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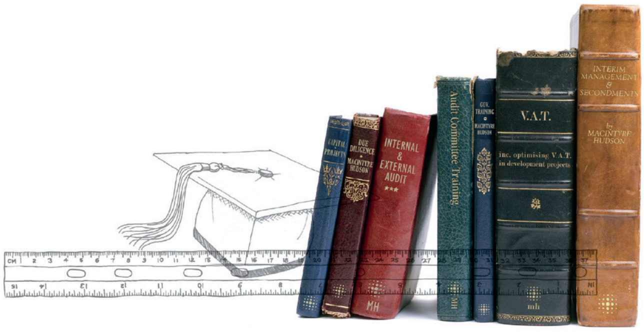
Academy Advisor

Spring 2017



Welcome to our regular newsletter for Academies and Free Schools.

In this edition we cover:

Academies Annual Return

The extended deadline of 28 February 2017 for the submission of the Academies Annual Return (AAR) for the year ended 31 August 2016 has now passed.

Despite all of the initial teething problems with the EFA Online Form, the majority of issues were resolved. The EFA have contacted us to ask if any of our clients would like to take part in an AAR survey and we would be grateful if you would contact Bianca Silva, Head of Schools and Academies at MHA MacIntyre Hudson, to let us know if you would like to take part. Please email: bianca.silva@mhllp.co.uk

For August 2017 accounts, the AAR must be submitted by 19th January 2018.

Off Payroll Working in the Public Sector

The government announced in the 2016 Autumn Statement its intention to introduce changes affecting public bodies that hire off-payroll workers. The new legislation will come into force on 6 April 2017.

Who is affected?

Public authorities that hire off-payroll contractors who provide their services through an **intermediary**.

Public authority is as defined by the Freedom of Information Act 2000 and Freedom of Information (Scotland) Act 2002. This covers companies owned and controlled by the public sector, local authorities, the NHS, educational establishments including universities and academies.

The Changes

Where a personal service company (PSC) provides the services of a worker to a public body, it is that public body, as the end client, that will be responsible for deciding whether the intermediaries' legislation (also known as IR35) should apply. If it finds that the rules should apply then it would also have to pay to HMRC the tax and National Insurance on the deemed employment payment, deducting those amounts from the amount it pays to the PSC.

Deciding if the rules apply - The Intermediaries Legislation

An intermediary can be a personal service company (PSC), a partnership or other individual. Most intermediaries providing workers will be PSCs. Anti-avoidance legislation catches individuals who would be employees of their clients if they did not use an intermediary. In general, a self-employed worker is not under the control, direction or supervision of the client and in business with a view to making a profit. The employment status of the worker therefore needs to be considered to determine if the rules apply.

HMRC has launched the Employment Status Service to assist in deciding whether the rules apply: www.gov.uk/guidance/check-employment-status-for-tax

Note that this service replaces the existing Employment Status Indicator tool which you may have previously used.
We recommend that each intermediary is run through this service and the results saved in case of any challenge by HMRC. HMRC have confirmed that they will abide by the result of the Service as long as the information input is correct.

We have produced a useful checklist to assist you with the decision making required. Please contact your advisor for a copy.

The Finance Bill confirms that you must inform the intermediary of the result of your review by the time the first payment is made to them, on or after 6 April 2017, otherwise you must operate PAYE on any amounts paid, irrespective of whether or not a review would have placed the engagement outside IR35.

Implications if the rules apply

Where it has been determined that the off-payroll working rules apply, the public body's key responsibilities are:-

1. To pay the income tax and primary class 1 NIC liabilities to HMRC. This should be done in real time, on or before the date of deemed payment to the worker, on a Full Payment Submission (FPS), in the same way as for employees. The liabilities must be paid over to HMRC by the 19th or 22nd calendar day of the following month.
2. Also pay secondary class 1 NICs due in respect of these engagements, and report them to HMRC.
3. Paying the deemed direct payment direct to the PSC, which is made net of employment tax and Class 1 primary NICs. A 5% deduction currently allowed to intermediaries for "notional expenses" will not be available in the public sector when computing the deemed employment payment.

The off-payroll worker in the public sector will not be entitled to statutory payments, not be subject to student loan deductions nor be enrolled in to the public body's pension scheme.

Examples

1. **A speech therapist brought in to a school one day a week to assist with pupils requiring specialist help**

The therapist:

- provides services through a limited company;
- decides how the work needs to be done without any input from the school;
- provides specialist materials and equipment for use in the business;
- provides their own vehicle and is responsible for any travel expenses

The specialist nature of the role means the school has little control over the way in which the therapist does the work required. Under those circumstances the therapist would fall outside the scope of IR35.

2. A supply English teacher

The teacher:

- provides services through a limited company;
- operates in a manner dictated by the school – follows the curriculum chosen by the school;
- provides no specialist equipment;
- works at times dictated by the school;

The school exercises a high level of control over both the work to be done and the manner in which it is to be done. Under those circumstances the teacher would be caught by IR35. Note: in most cases where a temporary worker such as a supply teacher is brought in to cover the absence of someone who is an employee this is normally a good indicator that IR35 will apply.

Agencies

Where PSCs are supplied via agencies, it is the public body's responsibility to determine the worker's employment status. The public body should notify the agency of its decision as to whether the off-payroll rules apply and the agency should operate the PAYE and NIC on the payments to the PSC. Where an agency requests this confirmation and the public body does not respond within 31 days of such as request, the responsibility for deducting tax and NIC falls on the public body. Once the school has conducted its IR35 review, it should write to any agencies supplying workers along the following lines:

"We have conducted a review of our off-payroll workers. As a result of this review we consider that the following individuals supplied by your agency would fall within the scope of IR35. If they provide their services to you by way of a limited company you may therefore have an obligation to operate PAYE in respect of any payments made to these individuals." (List)

"We have also reviewed the arrangement relating to the following people who we do not consider to fall within the scope of IR35." (List).

Budget Forecast Information

The EFA have written to Accounting Officers to advise that two Budget Forecast Returns (BFRs) are required from this academic year onwards.

The first return: Outturn (BFRO) must be submitted by Friday 19th May 2017: This return will focus on actual expenditure for the period up to March 2017 as well as an assessment of forecast expenditure to the end of August 2017.

The second return: the Budget Forecast Return (BFR) is required by Friday 28th July 2017: This return will focus on the projected financial position of academy trusts up to August 2018. An online BFRO template is due early April once testing has been completed.

Neither of the BFRs need to be reviewed by your external auditor, however if you require assistance please do not hesitate to contact your advisor.

Payroll Year End

All academies, as employers, must consider HMRC End of Year Employer Submission requirements, as penalties apply should forms be submitted late, contain errors or payments be received late.

For the current tax year 2016/17 (to 05 April 2017), you no longer need to complete a form P11D (return of expenses and benefits) if you consider the particular expenses or benefits are not taxable on the employee. Under the same exemption, the employee will also no longer have to make a claim to exempt the expense from tax. For example, if you reimburse mileage at 50p per mile, a form P11D is required because the mileage rate is above the HMRC mileage allowance of 45p per mile for up to 10,000 miles. If you reimburse mileage at 45p per mile, no reporting is required as the amounts reimbursed to the employee are not taxable. The employer now has the added responsibility of determining the correct tax treatment of the reimbursed expenses or benefits provided, as well as ensuring records are kept of items paid or reimbursed for employees. Keeping a purchase ledger / supplier account for employees' expenses is an easy way to keep track of these items for any given tax year.

Forms P11D must be completed and submitted to HMRC by 06 July 2017. If you are unsure of the tax treatment, or whether the particular expense fits into HMRC allowances, or require assistance with completion of forms P11D, please do contact your local academy advisor.

There is now the facility to process taxable expenses and benefits through payroll and remove the requirement to complete forms P11D, but to take advantage of this, the employer needs to register for "Payrolling Benefits in Kind" with HMRC before the start of the tax year, so if you wish to eliminate processing P11Ds for 2017/18, you need to register with HMRC by 05 April 2017: www.gov.uk/guidance/paying-your-employees-expenses-and-benefits-through your payroll

You can select which benefits and expenses are payrolled - reporting those that are not payrolled on a form P11D as normal. Employees must be informed what payrolling means to them (ie being taxed on relevant expenses as the

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expenses are reimbursed/ benefits given), and details of what has or has not been payrolled must be provided to employees by 01 June following the end of the tax year (by 01 June 2018 relating to the tax year to 05 April 2018).

Be aware that employers must not deduct more than 50% in tax from an employee's pay, so should an employee be low paid or on SSP in a month when a high value taxable expense or benefit might be payrolled, the employer needs to consider other options such as carrying forward the taxable amount to later pay periods.

Class 1A NIC on taxable expenses and benefits is still due by employers by 06 July each year, through completion of form P11D(b).

Spring Budget

There were some employment tax changes in the Spring Budget summarised as follows:

Termination payments
There will be some changes to the employer taxes on termination payments from 6th April 2018:

- The exemption from income tax and NICs for termination payments up to the current threshold of £30,000 will be retained;
- Employer NI will be payable on payments above £30,000; and
- Any pay in lieu of notice (PILON) will be treated as contractual and therefore subject to tax and NI.

It has been confirmed that PILON will only be subject to tax and NI on the equivalent of the employee's basic pay, excluding potential bonuses and other allowances. However, the application of this rule will be closely monitored to ensure that there is no manipulation.

Salary Sacrifice
The removal of tax advantages of salary sacrifices, with the exception of arrangements relating to pension contributions, childcare vouchers and 'cycle-to-work' schemes (from April 2017, with some transitional provisions for schemes running before that date.

Clients need to be aware that to take advantage of the relief available during the transitional period, sacrifice agreements need to be in place before 6th April 2017. Also, any alterations made to existing sacrifice agreements after 6th April 2017 will result in the new rules becoming applicable and the loss of any current tax relief.

Employer Provided Living Accommodation
The government will be publishing a consultation on employer-provided living accommodation and a call for evidence on the valuation of other benefits in kind. The Office of Tax Simplification recommended revising the existing rules on employer-provided living accommodation including, in particular, changing the way in which the taxable benefit is calculated. In response, as part of the 2016 Budget, the government issued a call for evidence.

Apprenticeship Levy

The apprenticeship levy comes into effect from 6 April 2017 and requires all employers operating in the UK with an annual pay bill over £3 million to pay a 0.5% levy on their pay bill each month. As this is a new piece of legislation affecting academies with an annual pay bill over £3 million, we have produced an in depth guide, featuring:

- example calculations;
- how to split the levy allowance between schools in a multi academy trust;
- how academies can benefit;
- actions required before the legislation comes in force.

Please visit our website to download the full guide:
Focus on the Apprenticeship Levy

Competency Framework for Governance

The Department for Education has published an updated Governance Handbook and a new Competency Framework for Governance. The competency framework outlines the knowledge, skills and behaviours required for governance to play its full part in the vision of the Department of Education to ensure there are enough good school places for every child in England.

There are 16 competencies within the framework which are underpinned by a foundation of important principles and personal attributes. These competencies have been grouped under the headings of the six features of effective governance, as per the Governance Handbook:

1. Strategic leadership
2. Accountability
3. People
4. Structures
5. Compliance
6. Evaluation

In the publication, each of the 16 competencies are taken in turn and the knowledge and skills required for effective governance are organised into those which are essential for everyone on the Board, those which are required of the Chair, and those which at least someone on the board should have.

The competency framework could be used as an important tool for the following:

- carrying out a skills audit of the board of trustees;
- recruitment of new trustees;
- induction/training of new trustees.

VAT Matters

VAT is an increasingly complex matter that applies across all areas of academy activity and the cost of getting it wrong can be significant.

Recent VAT issues we have supported academy clients with include VAT considerations on Capital Projects and in the light of proposed use of premises, particularly when seeking to raise external income. There may be a restriction on VAT input recoverability. Certain initiatives can result in restrictions of

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as high as 40% of input VAT incurred.

One must also consider the VAT treatment of external income, which varies according to the type of facility as well as the nature of the users.
Teacher training income can be exempt income for VAT purposes, dependent on the nature of the arrangement and therefore could potentially impact on the amount of recoverable input VAT.

We have VAT specialists available to provide the guidance and advice required to ensure you are compliant with current regulations. If you have any concerns in this area, please contact your local advisor.

In the press...

Education funding featured heavily in the Government's Spring Budget and we were asked to comment on the key points for the press. We have summarised a selection of our press comments below, having reviewed data from the National Audit Office:

"We are alarmed that this budget does nothing to address the £3bn funding shortfall schools up and down the country are facing. All schools are currently dealing with real-term cuts and are struggling to make ends meet, which will have an impact on their ability to deliver the standard of education we need."

"Whilst the Government has stated that the budgets for schools is protected in real-terms, figures from the National Audit Office do not support that claim. Funding levels do not take into account the rising costs of staff salaries and employer NI contributions, nor the increasing dependence on agency staff as schools navigate a national shortage of teachers. Other considerations, such as the costs of auto-enrolment and the Local Government Pension Scheme deficits have also been ignored."

"Further efficiency savings of 8% / £3bn is likely to result in schools having no choice but to offer a more limited curriculum, or specialise in a particular area."

"Additional funding for 110 free schools is welcomed as we anticipate around 500,000 new places will be needed by 2020. However, schools already struggle to recruit Trustees with the right Education, Finance and Business skills required, which must be addressed."

"New Free Schools need to be established in areas where there is the most need and ensure they do not negatively impact on existing schools that may find themselves under capacity and under funded."

"There is a significant outlay in establishing a new free school, in terms of purchasing land as well as building costs. We would urge the Government to consider applications strategically to ensure they meet local needs."

"Investment of £260m for improving school buildings is welcomed, however the DFE's own property survey indicates £6.7bn is required to bring buildings up to an acceptable standard; This really is a drop in the ocean on what is actually needed considering 60% of schools were built before 1976."

MHA Events

We host seminars and workshops across our MHA network of firms for Charities, Academies and Free Schools. Please visit: www.macintyrehudson.co.uk/seminars-events

How to contact us

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