

Employment status for tax, 'Off-payroll' working (IR35) for
public authorities
Corporate Governance Committee
26 July 2019



IR35

Agenda

- What is IR35?
- Public sector implications
- Implications for the County Council
- Risk management
- Progress to date
- Next steps

What is IR35?

- IR35 - government legislation established in 2000 to curb workers who set up limited companies as a way to minimise their exposure to income tax and NI liabilities
- The rules apply where workers provide their services to a public authority through an intermediary. From April 2017, it applies:-
 - Where the Council engages a worker through their own limited company/intermediary (personal service company “PSC”); and
 - Where the Council engages the worker through an agency or 3rd party
- IR35 aims to ensure that individuals who work through their own company pay broadly the same tax and NI in a similar way to employees, where they would be employed were it not for their personal service company (PSC)

Public sector implications

- Since 6 April 2017 it has been the responsibility of public authorities (and agency, or third party paying the intermediary) to make a decision on the employment status and if the off-payroll rules apply, and to ensure if necessary that tax and NI contributions are paid
- The new rules apply to: -
 - contracts either before or after that date
 - local authorities, parish councils, NHS, companies owned or controlled by the public sector. ↗
- LCC must inform the intermediary, agency, or third party whom they have a contract with whether the off-payroll rules apply or not.
- This decision should be notified before the date of entry into the contract, or before the provision of the services begins.

Implications for the Council

- Financial and reputational risk to LCC if processes are not followed
- HMRC can assess Public Authorities for retrospective tax and NI liabilities for failure to company with IR35 (effective from April 2017)
- The council will have to deduct tax and NI from the individual and then be liable to HMRC
- Important to evidence that reasonable care has been taken on employment status for tax decisions – HMRC test.
- For existing contracts before 6 April 2017 – the Council will need to determine whether or not the role fell within the IR35 boundary and make the necessary arrangements and notify the relevant parties.
- HMRC may choose to audit our compliance
- Note: Roll out to private sector for large and medium sized businesses due April 2020.

Risk management

- Centralised resource and compliance inbox to interpret the rules and provide guidance
- Policies have been recently updated to ensure managers are aware of the processes around IR35.
- An e-learning package has been developed to improve knowledge and awareness of IR35 and its impacts
- Managers are discussing face to face with the centralised resource to discuss the working practices of the engagement.
- The default approach will be within IR35, any exceptions will be evidenced through our internal working practices questionnaire.

Progress to date

- Appointment of HR compliance officer – dedicated role
- Reed contract (managed service for agency workers) in place
- A clearer intranet page to aid managers when they navigate around the recruitment page, updates via Managers' Digest
- HR compliance inbox set up to receive queries
- Clear process in place for new engagements

Progress to date

- Policies updated - both temporary agency policy and guidance and engagement of independent contractors
- Managers are checking engagements, evidenced through queries received to the HR compliance inbox
- Face to face discussions with senior managers to ensure compliance and greater insight into status determinations – process and importance
- Agreement with Reed that they will support above process.

Next steps

- For current engagements, Heads of Service have been asked to collate up to date information on any off-payroll engagements.
- Initial focus on identifying Personal Service Companies i.e. area of greatest risk.
- For new engagements, continuation of compliance checks.
- We expect the majority of engagements to fall within IR35, incurring tax and NI deductions and lowering our tax risk.

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