

## Contractor tests to see if suppliers are Managed Services Company (MSC) providers

Unwary contractors can all-too-easily fall into the trap of using non-compliant service providers and falling foul of the taxman, especially when it comes to using a [Managed Services Company](#) (MSC).

But Stuart Davis, in his first interview since becoming Chairman of the Service Providers Association SPA in January 2010, tells ContractorCalculator that there are tests that will keep contractors on the right side of the law, and also stop their clients and agencies coming under the taxman's spotlight.

Contractors choosing a service provider to manage their accounts, to check their contracts or as a trading vehicle, such as a [contractor umbrella company](#), have a bewildering array of options. These include firms that not only sail close to the wind, but sometimes also deliberately flout the rules by offering services that take them into territory covered by the [MSC legislation](#).

### Non-compliance by contractors' service providers

Davis sees this as an issue that goes beyond individual contractors and threatens the very economy of the UK. "The UK's flexible workforce of contractors, freelancers, consultants and interims is a vast and growing sector and incredibly important to the future competitiveness and success of UK PLC," he says. "So ongoing abuses of the regulatory framework by contractor service providers will greatly damage the reputation of the sector and could threaten its growth."

Davis is himself a former engineering contractor who has also launched and managed international staffing firms. This background has given him unique insights into both the recruitment agency and contracting sectors. In his new SPA role, he intends to use these insights to improve standards and compliance in the sector on behalf of SPA.

### Are suppliers 'fit for purpose'?

"The first stage for any contractor engaging with a service provider is to determine fitness for purpose," he explains. "Many contractors, particularly first timers, don't know which service provider best suits their needs, and because of their inexperience, could find themselves shoehorned into an unsuitable arrangement as a result of hard-sell by non-compliant providers."

According to Davis, non-compliance by service providers takes many forms, from pushing the boundaries of expenses claims to flagrant abuse of the Managed Services Companies legislation, for example by taking control of a contractor's business and finances.

### Tests to spot the warning signs of an MSC

"Non-compliant service providers clinging to managed service company practices may try to impose certain activities on their contractor clients," continues Davis, "and if the contractor spots these, there are 'tests' that should set alarm bells ringing."

Davis warns contractors that if their service provider fails any of the following tests, they may well be in breach of the managed services companies (MSC) rules:

- o The service provider controls, or attempts to control, the provision of the contractor's services to their client
- o The service provider controls the contractor limited company's finances and bank accounts
- o The service provider negotiates contracts with end-user clients and agencies without including the contractor in the dialogue
- o The service provider insists on becoming a company officer, such as a director or company secretary of the contractor's limited company
- o The service provider is clearly lax in its attitude to regulation, such as allowing expenses HMRC rules say should not be allowed
- o There are financial ties between the service provider and the agency or recruitment business that provides work for the contractor
- o The service provider undertakes any services that influence the control of the contractor's limited company.

### Other warning signs

In addition, Davis suggests that contractors should be wary of service providers that do not check the suitability of the service on offer for the contractor's needs; can't provide professional advice to help contractors decide; or sell their services on the basis of the tax savings contractors can make.

He explains: "Mitigating tax liabilities for contractor clients is a perfectly legal element of good service provision, but contractors would

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Stuart Davis, Service Providers Association

be prudent to be wary of a firm that aggressively markets tax avoidance as its main benefit. That's because those tax savings can be the product of operating non-compliantly."

### Using an MSC can cost cash, so take action

As contractors found by HMRC to be working via an MSC face having their contracting income treated as employment income, Davis urges contractors who suspect non-compliance to take action if they fear they might be using a non-compliant supplier.

"Contractors concerned that their service provider may be in breach of the MSC rules should first check [HMRC's comprehensive guidance](#), then take immediate steps to move to a compliant service provider," he says.

It also makes sense to use 'recognised' providers, Davis advises. "SPA members abide by a strict code of practice which is rigorously reviewed by a top four accountancy firm before voluntary submission to HMRC thus ensuring they operate within the regulatory framework. There are other industry organisations, such as [PCG](#), where contractors can go to find service providers but Davis advises that. "SPA can only endorse the compliance of their own members".

### Agency concern over 'preferred supplier lists'

The MSC legislation is also a concern for agencies that recruit contractors for their clients, but Davis says that as long as the agency is not directly involved with the service provider and has exercised appropriate due diligence, it should be 'clean'. But there should be no need for such agencies to worry about the transfer of debt provisions, as it's not HMRC's objective to chase agencies that can demonstrate appropriate safeguards."

Agency owners and managers should also be aware of any incentives offered by service providers to induce agency personnel to recommend them as preferred suppliers, and be clear about the relationship between the employment business and service provider. He also says that contractors should make sure they are comfortable with agency preferred supplier lists by doing their own compliance checks on listed providers.

Davis concludes: "Contractors who use the information and resources available to them, such as industry organisations with codes of conduct, to research the market, will be able to find a service provider that understands and fulfils their needs, is compliant and will not put them in breach of regulations such as the MSC legislation."

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