



Crown
Commercial
Service

Procurement Policy Note – Tax Arrangements of Public Appointees

Action Note 08/15 27 March 2015

Issue

1. This Procurement Policy Note (PPN) replaces PPN 07/12 “Tax Arrangements of Public Appointees” issued on 24 August 2012. PPN 07/12 provided departments, their agencies and Non Departmental Public Bodies (NDPBs) with a guide to help them seek assurance about the tax arrangements of their public appointees. It also provided illustrative contractual clauses allowing that assurance be sought. This replacement PPN reflects the withdrawal by HMRC, with effect from 6 April 2015, of the business entity tests “BETs”, referred to in the original PPN 07/12.
2. On 12 July 2012, the Chief Secretary to the Treasury wrote to the Prime Minister, copying Cabinet colleagues, to set out implementation plans following the review of the tax arrangements of public appointees, published on 23 May 2012 (http://www.hmhttp://www.hmtreasury.gov.uk/d/tax_pay_appointees_review_230512.pdf). HM Treasury notified Finance DGs of these new arrangements on 26 July 2012.

Dissemination and Scope

3. The contents of this PPN apply to all Central Government Departments including their Executive Agencies and NDPBs (the Department). Similar guidance will be provided to NHS organisations, and Academy Schools’ guidance will be updated to reflect the recommendations of the review. Please circulate this PPN within your organisation, its Executive Agencies and Non Departmental Public Bodies and to all Contracting Authorities for which you are responsible, drawing it to the attention of those with a purchasing role.

Timing

4. The provisions of this Action Note will take effect from 6 April 2015

Action

5. The key actions for Departments are:

- To determine the employment status of all their off-payroll workers, regardless of how the worker is engaged
- To ensure that appropriate contractual provisions are in place to enable this to happen.

Annexes A and B provide further detail.

Background

6. On 31 January 2012, the Chief Secretary to the Treasury announced a review of the tax arrangements of public sector appointees. The aim of the review was to ascertain the extent of arrangements which could allow public sector appointees to minimise their tax payments, and make appropriate recommendations.
7. The review was published on 23 May 2012. The key conclusions, referred to as the “off-payroll guidance” were:
 - the most senior staff must be on the payroll, unless there are exceptional temporary circumstances, which will require Accounting Officer sign-off and cannot last longer than six months;
 - departments must be able to seek formal assurance from contractors with off-payroll arrangements lasting more than six months and costing over £220 per day that income tax and national insurance obligations are being met. Departments should terminate the contract if that assurance is not provided. Departments also have the option of extending this requirement to other contractors as they believe appropriate.
 - implementation will be monitored carefully with financial sanctions for Departments that do not comply.
8. The recommendations from the review were implemented by Departments within three months of the publication of the review – with the appropriate clauses inserted into new contracts from 23 August 2012, and all contract renewals carried out after that date. Similar clauses were inserted into the new central Framework Agreements for Contingent Labour tendered in 2013.

9. In addition, Departments were required to seek to apply the recommendations of the review to existing relevant contracts, subject to ensuring value for money. Departments were to work with their legal teams to do this.
10. Departments are now required to use the guide and illustrative clauses attached at Annex A and B to implement the recommendations of the review, ensuring they work closely with their colleagues in Finance and HR, and with their legal teams.
11. Following the 2012 review, Departments must now report each year to Parliament on their implementation of the off-payroll guidance in their Annual Report and Accounts (Departments should refer to Public Expenditure System (PES) Paper (2014) 11). Departments should aim to resolve the majority of outstanding assurance requests by the time they report figures in the Annual Report and Accounts.
12. It is the responsibility of Departments to ensure that they implement the off-payroll guidance fully. Departments will continue to remain accountable to Parliament for the numbers reported in their Annual Report and Accounts.
13. HM Treasury reviews the reporting provided by Departments in their Annual Report and Accounts each year, and submits a summary to Parliament.

Contact

14. Enquiries about this PPN should be addressed to the Service Desk 0345 410 2222 or info@ccs.gsi.gov.uk.

Annex A: Assurance Guide

This guide is to help Departments seek assurance regarding the income tax and NICS obligations of their appointees, as recommended by the CST Review of Tax Arrangements of Senior Public Sector Appointees, the off-payroll guidance.

The Department must have the contractual right to seek assurance that the worker is meeting their income tax and National Insurance obligations if an individual (the “worker”) is engaged by the Department for 6 months or longer and being paid £220 per day or more - but not being paid through the Departmental payroll (with PAYE and NICs deducted at source).

In line with the recommendations of the CST review, Departments should decide when to seek the assurance. For example, they may wish to seek the assurance for some contracts only. They may seek the assurance at the start of the contract, if they know it will last for 6 months or longer; alternatively they may seek the assurance at the 6-month or some other point.

Workers should be responsible for the information provided, even if it comes from their accountant or professional adviser, and given a reasonable time (e.g. 20 working days) to provide information requested.

Departments should determine the employment status of all their off-payroll workers, regardless of how the worker is engaged.

The Department should use HMRC’s online Employment Status Indicator (ESI) tool (<https://esi2calculator.hmrc.gov.uk/esi/app/index.html>) to determine if the worker is classed as self-employed or an employee for tax purposes. Then:

- if the worker is classed as self-employed – the Department should confirm that the worker is registered to pay tax. For example if the worker has been working on a self-employed basis for a number of years they might provide their previous year’s business accounts and filed tax return, or if they are newly self-employed they will be able to provide form SA250 as evidence that they have registered as self-employed with HMRC. Once the evidence has been provided, the Department need take no further action.
- if the worker is classed as an employee – they should be put onto the Departmental payroll. If they are working through a limited company, assurance must be sought that they are applying IR35 legislation when appropriate with tax and NICs liabilities met.

Worker engaged directly

Where the worker is engaged directly (not through a limited company or other body) it is the responsibility of the engaging Department to ensure that they correctly classify the status of the worker as employed or self-employed. They must do this prior to the engagement starting; this is a requirement for every UK employer. The status and tax treatment is determined by the terms and conditions under which a worker is engaged. Departments may seek assurance about the tax obligations of workers engaged directly when determining the employment status of the workers.

Worker engaged through a limited company or other intermediary

Where someone is working through their own limited company (a “personal service company” PSC) there is no requirement for the Department to operate PAYE and NICs. Instead, the worker must consider the Intermediaries’ legislation known as IR35.

The IR35 legislation prevents people who would be classed as an employee if the company was not in place from paying less tax and NICs by operating through a PSC than by being engaged directly by the engager (the Department). It says that if the relationship between the worker and the engager (the Department) would be employment if it weren’t for the interposition of the company, then the company must treat the money from that contract as the worker’s earnings and pay tax and Class 1 NICs via RTI.

The assurance to be sought depends on the arrangements in place as follows:

1 – Worker working through a limited company or other body operating PAYE on the whole income for their work

Where a worker is not on the Department payroll but is working through a limited company or other body and on the payroll of that body there is no requirement for the Department to operate PAYE and NICs.

The Department may seek assurance as follows:

If the worker is engaged through a limited company or other organisation (e.g. a partnership or a university) and is on the payroll of that company/organisation with PAYE and NICs deducted at source on pay which is equivalent to the entire income of the limited company/organisation for their work, then the worker can provide evidence that all of the money the limited company/organisation is paid by the Department is put through that body and they are receiving/withdrawing it all with PAYE/NICs deducted at source.

This can be evidenced by the production of their payslips which will show their salary, and PAYE and NICs deductions. (Where the worker is a director of a personal service company, the company may deduct a small percentage for administrative costs.) The person may be the director of the company, working for a personal service company or one of many employees. This test also applies to those on secondment whose parent

organisation is reimbursed for their salary when PAYE and NICs should be operated on the full amount of the reimbursed salary. It will be possible for the worker to provide payslips at the 6 month point for the previous 6 months.

2 - Worker working through their own limited company and PAYE not operated on total income of limited company for their work.

Departments may seek assurance in these circumstances as follows:

Where the worker is engaged through their own limited company (a personal service company) and not withdrawing all the company's income from the Department under PAYE (as set out above) they will need to provide evidence of one of the following:

- a) If the worker feels that they are outside the scope of IR35, they will need to provide assurance for example, following a contract review by HMRC's independent IR35 helpline. The worker should be able to provide evidence of a contract review to say that they are outside the scope of the IR35 legislation at the 6 month point. If the terms of the contract remain the same, the assessment of the service company will not change for the duration of that contract.
- b) If the contract is within the scope of IR35, the worker can provide evidence that their company is operating the IR35 legislation on the payments received from the Department. This can be evidenced by the worker providing a "deemed employment payment calculation" and showing the tax and NICs liabilities have been met in full. The Deemed Employment Payment is a calculation that requires the worker's company to consider all the income of the PSC/intermediary for the year from a particular contract that is within IR35, calculate a "deemed employment payment" and pay Class 1 NICs and tax on that deemed payment.

The deemed payment calculation can be accessed online at <http://www.hmrc.gov.uk/ir35/ir35.xlt>. The legislation only requires the individual to make this payment at the end of the tax year, so it will not be possible to provide assurance until this point – the individual will need to indicate that they are intending to do this when assurance is sought and commit to meeting this requirement at an agreed later date.

Under the off-payroll guidance, it is the Department's responsibility to determine whether or not a worker has provided assurance that they are meeting their tax and NICS obligations. Departments may seek advice from their HMRC CRM when making such determination, but a Department cannot make a referral to HMRC's Tax Evasion Hotline in lieu of deciding if a worker has provided assurance. This is because taxpayer confidentiality means that

HMRC will not be able to share the results of any follow-up action with the Department.

Under the off-payroll guidance, referrals to the HMRC Tax Evasion Hotline are to be made when a worker has failed to provide assurance and the Department has terminated the worker's contract, unless the worker has already left the Department.

If a Department is concerned that the results of a contract review, whether conducted by HMRC or an independent body, do not adequately reflect the reality of the contract, the Department may wish to consider stipulating in advance the information a worker should disclose in a contract review. A Department needs to ensure that it has systems in place to enable it to have confidence in the results of any contract review which are supplied. Information required by the HMRC Contract Review Service may be of assistance here, <https://www.gov.uk/ir35-find-out-if-it-applies>.

Annex B – Illustrative Contract Clauses

Please Note

These Clauses have been drafted on an illustrative basis and are not intended to be implemented in to any Contract without a thorough review involving a) the individual Department's governance and (where applicable) information sharing practices and b) a review of the contracting parties in the particular circumstances (including tripartite arrangements) and termination provisions.

Generic Clauses for Individual Worker [Department contracts with Worker, or obligation in Header Contract to be flowed down to worker*]

1. Where [Worker*] is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
2. Where [Worker] is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
3. [Name of Contracting Authority/Agency] may, at any time during the term of this contract, request [Worker] to provide information which demonstrates how [Worker] complies with Clauses 1 and 2 above or why those Clauses do not apply to it.
4. A request under Clause 3 above may specify the information which [Worker] must provide and the period within which that information must be provided.
5. [Name of Contracting Authority/Agency] may terminate this contract if-
 - (a) in the case of a request mentioned in Clause 3 above-
 - (i) [Worker] fails to provide information in response to the request within a reasonable time, or
 - (ii) [Worker] provides information which is inadequate to demonstrate either how [Worker] complies with Clauses 1 and 2 above or why those Clauses do not apply to it;
 - (b) in the case of a request mentioned in Clause 4 above, [Worker] fails to provide the specified information within the specified period, or
 - (c) it receives information which demonstrates that, at any time when Clauses 1 and 2 apply to [Worker], [Worker] is not complying with those Clauses.
6. [Name of Contracting Authority/Agency] may supply any information which it receives under Clause 3 to the Commissioners of Her Majesty's Revenue & Customs for the purpose of the collection and management of revenue for which they are responsible.

** - Where there is no 'direct' contract between the Worker and the Contracting Authority, the Contracting Authority will need to ensure that these provisions are contained in the 'Header' Contract/Framework agreement and that the 'supplier' is legally obliged to flow these terms down to the Worker with whom it contracts. One way to do this would be to include the provision as an annexe to the 'Header' Contract/Framework Agreement and confirm that it must be included in any terms between the 'supplier' and the worker. There will also need to be information provisions in the Header contract to ensure that the information supplied by the worker can be provided directly to government departments to carry out any necessary assurance, and make the decision to terminate if necessary (through the correct contractual route).*