

## Employment Tax Risk Review

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### 1. EXECUTIVE SUMMARY

- 1.1 The Council asked tax consultants KPMG to carry out an Employment Tax Risk Review to identify any areas of potential risk in the Council's Employment Tax accounting processes. This report outlines any issues identified by KPMG and the procedures that have been put in place, or are in the process of being put in place, in order to reduce the level of risk.
- 1.2 Following a site visit and a review of procedures 10 areas of risk were identified:
- 2 High Risk
  - 4 Medium Risk
  - 4 Low Risk
- 1.3 An action plan has been prepared to address the issues raised by the review.
- 1.4 The Committee is asked to note the contents of the report with updates being provided to future meetings.

**Employment Tax Risk Review**

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**2. INTRODUCTION**

- 2.1 The Council asked tax consultants KPMG to carry out an Employment Tax Risk Review to identify any areas of potential risk in the Council's Employment Tax accounting processes. This report outlines any issues identified by KPMG and the procedures that have been put in place, or are in the process of being put in place, in order to reduce the level of risk.

**3. RECOMMENDATIONS**

- 3.1 Note the contents of the report and further updates will be provided once all action points are complete.

**4. DETAIL**

- 4.1 The Council asked tax consultants KPMG to carry out an Employment Tax Risk Review to identify any areas of potential risk in the Council's Employment Tax accounting processes. Those areas identified, if not addressed, could expose the Council to penalties and jeopardise the Council's risk profile.

- 4.2 The purpose of the review by KPMG was to ensure the systems and processes in place for reporting, calculating and paying PAYE and NIC on cash payments and benefits provided to employees are robust. In addition, ensure that there are appropriate safeguards built in to the system in respect of review, sign off and security controls.

The review used the same methodology which HMRC would adopt during an employer compliance review.

- 4.3 A consultant from KPMG carried out a 2 day site visit during which they reviewed the following areas:

- Payment of expenses, allowances and benefits in kind
- Payments to external consultants
- Payments made under voluntary or compulsory redundancy arrangements.

- 4.4 On completion of the site visit KPMG then produced a report of their findings, risk levels and recommendations to reduce these risks.

This report included a traffic light summary which can be seen in Appendix 1. This summary shows there were 2 areas of high risk, 4 medium risks and 4 low risks.

4.5 In light of the findings from this report an action plan is being created to take action to reduce/eliminate the risks identified where possible. The risks which will form the basis of the plan can be seen in Appendix 2. A completed plan will be presented at the meeting.

## 5. CONCLUSION

5.1 The completion of the Employment Tax Risk Review by KPMG, and planned action will reduce Argyll & Bute Councils exposure to errors and penalties. It will also assist in ensuring a low risk profile is maintained.

## 6. IMPLICATIONS

6.1	Policy –	None.
6.2	Financial -	Correct values of PAYE and NIC are calculated therefore reduced risk of penalties
6.3	Legal -	None.
6.4	HR -	None.
6.5	Equalities -	None.
6.6	Risk -	Errors in calculating and paying PAYE and NIC resulting in penalties and impacting the risk profile of the Council
6.7	Customer Service -	None.

**Bruce West, Head of Strategic Finance**  
**Dick Walsh Council Leader and Policy Lead for Strategic Finance**  
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For further information please contact Bruce West, Head of Strategic Finance  
01546-604151.

Appendix 1 – Traffic light summary of findings by KPMG  
Appendix 2 - Action Plan created by Argyll & Bute Council



	Key Findings	Risk level*
Payroll processes	<ul style="list-style-type: none"> <li>The payroll systems, processes and controls currently in place appear to be robust.</li> </ul>	Low 
Expenses – general	<ul style="list-style-type: none"> <li>In general, the expense claim forms reviewed were of a good standard.</li> <li>The Council's policy states that business mileage will be paid for the shorter of the distance between home and place visited on official business or normal office and place visited on official business. It is not clear from the claims we reviewed that the business mileage stated in respect of business mileage is in accordance with the Council's policy.</li> </ul>	Low 
Expenses – use of employees own car	<ul style="list-style-type: none"> <li>We identified instances of mileage costs being claimed and reimbursed in respect of home to work journeys by employees who historically have been engaged on multiple part-time employment contracts. In addition, we noted that employees working within the Council's social work department also appear to be claiming mileage in respect of journeys from home to their normal place of work.</li> <li>A PAYE and Class 1 NIC (employee and employer) obligation arises on amounts reimbursed to employees in respect of ordinary commuting journeys. We suggest that a review is undertaken to identify the level of home to work travel costs reimbursed to employees working under multiple employment contracts in the last four tax years, and a voluntary disclosure made to HMRC of the underpaid PAYE and NIC.</li> <li>We also suggest that further analysis is carried out to identify any other categories of employee where there is an increased risk of reimbursement in respect of ordinary commuting journeys so that any disclosure made to HMRC in this regard is complete.</li> </ul>	High 
Expenses - Councillors Risk level: Medium	<ul style="list-style-type: none"> <li>In adherence with the guidance issued by Scottish Local Authorities Remuneration Committee ("SLARC"), the Council regards a councillor's home as their normal place of work, and expenses associated with travel from a Councillor's home to the Council headquarters, and other locations to conduct council business, may be claimed.</li> <li>HMRC are increasingly active in arguing, particularly in the case of local authorities, that a councillor's home is not necessarily a workplace for tax and NIC purposes, and that the travel and subsistence expenses incurred by councillors travelling to committee or sub-committee meetings, are not allowable expenses. Where HMRC argue this successfully, the amounts reimbursed in respect of these journeys should be paid subject to deductions of PAYE and NIC through payroll, or if paid directly by the Council, treated as a taxable benefit in kind and reported on form P11D.</li> <li>We suggest that a review is undertaken of the location(s) in which the Councillors approved duties are carried out, to determine whether the Councillors have a normal place of work for employment tax purposes (which may include a Councillor's home). Where this is the case, consideration should be given to the tax and NIC position in relation to the reimbursement of their travel and subsistence expenses, and if appropriate, a voluntary disclosure made to HMRC of any underpaid PAYE and NIC.</li> </ul>	Medium/High 

\* Risk level – the risk ratings have been determined based on the probability of a successful HMRC challenge in the particular area and/or the level of the potential exposure.

	Key Findings	Risk level*
<b>Purchasing cards</b>	<ul style="list-style-type: none"> <li>The process and controls in place appear to be adequate in terms of ensuring that only goods and services considered appropriate for the relevant service and business purpose are purchased.</li> <li>We suggest that additional checks are built into the Council's process to ensure that any expenditure which may give rise to tax, NIC or reporting obligations is identified and captured.</li> </ul>	Low 
<b>Severance and redundancy payments</b>	<ul style="list-style-type: none"> <li>We consider that there is a risk that HMRC could successfully argue that the Compensatory Added Years ("CAY") payment is not compensation for loss of office and therefore should be taxed as earnings subject to PAYE and NIC in full.</li> <li>This would be on the basis that the payment is a terminal bonus for individuals at or near retirement age, or made under an employer financed retirement benefit scheme, rather than a redundancy payment arising from the termination of the employment.</li> </ul>	Medium 
<b>Employee Benefits</b>	<ul style="list-style-type: none"> <li>Based on our review of the limited documentation provided, we are unable to confirm whether the salary sacrifice arrangements in place are effective from a tax and NIC perspective. We suggest that a more comprehensive review is carried out in this regard to confirm the position.</li> <li>With regard to the Tied Housing provided to certain janitors/caretakers, there is a risk that a benefit in kind (BIK) has arisen since 2010 based on the cost to the Council of providing the living accommodation.</li> <li>We suggest that a review is undertaken of the circumstances, roles and responsibilities of the Council's janitors/caretakers in order to fully assess this risk.</li> </ul>	Medium 
<b>P11D dispensation</b>	<ul style="list-style-type: none"> <li>We recommend that as a matter of good practice, the Council should approach HMRC to update the terms of its P11D dispensation, and to provide HMRC with a summary of the Council's current systems and controls with regard to expenses and benefits generally.</li> </ul>	Low 
<b>Engagement of third party labour</b>	<ul style="list-style-type: none"> <li>During our review, we did not identify any documentary evidence that exists to record the process for determining the tax and reporting position for each individual who has been awarded a contract and engaged on a self-employed basis.</li> <li>To fully assess the Council's risk in this regard, we suggest that a review is carried out on a sample of the existing arrangements in place between the Council and individuals engaged on a self employed basis.</li> <li>We suggest the Council introduces checks to effectively manage the potential risks surrounding the engagement of individuals on a self-employed basis.</li> </ul>	Medium 
<b>Construction Industry Scheme</b>	<ul style="list-style-type: none"> <li>Where it has not been possible to obtain evidence of the cost of materials from a subcontractor, HMRC are actively challenging contractors to demonstrate how they are it is able to satisfy themselves that a reasonable estimate of the cost of materials was carried out prior to settling invoices.</li> <li>We suggest that additional processes and controls are implemented by the Council in order to ensure that a fair estimate of the cost of materials is made.</li> </ul>	Medium 

**Actions re KPMG Recommendations**

	<b>Risk</b>	<b>Action</b>	<b>Section Responsible</b>	<b>Date for Completion</b>	<b>Date Completed</b>	<b>Comment</b>
	<b>EXPENSES</b>					
1	Not clear from claims whether the business mileage claimed is the shorter of the distance between home and place visited or normal office and place visited as per Council policy. Risk of excessive mileage being claimed.		Creditors			
2	Instances of mileage costs being claimed re home to work by employees who have historically been engaged on multiple part-time employment contracts.		Creditors			Requested examples of this from KPMG which were received on 8/11/13 but no further work has been done on this as yet.
3	Employees within Social Work appear to be claiming mileage in respect of journeys from home to their normal place of work.		Creditors			
4	Members travel between home and HQ. HMRC increasingly arguing that a Councillors home is not necessarily a workplace for tax and NIC purposes and that travel to meetings is not allowable.		Creditors			
	<b>PURCHASING CARDS</b>					
5	Additional checks to ensure that any expenditure which may give rise to tax, NIC or reporting obligations is identified and captured.		Procurement/Creditors			Requested examples of this from KPMG but none received as yet.
	<b>SEVERANCE AND REDUNDANCY PAYMENTS</b>					

	Risk	Action	Section Responsible	Date for Completion	Date Completed	Comment
6	Risk that HMRC could argue that CAY payment is not compensation for loss of office and therefore should be taxed as earnings subject to PAYE and NIC in full.		Payroll/HR			
<b>EMPLOYEE BENEFITS</b>						
7	Unable to confirm whether the salary sacrifice arrangements are effective from a tax and NIC perspective.		Transport			KPMG were to provide options for other Salary Sacrifice Schemes but none received as yet. Car Leasing Salary Sacrifice has now ceased.
8	Tied Housing - risk that benefit in kind has arisen since 2010 based on the cost to the Council of providing the living accommodation		Education			Requested examples of this from KPMG which were received on 8/11/13 but no further work has been done on this as yet.
<b>P11D DISPENSATION</b>						
9	Approach HMRC to update terms of dispensation and to provide a summary of the Councils current systems and controls with regards to expenses and benefits generally.		Creditors			
<b>ENGAGEMENT OF THIRD PARTY LABOUR</b>						
10	No documentary evidence existing to record the process for determining the tax and reporting position for each individual who has been awarded a contract and engaged on a self-employed basis.		Payroll/HR			
<b>CIS TAX</b>						
11	Estimates re cost of materials.		Creditors/ Surveyors			