

## DOES YOUR EXISTING PROVIDER(S) OFFER TAILORED ADVICE?

### MANAGED SERVICE COMPANY (Clarification)

The following articles of government legislation (Page 2) demonstrate a common theme throughout which raises the question of who is likely to be an MSC and who isn't.

You will quickly notice that the provision of [**Specific Individual Tailored Advice**] of an independent nature that offers a recommendation(s) of various non-standard products. This will typically set aside any organisation from either having an '**influence**' or being '**actively involved**' in an incorporated company (PSC) and as such; will **NOT** an MSC.

To set us above the others, RACS Group offers the following compliant pointers to every contractor that joins our service(s) **BEFORE** any application is processed. We offer:

- A One to One telephone conversation with each Contractor.
- Completion of a specific 'Best Advice Matrix' that prompts a number of pre-determined personal and professional questions about the Contractor and Contract respectively.
- An independent Advice and Recommendation letter generated from the answers given (as in the above point) – allowing us to select from an industry generic product range of; PAYE, Umbrella, Own Limited Company (PSC), CIS or indeed total rejection where appropriate.
- A personal illustration based on this specific recommendation(s).
- A 'Duty of Care' towards each contractor with an introduction to various 3<sup>rd</sup> party qualified professionals for higher level taxation, IR35 and contract advice.
- Multiple options for all Own Limited Company (PSC) contractors that gives varied choice for all things to do with running their own limited company including:
  - Payroll Frequency – CHOICE!
  - Payroll Structure (Salary & Dividends, Salary Only, etc) – CHOICE!
  - Salary Levels – CHOICE!
  - Dividend Frequency (Monthly, Quarterley, Annually, etc) – CHOICE!
  - Invoicing Assistance (Raising & Chasing) – CHOICE!
  - Factoring Assistance – CHOICE!
  - Accountancy Services and HMRC Registrations – CHOICE!
  - Help with Annual Return services – CHOICE!
  - Group Insurance Services – CHOICE!

**Please note that our services have been designed in conjunction with HMRC legislation and, where applicable, rigorous independent audit standards. If your current provider doesn't offer a 'Best Advice Tailored Solution' then surely by contradiction they must offer a 'non-advised', 'set', 'standardised' product?**

The following extracts (below) are taken from government sources:

(i) HMRC: MSC Guidance on Chapter 9 & s688A: July 07

(i) **Managed Service Companies - GUIDANCE** – On Chapter 9, Part 2 and Section 688A, Part 11 Income Tax (Earnings and Pensions) Act 2003

**Meaning of “influences”**

In this context “influences” **does not mean the provision of advice**. The Financial Secretary to the Treasury said in Parliament on 15 May 2007: “there is a distinct difference.....between a person who provides independent, **tailored advice** to a client, who is then able to consider that advice before accepting it or rejecting it, and the person who simply supplies a client with a standard solution or product that the client accepts.”

The fact that an adviser **advises a client to incorporate** does not in itself constitute “influences”. The advice to incorporate needs to be considered in the wider context of the advice to the client i.e. whether it comprises part of **truly tailored advice** or in reality constitutes part of a standard product.

**What services are considered to comprise being **involved**\* (\*the word ‘INVOLVED’ has been amended to ‘ACTIVELY INVOLVED’ in later documentation) and which are not.**

In many cases it is not a simple matter of saying whether a particular service constitutes being involved; rather it is necessary to look at the circumstances, in totality, under which a service is provided. For example, setting up a company for a client as part of a **tailored advice** would not constitute being involved. However, if the setting up of a company was simply part of a standard non-tailored product then it is highly likely that setting up a company would constitute being involved.

*Indicators of services that would generally **not** constitute being involved:*

- ☐ **Managing company formation and set up**  
If such an activity is undertaken at the request of the client following **receipt of tailored advice** and is **not as part of a standardised product** then it does not constitute being involved
- ☐ **Acting as the client company’s Registered Office**  
If this is done at the request of the client following **receipt of tailored advice** and is **not as part of a standardised product** then it does not constitute being involved
- ☐ **Registering companies for VAT, CT and PAYE**  
This is an administration function and **does not constitute** being involved
- ☐ **Preparing VAT, CT and PAYE returns**  
If such activities are undertaken at the request of the client following **receipt of tailored advice** and are **not as part of a standardised product** then they do not constitute being involved
- ☐ **Providing advice on whether Chapter 8 ITEPA (IR35) applies to a particular engagement**  
Such advice **does not constitute being involved** where:

  - ☐ The Service Provider has had no involvement whatsoever, directly or indirectly, in the engagement contract with any of the parties in the contractual chain; and
  - ☐ There is verifiable evidence that the Service Provider, in addition to considering the engagement contract, considers fully the actual terms and conditions under which the client is engaged; and
  - ☐ There is verifiable evidence that the Service Provider has challenged inconsistencies in information provided by any party; and
  - ☐ The Service Provider extends full co-operation to HMRC when so requested in order to determine the accuracy of the Provider’s processes

- **Advising on a remuneration package**  
Providing advice to a client does not constitute being involved but HMRC will consider very carefully whether advice given constitutes **genuine tailored advice** or in effect constitutes a standardised product. In determining the nature of such advice, HMRC will consider all factors including the nature of advice given to other clients
- **Advising on expense claims**  
Providing advice to a client does not constitute being involved. But HMRC will consider very carefully whether advice given constitutes **genuine tailored advice** or in effect constitutes a standardised product. In determining the nature of such advice, HMRC will consider all factors including the nature of advice given to other clients
- **Preparing invoices**  
If **invoices are prepared at the request of the client** following receipt of **tailored advice**, relate to services over which the MSC Provider has **neither influence nor control**, and are **not prepared as part of a standardised product**, then they do not constitute being involved
- **Submitting invoices to clients of a company**  
See above comments
- **Operating a payroll**  
If the payroll is operated based on **employment income figures notified by the client** following receipt of **tailored advice** and is **not as part of a standardised income** routing product then it does not constitute being involved
- **Preparing weekly/monthly payslips and producing employer's payroll returns, such as P35 & P11Ds**  
See above comments.
- **Preparing management accounts and financial statements**  
These activities, if provided as **part of a tailored service** to the client, do not constitute being involved
- **Providing support on secretarial matters, such as drafting of minutes and preparing annual returns**  
These activities, if provided as **part of a tailored service** to the client, and undertaken on the instructions of the client, do not constitute being involved
- **Providing group insurances** (including employers and public liability)  
The provision or promotion of **insurance services**, except for insurance to make good a tax loss, does not constitute being involved

RACS Group feels that enforcement of these standards are only a matter of time by HMRC as indicated. You can see that we already have them in place and you should be encouraging your existing provider(s) to do the same irrespective of product offering.

For further help and assistance or if you require a more indepth bespoke discussion, please feel free to contact us on: **Tel: 0845 604 0571**    **Fax: 0845 604 0573**    **Email: [info@racsgroup.com](mailto:info@racsgroup.com)** or visit our website at: **[www.racsgroup.com](http://www.racsgroup.com)**

## DOES YOUR EXISTING PROVIDER(S) AUDIT CLAIMED EXPENSES? [CAN THEY DEMONSTRATE THIS TO HMRC]

### AUDIT REQUIREMENTS

The following articles from government legislation (below) aim to hit 'non-compliance' of expense claims very hard in both the Umbrella and PSC sectors. Does your provider have dispensations, do they regularly audit expense claims, do they actively promote the tax-free advantages. **ARE** they doing it right?

- (i) HMRC: Tackling Managed Service Companies: summary of consultation responses March 2007
- (ii) HM Treasury's Pre-Budget Report 2008 - "Following the consultation Tax relief for travel expenses..."

#### (i) **Tackling Managed Service Companies:** summary of consultation responses March 2007

**Section 3.32** "...Umbrella Companies should be caught and said that the **expenses rules are being abused** by such structures and that excluding them from the measures would give them an unfair tax and national insurance advantage over MSCs".

#### (ii) **HM Treasury's PBR 2008**

"Following the consultation Tax relief for travel expenses: temporary workers and **overarching employment contracts**, the government has decided to leave the current rules unchanged. However, in the light of evidence from the consultation confirming poor levels of compliance in this area HMRC will refocus its efforts to ensure that the current regime is properly applied. If **compliance does not improve**, the government may return to this at a later date.

**RACS Group** has a tried and tested 'robust' audit process in place for all of our product offerings that allow expenses to be claimed and fully verified. Every week we run an audit procedure that enables us to analyse:

- ☑ All **regular** offenders – those who try to claim for anything and everything.
- ☑ Those **who are unsure** and make minor mistakes.
- ☑ A **set percentage** of those who are usually 'spot-on'!

This, in turn, promotes overall 'good' practices from contractors allowing them to get the benefit(s) for the items that they **ARE** entitled to and not for those they **SHOULDN'T** – its that simple!

Moreover, the education process can be clearly demonstrated to HMRC, with detailed indicators of development over time. Something HMRC are keen to see implemented with all providers, especially Umbrella companies as deemed government **POLICING** bodies.

RACS Group feels that the enforcement of these practices are soon to be exercised by HMRC. You can see that we already have them in place and you should be encouraging your existing provider(s) to do the same irrespective of product offering. Please don't encourage your contractors to fall foul of these rules.

For further help and assistance or if you require a more indepth bespoke discussion, please feel free to contact us on: **Tel: 0845 604 0571** **Fax: 0845 604 0573** **Email: [info@racsgroup.com](mailto:info@racsgroup.com)** or visit our website at: **[www.racsgroup.com](http://www.racsgroup.com)**