Review of Tax Arrangements of Public Sector Appointees: Implementation Update **[DRAFT]**			
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Introduction

1.0 The Chief Secretary to the Treasury published a *Review of Tax Arrangements of Public Sector Appointees* on 23 May 2012. This set out new rules to ensure all central government departments and their arm's length bodies assure themselves that their senior staff and contractors are meeting their tax obligations.

2.0 The recommendations needed to be implemented within three months by 23 August. HMT will carry out a further review in April 2013 to ensure the recommendations have been successfully implemented. Sanctions will apply to any department that fails to comply in the form of DEL fine of up to five times the salary in question.

3.0 This paper provides the progress update promised in [S40] of 30 July 2012.

Recommendations

4.0 A summary of steps taken so far:

Review Recommendation	Response
Board members and senior officials with significant financial responsibility should be on the organisations payroll, unless there are exceptional circumstances – in which case the Accounting Officer should approve the arrangements – and such exception should exist for no longer than six months.	- For appointments with a daily rate exceeding £220 per day engaged for six months or more, contract managers must now confirm the employment status of any directly employed individuals using the HMRC Employment Status Tool. Any individual assessed as 'employed' for tax purposes must be on payroll. Any exceptions will be discussed with HR and subject to Accounting Officer approval.

Engagements of more than six months in duration, for more than a daily rate of £220, should include contractual provisions that allow the department to seek assurance regarding the income tax and IICS obligations of the engagee – and to terminate the contract if that assurance is not provided.	- New generic clauses, provided by HMT inserted into DECC standard terms and conditions and GPS resource frameworks. These clauses enable DECC to assure itself that all PAYE obligations are being complied with by the individual and grant DECC contract managers the power to seek confirmation from the individual upon request. - The new terms have also incorporated into Government Procurement Service resource frameworks. This gives departments the right to seek assurance although the responsibility and cost of this rests with the department. - DECC will require all new contract engagements and contract extension to sign a "comfort note" prior to be engaged to confirm that they accept the new clauses and that their tax arrangements are compliant. Failure to agree to the new terms or provide a comfort will prevent contract award or an extension of contract. - Contractors may be required to provide more substantial evidence to DECC. Any failure to do so may result in the termination of their contract and that details may be passed to HMRC for further investigation.
These measures should be implemented within three months and will be monitored after one year…	- Recommendations are now implemented. - DECC HR will maintain a contractor database and seek a refresh of the data from contract managers on a quarterly basis for the purpose of monitoring and reporting to HMT.
Departments should seek to apply these principles to existing contracts subject to ensuring value for money	- Contract managers will be asked to question the tax arrangements of all existing contractors and determine whether they are compliant. The outcome will be

for the taxpayer.	considered on a case by case basis and appropriate action taken that may include reducing the contract term and potential termination of contract.

Guidance

5.0 New guidance to staff will be issued shortly including specific responsibilities of contract managers and support available from HR, Finance and Procurement.

Appendix

Appendix A – Draft DECC Internet guidance for staff

Tax Control Arrangements of Public Sector Appointees

Policy

Following the HMT *Review of Tax Arrangements of Public Sector Appointees* in 23 May 2012 new rules apply to ensure all central government departments and their arm's length bodies are able to assure themselves that their senior staff and contractors are meeting their tax obligations.

Scope

Applies to DECC and DECC NDPBS when engaging specialist or temporary resources were the individual(s) will be employed for more than six months in duration and or be paid a rate of more than £220 per day

Requirements

From 23 August 2012:

- Revision of DECC's standard terms and conditions to incorporate new model HMT clauses. These ensure that DECC has the contractual right to seek assurance that individuals are meeting their income tax and National Insurance obligations

- DECC must seek assurance of tax compliance prior to appointing a contractor or extending a contract

- Review of tax arrangements of existing contractors employed before 23 August 2012

- New MI reporting requirements including quarterly review of contractor database for the purpose of monitoring and reporting to HMT

- Requirement to confirm employment status of directly employed individuals within scope prior to engagement

- Board members or those with significant financial responsibility, which includes Directors and Directors General of Finance as well as those in senior policy of operational roles, must be put onto the department's payroll

Tax Control Arrangements of Public Sector Appointees

Required Action	Responsibility	Comment
Check of contractor's /individual's tax compliance prior to engagement. [Applies to appointments of six month or more in duration or when the rate exceed £220 per day]	DECC Contract Manager	Issue should be raised with individual/contractor and they must confirm tax compliance and agree to provide a letter of comfort in first instance (see Model Tax Arrangement Comfort Letter). Contracts should not be awarded or extended if tax compliance cannot be confirmed.
Check of contractor's /individual's tax compliance of existing contracts signed prior to 23 August 2012.	DECC Contract Manager	Issue should be raised with individual/contractor and they must be asked to confirm tax compliance. Findings should be reported to HR to enable the contractor spreadsheet to be updated. Action will be taken on a case by case basis depending on the outcome of this discussion. Please contact HR/Finance or Procurement for further assistance as necessary.
Obtaining further evidence and detailed review of contractor's/individual's tax compliance.	DECC Finance	Further assurance will be carried out in conjunction will HMRC according to value and level of risk.
Maintenance of the contractor's database.	DECC HR	Contractor database will capture general information about the appointments and specifically: 1. the number of off-payroll engagements for those earning more than £220 per day for longer than 6 months since 23rd August 2012; 2. the number of these for whom assurance as to their tax obligations has been sought;

		3. the number who have successfully provided assurance; and 4. action taken against those who have not
Quarterly update of the contractor's database.	DECC Contract Managers	
Reporting of data to HMT.	DECC HR	
Implementation of changes to Government Procurement Service (GPS) resourcing frameworks.	GPS category team	
Check of contractor's /individual's tax compliance employed via GPS resourcing frameworks.	DECC Contract Manager	GPS has incorporated new terms in resource frameworks to give departments the right to assure tax compliance. The responsibility and cost associated with ensuring compliances rests with the department i.e. DECC.
Clarification of employment status of directly employed individuals i.e. those not employed through a limited company or other body). [This currently only applies to appointments of six months or more in duration or when the rate exceed £220 per day]	DECC Contract Manager	Following link to HMRC's online Employment Status Indicator tool: HMRC ESI Tool An 'employee' for tax purposes should be on DECC's payroll. 'Self employed' for tax purposes confirms the need to confirm tax compliance of the contractor/individual. Contact HR to discuss any particular issues and concerns. Any exceptions must be agreed by HR and will be subject to Accounting Officer approval.
Further Information & Guidance	Link to HM Treasury guidance: **HMT Guidance** Procurement Policy Note Tax Arrangements of Public Appointees: **Cabinet Office PPN-0712** DECC Finance: [contact name] DECC HR: [contact name] DECC Procurement: [contact name]	

Model Tax Arrangements Comfort Letter

[DECC Contract manager]
[Address]

[Contractor/individual's name]
[Address]

[Date]

Dear [Contract manager],

Payment of Taxes

I confirm compliance with all legal requirements relating to the payment of taxes and requirements of clause 31 of DECC's standard terms and conditions. I will provide any further evidence of compliance that may be required and accept DECC's right to termination the contract if this evidence is deemed unsatisfactory or not provided.

Your sincerely,

[Signed]

[Contractor/Individual]