

# TRANSFER OF INCOME TAX (PAYE) AND CLASS 1 NATIONAL INSURANCE CONTRIBUTIONS OF MANAGED SERVICE COMPANIES

## FLOW CHART

**Step 2: MSC PAYE/NICs debt established**

Payment received in full No further action necessary

**Step 3: Apply to MSC for payment (even if you believe the company have no assets)**

**Step 4:**

- **Company fails to respond or responds saying it cannot pay**

Ascertain asset position using information available to Dept.

- **Company in liquidation/Receivership/Administration**

Ascertain likelihood of debt being settled in full and by when

- **Company has assets**

Recover debt in normal way but have regard to time limits for transferring the debt if it proves irrecoverable from the company

- **Company offers settlement by instalments**

Judge each case on its merits but have regard to time limits for transferring the debt if it proves irrecoverable from the company

- **Debt will not/is unlikely to be paid within 3 months**

Go to step 5

**Step 5: Identify all persons within section 688A(2) ITEPA to whom the company's debt might be transferred.**

Ascertain names and addresses of persons within section 688A(2). Liaise with the appropriate SCU where the debt was not identified as a result of compliance activity

**Step 6:**

**Ascertain potential transferees' ability to pay the MSC's debt**

- Use information available to the Department and commercially. Liaise with appropriate sections within the Department (e.g. DMB).
- If there is evidence that persons in the first two categories (see section 3 of the guidance) have the financial ability to pay the debt (and any other associated debts) restrict enquiries regarding persons in the third category accordingly.
- If there is evidence that persons in the first two categories do not have the ability to pay (or their assets are alienated), go to step 7
- Remember that there are strict time limits for the issue of Transfer of Debt Notices (see section xxx of the guidance) and action to determine potential transferees and their ability to pay should be undertaken as quickly as possible

**Step 7:**

**Persons in the third category**

- Only compliance teams, in liaison with PSN Technical, should seek to determine whether a person is within the third category.
- Where it is considered that they are, also consider:
  - ⇒ the period of time in terms of the period the debt relates to, that they were a person within the third category and ;
  - ⇒ the degree and extent to which they directly or indirectly encouraged or were actively involved in the provision by the MSC of the services of the individual.

**Step 8:**

**Submission to the ICS Team**

- Submit the case to the ICS team for consideration of the issue of a Transfer of Debt Notice. Include the information set out in section 5.9 of the instructions.

**Step 9:**

**Review by ICS Team**

Review the case in accordance with sections 5.10 -5.14 of the guidance. If there are any areas of doubt, refer to the referring office for clarification.

- Satisfy yourself that the debt is irrecoverable from the MSC within a reasonable period.
- If satisfied, consider to whom the debt should be transferred
- Have regard to the order in which debts should be transferred, but also have regard to the time limits for issuing Transfer Notices to persons in the first two categories
- In all cases an officer not below HO must make a Direction (stencil at Appendix A of the instructions) that the debt is irrecoverable from the MSC within a reasonable period
- In all cases where a Transfer Notice is issued to a person in the third category an officer not below HO must certify that the debt is irrecoverable from persons in the first two categories (stencil at Appendix B of instructions)

**Step 10:**

**Issue of a Transfer Notice by the ICS Team**

- Issue a Transfer Notice to the persons identified as being appropriate in steps 5 to 9 using the stencil at Appendix C of the guidance in accordance with sections 5.15-5.19 of the guidance. Note that the contents of the Transfer Notice must conform precisely to the legislation.
- Issue a copy of the Notice to DMB

**Step 11:**

**Appeal received by ICS Team**

- Where an appeal is received follow the guidance at sections 5.20 -5.21
- If an appeal is upheld by the Commissioners go to Step 15



**Step 12:**

**Payment received by DMB**

- Where a payment is received, follow the guidance in section 5.22-5.23 of the guidance
- Where excess payments are received, go to step 14
- Where payment in full is received, the ICS Team should go to Step 15



**Step 13:**

**Total Specified Amount cannot be recovered**

- Where the total Specified Amount cannot be recovered from persons in the first category, refer to the ICS Team in accordance with section 5.24 of the guidance
- Where the total Specified Amount cannot be recovered from persons in the first two category, refer to the ICS Team in accordance with section 5.25 of the guidance



**Step 14:**

**Repayment of excess amounts by DMB**

- Where the amount received from persons to whom Transfer Notices have been issued exceeds the Specified Amount, plus interest due, repay the difference in accordance with the guidance at section 5.26 of the guidance



**Step 15:**

**Withdrawal of Transfer Notice by ICS Team**

- If the Commissioners uphold an appeal, withdraw the Transfer Notice in respect of the appellant in accordance with section 5.27 of the guidance
- If DMB notify that the debt has been paid in full (including interest) withdraw the Transfer Notices in respect of those persons who did not pay.
- Any person who made payment which fully or partially satisfied the debt should not have the Transfer Notice withdrawn.

