers are assessed under PAYE, which is the most unlikely outcome.
- This ignores the move of workers from compliant umbrella provider to PSC.

We would estimate that around 50% of workers currently operating in compliant umbrella providers would move to a PSC as a direct result of the proposed rules.

This move of workers will result in a loss of £600m, greater than the predicted gain and it would also impact the predicted gain reducing it down to £200m delivering a net loss in tax revenues of £400m.

This represents the best outcome as it too fails to consider other emerging structures. If we then bring this additional movement of workers in to the equation it further reduces the predicted returns.

- The workers that would move to new emerging structures would result in a further loss of tax revenues estimated to be in the region of £100m resulting in an overall tax loss of £500m.

There are already solutions in the market that do not utilise OACs. We would predict an increase in the availability, and use, of these arrangements if the proposed targeting of solutions that operate with OACs was followed through. This will significantly impact, as we have shown above, the forecast on anticipated returns made within the document.

These emerging solutions also seek to circumvent much of the legislation across the sector that provides employment levels of protection to the workers.

We would go further and suggest that the proposed action is more likely to result in an overall loss in tax revenues of £500m if enacted.

The suggested outcomes will produce a more 'unlevel playing field' contrary to the objectives of moving towards a 'more level playing field'.

### **The problem, as we have identified, that needs to be addressed**

As we illustrate through this response the issue at the centre of the problem is the wholesale movement of 'Agency Workers' into payment intermediary structures that fail to apply the existing rules as intended.

These solutions, primarily targeting the lower paid workers, has resulted in workers previously unable to make expense claims now being encouraged to make claims and significantly reduce their tax liabilities.

Many of the expense claims we see are exaggerated and unchecked resulting in disproportionately high claims on lower incomes.

This also allows the promoters of such arrangements to mask the charges associated with them and provides them with significant revenue streams.

We have reached this conclusion based on a number of key factors:

- The significant increases in enquiries from recruitment companies to Professional Passport seeking our views on moving their 'Agency Workers' to these solutions.
- The numbers of companies that now offer these solutions has increased dramatically and as a result of their relationships with recruitment companies they are now expanding their offerings across all workers within recruitment companies and creating real commercial difficulties for complaint providers. It should also be noted that many of these models do not use OACs.
- The increased media coverage on the schemes designed specifically for low paid workers.
- HMRC's recognition of the issue by releasing statements in an attempt to stop their market penetration.

This wholesale move has also been fuelled by a number of factors that include:

- Large financial incentives offered to recruitment companies to move these workers turning a cost of running a payroll in to a significant profit revenue stream.



- The removal of any employment liabilities or associated costs of employment from recruitment companies.
- A failure in recent Onshore Employment Intermediaries Legislation to catch these solutions within the liability clauses.
- A lack of visible compliance enforcement over three and a half years; the first point that HMRC issued their statements confirming that in their opinion the Pay Day by Pay Day solutions were not compliant.
- A lack of clarity on the application of s339 ITEPA 2003 limited purpose and duration test for temporary workplace status.

This wholesale move of low paid workers is not as a result of any action from compliant umbrella providers as they are unable to deal with lower paid workers.

The use of OACs does not remove the need for the tests on workplace status and therefore cannot be the issue.

Compliant and responsibly run umbrella providers apply these workplace tests and where a workplace fails the tests the workers are prevented from making T&S expense claims.

Our response considers these points in detail and we believe that our recommendations would provide a framework to eradicate this behaviour from the market.

These proposed actions would also result in the right workers being placed in the right structure based on their individual circumstances and in turn create a level playing field as described in the Discussion Document.

Ensuring the workers are in the correct structure, with the rules applied as intended, protects tax revenues. The significant numbers that would return back in to an 'agency worker' category with the resulting loss of the exaggerated expenses will provide significant additional tax revenues.

These recommendations will also not impact workers currently working correctly through the compliant umbrella companies and therefore we would not expect any movement away from these structures. This protects the existing tax revenues from the umbrella workers as they will not be seeking alternative structures that would otherwise have resulted in the reduction of tax revenues.

The comparisons between the returns to workers within the various categories would become more representative of their true underlying circumstances and therefore more relevant and aligned.

We also believe that the recommendations will provide a strong framework to support and encourage the correct compliant behaviour across all sectors of the market.

The recommendations also ensure the correct risk reward balance is in place to apply significant penalties to those that systemically fail to apply the rules as intended.

A copy of the full response can be downloaded using this link:  
[www.professionalpassport.com/pdfs/Response\\_to\\_Travel\\_and\\_Subsistence\\_Discussion\\_Document.pdf](http://www.professionalpassport.com/pdfs/Response_to_Travel_and_Subsistence_Discussion_Document.pdf)