



NIXONWILLIAMS

GUIDE TO MANAGED SERVICE COMPANIES



Welcome

This guide is designed to give a brief overview of the Managed Service Companies Legislation (MSC Legislation).

We all know about the traditional methods of operating for contractors (Limited Company, Sole Trader and Umbrella Company) but up until 2007 there was an alternative method of trading for a contractor, this was to use a Managed Service Company (sometimes referred to as a composite company).

Under this structure a number of contractors were placed into a group of shareholders all working through one company owned and run by the managed service provider, thus meaning they (the contractor) get all the tax advantages of operating a Limited Company but without the responsibility.

Some unscrupulous MSC Providers failed to pay taxes to HMRC, who were concerned about the lost revenue, so in December 2006 they announced that they would be bringing in measures to remove the tax advantages of using these schemes. The proposals included measures to enable them to recover PAYE and NIC debts from third parties.

To quote the Treasury, the following extract taken from their document *'Tackling Managed Service Companies'* clearly shows their intention of the legislation:

'The Government is taking action to tackle Managed Service Company (MSC) schemes which are used to avoid paying employed levels of tax and NICs. Income received by workers in MSCs in relation to services provided through the MSC will be subject to employed levels of tax and NICs, with the MSC obliged to operate Pay As You Earn (PAYE) and deduct tax and Class 1 NICs on that income - and the rules for tax relief for travel expenses will be the same as for other employed workers. The Government will also address the problem of MSCs escaping payment of tax and NICs due by allowing the recovery of these debts from appropriate third parties.

This will protect the Exchequer and ensure a level playing field for compliant businesses and workers. The Intermediaries legislation (IR35) will remain in place for Personal Service Companies.'

On 6 April 2007 Chapter 9 ITEPA 2003, more commonly known as the Managed Service Company ('MSC') legislation, was introduced. The MSC legislation applies to individuals providing their services through intermediaries which meet the definition of a MSC.



Payments

All payments received by individuals providing their services through MSCs are subject to PAYE and National Insurance contributions and the MSC legislation applies equally whether an MSC is based within or outside the United Kingdom.

Where the PAYE and NICs debts of an MSC cannot be recovered from the company, HMRC may transfer the debt personally to one of the following:

- The Company's director
- The MSC Provider or
- Other third parties (agencies perhaps).

Due to this legislation, MSC's are no longer a tax efficient way of operating!

However, care should be taken because there are companies operating MSC's and not operating the full PAYE model without tax relief on expenses and thus are in breach of the legislation. You may well be liable for additional tax if you operate through this model (even if you were not aware you were breaching the rules).

What is a Managed Service Company?

For a company to be a Managed Service Company it must fulfil all four conditions of Section 61B (1), Chapter 9, Part 2 ITEPA, these conditions are:

1. The company's business must consist wholly or mainly of providing directly, or indirectly, services of an individual to third party clients
2. The individual supplying their services to a third party client receives payments from the service company equal to the greater part of the sums received by the service company from the client for the services provided by the individual
3. The payments received by the worker are greater than they would have received if all of the payments were treated as employment income of the worker relating to an employment with the service company
4. There must be a person termed a 'MSC Provider' and that person must be involved with the company.



MSC Provider

To be a MSC Provider a person must be carrying on a business of promoting or facilitating the use of companies to provide the services of individuals.

The following are not a MSC Provider by virtue of the activity described:

- A firm of accountants carrying on a business of being accountants (irrespective of the percentage of the client base which is individuals operating through service companies)
- A Tax Adviser carrying on the business of being a Tax Adviser generally
- A Company Formation Agent
- A Chartered Secretary
- An Employment Business/Agency undertaking its core business of placing work seekers (including those operating through companies) with end clients
- Service providers providing services to companies generally, for example insurance companies, payroll bureaux etc
- A Trade Association operating in the service sector.



The following are a MSC Provider by virtue of the activity described:

- A Service Provider carrying on a business specifically of marketing and/or providing corporate solutions and services to individuals providing their services to end clients
- A firm of accountants carrying on a discernable part of their business specifically to market and/or provide corporate solutions and services to individuals providing their services to end clients. (In this case the firm would only be a MSC Provider in respect of that discernable part of the business)
- A business which terms itself a Tax Adviser, Service Provider or whatever but which specifically markets and/or markets corporate solutions and services to individuals providing their services to end clients.

MSC Provider involved with the company

Simply because a person is a MSC Provider does not necessarily mean that their client companies are Managed Service Companies.

HMRC is aware that there is a market for specialist service providers providing corporate solutions to workers genuinely in business on their own account. Whilst such specialist providers may be MSC Providers, it is important to remember that a key issue is whether the services provided constitute being involved with the client company.

To be a Managed Service Company, in addition to fulfilling the first three criterion in section 61B (1) of the legislation, the MSC Provider, or an associate must be 'involved with' the client company.



Activities Of 'Involved'

'Involved' is defined in the legislation by reference to any one of five activities:

Activity 1

The first activity is that of benefiting financially on an ongoing basis from the provision of the services of the individual who provides those services through a MSC. The main example of this would be if the provider charged their fees based on a percentage of the client's income, rather than a fixed standard fee, not determined by the level of the client's income.

Activity 2

The second activity is that of influencing or controlling the provision of the services of the worker. If the provider is involved with the way their services are provided, such influence or control is not indicative of a relationship between a provider and a person genuinely in business on their own account.

Activity 3

The third activity is that of influencing or controlling the way in which payments to the worker or an associate are made. The company's officers should determine how the company distributes its profits. Whilst the provider may provide advice, the decision on profit distribution must be made by the company's officers.

Activity 4

The fourth activity is that of influencing or controlling the company's finances or any of its activities. A company's officers should, independently of any external influence, determine how the company, as a separate legal entity, and its finances, are administered. Such decisions should have regard to all the relevant factors pertinent to the company and to the company officers' legal obligations. Where there is no such independence, and that is not simply a matter of presenting illusions by some structural changes, HMRC's view is that both the company and its finances are being influenced and controlled.

The clients should be free to choose their own banking arrangements, a provider who insists on using a particular bank would be seen as being involved with the client company.

Activity 5

The fifth activity is that of giving or promoting an undertaking to make good any tax loss. Prior to April 2007 the typical MSC scheme offered the client an 'IR35 proof' model. Sometimes that came with insurance, with the guarantee that if HMRC successfully challenged the IR35 proof status of the company, there would be no financial consequence for company or worker.

Where, subsequent to April 2007 a MSC Provider or an associate either offers insurance against the tax/NIC liabilities arising under the MSC legislation, IR35, or indeed any other provision of the Tax Acts or National Insurance legislation, they will be involved with those client service companies to which they either offer, or promote, such insurance.

Meaning of 'Influences'

In this context 'influences' does not mean the provision of advice.

The Financial Secretary to the Treasury said in Parliament on 15 May 2007:

"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."

What services are considered to comprise being involved and which are not.

Indicators of services that would generally not constitute being involved:

- Managing company formation and set up
- Acting as the client company's Registered Office
- Registering companies for VAT, Corporation Tax and PAYE
- Preparing VAT, Corporation Tax and PAYE returns
- Providing advice on whether IR35 (Chapter 8 ITEPA) applies to a particular engagement
- Advising on a remuneration package
- Advising on expense claims
- Preparing invoices
- Submitting invoices to clients of a company
- Operating a payroll
- Preparing weekly/monthly payslips and producing employers' payroll returns, such as P35 & P11Ds
- Preparing management accounts and financial statements
- Providing support on secretarial matters, such as drafting of minutes and preparing annual returns
- Providing group insurances (including employers and public liability).

Indicators of services that would constitute being involved in all circumstances:

- Providing a standardised corporate solution package, other than one in which all of the income of all of the persons working through the corporate body, is treated as employment income
- Being a director of client companies
- Being the company secretary of client companies
- Acting as the company's registered office of all client companies
- Managing the company bank account or the company's finances through a separate account (but see below regarding holding tax balances)
- Charging fees based on the number of invoices raised/payroll runs.

Indicators of services that may constitute being involved, depending on the scope of the activity:

- Maintaining cash balances on behalf of Personal Service Companies to meet Corporation Tax, PAYE and VAT liabilities
- Paying Corporation Tax, PAYE & VAT liabilities on behalf of the Personal Service Companies using the cash balances held.

Further reading on this topic is available on the HMRC website - <http://www.hmrc.gov.uk/employment-status/msc-guidance-july07.pdf>

Nixon Williams are one of the few contractor accountants that has never operated as a MSC Provider or even provided Umbrella Company options. We are pure accountants and we have been independently audited to verify that we are not caught by the MSC legislation.

It is worth a check that your accountant has never been a MSC provider and that if they have, they no longer operate as such.

PREMIER SERVICE SUMMARY

what is included?



Set Up

- Form a Limited company at Companies House.
- Register your company for PAYE.
- Register your company for VAT.
- Register your company for Corporation Tax.
- Register your company for the VAT Flat Rate Scheme.
- Assist with opening a HSBC or Cater Allen Bank account.

Monthly

- Operate your payroll with payslips for each employee.
- Calculate and issue a profit statement for your company.

Quarterly

- Calculation & advice of VAT returns & payments.
- Calculation & advice of PAYE payments.

Annually

- Issue and file P14's/P60 & P35 with HMRC.
- Issue and file P11d & P11d(b) with HMRC.
- Calculate and advise of Class 1A NIC payments.
- Prepare & file annual accounts with HMRC.
- Prepare & file Corporation Tax return (CT600) with HMRC.
- Prepare accounts for Companies House.
- Prepare Companies House Annual Return (AR01).
- Personal Tax Return for one person if received by 30th September after the end of the tax year. A small charge may apply if you join part way through the tax year.

Ongoing

- Dedicated Account Controller including their direct phone number & email address.
- Unlimited telephone & email support.
- Ongoing book-keeping.
- Produce dividend vouchers and board minutes.
- Deal with any general HMRC correspondence and queries.
- Advise Companies House of company changes.
- Deal with change of address for the company and director.
- Mortgage and tenancy references.
- Complete National Statistical Office questionnaires.
- Deal with HMRC investigations where we have done the work, provided you have followed our advice and not concealed anything from us.
- If you decide to cease using our services, your only commitment is to give us one month's notice.
- If you choose to move to another accountant, we do not make a charge for the transfer.

Your obligations to us:

- Send us copies of your invoices.
- Send us your expense claim form.
- Send us a copy of your company bank statements.
- Respond to letters and emails from us.
- Pay our fees each month.

All Inclusive
Service for only
£95+VAT
per month



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