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This is your chance to have a real influence on the future direction of the market and the legislation that applies.

Useful Links

www.hmrc.gov.uk

www.icaew.co.uk

www.lawsociety.org.uk

www.shout99.com

www.contracteye.co.uk

Onshore Umbrella versus Offshore Umbrella

Since the implementation of the MSC legislation in 2007 there has been a significant growth in the number of providers marketing 'umbrella' solutions; a number of these are based offshore. The questions we are often asked are:

What is the difference between an onshore and offshore umbrella?

Does an offshore umbrella represent any increased risks?

This article summarises the key differences and the risks to contractors.

If we first look at HMRC's widely recognised definition of an umbrella company, although this is not defined in legislation; it is a company that engages its workers under contracts of employment and treats all of their income as employment income paid through the PAYE tax system.

The PAYE tax system has three elements:

Employees National Insurance

Employers National Insurance

Income Tax

This is where we come to the first key difference between an

onshore and offshore umbrella.

The Isle of Man, Guernsey and Jersey fall outside the jurisdiction of the UK tax system although an agreement exists which allows them to apply and report PAYE tax on employees. The fundamental difference is that this agreement only covers two elements of PAYE:

Employees National Insurance

Income Tax

Employers National Insurance falls outside the scope of the agreement and therefore there is no requirement for the provider to pay this across to HMRC.

Any payment of employers national insurance is made voluntarily by offshore providers and could cease at any time of their choosing.

We are aware that some offshore umbrellas openly state that they have no intention of paying the Employers National Insurance and build this in as part of their margin, giving them an additional 12.8% return and, in turn, giving the contractors significantly higher risks of a HMRC challenge.

Secondly, it is the UK employers responsibility to deduct the correct levels of PAYE tax from their employees and apply the rules of the UK tax system appropriately on any payments made, including the payment of expenses. Where HMRC find non compliance it is the employer who holds the liability; not the employee.

These simple principles do not apply to offshore providers as they fall outside the UK tax system; so any challenges made by HMRC where additional liabilities arise, would fall back on to the employee and not the employer.

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IR35 Contract Reviews

Have all your contracts reviewed for a fixed fee; providing a conclusions report to protect you from IR35 'reasonable care' penalties.

Got an issue and need to talk to a real person?

Our members helpline provides 1:1 support covering a wide range of issues. This service is available to our Professional Members

Concerned about sending sensitive documents to your agency?

Our electronic ID validation provides a portable certificate accepted by many agencies and removes the need to send your sensitive documents. This is free for our Professional Members.

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There are two main areas that typically lead to an assessment of non compliance of an umbrella:

The contract of employment is not overarching

Application and management of the expenses policy

The overarching employment contract is an essential part of an umbrella's ability to operate a travel and subsistence expenses policy. It allows each assignment to be treated as a temporary workplace, subject to the correct application of all the other rules. Where a workplace is classed as temporary, employees are entitled to claim travel and subsistence expenses.

If the contract is not overarching, each workplace becomes a series of permanent workplaces where upon no travel and subsistence claims are allowed.

Where a provider's contract fails the tests of overarching, any expenses for travel and subsistence would be disallowed. This would lead to significant additional tax liabilities as all the expenses would now be liable under the PAYE tax system.

Onshore umbrellas would, in all cases, be liable for these additional taxes; not their employees, unless the employee made fraudulent claims. In the case of offshore umbrellas; it is, in all cases, the contractor who becomes liable for these additional taxes.

Exactly the same situation applies where the management and application of the expenses policy falls short of the requirements; whether a dispensation is in place or not.

Any wrongly allowed expenses would be disallowed by HMRC resulting in increased tax liabilities. Onshore providers would, in all

cases, be liable for these whereas, the liability falls directly on to the employee where an offshore umbrella is used.

In summary, using an onshore umbrella provides significantly more protection for contractors and even where the umbrella is found to be non compliant it is unlikely to lead to additional liabilities for the contractor.

Offshore providers present a significantly higher risk to contractors of becoming liable for additional taxes where the provider is assessed as not compliant. Contractors could also find themselves subject to the MSC legislation and Debt Transfer rules if the provider's non compliance leads to a conclusion that they were in fact operating a MSC.

It must also be remembered that all umbrella providers are subject to the same tax rules and therefore the tax you pay will be exactly the same. Be wary of any provider that seems to offer significantly higher returns as this is not possible. This usually indicates that they have built assumptions in to their calculators that are unlikely to be representative of your personal situation.

The only factor that influences the returns you receive from an umbrella company is their charges; although in reality this only makes pennies of difference so we always advise selecting a provider who provides the support and systems that suit your way of working.

Pre Budget Report

We will be releasing a Budget Special Intell Newsletter following the Chancellors statement on 9th December. We will summarise the key points relating to contractors and the contracting market.

Need Insurance or current policy due for renewal shortly?

Our members scheme will probably save you money and provide a higher level of protection. You only pay while you are on active contracts.

Become a member of Professional Passport

Membership starts at just £25.00 per annum and provides a wide range of benefits.

Membership fees support our work with government and future developments of our services and website.

Looking for a compliant provider?

Our approved providers have all been audited to ensure they meet the legislative requirements.

Monthly Paid Insurance Policies - Check the small print

Professional contractors operating through their own limited companies should, for their own protection, have professional indemnity and public liability insurance as a minimum. In many cases contractors only purchase these where required to do so by agencies or end clients.

Operating without these insurances can leave contractors exposed if a claim arises, as the loss could become a personal liability. Claims are rare although on the few occasions where claims have arisen they tend to be for significant amounts; often beyond the financial ability of a contractor.

Holding insurance can also become useful should HMRC make a challenge of IR35 status as it can provide evidence to support claims of operating outside IR35, and being in business in your own right.

As the market has developed, so has the range of policies available to contractors with many providers now offering monthly paid insurance contracts.

PI and PL policies are often written on a “claims made” basis meaning that you are only insured whilst you have an active policy in place.

Many monthly paid plans are written on this basis and whilst the premium is monthly you will be required to pay the premiums for up to 6 years beyond the end of your last contract if you want to ensure you are covered, as this is the full liability period.

Alternatively some providers offer a “run off” cover policy. This allows you to pay a single premium to protect you against any future liabilities that arise.

There are very few policies that are written on a “claims arising” basis meaning that you have cover for that period of work regardless of when a claim is made.

The Professional Passport members insurance is a “claims made” policy - with a key difference; the contractors policy is a sub policy of the master policy held by Professional Passport meaning that as long as the master policy is in force any claims brought would be covered.

This simple, but effective change, provides significant benefits to the contractors as it allows contractors to only pay the monthly premium whilst they are on active assignment and remain covered for the whole liability period.

If you are paying more than £22 per month for your PI and PL you will save money by joining our members scheme. If your current policy is “claims made”, as 99% are, you will also benefit from cover for the whole liability period in effect saving 6 years of premiums under your current policy to provide the same benefit.

You can obtain a quote [here](#), please note our current scheme is only available to IT contractors although we hope to extend this soon. You can purchase the insurance using a credit card and the policy documents are available instantly as PDF's in “your folder / your documents / insurance”.

We believe this new style policy provides significant additional benefits and savings for all professional contractors and is underwritten by Hiscox Insurance, probably the largest insurance provider in this market.