

Off Pay-roll Working Policy

Signed:

Chair: S. Gribbin

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1. Introduction

Collective Vision Trust strives to comply with its legal obligations in relation to engagement with its workforce. In order to do so it must formally assess the nature of the relationship with those undertaking work on its behalf, in order to discharge its duty to ensure that appropriate National Insurance (NI) and personal taxation is duly calculated and paid to HMRC.

2. IR35 Legislation

The intermediaries' legislation (commonly known as IR35) was introduced in 2000 to ensure that individuals who work off-payroll through their own company, and who would have been taxed as employees had they been engaged directly, pay employment taxes on their income.

This new legislation will ensure that individuals who work through their own company pay employment taxes in a similar way to employees where they would be employed were it not for the PSC that they work through. This measure does not create any new pension obligation and statutory payments and other employment rights.

3. Who is affected?

Workers who provide their services to a public body such as a School or Academy through an intermediary, which can be the worker's own limited company, such as a personal service company (PSC), a partnership of which the worker is a partner, or another individual.

The legislation **does not** affect contracts which are for the supply of goods, for example purchasing stationery from a local company or building works, where the builder could work on any project not just yours.

It might affect roles such as:

- Specialist Tutors/ Supply Teachers
- Sports or other coaches
- Counsellors
- Specialist advisors that are brought into the school
- Where you commission someone to do a specific piece of work for you such as build a website.
- Agency teachers who are not employed by the agency supplying them (see section on Agency Teachers)

Many of these workers are supplied through an **intermediary**.

An intermediary can be:

- An individual with their own limited company who they are the only employee
- A service or personal service company
- A partnership
- An individual trading under a trade name

Sometimes these organisations are referred to as a **Personal Services Company or PSC**.

On first examination they may appear to be employees of that supplying agency or other organisation but in reality they can often be self-employed workers.

In certain circumstances these workers are deemed by HMRC to actually be 'disguised employees' of the engaging organisation for whom the work is done. So the relationship is that of employer/employee and not, as it may first appear, client/contractor.

Collective Vision Trust must clarify the position of all persons it engages and comply with IR35 if it applies.

Workers are engaged in two ways:

Directly Engaged

Where the MAT engages directly with a self-employed person or intermediary/PSC, it must fully assess the relationship and ensure it acts in compliance with IR35. This may involve deducting/collecting tax and NI from any payment and paying this to HMRC.

Indirectly Engaged

This is where the intermediary is an agency.

In these circumstances the agency is responsible for applying and carrying out IR35 but it is the responsibility of the MAT to inform the agency that they are contracting with a public sector organisation and that they need to apply IR35. The MAT is also charged with ensuring that the agency is complying with IR35 and applying the rules correctly.

4. How to decide if IR35 applies?

The 'Employment Status' of each worker is the key to making this decision.

Depending on a range of factors workers will be deemed either to have employee status or contractor (non-employee) status.

If the worker is an employee of a company, which has a number of employees and operates a payroll under PAYE then IR35 will not apply. The relationship with this organisation is clearly that of a client/contractor.

Where the above paragraph does not apply, full assessment of employment status is required. Simply having a contract or ordering/invoicing takes place with an intermediary to deliver some work does not define the employment status as that of client/contractor. HMRC sets this aside the existence of the intermediary and looks at key features of the relationship between the engager and the worker.

There are three key features in determining employment status:

1. Level of control exerted by the engager over the worker
2. Level of control exerted by the engager over the work undertaken.
3. The input or output driven nature of the contractual arrangement

Control

- Is the worker having to attend a specified location in order to undertake the work?
- Is the worker inducted and/or trained by the engager?
- Is the start and end time of the working period specified?
- Is the person required to carry out the work in certain way/house style?
- Is someone employed supervising or overseeing the work they do?
- Is the worker unable to simply pass the work to someone else to do?
- Is the worker provided with a uniform?
- Is the worker required to use equipment supplied by the engager?

- Is the worker given access to a network and/or a computer?
- Is the worker only able to work for one client at a time?

If the answer is **Yes** to any of the above then IR35 is likely to apply as there is significant specified input (place of work, times of work, days of work specified etc.) and control.

How to Assess Employment Status

Assessing 'employment status' is therefore the key to determining if IR35 applies. This process is delegated to the CFO to oversee.

It is imperative that HMRC's Employment Status Indicator tool is used in all cases. This can be found at

<https://www.gov.uk/guidance/check-employment-status-for-tax>

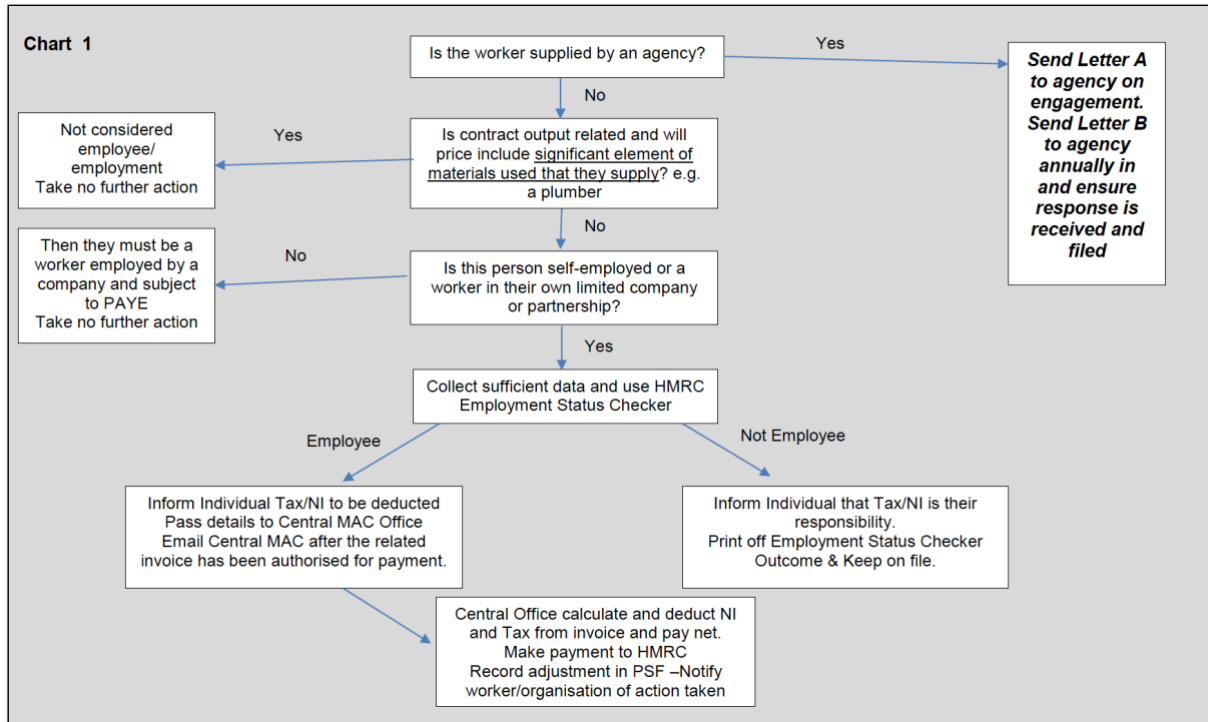
The outcomes of this test must be printed off, held on file and FOLLOWED. Provided the on line assessment tool has been properly used, HMRC agree to stand by the outcome given.

At the end of the process the checker will decide employment status and will set out below this the actions the MAT must take in order to comply.

If the outcome is that the payment can made gross then any invoice can be processed in the normal way.

If the outcome is that the payment must be paid net of taxation and National Insurance then the original invoice must be manually endorsed with 'Authorised to pay – IR35 Applies and payment must be net'. This should be in large bold writing diagonally across the invoice. The endorsement must be signed by an appropriately authorised signatory. The duly authorised and signed invoice, together with a copy of the Employment Status Indicator Tool printout, must then be forwarded to the CFO. A copy of the Employment Status Indicator Tool printout must also be held on file.

Appendix A – Decision Flow Chart



Appendix B

IR35 – Letter A

Dear

IR35 Intermediaries Compliance – Public Sector Organisation

In accordance with our legal duty set out within the above legislation, I write to inform you that your organisation has been identified as a supplying agency to Collective Vision Trust, which is a public sector organisation.

As a result of this, it is also my duty to inform you that compliance with IR35, relating to the correct assessment, deduction and payment to HMRC of taxation and national insurance, for all workers you supply to Collective Vision Trust, rests with you as an agency.

Please acknowledge receipt of this letter in writing and by return together with confirmation of your acceptance of its content.

Yours sincerely

Appendix C

IR35 – Letter B

Dear

IR35 Intermediaries Compliance – Public Sector Organisation

Further to my letter of [date] and your letter of response dated [date], I write to remind you that it is your legal duty as an agency, to comply with the requirements of IR35 with regard to the correct assessment, deduction and payment to HMRC of taxation and national insurance, for all workers you have supplied to Collective Vision Trust, in the tax year that ends [5th April].

Please acknowledge receipt of this letter in writing and by return together with confirmation of compliance with your legal duties as set out above.

Yours sincerely