

Factsheet

Working with umbrella companies: top 10 tips for agencies

Umbrella companies are relatively unregulated and the barriers to entry low. From a tax perspective, HM Revenue & Customs (HMRC) has highlighted concerns over the degree of non-compliance with tax legislation by ‘umbrellas’, for example through its ‘spotlight’ publications and a successful claim against Reed Employment for operating a non-compliant travel and subsistence scheme.

As a guide, we have produced the top 10 tips for selecting umbrella companies to work with. These tips are drawn from our experience of helping umbrellas with their compliance. It is not an exhaustive list, but is designed to highlight the most common areas of concern, which could have a detrimental impact on your business if the umbrella gets it wrong.

1. Who are you doing business with?

It's relatively easy to set up an umbrella without a significant capital outlay or without proper professional advice. We would always recommend that you know who you are doing business with. Ask who the owners and directors are and what experience and qualifications they have. Consider also the integrity of the business, such as their use of incentives for your consultants in return for introducing business.

2. Financial stability

There is a risk to your business and its reputation if the umbrella does not have the cash to pay employees for work that they have done for your end client. Not only should you check the umbrella's credit worthiness and its financial reserves, but you should also assess the risk of any financial claims, such as those from HMRC or employees, that could have a material impact on the umbrella's financial position. We support the Freelancer & Contractor Services Association's (FCSA's) recommendation that net assets should be maintained at a level in excess of 2.5% of gross profit. We



would also advise taking into consideration any contingent liabilities that may be disclosed in the accounts.

3. VAT on fees

VAT registered umbrella companies have the responsibility to raise VAT invoices to you for the value of the staff supplied. Some agencies choose to adopt self-billing arrangements with umbrella companies: if you do so then you will need to ensure that self-billing is incorporated into your terms and conditions. The umbrella should keep you updated on any change in its VAT registration status or number, so that you can ensure that your VAT records are kept up-to-date and you are claiming the proper amount of VAT.

4. Overarching contract of employment

Historically, the attractiveness for employees and the umbrella in operating the umbrella model was in maximising tax and National Insurance contribution (NIC) savings by reimbursing allowable expenses. However, since April 2016,

those advantages have largely been curtailed. Care will need to be taken when engaging with umbrella companies that claim to offer tax/National Insurance efficient travel expenses for employees, as potentially they are not compliant with current legislation and/or are operating an aggressive business model.

For the limited cases where the new legislation relating to travel expenses does not apply, for the expenses to be allowable there must be an overarching contract of employment encompassing all assignments that the employee performs for the umbrella, rather than a separate employment contract for each assignment. HMRC will test this, and if there is no overarching contract of employment, expenses will be disallowed and tax and National Insurance liabilities will arise.

5. Expenses processes

If processes are found lacking, HMRC may contend that certain expenses are not allowable and will pursue arrears of tax and National Insurance and/or withdraw any dispensation held by the umbrella. HMRC will expect to see a sufficient level of internal auditing being undertaken by the employer, including asking employees to provide supporting receipts, at least on a sample basis.

6. Aggressive business models

There are some business models operated in the market place, including those involving offshore structures, which seem almost too good to be true. Agencies should be aware that some of these schemes may not be compliant and could be subject to HMRC challenge. In fact, HMRC has issued public statements in relation to certain models which in their view do not work, such as the 'pay day by pay day' model which seeks to provide tax and NIC relief on expenses paid to employees whose pay is at National Minimum Wage levels or the provision of loans to contractors which seek to stand in the stead of salary liable to PAYE and NICs. If you are in any doubt over the legality or tax effectiveness of any business model proposed by an intermediary, we would always advise that you seek professional advice.

7. Managed service company risk

It is quite often assumed that because the umbrella operates PAYE and NICs on workers' pay, the managed service company (MSC) legislation is not in point. Whilst the MSC legislation

tends to be more of a concern for agencies dealing with limited company providers, there is also a risk that the MSC legislation and its transfer of debt provisions may arise when dealing with umbrella companies (depending on how they are structured) if, for example, HMRC perceives abuse in relation to expenses payments.

8. Agency Workers Regulations

Where a pay between assignment contract is in place, there are particular areas where differing approaches are being taken and where you should consider the implications for your business; in particular, the rate at which basic pay between assignments is calculated and how it is funded. We do recommend that agencies undertake appropriate due diligence to ensure that any such assumptions are appropriate: for example, that self-employed workers are genuinely self-employed, as in the event of a claim under the regulations, at tribunal will look closely at all of the parties involved in the contractual chain to determine who is responsible for any breach and, ultimately, payment of compensation.

9. Holiday pay

We recommend that you understand the basis on which the umbrella pays holiday pay to the worker. Many pay rolled up holiday pay, whilst others accrue funds to pay for holidays when they are taken. The key to mitigating potential claims from employees for unpaid holidays is in ensuring that employee communications and contractual terms are explicit and properly implemented.

10. Appropriate insurance cover

You may want to question whether the umbrella has appropriate and adequate insurance cover to protect their employees. For example, as an employer, the umbrella must have employer's liability insurance in place for all workers. We recommend that you request sight of insurance policies and review for any exclusions that the policy might include.

For more information on any of the issues raised here, please contact your usual Saffery Champness partner, or contact Robert Woodward on T: +44 (0)20 7841 4228.

This factsheet is based on law and HMRC practice at 1 November 2017.

T: +44 (0)20 7841 4000 E: info@saffery.com

Saffery Champness' Factsheet is published on a general basis for information only and no liability is accepted for errors of fact or opinion it may contain. Professional advice should always be obtained before applying the information to particular circumstances. J7207. © Saffery Champness LLP November 2017.

Saffery Champness LLP is a limited liability partnership registered in England and Wales under number OC415438 with its registered office at 71 Queen Victoria Street, London EC4V 4BE. The term "partner" is used to refer to a member of Saffery Champness LLP. Saffery Champness LLP is regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales. Saffery Champness LLP is a member of Nexia International, a worldwide network of independent accounting and consulting firms.