

SKEWED ADVICE FROM LEADING MSC OPERATOR

In the recent budget it was confirmed that the new rules for MSCs start from today, 5 April.

Earlier this week a leading provider of Composite Companies / PSCs, Giant, published some very misleading information about these changes, which has been circulated widely and is causing some angst.

We've written to all our clients about this, and the text of our letter is below:

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SENT TO GARBETTS CLIENTS 5 APRIL 2007

MSC CHANGES – GIANTS NEWS RELEASE

There is a news release by Giant, a firm of "accountants" in the loosest sense circulating regarding the recent changes to Managed Service Companies. A copy of it is appended below.

They have previous form at misleading people [see www.garbetts.com/download/giant.pdf - article from Accountancy magazine, their rights acknowledged]. The "qualified accountant" who owns [or used to, I haven't checked the set up recently] the set up has been disciplined for practising without authorisation and fined significant sums by the ACCA, and, frankly, many of us regard Giant as little more than a high pressure selling machine. At the time of IR35 coming in they were one of two large players in the PSC accounting market, and I was told they refused to take calls from the CEO of the other large player who was trying to get an industry coalition up together

In the document below reference is made to PSCs. Giant have twisted this to suit their own agenda. The Governments releases on the new rules clearly say PSCs are not caught by the new MSC rules, neither are accountants who act for them. It is in the HMRC technical releases and notes in black and white.

Extract from <http://www.hmrc.gov.uk/employment-status/details.htm>

"Who is not affected?

"Individuals working through Personal Service Companies (PSC) that are not within the new definition of a MSC.

"Individuals working through Umbrella Companies.

"What is a Managed Service Company (MSC)?

"An MSC is a form of intermediary company through which workers provide their services to end clients. The definition of an MSC in the legislation encompasses both 'composites' and 'managed personal service companies'.

In essence a scheme provider promotes the use of these companies and provides the structure to workers. The worker (although a shareholder) does not exercise control over the company."

There is a lot more money in running umbrellas / MSCs than there is PSCs, hence Giants actions. Self preservation. Their service descriptions obscure things a little but it seems in essence they are closing down their composite arrangements and moving everyone to an umbrella. As most of you will know, in its strict definition an umbrella is a PAYE only arrangement – basically IR35 whether you like it or not – with attendant higher tax and NI costs.

However going forward the only tax efficient and possibly (subject to contract) outside IR35 option is a PSC. It is not caught by the new MSC rules. The only risk to you is IR35 compliance, and if you act responsibly and with appropriate due diligence then under current rules - and there are no proposals for these to change - HMRC cannot pursue you personally (or us - and trust me I am not a risk taker) for the tax due.

I regret that Giant have mislead contractors. I can only suggest that if any colleagues of yours are scared by Giants tactics you suggest you leave behind a firm of unqualified cowboys and move to a proper, regulated accountancy practice like Garbetts – and many others out there - who operate truthfully and legitimately.

Kind regards

Yours sincerely

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News release issued by Giant earlier this week:

Giant withdraws from the PSC market to save contractors from financial ruin.

Summary

As a company owned and operated by qualified accountants, **giant** began providing personal service company (PSC) services in 1992, and since the draft MSC legislation in December 2006 we have spent considerable time and money on professional advice as well as the design and build of a new PSC support system.

Despite this long history and significant investment in PSC services **giant** is announcing it's withdrawal from the PSC market altogether and will now not be offering the **giant trailblazer** service. Instead, **giant** will be focussing on providing its award winning umbrella service **giant strongbox** as well as outsourced payroll solutions for agencies and others.

Last Thursday the Finance Bill 2007, Regulatory Impact Assessment and, in particular, the Guidance Notes were published which completely changed the original draft legislation regarding MSC's. Following it's publication we consulted with our advisors, Baker & McKenzie, KPMG, and Deloitte, and we have taken a leading tax barrister's advice, and this has prompted our current action.

Our advisors conclusion is that contractors that do business with PSC service providers face financial and reputational ruin, even bankruptcy, both at a corporate and personal level (and they expose other associated parties, eg. directors, shareholders etc, to personal financial risk) even if their service provider is an accountant.

HMRC have made it clear that they will target all PSC service providers and related parties under the debt transfer provisions, which makes for significant and unacceptable risk e.g. A £50,000 contractor operating via a PSC will save approximately £10,000 in tax and NI per annum. This is how much each PSC will owe per annum and the director and associates will be liable for it all. Plus interest!

The only safe operating model will be through a quality umbrella service like **giant strongbox**. All contractors who have purchased their limited company from **giant** and begun the move to **giant trailblazer**, who wish to switch to **giant strongbox**, can transfer the company back to **giant** in return for a full refund.

Those contractors who wish to take the unacceptably high level of risk associated with a PSC are free to deregister from **giant trailblazer** and seek a service provider who is willing to let the contractor take all the risk and face financial ruin. We will not do this.

The detail

Our advisors have been communicating directly with the Treasury and the Director General of HMRC. It has been made very clear that PSC service providers will not exist under any guise within this legislation, and that HMRC will target all PSC's.

The Treasury and HMRC are determined to drive such companies out of business and pursue all related 3rd party corporates and individuals for the tax and NI debts due. Under the 3rd party debt legislation HMRC are free to financially pursue any of the following persons, at their sole discretion:

- PSC, the contractor, its directors, secretary, shareholders, other associates
- Service provider
- Agency and end client (delayed until January 2008)
- Directors, secretary, shareholders, other associates of the service provider, agency and end client.

The contractor and its associates face personal financial ruin.

Legislation

The legislation now defines an MSC provider so widely that effectively, anyone 'promoting or facilitating' a PSC is caught. The Guidance Note (clause 24) makes it clear that accountants and/or companies' regulated by an accountancy body are not exempt from the legislation if they are also involved in 'promoting and facilitating' PSC's.

Given the speed and tenacity of the Treasury in implementing this anti avoidance and 3rd party debt (corporate and personal) legislation, does anyone seriously believe that an accountancy 'badge', will suffice to avoid it, and it is business as usual?

Hence, all service providers in this market place, regardless of whether they are regulated by an accountancy body or not, are caught by the legislation. HMRC can simply target each PSC service provider and all their respective PSC's will be caught.

Extract from HMRC Guidance Note clause 24: *The term: "in a professional capacity", means that professionally qualified persons [accountants] normally would not be considered to be an MSC provider except to the extent that they are in the business of promoting and facilitating the use of companies to provide the services of individuals [PSC's].*

Our view in brief

Unlike our competitors we are not prepared to put our clients, both contractors and agencies (and their directors, shadow directors, shareholders and other associates), in financial jeopardy.

Therefore **giant** will not be providing PSC services (**giant trailblazer**) in the future since there is now only one option (apart from agency PAYE) in which contractors can trade going forward and that is with a quality umbrella solution where they can continue to offset business expenses. In this respect we will continue to invest in our award winning umbrella service, **giant strongbox**.

All current **giant** managed limited company contractors will be moved to **giant strongbox** on the 6th April. This involves no work for you the contractor or your agency.