



MSC Guidance released – questions HMRC tells agencies to ask

Firstly, a quick re-cap for you. The MSC legislation was introduced in the Budget 2007 to ensure that contractors working through a 'Managed Service Company' paid full PAYE and NIC in their earnings in line with that of employed individuals. In addition to this, the legislation also states that other parties may be held accountable for any tax debts of the MSC, starting with the MSC's directors themselves (the contractor), the MSC Provider (the service provider), their directors or associates and finally, the recruitment agent/agency. After much lobbying and consultation with the recruitment industry, the legislation was tweaked to ensure that only those agencies or agents that 'encourage' contractors to use MSC's may be at risk from any unpaid tax liability. HMRC have expanded on this area in the guidance notes released this month.

As an agency, you do not need to establish whether the contractor operates through a MSC or not. If they already have a company set up when you place them in a role, the debt transfer regulations will not apply, even if you recommended that particular contractor to an MSC Provider in the past. The regulations will not apply even if the contractor informs you that they think they are working through a MSC.

In order to ensure that the accountants on your PSL are not MSC Providers, you will need to ask a couple of questions, particularly when tendering for a PSL. These questions have been defined by HMRC and we have outlined them below;

- 1. Do all of the service providers companies have the same name ('a brand name or well known company name' Ltd)?**
- 2. Does the service provider determine the terms and conditions relating to their client company? For example; the format of the contract, payment arrangements, payment rates or invoicing arrangements.**
- 3. Does the service provider have any authority for the company's trading or provision of services? For example; receipt or payment of company funds into a common bank account.**
- 4. Is the service provider in the contract chain? Either between the contractor/agency or the contractor/client.**
- 5. Can the contractor leave the service provider with their company or are they tied into a 'contract'?**



6. Does the service provider only have clients who are service companies (contractors)?

If the answer is yes to any of the above, then there may be an issue with the service provider being an MSC.

In summary, there is no problem with you having a PSL of accountants or having contractors with a limited company working through you. You will need to ensure during any PSL tender process that the accountancy firms can answer the questions above satisfactorily and ensure you as the agency are not at risk. You are able to provide contractors with 'factual information' but HMRC advise against informing contractors to use one payment model over another. As such it is strongly advised that you work with companies that are knowledgeable in this area.

If you would like to read up in further detail on HMRC's guidance, please find the full release here; <http://www.hmrc.gov.uk/employment-status/msc-guidance-july07.pdf>

Nasa Consulting has been working for some time to ensure that we are not 'involved' in the management of our clients businesses, despite being a regulated accountant and therefore exempt from the legislation. It is our primary concern to ensure that our clients and the agencies that we work with are not at risk from the MSC and debt transfer regulations.

Our wide range of accountancy services and expertise in IR35 means we are perfectly placed to assist those individuals who wish to continue working through a limited company, as well as those who just wish to engage a simple PAYE Umbrella. Our focus is on unbiased, professional advice which allows our clients peace of mind with the services they have chosen.

We at Nasa will be happy to discuss any aspects of this article, or the legislation as a whole and how it may affect you. Please feel free to contact us on **0117 904 7755**.