

Question 6 – P35 2009/10

Many of you will recall the uncertainty regarding Question 6 on the P35 regarding “Service Companies”. The following is an edited extract from HMRC’s “Finishing the tax year up to 5 April 2009 - E10 (2010)”

“Question 6 is deliberately in two parts. The first question identifies those employers who need to consider whether the second question applies. If the answer to the first question is no, the answer to the second question will similarly be no.

*The first question should be answered **yes** if:*

- an individual performed services (intellectual, manual or a mixture of the two) for a client or clients, and*
- the services were provided under a contract between the client and the service company of which, at any time during the tax year, the individual performing the services was a shareholder, and*
- the service company’s income was, at any time during the tax year, derived wholly or mainly (that is, more than half of it) from the services performed by the shareholders personally.*

The second question should only be answered yes if:

Income has been treated as deemed employment income and PAYE/NICs deducted in accordance with the Intermediaries legislation (IR35).

The only engagements affected by the IR35 rules are those in which the worker would be classed as an employee (for NICs, employed earner) of the client if it were not for the service company involvement. Where the IR35 rules apply, the intermediary (service company) may have to account for an additional amount of PAYE and NICs on the deemed payment, which is based upon the income from the engagements, after an allowance for certain expenses and pension contributions.

If you are a service company (as explained above) in the year to 5 April 2010, tick the first ‘Yes’ box under this question. If you have deducted PAYE and NICs on deemed employment payments under the Intermediaries legislation (IR35) in respect of any person shown on the Return, tick the second box ‘Yes’. “

What does this mean?

Many of our clients will be classed as a “service company” based upon the definition as above, therefore we would suggest that this is answered as, “Yes”. Unless advised otherwise, this is how we will answer Question 6 for you.

The second question, would only be answered as a “Yes” if one or more of your contracts were caught by the IR35 legislation for the tax year ending 5th April 2010.

All clients can of course direct us to answer this question as you wish, just let your Account Controller know.