Department of Energy & Climate Change
55 Whitehall
London SW1A 2HD
Tel:
email:
www.decc.gov.uk

Ref no: 12/1700

20 December 2012

Thank you for your letter of 30 November 2012 where you requested the following information:

> I would like to request any emails or documents, including meeting minutes, relating to discussions about the potential impact in your Department of implementing the recommendations of HM Treasury's Review of the tax arrangements of "off payroll" public sector appointees, published in May 2012. These recommendations were detailed in a "Procurement Policy Note" (Action Note 07/12) issued by the Cabinet Office on 24th August 2012.
>
> I would prefer to receive these by post if possible, however, I am happy to receive them by email if that is more convenient via the address

Freedom of Information Act 2000

Your request has been handled under the Freedom of Information Act 2000 ('the Act'). Under the Act you have the right to:

- know whether we hold the information you have requested and;
- be provided with that information (subject to any exemptions under the Act which may apply).

I have attached at Annex A copies of all email correspondence regarding the implementation of the HM Treasury's review of the Tax Arrangements of off-payroll public sector appointees since May 2012 when the review was published. I have attached separately two further documents that have been issued in relation to the review.

Some information that you have requested has been withheld for the following reasons:

- Section 21 (Information accessible by other means) as the information is already available by following the hyperlink below:

http://www.hm-treasury.gov.uk/d/tax_pay_appointees_review_230512.pdf ;

- Section 40 (2) as it is personal information. Some personal information has been redacted from the information released under **section 40(2)** of the FOI Act. This provides an absolute exemption for personal data which then falls to be dealt with under the Data Protection Act. Personal data of third parties can only be disclosed in accordance with the data protection principles. In particular, the first data protection principle requires that disclosure must be fair and lawful and must comply with one of the conditions in Schedule 2 of the Data Protection Act. We do not think that it is fair to release the names of junior members of staff or third parties and do not think that any of the relevant conditions apply. Where names have been

withheld, [S40] has been inserted to indicate that this is the case.

If you are unhappy with the result of your request for information, you may request an internal review within two calendar months of the date of this email. If you wish to request an internal review, please contact me.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioners Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Please do not hesitate to contact me if I can be of further assistance.

Annex A

From: [S40]
Sent: 26 October 2012 16:29
To: [S40]
Cc: Gerner Alyson (Finance & Information Services); Howlison Vanessa (Finance & Information Services); Internal Comms (DECC)
Subject: New Tax Controls

Please publish the attached in the next All DECC Staff Roundup:

New HMT Tax Controls

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. DECC must now confirm employment status and seek assurance regarding the tax obligations of contractors employed for more than six months at a daily rate of £220 or more. The measures also include new HMT reporting requirements and sanctions will apply to departments who fail to implement the controls.

Contract managers must now seek assurance of tax compliance prior to appointing a contractor or extending a contract. DECC's standard terms and conditions and Government Procurement Service (GPS) frameworks have been updated giving us the right to seek assurance of tax compliance and option to terminate the contract if assurance is not provided.

Guidance is available on the Procurement section of the intranet:

If you need any further information or wish to discuss please contact:

DECC Procurement

From: [S40]
Sent: 19 September 2012 09:17
To: [S40]
Cc: Gerner Alyson (Finance & Information Services) [S40]
Subject: RE: For comment: DRAFT: Message from Wendy Barnes on use of contingent workers

[S40]

Paragraph below:

New Tax Controls

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Single Tender Actions (STAs) – Direct contract award without competition

STAs up to £20K require Procurement Business Partner approval. STAs above £20K require Head of Procurement Approval i.e. Alyson Gerner.

Please let me know if you need anything more or want to discuss.

Regards,

[S40]

From: [S40]
Sent: 25 October 2012 12:16
To: [S40]
Subject: New Tax Control Guidance

Dear All,

It was good to see you this morning. Here is the link to the new tax control guidance (it is the last section):

[Text shown below]

Please let me know if you need to discuss.

[S40]

Tax Control Arrangements of Public Sector Appointees

Policy

Following the Her Majesty's Treasury Review (HMT) R*eview of Tax Arrangement 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 wer 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

Further Information & Guidance

Tax Control actions and responsibilities

Model Tax Arrangements Comfort Letter

HMT Guidance

Procurement Policy Note Tax Arrangements of Public Appointees

DECC Finance: [Contact name]

DECC HR: [Contact name]

DECC Procurement: [Contact name]

From: [S40]
Sent: 24 September 2012 16:43
To: Barnes Wendy (Operations Group); Howlison Vanessa (Finance & Information Services)
Cc: Gerner Alyson (Finance & Information Services); Rumsey Alison (HR); [S40]
Subject: Tax Arrangments Public Appointees

Wendy/Vanessa,

Please see attached paper on new tax controls which follows the previous paper on this issue sent by [S40] – also attached for reference.

Please let me know if you need to discuss.

Regards,

[S40]

From: [S40]
Sent: 05 September 2012 11:31
To: [S40]
Subject: RE: Contractors forced on to payroll

[S40]

I've just had a useful chat with [S40]. DECC does have a termination for convenience clause in our standard T&Cs. I missed it because it is called Cancelation and gives us the right to terminate the contract for any reason after serving 30 days notice. Alison can therefore be reassured that we will not need to prove non-compliance with tax law to terminate contracts. Please call if you need to discuss.

Regards,

[S40]

From: [S40]
Sent: 05 September 2012 10:25
To: [S40]
Subject: RE: Contractors forced on to payroll

[S40]
Just to clarify I agreed to check the standard DECC T&Cs to see whether we have a right of termination for convenience, This clause would allow the contract to be terminated for any reason after a given notice period. I've checked and there is no such clause so we do not have this option. I agree with [S40] it would be a risky to terminate a contract for tax control reasons unless there was a clear failure to meet legal requirements.

The opportunity to address this point is when we appoint new contractors or extend contracts on our revised terms that include the new tax control measures. Any contractor failing to accept the new terms simply would not be appointed. I also think we need to engage with any contractors on longer term contracts who refuse to accept the new terms to encourage them to move in the right direction.

Please call if you need to discuss.

Regards,
[S40]

From: [S40]
Sent: 05 September 2012 10:06
To: [S40]
Subject: FW: Contractors forced on to payroll

Hi [S40]

Please see Alison's email below. From memory when we discussed this a few weeks ago you advised that Tsol were advising on the termination of contract point has there been any update?

Thanks

[S40]

From: Rumsey Alison (HR)
Sent: 05 September 2012 09:54
To: [S40]
Subject: RE: Contractors forced on to payroll

[S40]
Thanks for the update. Can you ensure that [S40] gets some Legal advice on this. I'm nervous that no-one has considered the implications of terminating a contract on these grounds.

Alison,

> **From:** [S40]
> **Sent:** 05 September 2012 09:23
> **To:** Rumsey Alison (HR); **Subject:** RE: Contractors forced on to payroll
>
> All
>
> [S40] and I met with [S40] and [S40] to discuss this a few weeks ago.
>
> [S40] guidance will set out how contract managers (those who actually engage the contractors in the business) should be 'seeking formal assurance that income tax and NI obligations are being met'.
>
> They will need to do this both for contractors (individuals contracted directly to DECC) and interim staff supplied through agencies as although agencies will be expected to insert the news terms in their contracts, they won't be obliged to carry out the assurance checks at this stage until new cross Government frameworks are set up.
>
> HR will support Finance on a quarterly basis to identify where these staff sit in the business so that they can check with the contract managers that they have the assurance.
>
> [S40]
>
> **From:** Rumsey Alison (HR)
> **Sent:** 04 September 2012 17:12
> **To:** DECC HR Team Leaders
> **Subject:** FW: Contractors forced on to payroll
>
> All

Alyson's guidance below is very helpful. I'm not sure how we are going about "seeking formal assurance that income tax and NI obligations are being met" or who is doing this - anyone know?

A

From: Gerner Alyson (Procurement)
Sent: 04 September 2012 14:22
To: Howlison Vanessa (Finance) [S40]
Cc: Rumsey Alison (HR); [S40]
Subject: RE: Contractors forced on to payroll

[S40]
There is new guidance on the tax arrangements for public appointees. In summary it says that most senior staff should be on the payroll and where they aren't this should be signed off by the perm sec and ideally this should not be for more than 6months. For anyone who charges more than £220 per day we need to seek formal assurance that their income tax and national insurance obligations are being met. If we don't get that assurance then we have to terminate contracts.

[S40] is about to issue some guidance as to what we need to do with existing appointments and we will be inserting some new clauses into our terms and conditions for future appointments as well as guidance for seeking assurance.

The new arrangements were issued as a procurement policy note on the 24th August so are now in force.

Alyson

From: [S40]
Sent: 23 August 2012 18:06
To: Howlison Vanessa (Finance); Gerner Alyson (Procurement)
Cc: Rumsey Alison (HR); [S40]
Subject: Contractors forced on to payroll

Vanessa and Alison,

Apologies, you are getting all the stuff off my twitter feed today but some of it is quite relevant.

Computer weekly have published a report on a leaked document stating that contractors earning more than £220 a day will have to move to payroll. Howard Orme is quoted in the story http://www.computerweekly.com/news/2240161919/Government-could-see-exodus-of-IT-contractors .

I'm guessing this is something still being discussed within CO/HMT but is there a standard line I can take with my contractors who, once they spot this, will no doubt raise it? Or if not could we request one from whoever is drafting the guidance?

Thanks,

[S40]

From: [S40]
Sent: 04 September 2012 15:12
To: [S40]
Cc: [S40]
Subject: RE: Tax arrangements of public appointees

[S40]
Thanks for sending this on.
We did receive it via the HR network and [S40] (who does my old job here) and procurement are working to put it into practice.
Thanks
[S40]

-----Original Message-----
From: [S40]
Sent: 04 September 2012 14:56
To: [S40]
Subject: Tax arrangements of public appointees
[S40],
I wonder whether you have seen this procurement practice note which provides a bit more detail as to what needs to be included in contracts where we "employ" people through companies.

http://www.cabinetoffice.gov.uk/sites/default/files/resources/PPN-0712-Tax-Arrangements-of-Public-Appointees.pdf
[S40]