



UMBRELLA COMPANY MARKET

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ICAEW welcomes the opportunity to comment on the Umbrella Company Market call for evidence published by HM Treasury, HM Revenue & Customs and the Department for Business, Energy & Industrial Strategy on 30 November 2021, a copy of which is available from this [link](#).

The off-payroll problem will only be permanently resolved if the advantages of arbitrage, caused mainly by the cost of employer NIC, are removed. This could be achieved if the total amount of tax and NIC payable in respect of an individual was the same or similar across all sources of income and did not vary materially depending on employment status or type of engagement. An informed debate is needed about how work should be taxed and the extent to which the tax system should distinguish between those who the tax system currently treats as employees and as self-employed.

Non-compliant umbrella companies compete unfairly with compliant umbrella companies. HMRC should help people to use compliant umbrella companies, eg by publishing a list of UCs that it considers compliant.

Companies House and HMRC should work together to monitor and take preventative measures against individuals who are or have been directors of or significant shareholders in companies with poor compliance records and/or where tax debts have not been paid.

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KEY POINTS

1. The off-payroll problem could be permanently resolved if the total amount of tax and NIC payable by individuals and the engagers of workers was the same or similar across all sources of income and did not vary materially depending on employment status or type of engagement.
2. This could be achieved by replacing NIC on employment income with a hirers' levy in respect of engagements with employees and the self-employed.
3. The fundamental difficulties underlying the taxation of work need to be properly addressed by informed debate about how work should be taxed and the extent to which the tax system should distinguish between those who the tax system currently treats as employees and as self-employed.
4. Compliance would also be enhanced if the taxation of work and the off-payroll working regime complied with our *Ten Tenets for a Better Tax System* by which we benchmark the tax system and changes to it (summarised in Appendix 1), in particular, it needs to be simple (Tenet 2), certain (Tenet 3) and the tax/NIC easy to collect and calculate (Tenet 4).
5. Non-compliant umbrella companies (UCs) compete unfairly with compliant UCs by undercutting their fees. HMRC needs to consider ways to encourage engagers and workers to use the compliant UCs, for example by publishing a list of UCs that it considers compliant.
6. Companies House (CH) and HMRC should work together to monitor directors and shareholders, for example to check whether tax debts, especially PAYE debts from companies with common directors and or shareholders, are correct and being paid on time, and take preventative measures against individuals who are or have been directors of or significant shareholders in companies with poor compliance records.

GENERAL POINTS

A long-term solution is needed

7. The fundamental difficulties underlying the taxation of work remain. The off-payroll problem will only be permanently resolved if the advantages of tax and NIC arbitrage caused by the cost of employer NIC are removed.
8. This could be achieved if the total amount of tax and NIC payable by individuals and the engagers of workers was the same or similar across all sources of income and did not vary materially depending on employment status or type of engagement.
9. Compliance would also be enhanced if the taxation of work and the off-payroll working regime complied with our *Ten Tenets for a Better Tax System* by which we benchmark the tax system and changes to it, summarised in the Appendix; in particular, it needs to be simple (Tenet 2), certain (Tenet 3) and the tax/NIC easy to collect and calculate (Tenet 4).
10. Ultimately, these problems can only be properly addressed by an informed debate about how work should be taxed and the extent to which the tax system should distinguish between those who the tax system currently treats as employees and as self-employed.

Problems faced by parties in the labour chain

11. Some in the labour market are under the mistaken impression that HMRC approves umbrella companies (UCs).
12. HMRC's guidance says that all parties, especially clients, should undertake due diligence of the labour supply chain. This is not possible, not least owing to data protection law, which does not seem to be taken into account in HMRC's guidance.

13. Contractors are told by clients and employment agencies to enrol with a UC. How are contractors supposed to check whether an agency or a UC is reputable?
14. Many think that if a lawyer has said something it must be right, but employment and tax law are separate specialisms and most lawyers do not know about both of these areas.
15. Save where the end client is the fee-payer, it is impossible to reconcile gross amounts shown on payslips without information from every party in the chain, which the client and contractor have no means to obtain. Most people do not understand payslips and have an implicit trust that they are correct.

Action needed by government

16. HMRC should manage the tax system on a timely business. The Department currently does not administer PAYE in the timescales required by those operating payroll. Merely encouraging businesses to perform HMRC's functions is counterproductive and is leading to lack of trust in the tax system and HMRC.
17. Outsourcing by HMRC of labour supply chain compliance to those in the labour chains is probably not unexpected given HMRC's historically poor enforcement of the April 2000 IR35 rules. However, such outsourcing is unlikely to increase tax compliance. HMRC needs to take more direct enforcement action against suspected wrongdoers – merely adding yet more regulation is fruitless.
18. Companies House (CH) and HMRC should work together to monitor directors and shareholders, for example to check whether tax debts, especially PAYE debts from companies with common directors and or shareholders, are correct and being paid on time, and take preventative measures against individuals who are or have been directors of or significant shareholders in companies with poor compliance records.
19. CH should undertake pre-incorporation and ongoing compliance checks to prevent unsuitable people setting up companies, eg, check how many other directorships are/have been held and the compliance history of their companies.
20. Non-compliant UCs compete unfairly with compliant UCs by undercutting them. HMRC should consider ways to encourage end clients and contractors to use the compliant UCs, for example by publishing a list of UCs that it considers compliant.
21. To help people understand their payslips and remittance advices, financial and tax education is needed in schools, colleges and on courses for vocational qualifications.
22. As previously advised to government, the only sustainable way to resolve the off-payroll problem is to better align the tax and NIC implications of work. This could be achieved by replacing NIC on employment income with a hirers' levy in respect of engagements with employees and the self-employed. A long term rethink is needed.

ANSWERS TO SPECIFIC QUESTIONS

23. We have not answered Questions 1 to 36 as they are aimed at those using UCs.

Chapter 4 Tax Non-Compliance in the Umbrella Company Market

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

24. HMRC should manage the tax system on a timely business. They currently do not administer PAYE in the timescales required by those operating payroll. Merely encouraging businesses to perform HMRC's functions is counterproductive and is leading to lack of trust in the tax system and HMRC.

25. Companies House (CH) and HMRC should work together, eg, are tax debts, especially PAYE debts, from companies with the same directors/shareholders correct and being paid on time?
26. CH should undertake pre-incorporation and ongoing compliance checks to prevent unsuitable people setting up companies, eg, how many other directorships are held and what is the compliance history of their companies.
27. HMRC needs to help end clients and contractors determine whether UCs are compliant, for example by publishing a list of UCs that it considers compliant.
28. Please refer also to our comments above under General Points.

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

29. As we have previously recommended, the only way to resolve the off-payroll problem is to equalise the tax and NIC implications of work. One way to achieve this would be to replace NIC with a hirers' levy in respect of engagements with employees and the self-employed.
30. The call for evidence is written as if all UCs were non-compliant. The reality is that non-compliant UCs compete unfairly with compliant UCs and therefore HMRC should consider ways to encourage businesses to use the compliant UCs.
31. Please refer also to our comments above under General Points.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).