



**PROFESSIONAL
PASSPORT FORTIS**

CONTROL + SIMPLICITY

**REMOVING THE RISKS OF JOINT
AND SEVERAL LIABILITY**

DON'T TAKE OUR WORD FOR IT

DON'T TAKE OUR WORD FOR IT

DUE DILIGENCE

Audience Question:

Is there due-diligence of any kind at all, that the agency can do, that will prevent them from exposure under JSL?

HMRC Answer:

HMRC have published detailed guidance for businesses setting out how to undertake and record the due diligence checks needed to ensure a compliant supply chain. It can be found here [Responsibilities for employment businesses working with umbrella companies - GOV.UK](#).

Audience Question:

If we do all the due diligence as set out in the .gov.uk guidance and the umbrella fails to fully settle the PAYE is this an excuse for JSL?

HMRC Answer:

It is a commercial decision by engagers to use workers employed through umbrella companies. In the event of non-compliance by the umbrella company, the agency or end client engaging the umbrella company remains joint and severally liable in all cases.

Audience Question:

What is the purpose in demonstrating to HMRC that due diligence has been taken in selecting umbrella suppliers?

HMRC Answer:

There is no requirement to demonstrate to HMRC that due diligence has been carried out. Due diligence is a process to mitigate risk for the agency.

Audience Question:

Is there any proof our umbrella company can provide to us that would eliminate the JSL liability for us?

HMRC Answer:

No. There is no statutory excuse that removes the liability from the agency.

Audience Question:

If an umbrella falsifies their proof of payment of PAYE to the agency who has tried to perform due diligence, does the "there is no statutory excuse that removes the liability from the agency" still apply?

HMRC Answer:

Yes. There is no statutory excuse that removes the liability.

ACCREDITATIONS

Audience Question:

Can accreditations or certifications provide any protection for an agency under the JSL rules?

HMRC Answer:

No

Audience Question:

What payroll accreditations do HMRC recognise?

HMRC Answer:

HMRC does not endorse payroll accreditations.

Audience Question:

Professional Passport are setting up a system called Fortis which will work out the PAYE/NICS whereby the agency will pay the PAYE/NICs directly rather than the umbrella - the umbrella will then pay the worker the net payment - is this an acceptable option ?

HMRC Answer:

HMRC does not endorse services offered by third parties.

Audience Question:

We have made sure all our umbrellas are FCSA accredited and they use the SafeRec software. Can that provide us any protection from JSL?

HMRC Answer:

Businesses make a commercial decision to use umbrella companies and joint and several liability will still apply.

Audience Question:

If I engage the services of an Umbrella company that is a member of a Compliance Accreditation, will that offer protection to my agency if the umbrella company is then found to have been involved in tax avoidance?

HMRC Answer:

Chapter 11 applies whenever the conditions in the legislation are met.

PAYROLL AND RTI SUBMISSIONS

Audience Question:

if we have an RTI report and payslip check report to confirm that all calculations are correct for our workers, could we use that as proof we paid our PAYE to the umbrella under JSL rules?

HMRC Answer:

Agencies and end clients that choose to use umbrella company suppliers in their labour supply chains will want to conduct due diligence on those suppliers to mitigate the risks to their business. This could include checking RTI reports and payslips. However, where PAYE is not properly remitted to HMRC, the agency will remain liable for the shortfall.

Audience Question:

If an agency can show they sent all the money to the umbrella, including the amount to cover PAYE, and the umbrella fails to pay it all to HMRC will the agency still get a liability?

HMRC Answer:

Where an umbrella company fails to properly remit PAYE to HMRC, HMRC will seek payment from the agency that supplies the worker to the end client. Where there is no agency in the chain, HMRC will seek payment from the end client.

Audience Question:

If an agency can prove that it gave the monies for its workers to the umbrella, but that the umbrella did not pay the tax to HMRC, is the agency still liable under JSL?

HMRC Answer:

Yes

Audience Question:

If we have relied on payslip checks and RTI checks and there is a shortfall in PAYE will these checks be an allowable excuse against JSL or will JSL still apply?

HMRC Answer:

The liability will still apply.

Audience Question:

If our umbrella has provided proof to us that the PAYE was paid and then a liability arises, would we still be liable as our umbrella company showed us proof of the payment?

HMRC Answer:

Yes

LIABILITY RISK

Audience Question:

Are there any checks that can be carried out and used as an excuse to avoid JSL where a shortfall applies?

HMRC Answer:

Agencies or end clients that choose to use umbrella company suppliers will want to undertake due diligence to mitigate any risks to their businesses. But there is no statutory excuse that will apply to remove the liability.

Audience Question:

If the umbrella has engaged in deliberate tax fraud (e.g. false PAYE submissions, fake payslips, or hidden employees), will HMRC consider the agency to be jointly liable even if the agency had no knowledge of the fraud?

HMRC Answer:

As a matter of law, the liability is joint and several regardless of how that liability arose. There are no 'reasonable excuse' provisions. The Government's policy is that agency will be responsible for ensuring that PAYE has been operated correctly within their labour supply chains.

Audience Question:

If the umbrella fails to pay tax due to reasons beyond the visible control of the agency (e.g. mismanagement, or deliberately does not pay the tax), will HMRC still pursue the agency under JSL?

HMRC Answer:

Yes

Audience Question:

If an end client only has umbrella company workers via agencies (no direct relationships with umbrella companies) - is the end client still liable in any way?

HMRC Answer:

In an client, agency, umbrella chain the relevant parties will be the agency and umbrella.

Audience Question:

If an umbrella enters administration owing tax to HMRC, will HMRC wait until the end of the insolvency proceedings, or seek to immediately claim the missing PAYE/NICs from a “relevant party” under JSL?

HMRC Answer:

Where PAYE is not properly remitted to HMRC, HMRC will seek payment from the agency that provides the worker to the end client. Where there is no agency in the chain, HMRC will seek payment from the end client.

Audience Question:

Where a company is using a CIS intermediary, but it is then found that the CIS worker is bogus self-employed and should have been paid PAYE, would the client become JSL as the CIS intermediary should have been an umbrella company?

HMRC Answer:

This would depend on the particular circumstances but it is possible that the conditions will be met for Chapter 11 to apply.

Audience Question:

How do HMRC think agencies will still work with umbrella's when nothing is in place to provide us with real time reporting on payments being made? The risk is just too high.

HMRC Answer:

Businesses make commercial decisions to use an umbrella company and if an agency wants confirmation of compliance, they will need to make their own arrangements with the umbrella companies they use.

Audience Question:

If an agency and umbrella are jointly liable who would HMRC come to ‘first’ for the shortfall?

HMRC Answer:

HMRC will pursue the agency to make good any shortfall.

Audience Question:

Have I understood this correctly? - Where there is a shortfall, HMRC will pursue the agency for the unpaid tax, NOT the umbrella that failed to pay the correct amount?

HMRC Answer:

Yes.

FORTIS RELATED ANSWERS

Audience Question:

Can an end client or agency pay the umbrella company the net pay for the worker and withhold NICs and PAYE taxes and pay it over to HMRC themselves?

HMRC Answer:

Yes.

Audience Question:

If I have settled the full liability directly with HMRC for my workers and the umbrella fails leaving a PAYE debt, will I have to pick up some of that liability too?

HMRC Answer:

Relevant parties are only jointly and severally liable for amounts due in relation to the workers that they have supplied (in the case of recruitment agencies) or used (in the case of clients). If this liability has been settled, then there will be nothing for HMRC to recover from a relevant party.

Audience Question:

Professional Passport are setting up a system called Fortis which will work out the PAYE/NICS whereby the agency will pay the PAYE/NICs directly rather than the umbrella - the umbrella will then pay the worker the net payment - is this an acceptable option ?

HMRC Answer:

HMRC does not endorse services offered by third parties.

Audience Question:

If I have settled the full liability directly with HMRC for my workers and the umbrella fails leaving a PAYE debt, will I have to pick up some of that liability too?

HMRC Answer:

If any relevant party has paid the PAYE liabilities to HMRC there will be nothing to pursue. HMRC will only pursue liabilities from relevant parties if there is amounts outstanding.

Audience Question:

Can an agency pay HMRC the tax due directly before paying the umbrella company therefore eliminating risk?

HMRC Answer:

Yes



FORTIS



PROFESSIONAL PASSPORT FORTIS

**fortis.professionalpassport.com
fortis@professionalpassport.com**

**crawford.temple@professionalpassport.com
07881 511345**