

[REDACTED]

From: Rollison R (Richard)
Sent: 27 October 2019 10:07
To: [REDACTED]
Subject: FMEL - e-mail from Tim Hair re treatment of IR35 - 12 August 2019

From: Tim Hair <[REDACTED]>
Sent: 12 August 2019 12:02
To: [REDACTED]
Cc: [REDACTED] Rollison R (Richard) [REDACTED]
[REDACTED]

Subject: RE: FMEL

[REDACTED]

I have now been able to take advice from my accountant regarding operating inside IR35 through a service company.

Working on the assumption that NewCo would be deemed a public sector body, she has advised me that the onus for making PAYE/NIC deductions and payments falls on NewCo rather than Melville Management (my service company).

NewCo will therefore need to put the day rate payments through its payroll, deduct PAYE tax and Employees NIC at the appropriate rates, and make the net payment to Melville which makes no further deductions. NewCo will also need to make Employers NIC payments based on the total day rate. On that basis I can confirm that the revised day rate of £2,850 would apply to both employment and to an "inside IR35 via service company" arrangement.

One implication of either approach is that expenses in getting to and staying in Glasgow will be treated as a benefit in kind and therefore subject to PAYE and NIC. We will need to discuss how to handle this.

I look forward to hearing from you in due course.

Regards

Tim Hair

Sent from [Mail](#) for Windows 10

From: Tim Hair
Sent: Sunday, August 11, 2019 1:16:23 PM
To: [REDACTED]
Cc: [REDACTED]
[REDACTED]

Subject: RE: FMEL



Thanks for the clarification. I will work on the basis that I need to be in Glasgow on Tuesday, but will not make any firm arrangements until updated.

One point of clarification regarding the contract. I discussed with James the option of being employed by NewCo and the rate I gave was on that basis, which is fairly easy to define. I believe that operating inside IR35 through a service company has some specific requirements which, frankly, I don't understand. My accountant is back from holiday tomorrow and I will speak to her for guidance, but my specific concerns relate to payment of employers NI (NewCo or Service Co) and treatment of expenses/subsistence in getting to and staying in Glasgow. Your colleagues may have an insight in these areas and I would welcome any guidance they could offer.

Look forward to meeting you on Tuesday.

Regards

Tim

Sent from [Mail](#) for Windows 10

From: [Redacted]
Sent: Sunday, August 11, 2019 12:03:51 PM
To: [Redacted]
Cc: [Redacted]
Subject: RE: FMEL

Good morning Tim,

With apologies for not getting back to you before now on this – as you say there has been a lot of activity across the weekend. I've added in colleagues who are working on this for awareness. In answer to your queries –

1) do you want me to be involved with the FMEL turnaround

Yes. This is still very much our intention and we are just looking to ensure we use the most appropriate route to do this.

2) if so, on what basis eg contractor or employed, stat director?

We are looking at this as a services contract and are just finalising the details around this to satisfy any procurement issues from our side of things. We would also be looking for you to be a director as part of your role. As discussed on Friday, this is most likely to be inside of IR35 and you have given us your revised rate to reflect this, along with a detailed explanation of how you arrived at this fee.

3) when I would be required in Glasgow

Given where we are in the process at the moment and our consideration around formalising the procurement and detail I think we should look at Tuesday as the time to get you to Glasgow, hopefully we will have resolved issues with the paperwork (of have this almost finalised by then). We will contact you tomorrow to update on this.

Apologies again this has not been progressed as much as we hoped by this point but hopefully this will not take too much longer.

Enjoy the rest of your weekend.

[REDACTED]

[REDACTED]

From: Tim Hair <[REDACTED]>

Sent: 11 August 2019 11:13

To: [REDACTED]

Subject: Re: FMEL

[REDACTED]

Thanks for taking time to speak on Friday evening.

I'm sure that FMEL's Notice of Intent has generated a lot of activity this weekend, but it would be useful if you could clarify a few points.

- 1) do you want me to be involved with the FMEL turnaround
- 2) if so, on what basis eg contractor or employed, stat director?
- 3) when I would be required in Glasgow

I am assuming that I will not be needed tomorrow (Monday) and have therefore made no travel arrangements.

I look forward to hearing from you.

Regards

Tim Hair

[REDACTED]

On 9 Aug 2019, at 18:39, [REDACTED] > wrote:

Evening Tim,

Are you around for a quick call?

[REDACTED]

[REDACTED]



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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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[Redacted]

From: Ditchburn L (Liz) on behalf of DG Economy
Sent: 23 December 2019 13:39
To: Rooney M (Maureen)
Subject: FW: IMMEDIATE - USE OF IR35s TO EMPLOY STAFF

From: Brannen R (Roy) [Redacted] > **On Behalf Of** Chief Executive Transport Scotland
Sent: 23 December 2019 11:11
To: DG Economy [Redacted]
Subject: FW: IMMEDIATE - USE OF IR35s TO EMPLOY STAFF

Liz
To see

Roy Brannen
Chief Executive

Chief Executive Office | Transport Scotland

[Redacted]

Transport Scotland, the national transport agency
Còmhdhail Alba, buidheann nàiseanta na còmhdhail

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From: [Redacted]

Sent: 09 August 2019 08:19

To: [Redacted]

Cc: [Redacted]

Subject: RE: IMMEDIATE - USE OF IR35s TO EMPLOY STAFF

Thanks [Redacted]

From PWC (or SG HR) it would be useful to know how we go about awarding this contract/employing Tim at this juncture given the company doesn't have HR (or indeed any) staff at the moment. What is the normal procedure in these circumstances and is there an option for PWC to employ him in the first instance through our contract with them as a fall back if we can't get this in place today for any reason?

I don't want to cut across any other work on this so apologies if this is in hand but conscious Michelle is working on the draft advice this morning so probably tied up with limited time to look at this.

Happy to discuss.

[REDACTED]

[REDACTED]

From: [REDACTED]

Sent: 09 August 2019 08:10

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: IMMEDIATE - USE OF IR35s TO EMPLOY STAFF

On it now,

[REDACTED]

Sent with BlackBerry Work (www.blackberry.com)

From: [REDACTED]

Aug 2019 07:34

To: "Rollison R (Richard)" [REDACTED]

Cc: [REDACTED]

Subject: RE: IMMEDIATE - USE OF IR35s TO EMPLOY STAFF

Just adding [REDACTED] and [REDACTED] for policy awareness.

[REDACTED]

From: Rollison R (Richard) [REDACTED]

Date: Friday, 09 Aug 2019, 7:30 am

To: [REDACTED]

2. He thinks it is in everybody's best interest to keep have a rolling term to the contract. To give clarity for both sides he would suggest an initial term of 6 months with an agreed notice period after that. In reality he thinks this assignment will take around a year, but we will all know when it is time to recruit a permanent CEO and he would expect to agree an exit on an amicable and professional basis.
3. His day rate under this non-IR35 approach would be £2,000 per day.
4. The basis for expenses is from his home address and he takes the approach that he contain the cost without making life unnecessarily painful. He is very very aware that this situation is public money and would want to make sure my arrangements cannot be seen as extravagant.

Conscious that we are getting closer to Day 1 and that Tim will need to be fully briefed, therefore it may be best for somebody from SG HR or procurement to have a look at his draft contract and arrange time to discuss further with Tim at tomorrow's earliest convenience. If you can let me know, I can arrange diaries.

Kind regards



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<http://www.pwc.com/uk>

On Thu, 8 Aug 2019 at 17:28, [REDACTED] > wrote:



As far as I understand it IR35 just means that, where applicable, contractors who work in the public sector through an intermediary such as their own limited company have to pay employment taxes in a similar way to employees. So in this instance the newco may need to take responsibility for taking off employment taxes and National Insurance Contributions rather than just paying a fixed rate to an individual's personal company. This may make it less attractive to the individual and in some instances has meant that the day rate has had to be increased in order to retain them.

You need to run the role through the HMRC tool <https://www.gov.uk/guidance/check-employment-status-for-tax> - because it will depend upon what and how the person is going to work as to whether they are caught by the rules. Basically if they look like an 'employee' then they will likely be covered.

I'm also not sure if your newco will count as a public sector organisation.

I'm copying [REDACTED] and [REDACTED]. [REDACTED] knows a bit about IR35 and [REDACTED] project managed the acquisition of Prestwick Airport (and now leads resourcing).

Cheers

[REDACTED]

From: Rollison R (Richard) [REDACTED]

Sent: 08 August 2019 16:38

To: [REDACTED]

Cc: [REDACTED]

[REDACTED] Chief Executive Transport Scotland [REDACTED]

Subject: IMMEDIATE - USE OF IR35s TO EMPLOY STAFF

[REDACTED]

This is the issue discussed at Directors today.

Can you or someone in your world quickly advise whether we are comfortable with the use of IR35s for temporary members of staff who would be employed by a nationalised company.

My understanding is that IR35s are used when individuals establish companies to receive their 'wages' rather than being paid as individuals – and that this has tax advantages.

I think there might be a presumption against their use?

Can you reply direct to [REDACTED] and [REDACTED] (copied in)

Thanks

R

From: [REDACTED]
Sent: 08 August 2019 16:01
To: [REDACTED]
Cc: Rollison R (Richard) [REDACTED]; Nick.Gosling@transport.gov.scot; Chief Executive Transport Scotland
[REDACTED]
Subject: RE: Referees

There was something about IR35 if I recall? Suspect this may be an issue for us. Do we know how this might impact his engagement (e.g. – no, its fine, or perhaps impacting the rate?).

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: [REDACTED]
Sent: 08 August 2019 15:29
To: [REDACTED]
Cc: Rollison R (Richard) [REDACTED]; Chief Executive Transport Scotland
[REDACTED]
Subject: Re: Referees

Hi [REDACTED]

- Tim is available in Scotland from Monday 12 August but free for calls today and Friday afternoon.
- His day rate is £2,000 plus expenses
- Whilst he expects the role is likely to last at least around 9-12 months, he is comfortable with a three month contract followed by a rolling-contract afterwards.

Kind regards

[REDACTED]

On Thu, 8 Aug 2019 at 12:54, <[REDACTED]> wrote:

Thanks [REDACTED]. Can you remind me around the terms of his appointment please?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 08 August 2019 08:26
To: Rollison R (Richard) [REDACTED]
Cc: [REDACTED]; [REDACTED] Chief Executive
Transport Scotland [REDACTED]; [REDACTED]
[REDACTED]

Subject: Re: Referees

Hi [REDACTED], happy to reach out to the referees for a written statement I'll update the wider group when I get a response.

Richard, regarding background checks, let me go back and check with our wider team.

If you are looking to engage with the turnaround director, he will be contracted with the newco. Do you want me to organise time today with Tim for an update and further briefing?

--

[REDACTED]

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[REDACTED]

[REDACTED]

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On Wed, 7 Aug 2019 at 19:36, [REDACTED] wrote:

This may already be in hand but as well as referees could PWC do something resembling a quick background/media/social media check to ensure there is nothing there that might throw us of course. I can guarantee that the media and others will be looking for “news” irrespective of whether that is relevant to his task.

Richard Rollison
Interim Director
Directorate for Economic Development
Scottish Government

[REDACTED]

Sent with BlackBerry Work
(www.blackberry.com)

From: [REDACTED] [REDACTED]

Date: Wednesday, 07 Aug 2019, 6:50 pm

To: [REDACTED]

[REDACTED]
[REDACTED] Rollison R (Richard), Chief Executive Transport
Scotland [REDACTED]
[REDACTED]

[REDACTED] Referees

[REDACTED]

Can PWC reach out to the referees to ask for a written statement please? I think we are broadly content and minded to appoint subject to these references and we don't need to speak to them directly. Just whatever is standard in these circumstances.

Also agree it would be good for us to get him on board this week if possible. Can I just check what the normal process is for getting him engaged? Is it a contract with NewCo or some sort of contract with SG or PWC? I'll pick up with HR colleagues tomorrow in here but any info you have on this would be helpful.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 07 August 2019 18:33
To: [REDACTED]
Cc: [REDACTED]; Chief Executive Transport
Scotland [REDACTED]
Subject: Re: Referees

Hi all,

Tim just sent an update on the [REDACTED] email. Please see updated contact list.

[REDACTED]

[REDACTED]

Tim noted he can be out on site from next Monday but he is available for calls the rest of this week. If Tim is your ideal candidate, there are benefits in proceeding with his application this week, in order to front load any SG procurement requirements, include him in the planning process and provide him a full briefing so that he is ready for day 1.

----- Forwarded message -----

From: **Tim Hair** [REDACTED] >

Date: Wed, 7 Aug 2019 at 17:18

Subject: Referees

To: [REDACTED]

Marcus,

I've now made contact with two referees as follows:

[REDACTED]

[REDACTED] joined [REDACTED] as a NED in 2007, a few months after I joined the business, we worked together until I left in 2016. Originally an EY consulting partner, he is a serial Chairman in both the private sector and NHS.

[REDACTED]

[REDACTED] is an Investment Director at [REDACTED] and was their man on the Board of [REDACTED]. Prior to [REDACTED] [REDACTED] was with pwc in corporate finance.

[REDACTED] is in the UK at present and [REDACTED] is away on holiday. Both are expecting you to make contact by email or text to arrange a time to talk.

As a further in-house sanity check you might want to speak to [REDACTED] a Partner in your Birmingham office. I've known [REDACTED] since 2007 so he is well placed to have a view. I've not contacted him to tell him you might be in touch.

Let me know if you need anything else.

Regards

Tim

Sent from [Mail](#) for Windows 10

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[REDACTED]

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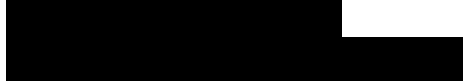
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13 August 2019

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IMMEDIATE: CONSULTANCY SERVICE - APPOINTMENT OF TURNAROUND DIRECTOR FOR FMEL

Purpose

1. In line with guidance on the use of consultancy services which require your agreement for services with a cost of £50k or more, to seek your agreement for us (NewCo) to enter in to a contract with Melville Management Ltd, the service company of the chosen Turnaround Director for FMEL, Tim Hair, at a cost of up to £2,850 per day plus reasonable expenses; and
2. To ask you to note that, given the extreme urgency to appoint a Turnaround Director, these service are being procured through a Non Competitive Action.

Priority: IMMEDIATE

3. PWC have serious concerns that we could be in a position to conclude the transaction tomorrow but would not have an appropriate and credible individual to run the business; this individual needs to be briefed on various matters before being able to take on the role – there is insufficient time to conduct this fully at this stage and no scope to delay this any further.

Background

4. We have been working with PWC to identify an appropriate Turnaround Director to work for a nationalised FMEL in the initial stages to stabilise the business; re-structure the business to ensure it is sustainable and able to run for the long-term; retain the confidence of stakeholders; and support the successful recruitment of a permanent Chief Executive (which would commence almost immediately). A key role would be to work with others to review the programme for 801 and 802.
5. PWC identified six candidates who in their view had the relevant expertise and experience to undertake the role of Turnaround Director. Following consideration of CVs, senior officials interviewed three candidates by phone and concluded that Tim Hair, who operates through his own service company Melville Management Ltd, had the requisite skills and experience to perform the role. Tim has significant experience in the engineering and automotive sectors , has led a number of business turnarounds and transformations and is a member of the Institute of Marine Engineering Science & Technology and the Institute of Turnaround.

Contract and costs

6. Tim will be contracted through the Newco at a gross cost of £2850 per day plus reasonable expenses, including costs of living in Scotland Monday – Friday. We

expect the contract to be for an initial period of two to three months with the option to roll forward on a monthly basis but with a four week notice period.

7. In the context of the other two individuals that SG interviewed, neither of whom we considered right for the task, Tim's net cost of £2k is in the middle: One was c.£1k per day (and PWC note they are one of the lowest cost on their books) and one was c.£3k per day. PWCs experience is that £2k - £2.5k net is very much in line with the going rate for this type of role: where there are significant PR and reputational risks to be managed.

8. Although we can expect significant criticism of this remuneration package, it is within industry standards and within the window of remuneration expected from shortlisted candidates for such a time limited and specialised role.

Alternative Options to Fill this Role/Reduce Costs Going Forward

9. Given the substantial costs involved, we have looked at alternatives to filling the role. This has included putting in place an interim SG SCS appointment, Scottish Enterprise nominating a candidate, secondees from other organisations (e.g. Babcock) - but given the specialist skills required, tight timeframes and priority around this matter this appointment is the only realistic option.

10. We have spoken to Tim and indicated that whilst this would likely be for a maximum period of 2-3 months, he indicated that should this look like going beyond this period he was receptive to extending this period and considering a revised (lower) rate.

Non-Competitive Action

11. The services of Melville Management Ltd, the service company of Tim Hair, are being procured through a Non Competitive Action (NCA). Normally, and to comply with procurement legislation, we would run a competitive tendering exercise prior to awarding a contract but we are confident that the urgent need to secure a Turnaround Director allows us to rely upon a derogation from competition permitted by the legislation to award make a direct contract award. In addition, the sensitivities around the operating position of the business would have been exposed had we entered into a normal and open procurement process.

12. Nonetheless, the NCA approach still requires us to publish a contract award notice within 30 days on the Official Journal of the European Union and the PublicContractsScotland websites, publicising the fact that we have awarded a contract and identifying both the contractor and the potential value of contract.

13. Once the existence of the contract becomes public knowledge a company/individual that feels it could have performed the contract may challenge the decision not to put the contract out to tender in the first instance, possibly on the basis that the derogation test that the need for a contract for a Turnaround Director was unforeseeable by SG until a point where there was no time left to run a competition had not been met. In those circumstances, the worst case scenario could be a legal challenge where the court finds that SG had insufficient grounds to rely upon the derogation from competition and requires that the contract be terminated with immediate effect and SG could also be fined.

Recommendations

14. You are asked to agree that the FMEL Newco enter in to a contract with Melville Management Ltd, the service company of the chosen Turnaround Director for FMEL, Tim Hair, at a cost of £2,850 per day plus reasonable expenses; and

15. To note that, given the extreme urgency to appoint a Turnaround Director and in line with regulation 33(1)(c) of the Public Contracts (Scotland) Regulations 2015, these service are being procured through a Non Competitive Action.

Liz Ditchburn
DG Economy

[Redacted]

From: Rollison R (Richard)
Sent: 27 October 2019 10:05
To: [Redacted]
Subject: Project Kildonan - Turnaround Director Approval - 13 August 2019

From: [Redacted] > **On Behalf Of** Cabinet Secretary for Finance, Economy and Fair Work

Sent: 13 August 2019 16:38

To: Cabinet Secretary for Finance, Economy and Fair Work <[Redacted]>; [Redacted]

Cc: First Minister [Redacted]; Lord Advocate [Redacted]; Deputy First Minister and Cabinet Secretary for Education and Skills [Redacted]; Cabinet Secretary for Transport, Infrastructure and Connectivity [Redacted]; Minister for Public Finance and Digital Economy [Redacted]; Permanent Secretary [Redacted]; Minister for Business, Fair Work and Skills <[Redacted]>; DG Economy <[Redacted]>; Rollison R (Richard) <[Redacted]>; Chief Executive Transport Scotland <[Redacted]>

[Redacted]

Subject: RE: Project Kildonan - Turnaround Director Approval - 13 August 2019

[Redacted]

The Cabinet Secretary has asked to add in that he notes the advice re the high cost but that we need to do this now, however we must look to get permanent management in at a lower cost at the earliest stable opportunity.

Other POs – this will be sent at 1900 tonight so grateful if you could flag any queries before then.

Thanks

[Redacted]
Private Secretary to Derek Mackay MSP, Cabinet Secretary for Finance, Economy and Fair Work
The Scottish Government
St Andrew's House | Regent Road | Edinburgh | [Redacted]

[Redacted]

From: [Redacted] **On Behalf Of** Cabinet Secretary for Finance, Economy and Fair Work
Sent: 13 August 2019 16:06
To: [Redacted] >; Cabinet Secretary for Finance, Economy and Fair Work <[Redacted]>
Cc: First Minister <[Redacted]>; Lord Advocate <[Redacted]>; Deputy First Minister and Cabinet Secretary for Education and Skills <[Redacted]>; Cabinet Secretary for Transport, Infrastructure and Connectivity <[Redacted]>; Minister for Public Finance and Digital Economy <[Redacted]>; Permanent Secretary <[Redacted]>; Minister for Business, Fair Work and Skills <[Redacted]>; DG Economy <[Redacted]>; Rollison R (Richard) <[Redacted]> Chief Executive Transport Scotland <[Redacted]>

[Redacted]

Subject: RE: Project Kildonan - Turnaround Director Approval - 13 August 2019

[Redacted]

The Cabinet Secretary is content to approve.

Thanks

[Redacted]

**Private Secretary to Derek Mackay MSP, Cabinet Secretary for Finance, Economy and Fair Work
The Scottish Government**

St Andrew's House | Regent Road | Edinburgh | EH1 3DG | [Redacted]

[Redacted]

From: [Redacted]

Sent: 13 August 2019 15:51

To: Cabinet Secretary for Finance, Economy and Fair Work [Redacted]

Cc: First Minister [Redacted]; Lord Advocate [Redacted] Deputy First Minister and
Cabinet Secretary for Education and Skills [Redacted]; Cabinet Secretary for Transport, Infrastructure and
Connectivity [Redacted]; Minister for Public Finance and Digital Economy [Redacted]
Permanent Secretary [Redacted]; Minister for Business, Fair Work and Skills
[Redacted]; DG Economy [Redacted]; Rollison R (Richard)
[Redacted] Chief Executive Transport

Scotland

[Redacted]

Subject: RE: Project Kildonan - Turnaround Director Approval - 13 August 2019

Importance: High

[REDACTED]

[REDACTED]

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