

IR 35 Forum Minutes

100 Parliament Street, Room GE24

30 August 2018

14.00 – 16.00

Attendees:

Rowena Fletcher (RF)	HMRC - Chair
Samantha Hurley (SH)	Association of Professional Staffing Companies (APSCo)
Damian Lazenby (DL)	HMRC
Mark Frampton (MF)	HMRC
Alan Reay (AR)	HMRC – by phone
Allison James (AJ)	HMRC
Stephen Gorham (SG)	HMRC
Georgina Lowe (GL)	HMRC (Note-taker)
Bunmi Adefuye (BA)	Recruitment and Employment Confederation (REC)
David Kirk (DK)	Institute of Chartered Accountants of England & Wales (ICAEW)
Sarah Ghaffari (SG)	Institute of Chartered Accountants of England & Wales (ICAEW)
Justine Riccomini (JR)	Institute of Chartered Accountants of Scotland (ICAS) – by phone
Samantha Mann (SM)	Chartered Institute of Payroll Professionals (CIPP) – by phone
Simon McVicker (SMc)	The Association of Independent Professionals and the Self-Employed (IPSE)
Chris James (CJ)	The Freelancer and Contractor Services Association (FCSA)
Jason Piper (JP)	Association of Chartered Certified Accountants (ACCA) – by phone
Vaneeta Khurana (VK)	Chartered Institute of Taxation (CIOT)

Apologies:

Lewina Farrell (LF)	Recruitment and Employment Confederation (REC)
Julia Kermode (JK)	The Freelancer and Contractor Services Association (FCSA)
Phil McNeill (PM)	Institute of Chartered Accountants of Scotland (ICAS)
Annie Gascoyne (AG)	Confederation of British Industry (CBI)
Paula Jarnecki (PJ)	HMRC
Jim Rogers (JR)	HMRC
Tony Johnson (TJ)	HMRC
Chris Simons (CS)	HMRC
Travis Woodward (TW)	HM Treasury

Welcome & introductions

1: RF welcomed members of the Forum. The action point register was read, updated and agreed. See Appendix 1.

CEST and mutuality of obligation (MoO)

2: Following publication of HMRC's paper on MoO, a number of constructive suggestions have been received on the further development of CEST. Further helpful comments have also been received as part of responses to the consultation on off-payroll working in the private sector.

3: Two possible options being considered are to include information about MoO on the CEST landing page, and to redraft HMRC's position paper on MoO to include additional material. Differences remain in the interpretation of MoO between HMRC and some stakeholders.

4: HMRC and forum members agreed it would be helpful to expand on HMRC's note on MoO to cover the competing arguments about the significance of continuing MoO where there is a succession of short engagements.

5: Forum members were of the view that CEST required some improvements to work more effectively in the larger and more diverse private sector. Areas of concern included: MoO; how CEST did or didn't deal with cases where an individual had a range of engagements which suggested they were in business on their own account; and that it should reflect the outcome of litigation since its introduction in March last year.

6: It was also suggested that specific guidance to help people complete CEST would be useful. One element being guidance on what information needs to be collected in advance in order to answer the questions; the second to provide further commentary to help with completion of the questions covering what they mean and their significance.

7: Forum members asked about letters, which are issued to a small number of individuals in the TV and Film Industry who have a pattern of multiple short term engagements and other circumstances that match those considered in *Hall v Lorimer*. Relevant guidance is already included in the Employment Status Manual (ESM) <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm4112> and detailed in the TV & Film Guidance Notes. http://webarchive.nationalarchives.gov.uk/20140206151750/http://www.hmrc.gov.uk/specialist/film_industry.htm

This guidance is under review with a view to including further material in the ESM. It was suggested it would be helpful to highlight Lorimer on the CEST landing page.

8: HMRC is already looking at where the CEST tool might be improved as part of normal good practice and will work with stakeholders to better understand concerns raised in responses to the consultation on off-payroll working. HMRC noted there are currently several litigation cases awaiting judgement, which are likely to help clarify some of the remaining points of difference between HMRC and some stakeholders.

9: HMRC commented that there needs to be a balance between a tool that is simple and straightforward with a relatively small number of questions, suitable for the majority of customers, and attempting to cover every eventuality. CEST currently provides a decision in 85% of cases. Detailed guidance is available for those more complex cases where CEST does not provide an outcome.

AP1/Aug: HMRC to produce a revised note on MoO

AP2/Aug: HMRC to update Forum once possible improvements to CEST have been considered.

AP3/Aug: HMRC to consider the need to provide additional guidance on completion of CEST.

Interest on IR35 settlements

10: Members considered papers from ICAEW and a presentation from HMRC on the related issues of the process for informal settlement of IR35 tax enquiries, and offsetting interest and repayment supplements, and how they might be improved. One obstacle to effective settlement is the belief of some clients that it is unfair that there is no statutory basis for offsetting the repayment supplement on the Corporation Tax reduced, against the calculation of statutory interest charged on the tax and NIC arrears. A second obstacle is that because no automatic offset is available, it is practically difficult for HMRC or an accountant to give the client a final figure for Corporation Tax and repayment supplement during contract settlement of the personal tax and NICs arrears. Customers can be reluctant to make an offer without a firm settlement figure. Members asked HMRC to look at the use of Collection & Management (C&M) powers to allow an offset and to streamline the settlement process.

11: HMRC confirmed that they had considered the case for non-statutory off-setting, and the use of C&M powers, however without some significant evidence that this would produce the same or a greater reduction in the tax gap, HMRC is not able to act. HMRC called for evidence that use of C&M powers would be more cost effective. HMRC did think that they could do more to make the settlement process clearer and easier. HMRC and Forum members agreed to set up a working group to develop a note for agents covering the settlement process. This would include worked practical examples to help with offsetting and tax calculation.

AP4/Aug: Forum members to notify secretariat if they wish to be part of the working group.

AP5/Aug: HMRC slide set on off-setting to be included with notes.

Off-payroll working guidance

12: HMRC thanked ICAEW for their helpful comment on how to improve HMRC's Off-payroll working in the public sector: reform of the intermediaries legislation - technical note: <https://www.gov.uk/government/publications/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note>

HMRC agreed the changes would make it clearer, and confirmed they will adopt most of the suggestions. HMRC will reply separately to each individual point by email, and share the correspondence with members prior to publication.

AP6/Aug: HMRC to respond to ICAEW on each point raised in their off-payroll guidance paper.

Accounting for off-payroll

13: ICAEW had shared the views of the Financial Reporting Council. HMRC agreed that they would share this more widely and publish an item in the next available Agent Update confirming that both net and gross figures are acceptable in calculations.

Update on agency/umbrella standards

14: Forum members had asked HMRC to explore the scope for developing some best practice standards to help address non-compliance, particularly by some umbrella companies.

15: HMRC have consulted with stakeholders, including BEIS who regulate agencies. Evidence suggests that the non-compliance is largely deliberate rather than a result of a lack of awareness, and in these circumstances, publishing standards would be ineffective. It was also unlikely that individuals, who may unwittingly use non-compliance intermediaries would be aware of published standards.

16: HMRC has recently published a Spotlight article which covers this issue: <https://www.gov.uk/guidance/umbrella-companies-offering-to-increase-your-take-home-pay-spotlight-45> which and confirms that HMRC will continue to robustly tackle non-compliance by employment intermediaries.

17: Members confirmed that this article has raised the profile of this issue and been welcomed by their members, as clear and helpful.

AP7/Aug: HMRC to send link to Spotlight article to all members.

Rights of appeal

18: HMRC thanked ICAEW for their paper setting out their interpretation of the NICs refund process. HMRC explained that NICs repayment applications are reviewed by HMRC. This might involve requests for additional information before or after the payment is made to enable HMRC to check the claim.

19: ICAEW agreed to amend their paper to reflect HMRC's comments.

AP8/Aug: HMRC confirmed that the ICAEW paper on NICs appeals is correct subject to the addition of material about the application process.

AOB

20: HMRC confirmed that the radio industry guidelines are still in use. HMRC also confirmed that they were working to refresh paper guidance which has been in place for a number of years, and incorporate it into the ESM so that it is more easily accessible and includes some modern examples to help the reader. HMRC has been discussing the ESM pages informally with customers in the radio industry.

21: Forum members asked when a response to the consultation on addressing non-compliance with the off payroll working rules will be published. HMRC explained that the government is considering the responses to the consultation before deciding how to proceed.

22: HMRC confirmed that the IR35 helpline is still operating. Forum members commented that they have always found the helpline staff to be very professional and helpful.

Summary of Action Points:

AP1/Aug: HMRC to issue revised note on MoO.

AP2/Aug: HMRC to update Forum once possible improvements to CEST have been considered.

AP3/Aug: HMRC to consider the need to provide additional guidance on completion of CEST.

AP4/Aug: Forum members to notify secretariat if they wish to be part of the working group.

AP5/Aug: HMRC slide set on off-setting to be included with notes.

AP6/Aug: HMRC to respond to ICAEW on each point raised in their off-payroll guidance paper.

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