

Limited Assurance

Title	Date of Report	Comments / Findings	Scale of Service	Assurance Level
IR35 – Management and Control of Off Payroll Engagement	August 2020	<p>This audit sought to provide assurance on the adequacy and effectiveness of the control framework across the council with regards to compliance with IR35 requirements in terms of employment status. IR35 is tax legislation introduced to address Government concerns about tax avoidance. It challenges whether people who supply their services to the Council via their own company and therefore are 'self-employed' (and recognised by HMRC as such), often referred to as 'off payroll', or whether the work should be taxed as PAYE. Since 6 April 2017 public sector bodies have had a duty to ensure that people working for them through intermediaries are paying the right tax and complying with IR35. HMRC has an online tool - Check Employment Status for Tax (CEST) questionnaire, to assist organisations in assessing whether individuals are within or outside of the scope of IR35, and to inform the decision on whether to tax that individual via PAYE.</p> <p>The following issues were reported:</p> <ul style="list-style-type: none"> • The prompt on Proactis (eRFQ) for staff to carry out a CEST test is not clear enough to engage officers. The Council's intranet page and the IR35 process contains the contact details for the former Agency Contract Manager and does not include the contact details for the Operational Accountancy Manager, who has responsibility for tax compliance and IR35 within the Council. The process does not outline how to correctly complete and upload a CEST test, and the implications of non-compliance. • Whilst guidance was provided to engagement officers between September – November 2018 through 'lunch time learning sessions' and a briefing to the Finance Management Team, these sessions were not mandatory and no subsequent learning sessions or briefings have been delivered, to ensure that all engaging officers know how to completely correct a CEST test. Our 	Extensive	Limited

		<p>survey circulated to a sample of 20 staff (of which we received 5 back) indicated that staff did not have a complete understanding of IR35.</p> <ul style="list-style-type: none"> • Our testing on a sample of 28 suppliers engaged through Proactis (eRFQ) to confirm whether an IR35 assessment had been carried out identified: <ul style="list-style-type: none"> ○ One instance where a supplier was incorrectly assessed as being within the scope of IR35 when in fact they were outside the scope of IR35, after we had re-performed the CEST test. ○ Eight instances where the engaging officer had indicated that the supplier was delivering goods, when in fact the suppliers in question were actually delivering services, where a CEST test is mandatory. ○ Eight instances where a tick box was checked indicating that a CEST test was carried out with the outcome “IR35 does not apply”, however evidence of the CEST test was not held on the Proactis system, detailing how the engaging officer came to the conclusion. ○ One instance related to a grant payment which should not have gone through the Proactis (eRFQ) system in the first place. ○ Three instances where a CEST test was required, however we were unable to obtain evidence of the completed CEST test as this was not uploaded onto Proactis. Two of the three in question were companies with single officers where the work may fall within scope as the services were in relation to the South Service Capacity Building Project. We were unable to verify details for the other company due to no records being available on Companies House. • There is no process of regular compliance checking to confirm whether agency workers outside the scope of IR35 have been categorised correctly on the Fieldglass system. • We reviewed a sample of 20 invoices paid from April 2019 to date, where no corresponding purchase order was raised (a “direct commission” order). In all 		
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		<p>20 instances tested, no evidence was held to demonstrate whether a CEST test was carried out, and whether the scope of work fell inside or outside IR35 regulations.</p> <ul style="list-style-type: none"> • Since the disbanding of the Council’s compliance team, there is no proactive monitoring place of engagements and whether IR35 regulations are being correctly followed and applied. Prior to the disbanding of the Compliance team, the process was such that a nominated HR officer would produce a list of all new engagements in the previous month and send this to the Compliance team, who would confirm whether the CEST test had been performed correctly. Additionally, there is no process of reporting compliance with IR35 to any directorate. <p>Results of Follow Up</p> <ul style="list-style-type: none"> • We reviewed the implementation status of the seven high and two medium priority recommendations raised during the previous audit on IR35 Off Payroll Engagement in 2017/18. We found that three high and two medium recommendations have not been implemented, including holding documentary evidence of IR35 assessments, producing monthly reports from Proactis and checking whether suppliers have been assessed for compliance with IR35, reporting to the Corporate Director from the [former] Compliance Team in relation to IR35 compliance and the progress of measures put in place to reduce the risk of non-compliance with IR35. <p>All findings and recommendations were discussed and agreed with the Director of Finance, Procurement and Audit, Divisional Director, Human Resources, Head of Procurement, Operational Accountancy Manager, Contracts and Supplier Development Manager and Agency Contract Manager between June and August 2020, and the final report was issued in August 2020 to Corporate Director, Resources.</p>		
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