

IR 35 Forum Minutes

100 Parliament Street,
21 November 2018 10.30 – 12.30

Attendees:

Rowena Fletcher(RF)	HMRC - Chair
Mark Frampton	HMRC
Anne Smith	HMRC
Justin Giles	HMRC
Tony Johnson	HMRC
Alan Reay	HMRC – by phone
Stephen Gorham	HMRC
Travis Woodward	HM Treasury
Millie Walker	HM Treasury
Georgina Lowe	HMRC (Note-taker)
Lewina Farrell	Recruitment and Employment Confederation (REC)
Sarah Ghaffari	Institute of Chartered Accountants of England & Wales (ICAEW) – by phone
Justine Riccomini	Institute of Chartered Accountants of Scotland (ICAS) – by phone
Samantha Mann	Chartered Institute of Payroll Professionals (CIPP)
Simon McVicker	The Association of Independent Professionals and the Self-Employed (IPSE)
Chris James	The Freelancer and Contractor Services Association (FCSA)
Jason Piper	Association of Chartered Certified Accountants (ACCA) – by phone
Lesley Fidler	Chartered Institute of Taxation (CIOT)
Matthew Lewis	Confederation of British Industry (CBI)

Apologies:

Samantha Hurley	Association of Professional Staffing Companies (APSCo)
David Kirk	Institute of Chartered Accountants of England & Wales (ICAEW)
Julia Kermode	The Freelancer and Contractor Services Association (FCSA)
Phil McNeill	Institute of Chartered Accountants of Scotland (ICAS)
Annie Gascoyne	Confederation of British Industry (CBI)
Damian Lazenby	HMRC
Chris Simons	HMRC

Welcome & introductions

1: RF welcomed forum members, and explained that Samantha Hurley had had to send apologies, so she would chair the meeting in Samantha's absence. The minutes of the meeting 30th August 2018 were agreed.

Off-payroll reform – discussion on Budget 18 announcement

2: HMRC thanked members for their constructive involvement with the consultation roundtable events, and for their responses to the consultation document. HMRC received over 270 responses to the consultation. This would be an opportunity to discuss a number of subjects raised, and update members on the next steps following the government's announcement at Budget 2018.

3: To help people comply with the existing rules and bring private sector organisations in line with public-sector bodies and agencies, the government announced that it will reform the off-payroll working rules (known as IR35) in the private sector. This follows consultation and the roll-out of reform in the public sector.

4: Simon McVicker raised the issue of so-called blanket rulings, and in particular recent articles posted online in the contractor press, which had included allegations against a named HMRC official. HMRC was clear that it is inappropriate for an official to be named, and that the articles had misrepresented what had been said. HMRC thanked forum members for raising this point and for their support.

5: HMRC explained the phrase “blanket rulings” is often used to refer to two different scenarios. The first, where an engager decides that all roles and workers are inside the off-payroll rules is not in line with the legislation, and HMRC has been clear that public bodies should not do this. The determination of status is dependent on the contractual terms and conditions, and actual working practices of an engagement. When HMRC has been made aware of blanket determinations, they have challenged the public authority concerned, and provided education and support to correct the position.

6: However, the term is also being applied to circumstances where, having reviewed one contract, an engager may consider that identical facts and terms and conditions apply to other contracts, and it is then not necessary to review every individual engagement separately. Forum members agreed it would be helpful to clearly minute this to enable them to rebut future allegations.

7: HMRC acknowledged the concerns about the capacity of the private sector to implement the reform. The government has listened to the concerns raised by businesses during the consultation and as a result, medium and large businesses will have until April 2020 to implement the changes, and the existing rules will continue to apply to the 1.5 million smallest businesses. Businesses will have more time to consider what changes they need to make, and to review any existing contracts. HMRC will provide support and guidance to help businesses implement the off-payroll working rules and ensure the guidance is appropriate to the larger and more diverse public sector.

8: Forum members welcomed the deferral until 2020, but were concerned that

detailed preparation cannot be completed until they have sight of the legislation and guidance. HMRC outlined the likely timescale, following the normal fiscal event timetable: the consultation on the detail of the reform, which will provide the framework for the reform, is expected in the New Year; meetings with stakeholders to discuss the CEST improvements are already taking place; draft legislation is expected to be published in the summer.

9: HMRC acknowledged these concerns, although noting this reform will build on existing awareness and knowledge from the public sector experience. Whilst the content of the consultation will be decided by ministers, it will include as much certainty as possible on the future framework of the rules.

10: Forum members suggested that the small business exemption would increase the administrative burden for agencies providing workers, as they will now need to establish whether the exemption applies. Members also raised the interaction with S282 of the Companies Act (Parent Companies). HMRC agreed that this is a complex area, and noted it for further discussion with agencies.

11: Forum members asked about the consultation on employment status for tax and employment rights. This was part of the government's response to the recommendations from the Matthew Taylor Review of Modern Working Practices. HMRC and HMT confirmed that the government was continuing to consider responses to the consultation and no decisions had yet been made on the timing or content of any announcement. HMRC commented that any wider reform of the employment status rules would likely be a longer term issue; there is an immediate need to tackle private sector non-compliance with the off-payroll rules, which results in substantial costs to the Exchequer.

12: HMRC assured forum members that education and support is being developed to ensure that people can get the information they need at the right time. HMRC will work closely with representative bodies and stakeholders, including forum members and tax agents, to both develop the guidance and support and educate their members and customers.

13: HMRC aims to publish draft guidance alongside the draft legislation. Forum members requested that the guidance should reflect more real life scenarios across a range of sectors and industries, and agreed to provide examples to HMRC.

14: HMRC are meeting a range of stakeholders, to discuss how CEST can be enhanced for the private sector. Forum members would like to be involved in these discussions, and volunteered to set up roundtables with their members. For these events to be meaningful, HMRC agreed to share more detail about plans to enhance CEST, as well as the wider package of surrounding guidance. HMRC thanked the forum for this helpful suggestion; guidance on how to complete CEST, which was suggested at the August forum meeting, will be developed.

15: Members highlighted areas where they are keen to see guidance, including details on who will be excluded from the reform. Members also asked how HMRC would tackle non-compliance amongst those contractors who provide their services to small business and continue to operate the existing rules. HMRC explained it will continue to adopt a risk based approach to compliance activity, in line with its strategy.

16: Members commented that it is very important for HMRC to consider where the liability ultimately falls in cases of end-client inaccuracies. HMRC noted this had been raised during the consultation, and that policy solutions are being considered.

17: Members raised concerns about payment intermediaries, in particular non-compliant umbrella companies. It was acknowledged that this links to the BEIS conduct regulations document for agencies and umbrellas, but that is not expected until next year, and will largely be of interest to already compliant businesses. Members felt that action is needed sooner. Examples of recent cases were given, often involving VAT flat-rate scheme, and phoenixism. HMRC acknowledged that this is a continuing area of concern, and that compliance action in this area needs to be more visible.

18: Members requested more clarity on the issue of historic claims and liabilities. HMRC confirmed it will focus its efforts on ensuring businesses comply with the reform rather than historic cases, as they have in the public sector. HMRC will not carry out targeted campaigns into earlier years for individuals who are found to be within the rules. Businesses' decisions about whether their contractors are within the rules will not automatically trigger an enquiry into earlier years.

19: Members referred to the issue of employment rights, highlighting a recent case, settled before reaching the Employment Tribunal, apparently on the basis that the individual was entitled to holiday pay. HMRC cannot comment on individual cases, but as the case was settled before reaching tribunal, it does not set a precedent. Forum members mentioned that although there is no legal precedent, there has been publicity, making other workers in a similar position aware of the possibility of a successful claim. HMRC reiterated that the decision does not set a precedent.

AP1/Nov: Forum members to provide suitable real life examples to HMRC to consider for inclusion in the draft guidance. (Para 13)

AP2/Nov: HMRC to ensure that forum members are able to engage with the project to enhance CEST. (Para 14)

AP3/Nov: HMRC to consider how best to address the forum's ongoing concern about non-compliant intermediaries, and report back to a future forum meeting. (Para 17)

Update on Ongoing Issues

20: Accountancy members who had clients under enquiry had asked for some guidance and examples to help them explain informal settlement figures. They were looking for an HMRC product they could use to explain the interaction between CT/Dividend Tax, and Deemed Payment Tax. HMRC shared a slide pack that they are developing. HMRC asked members to share the slides with interested colleagues and provide feedback.

21: Members reminded HMRC that every interaction between an accountant and client has an associated cost for the client, and asked that the recommended process should keep such contacts to a minimum.

22: Members agreed that it looked like a very useful product, but questioned why the final settlement cannot be deferred until any repayment due is also finalised and available for either repayment or set off. This would ensure that HMRC was motivated to finalise the repayment quickly. HMRC commented that relief does not arise until there is a deemed payment in existence, but they would research the position on the suggestion of considering a provisional claim, and respond.

AP4/Nov: Members to share the slides with colleagues and provide feedback to enable HMRC to develop a useful product for agents' use. (Para 20)

AP5/Nov: HMRC to research the position on provisional claims to be used in calculations and respond. (Para 22)

Update on Outstanding Action Points

23: AP1/Dec: HMRC had been asked to reinstate examples on contracted-out services which have been deleted from the guidance on Gov.UK. HMRC confirmed that this is ongoing, and is waiting for Gov.UK to upload the details.

24: AP3/May: HMRC apologised for the delay in sharing the draft accounting examples, and will share as soon as possible.

25: AP1/Aug: HMRC confirmed that they are expanding the paper on mutuality of obligation to reflect the comments raised at the last meeting and better engage with the current public debate. They will share before the next meeting.

26: AP2/Aug: Closed, as the updates on CEST had been included in the wider discussion on the CEST improvements.

27: AP3/Aug: Closed, as guidance on completion of CEST will be included in enhancements.

28: AP4/Aug: Closed – Members were asked to volunteer to be part of a working group to look at the issues concerning settlements and set-offs. Only one member had volunteered, but this had been superseded by the proposed slides for guidance on settlements.

29: AP5/Aug: Closed – slides were shared with minutes of previous meeting.

30: AP6/Aug: ICAEW had shared an annotated copy of the HMRC technical note on the reform of the off-payroll working rules in the public sector prior to the August meeting. HMRC shared a copy of their responses to the points raised. The changes will be incorporated into the updated HMRC guidance. HMRC agreed to share the revised text with members before publishing on Gov.UK

31: AP7/Aug: Close.

32: AP8/Aug: HMRC shared a copy of their response to ICAEW with the forum, which is subject to further discussion.

AOB

33: Members asked for dates of 2019 meetings to be confirmed. HMRC agreed, with the proviso that dates can be subject to change. The dates were sent to members after the meeting.

34: Members asked if there is a timeline for the government's response to the employment status consultation. HM Treasury reiterated that no decisions or timeline are known yet.

35: Members asked whether there are any plans for a more detailed review of the impact of the reform in the public sector, taking into account a wider range of stakeholders than the last research, and also considering the effect on other tax receipts now that a full return cycle is complete. HMRC explained that the original Budget Scorecard for the reform took account of expected improved compliance with the off-payroll working rules. As a result HMRC expects income tax (through PAYE) and NICs receipts to increase and CT and dividend tax receipts to fall. HMRC has seen nothing to suggest their projections were wrong.

36: Members also asked whether the impact on such things as recruitment or costs for other government departments (OGDs) had been considered. HMRC confirmed that they have had discussion with OGDs, and had seen no evidence of difficulties. The evidence was published as part of the consultation.

Provisional date of next meeting:

28 February 2019

Summary of New Action Points:

AP1/Nov: Forum members to provide suitable real life examples to HMRC to consider for inclusion in the draft guidance. (Para 13)

AP2/Nov: HMRC to ensure that forum members are able to engage with the project to enhance CEST. (Para 14)

AP3/Nov: HMRC to consider how best to address the forum's ongoing concern about non-compliant intermediaries, and report back to future forum meeting. (Para 17)

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