

## JOINT & SEVERAL LIABILITY

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Responsibilities, Risk  
and Best Practice

# AGENDA POINTS

**A BRIEF  
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# JOINT & SEVERAL LIABILITY EXPLAINED

## A Short History of Umbrella Companies

- Prior to 2007, a surge in self-employed contractors led to a proliferation of businesses to manage the corporate administration associated with self-employment
- These businesses became known as umbrella companies
- 2007 Managed Service Company (MSC) legislation introduced which created debt transfer for missing tax to the umbrella companies – sector changed overnight
- Sector shifts to focus on Travel & Subsistence Tax Relief to exploit the tax benefits of employing temporary workers on 336 hours overarching contracts of employment
- Travel and Subsistence Tax Relief was ended in 2016 since when the sector has focused on:
  - Outsourcing payroll functions and employment liabilities
  - Credit
  - Reduce administrative burden

# WHY IS THE LAW CHANGING AGAIN?



HM Revenue & Customs

HMRC analysis for 2022 to 2023 showed:

- **700,000 umbrella employees**
- **275,000** of those umbrella employees engaged at some point by an umbrella company that failed to comply with their **tax obligations**
- **£500 million** estimated losses due to tax avoidance in 2022/2023

Estimated that the changes will generate **£2.8 billion** for HMRC by 2031.

# HOW IS THE LAW CHANGING

- From 6 April 2026, a “relevant party” will be joint and severally liable with an “umbrella company” for the payment of PAYE/NI liabilities for umbrella company employees.
- New Chapter 11 of ITEPA is being introduced to make it easier for HMRC to recover PAYE/NI liability from parties in the labour supply chain other than the employer when umbrellas are being used.



# WHAT IS AN UMBRELLA COMPANY?

For the purposes of Chapter 11 **ONLY**, an “umbrella company” is defined as a business which:

- Employs a worker to personally provide services to a client;
- Carries on the business of supplying labour;
- Is not a company in which the worker has a material interest; and
- Meets the ‘umbrella company arrangements conditions’, which are that:
  - There is a contract between that business and the client (or another person)
  - Under that contract, the services of the worker are provided, or the business is paid for the services.

This broad definition will catch not only conventional umbrella companies, but also employment businesses if they *employ* temporary workers, as well as employers of record, agencies/ consultancies who offer services such as hire, train & deploy models if the individuals they supply are employed, and any other business or model which meets the definition of umbrella company above.

# WHAT IS A RELEVANT PARTY?

1

If the umbrella company has a direct contract with the end user client, the end user client is the relevant party.

2

If the umbrella company has a contract with someone other than the end user client (such as an employment business or a master vendor), then the party which has the contract with the end user client is the “relevant party”.

3

If the party that the end user client has a contract with (i.e. the closest agency/intermediary to the end user client) is “connected” with the umbrella company or is a non-UK resident, the client will be the relevant party.

4

Where both the end user client and the party closest to the end user client are non-UK resident, but there are other parties beneath them in the supply chain who are UK resident, then the closest such party to the client will be the relevant party.

# EXCLUSIONS

A worker is defined as someone who personally provides services or enters into arrangements with a view to personally providing services, to a client.

Where an agency worker is not employed but is engaged as a worker on a contract for services, Chapter 7 of Part 2 of ITEPA applies instead.

Under Chapter 7, the party closest to the client is treated as the employer for income tax purposes and is ultimately liable for PAYE.

The genuinely self-employed, and those who are deemed to be employees for tax purposes under Chapters 7 – 10 of ITEPA (which covers the agency worker tax rules, IR35, Managed Service Companies and off payroll working rules) are excluded from the new Chapter 11.

# WHAT DOES THIS MEAN?

- HMRC can pursue the “relevant parties” for PAYE, not just underpayments
- Strict liability offence – no “reasonable steps” defense
- Underpayments could arise not only due to tax avoidance, but mistakes/insolvency

## **Three main areas of concern:**

1. Tax avoidance models – deliberate non payment
2. Professional negligence – mistakes leading to wrong payments
3. Insolvency – credit terms, cashflow, issues resulting in shortfall owed to HMRC

# JSL AND THE NURSING CONCESSION

## WHAT IT IS

- A HMRC extra-statutory concession allowing certain nursing staff supplied by agencies to be treated as VAT – exempt.



## KEY CONDITION

- The agency must supply the staff directly to the healthcare provider.

## NOT COVERED:



- Non-clinical staff
- Supplies through intermediaries (for example umbrella companies)
- Services not forming part of patient care

# JSL - RISK MANAGEMENT

- Ensure the board has a proper understanding of the change in law and the exposure of the business to temporary labour PAYE / NI
- Reduce suppliers to operate smaller more secure PSL's
- Conduct more thorough ongoing due diligence / monitoring – relevant parties need to understand all PAYE / NI is being paid correctly on a monthly basis
- Come to Neuve – we have you covered!



**ANY  
QUESTIONS?**