

Treasury sheds light for contractors on managed service companies

Financial Secretary to the Treasury John Healey explained the intentions of [managed service company](#) in a [House of Commons Committee Debate](#) held without notice on May 15-16.

These comments have considerable significance, because they can be cited in court cases as a clear expression of the intentions of the Treasury in making the new law. The text of the managed service company legislation has been repeatedly criticised as unclear by the London-based Institute of Chartered Accountants and the London-based [Professional Contractors Group](#).

"The intentions of the Treasury in making this law are now clear," says John Kell, policy spokesman for PCG. "We should not expect any further changes in the text at this point."

A series of amendments proposed by Opposition MP for Chipping Barnet, the Honourable Theresa Villiers, which would have brought both clarity to the text and limited its very broad effect on the contracting industry, were shot down by the Government in a series of bleakly partisan votes.

Nonetheless, Healey's comments brought considerable clarity to a number of major points.

What is a Managed Service Company

Healey provides a clearer definition of a managed service company. "The first element that must be satisfied is that a person is carrying on a business of promoting or facilitating companies to provide the services of individuals, not a business to promote or facilitate companies generally. For that reason, those promoting or facilitating companies generally—for example, company formation agents—are not MSC providers. The same would be true of training providers and a number of companies that may provide advice," Healey said.

“ The intentions of the Treasury in making this law are now clear ”

John Kell - PCG

Promoting and Providing Service

The definition on what is a provider of managed service companies is better explained. Says Healey: "Some have asked whether a person who promotes their business and who provides services to those working through service companies is an MSC provider. The answer is no. There is a clear distinction between a person who promotes themselves or their business and someone who is, as a business, promoting the use of companies to provide the services of individuals. Even if a person fulfils the criterion of being an MSC provider, it does not automatically follow that their client companies are MSCs. That depends on the nature of their relationship with their client companies—namely, whether they are involved with the client companies."

Defining Involvement and Influence

Key to the meaning of the law is the notion of being 'involved' in, or 'influencing' a company can make one a provider. Healey explains that 'a tax adviser providing tax advice is not an MSC provider,' and this goes a long way to make life easier for accountants and lawyers.

Further, says Healey: "There is a distinct difference between a person who provides independent, tailored advice to a client, who is then able to consider that advice before accepting it or rejecting it, and the person who simply supplies a client with a standard solution or product that the client accepts. It is not the intention that the former situation—the provision of advice—be considered to be influencing in this context. However, the latter situation—supplying a standard solution or product—is regarded as influencing."

Accountants, Lawyers, Not 'Involved'

"Let me try to make this absolutely clear: even when the specific exclusion does not apply, the purpose of the legislation is not to include within the definition of MSC provider accountants, tax advisers, lawyers and company secretaries who provide advice or other professional services to companies in general. Those persons are not in the business of promoting or facilitating the use of companies to provide the services of individuals, nor are they regarded as involved with the company in the way in which the legislation envisages."

“ There is a distinct difference between a person who provides independent tailored advice to a client and one who supplies a standard solution ”

John Healey - Financial Secretary to the Treasury

Contractors Who Run Their Own Affairs

If you manage your own company, you are not affected by the new law according to Healey.

"Freelancers or agency workers who are engaged directly by any agency or who are in some way in business on their own account and run their own affairs, either through a [personal service company](#) or some sort of [umbrella company](#), are simply not affected by the legislation."

Debt Transfer 'Infrequent'

Healey was less reassuring on the concept of third-party liability for contractor tax debt.

"Let me reassure the Committee on the transfer of debt. Given that the transfer notices are expected to be issued infrequently, HMRC intends to vest such work in a central, specialised team that undertakes work of a similar nature," Healey claims.

It will be obvious to all those concerned that this in no way prevents the Revenue from seeking payment for contractor tax debt from third parties which could include recruiters.

While contractors should be grateful for this light in the darkness of the crudely worded legislation, a good many issues will still have to be settled in the courts. But at least it is clear that contractors who can show that they actively manage their own companies, regardless of how they were set up, are excluded from the law.

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