

Contractors warned of return of Managed Services Company legislation

After a dramatic few weeks for the contracting sector, you'd be forgiven for thinking that perhaps it's time to give contractors a break. But according to Adrian Marlowe of [Lawspeed](#), which specialises in providing legal and business services to the recruitment and contracting sectors, there is more to come, with HMRC again targeting [Managed Service Companies](#).

The contracting sector is certainly never dull, as events in recent months have proven. First, we had the [Alternative Book Company ruling](#) that will go down in contracting history as the contract with a [right of substitution](#) clause that was judged to be no more than 'window dressing'.

Then the government finally signed up to the [Agency Workers Directive](#), which looked to spell disaster for the contracting sector, but since the deal was struck it seems likely contractors will be unaffected.

Plus the loss of the [Dragonfly Consulting case](#) in the High Court has caused contractors, and their professional advisors, to re-examine the fundamentals of current and future contracts. Add to this the Treasury's [current consultation](#) over umbrella company contractor travel expenses and it's certainly been a busy quarter.

But Marlowe warns contractors not to be complacent, as there's more on the horizon, in the form of an 'old friend', the [Managed Services Company \(MSC\) legislation](#).

A spectre returns - the Managed Services Company legislation

"MSC is not yesterday's story," explains Marlowe, "it is very current. Earlier this year HMRC appointed a specialist team to follow up the MSC legislation. We can say with authority that investigations have already started as we are dealing with the investigators on behalf of a targeted client."

"To say that our client is concerned would be an understatement, not the least at the amount of work required, and therefore the time and cost, to deal with the investigation."

And, according to Marlowe, HMRC's specialist team includes a number of highly experienced investigators actively investigating potential targets, such as umbrella companies, agencies, companies providing a portfolio of services and contractors.

When is an umbrella not an umbrella?

MSC legislation was introduced to combat businesses that created [limited companies](#) for contractors that were run by third parties on their behalf largely for the purposes of avoiding tax.

The sting in the tail of the MSC legislation is that HMRC could potentially come after any of the parties involved if they could not extract the tax and National Insurance Contributions they considered due by the MSC provider, putting contractors and agencies at risk of receiving large bills from the taxman.

Legitimate [umbrella companies](#) that pay contractors only by way of employment income do not represent any risk to the agency or contractor, but Marlowe warns that: "Any model outside purely employment income offers potential risk to the agency and the contractor.

"And that risk is not alleviated because the model is run by certified or chartered accountants," he continues, "as there is no general exclusion in that regard. A business can be an MSC Provider, and therefore the contractor's company an MSC, whether or not it is run by accountants. This last point is often misunderstood."

Independent auditing for compliance

Many companies that provide a range of different business services, often under the same brand, such as personal service company services, [company formation](#), [IR35 services](#), accountancy advice, employment umbrella and so on claim to be members of various trade associations and that they are 'compliant'.

But Marlowe urges contractors and agencies to use extreme caution when considering entering into a commercial relationship with such organisations, as things may not be as they seem.

"The implication of being a member of a trade body would be that just by being a member the company is 'compliant', says Marlowe.

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"Nothing in fact could be further from the truth when it comes to exposure to MSC risk. And contractors should be aware that the assertion 'we are compliant' means nothing – compliant with what and tested against what and by whom?"

Questions to ask companies claiming to be 'compliant'

If the service provider is claiming trade association membership that brings auditing and compliance with an underpinning insurance policy that protects the contractor and agency from any risk of debt transfer, then Marlowe's advice is that contractors:

- o Ask which part of the service provider is actually the trade association member and has been audited – this is often 'fudged' by using a common brand across a number of different companies
- o Ask what the audit process involves, which independent body conducted the audit, and whether you may see the results
- o Ask for a copy of the policy of any underpinning insurance that protects the contractor or agency from MSC risk.

The [Association of Employment Management Companies \(AEMC\)](#) is currently the only independent trade body that only allows umbrella companies with a pure employment model to join and members are rigorously audited to prove this.

PAYE does not always mean employment income

Another common misconception, says Marlowe, is assuming PAYE means employment income: "A contractor could be paid according to a PAYE scheme, but they might not be employed by the client and this payment is not employment income, as the contractor is self-employed."

Therefore, this scenario would put the contractor and the agency at potential risk of falling foul of the MSC legislation.

The HMRC task force is likely to be focusing on the estimated 200 employment services companies currently operating in the UK. And each of those companies will have a great many contractors, and their respective agents, who might be running the risk of being badly stung by the MSC legislation.

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