



Procedures for Determining Off-Payroll Working

May 2018

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IR35 – the College’s obligations and process for payment

From 6th April 2017 all payments made to an individual who provides services to the College or its subsidiary companies through a personal services company (PSC) will need to be paid through the College’s payroll unless the engager can certify that they are not liable for PAYE and National Insurance deductions. This certification must be evidenced by use of HMRC’s Employment Service Status (ESS) tool:

<https://www.gov.uk/guidance/check-employment-status-for-tax>

Definition of a Personal Service Company (PSC)

The generally accepted definition of a PSC is a limited company, partnership or unincorporated company that typically has one or two directors who own most or all of the shares. The contractor’s PSC generally supplies professional services to end user clients, either directly or via an agency. The professional services are delivered by the contractor who is also the owner and director of the business.

Determining the nature of the engagement

The rules apply where a worker supplies services in such a way that if they had been engaged personally by the College they would have been regarded as an employee of the College. The employment status tool is designed to help make that clarification. It is an anonymous online tool and the data is not retained by HMRC. However, it is essential that the output from the ESS tool is retained by the College as evidence we have checked the PSC’s employment status.

It is the responsibility of the engager to check whether or not a supply of service is from a PSC and to perform the check using the ESS tool. You may need to contact the supplier to gain assistance in answering the questions. If in doubt as to whether or not you are engaging a PSC, use the ESS tool.

There are four possible outcomes from the ESS tool:

- *The intermediaries legislation does not apply to this engagement (or in the case of self-employed, this engagement should be classified as self-employed for tax purposes)*

The output from the tool should be forwarded to Finance for retention.

- *The intermediaries legislation applies to this engagement*

The supplier should be notified of this outcome and the invoice must be passed to Payroll for payment. The invoice and the output from the tool should be sent to the HR department. The supplier is not an employee, and does not have employment benefits but the invoice will have PAYE and NI deducted and will also be subject to employers NI and apprenticeship levy (see cost implications of the reform to IR35 below).

- *This engagement should be classed as employed for tax purposes*

Please contact HR

- *Unable to determine the tax status of this engagement*

Where this is the outcome, please seek assistance from the Head of Finance.

Following this initial discussion, it may be necessary to speak to the HMRC helpdesk.

It is important not to assume that any supplier already set up has passed the ESS tool check as it is possible for the same PSC to be engaged in different ways. As an example, a PSC could be asked to supply a film that they make under one contract but later be asked to provide teaching for set hours/sessions. The first contract would not be subject to an ESS check but the second would.

One-off suppliers (supplier code 80002)

The rules set out above apply to one-off payments as well as individual suppliers.

Self-employed individuals

Self-employed individuals should also have their status ascertained using the ESS tool. The output from the tool will be the same as the four for PSCs and they should be treated in the same way following the instructions included above.

Cost implications of the reform to IR35

When a PSC falls within the IR35 legislation and their invoice is paid via the payroll the cost to the College will be the cost of the invoice (including VAT is that is applicable) and an additional charge for employers NI and apprenticeship levy.

Agency Staff

Staff engaged through an agency also fall under the new legislation. However the difference with these workers is that as long as the College informs the agency of the employment status of the worker, the agency is then responsible for the correct treatment of any PAYE and NI deductions due.

As we assume that all agency staff will have an employment status of acting as employees, when a purchase order is raised for agency staff costs a statement will be printed on the purchase order saying, "in accordance with the updated IR35 legislation, all workers engaged on this contract are deemed to be acting as employees".

Additional notes on completing the ESS form.

When you reach the end of the questionnaire there are two optional boxes:

Optional: you can customise this summary by adding some information before you print it. This is for your reference only and won't be stored by HMRC.

Check performed by (name)

Your reference (contractor name or contract reference)

Please make sure you complete these before forwarding to Finance or HR. If the check performed by box is not completed it will be returned.

Assistance

Should the engager require any help or assistance with this procedure then please contact either the Head of Finance and Procurement or the Head of HR and Development.

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