

Protect yourself

Umbrella legislation is the modern plague tax advisors must quarantine, writes Dave Chaplin

From April 2026, a new tax avoidance regime will descend upon the UK's labour supply chain like an epidemic. The government's forthcoming Umbrella Legislation (Chapter 11 ITEPA 2003), which introduces Joint and Several Liability (JSL) for PAYE and NIC, means that if an umbrella company fails to hand over its taxes, the recruitment agencies and clients above it could be forced to pay the bill instead.

For accountants and tax advisers this new regime is both a compliance challenge and a professional opportunity, but one with a sting in the tail. The structure of the rules and the wide drafting typical of tax avoidance legislation mean disputes could take as long as the Black Death itself, but the parallels don't end there.

Like the plague, this is a contagion best managed through prevention. Advisers may earn considerable fees defending clients caught in their reach, but very little from offering the soundest advice of all: be extremely cautious in dealing with umbrellas – and, crucially, do not hand them the tax money.

At the heart of the new legislation sit the uncompromising and brutal JSL provisions, designed to eradicate non-compliance in the umbrella sector. Liability is automatic without defence, spreading exposure far beyond the bad actors that created the problem.

Once a worker is paid through an umbrella everyone involved in the contractual chain can become jointly liable for the tax until HMRC confirms receipt. Liability lingers until the tax safely lands in the Revenue's account.

At an HMRC webinar on 7 October 2025 about the legislation, HMRC were asked which party it would come to 'first' for the shortfall in a situation where the agency and umbrella company are jointly liable. HMRC said: "HMRC will pursue the agency to make good any shortfall."

The irony of JSL is that the umbrella industry itself lobbied for its inclusion, hoping to purge rogue operators. What they didn't appear to anticipate was that their medicinal cure has become poison. Let's take a closer look.

Definitions/key concepts

- Umbrella company: Broadly defined as any third-party employer that pays workers providing services to an end client.
- Joint and Several Liability (JSL): All 'relevant parties', including the umbrella, recruitment agency, and sometimes the client, are equally responsible for ensuring PAYE and NIC reach HMRC. If the umbrella defaults, HMRC can collect the entire amount from any of them.
- Relevant party: The entity contracting directly with the client, usually the recruitment agency. Where there is no agency, or the agency is 'connected' with the umbrella, the client is a relevant party.

- **Purported umbrella:** A new concept that applies where it is ‘reasonable to suppose’ that someone believed an entity which was supposed to be applying PAYE/NIC was not. While clever, the drafting is wide and ambiguous.

Regarding ‘purported umbrellas’, the phrase at 61Z1(1)(b) will likely become infamous: “It is reasonable to suppose that one or more participants in the arrangements, other than the purported umbrella company or the individual, would assume that the purported umbrella company is the employer of that individual.”

Tax litigators will recognise this as a lawyer’s invitation to spend a decade in the tax tribunals arguing what any reasonable person should have supposed to assume, and what objective test can be applied to negate any such supposition.

Rolling liability

Here’s the loud warning siren: the incoming threat isn’t immediately obvious by considering the static position after events have happened. It sits in understanding the impact of real-time operations.

The problem lies in the timing of payroll liabilities. PAYE is due on the 22nd of the month following a payroll run, while VAT is settled quarterly. Between those points sits a rolling window of exposure, a limbo in which money is neither in the client’s hands nor with HMRC. The debt sits in the ether, and is where the disease can spread.

The limbo is ongoing, creating a rolling liability which never reaches zero. Each payroll creates a new exposure, which persists until payment is confirmed.

Crucially, clients and agencies have no control over what happens within the umbrella, yet insolvency can strike at any moment. If the umbrella mismanages cash flow, delays remittance or collapses into administration, the unpaid tax becomes the problem of the next ‘relevant party’ up the chain. Because there is no defence, even the most diligent recruiter or client can be hit with a full PAYE and NIC bill they believed had already been settled. They are paying twice.

The issue with JSL

Recent high-profile failures of self-styled ‘accredited’ umbrella companies have exposed the fragility of the system. Several have gone under owing millions to HMRC, demonstrating that accreditation does not solve the problem.

Risk management is about control and upfront prevention, not retrospective proof. Once money has left the agency or client, control is lost. The only reliable prevention is for the first relevant party in the JSL chain to pay HMRC directly.

HMRC guidance published on 17 September 2025, ESM2420, acknowledges the principle: “It does not matter which party pays or how much each party pays as long as the amount is paid in full.”

At the 7 October HMRC webinar, when asked whether the agency could withhold tax and make a net payment to the umbrella, HMRC confirmed that they could, stating: “The agency that supplies a worker to the end client will have joint and several liability with the umbrella company for any amounts payable under PAYE. Either party can settle this liability.”

Under JSL, the burden of ensuring that payment happens without creating risk rests squarely with those at the top of the JSL chain.

Parallels with IR35

There is a profound irony in how the risk landscape has evolved.

When the IR35 reforms arrived, many organisations turned away from contractors working through their own limited companies and flocked to umbrellas, believing them to be the safer alternative.

Now that logic is turned entirely on its head.

Since the legislative changes to the operation of IR35/off-payroll in April 2024 (Statutory Instrument 2024/355), IR35 has become far more manageable. SI2024/355, referred to as the 'offsets legislation', removed a flaw which was resulting in disproportionate tax bills for firms. Firms can now offset the tax already paid by a worker's limited company and personally, thereby potentially reducing the tax risk to under 10% of contract value. Recent Supreme Court rulings have also clarified key case law principles. IR35 risk, once existential, is now proportionate, predictable and equitable. Risks are further minimised because IR35 is defensible, and must be applied on a case-by-case engagement basis.

By contrast, the new umbrella rules make JSL liability systemic and uncontrollable. A single umbrella failure could expose agencies and clients to the entire tax bill across all workers paid under that umbrella. The liability is now at least five times larger than anything faced under IR35, and there is no defence.

Pre-April 2026, umbrellas act as a safe harbour, but under the new regime, they're potentially a floating disaster if the holes aren't plugged. Without proper preventive measures, umbrellas are moving from panacea to pariah.

What should accountants do?

The priority now is to prepare. Three key points:

- Risk cannot be audited away: Post-payment audits, payslip checks or accreditation schemes cannot provide a 100% guarantee against default.
- Direct-to-HMRC models are safer: Structuring payroll so that taxes are paid directly to HMRC, rather than through umbrellas, is the only fully robust mitigation strategy.
- November 2025 Budget: The legislation is still in draft form, and operational details could shift before Royal Assent, but the central JSL concept is likely to remain.

Practical steps for advisers

After the Autumn Statement in late November 2025, many firms will begin redesigning their labour models for the new world.

Accountants should:

Identify: Map clients and sectors reliant on umbrella arrangements.

Test: Explore direct-to-HMRC payment models and in-house payroll solutions.

Educate: Boards and HR leaders must understand that under JSL, liability attaches automatically if tax isn't paid.

Plan: Avoid last-minute disruption in 2026.

Final thoughts

The umbrella JSL plague doesn't arrive until April 2026, but is currently sitting dormant in supply chains waiting to infect everybody. Because of the poisonous effect, liability will flow up the chain until it reaches your clients.

Advisers who help clients eliminate or quarantine exposure now will be the ones building lasting trust. Businesses must isolate themselves from contaminated payroll flows. Prevention is the only cure.

For those who ignore the warnings, the financial fever will be severe.

- Dave Chaplin is CEO of IR35 compliance firm [IR35 Shield](#) and author of [IR35 & Off-Payroll Explained](#)