
Employment Status Procedure: Intermediaries Legislation (IR35)

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1. INTRODUCTION

- 1.1. HMRC have regulations in place to cover individuals who work on a consultancy basis for an end-client, known as IR35 ('Intermediaries Legislation'). This regulation ensures that individuals who provide work through their own company, pay employment taxes in a similar way to employees.
- 1.2. The regulations apply to contractors, consultants and workers set up as an independent company (Personal Services Company, PSC) providing services directly to an organisation (end-client) or via an Agency.
- 1.3. There is no clear definition in law, or provided by HMRC, of what actually constitutes a Personal Services Company (PSC). The term 'personal services companies' was devised by HMRC following the introduction of the Intermediaries Legislation.
- 1.4. It is however, generally accepted that a PSC is a limited company that typically has a sole director who is the contractor and owner of the business. The contractor's PSC generally supplies professional services to end user clients, either directly or via an agency.

2. RESPONSIBILITIES

- 2.1. The Intermediaries Legislation was first introduced in 2000 to ensure that individuals who work through their own company pay employment taxes on their income.
- 2.2. Within the regulations the PSC had responsibility for considering whether the regulations applied and, where applicable, paying the appropriate taxes.
- 2.3. This position has now changed. With effect from 6 April 2017 the liability to make the decision on whether the Intermediaries Legislation (IR35) applies moves from the PSC to the Public Body (the Council/School).
- 2.4. HMRC have introduced an online Employment Status Service to assist in making the decision as to whether the legislation applies.
- 2.5. Where the determination is that the Intermediaries Legislation applies the Council or the supplying agency is then responsible for deducting the appropriate taxes.

3. EMPLOYMENT STATUS TOOL

- 3.1. To support public bodies in making their determination whether the legislation applies HMRC have introduced an online Employment Status Service (ESS): <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>
- 3.2. The employment status tool considers a number of factors when determining whether the legislation applies including:
 - Control, direction and supervision,
 - Risk (financial) / ability to profit,
 - Integration in the organisation and team(s),
 - Substitution – can a substitute be provided to deliver the work/project,

- Provision of own equipment,
- Obligations,
- Business Infrastructure, and
- Intentions of the parties.

- 3.3. The ESS questions must be answered truthfully to achieve an accurate outcome and therefore an understanding of the arrangement(s) is necessary.
- 3.4. Completion of the ESS questions will provide an output which informs whether the legislation applies or not. This determination can be relied upon and therefore a record of the outcome should be retained.

4. ENGAGING WITH CONSULTANTS – THE PROCESS

- 4.1. The use of consultants is generally to provide specific technical expertise and / or deliver a one off task or project. This work is usually in addition to the ongoing work of the organisation and as such cannot be met / or is not suitable to be undertaken by employees.
- 4.2. Before establishing any agreement with a consultant the engaging manager will need to determine the terms of the agreement including, the requirements and nature of the work, the rate of pay, whether the IR35 regulations apply, the duration of the contract and how the work / project will be managed.
- 4.3. Prior to engagement with a consultant, the manager / school must determine whether the consultant is covered by the IR35 regulations. They should complete the **Consultancy Engagement Form** at the end of this document and submit to payroll (payrollsection@tameside.gov.uk) for consideration to initiate the assessment process. The manager / school will be contacted to undertake the assessment and discuss next steps. Please note that Schools who have not purchased the Human Resources Service will be responsible for undertaking their own IR35 assessment and advising the consultant / their payroll provider accordingly.
- 4.4. In cases where it is determined that the IR35 regulations do not apply, the consultant can be paid on submission of an invoice via the Council Creditors team / school's payment system.
- 4.5. In cases where it is determined that the IR35 regulations apply, the Council/School, or supplying agency, will be responsible for deducting taxes from their income and making payment to HMRC. The Council/School is responsible for informing the agency of their determination in advance of the consultant commencing work. As part of this process the consultant will be required to provide their National Insurance (NI) number and tax code information.
- 4.6. In cases where a consultant is provided via an agency, the agency may request a written statement from the Council/School providing notification of their determination. The request must be replied to within 31 days and clearly state whether the IR35 regulations apply or the responsibility for accounting for the taxes will transfer to the Council/School.
- 4.7. Where an existing contract changes or is renewed i.e. additional work is agreed or the nature of the project changes the terms of agreement should be reviewed, including the IR35 determination. This will ensure that the determination is accurate and can be relied upon.

5. RECORD KEEPING AND PAYMENT

5.1. It is necessary to keep a record of all the documentation when engaging with a consultant, including:

- A contract of engagement
- The consultant engagement form for tax purposes
- The ESS outcome
- Evidence of eligibility to work in the UK
- DBS clearance where applicable
- Payment records

These documents are required irrespective of the IR35 assessment outcome and will be retained centrally by the HR Support and Payroll Team. Payments will not be made until all required documentation has been received. Please note that Schools who have not purchased the HR Support and Payroll Services will be responsible for keeping their own documentation.

5.2 Where IR35 does not apply, invoices should be submitted to creditors.general@tameside.gov.uk for payment via the financial system acredited with the individual being responsible for any tax liability to the HMRC.

5.3 Where IR35 applies and the consultant is paid via the Council payroll system, invoices should be submitted for payment to payrollsection@tameside.gov.uk. They must be authorised by an approving manager either by signature and date on the invoice, OR a supporting email confirming authorisation. Authorised invoices must be submitted by the third working day of the month in which the consultant wishes to be paid. So for example, to be paid on 15 May 2017, payroll would need to receive the approved invoice on 4 May 2017.

5.4 Where individuals are paid via payroll, the HMRC starter declaration form will be submitted, with appropriate taxes deducted and reported to HMRC for the duration of the contract by the payroll team. At the end of the contract the individual will be issued with a payment statement (P45).

6. RISK AND PENALTIES

6.1. The legislation amendments place significant responsibilities on the Council/School to ensure appropriate taxes are collected and paid to HMRC. These responsibilities bring both financial and reputational risk to the Council/School.

6.2. HMRC have the ability to apply a range of penalties for non-compliance, up to 100% of the required taxes. The application of any penalty will take into account genuine mistakes, prompted disclosure and action to rectify the error.

6.3. Non-compliance would be of significant risk and cost to the Council/School, as recovery from individuals is unlikely to be successful. It is therefore imperative that the legislation is applied rigorously.

CONSULTANCY ENGAGEMENT FORM

SECTION 1 – TO BE COMPLETED BY MANAGER / HEAD TEACHER FOR ALL CONSULTANTS

1.A CONSULTANCY ROLE TITLE	
1.B BUSINESS REASON FOR ENGAGING WITH A CONSULTANT	
1.C DESCRIPTION OF WORK/PROJECT TO BE UNDERTAKEN BY THE CONSULTANT	
1.D INDIVIDUAL NAME	
1.E COMPANY NAME (IF APPLICABLE) Include type of company i.e. Limited Company / Self Employed (Sole Trader) / Partnership	
1.F IS THE CONSULTANT BEING ENGAGED THROUGH AN AGENCY? IF SO PLEASE PROVIDE AGENCY DETAILS INCLUDING EMAIL ADDRESS	
1.G NUMBER OF DAYS WORKED	PER WEEK / MONTH
1.H NUMBER OF HOURS WORKED	PER WEEK / MONTH
1.I RATE OF PAY	PER HOUR / DAY
1.J ANY OTHER APPROVED PAY ARRANGEMENTS E.G. EXPENSES ETC <i>(PLEASE NOTE DEVIATION FROM PAY PRINCIPLES REQUIRES PRIOR AUTHORISATION FROM AED, PEOPLE AND WORKFORCE DEVELOPMENT)</i>	
1.K START DATE OF ARRANGEMENT	
1.L EXPIRY DATE OF ARRANGEMENT	
1.M COST CENTRE FOR PAYMENT <i>(Please note no account code is required)</i>	
1.N CONSULTANT EMAIL ADDRESS	

Manager Signature Print Name Date

At this stage please submit this form to Emily Drake at emily.drake@tameside.gov.uk for determination of tax liability under IR35 Regs. Please supply copies of eligibility to work in the UK in all cases and DBS clearance where applicable.

SECTION 2 – TO BE COMPLETED BY PAYROLL SECTION

2.A DO IR35 REGULATIONS APPLY?	Yes / No (Retain evidence in pack)
2.B WHO IS RESPONSIBLE FOR THE TAX DEDUCTIONS	<p>Consultant – please completed 2c and 2d and retain paperwork on personal file.</p> <p>Council/School – please complete 2c and 2d and return form to manager to arrange for consultant to complete section 3.</p> <p>Agency – please complete 2c and 2e and retain paperwork on personal file.</p>
2.C DATE MANAGER INFORMED OF TAX LIABILITY	
2.D DATE PROCUREMENT AND CREDITORS INFORMED OF TAX LIABILITY	
2.E DATE AGENCY INFORMED OF TAX LIABILITY	

SECTION 3 TO BE COMPLETED BY THE CONSULTANT WHERE APPLICABLE

TITLE	MR		MRS		MISS		MS	
	OTHER (Please state)							
MARITAL STATUS								
GENDER	FEMALE			MALE				
FORENAME (S)								
SURNAME								
HOME ADDRESS								
POST CODE								
DATE OF BIRTH								
NATIONAL INSURANCE NO.								
HOME AND MOBILE TELEPHONE NO.								
E-MAIL ADDRESS								

NAME & ADDRESS OF BANK / BUILDING SOCIETY

Post Code

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CONSULTANT SIGNATURE:	DATE:
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Record Keeping

This form should be retained electronically along with a copy of the Employment Status Service (ESS) outcome and the contractor's contract.

Payment Information where IR35 applies

All payments will be made on a monthly basis through the Council's / School's payroll system, subject to receipt of an authorised invoice, on the 15th (fifteenth) of the next available pay period by credit transfer into a bank/building society account of your choice. If the 15th (fifteenth) day of the month is on a Saturday, Sunday or public/statutory holiday your account will be credited on the nearest working day immediately preceding the 15th (fifteenth).

Deadline for Submitting this Form

This form will need to be returned as soon as possible and no later than the end of this calendar month to enable payroll set up in advance of the next payroll. Forms received after this date will be processed in a subsequent monthly payroll, dependent on submission date. For example, if your completed form is received on 3 August you will have unfortunately missed the 15 August payroll and will be set up for the 15 September payroll.

Invoices where IR35 applies

For guidance on invoices and what they should include please visit <https://www.gov.uk/invoicing-and-taking-payment-from-customers/invoices-what-they-must-include>

Invoices should be submitted for payment to payrollsection@tameside.gov.uk. They must be authorised by an approving manager either by signature and date on the invoice, OR a supporting email confirming authorisation. Authorised invoices must be submitted by the third working day of the month in which you wish to be paid. So for example, to be paid on 15 May 2017, payroll would need to receive the approved invoice on 4 May 2017.