

## **GLASGOW CITY COUNCIL INTERNAL AUDIT SECTION**

### **COMMITTEE SUMMARY**

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**Title of the Audit:** Corporate Review – Compliance with IR35

#### **1. Introduction**

- 1.1 As part of the agreed Internal Audit plan we have carried out a corporate review of compliance with IR35 (off-payroll workers).
- 1.2 Special tax rules (IR35) apply where a worker provides his/her services through their own intermediary, for example a Personal Service Company (PSC). Prior to April 2017 the intermediary was liable for income tax and national insurance contributions (NICs) for that person. However, amended legislation affecting public authorities, was implemented in April 2017. As a result, when a public authority engages with a worker provided via an intermediary (either directly or via a third party such as an agency) the public authority is required to assess employment status and potentially account for income tax and NICs when making payment to these types of workers.
- 1.3 Types of workers that may fall under IR35 include consultants, instructors and trainers, but only if the service is provided via an intermediary. IR35 legislation does not apply where there is no intermediary and as such does not include self-employed individuals. A PSC is the worker's own limited company.
- 1.4 The intention behind IR35 is to ensure that where a worker provides a service for a client, in a way that would have been an employment but for the existence of the intermediary, that income tax and NICs are deducted from that worker's income

at a similar rate as comparable employees.

- 1.5 The purpose of the audit was to gain assurance that appropriate arrangements are in place within the Council to ensure compliance with the requirements of IR35 legislation. The scope of the audit included:

- Reviewing the documented procedures for off-payroll working;
- Reviewing the training arrangements for staff involved in engaging off-payroll workers and those responsible for processing their payments;
- Ensuring there are appropriate arrangements in place to determine employment status, retain relevant supporting documentation and notify the worker of the outcome;
- Ensuring that sufficient arrangements are in place to account for income tax and NIC for cases that are determined to be within the scope of IR35; and
- Ensuring there are arrangements in place for regular review of ongoing engagements to re-determine employment status.

Throughout the audit fieldwork substantive testing and data matching was attempted to identify potential IR35 cases, however, the data available was not sufficient to conduct meaningful comparison. As such, our recommendations are based on discussions with officers, the review of the guidance available and processes in place.

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### **2. Audit Opinion**

2.1 Based on the work carried out a limited level of assurance can be placed upon the control environment. The audit has identified scope for improvement in existing arrangements and two recommendations which management should address.

### **3. Main Findings**

3.1 We found that in advance of the IR35 legislation changes, reports were presented to the Corporate Management Team (CMT) outlining the IR35 changes, requirements and next steps.

3.2 However, we have identified opportunities for improvement. Through discussions with officers in various Services, we identified that awareness and application of IR35 processes could be improved across the Council. We found that elements of the corporate guidance are unclear, particularly in differentiating the types of workers that may be in scope for IR35 and those who would be classified as employed for tax purposes.

3.3 Furthermore, we reviewed some of the core associated corporate policies and procedures (e.g. agency workers guidelines and procurement procedures) and found that the reference to IR35 was either misleading or had not been included.

3.4 Ongoing engagements that have been assessed for IR35, whether the outcome was in or out of scope, should be subject to reassessment, both periodically and if the nature of the engagement or contract changes. We identified that seven individuals had been deemed to be in scope for IR35 however this was due to a misinterpretation of Her Majesty's Revenue and Customs (HMRC) guidance (although in these cases there was no impact on the tax liability). We also identified that there is no centralised log to record which individuals have been checked using HMRC's employment status assessment tool and found not to be in scope, making it more difficult to ensure that all relevant cases have been checked and will be re-reviewed as required.

3.5 An action plan is provided at section four outlining our observations, risks and recommendations. We have made two recommendations for improvement. The priority of each recommendation is:

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<b>Priority</b>	<b>Definition</b>	<b>Total</b>
<b>High</b>	Key controls absent, not being operated as designed or could be improved. Urgent attention required.	1
<b>Medium</b>	Less critically important controls absent, not being operated as designed or could be improved.	1
<b>Low</b>	Lower level controls absent, not being operated as designed or could be improved.	0

- 3.6 The audit has been undertaken in accordance with the Public Sector Internal Audit Standards.
- 3.7 We would like to thank officers involved in this audit for their cooperation and assistance.
- 3.8 It is recommended that the Head of Audit and Inspection submits a further report to Committee on the implementation of the actions contained in the attached Action Plan.

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No.	Observation and Risk	Recommendation	Priority	Management Response
<p><b>Key Control:</b> Documented procedures are in place for IR35, cover all key processes and are reviewed regularly and staff have received appropriate training.</p>				
<p>1</p>	<p>Throughout the audit we noted, through discussion with officers across various Services, that there are both some misunderstandings and a lack of awareness surrounding what IR35 is and when it is relevant to an engagement.</p> <p>We found that the IR35 guidance refers to the requirement for sole traders and self-employed individuals to be assessed for IR35, however, as there is no intermediary these workers will not fall in scope for IR35. We acknowledge that these types of worker may be treated as 'employed for tax purposes' per HMRC's employment status assessment tool, however, this is not part of IR35 legislation and its inclusion may contribute to confusion.</p> <p>Furthermore, no training has been provided to support the guidance issued.</p> <p>We reviewed some of the core associated policies and procedures (e.g. agency workers guidelines and procurement procedures) and found that reference to IR35 was either misleading or had not been included.</p>	<p>Senior management should ensure that the IR35 guidance is reviewed to remove inaccuracies surrounding sole traders and self-employed individuals. Where possible, the guidance should be enhanced with examples to aid understanding.</p> <p>Associated corporate guidelines and policies, such as agency workers and procurement, should be reviewed and updated to reflect IR35 considerations and processes where appropriate.</p> <p>Once reviewed and updated the guidance document(s) should be issued to all relevant staff.</p> <p>Senior management should consider the use of a Manager's Brief or other corporate communications to ensure effective distribution of the message. Management should also consider the requirement for relevant staff to complete training.</p>	<p><b>High</b></p>	<p><b>Response:</b></p> <p>Accepted. Guidelines and processes will be amended to ensure a distinction is made between those in scope for IR35 and sole traders/self-employed workers. Communication issues will be addressed.</p> <p><b>Officer Responsible for Implementation:</b></p> <p>Head of Service Development, Financial Services</p> <p><b>Timescale for Implementation:</b></p> <p>31 July 2019</p>

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No.	Observation and Risk	Recommendation	Priority	Management Response
	This increases the risk that staff misunderstand IR35 legislation and that appropriate checks and action are not taken.			

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No.	Observation and Risk	Recommendation	Priority	Management Response
<b>Key Control:</b> Ongoing engagements are regularly reviewed to determine if the IR35 status has changed since the last assessment.				
2	<p>Ongoing engagements that have been assessed for IR35, whether the outcome was in or out of scope, should be subject to reassessment, both periodically and if the nature of the engagement or contract changes. We identified that seven individuals had been categorised on the payroll system as in scope for IR35 however this was due to a misinterpretation of the HMRC guidance (although in these cases there was no impact on the tax liability). We also identified that there is no centralised log to record which individuals have been checked using HMRC's employment status assessment tool and found not to be in scope, making it more difficult to ensure that all relevant cases have been checked and will be re-reviewed as required.</p> <p>This increases the risk that if an engagement changes in such a way that impacts the IR35 status, this is not recognised and the Council may incorrectly tax, or fail to tax a worker.</p>	<p>Senior management should ensure that a centralised log of all engagements assessed for IR35 is maintained and that this includes a date by which the engagement must be reassessed for IR35 purposes. Arrangements should also be put in place to ensure that a copy of the determinations for out of scope decisions are stored centrally.</p> <p>Furthermore, responsibility should be assigned for ensuring that assessments are completed in a timely manner. The IR35 guidance should be updated to reflect this.</p> <p>A review of IR35 workers on SAP should be undertaken to identify and correct the status of those workers that are not in scope for IR35, but are considered as 'employed for tax purposes'. As part of the review of guidance noted at recommendation one, management should ensure that this guidance explains the correct circumstances that results in an individual being added to SAP for IR35 purposes.</p>	Medium	<p><b>Response:</b></p> <p>Accepted</p> <p><b>Officer Responsible for Implementation:</b></p> <p>Head of Service Development, Financial Services</p> <p><b>Timescale for Implementation:</b></p> <p>31 July 2019</p>