

## **IR 35 Forum Minutes**

100 Parliament Street, Room G/57

Monday 17<sup>th</sup> July 2017

14:00-16:00

### **Attendees:**

Rowena Fletcher (RF)	HMRC (Chair)
Mark Frampton (MF)	HMRC
Adrian Dixon (AD)	HMRC
Damian Lazenby (DL)	HMRC
Alan Reay (AR)	HMRC
Nicholas Irvin (NI)	HMRC
Asif Choudhry (AC)	HMRC
Alison James (AJ)	HMRC
Chris Simons (CS)	HMRC
Travis Woodward (TW)	HM Treasury
Chiara Crean (CC)	HM Treasury
Samantha Hurley (SH)	Association of Professional Staffing Companies (APSCO)
Sarah Ghaffari (SG)	The Institute of Chartered Accounting in England and Wales (ICAEW)
Lewina Farrell (LF)	Recruitment and Employment Confederation (REC)
James Collings (JC)	The Association of Independent Professionals and the Self-Employed (IPSE)
Simon McVicker (SM)	The Association of Independent Professionals and the Self-Employed (IPSE)
David Kirk (DK)	
Julia Kermode (JK)	The Freelancer and Contractor Services Association (FCSA)
Jason Piper (JP)	Association of Chartered Certified Accountants (ACCA)
Kate Cottrell (KC)	Bauer & Cottrell
Danny Batey (DB)	Bauer & Cottrell
Carl Henning (CH)	Brookson Legal

### **Welcome & introductions**

1. RF welcomed attendees and placed on record her sincere thanks to Anita Monteith and Peter Bickley, who will be stepping down, for their contribution to the IR35 forum.
2. RF also welcomed new member Sarah Ghaffari to the IR35 forum.
3. The minutes and actions of the last forum were accepted and the action points were agreed to be dealt with by correspondence on an exceptions basis.

## Off-payroll reform update

4. HMRC spoke about the implementation of the reforms to off-payroll working in the public sector from 6 April 2017.
5. Points raised in discussion:
  - Check Employment Status for Tax (CEST) has been used c450,000 times and reaches a determination 85% of the time. Where it doesn't further guidance and the IR35 helpline are available to resolve these more complex cases.
  - It is not possible to attribute the proportion of the 450,000 uses that relates to the public sector reform, as this is the number of uses of CEST rather than the number of unique users. CEST also has a wider status application than just off-payroll determinations.
  - Some members said they had heard anecdotally that there had been high contractor attrition as a result of the reforms, leading to significant delays in public sector projects. HMRC has yet to see evidence of significant impact on contractor attrition rates or delays to projects.
  - Members were also concerned that some smaller public bodies have struggled to implement the reforms, with particular difficulties understanding the boundary between fully contracted out services and the provision of services.
  - HMRC recognised the concern that some smaller public bodies may not have the same level of awareness of the reform as central government departments, but has been working closely with organisations representing this customer group to cascade messages and raise awareness. Both these issues are also addressed in the online guidance.
  - **(AP1) HMRC to consider what more can be done to raise awareness in "harder to reach" parts of the public sector.**
  - HMRC acknowledged that some engagers are finding it difficult to judge whether substitution exists when making determinations and this was being addressed through ongoing engagement and more detailed online guidance on substitution.
  - Members also raised concerns that those caught by the reform were also losing their ability to claim travel and subsistence expenses, causing a negative impact on top of the direct impact of the reforms. HMRC was clear that where a person is genuinely self-employed they can continue to claim expenses, these reforms do not impact the genuinely self-employed but where a person would have been an employee except for the existence of a PSC, it is right that they are taxed in a similar way to an employee, who cannot claim the cost of commuting to work.
  - HMRC acknowledged that there has been growth in the use of umbrella companies and marketed avoidance schemes, and are taking action to address the latter. Members were concerned that some contractors are being forced to

work through umbrella companies and agencies are incorrectly treating workers as sole traders in order to not be caught by the reforms.

- **(AP2) HMRC to consider what further communications HMRC may be needed in respect of the shift in engagement models, and to raise awareness of avoidance schemes.**
- Members raised anecdotal suggestions that contractors are seeing lower pay rates when engaged by the public sector to reflect the additional tax cost to the public sector engager, for example employers NIC and apprenticeship levy. However, members also commented that some contractors are able to negotiate higher rates to compensate for the impact of the reforms. HMRC was not aware of any significant movement in contractor rates, but this is a contractual matter.
- Concern that reasons behind decisions of whether a worker is inside or outside of the legislation are not being passed further down the chain of engagement e.g. to second tier agencies. HMRC hope that the reasons for a determination would be made available to other parties further down the chain. However, the only person who is entitled to the reasons is the one who has the contract with the client, and so they are not required to pass them to other parties in the chain.

### **Check Employment Status for Tax (CEST)**

6. The service is still in public beta, but will be going live shortly. No further changes to CEST are envisaged at this time, but if customer feedback indicates the need to change parts of CEST HMRC will do so.
7. Points raised in discussion:
  - HMRC confirmed that when the tool is updated the previous results remain valid and there is no need to re-run CEST.
  - **(AP3) HMRC to release explanation notes following each change to the service.**
  - There are no plans for CEST to provide a unique reference number for each determination. Whilst members were keen for it to do so, this option had been discounted during design. Users of the tool should keep an electronic copy of the determination which would amount to the same thing.

### **Guidance products**

8. HMRC is refreshing the Employment Status Manual to consolidate existing guidance and improve readability for users. This will include looking at the current sector guidance, and considering which elements will be taken forward and where additional guidance may be appropriate.
9. Points raised in discussion:

- Employment rights and tax guidance pages are not currently interlinked, even when they are related for most individuals.
- **(AP4) HMRC to look at linking the rights and tax sections of guidance more closely.**
- Members asked for more examples of 'contracted out' and 'managed service'.
- **(AP5) HMRC to take this forward as part of the refresh of the guidance.**
- Members can send any questions and suggestions on the guidance to the IR35 inbox.

## Operational issues

10. Volume of calls to the IR35 helpline was continuing to fall, with 1,740 calls in March 2017, 1,380 in April, 1,208 in May, 1,135 in June and only 198 in the first week of July.

11. HMRC will be undertaking compliance activity with public bodies; focussing on the implementation of the reforms, checking compliance of the reforms and the correct treatment of workers under the off-payroll rules.

12. Points raised in discussion:

- Perception of compliance cases taking a long time to close. HMRC explained that the focus on the highest risk cases, often involving multiple engagements meant that cases could take extended periods to resolve. Conversely, cases where compliance was found to be good were closed quickly, and didn't give rise to concerns from customers, giving a distorted picture.
- It was noted that there had been no IR35 tribunal cases since September 2011. AR confirmed that there are cases that are likely to be litigated in the near future.
- Some customers were having to deal with different HMRC officers on their IT and CT affairs and are concerned at this disconnect.
- **(AP6) HMRC to look at the possibility of having the same contact for IT and CT where appropriate.**

## Review of the IR35 forum

13. Members have recently been emailed about a review of the forum and invited to have one to one conversations with DL. The review would be wide ranging including ToR and membership.

14. Points raised in discussion:

- Members were happy to help review the forum.
- Members would like a dial in facility for those unable to make the meeting in person

## **AOB**

15. Members asked if the recent reforms in the public sector would be extended to the private sector. HMRC explained that the current focus is on embedding the recent reform, and that it was not possible to comment on the plans of the new administration. However, we do of course want to see compliance improve in the private sector.

## **Closing**

16. RF thanked everyone for their attendance and input, and looked forward to the next IR35 forum in November. Minutes of the meeting would be sent in due course and DL would also be in touch regarding a review of the forum.