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| COMMITTEE | Audit, Risk and Scrutiny |
| DATE | 29 September 2015 |
| DIRECTOR | Angela Scott |
| TITLE OF REPORT | Deduction of PAYE from Office Holders |
| REPORT NUMBER | CG/15/118 |
| CHECKLIST COMPLETED | Yes |

1. PURPOSE OF REPORT

To present the Committee with details of a recently identified risk, concerning the deduction of PAYE from those categorised as 'office holders'.

2. RECOMMENDATION(S)

The Committee are asked to note the position

3. FINANCIAL IMPLICATIONS

Back tax of £26,295 was demanded by HMRC, and a Penalty (discounted because of the Council's cooperation) of £3944.25 was imposed, suspended for a period of one month, on the undertaking of measures seeking to prevent a recurrence. If there is a recurrence, there is a possibility of further penalties being imposed. There are no other financial implications arising from the report.

4. OTHER IMPLICATIONS

As part of the agreement with HMRC, new templates have been introduced when volunteers are appointed to certain positions, making the tax position clear. Officers involved in such appointments have had

a briefing from Legal Services, and the opportunity to discuss particular cases.

As a result of the changed procedures, there has been some discontent expressed by current volunteers affected, and at least one volunteer has stopped undertaking duties, and one curator says she will no longer accept nomination as part of the Panel provided to the Sheriff Principle.

Categories of those who may be regarded as “office holders” include Curators and others who prepare Reports for Court in Family cases or Mental Health Guardianships; members of Adoption and Fostering Panels, and similar panels; members of the Social Work Complaints Review Committee; members of the School Placings and Exclusions Committee; young people who are engaged by Trading Standards for alcohol Test Purchases; members of the Friends of Aberdeen Art Gallery who undertake tours at the Art Gallery; and similar volunteers from a selected pool, who carry out “successive work”, and who get fees or “benefits in kind” for undertaking duties, especially where such duties perform a role required under statute.

5. BACKGROUND/MAIN ISSUES

During a scheduled review by an HMRC Inspector, ACC was advised that we had failed to deduct PAYE and NIC from payments to Adoption & Fostering Panel members. Arrears of unpaid tax for Panel members and others were recently agreed with HMRC, and a new arrangement for payment through the Payroll Service was established and implemented. This issue has not previously been raised by HMRC with any other Scottish Local Authority.

- 5.1 Some 3 years ago, an HMRC inspector carrying out a routine inspection of council records commented that one group (members of the Adoption and Fostering panel) had been paid inappropriately in having their attendance fees paid gross, without deduction of Pay As You Earn or National Insurance Contributions. Initially, this was contested by the council, since Panel members are not employees, but HMRC then argued that such people were to be regarded as “office holders” and the council was required in terms on the Income Tax (Earning and Pensions) Act 2003 to deduct income tax from payments to office holders.

The council then took an Opinion from Senior Counsel at the tax bar, and he confirmed that HMRC were correct. Further, other examples specified to Counsel were also confirmed to be office holders. This included Curators, appointed by the Courts from a Panel nominated by the Chief Social Work Officer, who write reports on Family Matters (eg relating to proposed Adoptions) or Mental Health issues (Guardianships). It was said that there was a relationship between the Council and such people, they were chosen from a pool of selected

individuals, and successive work was being carried out, usually to perform a statutory function of the Council. It did not matter that there was no employment relationship, and no guarantee that work would be provided, or that work would be done.

5.2 Arrangement with HMRC

This point was then conceded to HMRC, and they then asked for information on all such payments made in the past 6 years. That information was collected and given to HMRC, who then calculated the amount of tax unpaid during that 6 year period (£26,295), which has now been paid.

HMRC also calculated the amount of penalty due because of non-compliance with the arrangement to deduct PAYE and NIC from income paid. This penalty was discounted because of the council's cooperation, and amounted to £3,944,25. However, this penalty was then suspended as the council gave certain undertakings as to future arrangements

- The council will meet all its notification and filing obligations
- The Committee Services section of Legal and Democratic Services will liaise with all relevant departments to discuss and implement changes to their procedures when engaging office holders, whilst also making these departments aware of the implications for the council if payments are not treated correctly and keeping records when this has occurred
- Guidance and training has been delivered by Legal Services to all service managers in all the relevant departments within the council and the guidance states that any successors to these positions must be fully versed of (*sic*) the correct procedures
- The Head of Legal Services will ultimately hold the responsibility for considering the position of an office. They will maintain all relevant guidance for distribution to all appropriate departments, allowing them to follow HMRC guidance when engaging individuals and arrange meetings to ensure corporate understanding of the guidance and keep appropriate records of these reviews.
- The council will liaise with the internal audit team and audits on gross payments should be included in the random audit programme already in place. Any such transaction would be identified during the continued testing of other areas.

5.3 Future payments

A Briefing Note on Office holders has been prepared and issued to Services to inform them of the issue, and give some working definitions and examples to assist with identification of office holders. More complex cases can be referred to Legal Services for more detailed support, where required, and there have been discussions between Legal Services and Services about actual examples, to establish those who are to be regarded as Officeholders. The Briefing Note requires Service heads to ensure that any successors in post will receive the same briefing, and be advised of the need to identify office holders.

Once officeholders have been identified, this has been and is to be intimated to payroll Service. They will then arrange payment under deduction of PAYE and NIC. Payroll have established a separate “org”, putting officeholders with office bearers, quite separate from Employees.

Internal Audit have been advised of the position, and will address this in their audit role in a proportionate way, given the sums involved and the frequency of payment.

The duty to deduct PAYE and NIC applies to all income paid, and also to any relevant “benefits in kind”, such as mileage covering journeys to the place where duties are carried out.

5.4 Risks

Once identified and in the system, office holders will be paid under deduction of PAYE and NIC. Existing groups have all been considered and assessed appropriately. The risk is regarding the appointment of lay people to new groupings established by Services, or committees of the council, and ensuring that the question is asked as to whether the work such people are doing, the relationship with the council, and, crucially, whether there is sufficient successive work, would be such as to constitute such people as office holders. If the identification is not properly made, it is possible that payment of attendance fees, or travel expenses, may be made through the Creditors system, on presentation of a claim form or vouched receipts, and without deduction of PAYE and NIC.

This would be in breach of the council’s arrangement to make payments under PAYE, and would also breach the recent undertakings given to HMRC.

5.5 Management of risks

Relevant officers in each Service have been advised of the situation by Committee Services. All have received the Briefing Note, and the opportunity to discuss particular cases with Legal Services officers. Payroll Services have a system set up to ensure payment of notified people is made under the correct deductions.

6. IMPACT

Services must be alert to the appointment of office holders, and ensure they are correctly paid under deduction of PAYE and NIC, through the Payroll Service

7. MANAGEMENT OF RISK

A Briefing Note on Office holders has been prepared and issued to Services to inform them of the issue, and give some working definitions and examples to assist with identification of office holders. More complex cases can be referred to Legal Services for more detailed support, where required. A payment system to ensure that correct deductions are made has been set up by Payroll Services.

8. BACKGROUND PAPERS

None

9. REPORT AUTHOR DETAILS

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