

## TAX ARRANGEMENTS OF SCOTTISH PUBLIC SECTOR WORKERS

### ASSURANCE GUIDANCE

This guidance is to help Scottish public bodies seek assurance regarding the income tax and NICs obligations of their 'workers' (employees, public appointees and those with whom they engage in work, for example: contractors and agency workers, etc.).

#### Worker engaged directly

Employees of Scottish public bodies are expected to be paid through payroll with tax and NICs deducted at source.

Where a worker is engaged directly (not through a limited company or other body), it is the responsibility of the engaging Scottish public body to ensure that they correctly classify the status of the worker as employed or self-employed. They must do this prior to the engagement starting. The status and tax treatment is determined by the terms and conditions under which a worker is engaged. Scottish public bodies may seek assurance about the tax obligations of workers engaged directly by following **step one** below.

#### Working through a limited company or other body operating PAYE on their whole salary

Where a worker is not on the Scottish public body's payroll but is working through a limited company or other body and on the payroll of that body, there is no requirement for the Scottish public body to operate PAYE and NICs. The Scottish public body may seek assurance by following **step two** below.

#### Worker working through their own limited company

Where someone is working through their own limited company (a "personal service company" or PSC) there is no requirement for the Scottish public body to operate PAYE and NICs. Instead, the worker must consider the intermediaries' legislation known as IR35 (<http://www.hmrc.gov.uk/ir35/>).

The IR35 legislation prevents people who would be classed as an employee if the company was not in place from paying less tax by operating through a PSC than by being engaged directly by the engager (the Scottish public body). It says that if the relationship between the worker and the engager would be employment if it were not for the interposition of the company, then the worker must treat the money from that contract as earnings and pay PAYE tax and NICs on the money. Scottish public bodies may seek assurance in these circumstances by following **step three** below.

#### Step One – employment status

Scottish public bodies should refer to HMRC's online Employment Status Indicator (ESI) tool (<https://esi2calculator.hmrc.gov.uk/esi/app/index.html>) to determine if the worker is classed as self-employed or an employee for tax purposes. Then:

- if the worker is classed as self-employed – the public body should confirm that the worker is registered to pay tax. For example: if the worker has been working on a self employed basis for a number of years they might provide their previous year's business accounts

and filed tax return, or if they are newly self employed they will be able to provide form SA250 as evidence that they have registered as self employed with HMRC. Once the evidence has been provided, the Scottish public body need take no further action. This evidence can be provided at the 6-month point.

- if the worker is classed as an employee – they should be put onto the Scottish public body's payroll.

As explained above, if the worker is working through a limited company, the Scottish public body should seek assurance as set out at **step two** or **step three** below.

### **Step Two – engaged by (or seconded from) a company or other organisation**

If the worker is engaged through a limited company (or other organisation e.g. a partnership or a university) and is on the payroll of that company and having PAYE and NICs deducted at source by the limited company, then the worker can provide evidence that all of the money they are paid by the Scottish public body is put through that body and they are receiving/withdrawing it with PAYE/NICs deducted at source.

This can be evidenced by the production of their payslips which will show the salary, and PAYE and NICs deductions. (The company may deduct a small percentage for administrative costs.) The person may be the director of the company, working for a personal service company or one of many employees. This test also applies to those on secondment whose parent organisation is reimbursed for their salary. It will be possible for the worker to provide payslips at the 6 month point for the previous 6 months.

### **Step Three – engaged through a personal service company**

Where the worker is engaged through their own limited company (a personal service company or PSC) and not withdrawing all their income from the Scottish public body under PAYE (as set out in **step two**) they will need to provide evidence of one of the following:

- The worker should be able to show that their service company is low risk for IR35 according to HMRC's "business entity" tests described in HMRC guidance published May 2012 ([www.hmrc.gov.uk/ir35/guidance.pdf](http://www.hmrc.gov.uk/ir35/guidance.pdf)). This means that they are a low risk of HMRC checking whether they need to operate the IR35 legislation described in **step three**. The worker will be able to provide this at the 6 month point. Provided the terms of the engagement remain the same, the service company will remain low risk for the duration of the contract.
- If the worker is medium or high risk according to HMRC's "business entity" tests but feels that they are outside the scope of IR35, then they will need to provide assurance in a different way – for example: following a contract review by HMRC's independent IR35 helpline. The worker will be able to provide evidence of a contract review to say that they are outside the scope of the IR35 legislation at the 6 month point. If the terms of the contract remain the same the assessment of the service company will not change for the duration of the contract.
- If the contract is within the scope of IR35, the worker can provide evidence that they are operating the IR35 legislation on the payments received from the Scottish public body. This can be evidenced by the worker providing a "deemed calculation". This is a calculation that requires the worker to consider all the income for the year from a particular contract that is within IR35, make a 'deemed payment' to HMRC for employer NICs and pay employee NICs and PAYE on the remainder of the income. The deemed

payment calculation can be accessed online at [www.hmrc.gov.uk/ir35/ir35.xlt](http://www.hmrc.gov.uk/ir35/ir35.xlt). The legislation only requires the individual to make this payment at the end of the tax year, so it will not be possible to provide assurance until this point – the individual will need to indicate that they are intending to do this when assurance is sought and commit to meeting this requirement at an agreed later date.

- If the Scottish public body is not satisfied with the evidence they receive they may send details to their CRM or customer coordinator in HMRC to be considered alongside other intelligence to support HMRC's work to tackle non-compliance. Taxpayer confidentiality means that HMRC will not be able to share the results of any follow-up action with the Scottish public body.

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## MODEL CONTRACTUAL PROVISIONS

### **Please Note:**

***These clauses have been drafted on an illustrative basis and are not intended to be implemented in to any contract without a through review involving a) the individual Scottish public body's governance and (where applicable) information sharing practices and b) a review of the contracting parties in the particular circumstances (including tripartite arrangements) and termination provisions.***

Generic clauses for individual worker [Scottish public body contracts with worker, or obligation in Header Contract to be flowed down to worker\*]

1. Where [Worker\*] is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
2. Where [Worker] is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
3. [Name of Scottish public body] may, at any time during the term of this contract, request [Worker] to provide information which demonstrates how [Worker] complies with Clauses 1 and 2 above or why those Clauses do not apply to it.
4. A request under Clause 3 above may specify the information which [Worker] must provide and the period within which that information must be provided.
5. [Name of Scottish public body] may supply any information which it receives under Clause 3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

*\* - Where there is no 'direct' contract between the Worker and the Scottish public body, the Contracting Scottish public body will need to ensure that these provisions are contained in the 'Header' Contract/Framework agreement and that the 'supplier' is legally obliged to flow these terms down to the Worker with whom it contracts. One way to do this would be to include the provision as an annex to the 'Header' Contract/Framework Agreement and confirm that it must be included in any terms between the 'supplier' and the worker. There will also need to be information provisions in the Header contract to ensure that the information supplied by the worker can be provided directly to the relevant Scottish public body to carry out any necessary assurance.*