

Contractors must choose advisors carefully

The new legislation for managed service companies has a twist that makes working with advisers like accountants, lawyers, and even an agency, a bit more touchy than it was before.

The legislation states that an advisor, who obviously earns a fee for working with you, exercises influence on the way you run your business or your finances. Now the legislation excludes accountants and employment providers from most of its provisions, but if they get "involved" with your company in the ways we mention, then they aren't excluded.

Is the Advisor Involved with The Company?

Specifically, the legislation states: an MSC provider is "involved with the company" if the MSC provider or an associate of the MSC provider—

- (a) benefits financially on an ongoing basis from the provision of the services of the individual,
- (b) influences or controls the provision of those services,
- (c) influences or controls the way in which payments to the individual (or associates of the individual) are made,
- (d) influences or controls the company's finances or any of its activities, or
- (e) gives or promotes an undertaking to make good any tax loss."

Working With Your Lawyer or Accountant

All of this sounds complicated, and it is. "Contractors who have their own limited companies need advice from accountants, lawyers, and others," says Barry Roback, CEO of the Watford-based accounting firm [JSA](#) which specialises in contractor affairs. "Fully qualified lawyers and accountants who are members of a recognised accounting body should be able to offer advice to contractors just as they would to any other type of client. Whether this will prove true will require testing in the courts."

Contractors need to look closely at their advisers and be absolutely sure that these are not somehow involving them in a managed service company scheme. Under the legislation, this would involve a heavy tax penalty.

Provider is Not Exempt

Adrian Marlowe, managing director of the London-based legal consultancy [Lawspeed](#), which specialises in contractor affairs, helps to clear the matter up:

"It has been suggested that a provider is exempt from the legislation if the provider is an accountant or a firm of accountants. The claim to this effect implies that any company receiving assistance from an accountant will not therefore be an MSC and will not therefore be subject to the MSC tax regime," Marlowe explains.

Marlowe continues: "Whilst there is an exemption from the legislation for accountants (and indeed lawyers) that merely give advice to personal service companies, if the advice is given by an accountant who is in the business of recommending the use of companies or facilitating the use of a company for tax avoidance purposes then the legislation applies."

But some advisers, accountants and lawyers included, may not make all this clear to you when you are seeking advice. Says Marlowe: "One conclusion would be that an individual can operate through a personal service company without being affected merely by avoiding obtaining advice from a central provider that is involved in the way defined in the legislation. This will inevitably not suit the interests of those service providers that continue to maintain the myth that because they act as accountants, and perhaps also offer alternate lines of business, their personal service company clients will not be MSCs."

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“Advice from a lawyer or accountant is not necessarily exempt”

Adrian Marlowe-Lawspeed

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