



## CHANGE TO TAX LEGISLATION THAT MAY APPLY TO TEMPORARY OR INTERIM WORKERS – IR35

### Purpose

1. The purpose of this SPPN is to provide an update to SPPN 12/2016 of 3 December 2016 about the HMRC change to the intermediaries' tax legislation – known as IR35 – which takes effect from 6 April 2017.

### Key Points

2. Public bodies are reminded of the steps they should take where the IR35 rules apply and where:
- individuals are engaged through an intermediary company (typically a Personal Service Company or PSC) under one of the Scottish Government Temporary and Interim Staff Services Framework Agreements;
  - a PSC is engaged directly by a public body; and,
  - public bodies are considering using a non-Scottish Government led Framework Agreement to engage temporary or interim workers.
3. Public bodies should be aware of the deadlines by which arrangements to ensure the deduction of employment taxes for PSCs – where the IR35 rules apply – from 6 April 2017 onwards must be in place. See paragraph 5 for more detail.

## **Using Scottish Government Temporary and Interim Staff Services Framework Agreements**

4. The Scottish Government Temporary and Interim Staff Services Framework Agreements can be used by the public sector in Scotland to fill Professional, IT and Temporary Staff vacancies. It is the responsibility of public bodies to look at any engagements with PSCs they have under these frameworks to assess whether the IR35 rules apply. HMRC has provided an employment status digital service tool on 2 March 2017 to enable these assessments to be made.

5. Public bodies should have internal arrangements in place to notify the recruitment agency of the outcome of assessments. This is because the agency will be responsible for making tax deductions from the PSC where the engagement is in scope of the IR35 rules. For existing contracts, this notification must be before the first payment to the worker on or after 6 April 2017. For contracts entered into on or after 6 April, that notification must be given either before entry into the contract or before the services begin, if this is later. If the information is not given then the public body must make the relevant tax deductions accordingly. As a matter of best practice, public bodies should retain a copy of the test result for audit purposes.

6. Going forward, to cover those cases where IR35 may apply to a PSC the following clause will be included in any mini-competitions under the Scottish Government Temporary and Interim Staff Services Framework Agreements : *“Where IR35 applies, payment of the price will be treated accordingly and the Service Provider shall not be able to claim payment of any sums deducted by the Authority pursuant to its obligations”*.

7. Where a PSC might be provided by a Service Provider (e.g. an IT managed service) under a services contract public bodies will also want to run the HMRC tool for those engagements.

### **Direct engagements of PSCs**

8. Where PSCs are engaged directly – e.g. not under one of the Scottish Government Framework Agreements or via a recruitment agency – public bodies should also run the HMRC tool for those engagements at the outset to assess whether the IR35 rules apply. Where these do apply, the public body will be responsible for deducting employment taxes on behalf of the PSC and making

payment to HMRC. The results of the test and the worker's personal details (e.g. National Insurance Number etc.) will ordinarily be passed to the public body's HR/Personnel Department to enable this to happen. Public bodies may also want to consider using in their adverts an IR35 clause similar to that described at paragraph 6 above. Public bodies should take their own legal advice where doing so.

### **Using non-Scottish Government Frameworks**

9. Where public bodies are using non-Scottish Government led Framework Agreements to engage workers they should check whether a clause is included in those frameworks that identifies whether IR35 might apply. Public bodies should always ensure that they run the HMRC tool at the outset in any event.

### **Further Detail**

10. This SPPN is based on the most up to date information available. The relevant UK legislation is still making its passage through the UK parliament and may yet be subject to some change.

11. HMRC has published [guidance](#) online. Also, the HMRC tool should assist public bodies to assess where IR35 applies to engagements they have with temporary or interim staff and can be found at [Employment Status Tool](#).

12. The [buyer's guide](#) associated with the Scottish Government Temporary and Interim Staff Services framework agreements can be found on the Scottish Procurement website.

### **Dissemination**

13. Please bring this SPPN to the attention of all relevant staff, including those in agencies, non-departmental public bodies and other sponsored public bodies within your area of responsibility.

### **Contact Information**

14. If you have any questions about this SPPN, please contact the [Scottish Procurement Mailbox](#). You can also write to Scottish Procurement, the Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU.