IR35 & Off-Payroll Working Compliance Policy Notice

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Purpose
The purpose of this policy is to ensure that internal staff of the Shamrock Group fully understand and comply with the requirements of the off-payroll working legislation (i.e. IR35).

IR35 compliance is essential in the recruitment industry, and as a corporate group, we are committed to maintaining the highest standards of compliance.

1. What is IR35?

IR35 refers to the off-payroll working legislation that targets disguised employment within the contractual supply chain when individuals provide services through an intermediary, typically a personal service company (PSC).

Under the legislation, the "Client" is the party in receipt of services from the PSC, which is an independent business operating on its own account. As such, where it is determined that the individual would be an "employee" of the Client for tax purposes, if not for the use of the individual's PSC, then IR35 would apply. In such circumstances, payments made to the PSC must be subject to deductions of income tax and National Insurance contributions (NICs).

Therefore, the purpose of IR35 is to ensure that individuals who work in a manner that is essentially the same as that of an employee, but who operate through a PSC to avoid tax and NICs, pay the same tax as they would if they were directly on the Client's payroll.

Key points about IR35 determinations:

- **Inside IR35**: If the individual is determined to be "inside IR35," it means they are effectively working as an employee for tax purposes, and their earnings must be processed through PAYE (Pay As You Earn). This means tax and NICs must be deducted at source. The IR35 rules have specific calculations set out in statute, so please contact the Head of HR, via emailing humanresources@shamrockgroup.ie if this applies to any engagement you may have arranged or booked. Further information can be found under paragraph 4 of this policy.
- **Outside IR35**: If the individual worker providing services from their PSC is "outside IR35," they are considered self-employed for tax purposes and are therefore outside of the scope of the legislation. This means their PSC can be paid in gross (subject to any other tax provisions, such as CIS).

2. IR35 Compliance Awarenesss

As part of Shamrock Group's commitment to IR35 compliance, this detailed document outlining IR35 has been made available to our workforce. This document can be accessed via our company wiki. All internal staff members are required to familiarise themselves with the content of this policy.

3. Correspondence and Communication Record-Keeping

HR will be the point of contact relating to all internal communications regarding IR35 compliance. If you have any questions regarding IR35 (including its application and/or process), you must ensure you contact HR before proceeding.

It is expected that internal staff will have questions relating to IR35 compliance from time to time, given its technical nature and legal complexity. Staff are not expected to know all the answers relating to IR35, and thus, contacting HR before proceeding is imperative in such instances.

Additionally, all internal and external records and communications (including email correspondence) relating to the following should be kept for auditing and compliance purposes (including data protection compliance for financial records as required under the UK GDPR):

- Status determination statements (i.e. SDS)
- Status disagreements
- Contracts
- Payments received/made in accordance with the contractual supply chain
- Substitutions (see our Substitution Policy for further information)

Therefore, employees may be asked to produce such communications and records from time to time insofar as they relate to IR35 compliance and failure to do so may result in disciplinary action.

4. Inside IR35 Determinations

Shamrock Group's policy is to make PAYE & NICs deductions when making payments to PSCs where we have received confirmation of the "Inside IR35" assessment from the Client. Specifically:

- We require a formal IR35 determination, i.e. a Status Determination Statement (SDS), from the Client confirming that the individual worker is inside IR35.
- It is required that the Client issues the SDS (with the "inside IR35" determination) to both the individual worker and the next qualifying party within the supply chain, i.e. the party the Client directly contracts with. For the avoidance of doubt, we will typically be the party directly contracting with the Client. If there are other parties within the supply chain, i.e. an umbrella company, it will be our responsibility to pass the SDS to the umbrella. Depending on the contract, we may also be required to pass the SDS to the individual worker upon its initial receipt.
- If the Client is deemed to be a "small company" as defined under the IR35 rules, and thus outside the off-payroll IR35 legislation, we will proceed without the need for an SDS. It is the Client's responsibility to determine and communicate their company size under the legislation.

Please note, where the engagement has been deemed as inside IR35, we may engage the individual worker directly using an alternative method of engagement, e.g. as a temporary agency worker and then operate PAYE accordingly. However, if the individual worker wishes to dispute the SDS (or alternatively, there are reasons to believe the SDS may not have been validly issued), please contact HR in the first instance and wait for further instructions.

5. Using HMRC's Check Employment Status for Tax (CEST) Tool

Shamrock Group requires, where applicable, the use of HMRC's **Check Employment Status for Tax (CEST)** tool to assess whether an individual is inside or outside IR35. The CEST tool is a free, online tool designed to assist businesses in making IR35 status determinations for their contractors.

Where we are the "Client" for IR35 purposes, a status assessment will need to be carried out using HMRC's CEST Tool. However, where we are not the "Client" for IR35 purposes, the CEST Tool may be used to check whether an SDS received by a Client is correct. Either way, this will be completed by HR but will require input from consultants.

It is **critical** that all questions answered through the CEST tool are done so honestly and accurately, reflecting the true working relationship between the individual worker and the Client. The purpose of the tool is to ensure compliance with IR35; therefore, input from consultants will be essential for accurate results.

Any attempt to skew the input provided to HR or the results themselves towards a desired outcome (e.g., falsely indicating that an individual is outside IR35 when they are inside) undermines the integrity of the process and could lead to serious consequences.

Key Considerations for the CEST Tool:

- **Honesty is paramount**: All information provided to HR, to be used in the CEST questions, should accurately reflect the reality of the working arrangements.
- **Review the results carefully**: The CEST tool will provide a determination based on the answers given. If the result is unclear or borderline, further review and consultation may be necessary.
- **Record the results**: A copy of the CEST determination should be retained for record-keeping purposes. This will serve as evidence of the IR35 status in case of a future audit or review.

Where an SDS is received from the Client, we will usually follow it, unless challenged properly with the Client, either by us or by the individual worker, in which case, HR will carry out a CEST Tool assessment as part of that process.

6. Record Keeping and Compliance Tracking

Shamrock Group ensures that all IR35 determinations (i.e. SDS) received are stored securely in our internal database. These determinations are flagged in our system, enabling us to track and verify payment methods. For example:

- If a determination confirms that an individual is **inside IR35**, records must be kept as to the mode of engagement and the method of payment. As above, where an "inside IR35" SDS is received, we may engage the individual directly using an alternative method, e.g. temporary agency worker via PAYE (no PSC) instead of operating PAYE on the payments made to the PSC. Therefore, please consult and confirm with both HR and Payroll as to the method of engagement and method of payment, ensuring all necessary information is retained for record-keeping purposes.
- If the determination is valid and indicates the individual is **outside IR35,** payment can be made according to the agreed contractual terms, in compliance with the relevant IR35 legislation.
- All assessments to be stored by HR

In cases where the PSC is engaged by one of our PSL umbrella companies, we will need to forward any IR35 assessment we receive to the relevant umbrella provider's predetermined mailbox to ensure they follow the necessary compliance processes.

7. Payroll and Finance Reports

To further reinforce our commitment to IR35 compliance, Shamrock Group runs weekly reports through our payroll and finance systems. These reports flag any payments made directly to PSCs, allowing us to ensure that all payments comply with IR35 determinations before they are processed. Any issues identified in these reports are addressed promptly, and the relevant corrective actions are taken before payments are made.

Reports are regularly reviewed by key managers to ensure full compliance across the business. This process supports continuous improvement and reinforces our commitment to IR35 compliance.

8. Umbrella Company Compliance

Shamrock Group works with a number of umbrella companies to supply workers and PSCs. The following practices ensure that these suppliers comply with IR35 legislation:

- All umbrella companies must meet stringent compliance requirements to be included on our Preferred Supplier List (PSL). They must complete a compliance questionnaire reviewed by Chartergates, and failure to meet the standards results in the refusal to join or continued membership in the PSL.
- We carry out annual audits of all umbrella companies, including the review of their compliance with the IR35 legislation. Should any concerns or weaknesses arise during these reviews, follow-up audits are conducted throughout the year. These audits help ensure that all umbrella companies meet the necessary standards.
- Any umbrella companies found not to comply with the current IR35 legislation or those who fail to pass the review process will be removed from our PSL.

9. Umbrella Company Contracts

Shamrock Group requires all umbrella companies we engage with to comply with the terms outlined in our umbrella-specific contracts. These contracts reinforce the need for all umbrella companies to adhere to the current IR35 legislation. The terms include provisions for corrective actions should any non-compliance be detected.

10. Communication with Clients: Ensuring Accurate IR35 Information

When communicating with Clients about IR35 at any point, it is crucial that all staff members of the Shamrock Group comply with the IR35 legislation. For the avoidance of doubt, communications with clients will need to be retained for record-keeping purposes in accordance with paragraph 3 of this policy. Therefore, any communication that misrepresents or provides inaccurate information about compliance which could result in serious consequences for both Shamrock Group and the client, will result in disciplinary action against the employee providing such information.

Key points for effective communication with clients:

- **Clear and accurate information**: Always ensure that any IR35 determinations are based on actual assessments and that no assumptions or misleading statements are made.
- **Avoid making unsupported claims**: We must not make blanket statements such as "all contractors are outside IR35" without proper status determinations in place.
- **Liability for misleading information**: If we provide misleading information and, as a result, the client fails to provide the proper IR35 status determination, **Shamrock Group could be held liable contractually**. This could lead to financial and reputational damage, and may result in Shamrock Group being held responsible for any unpaid tax or penalties.

We must ensure that all communications with clients are clear, precise, and compliant with the relevant legislation.

11. Legal Assistance and Support from Chartergates Legal Services Ltd.

Shamrock Group has retained **Chartergate Legal Services Ltd (“Chartergates”)** to provide expert legal advice on all matters related to IR35 compliance. Their legal expertise will help us navigate complex IR35 issues, ensuring that we make well-informed decisions in line with the latest legislation.

HR will liaise with Chartergates as needed. Therefore, please ensure any questions you may have in relation to IR35 are directed to HR in the first instance.

Chartergate Legal Services Ltd will also conduct **mock audits** of our IR35 processes and practices to ensure that we are abiding by this policy. These audits serve as a proactive measure to identify and address any potential compliance gaps before they can become significant issues. The results of these audits will be reviewed, and any necessary adjustments to our processes will be implemented immediately.

12. Ongoing Reviews and Audits

We are committed to maintaining a robust audit process. Regular internal audits and external reviews ensure the integrity of our IR35 compliance practices. In addition to annual reviews of our umbrella companies, Shamrock Group will undertake ad-hoc audits when required to address any emerging concerns or changes in legislation. These audits help us continuously improve our processes and maintain a high level of compliance.

13. Penalties for Non-Compliance

Failure to comply with IR35 can result in severe financial and legal consequences. The penalties for non-compliance may include:

- **Fines and Penalties**: HMRC can impose penalties for failing to meet IR35 requirements. These penalties can range from a percentage of the unpaid tax to severe financial fines if non-compliance is found to be deliberate or negligent.
- **Tax Liabilities**: If it is determined that a worker should have been inside IR35 but was incorrectly paid as if outside IR35, the company, as well as the worker, may be liable for the unpaid tax and National Insurance contributions. This includes both employer and employee contributions.
- **Legal Action**: Repeated or deliberate non-compliance may result in legal action, including the potential for court cases, damaging the company's reputation and potentially leading to further financial penalties.
- **Reputational Damage**: Non-compliance with IR35 could harm the reputation of Shamrock Group and damage relationships with clients, contractors, and umbrella companies.

Shamrock Group is committed to avoiding such penalties by ensuring 100% compliance with the IR35 regulations.

14. Training and Awareness

Shamrock Group offers ongoing training to all internal employees and staff to ensure that you remain up to date with the latest IR35 regulations and best practices. The company will provide additional guidance where necessary to ensure all involved parties are fully informed and compliant with the rules.

15. Enforcement

Shamrock Group takes IR35 compliance seriously, and non-compliance by any internal or external party may result in actions ranging from remedial measures to termination of contracts with suppliers or employees. It is our goal to ensure that we maintain compliance at all levels of the organisation, including PSC contractors, suppliers, and umbrella companies.

By signing below, I confirm I have read and understood the attached policy.

Signed By: ________________

Signed Date: ________________