

Guidance on transfer of PAYE /National Insurance contributions debts of Managed Service Companies.

1. Legislation

1.1 The legislation under which a PAYE and Class 1 National Insurance contributions (NICs) debt of a managed service company can be transferred to a third party under specified circumstances is:

- **Section 688A, Part 11, ITEPA** : Section 688A(2) sets out the persons to whom a debt may be transferred
- **The Income Tax (Pay as You Earn)(Amendment) Regulations 2007 (2007/xxxx)**: These Regulations provide the detailed mechanics of how a PAYE debt is transferred
- **The Social Security (Contributions) (Amendment No.5) Regulations 2007(2007/xxxx)**: these Regulations provide the detailed mechanics of how a Class 1 NICs debt is transferred.

Subsequent reference to Regulations, unless otherwise stated, refers to the above PAYE Regulations'/Social Security Regulations.

2. The MSC's Debt

2.1 An MSC's PAYE and Class 1 NICs debt can only arise by virtue of one of the existing provisions within the PAYE/NICs legislation:

- HMRC issues a Determination under Regulation 80 Income Tax (Pay as You Earn) Regulations 2003/ a Decision under Section 8, Social Security Contributions (Transfer of Functions, Etc) Act 1999; or
- On receipt of the MSC's P35, the sum shown on the form as payable exceeds that paid and a certificate is prepared under Regulation 76(2) Income Tax (Pay as You Earn) Regulations 2003/ Paragraph 22(5), Sch. 4, Social Security (Contributions) Regulations 2001 (where HMRC formally certifies the PAYE and NICs underpaid in accordance with the P35);or
- HMRC prepares a certificate under Regulation 77(6) Income Tax (Pay as You Earn) Regulations 2003/ Paragraph 14(1), Sch. 4, Social Security (Contributions) Regulations 2001 (where, after the end of a tax period an employer has not paid any PAYE or NICs, or HMRC believes the amount paid is not the correct amount due, HMRC issues a return to the employer requiring details of the PAYE and NICs due);or

- HMRC serves a notice under Regulation 78(4) Income Tax (Pay as You Earn) Regulations 2003/ Paragraph 15(1), Sch. 4, Social Security (Contributions) Regulations 2001 (where, after the end of a tax period an employer has not paid any PAYE or NICs, or HMRC believes the amount paid is not the correct amount due, HMRC having regard to the employer's past payments, specifies the PAYE and NICs due and issues a notice in that sum);or
- HMRC prepares a certificate under Regulation 79(2) Income Tax (Pay as You Earn) Regulations 2003/ Paragraph 26(4), Sch. 4, Social Security (Contributions) Regulations 2001 (where HMRC has inspected an employer's PAYE records and certifies the amount of PAYE and NICs due).

2.2 The sum of PAYE and NICs considered to be irrecoverable within a reasonable time (Regulation 97C(1)(b)/Regulation 29C(1)(b)) from the MSC is known as the "Specified Amount." "Reasonable time" is not defined in legislation but for practical purposes within three months should normally be considered within a reasonable time.

3. To whom a debt can be transferred

The categories of transferee

3.1 Section 688A (2), Part 11, ITEPA sets out four categories of persons to whom a debt can be transferred. The fourth category links to the second and third categories so for all practical purposes there are three categories. In this context a "person" means an individual, company or partnership. The three categories are:

1. The director, or other office holder or associate of the MSC
2. The MSC Provider or the director, or office holder or associate of the MSC Provider
3. Any other person who directly or indirectly has encouraged or been actively involved in the provision by the MSC of the services of the individual, or a director, or other office holder or associate of such a person.

The Regulations refer to a person in the second category as a person within section 688A(2) b or paragraph (b) associate. Similarly they refer to a person in the third category as a person within section 688A(2) (c) or paragraph (c) associate.

3.2 See 3.11 and 3.12 for the definition of 'associate' in this context.

The third category

N.B. Only debts incurred after 6 January 2008 can be transferred to persons within the third category. This is set out in the Regulations.

3.3 The legislation requires that before a debt can be transferred to a person within the third category above, it must be impracticable to recover the debt from a person within the first two categories. When a debt is “impracticable” to recover is explained at 5.7, 5.13 and 5.25. This will be established either by virtue of enquiries undertaken by compliance teams, or following unsuccessful debt recovery action by Debt Management.

3.4 The legislation does not define “impracticable”. Simply because a debt may be difficult to recover, for example because a person’s assets are in the form of property, does not make a debt impracticable to recover. But if, for example, a person’s assets are located outside UK jurisdiction, or the person is insolvent, then such a debt would normally be impracticable to recover from such a person.

3.5 In considering whether it is impracticable to recover the debt from persons within the first two categories, the Regulations provide that HMRC may have regard to all of the Managed Service Companies with which a person in the first two categories is connected. One of the practical consequences of this is that in determining an MSC Provider’s financial ability to pay the debt of a particular Managed Service Company, HMRC may have regard to the potential debts of other MSCs to which the Provider will become liable, even if those debts have yet to be formalised and transferred.

N.B. In determining to which persons within the first and second categories to transfer a debt, regard must be taken of the statutory time limits (see 5.1 below). If HMRC fail to have regard to statutory time limits and as a consequence are unable to issue a Transfer Notice to any person within the first or second category who it can reasonably be assumed would have satisfied the debt, HMRC cannot then seek to transfer the debt to a person within the third category citing impracticality in terms of those persons time-barred.

3.6 Whether a person falls within the third category should be considered initially only by a compliance team. Compliance teams should seek advice from Bob Hart (PSN (Technical)) regarding interpretation of a person falling within the third category. Normally a worker/shareholder in an MSC will automatically be considered to be within the third category. However, where there is evidence that the worker was genuinely unaware that they had been made a shareholder and were working through an MSC, this presumption does not apply and each case should be considered on the facts.

3.7 Determining whether a person falls within the third category should in the first instance be the responsibility of the compliance team/Special Compliance Unit, but the final decision on whether it is appropriate to issue a Transfer

Notice to a person within the third category rests with the designated team in Insolvency Compliance and Securities (ICS team). If the ICS team has any doubt as to the appropriateness of issuing a Transfer Notice, they should consult with Bob Hart (PSN Technical).

3.8 In terms of persons within the third category, it is **not** the intention that persons who have unwittingly been involved with MSCs or have merely received a worker's services, are issued with Transfer Notices. Issue of Transfer Notices should only be considered to this category of person where there is clear evidence that the person:

- Encouraged an individual into an MSC (in this context encouraged has a wide meaning and includes requiring the worker to operate through an MSC as a prerequisite to being offered a job, through to offering financial inducements to operate through an MSC);and/or
- Played an active part in the MSC's provision of the services of the worker such as advertising the services of the worker to prospective clients, or providing transport to enable the worker to undertake work; and
- Knew that the company was an MSC or failed to take reasonable steps to determine the status of the company.

3.9 The legislation includes specific exclusions from section 688A(2)(c)/(d) for:

- An Employment Business/Agency carrying on its core business of placing work seekers operating through service companies with end clients; and
- The mere provision of legal or accountancy advice in a professional capacity. In practice this should be taken to mean any person providing professional accountancy/tax/legal advice in a capacity that would not result in them being classed as an MSC Provider. (For more information, see the guidance on Chapter 9 ITEPA.)

3.10 The following list includes some other situations which do **not** fall within section 688A(2)(c)/(d). This list is not exhaustive and if there is any doubt as to whether a person falls within the third category you should refer to Bob Hart (PSN Technical) for advice:

- An end user client in receipt of the services of a worker operating through a service company set up by the worker, wholly independently of any influence/encouragement by the end user client.
- An ordinary employee of the MSC provider who is not a shareholder of the company and does not have a role in managing the business. For

example, someone in a clerical, secretarial or IT support role would not be considered to be within the provision.

- A business or individual providing general services to the MSC which are provided to a range of clients, e.g. company formation or payroll services.

Meaning of “associate”

3.11 The definition of “associate is that in section 611, Chapter 9 ITEPA - broadly in terms of a company, a person connected with the company. For the purposes of transfer of debt, “associate” does **not extend to an associate of an individual**. You cannot transfer a debt to, for example, the spouse of the Director.

3.12 An associate does not include an investor who as part of a wider investment portfolio, invests in a person within categories two or three.

4. Roles and responsibilities

General

4.1 In the majority of cases it is expected that an MSC’s debt will be identified as a direct result of compliance activity by compliance teams. In such cases the compliance team will assume responsibility for **steps 1 to 8** in section 5 below and also liaise closely with the designated appeals office and Debt Management as appropriate.

4.2 Where an MSC’s debt is identified other than through compliance activity, it is for the relevant part of DMB to consider **steps 2 to 8** in section 5 below.

Designated ICS Team

4.3 The designated ICS team is responsible for the following actions and is ultimately responsible for ensuring that any Transfer Notices issued fully comply with the requirements of section 688A, Part 11 ITEPA and associated Regulations. **Under no circumstances should any of the following actions be delegated to/assumed by another team:**

- Review of referrals for consideration of a transfer of debt;
- Liaison with the referring office regarding any issues arising from the referral;

- The making of a Direction under Regulation 97C(2)/Regulation 29C(2) authorising recovery of the specified amount from a person within s688A(2);
- Formally certifying that it is impracticable to recover the specified amount from a person within section 688A(2)(a) and (b)/(d) ITEPA;
- The timeous issue of a Transfer Notice or Notices in accordance with Regulation 97D/29D;
- Receipt of any appeal against a Transfer Notice and referral of the appeal to PSN (Technical); and
- Withdrawal of Transfer Notices

Compliance teams

4.4 In all cases where a debt is identified as a result of compliance activity, the compliance office is responsible for:

- Ensuring that the Regulation 80 Determination/section 8 decision is final and conclusive (that is, either the appeal period has expired or any appeal has been resolved);
- Application to the MSC for payment;
- Ascertaining whether the MSC has the ability to pay the debt;
- Ascertaining the names and addresses of the parties to whom a debt may be transferred in accordance with section 688A, Part 11, ITEPA;
- Ascertaining the financial position of the parties to whom a debt may be transferred;
- Formally determining that in an opinion of an officer of HMRC, in accordance with Regulation 97C(1)(b) /Regulation 29C(1)(b), the debt is irrecoverable within a reasonable period from the MSC;
- Where appropriate, providing evidence to the designated ICS team that the specified amount is impracticable to recover from any person within section 688A(2)a) or (b)/(d) ITEPA;
- Submitting papers to the designated ICS team to include full debt details:
 - ⇒ Under which condition in accordance with Regulation 97B/Regulation 29B;
 - ⇒ An analysis of the PAYE and NICs, by month and year (e.g. months 9 -12 2007/08); and
- Additionally, undertaking limited research in non compliance cases regarding persons to whom a debt might be transferred , and their financial position

N.B. The compliance team should undertake research (using, where appropriate, existing statutory powers and commercial processes available) regarding potential transferees during any appeal process in order that once the debt is confirmed there is no delay in seeking settlement/referring for consideration of a transfer of debt.

Debt Management

4.5 Debt Management have two distinct roles:

4.6 Where a debt arises by virtue of Condition B, C or D of Regulation 97B/Regulation 29B, Debt Management offices (in liaison with Processing colleagues) are responsible for Steps 2 to 8 in section 5 below.

4.7 Debt Management is also responsible for processing /enforcement of specified amounts, specifically:

- Processing payment of a specified amount;
- Calculating the interest due on the specified amount and obtaining payment;
- Issuing a reminder to a transferee/transferees where a specified amount remains unpaid after 30 days from the issue of a Transfer Notice/Transfer Notices;
- Commencing legal proceedings for recovery of the specified amount from all transferees;
- Considering acceptance of a sum from a Transferee of less than that specified in the Transfer Notice;
- Repaying any excess payments timeously in accordance with Regulation 97L/Regulation 29L;
- Notifying the ICS team timeously where payment (full or partial) of a specified amount is received in respect of a Specified Amount subject to appeal (by any transferee);
- Notifying the ICS team timeously where recovery of a specified amount from a person within section 688A(2)a) or(b)/(d) has proved impracticable; and
- Notifying the compliance team (where the case emanated from compliance activity) or the transferee's Tax Office of the sum paid in settlement and that such a sum is not an allowable deduction.

Designated Appeals office

4.8 Appeals against a Transfer Notice will be heard by the Special Commissioners. Accordingly PSN (Technical) will consider all appeals against Transfer Notices and liaise with Solicitors Office before allocation of the appeal to the appropriate office (e.g. a Regional Appeals Unit.)

4.9 The allocated office is responsible for:

- Listing the appeal/appeals;
- Defending the appeal/appeals; and
- Continued liaison with PSN(Technical) on any technical/procedural issues.

5. The Process

(See also flow chart)

Time limits

5.1 To be valid, Transfer Notices must be issued:

- To a person in the **first category** (that is, the director of the MSC, or other company officer or associate of the MSC): within 12 months of a debt becoming due in accordance with Regulation 97B/Regulation 29B.
- To a person in the **second category** (that is the MSC Provider, director or other office holder or associate of the MSC Provider): within 12 months of a debt becoming due in accordance with Regulation 97B/Regulation 29BC
- To a person in the **third category** (that is, a person who directly or indirectly has encouraged or been actively involved in the provision by the MSC of the services of the individual, or a director, or other office holder or associate of such a person): within 3 months of an officer of HMRC certifying that it is impracticable to recover from persons in the first two categories.

See also paragraph 5.14

Compliance teams only:

Step 1: Regulation 80/Section 8

5.2 Where necessary, issue a Determination under Regulation 80/Decision under section 8. If the Determination/Decision is appealed, whilst the appeal process proceeds, identify whether the MSC has the financial ability to pay the liability. Where it does not, identify the persons to whom the debt may be transferred and ascertain each person's financial position and ability to pay the debt. Defend the appeal and once the sum becomes final and conclusive move to Step 3.

Compliance teams/DMB:

Step 2: Establishing the Debt

5.3 Identify the debt due from the MSC in accordance with Conditions A -E Regulation 97B/Regulation 29B.

Step 3: Seeking payment from the MSC

5.4. Issue a demand for payment to the MSC at its registered office giving 7 days to pay. (Such a demand should be issued even where the company is known to have no assets.)

Step 4: Action following issue of a demand for payment to the MSC

5.5 Actions:

- If the company fails to respond or responds advising that it cannot pay, consider its asset position based on information available to the Department (e.g. accounts information; knowledge of systems and working practices etc.)
- If the company has assets, Debt Management should seek to recover the money in the most appropriate way but should have regard to the time limits imposed for the transfer of debt. If action to recover the debt from the company takes, or is likely to take, more than three months (for example because insolvency proceedings are the only option), move to step 5
- If the company has no assets, move to Step 5. Note that it is not necessary for the company to be in liquidation or even to have ceased trading for transfer of debt to be considered.
- If the company is in liquidation/Receivership/Administration, ascertain from the Liquidator/Receiver/Administrator the likelihood of full payment. Unless full payment can be guaranteed within 3 months, go to Step 5. Where a payment is subsequently received, see step 12 below.
- If the company offers settlement by instalments, judge each case on its merits including the likelihood of the company defaulting. Any such arrangement **must have regard to the time limits for the issue of a Transfer Notice** in Regulation 97D/Regulation 29D and must not exceed 3 months. If an arrangement is accepted, if the company defaults on any payment it is essential that you establish quickly the reason and consider moving to Step 5 having regard at all times to the time limits for issuing Transfer Notices.

Step 5: Identification of potential transferees

5.6 Identify the names and addresses of the persons to whom the MSC's debt may be transferred. Where the case did not emanate from a compliance team, refer to the SCU geographically nearest the MSC and ask them to undertake enquires regarding the names and addresses of persons in the first two categories.

Step 6: Ascertaining potential transferees' ability to pay

5.7 Ascertain the financial position of the persons in the first two categories and their ability to pay the MSC debt. If the evidence is that the persons have the ability to pay the MSC's debt go to Step 8. If the evidence is that the persons do not have the ability to pay the MSC's debt, or their assets are alienated (e.g. offshore), or there is any doubt, go to Step 7. (See also paragraphs 3.4 and 3.5.)

Step 7: Potential transferees within the third category

5.8 The compliance team should identify the names and addresses of persons in the third category, liaising with PSN (Technical) regarding whether such persons fulfil the criteria of Section 688A(2)(c)/(d). The compliance team should also determine:

- The period of time (in terms of the period to which the debt relates) that each person directly or indirectly encouraged or was actively involved in the provision by the MSC of the services of the individual; and
- The degree and extent to which each person directly or indirectly encouraged or was actively involved in the provision by the MSC of the services of the individual; and
- Each person's financial position and ability to pay the MSC's debt

N.B. in terms of degree and extent, regard should be taken of the following, which is not intended to be an exhaustive list:

- The period of time with which the person had some connection with the MSC;
- The extent of their role-whether it was peripheral or central;
- The extent to which their role was directly a contributing factor to the worker operating through an MSC;
- The extent to which they were instrumental in enabling the MSC to trade
- The extent to which they had any influence, directly or indirectly, over the company's failure to pay PAYE/NICs.

Step 8: Submission to the ICS Team for consideration of issue of Transfer Notices

5.9 Submit the case to the ICS team for consideration of the transfer of debt. Include:

- A declaration signed by an officer not below Higher Officer grade that they are of the opinion that the debt- the specified amount, is irrecoverable from the MSC in a reasonable period;
- Evidence in support of the above declaration;
- The names and addresses of the persons in the first two categories together with details of their financial position/ability to pay;

- A recommendation regarding which persons within the first two categories should be issued with Transfer Notices and the reasons why;
- Where research has indicated that it is likely to be impracticable to recover the specified amount from any person within the first two categories, evidence in support of this view;
- The names and addresses of the persons in the third category together with details of their financial position/ability to pay;
- Information regarding the period of time (in terms of the period to which the debt relates) that each person within the third category directly or indirectly encouraged or was actively involved in the provision by the MSC of the services of the individual; and
- Information regarding the degree and extent to which each person in the third category directly or indirectly encouraged or was actively involved in the provision by the MSC of the services of the individual

ICS Team only:

Step 9: Review of case by ICS Team

5.10 The ICS team should review all of the papers and satisfy itself that on the evidence provided the debt is irrecoverable from the MSC within a reasonable period. If it is not satisfied it should liaise with the referring office to resolve issues and record the resolution. Where the ICS team is satisfied that the debt is irrecoverable it should:

- 1) Make a Direction under Regulation 97C(2)/Regulation 29C(2) authorising recovery of the specified amount from persons within section 688A(2), Part 11, ITEPA (see Appendix A).
- 2) Consider to whom a Transfer Notice should be issued.

N.B. On the making of a Direction under Regulation 97C (2)/Regulation 29C(2), all persons within section 688A(2) become jointly and severally liable for the debt. However, this has no practical consequence for any person within section 688A(2) until such time as a Transfer Notice is issued. For example, there would be no obligation on a person to declare such a debt in their accounts until the Transfer Notice was issued.

5.11 Where there is ample evidence that the Director, other company officer or associate of the MSC have the financial ability to pay the specified amount, Transfer Notices should be issued initially only to persons within the first category. If Transfer Notices are only issued to persons in the first category, close liaison with Debt Management is essential to ensure that if the Specified Amount cannot be recovered, Transfer Notices are issued to persons within the second category within the time limits.

5.12 If there is any doubt as to the ability of persons within the first category to pay the Specified Amount, Transfer Notices should be issued to all persons within the first and second categories.

5.13 Where the referring office has indicated that none of the persons within the first two categories have the financial ability to pay, or their assets are alienated, or there is serious doubt as to HMRC's ability to recover the specified amount from any of the persons, consider issuing a Transfer Notice to persons in the third category. Note that before a Transfer Notice can be issued to any person within the third category, HMRC must be satisfied, and an officer not below Higher Officer grade must certify, that it is impracticable to recover the specified amount from any person within the first two categories. (See paragraph 3.4, 3.5 and Appendix B.)

5.14 A Transfer Notice must be issued to a person within the third category within three months of HMRC certifying that it is impracticable to recover the specified amount from persons in the first two categories. If you decide to issue a Transfer Notice to persons in the third category, Notices must be issued to **all** persons in this category identified by the referring office.

N.B. There is no statutory "upper" time limit on when a Transfer Notice may be issued to a person within the third category. Theoretically no matter how long it takes for HMRC to conclude that it is impracticable to recover a debt from a person in the first or second categories, HMRC still has three months from certifying such a fact, to issue a Transfer Notice. However, in practice a Transfer Notice should **not** be issued to a person in the third category more than six years after the dates set out in Regulation 97D/29D.

Step 10: Issue of Transfer Notices

5.15 Issue a Transfer Notice/Transfer Notices to the persons identified. Send a copy of the Transfer Notice/Notices to the SAFE Team at DMB

5.16 Note that the format of the Transfer Notice is prescribed in Regulations and must therefore conform with the statutory requirement precisely. A stencil for this purpose is at Appendix C.

5.17 In all cases a Transfer Notice must set out the total PAYE and Class 1 NICs unpaid by the MSC split between PAYE and NICs and the months and years to which it relates in addition to the Specified Amount (i.e. the total sum irrecoverable from the MSC).

5.18 A Transfer Notice to a person in the first and second categories will always require payment of the full Specified Amount.

5.19 A transfer Notice to a person in the third category must:

- ⇒ State that it is impracticable to recover the Specified Amount from named persons, being persons within section 688A(2)(a) and (b)/(d), Part 11, ITEPA, and that an officer of HM Revenue and Customs so certified on x date; and
- ⇒ Have regard to the period for which the person directly or indirectly encouraged or was actively involved in the provision by the MSC of the services of the individual (this information will have been provided by the referring office.)

It is possible therefore that a Transfer Notice will specify a “Lower Amount” that HMRC are prepared to accept. Where this is the case you should explain in a covering letter how the Lower Amount specified in the Transfer Notice has been calculated (e.g. the Specified Amount may relate to months 1-12 2008/09 but the person was only actively involved with the MSC for months 1-3 of 2008/09. The Lower Amount would be the actual amount due in respect of the first three months or where this detailed information is not available, 25% of the Specified Amount.)

Step 11: Receipt of Appeal(s)

ICS Team:

5.20 Any appeal will in the first instance be sent to the ICS team. The ICS team should acknowledge the appeal, notify Debt Management which person has/persons have appealed and refer the appeal(s) to PSN (Technical) together with all relevant papers. Where the ICS team is advised by DMB that a payment (from any person) has been received in respect of a Specified Amount subject to appeal, notify PSN (Technical) immediately providing full details.

DMB:

5.21 Where the ICS team notifies you that an appeal has been received in respect of a named person(s) recovery of the debt should not be pursued in respect of that person/those persons only. If payment (partial or full) is received from any other person served with a Transfer Notice, you should advise the ICS team immediately.

Step 12: Receipt of payment(s)

DMB:

5.22 Where, exceptionally, a payment is received from a person not within section 688A(2) ITEPA and not issued with a Transfer Notice, for example a liquidator:

- ⇒ If the payment satisfies the debt in full, you should notify the ICS team who will arrange for the Transfer Notices to be withdrawn;
- ⇒ If the payment only partially satisfies the debt, you should write to all transferees advising that a lower amount is now due.

5.23 Where payment is received from a person issued with a Transfer Notice:

- ⇒ If the payment is the full amount of the Specified Amount, you should write to the payee and all transferees requesting payment of the interest (explaining to other transferees that the Specified Amount has been paid);
- ⇒ If the payment is the Lower Amount notified to a particular transferee, you should write to the other transferees advising the balance still outstanding;
- ⇒ If the payment is a less than the Specified Amount and the payee advises that this is all that they can afford, you should liaise with the relevant compliance team to decide whether to accept the lower sum as final settlement of that particular transferee's liability in accordance with Regulation 97C(5)/Regulation 29C(5). Where a lower amount is accepted you should write to the other transferees advising the balance still outstanding. See also 5.25 where the full amount cannot be recovered from persons in the first and second categories.

Step 13: Total amount cannot be recovered

5.24 Immediately it becomes apparent that it will not be possible to secure full payment from persons within the first category (where only Transfer Notices have been issued to persons in this category), DMB should make a full report to the ICS team in order that the ICS team can consider issuing Transfer Notices to persons in the second category within the specified time limit.

5.25 As soon as it becomes apparent that it will not be possible to secure full payment from persons within the first and second categories, DMB should make a full report to the ICS team in order that the ICS team can consider issuing Transfer Notices to persons in the third category on the basis that it has been impracticable to recover the Specified Amount (or a part thereof) from persons in the first and second categories.

Step 14: repayment of excess amounts

N.B Repayment of excess amounts should be made timeously, without delay

5.26 Where payments exceed the total amount due (the Specified amount plus interest) repayment of any excess, where there is more than one payee, should be on a just and equitable basis. In practice this means:

- Where payments have been made by persons in all three categories, any excess should be repaid to persons in the third category first, pro rata to their payment.

Example:

The Specified Amount plus interest is £50,000. Payments are received: £10,000 from the MSC's Director, £30,000 from the MSC Provider and £10,000 each from two persons in the third category. Repayment would be £5,000 each to the persons in the third category

- Where payments have been made by persons in both the first and second category repayment should *normally* be to persons in the second category first (pro rata to their payments) but you should discuss with the compliance team whether, given the circumstances, it is just and equitable to repay persons in the second category to the detriment of persons in the first category.

Example:

The Specified Amount plus interest is £50,000. Payments are received: £20,000 from the MSC's Director, £50,000 from the MSC Provider. Normally repayment would be £20,000 to the MSC Provider. However, consideration should be given to such factors as the extent to which the worker was encouraged by the MSC Provider and the financial impact of the debt on both parties.

- Where payments have been made by persons in any single category, repayment should be pro rata to their payments.

Example:

The Specified Amount plus interest is £50,000. Payments are received: £30,000 from the MSC Provider and £30,000, each from two associates of the MSC Provider. Repayment would be £13,333 to each person.

Step 15: Withdrawal of Transfer Notices

5.27 The ICS team should write to a transferee /transferees withdrawing the Transfer Notice where:

- An appeal is upheld

N.B. the Transfer Notice withdrawn should only be in respect of the appellant(s) unless the grounds for the appeal were under Regulation 97G(3)(a)/Regulation 29G(3)(a) or Regulation 97G(3)(b)/Regulation 29G(3)(b) in which case all transferees will need to be notified accordingly

- DMB advise that the debt, including all associated interest, has been satisfied in full (and by whom.)

5.28 Withdrawal of a Transfer Notice is only appropriate where it is no longer intended to seek any part of the debt (including interest) from a transferee. Transfer Notices should not be withdrawn from any person who has partially satisfied a debt (including interest), rather they should be advised by letter whether their partial payment represents the total sum due.

6. Appeals

Jurisdiction and time limits:

6.1 Appeals are to the Special Commissioners. An appeal must be made to the address specified in the Transfer Notice within 30 days of the date the Transfer Notice was served and must specify the grounds of the appeal.

Grounds of appeal:

6.2 The grounds for appeal are set out in Regulation 97G /Regulation 29G. Some appeal grounds are available to all categories of persons while others are only available to persons within the third category:

Available to all:

- The relevant debt (or part of the relevant debt) is not due from the Managed Service Company to HMRC
- The Specified Amount does not relate to a company which is a Managed Service Company
- The Specified Amount is not irrecoverable from the Managed Service Company within a reasonable period

- The transferee is not a person within section 688A(2), Part 11, ITEPA
- The transferee was not a person within section 688A(2), Part 11, ITEPA during any part of the tax periods to which the Specified Amounts relate.
- The transferee was not a person within section 688A(2), Part 11, ITEPA during some part of the tax periods (i.e. for only part of the tax period) to which the Specified Amounts relate
- The Transfer Notice was not issued within the statutory time limits
- The Transfer Notice does not comply with the statutory requirements

Available to persons in the third category:

- It is not impracticable to recover the debt from a person in the first or second categories
- The Specified Amount (or the Lower Amount) does not have regard to the degree and extent to which the person encouraged or was actively involved in the provision by the Managed Service Company of the services of the worker.

See the attached Appendix C supplement which sets out the grounds of an appeal, for issue with a Transfer Notice.

Procedure on appeal:

6.3 Note that once a direction is made in accordance with Regulation 97C(2)/Regulation 29C(2): that the debt of an MSC is irrecoverable from an MSC within a reasonable period (see step 8 in section 5 above), each person within section 688A(2) ITEPA becomes jointly and severally liable for the debt. The outcome of any appeal by any person is relevant only to that person and has no bearing on the position of any other person to whom a Transfer Notice has been issued.

6.4 The two exceptions to the above where the outcome of an appeal is applicable to all persons who have been served with a Transfer Notice are:

1. An appeal under Regulation 97G(3)(a)/Regulation 29G(3)(a): that the relevant PAYE/NICs debt(or part of it) is not due from the Managed Service Company.

N.B.

- ⇒ The “relevant debt” is the PAYE/NICs originally due from the MSC in accordance with the PAYE/Social Security Regulations and not the Specified Amount which may, under some circumstances, be a different sum.
- ⇒ Under Regulation 97H(4) /Regulation29H(4),once the Special Commissioners determine the amount of the debt, the amount is conclusive as to the amount of the debt in any later appeal

relating to the debt.. Where therefore there are subsequent appeals and the relevant debt has already been reduced on appeal by the Special Commissioners, that amount is final and conclusive and cannot be further reduced by the Special Commissioners. (However, it can be varied, on appeal, by a higher appellatant body.)

2. An appeal under Regulation 97G(3)(b) /Regulation 29G(3)(b): that the specified amount does not relate to a company which is a Managed Service Company.

N.B. Where the PAYE/NICs debt of the MSC arises by virtue of Regulation 80/Section 8 , the MSC appealed the Regulation 80/Section.8 on the basis that it was not an MSC and/or on the quantum of the debt, and the General or Special Commissioners rejected the appeal or only partly upheld it, if a transferee appeals under Regulation 97G(3)(a)/Regulation 29G(3)(a) or 97G(3)(b)/Regulation 29G(3)(b), the decision of the Commissioners will clearly be relevant in defending the later appeal.

7. Other matters

Enforcement of a debt

7.1 Regulation 97K/Regulation 29K set out the application of the Taxes Management Act in terms of recovery of the Specified Amount and associated interest.

Deduction for Specified Amount when computing transferee's profits

7.2 Payment of a specified amount by a person within section 688A(2) ITEPA is not an allowable deduction in calculating the income tax/corporation tax payable against that person's income. Accordingly where a transferee pays the Specified Amount and associated interest, DMB should notify the compliance team which should liaise with the office responsible for transferee's tax affairs