

## Changes to travel and subsistence expenses relief from 6 April 2016

Version 1: 17.12.15

In summer 2015 HMRC consulted on removing tax relief on travel and subsistence expenses from temporary workers. In the Autumn Statement on 25.11.15 the Government announced it will proceed with this change and published draft legislation on 09.12.15 together with accompanying documents, listed below.

[Consultation – summary of responses](#)

[Draft legislation](#)

[Explanation of draft legislation](#)

[Guidance](#)

This note is based on the draft legislation – this is subject to amendment (from a technical though not a policy perspective). We must submit any comments on the text to HMRC by **03.02.16**.

Throughout this document ITEPA means the Income Tax (Earnings and Pension) Act 2003.

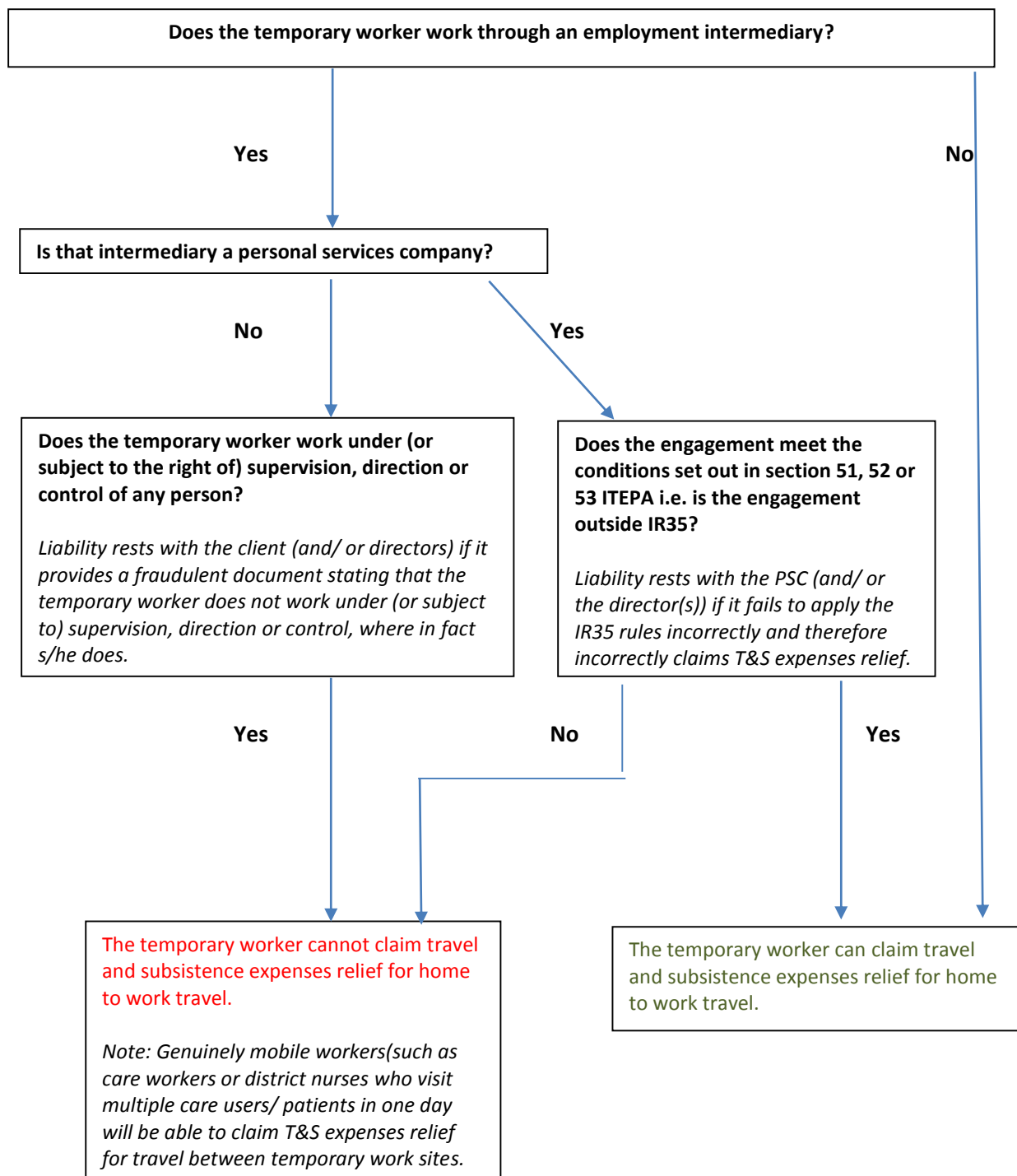
Issue	Response/ concerns
<b>What is T&amp;S expenses relief?</b>	Employees who work at temporary workplaces are able to claim tax relief on their travel and subsistence expenses. A number of conditions apply including that the employee can work at the temporary workplace for no more than 24 months and s/he should spend no more than 40% of their time at the temporary workplace.
<b>What problem have HMRC identified?</b>	There has been an exponential growth in the use of T&S by temporary workers, particularly those working through umbrella companies. HMRC say that the expenses relief was never intended to be used by temporary workers as it is. It believes significant sums of PAYE tax and NICs are due (between £265 million and £600 million depending on which document you read).
<b>Changes from April 2016</b>	In the Summer 2015 Budget it was announced the temporary workers would no longer be able to salary sacrifice in order to be able to claim T&S relief from 6 April 2016.
<b>What further changes will happen in April 2016?</b>	<p>Further changes were confirmed in the Autumn Statement which will remove the T&amp;S expenses relief entirely from temporary workers as follows:</p> <ul style="list-style-type: none"> <li>From 6 April 2016 a new section 339A ITEPA will apply which will mean that temporary workers will not be able to claim travel and subsistence tax relief for home to work travel where the worker <ul style="list-style-type: none"> <li>(a) Personally provides services to a client, and</li> <li>(b) The services are provided not under a contract directly between the client and the worker but involve an <b>employment intermediary</b>.</li> </ul> </li> <li>The rules will not apply i.e. T&amp;S expenses relief can still be used where:</li> </ul>

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	<ul style="list-style-type: none"> <li>○ it is shown that the manner in which the worker provides the services is not subject to (or to the right of) supervision, direction or control by any person (SDC) (new section 339A(1)) – <b>this means that SDC is presumed unless it can be shown not to apply; or</b></li> <li>○ the conditions set out in section 51, 52 or 53 ITEPA are met i.e. the engagement is outside IR35 (new section 339A(3)).</li> <li>• <b>Employment intermediary</b> is defined in new section 339A(9) as a “person, other than the worker or the client, who carries on a business (whether or not with a view to profit) and whether or not in conjunction with any other business) of <i>supplying labour</i> – so this includes someone working through an employment business, an umbrella and on the face of it, a PSC (see below). However most supply chains will have at least 2 employment intermediaries – the draft legislation does not distinguish between the employment intermediary which has the contract with the end user client (as in ITEPA reporting) or the employment intermediary which has the contract with the temporary worker.</li> <li>• Each engagement/ assignment is to be treated separately (new section 339(A)(4)). This will mean that the various client sites where a temporary worker works cannot be treated as temporary workplaces for the purposes of the relief.</li> <li>• Importantly, relief will still be available for travel between client sites e.g. for care workers or community nurses who attend multiple care users or patients in one day, though they will still not be able to claim home to work expenses relief. See page 8 of the <a href="#">draft guidance</a>.</li> </ul>
<b>Any exemptions?</b>	<ul style="list-style-type: none"> <li>• Staff supplied by professional services firms (i.e. who do not supply labour) are exempt from these changes and so will still be able to claim T&amp;S for employees they second.</li> <li>• Employed construction workers subject to a Working Rule Agreement? The consultation document referred to this exemption but there is no reference in the legislation – we will check this point with HMRC.</li> </ul>
<b>Application of new rules to PSCs</b>	<ul style="list-style-type: none"> <li>• New section 339A(3) provides that these new rules will apply only where (a) the intermediaries legislation applies i.e. where the individual works inside IR35 or (b) where IR35 would apply if the individual was not receiving all remuneration as employment income - <b>NB – HMRC confirmed on 15.12.15 that they will amend section 339A(3)(a) to remove the reference to employment income.</b> Therefore where the engagement is outside IR35 neither the PSC nor the EB will have to apply the SDC test and the PSC can still claim T&amp;S expenses relief for the contractor.</li> <li>• We have a number of questions to work through: <ul style="list-style-type: none"> <li>○ Is a declaration from the PSC that IR35 does not apply sufficient? What should this declaration look like? Do employment businesses also need to assess if IR35 applies or not, or is the PSC view sufficient? What if the employment businesses view conflicts with the PSC’s view?</li> <li>○ What due diligence do employment businesses need to do to check PSC credentials e.g. is having a “material interest” i.e. more than 5% of shares in the PSC sufficient?</li> </ul> </li> </ul>

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	<ul style="list-style-type: none"> <li>○ What behavioural changes can we expect? Whilst we wait for the IR35 consultation and any new rules to come into effect will this encourage individuals/ PSCs to claim that they are outside IR35 and therefore can still avail of T&amp;S relief? NB – see Liability below</li> </ul>
<b>Who will be liable for failure to comply with legislation?</b>	<ul style="list-style-type: none"> <li>• Initially this rests with the employment intermediary which has the contract with the temporary worker.</li> <li>• Liability can be transferred to a client or another relevant person if the client or relevant person provides a fraudulent document to the say that SDC does not apply, when in fact it does and the employment intermediary operates T&amp;S in reliance on this (new sections 339A(6) and (7)). “Fraudulent” is a problem as this suggests intention to mislead and not just a mistake.</li> <li>• Directors or other company officers can be personally liable – such liability will be joint and several (new section 97ZI)</li> <li>• On 15.12.15 HMRC said that liability would not transfer to an employment business for the failure of a PSC to apply either the IR35 or the T&amp;S rules correctly. We will seek written confirmation.</li> <li>• Liability can transfer to the employment business where it passes a fraudulent document which states that SDC does not apply. <a href="#">Q – does this include passing a document received from the client stating SDC does not apply?</a></li> </ul>
<b>Targeted anti-avoidance</b>	This is set out in new section 339A which provides that any arrangements “the main purpose, or one of the main purposes, of which is to secure that this section does not apply” will be disregarded.
<b>Impact?</b>	<ol style="list-style-type: none"> <li>1. Employed temps will be more expensive: <ol style="list-style-type: none"> <li>a. 13.8% employer’s NICs will be due on sums which would otherwise have been put aside for expenses;</li> <li>b. more temporary workers may qualify for pensions auto-enrolment (or for higher employer contributions) and higher holiday pay;</li> <li>c. if clients do not accept increased charges either umbrellas will have to swallow the increased costs, the employment businesses will have to cease working with those clients or seek alternative models of supply. If the employment business runs its own T&amp;S scheme, it will have to cease doing so.</li> </ol> </li> <li>2. Clients may decide to engage temporary workers directly and so cut out the employment business.</li> <li>3. Temporary workers <i>may</i> find that they take home less pay because they pay more tax and NICs (though as a result they are more likely to meet the qualifying criteria for NICs related contributions). They may also pay higher pensions deductions and enjoy higher holiday pay. However if they cease working through an umbrella company (see next point) they will save on the umbrella’s admin fee/ service charge.</li> <li>4. It may be difficult to get temporary workers to travel to remote areas or areas where there are skills shortages.</li> <li>5. Some umbrellas will cease to exist – they are the largest users of T&amp;S schemes. Temps employed by these umbrellas will have to be moved either onto the</li> </ol>

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	<p>employment business's own payroll or employed by another umbrella not using a T&amp;S scheme.</p> <ol style="list-style-type: none"> <li>If moved onto the employment business's own payroll this will increase their apprenticeship levy bill (where turnover exceeds £3million). (NB – we have limited detail on how the apprenticeship levy might work – the government is consulting on this at the moment).</li> <li>TUPE issues?</li> </ol> <ol style="list-style-type: none"> <li>New models of supply will appear attempting to get around the rules. <a href="#">Please pass any marketing materials or contractual document you receive to REC Legal so that we can see what is happening in the market.</a> We recommend that you do not sign non-disclosure agreements which prevent you from obtaining legal advice on new models of supply.</li> <li>There will be greater pressure to agree that temporary workers are not subject to (or to the right of) supervision, direction or control, where the opposite is true and/ or to supply them through their own personal service companies even where this is not appropriate and it is clear IR35 will apply.</li> <li>PSCs – will there be mass migration of workers into PSCs amid claims there are outside IR35? If yes, this will undo the work done by employment businesses to get people back onto PAYE post April 2014 (when s44 ITEPA was amended). HMRC have already said they will monitor the growth of PSCs, including via the quarterly ITEPA reporting.</li> <li>Will some employment intermediaries simply carry on applying T&amp;S relief in the belief they will not be caught by HMRC?</li> <li>Some employment businesses might seek to rely on tax investigations insurance and not do the appropriate due diligence checks on their umbrella company suppliers or PSCs. See the <a href="#">REC model intermediary checklist</a>.</li> <li>The professional services exemption will grant a significant advantage to those firms.</li> <li>Referral fees and timesheet processing fees – where employment businesses earn fees from referring individuals to umbrellas and/ or through the number of timesheets processed, this will impact on their bottom line.</li> </ol>
<b>Next steps</b>	<ul style="list-style-type: none"> <li>Webinar – 19.01.16 at 1pm.</li> <li>03.02.16 – closing date for comment on draft legislation and guidance</li> <li>Watch out for sector meetings and seminars dates in Q1 2016.</li> <li>We will amend relevant REC model contracts when we have the final legislation.</li> <li>06.04.16 – T&amp;S expenses relief changes to come into effect</li> </ul>
<b>Legal guide links</b>	<a href="#">Paye tax and NICs</a>  <a href="#">Travel expenses</a>

## Flowchart of entitlement to claim travel and subsistence expenses relief





## REC Legal

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