AUDIT • TAX • ADVISORY

Academy Advisor
Newsletter

Spring 2019

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Welcome to our regular newsletter for Academies and Free Schools

In this edition we cover:

- Making Tax Digital
- Related Party Transactions
- Resource benchmarking
- Termination payment changes
- Employment allowance changes
- IR35 - Intermediaries legislation
- Teachers' Pension eligibility
- Teachers' Pension contributions
- Lord Agnew's letter - excessive high pay
- Timetable for upcoming submissions

Academy Update

Welcome to our latest edition of Academy Adviser. As we go to press we understand that the DfE are due to publish a standard academy Chart of Accounts late March or early April.

As audit season has come to an end, one can reflect on how well or how difficult it was to meet the various deadlines. According to ESFA, 94% of all Financial Statements were on time, an improvement on last year, where only 92% of trusts met the deadlines. The percentage of financial statement opinion qualifications remained similar to 2016/17 at 1.8%, with an increased 'emphasis of matter' opinions related to 'going concern'. The percentage of modified regularity opinions was slightly lower thank 2016/17 at 4.4%, but reasons remained constant with previous years.

There were a number of common themes arising from the ESFA's assurance work in 2017 to 2018. The top 3 reasons for modified regularity opinions were non-compliant procurement practices, weak internal control arrangements and inadequate financial management and reporting arrangements. The main issues were:

- Trusts unable to demonstrate goods and services procured 'at cost'
- Non-compliance with own procurement procedures
- The board not maintaining an appropriate scheme of delegation of financial powers to ensure robust internal control
- Insufficient segregation of duties when making payments
- Transactions by credit cards not complying with own procedures
- Purchases made without appropriate approvals
- Boards not receiving sufficient information regarding financial performance at least 3 times a year
- Trusts not preparing monthly budget monitoring reports.

The ESFA also noted that the main weakness identified relating to Academy funding audits was academies not maintaining sufficient evidence to support entitlement to free school meals at the census point.

With the ESFA seeking to raise the profile of the management letters last year, it was unsurprising that the number of points raised in the management letters increased. Approximately a third of trusts had a recurrence of issues from year to year and those who had a repetition of the most serious issues should expect a visit, and / or some form of intervention from ESFA.

Having signed off the accounts, be sure that you have alerted your auditor to any request from HMRC for a corporation tax return for 31 August 2018. About 25% of Trusts receive such requests, so if you had one last year, you may not need one this year and, similarly, this may be the first year for such a request. The good news is that the deadline for submission of the 2018 CT600 return will usually be 31 August 2019, but if any corporation tax is payable, the payment date is 31 May 2019, so do not delay in letting your advisor know. Even if no tax is payable, a computation and return and suitably iXBRL tagged accounts are required by HMRC.

In this edition of Academy Advisor, we have highlighted a number of important updates that you should be aware of. If anything is unclear or if you need further advice and support, please do not hesitate to get in touch with your local office.

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Related Party Transactions

The board of trustees are required to manage personal relationships with related parties to avoid both real and perceived conflicts of interest and to promote integrity and openness.

Where relationships with related parties may attract greater public scrutiny, for example, transactions with the chair of the board or the accounting officer, or payments to related organisations with a profit motive (as opposed to those in the public or voluntary sectors) or relationships with external auditors beyond their duty to deliver a statutory audit, the trust must keep sufficient records, and make sufficient disclosures in their annual accounts, to show that these transactions have been conducted in accordance with the high standards of accountability and transparency required.

From 1 April 2019, Trusts must report all transactions with related parties to ESFA in advance of the transaction taking place, using ESFA's on-line form and must obtain ESFA's approval for:

- Transactions with related parties that are novel (outside of normal business), contentious (may cause criticism) and/or repercussive (have wider financial implications for other Trusts).
- Contracts for the supply of goods or services to the trust by a related party, where:
  - the contract exceeds £20,000,
  - where the total value of contracts would exceed £20,000 in the same financial year ending 31 August,
  - a contract of any value would mean that the £20,000 threshold has been exceeded in the same financial year ending 31 August.

For the purposes of reporting to, and approval by, ESFA, transactions with related parties do not include salaries and other payments made by the trust to a person under a contract of employment through the trust's payroll.

Prior contracts will still be subject to the 'at cost' and 'disclosure' rules in the Academies Financial Handbook (AFH) but will not be subject to the new notification and approval regime.

A proposal was made at a recent ESFA working party meeting, that recipients of donations or income from a related party should not be subject to the notification and approval regime and that charitable school funds should be exempt from the new requirements. We are currently awaiting further clarification on this point.

For further support or advice, please contact your local office.

Resource Benchmarking

It is important for academy trusts to benchmark income and expenditure annually against that of other similar trusts to identify meaningful trends and the reasons for discrepancies.

The DfE have published a school resource management self-assesment tool (www.gov.uk/government/publications/school-resource-management-self-assessment-tool) containing a large number of measurements to highlight areas where financial management and efficiency can be improved.

Benchmarking data can help guide:

- Planning and managing school budgets
- Identifying areas and setting targets for improved use of resources
- Achieving value for money in expenditure, focussing on improving its effectiveness in driving performance
- Reviewing of school contracts for procuring goods
- Delivering educational services to a defined standard

You should select a cohort of schools with similar characteristics to the school you wish to benchmark, such as size, location, percentage of SEN students or number of deprived pupils. The ESFA offer a Schools Financial Benchmarking service, using data from the Academy Accounts Return (AAR) of all academy trusts. You can use their online tool to set your parameters and view the results at: www.education.gov.uk/sfb.

When interpreting the data, further investigation may be required to understand why there may be significant differences in expenditure or income. The results of the benchmarking exercise should identify if changes or improvements need to be made at your trust.

We offer a bespoke benchmarking report for our clients, which provides comparisons with other academies within the local area as well as the national picture. The data is presented in a range of charts and tables to demonstrate clearly how a trust compares and identifies opportunities or scope to generate additional income or reduce expenditure. Please contact us for further details.

Employment Allowance changes

HMRC introduced a scheme in April 2014, allowing employers to claim the 'employment allowance' to reduce their Class 1 NICs by up to £3,000 each tax year. Most businesses and charities can currently claim the deductions but there are some exclusions (most notably a restriction that only allows one company within a group to claim the allowance).

From April 2020, the government has announced that access to this allowance will be restricted further, so that only businesses and charities with an employer NIC liability of less than £100,000 in the previous tax year will be eligible to claim the allowance.

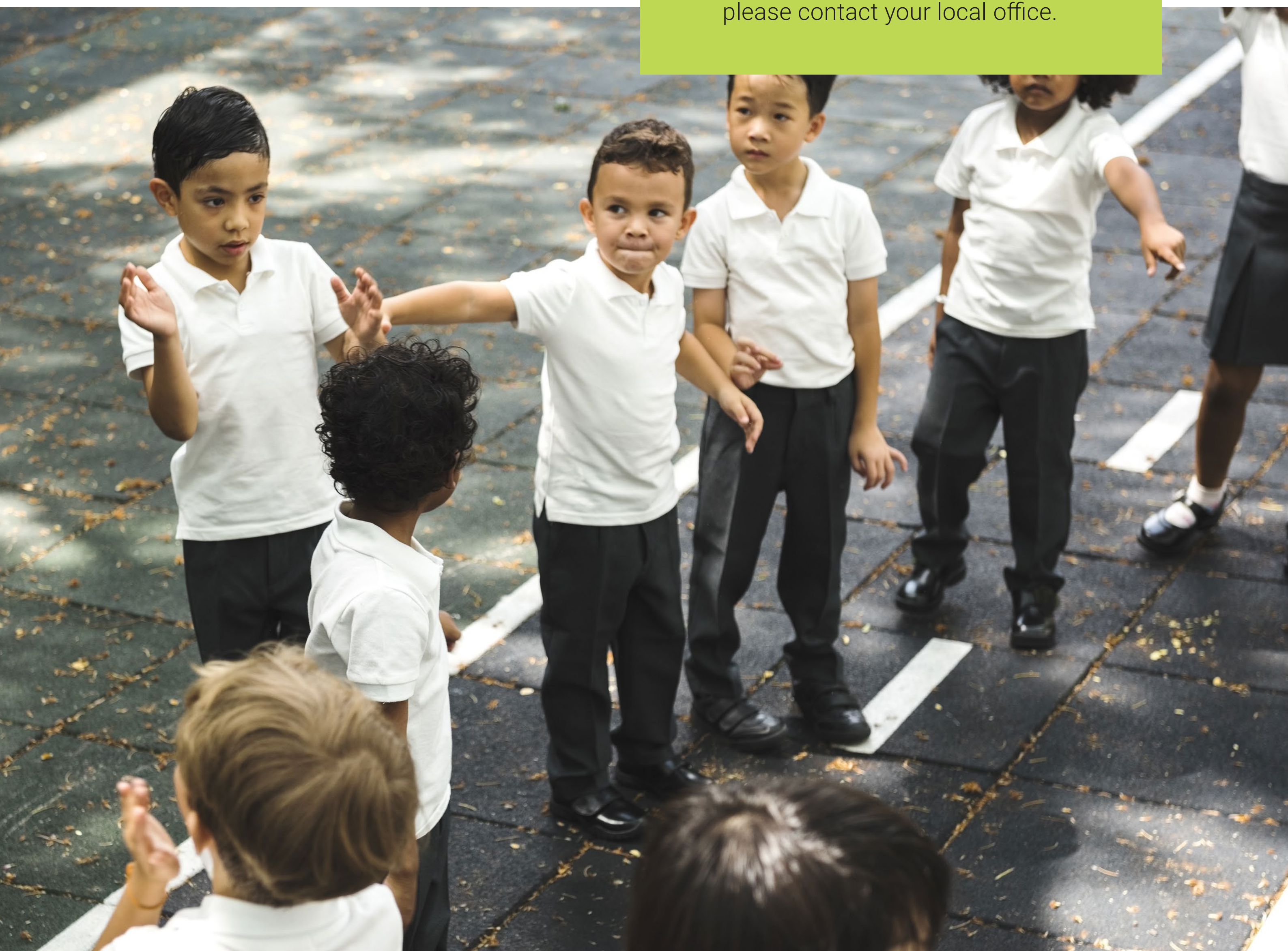
Termination Payment changes

Changes to termination legislation were introduced by Finance (no. 2) Act 2017 and came into effect from 6th April 2018.

Specifically, any payment in lieu of notice ('PILON'), whether contractual or otherwise, will be fully subject to tax and National Insurance Contributions (NICs).

In addition, from April 2020 the existing £30,000 income tax exemption for genuine non-contractual termination payments will remain, however, the employer will be required to pay Class 1A NICs on payments in excess of the £30,000 threshold.

For further support or advice, please contact your local office.



IR35 –
Intermediaries Legislation

The Intermediaries legislation, usually referred to as IR35, was introduced in April 2017 and currently applies to the public sector (including local authorities, the NHS, and educational establishments). It is designed to make sure contractors pay the required tax and National Insurance on their earnings by shifting the responsibility for determining the employment status of contractors to the public sector body who engages them. The Government is currently in the process of extending IR35 rules to the private sector by April 2020.

Specifically, public sector bodies have been required to examine the arrangements they have with workers who supply their services through intermediaries, including agencies, partnerships and personal service companies (PSCs), and where, but for the existence of the intermediary, the arrangement would be one of employment, public sector engagers are required to pay HMRC the tax and National Insurance on the deemed employment payment, deducting those amounts from the amount it pays to the PSC.

IR35 could be relevant to academies where a supply teacher, consultant or interim Head Teacher is used for an extended period of time, and is paid through a PSC. It is therefore strongly recommended that Academy Trusts paying workers through intermediaries keep contracts and arrangements under regular review to ensure any off-payroll workers are genuinely self-employed and not caught by the legislation.

We have a highly experienced team of specialists who can help you embark on a programme to identify any contracts that are at risk and plan how to manage any potential changes to ensure compliance. Our own series of tests can be used as another option to HMRC's Employment Status Service (ESS) test.

If you would like further advice or have any queries, please contact:

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The following factors should be considered for each worker:

- Is the worker required to provide their own personal services or is s/he able to offer a substitute or sub-contract work?
- Is the end client obliged to offer work and the worker obliged to do this throughout the contact?
- Does the worker have the right to terminate the contract at any time? If so, please consider the notice period.
- Does the worker have autonomy of his/her methods of work?
- Does the worker have to report to a manager who supervises his/her work?
- Is the worker entitled to choose their own hours of work?
- Does the worker use his/her own tools and equipment to carry out the services?
- Does the worker quote on an assignment basis or is s/he paid for whatever work is done?
- Is the client financially responsible for any worker required to correct any defects in his/her own time?
- Does the worker need to obtain permission to take time off?
- Is the worker subject to any internal rules and regulations of the end client that are similar to those that apply to employees of the client e.g. does the worker claim for reimbursed expenses using the client's own expense claim forms?
- Does the worker's company have business insurance such as public liability or professional indemnity?
- Has the worker ever been an employee of the client? If yes, is the worker providing the same services?
- Is the worker entitled to use any staff-only facilities?
- Is the worker clearly identifiable as a contractor when attending the client's site and treated as such? E.g. attending staff meetings, staff social events, having a staff email address.
- Does the client prevent the worker from doing work for other clients during the engagement?
- Is the worker entitled to any holiday or sick pay or other employee type benefits?

There is an online Employment Status Service (ESS) test, which provides the view of HMRC on whether a worker on a specific engagement, should be classed as employed or self-employed for tax purposes and can be accessed: www.gov.uk/guidance/check-employment-status-for-tax. A printed copy of the result should be kept as evidence to confirm when each check was completed in order to comply with the legislation.

Teachers' pension eligibility

In order to be an eligible member of the Teachers' Pension Scheme (TPS), a member of staff should spend at least 30% of their time teaching. If they do not, they should be in the Local Government Pension Scheme (LGPS).

Members of the Senior Leadership Team could be at risk here, especially in some schools where Teachers have been promoted into leadership positions and have subsequently given up almost all teaching. Some members of the SLT are good at ensuring they undertake enough teaching sessions to maintain eligibility, however for some members of the SLT, such as the Head Teacher, it may not be possible or even appropriate to spend the required amount of time teaching.

Whilst there is no definition of 'teacher' in the TPS regulations, teaching work is specified in other legislation to include:

- Planning and preparing lessons and courses for pupils
- Delivering lessons to pupils
- Assessing the development, progress and attainment of pupils
- Reporting on the development, progress and attainment of pupils

While members of the SLT may not be directly involved in 'front-line' teaching, they may be actively involved in the assessment, development and reporting of pupil attainment. Ultimately it is up to the employer to determine whether or not someone can be a member of the scheme based on the Teachers' Pensions Regulations.

They should carefully consider whether the job description and responsibilities are adequate to meet the teaching requirement and that the decision can be defended if challenged; as action will be taken to correct the position, with contributions refunded should an individual be incorrectly placed in the scheme.

Teachers' pension contributions

We reported in our last edition of Academy Adviser, that HM Treasury have issued directions to the Government actuary, proposing a significant increase in employer pension contributions to the Teachers' Pension Scheme. It is largely expected that employer contributions will rise from 16.48% to 23.6% from September 2019.

We have raised concerns with the DfE that the impact of this increase in cost will be significant for academy trusts and will require consideration for the impact on reserves and potentially on going concern. For a typical academy school with a teaching salary cost of £2.8m, the additional 7.12% in employer contributions will mean an additional cost of nearly £200k.

The DfE has previously said that it is committed to funding this increase for academy trusts throughout the period covered by the current Spending Review (up to March 2020), but their approach beyond March 2020 will depend on the outcome of the next Spending Review, due later this year. It is worth noting that this increase is still 'under consideration' until the public spending review.

We will not have any clarity on what may or may not be funded and have strongly suggested that the position needs to be resolved well in advance of the Budget Forecast Return deadlines in the summer. Trustees should review and amend the budget forecasts for 19/20 onwards to account for the increase and consider where possible additional savings may be required in order to balance budgets.

Also, as part of the Spending Review, the Government will determine any future funding arrangements for 2020 to 2021 in respect of Teachers' Pay Grant.

Lord Agnew's letter – Excessive high pay

Lord Agnew wrote to Academy Trusts in February 2019 to highlight his focus on the divisive issue of high pay in the sector, where resources may be more effectively diverted to the delivery of front-line education.

He has encouraged trusts to consider these principles when setting pay levels for senior employees:

1. The educational performance of your organisation
2. Ensuring effective financial performance of your trust and a healthy, balanced budget; and
3. The number of pupils being educated in your trust and the degree of challenge in the roles of the highest paid.

Trusts will need to provide the following information for any individual earning more than £100,000:

1. Basic salary;
2. Contractual notice period;
3. Performance-related pay and other bonuses awarded during the financial year;
4. Pension contributions and payments in lieu of pension contributions, including information on participation in the TPS, the LGPS, or both
5. Salary sacrifice arrangements;
6. Compensation for loss of office;
7. Any sums paid under any pension scheme in relation to employment with the provider;
8. Other taxable benefits;
9. Non-taxable benefits that are available only to senior members of staff; and
10. Other remuneration and the cost to the provider of providing each type of remuneration.

Timetable for submissions

Month	Description	Deadline
March	ESFA issue guidance on 2018/19 Budget Forecast Return Outturn (BFRO) ESFA issue Academy revenue funding allocations for 2019 – 2020	
April	**Non** School Direct Grant assurance	05 April
May	Budget Forecast Return Outturn	18 May
	Audited Financial Statements to be filed with Companies House	31 May
	2018 to 2019 Academies Accounts Direction (AAD) to be issued	
	2018 to 2019 Budget Forecast Return (BFR) guidance to be issued	
June	DFE academies sector annual report & accounts (SARA) to be published	
	2019 Academies Financial Handbook (AFH) to be issued	
July	2018 to 2019 Budget Forecast Return (BFR) due	27 July

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