



WINTER 2025

Employment Tax Briefing

HaysMac[★]



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Welcome



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Welcome from the editor

Welcome to the Winter Edition of the Employment Taxes Briefing, where we consider recent and impending issues which will affect all employers.

30 October 2024 saw the first Labour Budget for 14 years, but historically the first to be delivered by a female Chancellor of the Exchequer, the Rt.Hon. Rachel Reeves MP.

The announcements included the increase in both employer's National Insurance and National Minimum Wage rates which will affect all employers. We have seen representation being made by many sectors, including hospitality and social care, where the ability to simply absorb the increases will prove challenging at best.

One of the areas where employers can partially mitigate the National Insurance increase is the use of pension salary sacrifice. We outline some of the key points employers need to consider, whether they already make use of the arrangement or have not previously looked at implementing a salary sacrifice as part of their pension strategy.

A day rarely goes by for any employment taxes advisor where we do not have a conversation involving employment status, including the IR35 legislation. Sadly, where a taxpayer is in dispute with HMRC regarding their 'status', cases are taking years before they can be resolved. In this edition we look at the cases involving TV presenter, Kaye Adams and PGMOL, the organisation which represents professional football referees.

The Government has also announced proposed changes to the legislation concerning who will be responsible for operating PAYE on payments made to workers who operate through an umbrella company. The new rules will come into effect from April 2026.

Whilst we have known for some time that the mandatory payrolling of benefits in kind is going to apply from April 2026, we look at the challenges employers will face and whether registering to operate the new regime from April 2025 may prove to be a viable option for employers to consider.

I hope there is something of interest for everyone but please do not hesitate in contacting me, or a member of the Employment Taxes team, should you want to discuss matters further.

Chancellor shakes up the tax treatment of hybrid company cars and double cab pick-ups

As part of her first budget, Rachel Reeves announced that she would continue with favourable company car tax rates for zero emission electric vehicles until April 2030. However, hidden in the small print of the budget, the Government will increase the company car tax rates for plug in hybrid vehicles (PHEV) from 2028/29. The Government also decided that new double cab pick-ups will now be considered as company cars from April 2025.

Electric car changes

In order to incentivise the uptake of zero emission electric company cars, the Government confirmed that they will continue to make small percentage point increases to zero-emission company car tax rates with a rise to 7% in 2028/29 and 9% for 2029/30. Hopefully, a combination of the low benefit in kind charge (relative to the charge which will apply to petrol/diesel cars) and the ability for the employer to claim 100% capital allowances in the first year (18% per annum where the full 100% allowance is not claimed) will provide sufficient incentives for employers to provide electric cars.



Ultra-low emission cars

For ultra-low emission vehicles ranging between 1g to 50g of CO2 per kilometre but is also capable of working on a fully electric range there will be an annual increase of 2% per annum for the 2028/29 and 2029/30 tax years. The impact on a vehicle with an electric range of over 130 miles and a company car tax rate of 2% for the 2024/25 tax year will increase to 18% by the 2028/29 tax year. Similar changes will come into force for vehicles with an electric range of between 30 to 129 miles with less of an increase for vehicles with an electric range of between 1 to 29 miles.

Double pick-up vans

Other changes to be introduced will see new double cab pick-ups being treated as company cars from 6 April 2025. Transitional provisions for double cab pick-ups which were:

- ♦ purchased;
- ♦ leased; or
- ♦ ordered before 6 April 2025

The transitional period will end at the earlier of disposal, lease expiry or 5 April 2029.

The changes will mean that double cab pick-ups with a payload of one tonne or more will now be treated as company cars, rather than as a company van which benefits from a flat rate benefit value instead of a calculation based on the CO2 emissions, and list price of the vehicle, such as for company car benefit.

In addition, there may also be company car fuel benefit to consider which is also based on the CO2 emissions. Company cars are usually more expensive from a benefit in kind perspective for employees and considering that a number of double cab pick-ups will have CO2 emissions of above 170g per kilometre this will result in employers having to apply the top percentage company car tax rate currently set at 37%.

The changes outlined in this article, combined with the increase to employers Class 1 National Insurance Contributions will result in additional costs for employers not to mention to employees as well who will pay additional tax at their marginal rate.

Employee car ownership schemes

Draft legislation is due to be published by the Government, which is to bring an end to employee car ownership schemes. Under such a scheme an employer or third party can sell a car to an employee, through a loan with favourable interest terms at the end of which the employee can purchase the car. As the car is effectively owned by the employee who pays the monthly finance and running costs there is no company car tax payable by the employee. The legislation is expected to come into effect from 6 April 2026.

The Autumn Budget 2024 has certainly brought about the first meaningful changes to the car benefit regime, with expectations that further developments will follow during the life of this Parliament.

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Mandatory Payrolling of Benefits in Kind

In this article we consider some of the preliminary information provided following the Autumn Budget but also the merits of voluntarily payrolling Benefits in Kind (BiK) from April 2025.

The Government has in part clarified that, initially, beneficial loans (including director's overdrawn loan accounts) and living accommodation will not be part of the mandatory payrolling of BiK. This is probably due to some of the inherent complexities connected with calculating the extent of any benefit in kind charge.

A revised form P11D for reporting beneficial loans and living accommodation. Currently it is proposed this form may also extend to any amendments that were not captured through the payroll.

However, all other taxable benefits in kind will need to be processed through the payroll in real time from April 2026.

Current position

Currently, employers are required to report the benefits in kind they provide to their employees on a form P11D, which needs to be submitted to HMRC by 6 July each year, following the end of the tax year. However, employers can voluntarily payroll the benefits they provide to employees with the two exceptions referred to above.

The voluntary approach

Under the current 'voluntary' approach, employers are required to register online with HMRC (before the beginning of the tax year in which payrolling is going to first apply), stating what benefits are going to be subjected to payrolling and the employees to whom this will relate.

For example, this could be whether it will apply to an employee at a particular location. Where payrolling of benefits is applied, the Income Tax due is collected in 'real time' through the payroll, based on their taxable value, which may be estimated.

However, HMRC will no longer make any adjustments to the employee's PAYE code number.

National Insurance (NI)

Although forms P11D will no longer be submitted to HMRC, there is still a requirement to file a form P11D(b), summarising the value of the benefits provided and to pay the Class 1A NI by 19 July (21 July where payment is made via BACS). This will continue until the mandatory basis comes into effect.

This basis will continue to be the case until April 2026.

Employee statement

Where the voluntary of payrolling of benefits is applied, employers are required to provide employees with a statement of the taxable benefits provided during the year. The statement must be provided by 1 June following the end of the tax year.



Planning for mandatory payrolling of benefits from April 2026

Whilst we are waiting for the full draft legislation, limited technical guidance and HMRC's intentions have been published following the Budget. Based on experiences where clients voluntarily payrolled benefits, employers will need to consider the following:

- ◆ Determining the nature of the benefits you will provide.
- ◆ The changes that need to be made to your policies and procedures.
- ◆ Streamlining communication with your benefit providers, for example, medical insurance company, your payroll provider, and internally, between one department and another.
- ◆ How information is shared and communicated with employees.
- ◆ The impact on staff retention and recruitment.

It is important that you start planning now to ensure you will meet the challenge of moving across to payrolling of benefits without any significant disruption to your business.

NI under Mandatory Payrolling of Benefits

Once Mandatory payrolling takes effect Class 1A NI, will be payable each pay period (typically on a monthly basis) based on the value of the benefits in kind processed through the payroll.

Starting early

It may be worthwhile considering starting to payroll BiK before April 2026. Doing so will put you ahead of the game and reduce any issues with the information you will need from your benefit providers and assisting employees manage their tax codes.

Where an employer decides to voluntarily register for the payrolling of benefits, with effect from April 2025, the current system of completing annual forms P11D for most BiK, will instead be replaced by monthly reporting through payroll. Employers must ensure they are prepared for this significant change, as it will require changing the systems and procedures that are currently in place, to ensure that the correct information is reported as part of their payroll.

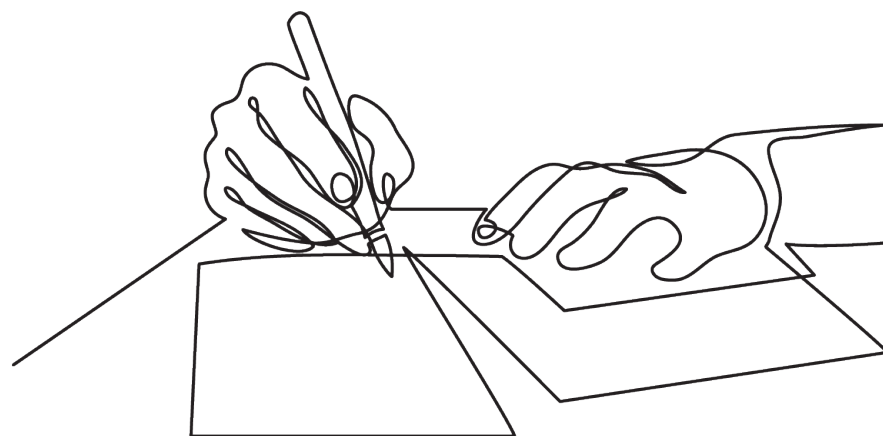
Why should I start a year earlier?

We anticipate that all benefits and service providers will be inundated with information requests ahead of 6 April 2026, which could create challenges for employers when meeting their real time reporting obligations.

Registering a year ahead of schedule will ensure a smoother interaction for all stakeholders, including HR teams, payroll, benefits providers and most importantly, employees.

The change should not be underestimated and will require a well-structured plan to help ensure that employers are fully prepared for the impact of the mandatory basis and to ensure that:

- ◆ Payroll providers have sufficient time to transition across to the payrolling of benefits.
- ◆ Data is obtained from benefit providers
- ◆ Good quality staff communications are provided
- ◆ Systems are in place to help ensure the valuation of the taxable benefits provided is updated regularly



The following are examples of the issues that need to be carefully considered, when ensuring a smooth transition to the payrolling of benefits:

- ◆ Payroll – what changes need to be made to the provision of information so that benefits can be successfully processed. Please note that not all payroll providers currently have the facility to payroll benefits.
- ◆ Employee communications – how can these changes be best communicated to employees?
- ◆ No form P11D – while P11Ds will no longer generally be submitted to HMRC, employers are still required to provide employees with details of the benefits provided and the value of those benefits – how can this be done successfully?
- ◆ Data gathering – under the impending changes, employers will need to review the value and provision of benefits in real time. This will require the careful tracking of leavers and joiners as well as variations of cover, such as for medical or dental insurance.

How can HaysMac help you prepare?

Whether you are currently registered with HMRC for payrolling of benefits or not, you will need to be ready to start operating the payrolling of benefit in kind from April 2026.

There are several steps which need to be considered, starting with identifying the taxable benefits you provide, including any new benefits which are going to be on-boarded by April 2026. Some may be obvious such as medical insurance or company cars, but how will you identify complex benefits, such as relocation costs, which may not be provided regularly and to the wider workforce.

We can help you establish new policies, procedures and processes now including how you will consult with all relevant third parties, payroll provider and your employees. How can we help you:

- ◆ Identify the benefits which need to be payrolled.
- ◆ Determine the value of the benefits provided which will be payrolled.
- ◆ Ensure details of the benefits are correctly reported to your payroll provider or loaded into your payroll software.
- ◆ Prepare any staff communications.

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Pension salary exchange schemes, how to manage the increase in employer’s National Insurance contributions

Following the Government’s Autumn Statement, businesses from all sectors were left to consider the full extent the increase in employer’s National Insurance contributions (NIC) and the uplift in the National Minimum and Living wages rates will mean to them.

Autumn Budget changes

To recap, the headline rate of employer’s NIC is going up by 1.2% to 15% with effect from 6 April 2025. Furthermore, the point at which NIC will be payable by employers will go down from £9,100 to £5,000. The increase in employers NIC will average around £900 per employee, or more pointily add over £225,000 to the wage bill for an employer with 250 employees. Whilst all employers will benefit from the Employer’s Allowance, this will in reality have little impact for most businesses other than those with around five full time employees.

Unsurprisingly, employers have been actively looking at how they can manage the increase in the employment costs they are confronting. One option includes the use of pension salary exchange.

Under a pension salary exchange employees forego or ‘sacrifice’ some of their monthly salary in return for increased employer pension contributions. Employers will be the greater beneficiary by virtue of the savings in the amount of NIC they will pay but employees will see a modest increase in their ‘take home’ pay. At the same time, the employer will take on responsibility for paying the pension contributions in full.

Benefits for employers

Pension salary exchange schemes help employers make their salary budget stretch a bit further. Put simply, for every £100 the employee agrees to sacrifice, the employer will see a £15.00 reduction in their NIC bill. This will be further enhanced by 0.5% for those employers with an annual wage bill in excess of £3m per annum who pay the Apprenticeship Levy. This will help to make in-roads into mitigating the impact the increase in employer’s NIC has created. Historically, many employers share all or part of their NIC savings with employees in the form of additional pension contributions, which can help to generate a greater level of employee engagement. Furthermore, it is common for employers to take the opportunity to use part of the NIC savings to provide new benefits or incentive awards to their employees.

However, the key message is that making use of a pension salary exchange provides employers with the ability to partly reduce the increase in employers NIC will bring from next April.



Key advantages for employees

Here, we consider the position from the employee’s point of view and what a pension salary exchange will mean to them. Basic rate taxpayers will also see a reduction in the amount of NIC they pay by £8 for every £100 they agree to sacrifice. As far as higher and additional rate taxpayers are concerned, whilst the savings will not be so significant, essentially limited to a 2% saving in NIC. The ability to receive immediate tax relief is a key advantage of the scheme, alongside reducing the need to adjust their PAYE code number, which will help to simplify their tax position. Furthermore, this provides an ideal opportunity for employees to consider the amount of salary they wish to sacrifice. Bear in mind that by reducing their earnings could bring their salary into a lower tax band or help to preserve child benefit entitlements as well as providing the opportunity for employees to move from a higher to lower tax band.

Where employers already offer a pension salary exchange, it is recommended the next few months provides an ideal opportunity to re-engage with employees, especially if there has been minimal take up in the past.

Implementing salary exchange schemes

Where employers are not already making use of the arrangement, a key aspect of the exchange will require a variation to the employees’ contractual terms. Employees will need to agree to a reduction in their salary, and in return the employer will agree to pay the corresponding amount in pension contributions on their behalf.

Communication is key to the implementation of a successful pension salary exchange. Typically, consideration needs to be given to staff briefings and written communications which clearly set out the advantages and disadvantages connected with a pension salary exchange. It is important that employees are provided with sufficient information to explain what it will mean to them.

A word of caution

A pension salary exchange must not take any employee’s pay below the National Minimum or Living Wage limits. There is a requirement to ensure any employees who are paid at, or close to these thresholds continue to pay pension contributions outside of any salary exchange.

All employers should at least consider the viability of using a pension salary exchange, not only to help mitigate the impact of the increase in wage costs being forced upon them but also to help promote greater employee engagement.

The use of a carefully planned pension salary sacrifice will help to provide a favourable platform for employees to save towards retirement but to help mitigate some of the financial burden which will come into play from next April.

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Recent employment status cases and the certainty these provided

At present there are no other employment status cases that are to be decided at the Supreme Court. However, the question of employment status remains a significant area of intrigue for HMRC, an example being the off-payroll campaign which is being conducted within the not for profit and charity sectors.

Here, we consider the lessons that can be gleaned from two recent cases. Although both cases were not decided at the Supreme Court, they do offer some clarity on how the Courts will deal with future employment status cases. For reference, Supreme Court is the final legal route and sets precedence in case law.

The two employment status cases in question are Kaye Adams, Atholl House Productions Limited (AHPL) v HMRC and Professional Game Match Officials Ltd (PGMOL) v HMRC. The rulings for both cases were published in November 2023 and September 2024 and will have a bearing on how HMRC are likely to manage future challenges.

Before we look into detail at the above cases, it is worthwhile setting out the background to the legislation and why HMRC is so intent on ensuring that companies/contractors are being compliant.

Background

The intermediaries legislation (most commonly referred to as IR35) was introduced in 2000 following the 1990s IT boom with the sole aim of ensuring that all individuals working like an employee pay the same amount of Income tax and National Insurance (NI) as an employee regardless of the structure (typically it tends to be the worker's Personal Service Company (PSC) in place between the engager and the worker.

There are Income tax and NI advantages in using the PSC model.

AHPL v HMRC EWCA Civ 501

This case was finally settled after nearly 10 years of going through various Income tax tribunals and appeals with HMRC finally conceding defeat in November 2023. The potential tax amount at loss was £70,000.

HMRC argued that Ms Adams's engagement with the BBC for the 2013/14 and 2016/17 tax years via her PSC, AHPL was one of employment and therefore the contract with the BBC was inside IR35. This means that the PSC would be responsible for calculating and paying to HMRC the Income tax and NI due on her earnings from BBC.



The Courts typically take a three stage approach when considering an individual's employment status:

1. What are the actual contractual terms and how do these terms translate in practice
2. A hypothetical contract is then drawn up
3. Applying the principles set out in the Ready Mix Concrete (Southeast) Ltd (RMC) v The Minister of Pensions and National Insurance (1968) 2QB497 case, the hypothetical contract is determined to be a contract of employment or not.

The RMC has three further tests:

- ◆ Mutuality of Obligation (MOO)/ Personal service
- ◆ Sufficient level of control
- ◆ All other terms are consistent with an employment contract.

The FTT determined that the engagement was on balance of facts, one of self-employment based on the following:

- ◆ Ms Adams was free to undertake other clients
- ◆ She had other revenue streams
- ◆ BBC did not treat her as an employee
- ◆ The intention of parties was that Ms Adams was an independent contractor.

Essentially Ms Adams was able to demonstrate that she was in business on her own account. However, the case has also brought home the length of time it can take to resolve any dispute.

PGMOL v HMRC [2024] UKSC 29

Another case which went as far as the Supreme Court but rather than decide, it was referred back to the FTT to decide stage three of the RMC case. This was because it was only asked to consider control and MOO/personal services, for example, Stages 1 and 2

of RMC. We have covered this case in detail here.

Lessons from both cases

It is clear from both cases that:

- ◆ The RMC criteria should be used to determine employment status.
- ◆ As far as control and MOO/ personal service are concerned, the first two strands of the RMC test, are proving to be a low bar to achieve
- ◆ However, unless one or more of the control or MOO/personal service is conclusive that the contract is either an employment or a contract for service (self-employment).
- ◆ What matters is that both tests are considered in more detail, as part of the third and final stage will require a multifactorial approach. This entails looking at all employment status indicators (including factors outside the contract) in the round prior to arriving at the employment status determination.

As demonstrated in the Kaye Adams case, the ability to demonstrate that she working as a business in her own account outweighed other employment indicators.

How does this apply to me?

Companies should now ensure that their employment status policies and processes are aligned with the clear steer given by these two cases. On their own, Stages 1 and 2 of the RMC decision are not conclusive. Any employment status review should be based on a multifactorial approach where all facts are gathered, a step taken back, a picture painted of the true working relationship before a decision is made.

Employment status is an area which has been the subject of HMRC interest for many years. This is probably more the case now with evolving case law.

However, HMRC are also interested in how businesses manage their off-payroll worker arrangements, which will extend to, for example, IR35, Agency and Managed service company legislation.

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Travel Expenses just got more taxing!

We frequently come across situations where employees travel overseas for conferences and seminars and the employer incorrectly assumes that the expenses will be allowable.

Presumably on the misconception it was a requirement of the job, or their employer had requested they attend a particular conference or seminar, the expenses are allowable if they meet the very restrictive conditions set out in the primary legislation, that is, the expenses are only deductible if:

- ♦ they are within Section 337 Income Tax (Earnings and Pensions) Act (ITEPA) 2003 as necessarily incurred in the performance of the duties of the employment; or
- ♦ they are within Sections 338 and 339 ITEPA as travel to a temporary workplace.

However, for both these tests to apply, the expenses are only deductible if they are incurred necessarily in the employee's performance of duties of employment. Necessary is defined as "if each and every holder of that employment would have to incur expenditure of that type" so a high bar to overcome!

It is also not enough to demonstrate that a trip had a personal educational value. Expenditure incurred by an employee to improve his or her qualifications for doing the job, or to keep his or her knowledge up to date, are not deductible. However, please refer to our comments further down in this article.

We take a considerable amount of guidance from decisions hand-down by the Courts and tribunals, some have stood the test of time. The cases of Owen v Burden (47TC476) and Thomson v White (43TC256) demonstrate how restrictive the necessary criteria is, as in both cases although it was accepted that the trips were for business reasons, it could not be shown that the trips were to perform the duties of employment.

Furthermore, the decision handed down in White v Higginbottom (57TC283) provides a useful example of the practical operation of the "necessary" test; albeit in relation to the similar rule relating to capital allowances.

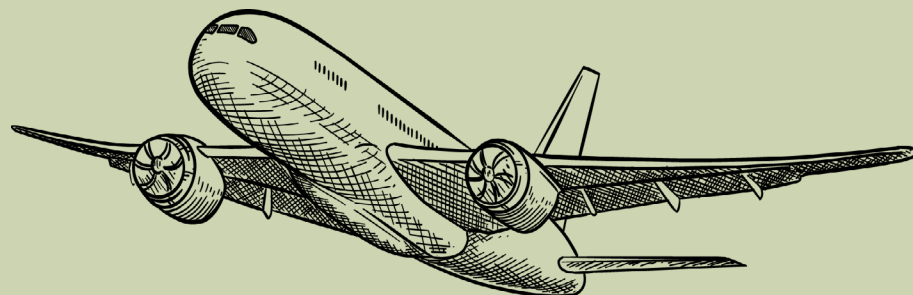
Overseas trips

Where we see HMRC challenge frequently is where some overseas trips are deemed to be incentive or to reward employees; particularly where the trip is to an exotic location or is organised and paid by third party. HMRC guidance states that insertion of a token business element is not sufficient to make it a business journey.

Based on experience, HMRC's initial challenge will be that it is to incentivise or reward that particular set of employees. It can generally be demonstrated that the cost of incentive trips is not incurred necessarily by the participants, since less successful colleagues doing the same or similar jobs will not have needed to incur the expense. Furthermore, it is unlikely the costs incurred do not form part of the duty of their employment to attend the conference.

The following example will illustrate HMRC's thinking. In the case in question, certain employees (identified as high performers) were rewarded with trips to exotic locations. HMRC considered only the primary legislation within Section 336 ITEPA 2003 and sought to disallow all of the expenses.

The legislation within Section 336 ITEPA 2003 is very restrictive as it only allows costs which have been incurred "wholly, exclusively and necessarily in the performance of the duties of the employment" and all three hurdles of the test need to be met, not just one or two of them".



Work related training

However, we managed to steer HMRC to consider the work related training legislation which can be found within Section 250 ITEPA 2003, which states that "work-related training" is defined as "any training course or other activity which is designed to impart, instill, improve or reinforce any knowledge, skills, or personal qualities which:

- ♦ are, or are likely to prove, useful to the employee when performing his/her duties or
- ♦ will qualify or better qualify the employee to undertake the employment, or to participate in charitable or voluntary activities arising through the employment.

A key point when using this legislation is there must be an itinerary to help demonstrate the reason why the event is being held and to support the extent of the costs which can be allowed, especially where some form of apportionment is going to be claimed. In the case in question, we were able to get an equitable result for the client where only the cost of deemed private element were subject to a benefit in kind charge, instead of the whole expenditure as was HMRC's original assessment.

Partners or spouses accompanying employees on a business trip

HMRC also look closely when spouses or partners accompany the employee or director on business trips, particularly abroad. The starting position for HMRC will be that all spouse/partner related travel costs (including food, accommodation etc) are taxable because they have not been incurred in the performance of duties of employment.

For spouse/partner expenses to be allowable, it must be demonstrated that they have a skill that is required, such as competency in a particular language which no other employee has, or the spouse/partner presence is essential to host a series of business entertaining occasions or the employee's health is so poor that it is essential that the spouse/partner accompanies them on the trip.

The above circumstances are rare so we need to determine if we can mitigate any of these costs.

Costs such as flights and accommodation will be the same, so can be claimed as business expense. You need to bear in mind that other personal expenditure such as food, personal trips etc will be taxable and reporting process would be dependent on if it were purchased via Company credit card, paid by the Company to the provider or the employee is reimbursed for the costs incurred.

In summary, travel expenses for overseas business trips are not as straight forward as one imagines and therefore may not be allowable for the above reasons. However, a different strategy of using the employer related training exemption may be more fruitful.

To conclude, for an employer to contend that there was business element/training attached to a business trip, especially to an exotic location, it must keep robust records to support this assertion such as an agenda or itinerary.

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Umbrella company reforms

As part of the Autumn Budget statement, the Chancellor of the Exchequer announced new legislation which is aimed at combatting non-compliance involving the use of umbrella companies.

What are umbrella companies?

Umbrella companies are employment intermediaries which typically employ temporary workers on behalf of agencies and end users. The arrangements will see the worker providing their services to the end client but the responsibility for ensuring all PAYE and National Insurance compliance obligations are the responsibility of the umbrella company.

Umbrella companies have proved to be an ideal model for the provision of workers, which can be done on a highly flexible basis primarily to meet the needs of end user clients. Currently, neither the agency nor the end user client are responsible for conducting any of the administrative and compliance reporting obligations.

In recent years, HMRC have firmly been of the opinion that umbrella companies are not fulfilling their compliance reporting obligations, often seeing challenges relating to compliance failures and right up to aggressive tax avoidance and fraudulent behaviour.

The Government's proposal

It is proposed that from April 2026, new legislation will come into force where the responsibility for PAYE and National Insurance compliance will move away from the umbrella company. Instead, it will become the responsibility of the agency who supplies the worker to the end user.

However, where no agency engages in the provision of the worker (often referred to as the worker supply-chain), the responsibility to operate PAYE and National Insurance will rest with the end-user.

Action-points

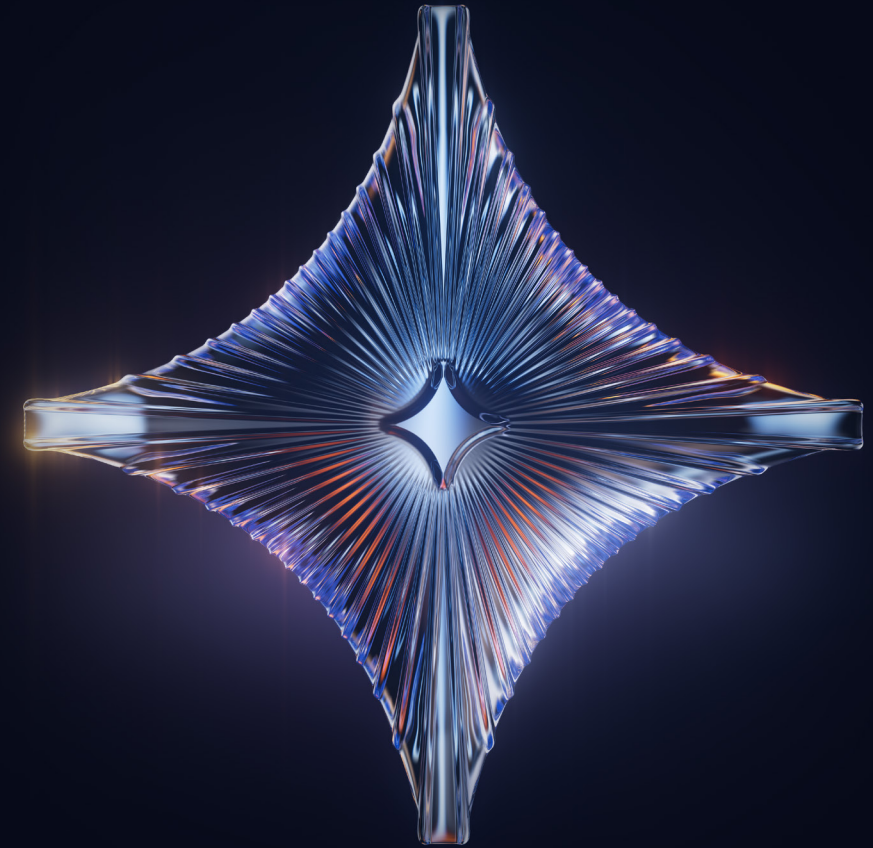
The new legislation will require agencies or end-users to review their current arrangements, especially the existing worker supply-chains. For example, do you know which workers are provided through umbrella company arrangements and which agencies supply those workers?

Where agencies or end-users are going to continue to outsource their payroll reporting obligations, then they will need to, at the very least, understand how the umbrella company is going to ensure compliance is going to be maintained. The importance of reviewing controls and procedures will need to be carried out as part of a detailed review.

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