

IR 35 Forum Minutes

100 Parliament Street, Room 2/10

10 May 2018

14.00 – 16.00

Attendees:

Samantha Hurley (SH)	Association of Professional Staffing Companies (APSCo) - Chair
Rowena Fletcher (RF)	HMRC
Damian Lazenby (DL)	HMRC
Mark Frampton (MF)	HMRC
Paula Jarnecki (PJ)	HMRC
Tony Johnson (TJ)	HMRC
Jim Rogers (JR)	HMRC
Georgina Lowe (GL)	HMRC (Note-taker)
Stephen Herring (St H)	Institute of Directors (IOD)
Lewina Farrell (LF)	Recruitment and Employment Confederation (REC)
Sarah Ghaffari (SG)	Institute of Chartered Accountants of England & Wales (ICAEW)
Simon McVicker (SMc)	The Association of Independent Professionals and the Self-Employed (IPSE)
Julia Kermodé (JK)	The Freelancer and Contractor Services Association (FCSA) – by phone
Jason Piper (JP)	Association of Chartered Certified Accountants (ACCA)
Matthew Lewis (ML)	Confederation of British Industry (CBI)
Lesley Fidler (LFd)	Chartered Institute of Taxation (CIOT)

Apologies:

Phil McNeill (PM)	Institute of Chartered Accountants of Scotland (ICAS)
Annie Gascoyne (AG)	Confederation of British Industry (CBI)
Samantha Mann (SM)	Chartered Institute of Payroll Professionals (CIPP)
Gavin McCann (GMc)	HMRC
Alan Reay (AR)	HMRC
Allison James (AJ)	HMRC
Chris Simons (CS)	HMRC
Travis Woodward (TW)	HM Treasury

Welcome & introductions

1: SH welcomed members of the Forum, and asked HMRC to provide an update on action points. Details at Appendix 1.

Off-payroll working rules update

2: HMRC reminded members of the Budget 2017 announcement and confirmed they will let the Forum know as soon as the consultation is published.

3: HMRC asked for comments on the best way to consult with forum members. Members welcomed the offer of a roundtable discussion, but want some time to consider the document and gather evidence from members beforehand. It was agreed a structured conversation would be most useful, and we should use the opportunity of the consultation to draw out the differences between the public and private sectors, with insights from customers, clients and members. Members commented that any change to current rules would need careful management of the transition management period, given the size of the private sector. The forum would like specific options to put to their members for test and comment as well as an analysis of the public sector reform over a longer period.

4: HMRC provided an update on the implementation of the reform introduced in the public sector. Data shows that compliance has improved as a result of the reform. In the first 10 months an additional 90,000 engagements have been registered on RTI equating to 58,000 individuals paying income tax and NICs. HMRC estimates an additional £410m of income tax and NICs have been remitted since the public sector reform was introduced.

5: HMRC is aware of concerns about alleged blanket rulings and has worked to build a network of public bodies and their tax managers, providing help and guidance, encouraging consistency and sharing best practice. The level of direct contact has diminished as the level of expertise has increased and hiring practises have been reviewed. There will be occasions where workers are hired to carry out identical roles, with the same terms and conditions, and where the same determination is therefore correct. This is legitimate and does not amount to a blanket ruling. Treating people in the same factual position in the same way meets the statutory obligation to use reasonable care. Members maintained that blanket decisions were occurring.

6: HMRC referred to recent Freedom of Information requests concerning the use and development of CEST. Data shows that there have been over 750,000 uses to date, (compared with 80,000 for the previous Employment Status Indicator over how many years?). The uses are now fairly steady at around 40-50,000 per month. The determinations are in line with those from commercial tools (60/40 self-employed/employed). Whilst much had been made about HMRC not releasing documents from development meetings, it was important to recognise that CEST was developed using agile methodology. This means changes are made iteratively, with lawyers and other experts present. CEST has been tested using the core case law that people would expect, and details of those results have been published.

7: It was explained that there is no contradiction between the 60/40 split of self-employed/employed determinations and HMRC's estimate that 90% of contractors were not complying with the rules. The latter refers to those 90% of contractors who should be applying the rules, rather than to all contractors. In addition, CEST is available to all workers, including those who are directly engaged and do not work through their own companies, to check status, not just those considering the off-payroll rules.

8: HMRC does not have sector specific data although will investigate whether it is possible to find out whether there are particular issues relevant to some sectors.

AP1/May HMRC to discuss specific sector compliance with colleagues and liaise with REC about any issues which emerge (Mark Frampton).

Employment Status Consultation

9: HMRC reminded the forum that this consultation was published on 7 February and is open until 1 June. It is a joint consultation with BEIS and HMT, covering employment status for employment rights and tax. A number of roundtables have been held so far, with more planned. The consultation is very open and aims to identify issues with the current system and whether legislative change would help achieve clarity and certainty.

Interest on IR35 Settlements

10: ICAEW had raised concerns about the difference between interest charged, and repayment supplement paid. ICAEW saw the difference as punitive and an obstacle to settling enquiries. HMRC advised that there is a clear statutory position which is set out in TMA 70 S59D. Generally, where an amendment to a CTSA return produces a repayment, that repayment is subject to repayment supplement under ICTA 1988 S825 and 826. The differences in rate and the timing of the charge is contained in statute. There is no obvious statutory cover for a concession.

11: HMRC will consider the extent of collection and management powers and explore what other alternative basis there might be for computing settlements if that would assist cost effective settlement of enquiries. This is something that would also need to be considered in the context of the expected consultation on compliance with the off payroll working rules in the private sector.

AP2/May – HMRC to work with ICAEW on improved guidance on the existing rules, and alternative ways to offset interest charged and the repayment supplement (Mark Frampton and David Kirk)

Accounting for Off-payroll

12: HMRC had had a helpful conversation with ICAEW about the correct way to account for off-payroll. HMRC agree that both approaches, using either gross or net figures, are valid and have prepared examples of both for comparison. Members

also requested examples including VAT and FRS figures. HMRC will share the draft examples currently available, and will then prepare further examples to look at the VAT figures.

13: Forum members asked for guidance on how to treat tax and National Insurance if companies use gross figures, requesting guidance on the accounting, VAT and CT elements. HMRC agreed to prepare examples incorporating these points

AP3/May – HMRC to share initial draft accounting examples (Mark Frampton)

AP4/May – HMRC to prepare additional accounting examples to show VAT and CT positions as soon as possible (Mark Frampton and Alan Reay)

Compliance Update

14: In response to concerns from forum members, HMRC is exploring the feasibility of setting out standards/expectation of employment agencies and umbrella companies in relation to tax. Forum members were asked to share any standards they already have for their members, as well as any other relevant information. The work is very much at the feasibility and scoping stage, and HMRC will report back to the next Forum meeting about whether this can be taken forward.

AP5/May – HMRC to email forum members with details of project and request for information (Jim Rogers). Members to provide comments on “what good looks like”.

AP6/May – CBI to contact HMRC to share details of their new IR35 Working Group

AOB

15: Some forum members have examples of contractors affected by the contracted-out issues referred to in AP1/Dec. HMRC confirmed comments are welcome up to 31 May.

Provisional date of next meeting:

2 August 2018

Summary of Action Points:

AP1/May HMRC to discuss specific sector compliance with colleagues and liaise with Lewina Farrell about any issues (Mark Frampton).

AP2/May – HMRC to work with ICAEW to consider possible solutions to concerns about difference in interest and supplement rates. (Mark Frampton and David Kirk)

AP3/May – HMRC to share initial draft accounting examples (Mark Frampton)

AP4/May – HMRC to prepare additional accounting examples to show VAT and CT positions as soon as possible (Mark Frampton and Alan Reay)

AP5/May – HMRC to email forum members with details of project and request for information (Jim Rogers). Members to provide comments on “what good looks like”.

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Appendix 1

IR 35 Forum Action Points Review

10 May 2018

Action point number	Action	Lead	Due	update
AP1/Dec	HMRC to ensure that update guidance covers issues on exemptions and exceptions, especially on outsourced services	HMRC	31 May 2018	Draft examples have been shared with forum members – HMRC happy to take comments. Once agreed, the examples will be reinstated on Gov.UK
AP2/Dec	Forum members to submit queries on accounting adjustments for HMRC to consider when updating guidance	HMRC		Agenda Item
AP3/Dec	HMRC to work with members and CBI to consider how to resolve issues with supply chains	HMRC		Agenda Item
AP4/Dec	HMRC to review guidance on reclaiming NICs where the status decision is challenged in the SA return	HMRC		Link to guidance was included with minutes of February meeting - Close
AP6/Dec	HMRC to respond to queries about the inclusion of MoO in the CEST tool by end of January	HMRC		Paper shared with members, HMRC now considering the helpful feedback received
AP8/Dec	HMRC to approach suggested representatives (CBI, IOD, CIPP and FSB) for names of new members	HMRC		IOD member appointed - Close
AP9/Dec	HMRC to work with members to develop products for business providing guidance on working with umbrella companies	HMRC		Agenda Item
AP2/Feb	HMRC to publish the terms of reference and updated membership on the Forum website	HMRC	31 March 2018	Published 28/03/18 - Close
AP3/Feb	HMRC to share education materials with Forum members	HMRC	31 March 2018	Presentations and Webinar slides shared with members 20/03/18 - Close

