

Managed Service Companies (MSCs)

New legislation on MSCs was introduced in the Finance Act 2007, with a view to targeting certain structures which had, in theory, avoided the IR35 rules.

An MSC is a company (which includes any body corporate or partnership):

- whose business consists wholly or mainly of providing the services of an individual worker to others; and
- where the individual (or an associate) receives the greater part of the monies received in respect of the services provided by the worker; and
- the way in which those payments are made would result in the individual receiving (net of tax and National Insurance) an amount greater than that which would have been received (net of tax and National Insurance) if the payments were treated as employment income; and
- an *MSC Provider* (or associate) must be *involved* with the company

MSC Provider

An MSC Provider is defined as a person who carries on a business of promoting or facilitating the use of companies to provide the services of individuals.

Involvement with the company

An MSC Provider is said to be involved with the company where the Provider (or an associate):

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

The Guidance Notes issued by HMRC stress that 'influence' is not merely the provision of advice and list indicators of services which would generally not constitute being involved, such as:

- Company formation and set up
- Acting as a registered office

- Providing advice only on whether IR35 applies to a particular engagement
- Providing advice only on remuneration packages and expenses claims
- Operating a payroll service

The Guidance Notes also list indicators of services that would generally constitute being involved with a client company:

- Providing a standardised package where not all the income of all the persons working through the company is treated as employment income
- Being a director or company secretary
- Managing the company's bank account or finances through a separate account
- Charging fees based on the number of invoices raised/payroll runs, where this represents a link to the provision of the services of the worker

There are statutory exemptions for the normal activities of professional advisers such as accountants, lawyers and employment agencies. However, the exemption ceases to apply where their business substantially involves marketing and/or promoting 'personal service companies'.

Deemed employment payments

An MSC will have to operate PAYE and Class 1 NIC on *all* payments caught by the above rules.

The payments are adjusted for any amounts already treated as earnings by the MSC, and may be adjusted for any expenses that would be tax-deductible if the worker had been employed directly by the company's client and had paid the expenses from his taxable earnings. This wording is designed to ensure that travel costs to the client's premises, and associated accommodation and subsistence costs, will *not* be tax-deductible.

The resulting payment after allowable expenses represents the deemed employment payment and the employers NIC thereon.

MSC Providers should note that they have a potential liability for any unpaid PAYE and NIC liabilities of any MSC with which they are 'involved'.

Personal Service Companies which are not MSCs continue to fall within the Intermediaries legislation (commonly known as "IR35").