

# **Managed Service Companies**

## **Transfer of Pay as You Earn and national insurance contributions debts**

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February 2007



HM TREASURY



HM Revenue  
& Customs





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# MANAGED SERVICE COMPANIES – TRANSFER OF PAY AS YOU EARN AND NICs DEBTS

## INTRODUCTION

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**1.1** The consultation document *Tackling Managed Service Companies*, published on 6 December 2006, described Managed Service Companies (MSCs) and set out the Government's plans to address the significant and increasing risk to the Exchequer from MSCs and the unfair competitive advantage those using them are gaining over workers and businesses who pay the correct employed levels of tax and national insurance.

**1.2** The Government believes the draft legislation in the consultation document strikes the right balance between being well-targeted, clear about who is affected and robust against avoidance but is consulting to ensure that this is the case. As promised in the consultation document the Government is today publishing further draft legislation concerning the transfer of the Pay as You Earn (PAYE) debts of MSCs. The Government also intends to introduce legislation to achieve a similar transfer of national insurance contributions (NICs) debts.

**1.3** The Government is keen to ensure that the legislation achieves its objectives and welcomes comments on the questions for consultation set out in the consultation document and in this note.

**1.4** This is the final piece of draft legislation to be published as part of the consultation.

**1.5** Responses on the draft primary legislation (Section 688A) should be submitted by **2 March 2007**.

**1.6** Comments on the Regulations should be sent by **30 April 2007**.

**1.7** Details of the process are set out at 1.27.

## THE NEED FOR A PROVISION TO ALLOW DEBTS TO BE TRANSFERRED

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**1.8** As *Tackling Managed Service Companies* sets out, workers in MSCs are almost invariably not in business on their own account and the evidence is that the existing rules (the Intermediaries legislation) to ensure that the correct levels of tax and NICs are paid are, in the vast majority of cases, not being followed. This is significant because the number of individuals working through MSCs has been growing rapidly in recent years.

**1.9** The consultation document sets out the difficulties faced by HMRC in collecting PAYE and NICs due from MSCs. Where a liability has been established, in practice the debt often cannot be collected from an MSC because MSCs generally have no tangible assets making it easy for them to be wound up or simply to cease trading and for workers to move to a new MSC.

**1.10** In one example drawn from HMRC compliance activity, several composite companies, administered by an MSC scheme provider, were reviewed by HMRC. The

review raised concerns about the application of the Intermediaries legislation and established that further tax and NICs were due. The MSC scheme provider set up a new set of composite companies. The composite companies under review ceased to trade on a Friday, the new composite companies took on the workers the following Monday, and the workers continued as if nothing had happened. Because of their lack of assets, HMRC was unable to collect the tax and NICs due from the old composite companies. Composite companies are separate legal entities making it impossible for the liability of the company to be transferred to the MSC scheme provider or the workers.

**1.11** As explained in Chapter 4 of *Tackling Managed Service Companies*, in order to address the problem of MSCs escaping their debts in this way, the Government has decided to introduce specific legislation to allow the PAYE and NICs debts of MSCs to be transferred to appropriate third parties.

## THE GOVERNMENT'S APPROACH

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**1.12** The Government believes the approach in the draft legislation is a proportionate and targeted response to address a serious issue. The consultation document describes the structures of MSC schemes and the various parties who could be involved in the contractual chain.

**1.13** Given the wide range of third parties potentially involved, the legislation is necessarily drawn to include any of these parties in order to prevent abuse. Certain parties are always clearly and directly involved with the MSC and they will automatically be within the scope of the debt transfer provision. These are the scheme provider and directors, office holders or associates of the MSC. But for other third parties, the scope of the provision is limited so that the legislation is not intended to include anyone who didn't know, or could not reasonably be expected to know, that they are dealing with an MSC. These other third parties will only have the debt transferred to them if the debt cannot be collected from the scheme provider or the director, office holder or associate of the MSC.

## WHO ARE APPROPRIATE THIRD PARTIES?

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### Directors of MSCs and MSC scheme providers

**1.14** The PAYE and NICs debts are those of the company, the MSC, and clearly the directors or other office holders of the MSC, and the scheme provider who has set up and controls the MSC, are directly involved with that company. The legislation specifically includes these parties as well as associates of the scheme provider or the MSC.

### Other third parties

**1.15** But the evidence from HMRC compliance activity is that there is a number of different parties who could be involved in MSC schemes beyond the directors and the scheme provider and the draft legislation is drawn to include these parties. This

potentially includes employment agencies<sup>1</sup> and end clients. It could also include a worker in an MSC who is not a director or officer of the company, where the worker could reasonably be expected to know he was operating through an MSC.

**1.16** The test to be applied is whether the person has ‘encouraged, facilitated or otherwise been involved in the provision by the MSC of the services of the relevant individual’. This means that debts cannot be transferred to anyone who has simply received the services of a worker operating through an MSC or unwittingly provided such a worker. The legislation is not intended to include those who do not know or could not reasonably be expected to know that they were dealing with an MSC.

**1.17** This means that, for example, an employment agency which advises workers approaching it for work to incorporate and tells them to use a particular scheme provider would be within the scope. An agency simply providing a worker to an end client and which did not know and could reasonably not be expected to know the worker was operating through an MSC would not.

**1.18** An end client who told workers that they had no choice but to incorporate through an MSC or offered higher rates of pay to encourage workers to move to an MSC, would be within the scope. On the other hand, an end client who used workers from an employment agency, without knowing whether the workers were operating through companies or not, would not fall within the scope of the legislation.

**1.19** Where a worker is a director of the MSC he will be within the scope of the debt transfer. As a director he has legal obligations in relation to the company and can be expected to know what the company is doing. Where the worker is not a director, he may be within the scope of the legislation if he can reasonably be expected to know that he is providing his services through an MSC.

## SAFEGUARDS

**1.20** The draft legislation contains safeguards which limit or control the way the legislation is applied:

- Taking account of early comments from stakeholders, the draft legislation specifically excludes from the scope of the legislation those such as accountants or lawyers giving professional advice.
- There will be a right of appeal against a notice transferring the debt to a third party (on the grounds set out in paragraph 1.26).
- HMRC will seek to recover the debt first from the director, officer or associate of the MSC or the scheme provider. Other third parties will only be considered if the debt cannot be recovered from these parties.

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<sup>1</sup> ‘Employment agency’ is used in this document to refer to an agency which supplies workers to end clients and remains part of the ongoing relationship between the worker and end client (technically known as an *employment business*).

## THE LEGISLATION

**1.21** The legislation will be introduced in two parts. The first, to be introduced in the Finance Bill, will be a new section to be inserted in Part 11, Chapter 3, Income Tax (Employment and Pensions) Act 2003. Regulations to exercise the powers of this legislation will be laid once the Finance Bill has received Royal Assent. Regulations in relation to national insurance, mirroring the approach in the PAYE Regulations, will also be laid in due course.

**1.22** The legislation is set out in full at Annex A. Annex B contains tables which provide a commentary on the legislation.

**1.23** Section 688A (2) ITEPA lists various persons and classes of persons from whom HMRC may recover a PAYE debt of an MSC where HMRC are of the opinion that the debt is irrecoverable from the MSC. Where an MSC fails to pay a relevant PAYE debt (that is a PAYE debt incurred for any tax period commencing on or after 6 April 2007) and HMRC are of the opinion that the debt is irrecoverable from the MSC, HMRC will make a Direction to that effect. The making of a Direction creates a joint and several liability in respect of all persons listed in section 688A (2) ITEPA.

**1.24** Regulations enable HMRC to recover the debt from one or more persons by the issue of a Transfer Notice, and set out the way in which that is to be done.

**1.25** In considering whether to issue a Transfer Notice against a person or persons, HMRC must:

- Consider whether the MSC's PAYE debt is irrecoverable from the MSC. If it is recoverable from the MSC, payment will be secured from the MSC.
- Having decided that the MSC's PAYE debt is irrecoverable from the MSC, **firstly** consider the issue of Transfer Notices against persons listed in section 688A (2)(a): the MSC's director, office holder or associate, and section 688A(2)(b): the Scheme Provider.
- Only consider the issue of a Transfer Notice against persons within section 688(2)(c) ("a person who directly or indirectly has encouraged, facilitated or otherwise been involved in the provision by the MSC of the services of the individual") if recovery of the debt against persons in section 688A(2)(a) and (b) is either impossible or impracticable.

**1.26** Persons to whom a Transfer Notice is issued have various appeal rights. Some rights are relevant to all persons whilst other relate to persons within section 688A (2) (c) only. The main grounds for appeal are:

### All persons

- The amount of the MSC's relevant PAYE debt (if this has not already been subject to appeal);
- The debt does not relate to a Managed Service Company as defined in Chapter 9, Part 2, ITEPA; or
- The person is not a person listed in section 688A(2) ITEPA (or was not such a person for all or part of the period to which the debt relates)

### Persons listed in section 688A (2) (c)

- It is not impossible/impracticable to recover the debt from a person listed in section 688A(2) (a) or (b) ITEPA; or
- The amount to be transferred does not have regard to the degree and extent to which the person directly or indirectly encouraged, facilitated or was otherwise involved in the provision by the MSC of the services of the individual.

## CONSULTATION PROCESS

### Questions for consultation

**1.27** The Government is consulting to ensure that it gets the balance of the legislation right and would welcome other formulations which achieve its objectives.

**1.28** The Government would welcome views on:

1. whether the legislation brings within its scope all of those potentially involved in the provision of a worker's services by the MSC and ensures that those simply receiving the services of MSC workers are not included;
2. whether there are alternative ways to encapsulate in the legislation that a person such as an agency or end client would not be within its scope if they did not know or could not reasonably have been expected to know that they were dealing with an MSC.

### Process and timetable for consultation

**1.29** This draft legislation follows the approach outlined in the consultation document *Tackling Managed Service Companies*.

**1.30** There are two separate deadlines for comment:

- Comments on the **Primary legislation (Section 688A)** should be sent by **2 March 2007**;
- Comments on the **Regulations** should be sent by **30 April 2007**.

Comments should be sent to:

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MSC Consultation  
HM Treasury  
Room 2/N2  
1 Horse Guards Road  
London  
SW1A 2HQ

Or e-mail: [msc.consultation@hm-treasury.gov.uk](mailto:msc.consultation@hm-treasury.gov.uk)

Telephone queries: 020 7270 6114



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**PRIMARY LEGISLATION**

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**“688A Managed service companies: recovery from other persons**

- (1) PAYE regulations may make provision authorising the recovery from a person within subsection (2) of any amount that an officer of Revenue and Customs considers should have been deducted by a managed service company (“the MSC”) from a payment of, or on account of, PAYE income of an individual.
- (2) The persons are—
  - (a) a director or other office-holder, or an associate, of the MSC,
  - (b) the scheme provider,
  - (c) a person who (directly or indirectly) has encouraged, facilitated or otherwise been involved in the provision by the MSC of the services of the individual, and
  - (d) a director or other office-holder, or an associate, of a person within paragraph (b) or (c).
- (3) A person does not fall within subsection (2)(c) merely by providing advice in a professional capacity.
- (4) In this section—
  - “associate” has the meaning given by section 61H,
  - “director” has the meaning given by section 67,
  - “managed service company” has the meaning given by section 61B, and
  - “the scheme provider” means the person who is the scheme provider (within the meaning of section 61B) in relation to the MSC.
- (5) The Treasury may by order amend this section (but not this subsection or subsection (6)).
- (6) The Treasury must not make an order under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.”



**REGULATIONS**

## S T A T U T O R Y I N S T R U M E N T S

**2007 No. [6666]****INCOME TAX****The Income Tax (Pay as You Earn) (Amendment) Regulations  
2007**

<i>Made</i> - - - -	2007
<i>Laid before the House of Commons</i>	2007
<i>Coming into force</i> - -	2007

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 684 and 688A(1) to (4) of the Income Tax (Earnings and Pensions) Act 2003(a) and now exercisable by them(b).

**Citation and commencement**

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) Regulations 2007, and shall come into force on [day] [month] 2007.

**Amendment of the Income Tax (Pay As You Earn) Regulations 2003**

2. The Income Tax (Pay As You Earn) Regulations 2003(c) are amended by inserting the following Chapter at the end of Part 4 (payments, returns and information)—

**“CHAPTER 4****DEBTS OF MANAGED SERVICE COMPANIES****Interpretation of Chapter 4**

**97A.**—(1) In this Chapter—

“HM Revenue and Customs” means Her Majesty's Revenue and Customs;

“lower amount” means the amount mentioned in regulation 97B(5);

“managed service company” has the meaning given by section 61B of ITEPA(d);

(a) 2003 c. 1; section 684 was amended by section 145(1) and (2) of the Finance Act 2003 (c. 14), paragraph 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) and section 94(3) of the Finance Act 2006 (c. 25), and section 688A was inserted by paragraph [a] of Schedule [b] to the Finance Act 2007 (c. [x]).

(b) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that in so far as it is appropriate in consequence of section 5 a reference in an enactment, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(c) S.I. 2003/2682, to which there are amendments not relevant to these Regulations.

(d) Section 61B was inserted by paragraph [y] of Schedule [b] to the Finance Act 2007.

“qualifying period” means a tax period beginning on or after [the date on which these amending Regulations come into force];

“relevant PAYE debt” means a debt specified in regulation 97C;

“specified amount” means the amount mentioned in regulation 97B(1)(b);

“transfer notice” means the notice mentioned in regulation 97B(4);

“transferee” means the person mentioned in regulation 97B(4).

(2) In this Chapter references to section 688A, however expressed, are references to section 688A of ITEPA.

### **Transfer of debt of managed service company**

**97B.**—(1) This regulation applies if—

- (a) a managed service company has a relevant PAYE debt, and
- (b) an officer of Revenue and Customs is of the opinion that the relevant PAYE debt or a part of the relevant PAYE debt (the “specified amount”) is irrecoverable from the managed service company.

(2) HM Revenue and Customs may make a direction authorising the recovery of the specified amount from the persons specified in section 688A(2) (managed service companies: recovery from other persons).

(3) Upon the making of a direction under paragraph (2), the persons specified in section 688A(2) become jointly and severally liable for the relevant PAYE debt, but subject to what follows.

(4) HM Revenue and Customs may not recover the specified amount from any person in accordance with a direction made under paragraph (2) until they have served a notice (a “transfer notice”) on the person in question (the “transferee”).

(5) If an officer of Revenue and Customs is of the opinion that it is appropriate to do so, HM Revenue and Customs may accept an amount less than the specified amount (the “lower amount”) from a transferee; but this acceptance shall not prejudice the recovery of the specified amount from any other transferee.

(6) HM Revenue and Customs may not serve a transfer notice on a person mentioned in section 688A(2)(c) unless, in the opinion of an officer of Revenue and Customs—

- (a) it is impossible to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2),
- (b) it is impracticable to recover the specified amount from those persons, or
- (c) having regard to regulation 97D, protection of the Exchequer would be prejudiced.

(7) In determining which of the persons mentioned in section 688A(2)(c) are to be served with transfer notices and the amount of those notices, HM Revenue and Customs must have regard to the degree and extent to which those persons are persons who (directly or indirectly) have encouraged, facilitated or otherwise been involved in the provision by the managed service company of the services of the individual mentioned in that provision.

### **Relevant PAYE debts**

**97C.**—(1) A managed service company has a relevant PAYE debt if—

- (a) a managed service company must pay an amount of tax for a qualifying period, and
- (b) one of conditions A to E is met.

(2) Condition A is met if—

- (a) an amount of tax for a qualifying period has been determined in accordance with regulation 80 (determination of unpaid tax and appeal against determination), and

- (b) any part of the tax determined has not been paid within 14 days from the date on which the determination became final and conclusive.
- (3) Condition B is met if—
  - (a) an employer delivers a return under regulation 73 (annual return of relevant payments) for the tax year 2007-08, or any later tax year, showing an amount of total net tax deducted by the employer for that tax year,
  - (b) HM Revenue and Customs prepare a certificate under regulation 76 (certificate if tax in regulation 73 return is unpaid) showing how much of that amount remains unpaid, and
  - (c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.
- (4) Condition C is met if—
  - (a) HM Revenue and Customs prepare a certificate under regulation 77(6) (return and certificate if tax may be unpaid) showing an amount of tax which the employer is liable to pay for a qualifying period, and
  - (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.
- (5) Condition D is met if—
  - (a) HM Revenue and Customs serve notice on an employer under regulation 78(4) (notice and certificate if tax may be unpaid) requiring payment of the amount of tax which they consider the employer is liable to pay, and
  - (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the notice is prepared.
- (6) Condition E is met if—
  - (a) HM Revenue and Customs prepare a certificate under regulation 79(2) (certificate after inspection of PAYE records) showing an amount of tax which it appears that the employer is liable to pay for a qualifying period,
  - (b) HM Revenue and Customs make a written demand for payment of that amount of tax, and
  - (c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the written demand for payment is made.

#### **Time limits for issue of transfer notices**

**97D.**—(1) A transfer notice must be served before the end of the period specified in this regulation.

(2) In a case in which condition A in regulation 97C is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which the determination became final and conclusive.

(3) In a case in which condition B in regulation 97C is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs received the return delivered under regulation 73.

(4) In a case in which condition C in regulation 97C is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs prepare the certificate under regulation 77(6).

(5) In a case in which condition D in regulation 97C is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs serve notice to the employer under regulation 78(4).

(6) In a case in which condition E in regulation 97C is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs carry out the inspection of the employer's PAYE records.

### Contents of transfer notice

**97E.**—(1) A transfer notice must contain the following information—

- (a) the name of the managed service company to which the relevant PAYE debt relates;
- (b) the address of the managed service company to which the relevant PAYE debt relates;
- (c) the amount of the relevant PAYE debt;
- (d) the tax periods to which the relevant PAYE debt relates;
- (e) if the tax periods to which the relevant PAYE debt relates are comprised in more than one tax year, the apportionment of the relevant PAYE debt among those tax years;
- (f) the transferee's name;
- (g) the transferee's address;
- (h) the specified amount;
- (j) the tax periods to which the specified amount relates;
- (k) if the tax periods to which the specified amount relates are comprised in more than one tax year, the apportionment of the specified amount among those tax years;
- (l) the address to which payment must be sent;
- (m) the address to which an appeal must be sent.

(2) The transfer notice may specify the lower amount if HM Revenue and Customs are prepared to accept the lower amount from the transferee.

### Payment of the specified amount

**97F.**—(1) If a transfer notice is served, the transferee must pay the specified amount to HM Revenue and Customs at the address specified in the transfer notice.

(2) The transferee must pay the specified amount within 30 days beginning with the date on which the transfer notice is served.

(3) The specified amount carries interest from the reckonable date until the date on which payment is made.

### Appeals

**97G.**—(1) A transferee may appeal against the transfer notice.

(2) A notice of appeal must—

- (a) be given to HM Revenue and Customs at the address specified in the transfer notice within 30 days beginning with the date on which the transfer notice was served, and
- (b) specify the grounds of the appeal.

(3) The grounds of appeal are any of the following—

- (a) that the relevant PAYE debt (or part of the relevant PAYE debt) is not due from the managed service company to HM Revenue and Customs;
- (b) that the specified amount does not relate to a company which is a managed service company;
- (c) that the transferee is not a person mentioned in section 688A(2);
- (d) that the transferee was not a person mentioned in section 688A(2) during the tax periods to which the specified amount relates;

- (e) that the transferee was not a person mentioned in section 688A(2) during some part of the tax periods to which the specified amount relates;
  - (f) that the transfer notice was not served before the end of the period specified in regulation 97D;
  - (g) that the transfer notice does not satisfy the requirements specified in regulation 97E;
  - (h) in the case of a transferee mentioned in section 688(2)(c), that it is not impossible to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2);
  - (j) in the case of a transferee mentioned in section 688(2)(c), that it is not impracticable to recover the specified amount from the persons mentioned in paragraphs (a) and (b) of section 688A(2);
  - (k) in the case of a transferee mentioned in section 688(2)(c), that protection of the Exchequer would not be prejudiced;
  - (l) in the case of a transferee mentioned in section 688(2)(c), that the amount specified in the transfer notice does not have regard to the degree and extent to which the transferee is a person who (directly or indirectly) has encouraged, facilitated or otherwise been involved in the provision by the managed service company of the services of the individual mentioned in that provision.
- (4) Paragraph (3)(a) is subject to regulation 97H(4).
- (5) The appeal is to the Special Commissioners.

**Procedure on appeals**

**97H.**—(1) On an appeal the Special Commissioners shall uphold or quash the transfer notice.

(2) The general rule in paragraph (1) is subject to the following qualifications.

(3) In the case of the ground of appeal specified in regulation 97G(3)(a), the Special Commissioners shall investigate the matter and shall—

- (a) uphold the amount of the relevant PAYE debt specified in the transfer notice, or
- (b) reduce or increase the amount of the relevant PAYE debt specified in the transfer notice to such amount as in their opinion is just and reasonable.

(4) If the Special Commissioners determine the amount of the relevant PAYE debt of a managed service company under paragraph (3), that amount is conclusive as to the amount of that relevant PAYE debt in any later appeal relating to that debt.

(5) In the case of the ground of appeal specified in regulation 97G(3)(e), the Special Commissioners may reduce the amount specified in the transfer notice to an amount determined in accordance with the equation—

$$RA = \frac{P}{TP} \times AS$$

(6) In paragraph (5)—

RA means the reduced amount;

P means the number of days in the tax periods specified in the transfer notice during which the transferee was a person mentioned in section 688A(2);

TP means the number of days in the tax periods specified in the transfer notice;

AS means the amount specified in the transfer notice.

(7) In the case of the ground of appeal specified in regulation 97G(3)(l), the Special Commissioners may reduce the amount specified in the transfer notice to such amount as in their opinion is just and reasonable.

**Withdrawal of transfer notices**

**97J.**—(1) A transfer notice shall be withdrawn if the Special Commissioners quash it.

(2) A transfer notice may be withdrawn if, in the opinion of an officer of Revenue and Customs, it is appropriate to do so.

(3) If a transfer notice is withdrawn, HM Revenue and Customs must give written notice of that fact to the transferee.

**Application of Part 6 of TMA**

**97K.**—(1) For the purposes of this Chapter, Part 6 of TMA (collection and recovery) applies as if—

- (a) the transfer notice were an assessment, and
- (b) the amount specified in the transfer notice were income tax charged on the transferee;

and that Part of that Act applies with the modification indicated in paragraph (2) and any other necessary modifications.

(2) Summary proceedings for the recovery of the specified amount may be brought in England and Wales or Northern Ireland at any time before the end of a period of 12 months beginning immediately after the expiry of the period mentioned in regulation 97F(2).

(3) The specified amount is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of TMA (magistrates' courts, county courts and inferior courts in Scotland).

(4) But paragraph (3) does not prevent the bringing of separate proceedings for the recovery of each of the amounts which the transferee is liable to pay for any tax period.

**Repayment of surplus amounts**

**97L.**—(1) This regulation applies if the amounts paid to HM Revenue and Customs in respect of a relevant PAYE debt exceed the specified amount.

(2) HM Revenue and Customs shall repay the difference on a just and equitable basis and without unreasonable delay.

(3) Interest on any sum repaid shall be paid in accordance with regulation 83 (interest on tax overpaid).".

*A. Commissioner*

*A. N. Other*

[Day] [Month] 2007

Two of the Commissioners for Her Majesty's Revenue and Customs

# B

## COMMENTARY ON DRAFT LEGISLATION

The tables below explain the draft legislation relating to the transfer of the PAYE debts of Managed Service Company to third parties.

This commentary is a guide to the Government's intention as to how the legislation would operate if enacted in this form.

### LEGISLATION FOR FINANCE BILL

Draft legislation	Explanation
S. 688A	A new section is inserted in Part 11, Chapter 3 Income Tax (Employment and Pensions) Act 2003 (ITEPA).
688A(1)  PAYE regulations may make provision authorising the recovery from a person within subsection (2) of any amount that an officer of Revenue and Customs considers should have been deducted by a managed service company ("the MSC") from a payment of, or on account of, PAYE income of an individual.	Provides that regulations may authorise the recovery from specified persons of any amount that an officer of HM Revenue & Customs (HMRC) considers represents the Pay As You Earn (PAYE) debt of a Managed Service Company (MSC). PAYE debt includes any PAYE debt incurred for a tax month commencing on or after 6 April 2007.
688A(2)  The persons are –	This subsection sets out the persons, or the classes of persons, from whom an MSC's PAYE debt may be recovered.
(2)(a)  a director or other office-holder, or an associate, of the MSC,	The first class of person is a director (including shadow director), or other office-holder (for example Company Secretary) or associate of the MSC.
(2)(b)  the scheme provider	The second class of person is the MSC's Scheme Provider, that is the person who made the MSC scheme or arrangement available.
(2)(c)  a person who (directly or indirectly) has encouraged, facilitated or otherwise been involved in the provision by the MSC of the services of the individual, and	The third class of person is deliberately drawn to cover all distinct sub classes of persons who may have directly or indirectly:  Encouraged  Facilitated, or  Otherwise been involved  in the provision by the MSC of the services of an individual.  Key here is the word provision: persons who have simply been in receipt of the services of a worker by an MSC are not caught. Those in

Draft legislation	Explanation
	receipt of the services of a worker provided by an MSC and who encouraged the worker to go to a scheme provider in the first place will be caught.
(2)(d) a director or other office-holder, or an associate, of a person within paragraph (b) or (c).	The fourth class of person is a director (including shadow director), or other office holder, or associate of a Scheme Provider or of any person who directly or indirectly has encouraged, facilitated or otherwise been involved in the provision by the MSC of the individual's services.
688A(3)  A person does not fall within subsection (2) (c) merely by providing advice in a professional capacity.	This subsection provides that a person providing advice in a professional capacity does not fall within the definition of a person within subsection (2) (c).
688A(4)  In this section –  “associate” has the meaning given by section 61H,  “director” has the meaning given by section 61H,  “managed service company” has the meaning given by section 61B, and  “the scheme provider” means the person who is the scheme provider (within the meaning of section 61B) in relation to the MSC.	This subsection defines the meanings of associate, director, managed service company and scheme provider.
688A(5)  The Treasury may by order amend this section (but not this subsection or subsection (6)).	This subsection provides that HM Treasury may, by regulations, amend s688A, but not s (5) or (6).
688A(6)  The Treasury must not make an order under this section unless a draft has been laid before and approved by a resolution unless a draft of it has been laid before and approved by a resolution of the House of Commons.	This subsection requires that regulations under subsection(5) must be subject to the Parliamentary Affirmative Resolution procedure

## REGULATIONS

Draft legislation	Explanation
<p><b>Chapter 4</b></p>	<p>A new chapter is inserted in Part 4 Income Tax (Pay As You Earn) Regulations 2003.</p>
<p><b>Regulation 97A</b></p> <p>In this Chapter—</p> <p>“HM Revenue and Customs” means Her Majesty’s Revenue and Customs</p> <p>“lower amount” means the amount mentioned in regulation 97B(3);</p> <p>“managed service company” has the meaning given by section 61B of ITEPA(1);</p> <p>“qualifying period” means a tax period beginning on or after 6th April 2007;</p> <p>“relevant PAYE debt” means a debt specified in regulation 97C;</p> <p>“specified amount” means the amount mentioned in regulation 97B(2);</p> <p>“transfer notice” means the notice mentioned in regulation 97B(2);</p> <p>“transferee” means the person mentioned in regulation 97B (2).</p> <p>In this Chapter references to section 688A, however expressed, are references to section 688A of ITEPA.</p>	<p>Defines terms used in Chapter 4: “HM Revenue and Customs”, “lower amount”, “managed service company,” “qualifying period”, “relevant PAYE debt”, “specified amount”, “transfer notice” and “transferee”.</p> <p>“Section 688A”, means section 688A Income Tax ( Earnings and Pensions) Act 2003 (ITEPA)</p>
<p><b>Regulation 97B</b></p>	<p>This sets out the circumstances under which an unpaid PAYE debt of an MSC becomes the liability of the persons listed in section 688A (2) ITEPA. It further sets out the persons to whom HM Revenue and Customs (HMRC) may transfer a PAYE debt of an MSC (termed a “relevant PAYE debt”).</p>

Draft legislation	Explanation
<p><b>97B (1)(a)</b></p> <p>(1) This regulation applies if—</p> <p>(a) a managed service company has a relevant PAYE debt, and</p>	<p>Provides that if an MSC has a relevant PAYE debt, as set out in regulation 97C; and</p>
<p><b>97B (1)( b)</b></p> <p>(b) an officer of Revenue and Customs is of the opinion that the relevant PAYE debt (or any part of that debt) is irrecoverable from the managed service company.</p>	<p>In the opinion of an officer of HMRC, the relevant PAYE debt or any part of the debt is irrecoverable from the MSC.</p>
<p><b>97B(2)</b></p> <p>(2) HM Revenue and Customs may make a direction authorising the recovery of the specified amount from the persons specified in section 688A (2) (managed service companies: recovery from other persons).</p>	<p>Provides that where HMRC are of the opinion that a relevant PAYE debt or any part of the debt, is irrecoverable from the MSC, they may direct that the debt (or part thereof) is recoverable from those persons listed in section 688(2) ITEPA.</p>
<p><b>97B(3)</b></p> <p>(3) Upon the making of a direction under paragraph (2), the persons specified in section 688A (2) become jointly and severally liable for the relevant PAYE debt, but subject to what follows.</p>	<p>The act of making a direction under regulation 97B (2) creates a joint and several liability for the MSC's PAYE debt on each of the persons listed in section 688A (2) ITEPA, but that is subject to regulation 97B(4)-(7).</p>
<p><b>97B(4)</b></p> <p>(4) HM Revenue and Customs may not recover the specified amount from any person in accordance with a direction made under paragraph (2) until they have served a notice (a "transfer notice") on the person in question ("the transferee").</p>	<p>Provides that before HMRC can seek to recover the MSC's debt from a person listed in section 688A (2) ITEPA, they must have issued that person with a notice, termed a "transfer notice".</p>
<p><b>97B(5)</b></p> <p>(5) If an officer of Revenue and Customs is of the opinion that it is appropriate to do so, HM Revenue and Customs may accept an amount less than the specified amount (the "lower amount") from a transferee; but this acceptance shall not prejudice the recovery of the specified amount from any other transferee.</p>	<p>Provides that HMRC may recover from a person within section 688(2) ITEPA a lesser amount than the MSC's PAYE debt, but if they do so that is without prejudice to the amount that they seek to recover from other persons.</p>

Draft legislation	Explanation
<p><b>97B(6)</b></p> <p>H M Revenue and Customs may not serve a transfer notice on a person mentioned in section 688A(2)(c) unless, in the opinion of an officer of Revenue and Customs-</p>	<p>Provides that HMRC may not serve a transfer notice on a person within section 688A (2) (c) ITEPA (“a person who (directly or indirectly) has encouraged, facilitated or otherwise been involved in the provision by the MSC of the services of the individual”) unless in the opinion of HMRC one of three criteria are met. These are:</p>
<p><b>97B(6)(a)</b></p> <p>(a) it is impossible to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2),</p>	<p>That it is impossible to recover the MSC’s relevant PAYE debt from a person mentioned in section 688A(2)(a) or(b) ITEPA (a director, office holder or associate of the MSC, or the Scheme Provider);or</p>
<p><b>97B(6)(b)</b></p> <p>(b) it is impracticable to recover the specified amount from those persons, or</p>	<p>That it is impracticable to recover the MSC’s relevant PAYE debt from a person mentioned in section 688A(2)(a) or(b) ITEPA;or</p>
<p><b>97B(6)(c)</b></p> <p>(c) having regard to regulation 97D, protection of the Exchequer would be prejudiced.</p>	<p>That by not issuing a transfer notice, protection of the Exchequer would be prejudiced because under regulation 97D HMRC only has 12 months in which to issue such notices.</p>
<p><b>97B(7)</b></p> <p>(7) In determining which of the persons mentioned in section 688A (2)(c) are to be served with transfer notices and the amount of those notices, HM Revenue and Customs must have regard to the degree and extent to which those persons are persons who (directly or indirectly) have encouraged, facilitated or otherwise been involved in the provision by the managed service company of the services of the individual mentioned in that provision.</p>	<p>Provides that in deciding whether a notice is issued to a person within section 688A(2)(c) ITEPA, and to which persons, HMRC must consider the extent and degree to which the person has directly or indirectly encouraged, facilitated or otherwise been involved in the provision by the MSC of an individual’s services. Key here is the word “provision” since simply being in receipt of an individual’s services is not sufficient for the issue of a Notice.</p>
<p><b>97C(1)(a)</b></p> <p>(1) A managed service company has a relevant PAYE debt if—</p> <p>(a) a managed service company must pay an amount of tax for a qualifying period, and</p>	<p>Provides that an MSC has a “relevant PAYE debt” only if the debt relates to a tax month commencing on or after 6 April 2007; and</p>
<p><b>97C((1)(b)</b></p> <p>(b) one of conditions A to E is met.</p>	<p>It is established by virtue of one of five conditions A-E, relating to the existing PAYE regulations. These are:</p>

Draft legislation	Explanation
<p><b>97C(2)(a)</b></p> <p>(2) Condition A is met if—</p> <p>(a) an amount of tax for a qualifying period has been determined in accordance with regulation 80 (determination of unpaid tax and appeal against determination), and</p>	<p>Condition A is that an amount of tax has been determined under regulation 80 Income Tax(Pay As You Earn) Regulations 2003; and</p>
<p><b>97C(2)(b)</b></p> <p>(b) any part of the tax determined has not been paid within 14 days from the date on which the determination became final and conclusive.</p>	<p>Any part of the sum determined under regulation 80 has not been paid within 14 days of the determination becoming final and conclusive (that is, 14 days after the due date of the determination or if subject to appeal, 14 days after the determination is confirmed by the Commissioners).</p>
<p><b>97C(3)(a)</b></p> <p>(3) Condition B is met if—</p> <p>(a) an employer delivers a return under regulation 73 (annual return of relevant payments) for the tax year 2007-08, or any later tax year, showing an amount of total net tax deducted by the employer for that tax year,</p>	<p>Condition B is that the MSC delivers its annual return, form P35, showing a sum of tax due; and for a year 2007/08 or later;</p>
<p><b>97C(3)(b)</b></p> <p>(b) HM Revenue and Customs prepare a certificate under regulation 76 (certificate if tax in regulation 73 return is unpaid) showing how much of that amount remains unpaid, and</p>	<p>HMRC prepares a certificate under regulation 76 Income Tax (Pay As You Earn) Regulations 2003 setting out how much of that tax is unpaid; and</p>
<p><b>97C(3)(c)</b></p> <p>(c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.</p>	<p>Any part of the amount certified as unpaid has not been paid within 14 days of the certificate under regulation 76 having been prepared.</p>
<p><b>97C(4)(a)</b></p> <p>(4) Condition C is met if—</p> <p>(a) HM Revenue and Customs prepare a certificate under regulation 77(6) (return and certificate if tax may be unpaid) showing an amount of tax which the employer is liable to pay for a qualifying period, and</p>	<p>Condition C is that within 17 days after the end of a tax period, either the MSC has not paid any tax to HMRC, or HMRC believes that the amount of tax paid is not the full amount due. HMRC prepares a certificate under regulation 77(6) Income Tax (Pay As You Earn) Regulations 2003 requiring the MSC to provide details of the total amount of tax payable for the tax period; and</p>

Draft legislation	Explanation
<p><b>97C(4)(b)</b></p> <p>(b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.</p>	<p>Any part of the amount certified as unpaid following receipt of details from the MSC, has not been paid within 14 days of the certificate.</p>
<p><b>97C(5)(a)</b></p> <p>5) Condition D is met if—</p> <p>(a) HM Revenue and Customs serve notice on an employer under regulation 78(4) (notice and certificate if tax may be unpaid) requiring payment of the amount of tax which they consider the employer is liable to pay, and</p>	<p>Condition D is that within 17 days after the end of a tax period, either the MSC has not paid any tax to HMRC or HMRC believes that the amount of tax paid is not the full amount due. HMRC serves a notice under regulation 78(4) Income Tax (Pay As You Earn) Regulations 2003 setting out the amount of tax considered to be due, requiring the MSC to make payment within 7 days; and</p>
<p><b>97C(5)(b)</b></p> <p>(b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the notice is prepared.</p>	<p>Any part of the amount notified under regulation 78(4) has not been paid within 14 days of the certificate.</p>
<p><b>97C(6)(a)</b></p> <p>(6) Condition E is met if—</p> <p>(a) HM Revenue and Customs prepare a certificate under regulation 79(2) (certificate after inspection of PAYE records) showing an amount of tax which it appears that the employer is liable to pay for a qualifying period,</p>	<p>Condition E is where an MSC's PAYE records have been inspected by an officer of HMRC under regulation 97 Income Tax (Pay As You Earn) Regulations 2003 and a certificate is prepared based on information from the inspection, setting out the amount unpaid; and</p>
<p><b>97C(6)(b)</b></p> <p>(b) HM Revenue and Customs make a written demand for payment of that amount of tax, and</p>	<p>A written demand for the amount unpaid is issued; and</p>
<p><b>97C(6)(c)</b></p> <p>(c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the written demand for payment is made.</p>	<p>The amount demanded has not been paid within 14 days of the issue of the demand.</p>
<p><b>97D(1)</b></p> <p>(1) A transfer notice must be served before the end of the period specified in this regulation.</p>	<p>This provides that a notice transferring an MSC's relevant PAYE debt to a person must be issued within a specified time and that time is linked to how the debt has been determined. The periods are:</p>

Draft legislation	Explanation
<p><b>97D(2)</b></p> <p>(2) In a case in which condition A in regulation 97C is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which the determination became final and conclusive.</p>	<p>Condition A: within 12 months of the date the determination became final and conclusive.</p>
<p><b>97D(3)</b></p> <p>(3) In a case in which condition B in regulation 97C is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs received the return delivered under regulation 73.</p>	<p>Condition B: within 12 months of the date HMRC received the P35.</p>
<p><b>97D(4)</b></p> <p>(4) In a case in which condition C in regulation 97C is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs give notice to the employer under regulation 77(6).</p>	<p>Condition C: within 12 months of the preparation of the certificate under regulation 77(6).</p>
<p><b>97(D5)</b></p> <p>(5) In a case in which condition D in regulation 97C is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs serve notice to the employer under regulation 78(4).</p>	<p>Condition D: within 12 months of the date of the notice under regulation 78(4).</p>
<p><b>97(D6)</b></p> <p>(6) In a case in which condition E in regulation 97C is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs carry out the inspection of the employer's PAYE records.</p>	<p>Condition E: within 12 months of the date of the inspection of the MSC's records.</p>
<p><b>97E</b></p> <p>A transfer notice must contain the following information—</p>	<p>Provides that a notice transferring an MSC's relevant PAYE debt must include certain information:</p>
<p><b>97E(a)</b></p> <p>(a) the name of the managed service company to which the relevant PAYE debt relates;</p>	<p>The MSC's name;</p>

Draft legislation	Explanation
<b>97E(b)</b>  (b) the address of the managed service company to which the relevant PAYE debt relates;	The MSC's address;
<b>97E(c)</b>  (c) the amount of the relevant PAYE debt;	The MSC's PAYE debt;
<b>97E(d)</b>  (d) the tax periods to which the relevant PAYE debt relates;	The tax months to which the debt relates;
<b>97E(e)</b>  (e) if the tax periods to which the relevant PAYE debt relates are comprised in more than one tax year, the apportionment of the relevant PAYE debt among those tax years;	If the debt spans more than one tax year, the proportion of the debt relating to each of the tax years;
<b>97E(f)</b>  (f) the transferee's name;	The name of the person to whom the debt is being transferred;
<b>97E(g)</b>  (g) the transferee's address;	The address of the person to whom the debt is being transferred;
<b>97E(h)</b>  (h) the specified amount;	The amount of the MSC's relevant PAYE debt which HMRC considers to be irrecoverable from the MSC;
<b>97E(j)</b>  (j) the tax periods to which the specified amount relates	The tax periods (years and months) to which the irrecoverable MSC's debt relates;
<b>97E(k)</b>  (k) if the tax periods to which the specified amount relates are comprised in more than one tax year, the apportionment of the specified amount among those tax years;	If the period of the irrecoverable debt relates to more than one tax year, the apportionment of the debt between the years;
<b>97E(l)</b>  (l) the address to which payment must be sent;	The address to which payment must be sent; and
<b>97E(m)</b>  (m) the address to which an appeal must be sent.	the address to which an appeal must be sent.

Draft legislation	Explanation
<p><b>97E(2)</b></p> <p>The transfer notice may specify the lower amount if HM Revenue and Customs are prepared to accept the lower amount from the transferee.</p>	<p>Where HMRC is prepared to accept a lesser sum than the MSC's PAYE debt from a person in accordance with regulation 97B(5), the transfer notice may show that lesser sum.</p>
<p><b>97F(1)</b></p> <p>If a transfer notice is served, the transferee must pay the specified amount to HM Revenue and Customs at the address specified in the transfer notice.</p>	<p>Provides that where a transfer notice is served, the person on whom it is served must pay the amount to the address specified in the notice.</p>
<p><b>97F(2)</b></p> <p>(2) The transferee must pay the specified amount within 30 days beginning with the date on which the transfer notice is served.</p>	<p>Provides that payment of a transferred sum must be within 30 days from the date of the issue of the transfer notice.</p>
<p><b>97F(3)</b></p> <p>(3) The specified amount carries interest from the reckonable date until the date on which payment is made.</p>	<p>Provides that the amount specified in the transfer notice carries interest from the reckonable date (14 days after the end of the tax year to which the debt relates).</p>
<p><b>97G(1)</b></p> <p>(1) A transferee may appeal against the transfer notice.</p>	<p>Provides that a person to whom an MSC debt is transferred (either the total MSC debt or a lower amount), may appeal against the transfer.</p>
<p><b>97G(2)(a)</b></p> <p>(2) A notice of appeal must—</p> <p>(a) be given to HM Revenue and Customs at the address specified in the transfer notice within 30 days beginning with the date on which the transfer notice was served, and</p>	<p>The appeal notice must be provided to HMRC at the address shown in the transfer notice within 30 days of the date the notice was issued; and</p>
<p><b>97G(2) (b)</b></p> <p>(b) specify the grounds of the appeal.</p>	<p>Set out the grounds of the appeal.</p>
<p><b>97G(3)</b></p> <p>(3) The grounds of appeal are any of the following—</p>	<p>This provides that the grounds of an appeal under regulation 97G may be under any of the following :</p>
<p><b>97G(3)(a)</b></p> <p>(a) that the relevant PAYE debt (or part of the relevant PAYE debt) is not due from the managed service company to HM Revenue and Customs;</p>	<p>The amount of the PAYE debt claimed by HMRC to be due from the MSC, or part of the amount, is not due to HMRC;</p>

Draft legislation	Explanation
<p><b>97G(3)(b)</b></p> <p>(b) that the specified amount does not relate to a company which is a managed service company</p>	<p>The PAYE debt being transferred does not relate to an MSC (as defined in Chapter 9, Part 2, ITEPA);</p>
<p><b>97G(3)(c)</b></p> <p>(c) that the transferee is not a person mentioned in section 688A(2);</p>	<p>The person to whom the debt is being transferred is not a person listed in section 688A(2) ITEPA;</p>
<p><b>97G(3)(d)</b></p> <p>(d) that the transferee was not a person mentioned in section 688A(2) during the tax periods to which the specified amount relates;</p>	<p>The person to whom the debt is being transferred was not a person listed in section 688A(2) ITEPA during the period to which the transferred debt relates;</p>
<p><b>97G(3)(e)</b></p> <p>(e) that the transferee was not a person mentioned in section 688A(2) during some part of the tax periods to which the specified amount relates;</p>	<p>The person to whom the debt is being transferred was not a person listed in section 688A(2) ITEPA during part of the period to which the transferred debt relates;</p>
<p><b>97G(3)(f)</b></p> <p>(f) that the transfer notice was not served before the end of the period specified in regulation 97D;</p>	<p>The notice transferring the debt was not issued within the statutory time limits set out in regulation 97D;</p>
<p><b>97G(3)(g)</b></p> <p>(g) that the transfer notice does not satisfy the requirements specified in regulation 97E;</p>	<p>The notice transferring the debt did not provide the information required by regulation 97E;</p>
<p><b>97G(3)(h)</b></p> <p>(h) in the case of a transferee mentioned in section 688(2)(c), that it is not impossible to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2);</p>	<p>Where the person to whom a debt is to be transferred is a person listed in section 688A(2) (c) ITEPA (“a person who (directly or indirectly) has encouraged, facilitated or otherwise been involved in the provision by the MSC of the services of the individual”), it is not impossible for HMRC to recover the MSC’s PAYE debt from a person listed in section 688A(2) (a) or (b) ITEPA (a director, office holder or associate of the MSC or the Scheme Provider);</p>
<p><b>97G(3)(j)</b></p> <p>in the case of a transferee mentioned in section 688(2)(c), that it is not impracticable to recover the specified amount from the persons mentioned in paragraph (g);</p>	<p>Where the person to whom a debt is to be transferred is a person listed in section 688A(2) (c) ITEPA, it is not impracticable for HMRC to recover the MSC’s PAYE debt from a person listed in section 688A(2) (a) or (b) ITEPA;</p>

Draft legislation	Explanation
<p><b>97G(3)(k)</b></p> <p>(k) in the case of a transferee mentioned in section 688(2)(c), that protection of the Exchequer would not be prejudiced;</p>	<p>Where the person to whom a debt is to be transferred is a person listed in section 688A(2)(c) ITEPA, HMRC's ability to recover the debt owed to the Exchequer would not be prejudiced. That is, it is unnecessary for HMRC to have regard to the time limits imposed by regulation 97D.</p>
<p><b>97G(3)(l)</b></p> <p>(l) in the case of a transferee mentioned in section 688(2)(c), that the amount specified in the transfer notice does not have regard to the degree and extent to which the transferee is a person who (directly or indirectly) has encouraged, facilitated or otherwise been involved in the provision by the managed service company of the services of the individual mentioned in that provision.</p>	<p>Where the person to whom a debt is to be transferred is a person listed in section 688A(2)(c) ITEPA, in determining the amount to be transferred, HMRC has not had regard to the extent and degree to which the person has directly or indirectly encouraged, facilitated or otherwise been involved in the provision by the MSC of an individual's services.</p>
<p><b>97G(4)</b></p> <p>(6) Paragraph (3)(a) is subject to regulation 97H(4)</p>	<p>Provides that the right of appeal regarding whether a PAYE debt is actually due to HMRC, is subject to the provisions set out in regulation 97H(4).</p>
<p><b>97G(5)</b></p> <p>(5) The appeal is to the Special Commissioners.</p>	<p>Provides that an appeal must be to the Special Commissioners.</p>
<p><b>97H(1)</b></p> <p>(1) On an appeal the Special Commissioners shall uphold or quash the transfer notice.</p>	<p>Provides that on appeal the Commissioners have two options: to uphold the amount transferred or quash the amount transferred.</p>
<p><b>97H(2)</b></p> <p>The general rule in paragraph (1) is subject to the following qualifications.</p>	<p>The options available to the Commissioners when considering an appeal are subject to the following:</p>
<p><b>97H(3)</b></p> <p>(3) In the case of the ground of appeal specified in regulation 97G(3)(a), the Special Commissioners shall investigate the matter and shall-</p>	<p>Where an appeal relates to whether a PAYE debt is actually to HMRC, the Special Commissioners shall-</p>
<p><b>97H(3)(a)</b></p> <p>(a) uphold the amount of the relevant PAYE debt specified in the transfer notice, or</p>	<p>Either confirm the amount of the MSC's relevant PAYE debt, or</p>

Draft legislation	Explanation
<p><b>97H(3)(b)</b></p> <p>(b) reduce or increase the amount of the relevant PAYE debt specified in the transfer notice to such an amount as in their opinion is just and reasonable</p>	<p>Reduce or increase the amount of the MSC's relevant PAYE debt to an amount that they consider to be just and reasonable.</p>
<p><b>97H(4)</b></p> <p>(4) If the Special Commissioners determined the amount of the relevant PAYE debt of a managed service company under paragraph (3), that amount is conclusive as to the amount of that relevant PAYE debt in any later appeal relating to that debt.</p>	<p>If the Special Commissioners determine the amount of the MSC's relevant PAYE debt, that sum is final and may not be further appealed.</p>
<p><b>97H(5)</b></p> <p>(5) In the case of the ground of appeal specified in regulation 97G(3)(e), the Special Commissioners may reduce the amount specified in the transfer notice to an amount determined in accordance with the equation—</p> $RA = \frac{P}{TP} \times AS$	<p>Where the grounds for the appeal are that the person to whom the debt is being transferred was not a person listed in section 688A (2) ITEPA during part of the period to which the transferred debt relates, the Commissioners may reduce the amount to be transferred in accordance with a specified formula.</p>
<p><b>97H(6)</b></p> <p>(6) In paragraph (5)—</p> <p>RA means the reduced amount;</p> <p>P means the number of days in the tax periods specified in the transfer notice during which the transferee was a person mentioned in section 688A(2);</p> <p>TP means the number of days in the tax periods specified in the transfer notice;</p> <p>AS means the amount specified in the transfer notice</p>	<p>Explains the formula which has regard to the period the person was a person within section 688A (2)(c) ITEPA as a proportion of the period to which the debt relates.</p>
<p><b>97H (7)</b></p> <p>(7) In the case of the ground of appeal specified in regulation 97G (3)(l), the Special commissioners may reduce the amount specified in the transfer notice to such an amount as in their opinion is just and reasonable</p>	<p>Provides that where a person listed in section 688A(2)(c) ITEPA appeals on the grounds that the sum transferred does not have regard to the degree and extent to which they directly or indirectly encouraged, facilitated or were otherwise involved in the provision of an individual's services through the MSCS, the Commissioners may reduce the amount to be transferred to an amount that they consider is just and reasonable.</p>

Draft legislation	Explanation
<p><b>97J(1)</b></p> <p>(1) A transfer notice shall be withdrawn if the Special Commissioners quash it.</p>	<p>Provides that a notice transferring a debt shall be withdrawn if the Commissioners uphold an appeal and quash the transfer.</p>
<p><b>97J(2)</b></p> <p>(2) A transfer notice may be withdrawn if, in the opinion of an officer of Revenue and Customs, it is appropriate to do so.</p>	<p>Further provides that a transfer notice may be withdrawn if in the opinion of HMRC it is appropriate to do so.</p>
<p><b>97J(3)</b></p> <p>(3) If a transfer notice is withdrawn, HM Revenue and Customs must give written notice of that fact to the transferee.</p>	<p>Provides that where a transfer notice is withdrawn, HMRC must notify each person served with the withdrawn notice of that fact.</p>
<p><b>97K(1)(a)</b></p> <p>(1) For the purposes of this Chapter, Part 6 of TMA (collection and recovery) applies as if—</p> <p>(a) the transfer notice were an assessment, and</p>	<p>Provides that the provision of Part 6 Taxes Management Act 1970 (which relates to collection and recovery of duties) applies to the transfer of debt provisions in the new Chapter 4, Part 4, ITEPA. In terms of determining collection and recovery provisions (that is, the practical application of how HMRC will recover a transferred debt), the transfer notice is treated as if it is an assessment; and</p>
<p><b>97K(1)(b)</b></p> <p>(b) the amount specified in the transfer notice were income tax charged on the transferee;</p> <p>and that Part of that Act applies with the modification indicated in paragraph (2) and any other necessary modifications.</p>	<p>The amount transferred as if it is income tax charged on the person. But the provision for commencing Summary Proceedings is modified as set out in regulation 97J(2).</p>
<p><b>97K(2)</b></p> <p>(2) Summary proceedings for the recovery of the specified amount may be brought in England and Wales or Northern Ireland at any time before the end of a period of 12 months beginning with the date on which the amount specified in the transfer notice as recoverable from the transferee became payable.</p>	<p>Sets out that Summary Proceedings (in England, Wales or Northern Ireland) for recovery of a transferred amount may be brought within 12 months of the date immediately following that on which the transferred amount became overdue.</p>
<p><b>97K(3)</b></p> <p>(3) The specified amount is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of TMA (magistrates' courts, county courts and inferior courts in Scotland).</p>	<p>In terms of legal recovery proceedings in the courts, the amount of the MSC's relevant PAYE debt which is, in the opinion of HMRC irrecoverable, represents HMRC's legally due debt.</p>

Draft legislation	Explanation
<p><b>97K(4)</b></p> <p>(4) But paragraph (3) does not prevent the bringing of separate proceedings for the recovery of each of the amounts which the transferee is liable to pay for any tax period.</p>	<p>Regulation 97 K(4) does not prevent HMRC from commencing separate legal recovery proceedings against each person to whom a transfer notice has been issued.</p>
<p><b>97L(1)</b></p> <p>(1) This regulation applies if the amounts paid to HM Revenue and Customs in respect of a relevant PAYE debt exceed the specified amount.</p>	<p>Provides for circumstances in which, by virtue of the issue (on a joint and several liability basis), of more than one transfer notice relating to the same debt, the total sum received by HMRC exceeds the amount specified in the notice.</p>
<p><b>97L(2)</b></p> <p>(2) HM Revenue and Customs shall repay the difference on an equitable basis and without unreasonable delay.</p>	<p>Provides that repayment of the excess amount shall be on an equitable basis; and</p>
<p><b>97L(3)</b></p> <p>(3) Interest on any sum repaid shall be paid in accordance with regulation 83 (interest on tax overpaid).”.</p>	<p>The repayment will include interest (where appropriate) calculated in accordance with regulation 83 Income Tax (Pay As You Earn ) Regulations 2003: from the later of the following dates:</p> <p>The 14th day after the end of the tax year to which the transferred debt relates; or</p> <p>The date on which the payment of the transferred debt was made.</p>

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