



GLA Brief

Issue 39 – June 2014: Travel and subsistence schemes

This Brief explains how the Gangmasters Licensing Authority (“GLA”) Licensing Standards apply to travel and subsistence tax relief models. This Brief replaces Issue 12 dated January 2011.

Introduction

Umbrella companies or payroll companies who employ or engage workers directly **must** hold a GLA licence. Travel and subsistence schemes operated by labour providers and / or umbrella companies must comply with the GLA’s Licensing Standards in particular, Licensing Standards:

- Standard 2.1: PAYE, National Insurance and VAT
- Standard 2.2: Minimum Wage
- Standard 7.1: Fees and Providing Additional Services

Types of scheme

Whether travelling and subsistence expenses can legitimately be paid free of tax and NICs by an employer depends on a number of factors. The GLA will critically examine any model(s) being operated to ensure compliance with its Licensing Standards.

The introduction of regulation 31(1)(j) of the National Minimum Wage Regulations 1999 saw the end of the payment for reimbursement of expenses being taken into account when calculating the National Minimum Wage (“NMW”). This impacted on the operation of salary sacrifice schemes for workers earning at or near the NMW. As a result the GLA has seen the introduction of a number of new schemes.

The GLA were successful in an appeal (“*FS Commercial*”) against the refusal of a GLA licence regarding one such scheme. The applicant wished to operate a particular model whereby tax and National Insurance (NICs) relief was applied to an element of the worker’s pay, by the applicant each pay day. Such models can be known as “pay day by pay day tax relief”, “Auto Relief” or “personal tax relief”. A full copy of the determination in this matter can be found at

<http://www.gla.gov.uk/PageFiles/1475/FS%20Commercial%20Ltd.pdf> .

Licensing Standard 2.1 Critical: PAYE, NI and VAT

This Standard requires a licence holder to accurately calculate and deduct tax and National Insurance from all workers' pay and pay the correct amount to HM Revenue and Customs in a timely manner.

Travel and subsistence schemes examined by the GLA typically see a reduction in the amount of a worker's taxable pay. The GLA acknowledges that certain schemes can be compliant with this Licensing Standard where an employer **reimburses** expenses actually incurred by its workers, provided NMW Regulations are complied with. For example, salary sacrifice schemes where a worker contractually sacrifices a portion of their wage in return for a **payment** of tax free expenses. Where there is a **payment** of expenses, the GLA will undertake a variety of checks including but not limited to, whether a valid dispensation from HMRC is held, whether that dispensation is being complied with and whether the company has adequate procedures in place to verify the amount of expenses being incurred.

Some schemes see employers **not reimbursing** expenses incurred by the worker and instead purporting to reduce a worker's pay for PAYE and NICs purposes by an amount of travelling and subsistence expenses incurred by the worker, through what is sometimes called the "pay day by pay day" model. Where there is **no payment** of expenses, contrary to tax and NICs legislation, the GLA considers these schemes to be non-compliant with Licensing Standard 2.1.

This is because:

- Any relief available to a worker under section 338 of ITEPA 2003 (and which may be claimed by a worker at the end of a tax year) is not taken into account in the calculation of PAYE income for the purposes of Part 11 of ITEPA. There is therefore no basis for an employer to treat pay for PAYE purposes as reduced by the amount of any travelling or subsistence expenses.
- For NICs purposes there is no equivalent relief available to that contained in section 338 of ITEPA 2003. Rather Part VIII of Schedule 3 to the Social Security (Contributions) Regulations 2001 (SI 2001/1004) only applies a disregard for payments made to a worker (as opposed to expenses incurred by the worker).

In other cases, licence holders have claimed that they can simply deduct amounts equal to HMRC's benchmark scale rates for the purposes of a pay day by pay day model. This is plainly contrary to the applicable legislation and may give rise to questions about whether the licence holder is fit and proper. HMRC benchmark scale rates are only available where an employer is granted a dispensation by HMRC and such a dispensation can only apply to **reimbursement** of expenses as opposed to unreimbursed expenses incurred by a worker; see section 65 of ITEPA 2003

The GLA will normally revoke or refuse a licence for non-compliance with this Licensing Standard.

Licensing Standard 2.2 Critical: Paying Wages

This Standard requires a worker to be paid at least the NMW or if applicable, in accordance with the Agricultural Wages Order.

The payment of travelling and subsistence cannot count towards the pay that is taken into account when calculating NMW. Therefore, the GLA will assess whether the operation of salary sacrifice schemes takes a worker's pay below NMW.

The GLA is also aware that certain schemes see workers being charged a fee, for example a fee paid to either the licence holder or a third party for tax advice and payroll administration. Where workers are charged a fee the GLA will investigate the circumstances of this as well as the agreement with the workers, the nature of the fee and how worker's pay for this in order to determine whether there has been a breach of this Licensing Standard.

The GLA will normally revoke or refuse a licence for non-compliance with this Licensing Standard.

Licensing Standard 7.1 Critical: Fees and Providing Additional Services

This Standard stipulates that a licence holder must not charge a fee to any worker for any work-finding service that has been agreed. Labour providers must also not make the provision of work-finding services conditional on the worker using any other services provided by the licence holder or any person connected to them.

Where a worker is signed up to use an advisory service, run either by the licence holder or a connected party the GLA will critically examine this relationship in order to assess compliance against this Standard.

For more information about how the GLA assesses compliance with this Standard please see GLA Brief 37.

Further information

If you any questions about this Brief, please contact the GLA helpline on 0345 602 5020 or email licensing@gla.gsi.gov.uk.

For the latest news and updates from the GLA:



Twitter: [@UK_Gla](https://twitter.com/UK_Gla)



facebook: www.facebook.com/GangmastersLicensingAuthority

If you have received a hard copy of this Brief but would prefer electronic versions in future, please email communications@gla.gsi.gov.uk