



HM Treasury



HM Revenue
& Customs



Department for
Business & Trade

Tackling non-compliance in the umbrella company market

Consultation

June 2023

OFFICIAL



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Tackling non-compliance in the umbrella company market.
Consultation

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Executive Summary

The purpose of this consultation is to seek views on proposals to tackle non-compliance with both tax and employment rights by umbrella companies. The government has three main objectives for the umbrella company market. These are to deliver improved outcomes for workers, to support a level playing field in the umbrella company market, and to protect taxpayers from the significant revenue losses that currently arise from non-compliance. Together, these will enable both people and businesses to succeed in the labour market, supporting economic growth and ensuring everybody feels its benefits.

Current activity

Chapter 2 of this consultation outlines recent activity undertaken by the government and HMRC in this area.

Since the Call for Evidence on the umbrella company market closed, the government has updated its guidance on working through an umbrella company and published dedicated guidance on Key Information Documents for umbrella company employees. Additional ways to support employees in the umbrella sector through guidance and online tools are being explored.

Guidance for employment businesses on how to support workers they engage via umbrella companies and best practice when carrying out due diligence will be published later this year. The government welcomes views on other ways it can support businesses and workers.

HMRC has used new powers enabling it to publish more details of promoters of tax avoidance schemes more quickly than before. Publishing this information supports taxpayers to make informed choices and to steer clear of or exit tax avoidance.

At Budget 2023, the government announced its intention to consult on introducing a criminal offence for tax avoidance scheme promoters who fail to comply with a legal notice from HMRC to stop promoting a tax avoidance scheme and expediting the disqualification of company directors involved in promoting such schemes. Following that announcement, the consultation, "*Tougher consequences for promoters of tax avoidance*" was published at Tax Administration and Maintenance Day on 27 April 2023.

Regulating umbrella companies for employment rights

Chapter 3 sets out the options the government is considering to address employment rights issues within the umbrella company market such as pay, or holiday pay, being withheld.

Unlike employment agencies, which are regulated under the Employment Agencies Act 1973 and the associated Conduct of Employment Agencies and Employment Businesses Regulations 2003, umbrella companies are generally unregulated, unless their other activities bring them within the scope of the current regulations that apply to employment agencies and employment businesses. The government first committed to regulating umbrella companies following the Good Work Plan in 2018, reaffirming this in its Call for Evidence in 2021.

To enable regulation to be introduced, umbrella companies must first be defined in law. The consultation proposes two possible approaches to defining umbrella companies. Both options would enable the government to be precise about the businesses to be brought in scope and ensure subsequent regulations or standards crystallise on the right business at the right point in the supply chain.

Considerations for the government in this area include what aspects of the umbrella companies' involvement in the supply chain should be covered and how any new standards would be enforced.

Tackling tax non-compliance in the contingent labour market

Chapter 4 outlines strategic options for preventing tax non-compliance within the umbrella company market by changing the incentives and behaviours in the temporary labour market. It invites respondents to share their views on how these options could be further developed and what their impacts could be on reducing non-compliance, on individual businesses and on the wider labour market.

The first of these options is the introduction of a mandatory due diligence requirement, with penalties applying to those employment businesses or end clients that do not comply. This requirement could sit with the employment business or the end client depending on the specific arrangements of the contract. The government would support businesses by providing guidance setting out due diligence principles and how compliance can be demonstrated.

The second option is to legislate to give HMRC the power to collect an umbrella company tax debt from another business in the labour supply chain, in specified circumstances. This would primarily apply to outstanding amounts of Income Tax and National Insurance contributions (NICs) that should have been collected via Pay As You

Earn (PAYE). This would encourage employment businesses and end clients to be more selective in the umbrella companies they contract with by making them potentially liable for unpaid tax debts in the event of non-compliant behaviour by the umbrella company.

The third option would deem the employment business that supplies the worker to the end client to be the employer for tax purposes. This option would require a party further up the labour supply chain to operate PAYE on payments to contingent workers. This would not prevent the deemed employer from using a payroll bureau or umbrella company to discharge their PAYE obligations, but the deemed employer would be ultimately responsible for ensuring the correct operation of PAYE.

Targeted options to address tax non-compliance

Chapter 5 examines two specific reliefs that are subject to abuse and invites views on options to reduce fraud.

The employment allowance and VAT flat rate scheme are both targeted by fraudulent umbrella companies that abuse both schemes to benefit from lower levels of employer NICs and VAT. The employment allowance is exploited by umbrella companies that artificially disaggregate to ensure the company's employer NICs liabilities for the year are covered by the £5,000 allowance meaning no employer NICs is paid. The same entities defraud the VAT flat rate scheme to exploit the different VAT rates available. HMRC has deregistered tens of thousands of umbrella companies who it believed were involved in abusing either or both the VAT flat rate scheme and employment allowance.

The government is considering further action to combat the abuse of both schemes. The consultation seeks views on the benefits of the flat rate scheme and what the government could do to prevent its abuse. It also sets out a proposal to mandate a UK director to be in place for a company to be eligible for the employment allowance.

Chapter 1

Introduction

1.1 The United Kingdom has a resilient and flexible labour market, with unemployment at record lows and the number of payrolled employees now well above pre-pandemic levels¹. A key part of this flexibility is provided by the UK's 1.7m temporary workers², many of whom use employment intermediaries to source and secure job roles.

1.2 One such employment intermediary, which has grown in use over the last two decades, is the umbrella company. Umbrella companies employ individuals on behalf of employment businesses (often referred to as recruitment agencies) who are then supplied to end clients. Employment businesses (which usually sit in between umbrella companies and end clients in the labour supply chain) find work for individuals, rather than umbrella companies.

1.3 While an umbrella company is the legal employer, the individual does not provide services to or for the umbrella company itself. Umbrella companies must provide individuals with the same employment rights as any other employee (subject to qualifying periods) and must operate Pay As You Earn (PAYE) on any payments of earnings made.

1.4 The government supports a dynamic and flexible labour market, and it welcomes new ways of working that encourage these aims. However, this cannot come at the expense of workers, the taxpayer, or the compliant majority of market participants who are too often undercut by rogue companies. The government wants to remove non-compliance from the contingent labour market, so that workers are suitably protected and firms are free to compete on a level playing field, in turn supporting economic growth.

1.5 On 30 November 2021, the government published a Call for Evidence on the umbrella company market. The Call for Evidence informed the government's understanding of the role that umbrella companies play in the temporary labour market and the behaviours in the market that were causing concern. It considered issues across employment rights and tax and was run jointly by HM

1

www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/march2023

2

www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/temporaryemployeeemp07

Treasury, HM Revenue and Customs and the Department for Business, Energy and Industrial Strategy (now the Department for Business and Trade).

1.6 The Call for Evidence closed on 22 February 2022 with over 400 responses received from industry representatives, umbrella companies, employment businesses and umbrella company employees, among others.

1.7 Responses to the Call for Evidence from workers outlined the disadvantages of being engaged via the umbrella company model. Many umbrella company employees reported a lack of general understanding about how their engagements worked, with some reporting specific instances of poor treatment by their umbrella company employers.

1.8 Many workers said they had little choice other than to work through an umbrella company and felt that this was a downside to the model. It was also said that the use of umbrella companies was driven by the desire of end clients to pass their responsibilities in respect of workers down the labour supply chain to employment intermediaries.

1.9 Responses suggested that some workers had limited choice over which umbrella company they contracted with. The prime reason given was the use of preferred supplier lists by employment businesses. Employment businesses explained that using a preferred supplier list helped to reduce costs by minimising the need for them to carry out their own due diligence checks on multiple umbrella companies.

1.10 Although some worker respondents said that the use of umbrella companies allowed them to collate multiple engagements under a single PAYE record with an umbrella company, for others this was not possible because of variances between the preferred supplier lists used by different employment businesses.

1.11 Many respondent workers felt that the amount that they were ultimately paid by their umbrella companies was not right. A high number of workers believed they were paying their umbrella company's employer National Insurance contributions (NICs) in addition to their own employee contributions. This is because umbrella companies deduct their employers' expenses, including employer NICs, from the total gross amount received from the employment business or end client for employing the worker. Many workers also felt that administrative charges were too high.

1.12 Workers and trade unions said that some workers did not receive the employment rights to which they were entitled while working through an umbrella company. Some workers said that they were unaware of who was responsible for providing their employment rights.

1.13 A number of respondents reported worries about being engaged by non-compliant umbrella companies and the risk of facing tax bills at a later date.

1.14 Businesses that responded recognised the issues in the market, particularly with treatment of workers and tax non-compliance but also outlined the perceived benefits of the model. There was a consensus view that poor behaviour should be addressed to protect workers and provide a level playing field for compliant employment businesses and umbrella companies.

1.15 Some larger employment businesses said that they worked with umbrella companies because some workers had a preference to be engaged in this way. They explained that they would prefer to engage temporary workers on their own payrolls because of concerns about workers' experiences and the administrative burdens of due diligence but felt compelled to offer the option of using an umbrella company in order to remain competitive.

1.16 Other employment businesses said that they chose to engage workers through umbrella companies for administrative ease and to avoid having to operate a payroll for the workers they placed.

1.17 There was a sense of frustration that those employment businesses that undertook due diligence or refused to contract with non-compliant umbrella companies could be undercut by and lose business to those businesses that were happier to turn a blind eye.

1.18 End clients and organisations responding on their behalf, explained that using umbrella companies helped them to fill temporary roles flexibly and with minimal administrative burdens because the administrative requirements of engaging someone directly, such as payroll and employment rights, were outsourced. It was suggested that end clients do not always have full visibility of their labour supply chains and were generally reliant on employment businesses to assure the compliance of businesses down the chain.

1.19 Umbrella companies and their representatives said that non-compliant competitors could offer services at a lower cost, and that addressing this non-compliance would help to level the playing field for compliant businesses.

1.20 Respondents across the board were supportive of government regulation of the umbrella company market. Regulation of umbrella companies was put forward as a way to ensure that workers are treated fairly and in line with employment law requirements and to restore credibility to the umbrella company market.

1.21 These responses highlighted the different impacts that malpractice by umbrella companies can have on the different participants in labour supply chains and have informed the

government's decision to look at the issues in the market holistically.

1.22 Since publishing the Call for Evidence, the government has taken action to address the issues in the umbrella company market. This includes publishing guidance to help umbrella company employees to understand their engagements and to challenge when things are not as they should be. HMRC has continued to use its compliance powers to challenge those who fail to comply with tax legislation and issues guidance to help people identify and stay away from tax avoidance.

1.23 Whilst these interventions have helped workers to better understand and enforce their rights, significant challenges remain, and the government wants to go further. This consultation invites views on options that the government believes could meaningfully improve the operation of the market. The government is seeking views from stakeholders to support the further development of these options and to inform a decision as to which, if any, of the options to take forward.

1.24 A number of stakeholders called for the umbrella company model to be outlawed entirely. Some responses suggested that the introduction of a ban may not have a significant impact on the temporary labour market. Some large employment businesses told the government that they would prefer not to use umbrella companies as they tend to have in-house payroll.

1.25 Other respondents to the Call for Evidence put forward advantages that umbrella companies bring to the flexible labour market. For example, smaller employment businesses suggested that umbrella companies allowed businesses to survive through the pandemic by outsourcing and reducing administrative costs to the business, making them more viable.

1.26 Despite the non-compliance observed in the market, the evidence available to the government at this time does not suggest that an outright ban would be a proportionate response.

1.27 Instead, the government is choosing to focus on options to address the underlying drivers of non-compliance within the market. These options, which are set out later in this consultation document, are intended to strike a balance between protecting workers, compliant businesses and the taxpayer, whilst protecting the flexibility of the labour market.

1.28 In putting forward these options, the government has three main objectives. First, to deliver improved outcomes for workers, by reducing the number of illegitimate operators in the umbrella company market. Secondly, to increase compliance across the market so that businesses can operate on a level playing field, supporting the government's wider growth objectives. Thirdly, to protect the Exchequer from the significant revenue losses that currently arise from umbrella company non-compliance.

1.29 In pursuing these objectives, the government is mindful of the need to protect the flexibility of the labour market and to minimise the burdens imposed on compliant businesses. The government recognises that some of the options proposed would be comparatively more burdensome than others. The government is interested in exploring the proportionality of each option to inform how to strike the right balance between improving outcomes, protecting the integrity of the market, and avoiding unreasonable burdens on businesses. The proposed options could be taken forward in isolation or as a package of complementary measures.

1.30 These options are split into three chapters.

Chapter 3 – Regulation of umbrella companies for employment rights

1.31 This chapter invites views on approaches to regulation of the umbrella company market for employment purposes. It presents two options the government is considering for defining umbrella companies, one of which also seeks to simplify the potential methods of payment and engagement. It then sets out a series of options for the framework that would be applied to umbrella companies. This includes seeking early views on what should be included in the regulations that will set the minimum legislative standards for umbrella companies and how such standards should be enforced.

Chapter 4 – Tackling tax non-compliance in the contingent labour market

1.32 This chapter invites views on options to change tax obligations and HMRC powers to encourage a change of behaviour by businesses who use temporary labour and to disincentivise the use of non-compliant umbrella companies.

1.33 Businesses are currently able to outsource their employment tax responsibilities to umbrella companies with limited repercussions if they contract with an umbrella company that does not, in turn, fulfil these responsibilities. The government proposes two options to encourage organisations to undertake greater due diligence when deciding which umbrella companies to contract with.

1.34 This chapter also proposes a third option, which would ensure that the liability for withholding and paying employment taxes to HMRC ultimately rests with the employment business, even where another company is engaged to operate a payroll on that business's behalf.

Chapter 5 – Targeted options to address tax non-compliance

1.35 This chapter seeks views on changes to the employment allowance and the VAT flat rate scheme, both of which are abused by so-called mini umbrella companies. These changes are intended to disrupt the model by making it harder to fraudulently claim these reliefs.

Chapter 2

Current activity

Introduction

2.1 The government is already acting to improve the operation of the umbrella company market. This chapter sets out actions the government has taken since the Call for Evidence closed, as well as ongoing work and initiatives that it will implement in the coming months. While the government is already working on the initiatives below, it welcomes views on how it can work with businesses, workers and their representatives to develop them further.

Guidance and support

2.2 The government is committed to improving outcomes for workers engaged through umbrella companies and the operation of the umbrella company market as a whole. Responses to the Call for Evidence suggested that many workers do not fully understand how their umbrella company engagements work, including which employment rights they're entitled to and the correct tax treatment of payments received.

2.3 In 2021 HMRC published dedicated guidance on working through an umbrella company. HMRC has improved and expanded this guidance in consultation with users and industry experts. This updated guidance was published in November 2022: www.gov.uk/guidance/working-through-an-umbrella-company.

2.4 Alongside this, the government published updated guidance on Key Information Documents for umbrella company employees: www.gov.uk/guidance/key-information-document-guidance-for-agency-workers-paid-through-umbrella-companies.

2.5 The government is exploring further ways in which it can support umbrella company employees and other labour market participants through guidance and other tools to ensure that they have the information they need to understand their engagements.

2.6 Several businesses responding to the Call for Evidence said that they thought the government should provide clearer guidance for employment businesses who contract with umbrella companies. The government will therefore publish guidance for employment businesses. This guidance will provide employment businesses with advice on supporting the workers they source work for who are employed by umbrella companies. It will also provide guidance on best practice for undertaking due diligence checks on the umbrella companies in their supply chain. The government will seek input to

this new guidance from industry experts and will aim to publish it later this year.

2.7 The government will consider publishing further guidance, where needed, on the umbrella company and temporary labour market areas. It welcomes views on the areas further targeted guidance should cover and whether there are other ways government could support businesses and workers.

2.8 The government is aware of innovative tools available to help workers and employment businesses to assess the compliance of the umbrella companies with which they contract and recognises the value that they can provide. To complement these private sector solutions, HMRC is exploring the role a calculator for workers could play in enabling umbrella company employees to work out their gross pay from their assignment rate and the tax that should be deducted from their pay and paid by their employer to HMRC. This may help temporary workers to understand their pay including what they can expect to see deducted, to steer clear of entering into disguised remuneration tax avoidance schemes and to identify and report if their umbrella company appears to be non-compliant.

Tax avoidance involving umbrella companies

2.9 The Call for Evidence referenced new powers that HMRC had been given to clamp down on the promoters of tax avoidance, which became law in Finance Act 2022.

The legislation introduced in Finance Act 2022 built on the powers introduced in Finance Act 2021 and included a new power enabling HMRC to publish more information, more quickly, about tax avoidance schemes and those who promote them. HMRC recognises that some workers actively choose to use avoidance schemes and others are tempted by promises of increased take-home pay. Publishing more information helps to warn workers and encourage them to leave or steer clear of these schemes. As at 31 May 2023 HMRC has published the details of 35 promoters and 39 tax avoidance schemes.

2.10 An accompanying communications campaign is promoting this to further raise awareness. Further information, including the list of named promoters, can be found on gov.uk at www.gov.uk/government/publications/named-tax-avoidance-schemes-promoters-enablers-and-suppliers. If a tax avoidance scheme is not shown in this list, this does not mean that the scheme works or is approved by HMRC. HMRC does not approve tax avoidance schemes.

2.11 HMRC continues to publish further information for workers as part of its Spotlight series on tax avoidance, warning workers about the avoidance schemes offered by some umbrella companies. HMRC's latest Spotlight on this topic was published in August 2022 and can be found on gov.uk at

www.gov.uk/guidance/warning-for-agency-workers-and-contractors-employed-by-umbrella-companies-spotlight-60.

2.12 HMRC also continues to update its tax avoidance awareness campaign which advises workers how to spot avoidance schemes, explains the risks involved and encourages workers to protect themselves by reporting schemes and those promoting them to HMRC: <http://taxavoidanceexplained.campaign.gov.uk>.

2.13 In November 2020, HMRC and the Advertising Standards Authority (ASA) issued a joint Enforcement Notice which set out what promoters should and should not include in their internet advertising. As at February 2023, 22 websites have been shut down, and eight have been amended to comply with the notice.

2.14 The government published a consultation on 27 April 2023 to introduce:

- proposals for a new criminal offence for promoters of tax avoidance who fail to comply with a HMRC notice (a “Stop Notice”) to stop promoting an avoidance scheme, and
- proposals to expedite the disqualification of directors of companies promoting tax avoidance including those who exercise control or influence over a company

The consultation is open until 22 June 2023 and is available on gov.uk at www.gov.uk/government/consultations/consultation-tougher-consequences-for-promoters-of-tax-avoidance.

2.15 HMRC published its latest Marketed Tax Avoidance Report on 30 November 2022, setting out what it knows about the tax avoidance market with a focus on the 2020-21 tax year. This is available online at www.gov.uk/government/publications/use-of-marketed-tax-avoidance-schemes-in-the-uk/use-of-marketed-tax-avoidance-schemes-in-the-uk-2020-to-2021.

HMRC data

2.16 Respondents to the Call for Evidence suggested that HMRC could use its data sources to better enforce compliance within the umbrella company market. HMRC is considering how the existing Employment Intermediaries return and its data could be improved to help improve compliance.

Public sector procurement

2.17 Procurement standards are governed by frameworks across the public sector. These frameworks typically include terms that service providers and recruitment agencies must adhere to. The Employment Agency Standards Inspectorate and HMRC already work closely with the Crown Commercial Service and framework providers to ensure frameworks comply with existing tax and employment legislation. Despite this, the frameworks do not

currently include specific standards about recruitment agencies' use of umbrella companies.

2.18 The government will continue to work with these partners as it develops regulatory and other approaches to improving standards in the umbrella company market to ensure they are incorporated into frameworks.

2.19 The government welcomes views on other ways, beyond setting minimum legislative standards, it could act to tackle non-compliance and protect the integrity of public sector supply chains. The government also welcomes thoughts on how it should work with stakeholders to progress this agenda, including the most efficient way to make changes to frameworks and encourage their use.

Chapter 3

Regulating umbrella companies for employment rights

Introduction

3.1 The Employment Agency Standards (EAS) Inspectorate is the state regulator for the recruitment sector in Great Britain. It enforces the requirements of the Employment Agencies Act 1973 (the 1973 Act)³ and the associated Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations)⁴. This legislation defines and directly regulates the conduct of employment agencies and employment businesses by setting the minimum legislative requirements the government expects of them. Employment law (including the 1973 Act and its associated Conduct Regulations) is reserved for Great Britain, while it is devolved in Northern Ireland. Any employment law options that might be taken forward following this consultation (including on regulation) would apply in Great Britain.

3.2 Umbrella companies do not provide work-finding services or supply individuals to hirers, meaning their function is distinct from that of employment businesses. Some stakeholders consider that umbrella companies meet the criteria to be considered an employment business, as set out in section 13(3) of the 1973 Act, and so should already be directly regulated. A company calling itself an umbrella company may be regulated as an employment business only if they are providing services normally performed by employment businesses, such as work-finding and supply to hirers. Umbrella companies will therefore generally be unregulated, unless their other activities bring them within the scope of the current regulations that apply to employment agencies and employment businesses.

3.3 This creates scope for practices by some umbrella companies that lead to negative outcomes for individuals (including pay or holiday pay being withheld) and for businesses. These are set out in more detail in the summary of responses to the Call for Evidence.

³ <https://www.legislation.gov.uk/ukpga/1973/35>

⁴ <https://www.legislation.gov.uk/uksi/2003/3319/contents/made>

There are often no practical consequences for the umbrella company for non-compliance with employment law, given the lack of state enforcement and the low rate of individual enforcement against them as employers.

3.4 There is a long-standing government commitment to regulate umbrella companies. This dates from the Good Work Plan (2018)⁵ and was reaffirmed most recently in November 2021 in the government's Call for Evidence on the umbrella company market.⁶ The government's summary of responses to the Call for Evidence supports the rationale for state enforcement and that regulation of umbrella companies should form part of a coherent package that also addresses tax-related issues.

3.5 Regulating umbrella companies is a two-step process. The government would first need to define umbrella companies (using primary legislation) and give ministers the powers to make regulations containing requirements for umbrella companies. The government would then need to consult after the definition had become law (when the primary legislation gained Royal Assent) on the specific requirements to be placed on umbrella companies before implementing them.

3.6 In this chapter, the government is mostly concerned with seeking views on the two proposals for defining umbrella companies, given there will be a further consultation prior to introducing any specific requirements on umbrella companies.

3.7 First, the government welcomes views on the two options for defining umbrella companies to bring them in scope of enforcement. Option 1 defines umbrella companies and introduces an element of regulation. It seeks to limit the ways individuals can be engaged and paid in the recruitment sector to one of four methods, one of which will be an umbrella company arrangement. The government considers that this could be beneficial to tackling pay-related detriments, such as where workers do not receive their pay or holiday pay, which are the main reported issue as well as avoiding unnecessarily long contractual chains.

3.8 Secondly, the government welcomes early views on what requirements should be set for umbrella companies through the secondary legislation. The government will consider these responses and use them to inform the future statutory consultation on these requirements. Thirdly, the government also welcomes views on how these requirements should be enforced.

3.9 The questions below are a guide to the areas the government is interested in exploring through this consultation. The

⁵ <https://www.gov.uk/government/publications/good-work-plan>

⁶ <https://www.gov.uk/government/consultations/call-for-evidence-umbrella-company-market>

government also welcomes respondents' comments on areas not covered in this chapter that they consider relevant.

Defining umbrella companies

3.10 There are advantages and risks to each of the options set out below. The government welcomes thoughts on which option of defining umbrella companies would best enable the regulation of the current and future umbrella company market, by effectively targeting regulations at the right business in the supply chain and being flexible enough to adapt to market changes. It also welcomes thoughts on approaches it may not have considered.

Option 1: Defining umbrella companies and limiting acceptable engagement structures.

3.11 As mentioned above, this option would seek to define an umbrella company and simplify the potential engagement methods in the recruitment sector. It would achieve that by using the definition (set out below) to include umbrella company arrangements as one of four methods of engaging and paying agency workers to be permitted in the recruitment sector.

The definition

3.12 Under this option, an umbrella company would be defined in the following way:

- a person or business (whatever their legal form) who may be engaged as a corporate work-seeker by the employment business to employ or engage an individual looking for work; and
- the umbrella company would employ or engage that individual with a view to them being supplied to carry out work for a hirer, in line with arrangements between an employment business and a hirer

3.13 This definition would explicitly state that umbrella companies employ or engage an individual "with a view" to them being supplied to bring in scope scenarios where individuals may approach an employment business with their own umbrella company. Workers would also benefit from protections as soon as their employment relationship with an umbrella company started, which could be before they were supplied to work on a specific assignment for a hirer.

3.14 The government would also amend the definition of an employment business in the 1973 Act so that it refers explicitly to work-finding services. This would make the dividing line between employment businesses and umbrella companies clearer and make it easier to ensure obligations crystallise on the right business at the right point in the supply chain.

Simplifying payment arrangements in the recruitment sector

3.15 The government proposes only permitting the four methods of engagement and payment methods below, which it considers reflect the current compliant market practices used in the recruitment sector. As a result, this would hopefully balance flexibility for both businesses and workers to choose arrangements to suit their individual situations with simplifying potential arrangements.

3.16 It would also prevent businesses from deploying new payment and engagement methods as they are developed. As mentioned, the government is not seeking to unnecessarily restrict business flexibility and so is not opposed to permitting new engagement methods in the future. However, this option would provide a way to ensure that only payment and engagement methods for which there is a genuine rationale (as opposed to those methods which are purely means of exploiting workers or gaining unfair competitive advantages) would be permitted. It would therefore enable the government to continue balancing flexibility and transparency.

3.17 The government hopes that this would also protect recent improvements in transparency for workers arising from the introduction of the Key Information Document (KID). The government also hopes this would benefit businesses, given the focus on ensuring these four methods reflect those used most by employment businesses. With fewer permitted engagement methods, businesses could focus their resources on ensuring their offerings in each of the models were compliant, which includes conducting due diligence on umbrella companies.

3.18 The government welcomes views on whether and how restricting payment and engagement methods could benefit businesses and individuals, and if so whether there are other models that would need to be permitted for this to work effectively.

3.19 This option only seeks to regulate recruitment umbrella companies' involvement in recruitment sector supply chains, which typically involve a recruitment agency offering work-finding services to an individual. It is not seeking to regulate independent contractors, who do not use the services of employment businesses to find work, even though they may use umbrella companies to manage their own affairs.

3.20 The four methods that would be permitted are:

- *Model 1* – the employment business directly employs the individual work-seeker (under a contract of service), and no umbrella company is involved. This model is already covered by the current legislation.
- *Model 2* – the employment business directly engages the individual work-seeker (under a contract for services), and no

umbrella company is involved. This model is already covered by the current legislation.

- *Model 3 (umbrella company model)* – the employment business directly engages a corporate work-seeker (which will be an umbrella company) not controlled by the individual doing the work. This lack of control of the corporate work-seeker distinguishes it from model 4 below.
- *Model 4* – the employment business engages the individual's Personal Service Company (PSC), which the government proposes to define narrowly for the purposes of this approach. A business would only be considered a PSC for the purposes of this option if it is under the control of the individual worker and that individual is the only person made available by the company. This model is already covered under current legislation.

3.21 Under each of these four models, only one person or business would be permitted in the supply chain between the employment business and the individual to be supplied to do the work. It would not prevent multiple employment businesses from existing higher up in the supply chain, provided they do not interpose themselves between the umbrella company and the employment business that supplies the worker. It is also not intended to prohibit scenarios where, for legitimate reasons, an individual remains in an assignment but changes their umbrella company. It would not prohibit the use of a payroll bureau, which would have no contractual relationship with the individual supplied to carry out the work.

3.22 The employment business would be held responsible for ensuring that the prohibition on other models of employment or engagement and payment were adhered to. This would mean ensuring that the umbrella company did not engage another umbrella company or that the individual's PSC met the definition that would be set out. It is proposed that not doing so would breach the law.

3.23 The government would aim to mitigate the potential burden of this on the employment business by allowing a potential due diligence defence where they can demonstrate they have taken all reasonable steps to ensure only one of the four permitted methods of engagement is being used. The government welcomes views on what precisely should constitute grounds for benefiting from the due diligence defence.

Option 2: Defining umbrella companies by applying three tests

3.24 Another approach the government is considering would involve setting three tests, all of which must be met, for a business to be considered an umbrella company. The aim, as with the option

above, would be to capture umbrella companies without also expanding state enforcement to other businesses, such as purely payroll providers, which handle agency workers' pay. But unlike the option above, it does not seek to limit the engagement and payment methods that can be used in the recruitment sector.

3.25 The definition of an umbrella company would be based on two main components. First, the umbrella company would have a direct contractual relationship with the individual who is supplied to carry out the work and a separate supply agreement with the employment business. The government understands that the contract between the individual and their umbrella company will typically be a contract of service. This would aim to differentiate the umbrella company from a payroll provider, which has no contractual relationship with the individual. Second, the umbrella company receives a total gross amount, which includes sums to cover their employer costs and the individual's gross income, from the employment business. They pass the individual their net pay, after making all necessary and agreed deductions.

3.26 The three proposed conditions that a business should meet to be considered an umbrella company under this option are as follows:

- *Condition 1* – there should be two separate businesses (an employment business and end client) involved in supplying the worker in addition to the umbrella company.
- *Condition 2* – the putative umbrella company has a direct contractual relationship with the individual to be supplied to an end-hirer that makes the umbrella company responsible for paying the individual the agreed rate. But the putative umbrella company is not responsible for providing work-finding services, which remains the function of the employment business.
- *Condition 3* – the putative umbrella company receives a form of commission or fee, often referred to as their “margin”, for the service they have provided as an umbrella company. This will most commonly be deducted from the individual's gross pay by the umbrella company, which makes up part of the total gross amount it receives from the employment business, whether directly or indirectly. This should be indicated on the Key Information Document (KID) if this is to be the case.

3.27 All three conditions should be met for a business to be considered an umbrella company. The legislation would provide for these tests to be applied to a business in relation to each supply. It would bring businesses in scope based on the nature of their activity not corporate set up, which is consistent with how the 1973 Act and the Conduct Regulations function. Practically speaking, this means a business could be considered an umbrella company in one scenario but not in another.

3.28 This definition is highly specific. An advantage of this is that it would enable government to be very precise about the businesses to be brought in scope and offer a clear way of targeting the subsequent regulations or standards to the right business at the right point in the supply chain.

3.29 However, a key disadvantage is that deliberately non-compliant businesses may seek to structure around this definition (and so put themselves out of scope of the eventual regulations) by building supply chains and dividing responsibilities to avoid meeting all three tests. The government is considering ways to address this without losing the ability to target regulations precisely, which may include ensuring the definition could be amended in the future to respond to business model changes.

Question 1: *Which of the options would be the most effective way to define umbrella companies to ensure only they are brought in scope now and ensure future regulations/standards can be targeted to the right business in the supply chain? Please explain your answer.*

Question 2: *Which of the definitions would be the most future proof? Please explain your answer.*

Question 3: *Are there any unintended consequences of either option and/or are there alternative ways of defining umbrella companies the government should consider? Please explain your answer.*

Umbrella company standards

3.30 After defining umbrella companies, the government will need to make regulations containing the minimum legislative requirements for umbrella companies to comply with. There is a choice about what aspects of the umbrella company's involvement in the supply chain the regulations should cover. They could be initially targeted to a few key issues (option 1) or cover a wider array of umbrella companies' involvement in the supply chain (option 2). The approach the government chooses to define umbrella companies would not restrict its flexibility in how broad the regulations should be.

3.31 Option 1 is for the regulations to set the minimum legislative standards in just a few key areas that have consistently been reported to us as the main areas of detriment for individuals employed (or engaged) through umbrella companies. It would be possible to add to these regulations if, after a sufficient review period, this was considered necessary.

3.32 The initial areas of focus could include:

- *Handling of pay and holiday pay* – the government could require umbrella companies to pay the individuals they employ all the

money they are owed for the hours they have worked. This obligation should apply however the umbrella company structures its contracts and should require the umbrella company to pay the individual even if they have not been paid by the employment business. This mirrors the obligation on employment business to pay work-seekers irrespective of payment by the hirer. It seeks to create a chain of obligations that flows from the employment business down to the individual.

- *Use of additional services* – the government could seek to prevent umbrella companies making entry into an employment contract conditional upon the individual agreeing to pay for additional services offered by the umbrella company beyond their margin. The government could also require greater transparency about their margin up front.
- *Key Information Document (KID)* – the government could place a positive duty on umbrella companies to pass on accurate information employment businesses need to provide a Key Information Document (KID). It would remain the responsibility of the employment business to issue the KID.

3.33 Option 2 is to introduce regulations that go beyond these few key areas that have been reported to the government. This would involve setting minimum standards about how umbrella companies should perform their function as umbrella companies (as they will be defined) to support employment businesses in meeting their statutory obligations as the business responsible for providing work-finding services and supplying the individuals. This approach to the regulations would set minimum standards in a wider range of aspects of umbrella companies' involvement in the agency work supply chain.

3.34 For example, employment businesses must ensure only suitably qualified staff are supplied to perform work and must inform hirers if they become aware of information that might make the individual unsuitable to continue in a role. The government could require the umbrella company to share with the employment business any information they have or become aware of as the employer that could support the employment business in meeting this statutory obligation under the existing Conduct Regulations. This would preserve the umbrella company's distinct function, which does not involve work-finding or supply of individuals to hirers.

3.35 The government could also seek to make additional changes to certain requirements on employment businesses. For example, it could change the requirements about pay rates that employment agencies and employment business must comply with when advertising jobs. The aim would be to make it clearer what the individual's gross pay would be and address workers' confusion

reported in response to the Call for Evidence about employer contributions being deducted from their gross pay.

Impact of umbrella company regulations

3.36 While it is difficult to estimate impact until the precise nature of the regulations is known, there would be some limited direct costs to umbrella companies. They would need to familiarise themselves with the new regulatory regime, ensure their business practices complied and accommodate EAS inspections on occasions. EAS would continue to first work with businesses to correct breaches before taking enforcement action, which is often referred to as taking a compliance-based approach to enforcement.

3.37 The government welcomes views on what aspects of umbrella company involvement in the supply chain should be covered. The government is interested in whether starting with a more targeted set of standards before potentially expanding them after an appropriate review period would enable it to better design regulations that balance protecting workers from genuine detriment while preserving business flexibility.

Question 4: *What aspects of the umbrella company's role in the supply chain should the regulations cover?*

Question 5: *Is there a rationale for starting with limited regulations and reviewing them before potentially expanding them to cover other areas of umbrella company involvement? Please explain your answer and illustrate with examples.*

Enforcement of umbrella company standards

3.38 Lastly, the government welcomes views on what body should enforce umbrella company regulations as well as how proactive this enforcement activity should be. The approach the government chooses to defining umbrella companies and the level of ambition in the regulations does not restrict the choice about the enforcement mechanism.

Enforcement body / vehicle

3.39 The government has already committed to expand state enforcement to include umbrella companies. Its current preferred approach is to regulate umbrella companies through expanding the remit of the EAS, which already regulates employment agencies and employment businesses.

3.40 There are advantages to this approach. First, EAS already regulates the recruitment sector where umbrella companies are heavily used. It has knowledge and relationships that would be valuable to ensuring effective enforcement. It would also be more efficient to rely on existing enforcement infrastructure as there would be minimal set up costs. It would also avoid adding additional complexity to the enforcement landscape (which

individuals may already find confusing) and would avoid the challenges that arise from multiple enforcement bodies with similar remits operating in the same space.

3.41 The government previously committed, in June 2021, to establish a single enforcement body for employment rights. Establishing a single enforcement body requires primary legislation and so delivering this commitment is subject to there being sufficient Parliamentary time needed to legislate. The EAS (along with its expanded remit) could be incorporated into the single enforcement body if the government decides to legislate for this in the future.

3.42 The government would want EAS to be able to use its full suite of current enforcement powers. These include the power to enter premises subject to the safeguards and requirements contained in section 9 of the 1973 Act, the ability to seek labour market enforcement undertakings and orders, the ability to prohibit of individuals from running recruitment businesses and ultimately to prosecute subject to a public interest test. This list is available on gov.uk⁷.

3.43 It is also worth considering whether any additional enforcement powers would be needed. The government previously committed, also in June 2021, to introduce new civil penalties for breaches under the EAS-enforced regime that result in wage arrears. Civil penalties are already a common feature of other labour market enforcement arrangements (such as HMRC's National Minimum Wage enforcement and other ombudsman arrangements).

3.44 The government is interested in views on whether it should build on this and extend civil penalties for wage arrears to breaches of umbrella company regulations. The government would also welcome views on how the level of penalty should be set.

Question 6: *Are there reasons that the Employment Agency Standards Inspectorate should not enforce umbrella company regulations? And if so, are there other bodies or approaches the government should consider? Please explain your answer.*

Question 7: *Does the Employment Agency Standards Inspectorate have sufficient enforcement powers to regulate umbrella companies or would changes need to be made? Please explain your answer.*

Nature of enforcement

3.45 There are two options for the approach that EAS should take when seeking compliance with umbrella company requirements.

⁷ www.gov.uk/government/publications/list-of-people-banned-from-running-an-employment-agency-or-business

3.46 First, EAS could adopt the same approach to enforcing umbrella company regulations as it does currently for those that apply to employment agencies and employment businesses. In summary, this would involve reactive and proactive enforcement activity.

3.47 EAS typically operates a compliance-based approach to enforcement, meaning when it receives a complaint it first seeks to educate the business and work with them to correct the breach, only taking enforcement action if necessary. In addition to complaint-based work, EAS also carries out proactive outward-bound inspections. These are based on information about risk and can be focussed on either a geographic region or a particular sector. There is more detail on this in its enforcement statement which is available on gov.uk⁸.

3.48 Secondly, EAS could take a purely reactive approach to enforcement, that is more akin to the approach taken by an Ombudsman. EAS would only respond to complaints from an individual but would continue to carry out proactive visits to enforce the existing standards for employment agencies and businesses.

Impact of enforcement approaches

3.49 It would likely be more costly for umbrella companies to comply with enforcement that mirrored EAS' current approach to enforcing the requirements against employment agencies and employment businesses. There may be a higher likelihood they would need to comply with a visit from the enforcement body. The precise impact on umbrella companies is not clear as it will also depend on what the standards are, but in either scenario the government does not expect the cost to be significant.

3.50 EAS, or another organisation, could alternatively take a purely reactive approach to enforcement that is more akin to the approach taken by an Ombudsman. It would not be empowered to carry out investigations or initiate enforcement action based on risk or intelligence, but only following a complaint from an individual. EAS would still be able to carry out proactive visits to enforce the existing standards for employment agencies and businesses, however.

3.51 The legislation empowering an enforcement body to regulate umbrella companies will have the same territorial extent and application as the current legislation that applies to employment agencies and employment businesses.

Question 8: *Should EAS mirror its current enforcement approach for employment agencies and employment businesses if it enforces umbrella company requirements? Please explain your answer.*

⁸ www.gov.uk/government/publications/employment-agency-standards-eas-inspectorate-enforcement-policy-statement

Chapter 4

Tackling tax non-compliance in the contingent labour market

Introduction

4.1 This chapter provides an overview of options that the government believes could substantially reduce tax non-compliance in the umbrella company market.

4.2 As set out in the Call for Evidence, HMRC is aware of several types of tax non-compliance that are prevalent in the umbrella company market, including fraud and disguised remuneration tax avoidance arrangements. HMRC is already taking robust action and making progress in tackling this non-compliance. The options set out below would deliver a more strategic approach to address all non-compliant behaviour that is facilitated by umbrella companies.

4.3 Responses to the Call for Evidence suggested that the current operation of the temporary labour market encourages end clients and employment businesses to outsource many of their obligations to umbrella companies. Whilst outsourcing is a legitimate business model and can create administrative and cost efficiencies for businesses, it can also create risks.

4.4 These risks are significant in the umbrella company market, where companies can be responsible for processing millions, and in some cases billions, of pounds of payments for workers and ensuring the correct tax and NICs are passed to HMRC. These risks can also lead to harm for workers who may not receive the correct national insurance credits, with potential consequences for their state pension entitlements. The ease with which umbrella companies can be established and subsequently liquidated poses significant challenges for HMRC to take effective enforcement action where non-compliance is identified.

4.5 Responses to the Call for Evidence also suggested that those businesses that do take steps to ensure good compliance are put at a competitive disadvantage to those that do not, allowing the non-compliant to undercut compliant firms. This is not fair on legitimate businesses and it in turn puts pressure on those that are compliant

to cut corners to compete, driving down standards across the entire market.

4.6 The options in this consultation are set out at a relatively high level and the government is interested in respondents' views on how they could best be designed to meet the objectives that are set out for each. The government is keen to understand the potential impacts of each option, not only on non-compliant umbrella companies but also on the other entities that make up temporary labour supply chains and on workers themselves. The government is mindful of the need to strike the right balance between reducing non-compliance in the umbrella company market and any burdens for businesses that arise as a result of this action.

Option 1: Mandating due diligence

4.7 Respondents explained that many employment businesses who supply workers to end clients undertake some form of due diligence on the umbrella companies they contract with to ensure that those companies are genuine, comply with their obligations and treat their workers properly. However, this is not universal across the market with some businesses having no, or only limited, procedures in place. Responses also suggested that entities further up the labour supply chain, such as end client companies, often do not have a full view of the entities that make up their labour supply chains. The government believes that this lack of visibility and absence of due diligence may create the gaps non-compliant umbrella companies need to enter and operate within the labour supply chain.

4.8 To build upon the good practice that already exists amongst many employment businesses and end clients, the government is interested in exploring a requirement for organisations contracting with umbrella companies to carry out a minimum level of due diligence on that umbrella company. The government is interested in exploring if a requirement for businesses using umbrella companies to carry out mandatory due diligence, with a potential penalty for failure to do so, may lead to fewer non-compliant umbrella companies entering labour supply chains, protecting workers from the harms that can arise.

General operation

4.9 This option could be delivered through a statutory requirement to undertake due diligence. This obligation could sit with either the end client or an employment business that is in a contractual relationship with and supplies the worker to the end client. It is the government's view that a mandatory due diligence requirement should require businesses to seek to secure their labour supply chains against all forms of tax non-compliance, including error, avoidance and fraud.

4.10 The government previously considered⁹ requiring businesses to conduct due diligence into whether individuals working via their own Personal Service Companies were complying with the intermediaries legislation (IR35), ultimately rejecting the idea in favour of the extension of off-payroll working reform. The proposal in this consultation is for a broader due diligence requirement covering the conduct of a type of employment intermediary which operates in a substantially different way, supplying many workers at once rather than the single worker typically supplied by a Personal Service Company.

Question 9: *Do you agree that a requirement to undertake due diligence upon any umbrella companies which form part of a labour supply chain would reduce tax non-compliance in the umbrella company market, and to what extent?*

Question 10: *Would a mandatory due diligence requirement focused on tax non-compliance also improve outcomes for workers engaged via umbrella companies?*

Question 11: *Which parties in a labour supply chain should be required to comply with a due diligence requirement?*

4.11 The government recognises the need for businesses to have certainty around any due diligence requirements. Given the range of checks that can fall within the definition of due diligence and that different checks may be more or less relevant in certain scenarios, the government considers that it may be preferable that any legislative requirement is not prescriptive as to the precise checks which should be undertaken, though the government would welcome views on this point. Instead, HMRC could look to support businesses to understand what is expected of them and how to comply with the requirements through guidance. For example, HMRC already has published guidance on due diligence principles when sourcing labour, which sets out the steps customers can take to ensure the integrity of labour supply chains¹⁰. In setting expectations for mandatory due diligence, the government would consider the interaction with any new regulatory obligations, as discussed in the previous chapter.

Question 12: *Which due diligence checks are most effective for identifying potential tax non-compliance in labour supply chains?*

Question 13: *What due diligence checks could end clients or employment businesses be reasonably expected to carry out upon umbrella companies within their labour supply chains?*

⁹ www.gov.uk/government/consultations/off-payroll-working-in-the-private-sector

¹⁰ This guidance can be found on gov.uk at www.gov.uk/government/publications/use-of-labour-providers

Which tax heads should the checks cover (e.g. employer duties, VAT, Corporation Tax, etc.)?

Question 14: *What evidence would you expect would need to be retained, and for how long, to demonstrate that a due diligence requirement has been met?*

Question 15: *How could a mandatory due diligence requirement be designed to ensure that compliance burdens remain proportionate?*

4.12 The requirement could be supported by a penalty regime, with businesses in scope of the requirement being subject to a penalty if they fail to undertake the required due diligence. A penalty could be set at a fixed amount or linked to the amount of any tax that has not been paid by a non-compliant umbrella company in the culpable business's labour supply chain. The government welcomes views from stakeholders on the scale of penalty for failure to comply with the requirement that would achieve the desired change in business behaviour.

4.13 The intention of a penalty regime would be to incentivise end clients and agencies to ensure the legitimacy of any umbrella companies they choose to do business with. However, the government recognises that in some instances, despite the best efforts of end clients and employment businesses, tax non-compliance may still occur within the labour supply chain. As well as views on the appropriate level of penalty to deliver on the intention of the requirement, the government would be interested to hear about what safeguards stakeholders think should be part of a mandatory due diligence regime.

Question 16: *What would be the appropriate level of penalty to ensure that the requirement is complied with and how should it be calculated?*

Question 17: *What safeguards, if any, do you think would be required were a due diligence requirement to be introduced?*

Potential impacts

4.14 The government acknowledges the possibility that some businesses might look to engage temporary labour otherwise than via the umbrella company model, rather than engage with any requirement to undertake due diligence. The government is interested in what respondents think the impacts of a mandatory due diligence requirement are likely to be on labour supply chains and related businesses. The government is also interested in respondents' views on the impact that a mandatory due diligence requirement could have for workers engaged via umbrella companies.

Question 18: *What impacts would this option have on the labour market and on the umbrella company market specifically?*

Question 19: *Would this measure lead users and suppliers of temporary labour to move away from the umbrella company model of engagement? If so, how would end clients and employment businesses engage workers instead?*

Question 20: *Do you have any other comments on the proposal to require a mandatory minimum level of due diligence checks upon umbrella company engagements? In particular, are there any further risks that the government should consider before deciding whether to take this option forward?*

Option 2: Transfer of tax debt that cannot be collected from an umbrella company to another party in the supply chain

4.15 As employers, umbrella companies are required to withhold Income Tax and employee NICs from workers' pay and are liable to pay employer NICs. The low level of capital held by umbrella companies can lead to difficulties for HMRC in collecting unpaid tax from them, whether as a result of error, avoidance or fraud. This can be exacerbated by the behaviours of those individuals operating non-compliant umbrella companies, whose identities are often concealed through the use of stooge directors based overseas. In the case of disguised remuneration schemes, where non-compliant umbrella companies fail to withhold and pay over to HMRC the correct Income Tax and NICs, this can mean that the only avenue possibly available to collect any resultant tax liability is directly from the worker to ensure their tax is ultimately paid.

4.16 Some individuals will have made an active choice to enter into disguised remuneration arrangements, tempted by promises of increased take-home pay. While it is appropriate, where the relevant legal tests are met, to collect the tax due from individuals, in some cases it may be more appropriate to consider the actions of other parties. Particularly this could be where non-compliance has occurred and there has been a failure of due diligence within the wider labour supply chain and where the other parties in the labour supply chain have, explicitly or implicitly, benefitted from the non-compliance, for example by paying a lower fee for a worker's services.

4.17 To address the challenges of collecting unpaid tax owed by a non-compliant umbrella company, the government could legislate to give HMRC the power to transfer an umbrella company's tax debt to another party in the labour supply chain, in circumstances where this debt cannot be collected from the umbrella company itself.

4.18 The government envisages that this could principally cover the payroll taxes that should be accounted for by umbrella

companies as employers, namely Income Tax and both employee and employer NICs. However, the government is interested in views on whether the scope could be extended to cover additional tax heads such as VAT.

4.19 This option may have further indirect benefits, which would go some way to meeting its wider objectives for the functioning of the umbrella company market. By creating a potential consequence for labour supply chain intermediaries and users of temporary labour of engaging a worker via a non-compliant umbrella company, it is hoped that these businesses will be encouraged to take greater care when selecting the umbrella companies with which they contract. It could address the incentive that supply chain businesses currently have to effectively outsource their payroll responsibilities to umbrella companies, by introducing a potential liability in the event that the umbrella company does not comply with its obligations.

4.20 The government has previously introduced debt transfer provisions for circumstances involving other types of employment intermediary. The debt transfer rules which support the off-payroll working rules (IR35) give HMRC the power to transfer the liability for unpaid employer duties to other parties in the labour supply chain if they cannot be collected from the fee-payer¹¹. The debt transfer rules which support the Managed Service Company (MSC) rules give HMRC the power to transfer the liability for unpaid employer duties to various specified parties who were involved in the set-up of the MSC arrangement¹².

General operation

4.21 The design of this option would require a tax debt to be identified by HMRC before it can be transferred. It is expected that this would take place through HMRC's normal compliance checks into umbrella companies. The intention of the policy is to give HMRC an avenue to collect tax which is not realistically collectible from a non-compliant umbrella company; the circumstances in which this will be the case would need to be set out through legislation and guidance, to make the extent of the power clear. The government welcomes views from stakeholders on how to define the circumstances in which it would be most appropriate for this power to be used.

4.22 Another question of the design of this policy is the party to whom the tax debt would be transferred. The government's initial view is that it would be most appropriate in the first instance to seek to recover the tax debt from the employment business which supplies the worker to the end client. This is because this employment business is well-positioned in the labour supply chain

¹¹ See regulations 97LA-LH of the Income Tax (Pay As You Earn) Regulations 2003

¹² See regulations 97A-L of the Income Tax (Pay As You Earn) Regulations 2003

to have oversight and control of the other parties who will enter the contractual chain. This approach would mirror the operation of the existing Agency Legislation in Chapter 7, Part 2 of the Income Tax (Earnings and Pensions) Act 2003. Under this legislation, where a worker is engaged via a series of employment businesses, with no umbrella company, it is the employment business holding the contract with the end client that is the deemed employer for tax purposes.

4.23 In the event that there is no employment business, or that there is no realistic prospect of recovering from the employment business, the government is interested in exploring whether it could also be appropriate to transfer the tax debt to the end client, which is similarly well-placed and is also the party which benefits from the supply of labour. This would be a similar approach to that which was taken for the debt transfer provisions which support the off-payroll working rules.

4.24 The government has also considered whether to transfer the tax debt to the employment business which directly engages the umbrella company, where this is a different employment business to the one holding the contract with the end client. Although this employment business will have entered into a contract with the umbrella company and arguably ought to bear some responsibility for its behaviour, it is the view of the government that its lack of oversight over the whole labour supply chain makes it a less appropriate party to which to transfer the debt. There is also a greater risk that this business might be complicit in the non-compliance by the umbrella company and could lead to the same issues collecting tax. This approach would mirror the operation of the existing Agency Legislation.

Question 21: *Do you agree that, were this option to be pursued, it would address tax non-compliance in the umbrella company market, and to what extent?*

Question 22: *Would this option improve outcomes for workers engaged via umbrella companies?*

Question 23: *In what circumstances do you think HMRC should be able to transfer an umbrella company's tax debt?*

Question 24: *Do you agree that the tax debt should be transferred to the employment business which supplies workers to the end client, with transfer also possible to the end client in certain circumstances?*

Question 25: *What processes would employment businesses and end clients use to identify tax risks within their labour supply chains?*

Scope

4.25 This option is proposed to cover, broadly, employment taxes that ought to have been accounted for by umbrella companies. This would include, where they are due, Income Tax and employee NICs payments that ought to have been deducted from employees' pay and remitted to HMRC. It would also include employer NICs payments that the umbrella company is liable to pay as employer. The government will, however, consider whether it would be appropriate or practicable to introduce similar measures covering other tax heads, such as VAT, which can also be targets of non-compliance by umbrella companies. HMRC is already able to deny VAT input tax claims made by businesses that have used fraudulent umbrella companies in some circumstances.

Question 26: *Do you agree that this option should apply to employment taxes as set out above? Which other taxes could or should it apply to?*

4.26 This option would require a definition of the engagements for which tax debts would be in scope of transfer if there is non-compliance. The intention is that the tax debts of umbrella companies would be in scope; therefore, the government could look to introduce a definition of umbrella companies for these purposes. This is because there is no existing legal delineation between the tax which should be accounted for by umbrella companies and by other employers. The government will consider whether it would be appropriate to adopt the same definition for tax purposes as is proposed for rights purposes (see Chapter 3).

4.27 A slightly different approach would be to define the parameters of an engagement in which a non-compliant tax debt would be in scope of transfer, rather than relying on a specific definition of an umbrella company. This would be intended to cover umbrella company engagements but without relying on a narrow definition of an umbrella company which non-compliant umbrella companies could seek to restructure to avoid.

4.28 The government will also consider whether it should adopt a wider definition, covering not just umbrella companies but also other employers in contingent labour supply chains. Views from stakeholders are welcomed on how the government could best define the scope of this option, were it to be taken forward.

Question 27: *How should the government define the engagements to which this option would apply?*

Expected impacts

4.29 This option has two main expected impacts. First, a reduction in the number of non-compliant umbrella companies that are able to enter labour supply chains due to employment businesses and end clients not being willing to contract with them directly or indirectly. Secondly, an increase in HMRC's ability to use its

compliance powers to protect tax which is at risk because of the actions of non-compliant umbrella companies.

4.30 In particular, the direct impact of transfer of tax debt would help HMRC to protect payroll taxes which are currently unpaid due to the use of avoidance schemes. Although other tax heads, such as VAT, which are evaded by some umbrella companies, may not be directly protected by this measure, it is likely that the changes to market behaviours would see a reduction of non-compliance across tax heads.

4.31 This option would have an operational impact on HMRC, who would be required to apply the rules in relevant circumstances. In particular, HMRC officials would be required when applying the rules to calculate how much of an umbrella company's tax debt should be transferred to the businesses who have been involved in the labour supply chains of what may be many workers employed by the umbrella company.

4.32 The government anticipates a behavioural change by businesses using umbrella companies. This would be likely to increase administrative burdens on these businesses, as they seek to assure against the possibility of contracting with a non-compliant umbrella company and becoming exposed to the risk of a transfer of tax debt. The government would be interested to hear representations from stakeholders on the nature and extent of this potentially increased administration and how to minimise any resulting burden.

Question 28: *What steps should businesses using umbrella companies take to assure themselves that they are engaging with a compliant umbrella company? How could the government support businesses to minimise the impact of these actions?*

4.33 The government anticipates that some businesses may choose to no longer use umbrella companies in their supply chains at all, in view of the risk of a tax debt transfer. The government is interested to hear from stakeholders on the potential extent of this and any possible wider impacts.

Question 29: *Would businesses stop using umbrella companies as a result of the introduction of a transfer of debt? How many businesses would do this and what wider impacts would there be?*

Potential risks

4.34 Being required to account to HMRC for tax debts of non-compliant umbrella companies could have a significant impact on those businesses to whom a transfer is made. The government is interested in exploring whether this impact could be justifiable because of the expectation that businesses supplying and ultimately benefiting from temporary labour should take steps to

assure the security of their supply chains. The government acknowledges that, were this option to be taken forward, circumstances may arise in which a transfer of tax debt may not be appropriate.

4.35 The government is therefore considering whether safeguards would need to be put in place if this option is taken forward, to protect businesses who can show that they have taken reasonable steps to assure their supply chains. Possible safeguards could include not permitting a transfer to a business if it can show that it has exercised due diligence in deciding to contract with a particular umbrella company. Additionally, a safeguard could limit transferable tax debts to those arising from certain non-compliant activities, ensuring that genuine business failures are not included. The government would welcome the views of stakeholders on these and other potential safeguards that would support the effective functioning of this option in line with its policy objectives.

Question 30: *What safeguards, if any, do you think should be included if this option is taken forward?*

4.36 A further potential risk of this option is that it could embolden umbrella companies to behave in a non-compliant way, in the knowledge that the tax debt arising from the non-compliance could be transferred to an employment business or end client. However, HMRC would always seek to enforce the debt against the umbrella company in the first instance, with transfer only considered where it is clear that there is no realistic prospect of collecting the debt from the umbrella company. The combination of enforcement action from HMRC, combined with increased due diligence from employment businesses and end clients will reduce the risk that those umbrella companies that are set up for non-compliance enter labour supply chains in the first place.

Question 31: *Would this option change behaviour of businesses using umbrella companies in the way that the government expects?*

Question 32: *How likely is it that the temporary labour market would move away from using umbrella companies entirely, were this option taken forward?*

Question 33: *Are there any further risks that the government should consider before deciding whether to take this option forward?*

Option 3: Deeming the employment business which supplies the worker to the end client to be the employer for tax purposes where the worker is employed by an umbrella company, moving the responsibility to operate PAYE

4.37 Some stakeholders suggested that an effective way to prevent non-compliance by umbrella companies would be to prevent them from handling gross funds. This could be achieved by requiring a party sitting above the umbrella company in the labour supply chain (such as the employment business) to make deductions of Income Tax and NICs from the fee paid for the supply of the worker's services. This would mean for example that non-compliant umbrella companies would not be able to incorrectly treat payments to workers as non-taxable, such as with the "loans" commonly seen in avoidance schemes, if the tax had already been withheld and paid to HMRC.

4.38 The government welcomes views from stakeholders on how this might work in practice, whether it would be a proportionate change and the extent of any wider risks and impacts.

General operation

4.39 This option would involve legislating to change the entity in the labour supply chain that would be treated as the employer for tax purposes and secondary contributor for NICs purposes. This deemed employer would be responsible for deductions of Income Tax and NICs and also for payment of employer NICs. Under this option, the deemed employer would still be able to use the services of another business, for example a payroll bureau or umbrella company, to calculate the Income Tax and NICs liabilities but would remain ultimately responsible for PAYE being operated correctly.

4.40 It is the government's view that the most appropriate party to act as the deemed employer would be the employment business which has a contract with the end client to supply the worker to them. This would mirror the existing agency legislation at Chapter 7, Part 2 ITEPA 2003. In the event that an umbrella company was engaged directly by the client, the client would be the deemed employer. Another party which could act as the deemed employer would be the employment business that has a contract with the umbrella company. This would be similar to the approach taken in the off-payroll working rules at Chapter 10, Part 2 ITEPA 2003. Under these rules, the intermediary that pays the worker's Personal Service Company is treated as the deemed employer, assuming the end client and any other parties in the labour supply have met their obligations under the legislation. The government is interested to hear views from stakeholders on which entity would be best placed to be the deemed employer, were this option to be taken forward.

Question 34: *Do you agree that, were this option to be pursued, it would address tax non-compliance in the umbrella company market, and to what extent?*

Question 35: *Were this option to be taken forward, which entity in the labour supply chain would be best placed to be the deemed employer, and why?*

Expected impacts

4.41 This option is expected to have a substantial impact on much of the non-compliant tax behaviour currently seen in the umbrella company market.

4.42 By placing responsibility for operating PAYE nearer the top of the labour supply chain, the government believes that non-compliant umbrella companies would be less likely to enter the chain. Employment businesses and clients that want to outsource the administration of operating a payroll would still be able to do so. However, they would be incentivised to ensure that any outsourcing is only contracted to reputable firms because the ultimate responsibility for compliance would remain with them.

4.43 As with any reform, the temporary labour market may also react to the introduction of this option by re-evaluating its engagement practices, in some cases potentially moving away from using the umbrella company model. During the Call for Evidence, many client and employment business stakeholders said that one of the key services that they value from umbrella companies is taking over the operation of the payroll, which would otherwise be the responsibility of the employment business. This option would not prevent employment businesses from engaging another party to run their payroll but it would stop them from being shielded from responsibility for failure to do this correctly. Businesses could therefore continue to use umbrella companies for tax administration, as well as the administration of employment rights.

4.44 It is not thought that workers would see a significant impact were this option to be taken forward, although they may have different employers for tax and rights purposes. The government would consider what implications this might have for the practicalities of employment, for example the issue of payslips, were this option to be taken forward.

Question 36: *How would businesses manage their obligations as deemed employers following this change? What could the government do to support them with these new obligations?*

Question 37: *Would businesses stop using umbrella companies as a result of this change? How many businesses would do this and what wider impacts would there be?*

Potential risks

4.45 The government acknowledges the risk that this option may lead to disruption in the temporary labour market as a result of a large number of employment businesses re-evaluating their relationships with umbrella companies. The government is interested in hearing views from stakeholders on the extent to which they think this is a risk. There is also a risk that, should engagement practices change, workers could be moved by non-compliant umbrella companies into some other form of non-compliant arrangement.

Question 38: *How would the temporary labour market respond to this option being taken forward?*

Question 39: *Would this option improve outcomes for workers engaged via umbrella companies?*

Question 40: *Are there any further risks that the government should consider before deciding whether to take this option forward?*

Question 41: *Are there any other options that have not been covered in this chapter that you think could reduce non-compliance in the umbrella company market?*

Chapter 5

Targeted options to address tax non-compliance

Introduction

5.1 Whilst Chapter 4 explores options for addressing the structural challenges for the tax system that exist in the umbrella company market, this chapter invites respondents' views on targeted options to address the abuse of specific tax reliefs by some umbrella companies. Changes targeted at the abuse of these reliefs could be taken forward in addition to the strategic options set out in Chapter 4. The government is interested in respondents' views on how successful these options could be at materially reducing this abuse.

5.2 The employment allowance and VAT flat rate scheme are both targeted by so-called mini umbrella companies who abuse both schemes to benefit from lower levels of employer NICs and VAT respectively, defrauding the Exchequer in the process.

VAT flat rate scheme

5.3 The flat rate scheme is a simplification measure designed to reduce the administrative burdens of VAT compliance for small businesses. The scheme was introduced in 2002 and is open to VAT registered businesses with a turnover of £150,000 or less (excluding VAT) per annum. Once on the scheme, businesses can earn up to £230,000 per annum before they must leave the scheme.

5.4 Users of the scheme charge VAT to their customers in the usual way but can apply a flat rate of VAT to their gross turnover to calculate the VAT due to HMRC. The flat rate applied is dependent on trade classification. Businesses in their first year of VAT registration can reduce their flat rate by a further 1%. Users of the scheme cannot reclaim VAT (input tax) on their business purchases, with the exception of single purchases of capital expenditure goods where the amount of the purchase including VAT is £2,000 or more, because an allowance for input tax is built into the flat rates.

5.5 The scheme was designed to be revenue neutral for government and flat rate scheme users. However, it is acknowledged that the VAT liability for businesses will likely be different on the scheme versus normal accounting. The flat rate

scheme helps some businesses manage their cash flow and reduces the amount of VAT records they must retain. These benefits may outweigh the difference in liability experienced by some businesses.

Employment Allowance

5.6 The employment allowance is a NICs relief targeted at smaller employers. It reduces eligible secondary Class 1 NICs (employer NICs) liabilities by up to £5,000 each tax year and is available where an employer had employer NICs liabilities of less than £100,000 in the previous tax year.

5.7 Where companies are part of a group (also known as connected companies), only one company in the group can claim the allowance. Since 6 April 2020, the total employer NICs liabilities must be less than £100,000 in order to qualify for the 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 NICs liabilities across a group of connected companies.

Mini umbrella company fraud

5.8 The employment allowance and flat rate scheme are simple to use and rely on self-assessment of eligibility making them more easily subject to abuse by umbrella-style companies who are known to disaggregate into smaller entities (commonly known as mini umbrella companies) to meet the eligibility requirements for the employment allowance and flat rate scheme. These umbrella companies fraudulently exploit the employment allowance by ensuring the company's employer NICs liabilities for the year are covered by the £5,000 relief meaning no employer NICs is paid. The same entities deliberately misuse the flat rate scheme to exploit the lower flat VAT rates available, often by relying on an incorrect trade classification.

5.9 These umbrella companies typically have a UK-based director when they register for VAT and claim the employment allowance before that director resigns and a new offshore director is put in place. As the new director is outside of UK jurisdiction it becomes difficult for HMRC to recover any VAT or NICs lost through fraud. There is no standard model for this fraud and arrangements are constantly evolving as organised criminals try to hide their activities from HMRC.

5.10 Employees of these umbrella companies, who are often not aware of these arrangements, usually do not know who their direct employer is, and they can be moved regularly between umbrella companies to help maximise profits from the fraud. This regular changing of employer can result in the loss of some employment rights that are linked to continuity of employment. End clients, for whom the employees ultimately provide services, may also not be

aware that a third party they use for payrolling has been involved with setting up umbrella companies for fraudulent purposes.

Counteracting fraud

5.11 HMRC uses its civil and criminal powers to challenge those involved in umbrella company fraud and those facilitating it. HMRC has deregistered tens of thousands of umbrella companies who it believes were involved in exploiting either or both the VAT flat rate scheme and employment allowance.

5.12 HMRC takes action to counter employment allowance claims where it is found that a workforce is split up into many small companies with a few employees to avoid paying employer NICs. HMRC has also taken steps to deny businesses who use fraudulent umbrella companies the right to recover VAT input tax.

5.13 The flat rate scheme anti-avoidance rules are used to apply the following exclusions:

- businesses that are eligible for group treatment, or are registered for VAT as a divisional or group registration, at the time of application - or have been in the preceding 24 months
- businesses that acquire or intend to acquire capital items that are covered by the Capital Goods Scheme
- businesses that are associated - or have been in the preceding 24 months

5.14 In 2017, the government introduced the trader of limited cost legislation to further reduce the amount of abuse and make the flat rate scheme fairer. HMRC saw a reduction in the flat rate scheme population after the test was introduced but the scheme is still subject to high levels of abuse.

Further action

5.15 The preceding chapter of this consultation set out several strategic proposals being considered to combat tax non-compliance by umbrella companies. Although it is expected that these proposals would contribute to a reduction in abuse, the government believes there is a strong rationale to also target abuse of the flat rate scheme and employment allowance with specific targeted action.

VAT flat rate scheme

5.16 The government is considering taking further action to combat abuse of the flat rate scheme. The government welcomes views on how this could be done and has set out a series of questions below. It is mindful that introducing further measures into the scheme would add complexity to a VAT simplification. The

limited costs trader test added a further calculation that scheme users must carry out in each VAT period.

5.17 The introduction of Making Tax Digital (MTD) in 2019, and associated simplifications for record keeping and automation of the calculation process, has also impacted on the extent to which the flat rate scheme simplification continues to benefit businesses. The government is therefore seeking views as to the extent to which the flat rate scheme continues to offer administrative simplifications that would not otherwise be provided to understand how current simplifications overlap.

Questions about the VAT flat rate scheme and MUC abuse

Question 42: *What more could HMRC do to prevent abuse of the scheme? Are there any specific options that you believe the government should consider?*

Question 43: *What benefits does the scheme currently provide when compared to other accounting simplification measures (e.g. the annual accounting or cash accounting schemes) and, in particular, what additional (if any) benefits are there to those enabled by Making Tax Digital for VAT?*

Questions 44: *What effect, if any, has the 'limited cost' test had on your VAT accounting obligations?*

Question 45: *Do you have any other thoughts you would like to share on the VAT flat rate scheme?*

Employment Allowance

5.18 The government is considering legislative change to address abuse of the employment allowance by umbrella companies. This consultation seeks views on a legislative proposal that would allow HMRC to better deploy its existing compliance tools against umbrella company fraud. The government also welcomes views on alternative approaches that would help to address this type of fraud.

Requiring a UK resident director to be in place in order for a company to be eligible to claim the employment allowance

5.19 The success of the mini umbrella company abuse model is in part attributable to the UK director being replaced by an offshore director as described above. This makes it harder for HMRC to recover debts or seize assets from individuals in overseas territories.

5.20 One option to reduce abuse could be to make it mandatory for a UK director to be in place to be eligible for the employment allowance, allowing HMRC to better deploy its existing compliance tools and bear down on fraudulent behaviour. This would disrupt the abusive model by removing a large number of individuals based

overseas who currently act as directors of these umbrella companies. Where a UK director is in place, HMRC would be able to contact those individuals and serve relevant notices where the company was fraudulently claiming the employment allowance.

General Operation

5.21 This option would be designed to be a straightforward requirement that in order to claim the employment allowance a UK director would need to be in place throughout the entire period for which the employment allowance is claimed.

Scope

5.22 This change would apply to all companies who claim the employment allowance. Those who claim the employment allowance but who do not operate as a company, such as sole traders, would not be affected.

Expected impacts

5.23 This option would be expected to have a direct impact on abuse of the employment allowance by umbrella companies. By enabling easier contact with UK directors, the government will be able to broaden its knowledge and evidence of those involved with fraudulent activity. In turn, HMRC and other government departments will be able to increase compliance activity towards promoter mini umbrella company businesses. As the mini umbrella company abuse model becomes more difficult to operate, the government would then expect a decline in this type of activity and a consequent protection of revenue. This could also improve outcomes for those workers who are currently employed by these businesses, as they would no longer be moved regularly between employers.

Potential Risks

5.24 It is expected that the vast majority of companies who claim the employment allowance already have a UK director in place meaning there should not be a significant impact for the majority of companies. However, there is a risk that a minority of legitimate companies may be impacted by these changes. The government would be interested in hearing views from them on any potential impacts for their businesses. The government is also mindful that some mini umbrella companies could seek to recruit UK-based individuals who have no direct involvement in the fraud to act as directors.

5.25 Given that there are already rules in place which should prevent mini umbrella companies from claiming the employment allowance, there is also a risk that users of mini umbrella companies would ignore this change. The government would be interested in views on how further action could be taken to prevent this.

Questions about the employment allowance option

Question 46: *Do stakeholders agree, that if this option were implemented, it would help address abuse of the employment allowance?*

Question 47: *Are there any ways in which mini umbrella companies could sidestep these changes, and if so, how could this proposal be strengthened to reduce or prevent this risk?*

Question 48: *For limited companies, how would your business be impacted if eligibility requirements were brought in that required your business to have at least one UK director in order to claim or continue claiming the employment allowance?*

Question 49: *Would there be any barriers to appointing a UK director for those legitimate businesses who do not currently have one in place but who are eligible to claim the employment allowance?*

Question 50: *Are there any wider benefits, impacts or risks involved with this proposal that have not been identified above?*

Question 51: *Do stakeholders consider it would be beneficial to amend payroll software to make explicit that a UK director is required at the point of claiming the employment allowance?*

Question 52: *Aside from the proposed option and wider options discussed throughout this consultation, what more could HMRC do to reduce the abuse of employment allowance?*

Chapter 6

Next steps

6.1 This consultation will be open until 29 August 2023.

6.2 Responses can be submitted by email to umbrellacompanyevidence@hmtreasury.gov.uk. Alternatively, responses can be submitted by post to:

Umbrella Companies Consultation
Room 3E/04
100 Parliament Street
Westminster
SW1A 2BQ

6.3 In addition to written responses, officials will consider requests for face-to-face meetings, particularly from groups or organisations representing large numbers of individuals and businesses.

6.4 Following the conclusion of the consultation, the government will consider in full all of the responses received and will publish a summary of responses in due course.

Processing of personal data

6.5 This section sets out how we will use your personal data and explains your relevant rights under the UK General Data Protection Regulation (UK GDPR). For the purposes of the UK GDPR, HM Treasury is the data controller for any personal data you provide in response to this consultation.

Data subjects

The personal data we will collect relates to individuals responding to this consultation. These responses will come from a wide group of stakeholders with knowledge of a particular issue.

The personal data we collect

The personal data will be collected through email submissions and are likely to include respondents' names, email addresses, their job titles, and employers as well as their opinions.

How we will use the personal data

This personal data will only be processed for the purpose of obtaining opinions about government policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Processing of this personal data is necessary to help us understand who has responded to this consultation and, in some cases, contact certain respondents to discuss their response.

HM Treasury will not include any personal data when publishing its response to this consultation.

Lawful basis for processing the personal data

The lawful basis we are relying on to process the personal data is Article 6(1)(e) of the UK GDPR; the processing is necessary for the performance of a task we are carrying out in the public interest. This task is consulting on the development of departmental policies or proposals to help us to develop good effective policies.

We will ensure that any personal data being processed will be proportionate to the aim pursued, respect the essence of the right to data protection with suitable and specific measures in place to safeguard the fundamental rights and the interests of the data subject.

Who will have access to the personal data

The personal data will only be made available to those with a legitimate need to see it as part of consultation process.

We sometimes conduct consultations in partnership with other agencies and government departments and, when we do this, it will be apparent from the consultation itself. As this is a joint consultation with HM Revenue and Customs and the Department for Business and Trade, we will be sharing responses with them to help them understand who responded to the consultation.

As the personal data is stored on our IT infrastructure, it will be accessible to our IT service providers. They will only process this personal data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we hold the personal data for

We will retain the personal data until the consultation process has been completed and the policy is implemented. After this, we will only retain personal data if it is embedded in a response, but we will not use it for any unrelated purposes.

Your data protection rights

You have the right to:

- request information about how we process your personal data and request a copy of it
- object to the processing of your personal data

- request restriction or suspension of the processing of your personal data
- request that any inaccuracies in your personal data are rectified without delay
- request that your personal data are erased if there is no longer a justification for them to be processed
- complain to the Information Commissioner's Office if you are unhappy with the way in which we have processed your personal data

A full list of data protection rights can be found on the Information Commissioner's Office's website [here](#).

How to submit a data subject access request (DSAR)

To request access to your personal data that HM Treasury holds, contact:

The Information Rights Unit
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

dsar@hmtreasury.gov.uk

Complaints

If you have concerns about our use of your personal data, please contact the Treasury's Data Protection Officer (DPO) in the first instance at privacy@hmtreasury.gov.uk

If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner at casework@ico.org.uk or via this website: <https://ico.org.uk/make-a-complaint>.

List of consultation questions

Chapter 3 – defining umbrella companies

Question 1: Which of the options would be the most effective way to define umbrella companies to ensure only they are brought in scope now and ensure future regulations/standards can be targeted to the right business in the supply chain? Please explain your answer.

Question 2: Which of the definitions would be the most future proof? Please explain your answer.

Question 3: Are there any unintended consequences of either option and/or are there alternative ways of defining umbrella companies the government should consider? Please explain your answer.

Chapter 3 – umbrella company standards

Question 4: What aspects of the umbrella company's role in the supply chain should the regulations cover?

Question 5: Is there a rationale for starting with limited regulations and reviewing them before potentially expanding them to cover other areas of umbrella company involvement? Please explain your answer and illustrate with examples.

Chapter 3 – enforcement of umbrella company standards

Question 6: Are there reasons that the Employment Agency Standards Inspectorate should not enforce umbrella company regulations? And if so, are there other bodies or approaches the government should consider? Please explain your answer.

Question 7: Does the Employment Agency Standards Inspectorate have sufficient enforcement powers to regulate umbrella companies or would changes need to be made? Please explain your answer.

Question 8: Should EAS mirror its current enforcement approach for employment agencies and employment businesses if it enforces umbrella company requirements? Please explain your answer.

Chapter 4 – Option 1: Mandating due diligence

Question 9: Do you agree that a requirement to undertake due diligence upon any umbrella companies which form part of a labour supply chain would reduce tax non-compliance in the umbrella company market, and to what extent?

Question 10: Would a mandatory due diligence requirement focused on tax non-compliance also improve outcomes for workers engaged via umbrella companies?

Question 11: Which parties in a labour supply chain should be required to comply with a due diligence requirement?

Question 12: Which due diligence checks are most effective for identifying potential tax non-compliance in labour supply chains?

Question 13: What due diligence checks could end clients or employment businesses be reasonably expected to carry out upon umbrella companies within their labour supply chains? Which tax heads should the checks cover (e.g. employer duties, VAT, Corporation Tax, etc.)?

Question 14: What evidence would you expect would need to be retained, and for how long, to demonstrate that a due diligence requirement has been met?

Question 15: How could a mandatory due diligence requirement be designed to ensure that compliance burdens remain proportionate?

Question 16: What would be the appropriate level of penalty to ensure that the requirement is complied with and how should it be calculated?

Question 17: What safeguards, if any, do you think would be required were a due diligence requirement to be introduced?

Question 18: What impacts would this option have on the labour market and on the umbrella company market specifically?

Question 19: Would this measure lead users and suppliers of temporary labour to move away from the umbrella company model of engagement? If so, how would end clients and employment businesses engage workers instead?

Question 20: Do you have any other comments on the proposal to require a mandatory minimum level of due diligence checks upon umbrella company engagements? In particular, are there any further risks that the government should consider before deciding whether to take this option forward?

Chapter 4 – Option 2: Transfer of tax debt that cannot be collected from an umbrella company to another party in the supply chain

Question 21: Do you agree that, were this option to be pursued, it would address tax non-compliance in the umbrella company market, and to what extent?

Question 22: Would this option improve outcomes for workers engaged via umbrella companies?

Question 23: In what circumstances do you think HMRC should be able to transfer an umbrella company's tax debt?

Question 24: Do you agree that the tax debt should be transferred to the employment business which supplies workers to the end client, with transfer also possible to the end client in certain circumstances?

Question 25: What processes would employment businesses and end clients use to identify tax risks within their labour supply chains?

Question 26: Do you agree that this option should apply to employment taxes as set out above? Which other taxes could or should it apply to?

Question 27: How should the government define the engagements to which this option would apply?

Question 28: What steps should businesses using umbrella companies take to assure themselves that they are engaging with a compliant umbrella company? How could the government support businesses to minimise the impact of these actions?

Question 29: Would businesses stop using umbrella companies as a result of the introduction of a transfer of debt? How many businesses would do this and what wider impacts would there be?

Question 30: What safeguards, if any, do you think should be included if this option is taken forward?

Question 31: Would this option change behaviour of businesses using umbrella companies in the way that the government expects?

Question 32: How likely is it that the temporary labour market would move away from using umbrella companies entirely, were this option taken forward?

Question 33: Are there any further risks that the government should consider before deciding whether to take this option forward?

Chapter 4 – Option 3: Deeming the employment business which supplies the worker to the end client to be the employer for tax purposes where the worker is employed by an umbrella company, moving the responsibility to operate PAYE

Question 34: Do you agree that, were this option to be pursued, it would address tax non-compliance in the umbrella company market, and to what extent?

Question 35: Were this option to be taken forward, which entity in the labour supply chain would be best placed to be the deemed employer, and why?

Question 36: How would businesses manage their obligations as deemed employers following this change? What could the government do to support them with these new obligations?

Question 37: Would businesses stop using umbrella companies as a result of this change? How many businesses would do this and what wider impacts would there be?

Question 38: How would the temporary labour market respond to this option being taken forward?

Question 39: Would this option improve outcomes for workers engaged via umbrella companies?

Question 40: Are there any further risks that the government should consider before deciding whether to take this option forward?

Question 41: Are there any other options that have not been covered in this chapter that you think could reduce non-compliance in the umbrella company market?

Chapter 5 – Questions about the VAT flat rate scheme and MUC abuse

Question 42: What more could HMRC do to prevent abuse of the scheme? Are there any specific options that you believe the government should consider?

Question 43: What benefits does the scheme currently provide when compared to other accounting simplification measures (e.g. the annual accounting or cash accounting schemes) and, in particular, what additional (if any) benefits are there to those enabled by Making Tax Digital for VAT?

Questions 44: What effect, if any, has the 'limited cost' test had on your VAT accounting obligations?

Question 45: Do you have any other thoughts you would like to share on the VAT flat rate scheme?

Chapter 5 – Questions about the employment allowance option

Question 46: Do stakeholders agree, that if this option were implemented, it would help address abuse of the employment allowance?

Question 47: Are there any ways in which mini umbrella companies could sidestep these changes, and if so, how could this proposal be strengthened to reduce or prevent this risk?

Question 48: For limited companies, how would your business be impacted if eligibility requirements were brought in that required your business to have at least one UK director in order to claim or continue claiming the employment allowance?

Question 49: Would there be any barriers to appointing a UK director for those legitimate businesses who do not currently have one in place but who are eligible to claim the employment allowance?

Question 50: Are there any wider benefits, impacts or risks involved with this proposal that have not been identified above?

Question 51: Do stakeholders consider it would be beneficial to amend payroll software to make explicit that a UK director is required at the point of claiming the employment allowance?

Question 52: Aside from the proposed option and wider options discussed throughout this consultation, what more could HMRC do to reduce the abuse of employment allowance?

Terminology

The following is an explanation of some of the terms that are used in this consultation.

A promoter of a mass-marketed tax avoidance scheme - 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.

Contract of employment – 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.

Disguised remuneration (DR) – 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.

Employment agency - 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).

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). For tax purposes, such as the agency legislation, these are typically known just as agencies.

Employment intermediary – 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.

End client – the party who receives the services of the person supplied to carry out the work.

Key Information Document (KID) – 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.

Mini umbrella company (MUC) – a small umbrella company, typically only employing a few workers, set up to commit tax fraud.

Personal Service Company (PSC) – a limited company through which a contractor provides their services. Typically, the contractor is a significant or the only shareholder.

Umbrella company – 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.

Umbrella company employee – a work-seeker who is employed by an umbrella company in order to complete work for an end client.

Worker – 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 1996.

Work-seeker – 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 services.

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk