





Call for Evidence:

Umbrella company market







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Terminology

- The following is an explanation of some of the terms that are used in this Call for Evidence.
- <u>A promoter of a mass-marketed tax avoidance scheme</u> generally someone who designs or markets the tax avoidance scheme or is responsible for its organisation. Promoters may use a network of enablers to sell their schemes.
- <u>An enabler of a mass-marketed tax avoidance scheme</u> broadly defined as anyone who plays a part in designing, marketing, managing or financing the scheme.
- <u>Contract of employment</u> Contract of employment means a contract of service or apprenticeship, whether express or implied, and whether oral or in writing. Section 230 of the Employment Rights Act 1996 states that 'employee' means an individual who has entered into or works under a contract of employment.
- <u>Disclosure of Tax Avoidance Schemes (DOTAS)</u> legislation requiring promoters, and in some cases their clients, to notify HMRC of certain arrangements intended to achieve a tax advantage.
- <u>Disguised remuneration (DR)</u> contrived arrangements that pay people amounts that are purported to be non-taxable in place of a salary. These amounts are often described as a loan, annuity, or other payment that is said to be non-taxable. These supposedly 'non-taxable' payments are no different to normal earnings and are, and always have been, taxable.
- <u>Employment agency</u> a business which finds permanent roles for work-seekers with an employer or supplies employers with work-seekers. For the precise definition, see the Employment Agencies Act 1973, section 13(2)¹.
- Employment business a business which finds temporary or contract roles for work-seekers and supplies them to work for, and under the control of, the end-client. The provision of work-finding services (defined in regulation 2 of the Conduct Regulations) is a distinguishing feature of an employment business. For the precise definition, see the Employment Agencies Act 1973, section 13(3)². For tax purposes, such as the agency legislation, these are typically known just as agencies.
- <u>Employment intermediary</u> any person who makes arrangements for an individual to work for a third party or pay for work done for a third party. Employment businesses, employment agencies and umbrella companies are types of employment intermediary.
- <u>End client</u> the party who receives the services of the person supplied to carry out the work.
- <u>Key Information Document (KID)</u> the document which employment businesses must provide to work-seekers when they sign up with them and before any work-finding services can commence. It should set out pay-related information for the work-seeker.

 $^{^{1}\} https://www.legislation.gov.uk/ukpga/1973/35/section/13$

² https://www.legislation.gov.uk/ukpga/1973/35/section/13

- <u>Mini-umbrella company (MUC)</u> a small umbrella company, typically only employing a few workers, set up to commit tax fraud. A full explanation of this fraud is set out in Chapter 4.
- <u>Personal Service Company (PSC)</u> a limited company through which a contractor provides their services. Typically, the contractor is a significant or the only shareholder.
- <u>Promoters of Tax Avoidance Schemes (POTAS)</u> Legislation designed to encourage promoters to change their behaviour voluntarily, or to face an escalating series of sanctions to require them to change their behaviour, supported by information powers and penalties, which affect them, their intermediaries and their clients, including the power to name promoters.
- <u>Umbrella company</u> a business which employs a worker with a view to that worker being supplied to work for, and under the control of, the end-client. There is no statutory definition of an umbrella company for employment rights or tax purposes.
- <u>Umbrella company employee</u> a work-seeker who is employed by an umbrella company in order to complete work for an end client.
- <u>Worker</u> a person supplied to carry out work, typically used in this document to refer to someone seeking temporary work, often through an employment intermediary (sometimes also referred to as a contractor). Please note that this term does not refer in this context to the technical meaning of the employment status 'worker' or 'limb (b) worker' for the purpose of assigning employment rights as set out in section 230 (3) of the Employment Rights Act 1996³.
- <u>Work-seeker</u> for employment law purposes, this refers to the person to whom an employment agency or employment business provides (or holds itself out as capable of providing) work-finding services⁴. Depending on the precise contractual relationships between businesses, the umbrella company (where involved) may be the work-seeker.

 $^{^3}$ https://www.legislation.gov.uk/ukpga/1996/18/section/230

⁴ https://www.legislation.gov.uk/uksi/2003/3319/regulation/2/made

Chapter 1

Introduction

- 1.1 The United Kingdom has one of the most dynamic labour markets in the world. The UK is ranked 4th for flexibility on the 2020 OECD Index of Employment Protection Legislation⁵, and has generally seen a lower unemployment rate than the G7 average over the last few decades⁶.
- 1.2 The labour market has been shown to be resilient in the face of the pandemic and is recovering strongly. At the start of this crisis, unemployment was expected to reach 12 per cent or more⁷. The unemployment level is now expected to peak at less than half of what was initially predicted over 2 million fewer people expected to be out of work than previously thought⁸. The unemployment rate has been falling for nine consecutive releases and is lower than in the US, Canada, France, Italy, Spain and Australia⁹. Job vacancies are at a record high and the total number of paid employees is now at a record high following eleven consecutive months of growth¹⁰. The government's Plan for Jobs and Plan for Growth will help support and create jobs and build a business environment that gets UK businesses hiring and investing again.
- 1.3 In line with international trends, the UK labour market has seen firms and individuals adopt a wider range of ways of working. One such shift over the last decade has been the growth in the use of labour market intermediaries like umbrella companies.
- 1.4 Umbrella companies play a role in the labour market by facilitating the engagement of temporary workers. Umbrella companies employ individuals on behalf of clients and employment businesses. They do not source work for the employee, which is typically done by an employment business further up the labour supply chain. Although workers are employed by the umbrella company, the worker does not provide services to the umbrella company itself. Rather, the workers provide their labour to clients, typically on a short-term basis.
- 1.5 Umbrella companies are responsible for paying salary, deducting tax, National Insurance contributions (NICs) and managing employment rights such as holiday pay, statutory sick pay and workplace pension auto-enrolment. When they are engaged under contracts of employment, umbrella company employees are entitled to benefit from full employment rights subject to qualifying conditions such as length of service. As employees, they should also receive any payments of earnings from their employment after relevant deductions, such as income tax and employee NICs, rather than needing to account for and pay these amounts separately under Income Tax Self Assessment.

⁵ https://www.oecd.org/els/emp/oecdindicatorsofemploymentprotection.htm. UK ranks 4th for flexibility of individual and collective dismissals for workers on regular contracts, and 3rd for workers on temporary contracts.

⁶ https://data.oecd.org/unemp/unemployment-rate.htm

⁷ Fiscal sustainability report – July 2020 - Office for Budget Responsibility (obr.uk)

⁸ Ibid.

⁹

https://www.ons.gov.uk/employment and labour market/people in work/employment and employee types/bulletins/uklabour market/october 2021

¹⁰ Ibid.

Rationale for Call for Evidence

- External analysis and HMRC data suggest that the overall umbrella company 1.6 market has grown substantially¹¹ since it first became popular 20 years ago.
- 1.7 The government understands that, by performing employment services for employment businesses and other businesses seeking temporary workers, umbrella companies may support a more flexible and resilient labour market. However, the increased complexity of the labour market, and the umbrella company model itself, has presented tax and regulatory challenges.
- 1.8 The government wants to encourage a dynamic and flexible labour market and it welcomes innovative business models and new ways of working that support these aims. However, it is important that workers are protected from exploitation and that these new models of working do not lead to unfair outcomes for workers or the ability for some unscrupulous participants to abuse the system.
- 1.9 The government is aware of concerns regarding non-compliance with employment law, including umbrella companies failing to provide employment rights such as holiday pay, and poor market practices, for example, a lack of transparency over pay rates, fees and charges.
- 1.10 Compliant umbrella companies ensure that the correct tax and NICs are paid. However, HMRC is also aware of tax non-compliance within this sector, which will be contributing to the wider tax gap ¹². The overall tax gap is the difference between the amount of tax that should, in theory, be paid to HMRC, and what is actually paid.
- 1.11 HMRC has evidence of different examples of this tax non-compliance including tax evasion – through the use of mini umbrella companies, and tax avoidance through disguised remuneration schemes facilitated by umbrella companies. Disguised remuneration involves individuals being paid partly by amounts claimed to be non-taxable such as a loan. Similar concerns have also been raised by stakeholders, including in response to a Call for Evidence in 2020 on tackling disguised remuneration¹³.
- 1.12 The government recognises the concerns expressed by Parliamentarians and other stakeholders about the risks that abuse of the umbrella company model can pose both to workers and to taxpayers. It is grateful for the representations it has already received from bodies such as the Low Incomes Tax Reform Group and others, as well as the recommendation from the House of Lords Economic Affairs Committee Finance Bill Sub-Committee that it focus on the risks associated with umbrella companies.
- 1.13 The government expects all parties within the labour market to take responsibility for ensuring high standards of tax and employment rights compliance and suitable protection for all workers. This document sets out the action that the government has already taken and is committed to taking in the umbrella company market. For instance, the government has already committed

¹¹ See footnotes 18 - 21

^{12 &}lt;a href="https://www.gov.uk/government/statistics/measuring-tax-gaps">https://www.gov.uk/government/statistics/measuring-tax-gaps

¹³ https://www.gov.uk/government/consultations/call-for-evidence-tackling-disguised-remuneration-tax-avoidance

- to regulating umbrella companies through a new single enforcement body in its response to the consultation on establishing the single enforcement body for employment rights in June 2021¹⁴.
- 1.14 The government wants to ensure it has a detailed and up to date understanding of the market and how it is continuing to evolve, building on existing information received from stakeholders. This includes seeking views on the benefits of the umbrella company model to the flexible labour market for end clients, employment businesses and the workers themselves.
- 1.15 Through this Call for Evidence, the government is therefore seeking views from umbrella companies, their workers, employment businesses, end-hirers, and representative groups and bodies about umbrella company use and practices.

Call for Evidence

- 1.16 The Call for Evidence invites views on a broad range of questions regarding the role that umbrella companies play and their utility in the labour market, as well as the ways in which they interact with the employment tax and employment rights systems. It also seeks views on the government's understanding of the behaviours in the market that are causing concern.
- 1.17 The government is keen that a wide range of experiences of respondents can be captured to give a rounded understanding of the umbrella company market and how it contributes to the overall labour market. This Call for Evidence poses specific questions in chapters two, three and four, which are intended to encourage detailed responses on the government's primary areas of interest. However, respondents need not limit their comments solely to the questions asked.
- 1.18 The government will continue to undertake further engagement with stakeholders during the Call for Evidence process.
- 1.19 The government will publish a summary of responses in due course.
- 1.20 This Call for Evidence is intended to complement the government's commitment to bring umbrella companies into scope for labour market enforcement.

^{14 &}lt;a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/single-enforcement-body-consultation-govt-response.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/single-enforcement-body-consultation-govt-response.pdf

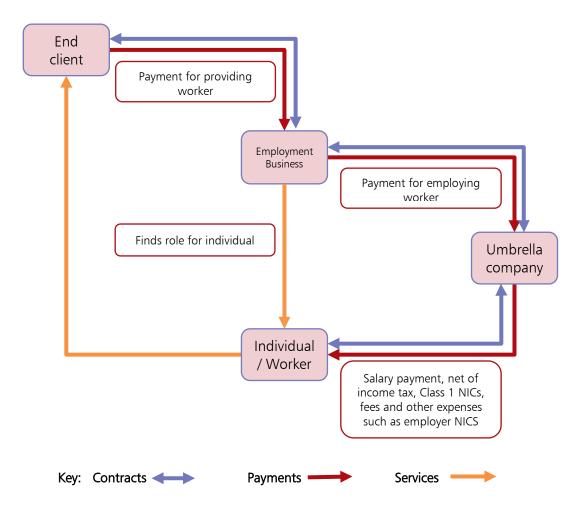
Chapter 2 The Role of Umbrella Companies in the Labour Market

Umbrella companies in the labour market

- 2.1 Umbrella companies are not currently defined in legislation. They derive their income from payments received from employment businesses or end clients in return for employing workers on their behalf and are typically defined as businesses which operate at arms-length from the workers they employ.
- 2.2 Like any employer, umbrella companies take on legal responsibilities related to the administration of employment taxes and the provision of employment rights. However, they are not responsible for finding work for individuals. A worker in this model provides their labour for the benefit of the end client's business, although they are the umbrella company's employee.
- An arrangement involving an umbrella company, an employment business and an end client usually follows these steps:
 - a. A work-seeker approaches an employment business to be found work. The employment business may, at this point, require the work-seeker to be engaged through an umbrella company, potentially from their own preferred supplier list. It is also possible that a work-seeker approaches the employment business and suggests an umbrella company they would like to be engaged through, because of a pre-existing relationship.
 - b. Before the work-seeker can be found work, the employment business is required to provide the work-seeker with a 'Key Information Document' setting out the terms of the arrangement and how much the worker can expect to be paid.
 - c. The umbrella company enters into a contract with an employment business to employ workers the employment business has agreed to provide to an end-client business. The umbrella company will be the worker's employer for the duration of the engagement between the worker and the end client. This will continue for as long as the employment business, that the worker uses to find work, agrees for that particular umbrella company to be used.
 - d. Before the work-seeker agrees terms with the employment business, the employment business is required to provide the work-seeker with a 'Key Information Document' setting out the terms of the arrangement and how much the worker can expect to be paid. At prescribed intervals the work-seeker submits a time sheet to the employment business. The employment business will then tell the umbrella company the amount it needs to include in its invoice.
 - e. The umbrella company invoices the employment business for any work completed at a pre-agreed rate, sometimes known as the assignment rate or limited company rate, plus any reimbursable expenses. The employment business then invoices the end client, including its own fee for supplying the worker, and receives payment.

- f. If there is any material change to the information included in the Key Information Document, for example who is paying the work-seeker, then a new Key Information Document must be provided to the work-seeker.
- g. Finally, the employment business pays the umbrella company for the hours worked by the worker. The umbrella company will retain a sum in respect of its own services. Using the funds it has retained, the umbrella company will pay its direct costs of the employment, including employers' deductions such as Class 1 employer National Insurance contributions (NICs) and employer pension contributions. The umbrella company will also retain an amount to cover holiday pay. The remainder of the payment from the employment business is the worker's gross pay. The umbrella company deducts income tax and Class 1 employee NICs through Pay As You Earn (PAYE) and the work-seeker receives the remaining amount as their net pay.

Figure 1: Typical structure of a labour supply chain containing an umbrella company



Compliance with tax and employment law

2.4 Umbrella companies are legally required to supply employees with a payslip showing deductions from their pay. They may also supply the worker with a reconciliation statement, which shows how the worker's pay is calculated from the rate paid by the employment business. This will show payments that the umbrella company has made or retained to meet its legal responsibilities, including employer NICs and holiday pay. This is received alongside an

employee's payslip, which shows their usual income tax and employee NICs deductions.

- 2.5 HMRC has published guidance providing further information to help individuals understand how and what they will be paid if they are an agency worker or contractor and work through an umbrella company¹⁵. Some workers raise concerns that they have paid the employer NICs from their wages as well as their own employee NICs. Usually this is not the case, with payslips simply reflecting that employer's NIC has been deducted from the fee paid by the end client or employment business to the umbrella company, rather than the worker's gross wages. It is unlawful for employers to withhold funds from their employees' gross pay to cover the employer NICs costs incurred on this pay. If a worker has reason to believe this is happening then they can contact ACAS, the Advisory, Conciliation and Arbitration Service, who are available to provide free and impartial advice to employers, employees and their representatives on their rights and obligations under the relevant legislation¹⁶.
- 2.6 Umbrella company employees are also entitled to the same employment rights that are available to those engaged in more traditional employment. These include holiday pay, National Minimum Wage, National Living Wage, automatic enrolment into a workplace pension, and statutory payments such as statutory sick pay and statutory maternity pay.
- 2.7 Although umbrella companies are required to comply with tax and employment law in the same way as every other employer, there is no specific regulatory framework for these companies as there is for employment businesses and employment agencies. The regulation of both of these models is principally governed under the Employment Agencies Act 1973 and the associated Conduct of Employment Agencies and Employment Businesses Regulations 2003 (more detail on this regulatory framework can be found in Chapter 3). The government has already announced its commitment to expand state enforcement to umbrella companies by bringing these companies within scope of the new single enforcement body¹⁷.
- 2.8 The government is also aware of efforts to improve standards within the umbrella company market through self-regulatory activity, most notably through independent accreditation body membership. Recognition from these bodies, in which the government is not involved, may require umbrella companies to comply with certain standards and to submit themselves to auditing by the bodies.
- 2.9 The government welcomes efforts by the recruitment and employment intermediaries sector to raise and maintain high standards of compliance, ensuring that workers receive the rights to which they are entitled and that taxes are correctly deducted and paid to HMRC. However, accreditation is not a guarantee of compliance, and the government recognises that membership of an accreditation or other trade body is voluntary. Clients, workers and

¹⁵ https://www.gov.uk/guidance/working-through-an-umbrella-company

¹⁶ https://www.acas.org.uk.

¹⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/single-enforcement-body-consultation-govt-response.pdf

- employment businesses are free to contract with umbrella companies that do not sign up to these standards.
- 2.10 Non-compliant umbrella companies are able to reduce their costs and can consequently offer services at a lower price, giving them a competitive advantage over businesses who do the right thing. As well as reducing tax revenue for public services, tax non-compliance in labour supply chains distorts the market and has a negative impact on other businesses in the sector who are following the rules. Similarly, a failure to provide and pay for the employment rights to which workers are entitled allows non-compliant businesses to undercut those companies that do comply.

Growth of the umbrella company market

- 2.11 The recruitment sector and agency work play a role in the flexibility of the modern UK labour market, helping businesses to meet their fluctuating demand and enabling individuals to choose assignments to meet their needs.
- 2.12 The recruitment sector has evolved with a changing labour market. One area of change has been the ways in which workers are engaged. Rather than being engaged, employed, and paid by employment businesses, increasing numbers of agency workers are engaged through other means.
- 2.13 Other common methods of engaging, employing and paying work-seekers include the use of a worker's personal services company (PSC) and increasingly the use of umbrella companies. External commentators have estimated that the number of employees working through umbrella companies increased from between 300,000 and 400,000 in 2015, to over 600,000 by 202118. Evidence available to HMRC supports this perception of a market growing over time.
- 2.14 In 2008 HMRC estimated that the number of individuals working through umbrella companies in the 2007-08 tax year was around 100,000¹⁹. In 2014 evidence available to HMRC suggested that around fifty of the larger umbrella companies alone employed 150,000 individuals during the 2013-14 tax year²⁰. HMRC analysis suggests that at least 500,000 individuals were employed by an umbrella company in the 2020-21 tax year²¹.
- 2.15 Individuals and businesses may choose different methods of engagement for a variety of reasons, including allocating tax and employment rights obligations to different entities within the labour market.

The role of umbrella companies in the labour market

¹⁸Report by LITRG, an initiative of the Chartered Institute of Taxation: https://www.litrg.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf

¹⁹ Paragraph 4.18: https://webarchive.nationalarchives.gov.uk/ukgwa/+/http://www.hm-treasury.gov.uk/media/F/2/travelexpenses 210708.pdf

²⁰ Paragraph 43:

 $https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/387335/Employment_Intermediaries_-_Temporary_workers__relief_for_travel_and_subsistence_expenses.pdf$

²¹ Umbrella companies that HMRC has identified based on a number of public domain sources and HMRC internal information including from operational work.

- 2.16 The government's understanding is that participants in the labour supply chain may have incentives to operate using umbrella companies because of the perceived administrative benefits that the model provides. The government understands that:
 - <u>Workers</u> may find that some employment businesses and their clients prefer to engage temporary workers through umbrella companies. Under these circumstances, workers may consider they have little choice other than to work through an umbrella company if they want to accept a particular engagement.
 - O However, workers may also choose to enter into arrangements with umbrella companies where they work on a number of short-term employments, to allow them to maintain continuity of employment with a single employer. This is marketed as having several benefits, including meeting the requisite qualifying periods for certain employment rights and making it easier for the worker to present their employment history in applying for a loan.
 - End clients may choose to engage workers via umbrella companies to outsource the administrative costs and responsibilities of employing them directly. This might apply where organisations feel that the duration or nature of the engagement would make it relatively onerous or expensive to become a direct employer and take on full legal obligations in relation to what is often a temporary engagement.
 - Employment businesses may also choose to engage workers they supply to end clients via umbrella companies to simplify their own administrative operations and ensure compliance. This may be linked to the fact that such businesses source work for a large number of individuals, relative to their own size. Tax law requires agencies to treat workers supplied to end clients as their own employees for tax purposes where certain conditions are met²². However, this legislation does not apply where the worker is employed by an umbrella company on behalf of the employment business. The umbrella company is then the employer for both tax and employment rights purposes, allowing the employment business to outsource the administrative costs and responsibilities of meeting tax and employment rights law, while they focus on providing workfinding services.
 - As an alternative to engaging an umbrella company, employment businesses could choose to engage the services of a payroll bureau. Payroll bureaux are businesses which, for a fee, will process payments to workers and make the necessary deductions and returns to HMRC. The payroll bureau's contractual relationship is solely with the business which has engaged them, not with the workers. Payroll bureaux act on behalf of the employer which is responsible under tax law for operating PAYE. If a payroll bureau does not operate PAYE correctly, the employer is responsible for correcting any errors and underpayment of tax to HMRC. This differs from the umbrella

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²² Chapter 7, Income Tax (Earnings and Pensions) Act 2003

company model, where the employment business or end client has no liability to HMRC for any underpayment and the umbrella company will instead be responsible for correcting any errors and underpayment of tax. A payroll bureau plays no role in the provision of employment rights to the worker. These obligations remain with the employment business or organisation employing the worker.

2.17 The government welcomes comment on its understanding of the role that umbrella companies play in the labour market and further specific questions on this are listed at the end of this chapter. The government also welcomes views on whether there are specific sectors for which this model may be well-suited, and whether there are types of employments that umbrella companies are typically used for, for example whether they are used more for higher or lower paying employments.

Changes in relevant tax legislation

2.18 Umbrella companies have existed as part of the temporary labour market for decades. However, there have been a number of changes to tax legislation in recent years which have reduced incentives to structure engagements using alternative structures that had been tax-advantageous or that could enable tax non-compliance, such as personal service companies and managed service companies. A history of the legislative changes in this area is set out in the annex to this Call for Evidence.

Questions

2.19 The government is interested in respondents' views on the place of umbrella companies in the labour market and the kinds of incentives that sit behind their use.

Questions for employment businesses and end clients about their use of umbrella companies

Question 1: Do you represent an employment business, or end-client?

Question 2: In which sector does your business operate, or what type of service does it provide?

Question 3: Roughly how many people does your organisation employ directly and operate PAYE for overall? [micro (0-9 employees), small (10-49), medium (50-249) and large (250+)]

Question 4: If you use umbrella companies, roughly how many people are employed via an umbrella company on behalf of your business each year? Question 5: What factors do you take into account when deciding how to engage staff?

Question 6: If you use umbrella companies, why do you work with them?

Question 7: If you use umbrella companies, does working with them create any advantages? If so, what are they?

Question 8: Does working with umbrella companies create any disadvantages? If so, what are they?

Question 9: Have you noticed any change in the way umbrella companies market themselves and the benefits they offer over the last 5 years? What has changed?

Question 10: Have you considered working with other intermediaries, such as payroll bureaux?

- a. If yes, which other intermediaries?
- b. If yes, why did you decide not to work with them or why did you choose to work with an umbrella company over these other intermediaries?

Question 11: The government has heard concerns about supply chains for labour becoming longer. Do you have views on the benefits and drawbacks of longer supply chains and/or why businesses may find that useful?

Question 12: Do you encourage or require your work-seekers to work through an umbrella company?

- a. Why?
- b. What type of workers?

Question 13: Do you operate a preferred supplier list?

- a. If yes, how many do you use?
- b. If yes, how do you select these?
- c. If yes, why do you use a preferred supplier list?

Question 14: Do you do carry out due diligence on umbrella companies you work with/on your preferred supplier list? How?

Question 15: What proportion of umbrella companies that you work with are accredited by a third-party trade body and which trade body?

Question 16: Do you receive all the required information from the umbrella company to accurately complete the Key Information Document?

- a. Do you independently validate the information received from the umbrella company?
- b. How?

Chapter 3

Employment Rights Issues in the Umbrella Company Market

- 3.1 For the purposes of employment rights, the recruitment sector is regulated directly by three main pieces of legislation. These are the Employment Agencies Act 1973 (the 1973 Act), the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations) and the Agency Workers Regulations 2010 (AWR).
- 3.2 The Employment Agencies Act 1973 draws a distinction between employment agencies and employment businesses. Employment agencies find permanent roles for work-seekers with hirers, whereas employment businesses supply work-seekers to work under the control of hirers on temporary assignments. Different obligations and restrictions are placed on employment agencies and businesses to reflect the different roles they perform in finding work for work-seekers. Therefore, it is employment businesses not employment agencies who work with umbrella companies.
- The recruitment sector is also covered by laws such as the National Minimum Wage Act 1998, Health & Safety at Work Act 1974 and the Working Time Regulations 1998.
- 3.4 The AWR, like the majority of employment law, is enforced by the individual via an employment tribunal where disputes cannot be settled through other means, such as the Advisory, Conciliation and Arbitration Service (ACAS) early conciliation.
- 3.5 The typical tripartite relationship involving the employment business, work-seeker and hirer is more complicated than a relationship between two parties. This could present increased risks for agency workers, but government also recognises that many individuals benefit from the flexibility it offers. Therefore the 1973 Act and the Conduct Regulations regulate the conduct of employment agencies and employment businesses, but not hirers, and set out the minimum legislative requirements they must comply with. Compliance with this legislation and its requirements is enforced by the Employment Agency Standards (EAS) Inspectorate on behalf of work-seekers and hirers. There are also professional bodies that provide additional compliance frameworks for employment businesses.
- 3.6 The government has already taken steps to increase the protections for agency workers, as set out in more detail below.

The government's commitment on umbrella companies

- 3.7 In 2018 the government consulted on the recommendation to bring umbrella companies into scope of state enforcement, and later that year published the Good Work Plan²³. This set out its commitment to expand state enforcement for agency workers to include umbrella companies.
- 3.8 The government reaffirmed its commitment in June 2021 when it published its response to the 2019 consultation²⁴ on establishing the single enforcement body for employment rights. This new workers' watchdog will help the country build back better by taking a smarter approach to the enforcement of employment law. It will make it easier for the vast majority of responsible businesses to comply with the rules, whilst ensuring a level playing field through effective enforcement against those who cut corners and exploit workers.

The rationale for regulating umbrella companies

- Umbrella companies currently fall outside the regulatory framework for agency 3.9 workers' rights that is enforced by EAS: the 1973 Act and the Conduct Regulations.
- 3.10 The government is aware of that there is a lack of transparency for agency workers that are employed through umbrella companies. The lack of transparency primarily relates to the identity of the employer and the amount of pay they can expect to receive for an assignment.
- 3.11 Regulating umbrella companies is a multi-stage process. The government has already taken the first step towards better protecting individuals working through umbrella companies by introducing the Key Information Document (KID) in April 2020.
- 3.12 From 6 April 2020 regulation 13A of the Conduct Regulations came into force. It requires employment businesses to provide agency workers with a Key Information Document (KID) when they register with the employment business and before the employment business provides them with any work-finding services. The KID should provide a range of pay-related information, including the minimum rate of pay the agency worker can expect, who should pay them, how often they are paid and if there are any agreed deductions. Any differences between the rate of pay given to the umbrella company by the employment business and the sum provided to the worker after all agreed fees and deductions will have to be accounted for and explained.
- 3.13 In practice, the KID should be one of the first things an agency worker receives when they sign up with an employment business. An employment business may offer the work-seeker a choice from a range of different methods of engagement. This could include an umbrella company, a standard PAYE model or the option of working through their own PSC.

body-consultation-govt-response.pdf

²³ https://www.gov.uk/government/publications/good-work-plan

 $^{^{24} \, \}text{https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/single-enforcement-particles and the state of the state of$

- 3.14 The employment business is not required to offer multiple methods of engagement. However, where the employment business does offer different methods of engagement, including where there are several different umbrella companies to choose from, the employment business may (but is not required to) provide a KID or KIDs for each method of engagement to give the individual an idea of how any statutory and agreed deductions would affect their takehome pay. At this point, the KID or KIDs would be illustrative and based on estimates. When the individual has selected their method of engagement, they should receive a KID that reflects how they will actually be paid.
- 3.15 The intended effect of the KID is to ensure the individual worker has the information to make a better-informed choice about how they wish to be engaged by improving transparency around the identity of their employer and the deductions that will be made from their gross pay.
- 3.16 Since the KID requirement came into force, the government has not tested with workers whether, and to what extent, this has helped them to better understand what their take-home pay is likely to be. This is something the government would like to test through this Call for Evidence.

Next steps for umbrella regulation

- 3.17 The Key Information Document aims to provide more transparency to workers and to improve their understanding of what it means in real terms to be engaged through an umbrella company.
- 3.18 The obligation to comply with this regulation sits with the employment business who in turn relies on the umbrella company to provide relevant and accurate information in a timely manner.
- 3.19 However, there is still no means by which umbrella companies themselves are regulated, as employment agencies and employment businesses are, though as employers they are still required to comply with wider employment and tax law. If a non-compliant umbrella company causes detriment to a worker, EAS cannot take enforcement action on behalf of the worker. It would be up to the worker to enforce their rights via an employment tribunal.
- 3.20 The government therefore intends to go further, though this will be a multistage process. The next stage to do that will be to bring umbrella companies into scope of the framework that regulates employment agencies and employment businesses which is currently enforced by the Employment Agency Standards Inspectorate (EAS). This will require primary legislation.
- 3.21 EAS will continue to ensure transparency for individual work-seekers by supporting businesses to comply with the KID requirement.
- 3.22 The government will subsequently set out, through regulations, the minimum legislative requirements umbrella companies will be expected to comply with. Once this has been done, inspectors will be able to investigate relevant complaints relating to umbrella companies and seek compliance from them, and where necessary enforce compliance.
- 3.23 The government would aim to address common issues through these regulations including:

- Non-payment of wages and payroll skimming umbrella companies may 'skim' money from payslips or inflate deductions to retain a small amount of the money to which the individual work-seeker is entitled for the hours worked for the end-user.
- Non-payment of holiday pay it is possible that agency workers are not informed of holiday pay to which they are entitled, or the right amount of holiday pay is not paid out to agency workers on request..
- 3.24 The government is also aware that purported 'joint-employment' contracts, where an umbrella company and an employment business both employ the worker, are starting to become a feature of temporary worker supply chains. This type of arrangement makes it more difficult for work-seekers to know what the nature of their relationship is with the employment business and the umbrella company. The government would therefore be interested to hear views about reasons for their use, how widespread this practice is, and the impact on work-seekers.
- 3.25 The evidence gathered through this Call for Evidence will inform the ongoing policy development of potential options aimed at better protecting workers. It will ensure that the government is developing regulations based on the most up to date market practices. Future regulations will aim to protect workers' rights and continue to allow businesses to operate flexibly.

Ouestions

Questions for work-seekers about their experience of working through umbrella companies

General questions

Question 17: Which sector do you work in? For example, hospitality, retail, or IT.

Question 18: How would you describe the main role(s) that you perform?

Question 19: How many umbrella companies are you employed by currently?

Question 20: How many different assignments have you worked while being employed by the same umbrella company?

Question 21: Approximately, what percentage of your annual income comes from roles performed while employed through an umbrella company? Question 22: If you have been working for umbrella companies for more than a year, have you noticed any change in the way umbrella companies market

themselves to workers and the benefits they offer? What has changed?

Questions about working through umbrella companies

Question 23: Do you know which organisation is responsible for your pay, employment rights and employment status?

Question 24: Why do you work for/through an umbrella company?

Question 25: If you have chosen to work through an umbrella company rather than being paid directly by the employment business, why was this?

Question 26: How did you choose which umbrella company to work through?

Question 27: Are you issued with terms or a contract by the umbrella company?

Question 28: Do you receive a payslip from your umbrella company and, if so, do you understand the payslip?

Question 29: Do you have any other feedback on the experience of working through an umbrella company?

Questions about the Key Information Document

Question 30: Do you know who is responsible for issuing the Key Information Document to you?

Question 31: Are you, or have you been, issued with a Key Information Document when you sign up with an employment business for the first time? Question 32: Are you, or have you been, re-issued with a Key Information Document when the information changes?

Question 33: Has receiving a Key Information Document helped you to better understand what you can expect to be paid, at what point and by whom?

Chapter 4 **Tax Non-Compliance in the Umbrella Company Market**

- 4.1 Beyond considerations of labour market regulation, the government is aware of the scope for unscrupulous individuals and organisations to use umbrella companies to facilitate tax non-compliance. These concerns have been echoed by a number of stakeholders and commentators. Key risks cited often include the promotion and marketing of tax avoidance schemes, which seek to use intermediary structures to avoid employment taxes, and fraudulent attacks exploiting generous employer tax reliefs.
- 4.2 Tax non-compliance by employers can carry risks for workers. The government is also aware that businesses that are failing to comply with their tax obligations may also fail to meet their employment rights obligations and vice versa.
- 4.3 The government and HMRC take action to reduce the tax gap and ensure that everyone pays their fair share of the tax needed to pay for public services. Successive governments and HMRC has taken robust action to tackle non-compliance within the labour supply chain. Despite these interventions, the government acknowledges that some individuals and organisations persist in promoting non-compliant structures. This chapter explores some of those areas of tax non-compliance and the action taken to date.

Disguised remuneration tax avoidance

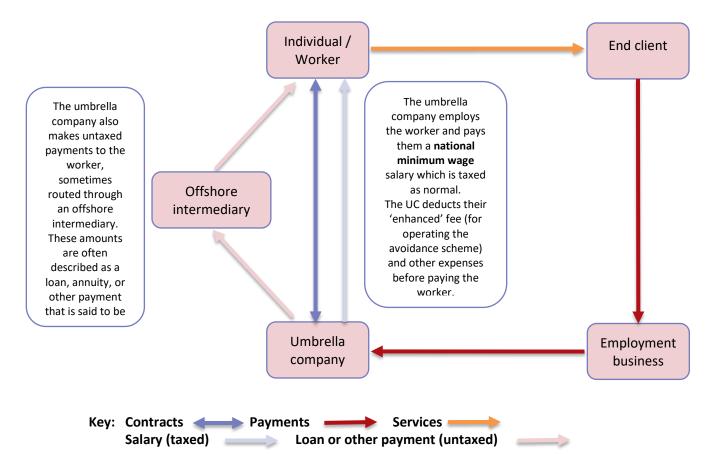
- 4.4 One of the key areas of concern relating to tax is the use of umbrella company structures to facilitate disguised remuneration tax avoidance. Disguised remuneration schemes are contrived arrangements that pay people amounts that are purported to be non-taxable in place of a salary. These amounts are often described as a loan, annuity, or other payment that is said to be non-taxable. These supposedly 'non-taxable' payments are no different to normal earnings and are, and always have been, taxable.
- 4.5 HMRC launched a call for evidence into disguised remuneration in 2020²⁵, and the summary of responses was published in Spring 2021²⁶. This call for evidence focuses on the full range of issues relating to umbrella companies, including, but not limited to, the use of umbrella company structures in disguised remuneration tax avoidance.
- 4.6 The vast majority of taxpayers do not engage in tax avoidance around 99.8% of taxpayers have never used a disguised remuneration avoidance scheme²⁷. The

²⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902667/Tackling_disguised_rem_uneration_tax_avoidance_-_call_for_evidence.pdf

²⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972080/Call_for_evidence_tackling_disguised_remuneration_tax_avoidance_summary_of_responses.pdf

²⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972080/Call_for_evidence_tackling_disguised_remuneration_tax_avoidance_remuneration_tax_avoidance_responses.pdf

- government is committed to tackling tax avoidance, including disguised remuneration schemes.
- 4.7 Disguised remuneration tax avoidance schemes have been in existence in one form or another since the 1990s. These schemes, which seek to avoid employment taxes on earnings and profits, evolved over time and were regularly updated in an effort to frustrate HMRC's efforts to collect the tax that was properly due.
- 4.8 Over the years there has been a shift away from disguised remuneration avoidance schemes targeted at small and medium sized employers. Instead, we now see a much greater proportion of schemes targeted at individuals such as contractors or agency workers.
- 4.9 Disguised remuneration schemes aimed at contractors involve the contractor entering a contractual arrangements which take advantage of a number of legitimate structures, including trusts, partnerships and companies, with many of the most recent iterations of schemes using umbrella company structures as a means of facilitating the tax avoidance.
- 4.10 Umbrella companies may now be the favoured structure for facilitating this type of tax avoidance because of the relative ease with which these companies can be established and subsequently liquidated, often operating with few substantial assets against which a tax charge may be secured. New umbrella company structures may then be established and repeat the non-compliant behaviour, rather than even attempting to defend the pretence that the avoidance scheme worked in law.
- 4.11 A worker can enter a disguised remuneration scheme by signing up with a non-compliant umbrella company which uses such schemes to process payments from a particular engagements. The flow of contracts, services and payments is similar to that outlined in Figure 2 showing a typical structure of a labour supply chain.
- 4.12 Figure 2: Typical structure of a labour supply chain containing an umbrella company operating a disguised remuneration avoidance scheme



4.13 The umbrella company will operate PAYE on a small part of the amounts paid to the worker (typically a national minimum wage salary), while the remaining amounts paid are treated by the umbrella as non-taxable loans or other payments. There is no expectation at the point the loans are entered into that these payments will ever be repaid. These payments are sometimes routed via an offshore trust or other intermediary but can also be paid directly from the umbrella company to the worker. The payments are no different to normal income and are taxable.

HMRC action to tackle disguised remuneration tax avoidance

- 4.14 HMRC has had significant success in tackling avoidance. As a result of the action HMRC has taken on tax avoidance, the avoidance tax gap has shown a steady decline from its peak of £4.7 bn (1.1% of total tax liabilities) in 2005-06 to £1.5 bn (0.2%) in 2019-20. The tax gap from marketed avoidance has also fallen from £1.5 billion (0.4%) in 2005-06 to £0.5 billion (0.1%) in 2019-20. Despite the substantial action HMRC has taken around tax avoidance, the promotion of disguised remuneration schemes has continued, even though most schemes do not work and HMRC will challenge their use.
- 4.15 The government and HMRC continue to take robust action to bear down on the use and promotion of disguised remuneration schemes. This action includes the publication of HMRC's promoter strategy in March 2020, the introduction of a number of measures strengthening anti-avoidance regimes in Finance Act 2021 and, as confirmed in Autumn Budget 2021, a tough new package of measures to clamp down on promoters, which is included in Finance (No2) Bill 2021.

- Among the measures in the Finance Bill is a new, additional penalty for UK entities who facilitate avoidance schemes involving offshore promoters.
- 4.16 HMRC also takes preventative steps to help taxpayers spot tax avoidance schemes so that they can steer clear of them. These steps include:
 - Working with regulatory bodies, such as the Advertising Standards
 Authority, to make sure that all government and regulatory powers are used
 to tackle promoters, and to protect taxpayers
 - Providing information to taxpayers on the pitfalls of avoidance, such as in guidance for contractors and agency workers on how to identify tax avoidance schemes that wrongly claim to increase take-home pay
 - Stepping up its communication to better educate taxpayers so that they are less likely to be tempted to get involved in avoidance in the first place. For example, HMRC is currently running an awareness campaign targeting contractors in certain sectors of the economy where promoters are known to operate. This campaign can be found on Gov.uk: https://taxavoidanceexplained.campaign.gov.uk/
 - Increasingly intervening in real time writing to taxpayers who appear to have started using employment-based avoidance as early as possible to give them an opportunity to get out of avoidance schemes early
 - Working with professional trade bodies, like the Recruitment and Employment Confederation and others, to educate those in the supply chain about how to identify tax avoidance and checks they can make to avoid becoming involved in the supply chain of tax avoidance schemes.
- 4.17 Umbrella companies involved in tax avoidance schemes can receive a fee for each taxpayer signed up to an avoidance scheme.
- 4.18 Depending on their role in facilitating the use of the scheme, umbrella companies may be promoters or enablers or both for the purposes of the anti-avoidance legislation. The Enablers Penalty regime provides for a penalty of 100% of the gross fees received for enabling tax avoidance arrangements. The Promoters of Tax Avoidance Schemes (POTAS) regime also includes sanctions. For example, HMRC may issue a notice requiring a promoter to stop selling an avoidance scheme and a penalty of up to £100,000 may apply if they fail to do so.
- 4.19 The government recognises that the promotion and use of disguised remuneration tax avoidance schemes remains a challenge in the umbrella company market. It also acknowledges the real harm that the continued use of these schemes can pose to workers, the Exchequer and to those compliant businesses operating in the contingent labour market. HMRC will continue to take action to force the remaining small but persistent scheme promoters out of the market.

Mini umbrella company (MUC) fraud

4.20 HMRC is also taking action against the use of umbrella company type structures to facilitate mini umbrella company (MUC) fraud. MUC fraud involves the

disaggregation of a larger umbrella company workforce into a large number of smaller umbrella companies, each typically employing only a few workers, in order to fraudulently benefit from tax reliefs aimed at smaller businesses. As in the case of disguised remuneration, umbrella companies may be particularly useful structures for facilitating this type of non-compliance because of the relative ease with which these companies can be established and collapsed.

- 4.21 In recent years, HMRC has taken forward a range of actions to tackle this type of fraud and challenge those who are involved in it.
- 4.22 The organisation of the MUCs is facilitated by a business (sometimes also known as an outsourcing business). The creation of the MUCs and the complex layers of businesses within the supply chain help to facilitate the fraud. Figure 3 shows how a typical MUC structure fits into a labour supply chain.

Employment End client business MUC promoter Umbrella Umbrella Umbrella company company company Individual / Individual / Individual / Worker Worker Worker Key: Contracts Payments . Services =

Figure 3: Example structure of a labour supply chain involving MUCs

- 4.23 MUC fraud is perpetrated by organised criminals. It presents a threat to the UK Exchequer and creates an uneven playing field for those employment businesses and umbrella companies who follow the rules. Workers in MUCs usually do not know who their employer is and may not be aware of their entitlement to employment rights. They can be moved regularly between MUCs to help maximise profits from the fraud.
- 4.24 MUC fraud typically targets abuse at the Employment Allowance and the VAT Flat Rate Scheme, which are two reliefs for smaller businesses. The Employment

Allowance²⁸ is a NICs relief targeted at smaller employers. It reduces eligible employers' Class 1 NICs liabilities by up to £4,000 each tax year and is available where an employer had Class 1 employer NICs liabilities of less than £100,000 in the previous tax year.

- 4.25 Where companies are part of a group (also known as connected companies), only one company in the group can claim the Employment Allowance. Since 6 April 2020, the total employer Class 1 NICs liabilities must be less than £100,000 in order to qualify for the Employment Allowance. To prevent companies from disaggregating in order to benefit by more than the intended amount of relief, this £100,000 limit also applies to the total employer Class 1 NICs liabilities across a group of companies.
- 4.26 MUC abuse seeks to ensure the company's Class 1 employer NICs liabilities for the year are covered by the £4,000 employer NICs relief provided by the Employment Allowance, so no employer NICs is paid. The Employment Allowance anti-avoidance rule is used to combat MUCs' abuse of the Employment Allowance and HMRC takes action to switch off Employment Allowance claims where it is found a workforce is split up into many small companies with a few employees, to avoid paying employer NICs.
- 4.27 The VAT Flat Rate Scheme²⁹ (FRS) is an optional administrative simplification. Businesses with an annual turnover below £150,000 can join the scheme but must leave the scheme if their annual turnover goes above £230,000. It allows businesses to calculate their VAT liability by applying a fixed percentage to their turnover instead of recording the VAT due and recoverable on each sale and purchase. The fixed percentage varies according to the trade carried out by the business. Businesses with low levels of input tax may get a saving on VAT compared to using the standard method. Under the MUC model, each MUC will have a turnover low enough to join the scheme.
- 4.28 In 2017 HMRC introduced the Trader of Limited Cost legislation, designed to remove an unfair tax advantage from businesses with particularly low levels of input tax. MUCs have been found to circumvent these rules intentionally by declaring an incorrect trade class and not applying the limited cost test. This means they apply a more beneficial and lower percentage rate to their turnover than they are entitled to.
- 4.29 HMRC has a robust approach to tackling tax fraud, with its Fraud Investigation Service focused on investigating and prosecuting criminals who seek to evade tax. HMRC is using both its civil and criminal powers to challenge those who are involved in and facilitating this type of fraud.
- 4.30 HMRC has recently made a number of arrests in relation to MUC fraud and has also taken steps to deny the right to recover input tax in cases where it has established that a business in the supply chain knew, or should have known, that there was fraud.

²⁸ https://www.gov.uk/claim-employment-allowance

²⁹ https://www.gov.uk/vat-flat-rate-scheme

4.31 HMRC has published guidance warning businesses about the risks of MUC fraud in their labour supply chains, which is available at: https://www.gov.uk/guidance/mini-umbrella-company-fraud.

Other risks

- 4.32 The government is aware of other tax compliance risks which can arise in the umbrella company market. Where HMRC finds that the direct tax or indirect tax rules have not been correctly applied, it will seek to recover unpaid amounts due. The examples below are not an exhaustive list.
- 4.33 One such risk is payroll company fraud. Payroll company fraud is the supply of services of genuine employees, to active businesses, from companies purporting to be 'payroll companies' who take the required payroll deductions of income tax and National Insurance contributions from workers' pay, but then fraudulently fail declare or remit this money to HMRC. This can include fraud perpetrated by employment intermediaries, such as umbrella companies. Losses of VAT can also occur from fraudsters setting up bogus supply chains with Missing Traders. Missing trader fraud involves a 'missing' or 'defaulting' trader who deliberately fails to pay its VAT liability for taxable supplies made in the UK30.
- 4.34 Where the 'payroll company' acts as the employer for the workforce, as it would when an umbrella company model is used, there could be little or no risk to the recipient of the worker's services. Because these companies are relatively easy and inexpensive to set up and have limited capital assets, they can be closed down or abandoned when HMRC seeks to recover the sums due. As well as the cost to the Exchequer, payroll company fraud can have impacts for the individuals who have suffered deductions that have not been received by HMRC. HMRC is committed to tackling this fraud, minimising the tax revenue lost and prosecuting those conducting the fraudulent activity.
- 4.35 As set out in Chapter 2, the government introduced changes to the relief available for travel and subsistence expenses in April 2016, to bring people who work through intermediaries, including umbrella companies, into line with the vast majority of workers who cannot claim tax relief for their ordinary commuting costs. HMRC has published guidance to support employment intermediaries to apply these rules correctly. HMRC is aware of claims that some employment intermediaries are not applying these rules correctly.
- 4.36 HMRC is also aware of indirect tax compliance risk in the umbrella company market, for example the incorrect treatment of their supply as exempt for VAT or by attempting to describe their only supply as that of administration/payroll services to the workers. HMRC has successfully challenged this type of non-compliance at tribunal, for example in the medical sector.
- 4.37 As mentioned in the previous chapter, HMRC is also aware of the growing use of 'joint-employment' arrangements by umbrella companies and employment

³⁰

 $https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947102/Missing_trader_fraud_2020.pdf$

business in sectors that are zero rated or exempt from VAT. These arrangements seek to reduce VAT due by purporting to share employment responsibilities between the umbrella company and agency. This is an example of how the market and models offered by umbrella companies change over time.

Ouestions

4.38 This Call for Evidence is intended to complement HMRC's existing strategy for tackling the promotion of tax avoidance schemes by seeking views about the specific risks posed by umbrella company structures and how these risks might be mitigated.

Question 34: If you are an employment business or end client which uses umbrella company employees, do you take any steps to prevent umbrella companies which may engage in tax non-compliance from entering your labour supply chains? If so, what?

Question 35: How could employment businesses or end clients, who use umbrella companies, do more to ensure tax compliance in their supply chain? Question 36: Do you have experience of umbrella companies engaging in any related schemes or models to those covered above, or any other tax non-compliance not covered in this paper? If so, what are they?

Question 37: How could the government support or encourage employment businesses and end clients to do more to ensure tax compliance in their supply chain?

Question 38: What further steps, if any, do you think HMRC and government should take to prevent or tackle non-compliant models outlined in this section?

4.39 To note, while the government is interested in better understanding about how tax avoidance schemes may operate, reports about *specific* tax avoidance schemes should be reported to HMRC through the HMRC Fraud Hotline or online, rather than through this Call for Evidence³¹.

³¹ https://www.gov.uk/government/organisations/hm-revenue-customs/contact/report-fraud-to-hmrc

Chapter 5

Next Steps

- 5.1 As set out in this Call for Evidence, the government recognises the role umbrella companies play alongside other sectors in the labour market.
- 5.2 All parties involved in the labour supply chain have a responsibility to ensure good compliance with tax and rights obligations, and to prevent exploitation. Self-regulation is already well-established and undertaken across the umbrella company industry. However, as set out in Chapters 3 and 4, there remains scope for, and evidence of, significant non-compliance.
- 5.3 The government is prepared to intervene where there is evidence of poor compliance with employment rights and tax obligations. Successive governments and HMRC has already taken robust action to clarify obligations, reduce non-compliance and tackle fraud.
- 5.4 The government has already committed to protect further the rights of agency workers who work through umbrella companies, by bringing these companies in scope of state enforcement³².
- 5.5 The government keeps labour market trends under review, and carefully considers industry and stakeholder feedback. The government will use the information gathered through this Call for Evidence to inform any future policy decisions in this area. It will publish a summary of responses in due course.
- 5.6 Email responses should be sent to: <u>umbrellacompanyevidence@hmtreasury.gov.uk</u>
- 5.7 Questions or enquiries in relation to this Call for Evidence should also be sent to the above email address.
- 5.8 Due to the Covid-19 pandemic, we would request where possible responses are sent electronically. However, if needed, responses can be sent by post to:

Umbrella Company Call for Evidence Personal Tax Team HM Treasury 1 Horse Guards Road London SW1A 2HQ

5.9 The closing date for submissions to this Call for Evidence is 22 February 2022.

HM Treasury Call for Evidence – processing of personal data

5.10 This notice sets out how HM Treasury will use your personal data for the purposes of the call for evidence on the UK's AML/CFT regulatory and supervisory regime and explains your rights under the UK General Data Protection regulation (GDPR) and the Data Protection Act 2018 (DPA).

Your data (date subject categories)

5.11 The personal information relates to you as either a member of the public, parliamentarian, or representative of an organisation or company.

The data we collect (data categories)

5.12 Information may include your name, address, email address, job title, and employer, as well as your opinions. It is possible that you will volunteer additional identifying information about yourself or third parties.

Legal basis of processing

5.13 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop effective government policies.

Special categories data

5.14 Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis for processing special category data

- 5.15 Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.
- 5.16 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop effective policies.

Purpose

5.17 The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Who we share your responses with

5.18 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are

^{32 &}lt;a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/single-enforcement-body-consultation-govt-response.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/single-enforcement-body-consultation-govt-response.pdf

- primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information regulations 2004 (EIR).
- 5.19 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.
- 5.20 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.
- 5.21 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.
- 5.22 Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: https://www.gov.uk/government/organisations.
- 5.23 As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (retention)

- 5.24 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.
- 5.25 Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your rights

- You have the right to request information about how your personal data are processed and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.
- You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
- You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a Data Subject Access Request (DSAR)

5.26 To request access to personal data that HM Treasury holds about you, contact:

Data Protection Unit HM Treasury 1 Horse Guards Road London SW1A 2HQ dsar@hmtreasury.gov.uk

Complaints

- 5.27 If you have any concerns about the use of your personal data, please contact us via this mailbox: <u>privacy@hmtreasury.gov.uk.</u>
- 5.28 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF 0303 123 1113 casework@ico.org.uk

5.29 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Annex

History of tax legislation changes

Intermediaries ("IR35") legislation (2000)

- A.1 The umbrella company model became popular following the introduction of an important set of intermediaries legislation, commonly known as IR35, in 2000. These rules sought to ensure that individuals working through personal service companies (PSCs) who would have been employees if they were directly engaged, paid broadly the same employment taxes as individuals employed directly.
- A.2 Under this legislation, a worker's personal service company (PSC) was required to determine whether the worker would have been employed had they been engaged directly. Where this was the case, the PSC was responsible for administration and payment of tax equivalent to that due under PAYE had the worker been hired directly. Around this time, umbrella companies began to market themselves to these workers, offering to take over the administrative burden from the PSC on the basis the workers became the Umbrella Companies' employees and supplied their services through them instead of through the worker's PSC.
- A.3 Where a worker provides their services through their own PSC, they may have employment rights and entitlement to statutory payments from their PSC. However, any costs associated with these rights will be borne by the PSC, and ultimately funded from the income received for the worker's services.

Managed Service Companies legislation (2007)

A.4 Following the introduction of IR35, HMRC also saw an increase in the use of managed service companies (MSCs) which sought to get around the recently introduced IR35 rules. MSCs are a type of corporate structure through which workers provide their services and were used to enable employment income to be drawn as dividends. It was challenging for HMRC to enforce the existing rules against users of these schemes, or the MSCs themselves, so legislative action was taken in 2007 to remove the benefits of engaging in this way.

Agency legislation changes (2014)

A.5 In 2014 the government also reformed the agency legislation, which had been first introduced for tax in 1975, to make it more difficult for employment businesses to hire individuals without treating them as employees for tax purposes. The reform to the rules meant that more agencies were required to directly engage workers, with likely implications for administrative operations. This may have increased the incentive for employment businesses to engage workers via umbrella companies.

Travel and subsistence expenses reform (2016)

A.6 During the initial years of the model, one of the marketed benefits to contractors of working through umbrella companies was the availability of tax-free travel and subsistence (T&S) expenses for the cost of home-to-work travel.

This resulted in an unfair tax-driven advantage for those working in this way, as it is an established principle of the UK tax system that people should not be able to receive tax relief on T&S expenses for their regular travel from home to work. Further, there were concerns that the reimbursement of expenses without deduction of tax was often poorly monitored by umbrella companies as there was no incentive for them to check the claimed amounts were correct.

- A.7 HMRC introduced legislation in 2016 to: treat the location of specific assignments for individuals who are working through intermediaries (such as umbrella companies) and subject to supervision, direction or control as permanent workplaces; and to require the deduction of income tax and NICs from expenses payments paid or reimbursed to employees under a salary sacrifice scheme (which were regularly used by umbrella companies for the payment of expenses to employees). A salary sacrifice arrangement is an agreement to reduce an employee's entitlement to cash pay, usually in return for a non-cash benefit.
- A.8 These changes were expected to remove almost completely the availability of tax relief on these T&S expenses for umbrella company employees, negating an incentive to operate through the umbrella company model. However, the continued use of umbrella companies following the changes suggests that there remain wider incentives for workers and businesses to operate through this model.

IR35 off-payroll working reform (2017 and 2021)

- A.9 Following its introduction in 2000, non-compliance with IR35 was widespread. It is estimated that non-compliance in the private and voluntary sectors would have cost the Exchequer £1.3 billion per year by 2023-24 if not addressed. In response, the government reformed the way the rules operate in the public sector in April 2017. The reform made organisations responsible for determining whether the rules apply to contracts, and for ensuring that they and the individuals who work for them pay the right tax. This proved to be effective in improving compliance. The government extended the reform to medium and large organisations in the private sector from April 2021³³.
- A.10 Following these reforms, client organisations are now required to determine whether workers engaging through their PSCs would be employees if they had been engaged directly. This decision is passed down the labour supply chain and, if the worker does work like an employee, the deemed employer, usually the entity in the labour supply chain which pays the worker's intermediary (also known as the fee-payer) becomes liable for operating PAYE and enforcing payroll deductions if an incorrect decision was made.
- A.11 The off-payroll working rules do not generally apply where the worker is an employee of an umbrella company, because the worker is not providing their services through their PSC but under a contract of employment with the umbrella company. In reducing the opportunity for non-compliance when working with PSCs in situations where the individual is working like an employee, this reform may have made the umbrella company model comparatively more attractive.

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³³ https://www.gov.uk/guidance/understanding-off-payroll-working-ir35

Summary

A.12 The cumulative effect of various measures for tax have removed the tax incentives and non-compliance opportunities for other structures. Where clients and employment businesses remain keen to legitimately avoid the obligations of taking on an employee (or deemed employee), the use of umbrella companies has become more attractive by comparison to the other options. This is notwithstanding that the 2016 changes to travel and subsistence rules made employment by umbrella companies less tax advantageous in absolute terms than they were before those changes.

List of call for evidence questions

Questions for employment businesses and end clients about their use of umbrella companies

Question 1: Do you represent an employment business, or end-client?

Question 2: In which sector does your business operate, or what type of service does it provide?

Question 3: Roughly how many people does your organisation employ directly and operate PAYE for overall? [micro (0-9 employees), small (10-49), medium (50-249) and large (250+)]

Question 4: If you use umbrella companies, roughly how many people are employed via an umbrella company on behalf of your business each year? Question 5: What factors do you take into account when deciding how to engage staff?

Question 6: If you use umbrella companies, why do you work with them?

Question 7: If you use umbrella companies, does working with them create any advantages? If so, what are they?

Questions 8: Does working with umbrella companies create any disadvantages? If so, what are they?

Question 9: Have you noticed any change in the way umbrella companies market themselves and the benefits they offer over the last 5 years? What has changed?

Question 10: Have you considered working with other intermediaries, such as payroll bureaux?

- a. If yes, which other intermediaries?
- b. If yes, why did you decide not to work with them or why did you choose to work with an Umbrella company over these other intermediaries?

Question 11: The government has heard concerns about supply chains for labour becoming longer. Do you have views on the benefits and drawbacks of longer supply chains and/or why businesses may find that useful?

Question 12: Do you encourage or require your work-seekers to work through an umbrella company?

- a. Why?
- b. What type of workers?

Question 13: Do you operate a preferred supplier list?

- a. If yes, how many do you use?
- b. If yes, how do you select these?
- c. If yes, why do you use a preferred supplier list?

Question 14: Do you do carry out due diligence on umbrella companies you work with/on your preferred supplier list? How?

Question 15: What proportion of umbrella companies that you work with are accredited by a third-party trade body and which trade body?

Question 16: Do you receive all the required information from the umbrella company to accurately complete the Key Information Document?

- a. Do you independently validate the information received from the umbrella company?
- b. How?

Questions for work-seekers about their experience of working through umbrella companies

General questions

Question 17: Which sector do you work in? For example, hospitality, retail, or IT.

Question 18: How would you describe the main role(s) that you perform?

Question 19: How many umbrella companies are you employed by currently?

Question 20: How many different assignments have you worked while being employed by the same umbrella company?

Question 21: Approximately, what percentage of your annual income comes from roles performed while employed through an umbrella company?

Question 22: If you have been working for umbrella companies for more than a year, have you noticed any change in the way umbrella companies market themselves to workers and the benefits they offer? What has changed?

Questions about working through umbrella companies

Question 23: Do you know which organisation is responsible for your pay, employment rights and employment status?

Question 24: Why do you work for/through an umbrella company?

Question 25: If you have chosen to work through an umbrella company rather than being paid directly by the employment business, why was this?

Question 26: How did you choose which umbrella company to work through?

Question 27: Are you issued with terms or a contract by the umbrella company?

Question 28: Do you receive a payslip from your umbrella company and, if so, do you understand the payslip?

Question 29: Do you have any other feedback on the experience of working through an umbrella company?

Questions about the Key Information Document

Question 30: Do you know who is responsible for issuing the Key Information Document to you?

Question 31: Are you, or have you been, issued with a Key Information

Document when you sign up with an employment business for the first time?

Question 32: Are you, or have you been, re-issued with a Key Information

Document when the information changes?

Question 33: Has receiving a Key Information Document helped you to better understand what you can expect to be paid, at what point and by whom?

Tax non-compliance questions

Question 34: If you are an employment business or end client which uses umbrella company employees, do you take any steps to prevent umbrella companies which may engage in tax non-compliance from entering your labour supply chains? If so, what?

Question 35: How could employment businesses or end clients, who use umbrella companies, do more to ensure tax compliance in their supply chain? Question 36: Do you have experience of umbrella companies engaging in any related schemes or models to those covered above, or any other tax non-compliance not covered in this paper? If so, what are they?

Question 37: How could the government support or encourage employment businesses and end clients to do more to ensure tax compliance in their supply chain?

Question 38: What further steps, if any, do you think HMRC and government should take to prevent or tackle non-compliant models outlined in this section?

HM Treasury contacts

This document can be downloaded from www.gov.uk

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