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**HMRC Consultation on Employee Benefits and Expenses
– exemption for paid or reimbursed expenses
WRITTEN SUBMISSION BY THE ASSOCIATION OF LABOUR PROVIDERS**

Contact

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Introduction

The Association of Labour Providers (ALP) is a trade association supporting and representing organisations that supply seasonal, agency and contingent labour into the UK food production, horticultural and agricultural sectors. The ALP has approximately 270 organisations that voluntarily choose to be members of the Association on payment of an annual subscription and commitment to abide by the ALP Constitution. ALP member organisations supply approximately 60-70% of the temporary workers into the food supply chain. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters Licensing Authority (GLA). The ALP provides a range of services to help labour providers achieve labour standards compliance and good practice.

Consultation Purpose

In response to the Office of Tax Simplification's (OTS) January 2014 report on the tax treatment of employee benefits and expenses [Review of employee benefits and expenses: second report](#), the government announced in Budget 2014 that it intended to review the rules underlying the taxation of travel and subsistence expenses.

The government believes that the travel and subsistence rules have failed to keep pace with changes in working practices including the growth in the temporary labour market and that tax planning and abusive behaviour are distorting the labour market and working practices.

The government intends to start from first principles and produce a new set of rules that will work with modern day practices and are simpler for both employees and employers to understand and use; to reflect rather than drive commercial decisions and be responsive to 21st century working patterns. The government expects that this will be a longer term piece of work, and therefore has no plan to legislate for these new rules in the remainder of the current parliament.

The government intends to conduct the consultation in stages. In the first stage of the consultation which commenced in July 2014 and will take until October 2014 the government intends to improve its understanding of the commercial realities of travel and subsistence payments and to discuss the framework within which it will develop any new principles to underlying rules on travel and subsistence expenses. In

particular the government wants to discuss what sort of payments should qualify for tax relief, who they should need to be paid by, to whom and in what manner – and whether tax relief for subsistence payments need be tied to the rules for travel. The government intends to make an initial update on this stage of the review at the Autumn Statement 2014.

In the second stage of the review the government intends to establish a working group to assist in producing a new set of principles upon which the rules of a new travel and subsistence tax regime. These principles will be based upon the government's findings from the first stage of the review. The government intends to report on this stage of the review at Budget 2015.

Response

The response by the ALP particularly refers to the "Protection against abuse" section of the consultation extracted below:

4.13 The Government is aware of a number of arrangements that are used by a minority of employers which seek to replace taxable pay with payments of non-taxable expenses. Historically these arrangements have involved employees sacrificing an amount of their salary in exchange for being paid an equivalent amount of subsistence expenses. The primary purpose of these arrangements is usually to reduce the amount of NICs that the employer is required to pay. The arrangements are often aimed at low paid employees.

4.14 Because these arrangements reduce an employee's taxable pay there are a number of potential side effects for an employee taking part in them, including a potential reduction in the employee's entitlement to contributory benefits due to reduced NICs payments by the employee. These issues predominantly affect the lowest paid workers. In many cases employees are given no real choice but to participate in these arrangements.

4.15 There is also a commercial effect to such arrangements. Those employers who use these arrangements have a reduced NICs liability and, as a result, they gain a competitive advantage over employers who are unable or unwilling to enter into similar arrangements themselves.

4.16 The majority of these arrangements involve the expenses payments being made under a dispensation.

4.17 The Government does not believe that these arrangements are in the spirit of the rules that provide relief for employees who incur qualifying expenses in the course of their work. The Government also does not believe it is fair that employers who enter into these arrangements gain a competitive advantage over those employers who seek to operate within the spirit as well as the letter of the law.

4.18 The proposed exemption provides an opportunity for the Government to tackle some of these arrangements and prevent them being used in the future. This would most likely be achieved through a targeted anti-abuse rule to prevent such arrangements being used in conjunction with the exemption.

4.19 The Government's intention is that any action to tackle these arrangements should not disturb any legitimate business practices that are not tax or NICs motivated. While the Government is not aware of any commercial reason for these arrangements, other than a desire to reduce tax and NICs liabilities, it would welcome views on whether there are any business practices that would be inadvertently affected.

4.20 In particular the Government would welcome views on whether there are specific types or models of these arrangements which are not tax or NICs motivated. Similarly views would be welcome on whether there are types of these arrangements which are clearly contrived or artificial.

Question 2: of the consultation specifically asks, "Are you aware of any types of arrangement that seek to replace taxable pay with payments of non-taxable expenses which the Government should focus on in particular when tackling this issue? Are you aware of any types of these arrangements where tackling them might disturb business practices that are not tax or NICs motivated?"

The ALP position on this matter has been for some considerable time that:

- There should be a level playing field that allows fair competition for labour providers of all sizes and resources.
- There is an inequity in that low paid workers at or around NMW are unable to benefit from tax relief legally available to higher paid workers.
- HMRC, as the authority which both issues dispensations and enforces compliance, has been the cause of the unequal competitive trading situation that has arisen in recent years. HM Government should act urgently on this matter.
- Workers who participate in such schemes should receive a significant addition to their net take home pay.

The ALP therefore welcomes this consultation as a significant development in HMRC actively tackling abusive arrangements.

For labour providers, however, there is a degree of ambiguity around the targeted anti-avoidance measures, which are proposed to counter perceived abuse using salary sacrifice arrangements for travel and subsistence.

It is difficult to see how the anti-abuse measure will be framed and how it will be enforced, given that HMRC should be in a position to counter abusive arrangements under existing legislation and powers. Those businesses abusing travel and subsistence reliefs currently are generally not operating within the scope of any HMRC dispensation and may also be in breach of National Minimum Wage legislation. A targeted anti-avoidance rule denying these types of businesses access to an exemption for business expenses is likely to be toothless and is likely to create greater ambiguity for businesses paying expenses under the scope of a valid dispensation.

The consultation also suggests a lack of understanding of the usual umbrella business model. Umbrella employers do not typically operate a salary sacrifice arrangement. There is no replacement of taxable pay with expenses – rather there is a contractual entitlement to pay plus expenses.

The ALP does not see that the proposed anti-avoidance measure will be of any help. One outcome might be that umbrella employers will continue to require a dispensation – however, this would require legislation that distinguishes an umbrella employer from other employers, which in itself will add complexity and potentially create further loopholes.

The ALP therefore proposes a further and more targeted consultation on this matter with the ultimate outcome of ending abusive arrangements and creating a level playing field that allows fair competition for labour providers of all sizes and resources.