

EMPLOYMENT MATTERS COMMITTEE

13 JUNE 2018

PERSONAL SERVICE COMPANIES (IR35)

AND HOLDERS OF OFFICE

OUTCOME OF AN INTERNAL AUDIT REVIEW

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Summary:

Effective on 6 April 2017, the Finance Bill 2017 introduced changes to the way that a worker operating within the public sector through an intermediary (Personal Service Company (PSC)) would be required to make PAYE and NI payments. The way that the Council implemented those changes was subject to an internal audit review with the findings being reported in January 2018. This report summarises the findings within the report and updates Members on progress made on implementing the recommendations contained within the audit report.

1. Budget and Policy Framework

- 1.1 Whilst there is no specific decision to be made based on this report, it is important that the Committee is aware of the findings of the internal audit and what the Council has put into place to implement the recommendations from the audit findings.
- 1.2 Members of the Audit Committee will see the details of the Executive Summary of the Audit Report at their June meeting.

2. Background

- 2.1 The Finance Bill 2017 introduced changes to the way that a worker operating within the public sector as a Personal Service Company would be required to make PAYE and NI payments.
- 2.2 The legislation fundamentally changed the way that employers had previously managed these workers and it placed the responsibility with the employing body of firstly assessing whether a worker falls within the scope of the new

legislation and then making arrangements to deduct PAYE and NI at source for those who are captured by the new rules.

- 2.3 The Council implemented arrangements to comply with the new legislative requirements, with a report being presented to the Employment Matters Committee in June 2017 detailing the changes and new arrangements. The report informed Members that the processes would be tested by an internal audit and Members asked that the outcome of that audit be reported back.
- 2.4 The audit was undertaken during the latter part of 2017, with the Audit Report being published in January 2018.

3. Summary of findings

- 3.1 The Overall Audit Opinion “Needs Strengthening”, with three recommendations being agreed to remedy the audit findings:
 - That an investigation be undertaken with Exchequer Services to ensure that no workers who are captured within the scope of IR35 (i.e. they should be paid via Payroll and be deducted NI and PAYE at source) are no longer paid via Integra.
 - That a more robust recording system of the initial IR35 assessment is introduced, along with a copy of the agreement made with the worker.
 - That procedures be implemented for the structured monitoring of IR35 engagements particularly at the end of any contract period.
- 3.2 Subsequent to the Audit Report, both the HR Resourcing Team and the Payroll Team have implemented these recommendations.

4. Advice and analysis

- 4.1 It should be recognised that the new Regulations introduced a new set of highly complex arrangements, with many of the final elements of the legislation not being finalised until close to the implementation date.
- 4.2 A website designed by the Government to give definitive guidance came in for criticism from representative groups of both employers and workers.
- 4.3 Where workers who had been enjoying the benefits afforded to them prior to the introduction of IR35 were challenged, and in some cases with the support of their Manager, there was a sometimes protracted discussion as to which side of the IR35 rules the individual fell.
- 4.4 The Overall Audit Opinion of “Needs Strengthening” reflects all of these complexities and challenges, but as the new processes bed down it can be expected that there will be a reduction in the opportunities for error.

5. Risk Management

- 5.1 The risk implications arising from this report are detailed below:

Risk	Description	Action to avoid or mitigate risk	Risk rating
<p>Failure to implement the recommendations from the Audit Report will expose the Council to legal challenge, and may be subject to a fine from HMRC.</p>	<p>The Council have a statutory duty to deduct PAYE and NI from its employees and workers, and as part of that duty the council is required to assess whether a worker falls inside or outside of the scope of IR35 regulations.</p> <p>The processes and mechanisms introduced by the Council to comply with this duty were subject to an internal audit, with the audit report making three recommendations to improve the robustness of the current arrangements.</p> <p>These improvements will reduce the exposures and risks to the council of breaching the IR35 requirements.</p>	<p>The three recommendations have been actioned.</p>	<p>E3</p>

6. Financial and legal implications

6.1 There are no financial or legal implications.

7. Recommendation

7.1 That the Committee notes the report.

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Appendices: None

Background papers: None