

## **IR 35 Forum Minutes**

100 Parliament Street,  
28 February 2019

### **Attendees:**

Samantha Hurley (SH)	Association of Professional Staffing Companies - Chair
Damian Lazenby	HMRC
Phil Horswill	HMRC
Mark Frampton	HMRC
Tony Johnson	HMRC
Alan Reay	HMRC
Chris Simons	HMRC
Allison James	HMRC
Stephen Gorham	HMRC
Georgina Lowe	HMRC (Note-taker)
Lewina Farrell	Recruitment and Employment Confederation (REC)
David Kirk	Institute of Chartered Accountants of England & Wales (ICAEW)
Justine Riccomini	Institute of Chartered Accountants of Scotland (ICAS)
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)
Lesley Fidler	Chartered Institute of Taxation (CIOT)
Matthew Lewis	Confederation of British Industry (CBI)

### **Apologies:**

Rowena Fletcher	HMRC
Travis Woodward	HM Treasury
Phil McNeill	Institute of Chartered Accountants of Scotland (ICAS)
Jason Piper	Association of Chartered Certified Accountants (ACCA)

### **Welcome & introductions**

1: SH welcomed forum members.

### **Off-payroll reform – Update on Autumn Budget 18 announcement**

2: HMRC confirmed that the consultation on the detail of the 2020 reform will be published shortly. Forum members will be contacted on the day of publication, and HMRC will engage with them from the start of the consultation.

3: HMRC are continuing to work with stakeholders to enhance CEST and encouraged members to respond to the invitation to take part in those discussions and user tests.

4: The consultation on off-payroll reform will run for 12 weeks. Following that, draft legislation will be published in the summer, in line with the fiscal events timetable. Legislation will be included in Finance Bill 2019/20.

5: HMRC were unable to confirm the detailed content of the consultation document prior to publication, but it will include those areas where stakeholders had raised concerns.

6: Members asked whether there would be any link between the consultation and a review of the 2017 reform. HMRC would expect responses to the consultation to include the experience of stakeholders in implementing the 2017 reform. There are no plans to conduct further external research into the impacts of the 2017 reform.

7: Members commented that many of their clients are unaware of the planned reform, and asked whether HMRC has started its education programme. The consultation discussions are part of the education and awareness building, and the document will include education and awareness plans. Part of this will be working with forum members to reach their members.

8: Members expressed concern about reaching the large number of businesses that are not part of an organisation or representative body. They are also aware that some contracts are starting to include new clauses relating to the reform.

9: HMRC commented that after publication of the consultation document they will be able to increase the education and engagement, and reassured forum members that they are considering innovative ways to raise awareness.

AP1/Feb – Forum members to respond to HMRC's invitation to participate in discussions on CEST enhancements.

### **Mutuality of Obligation Discussion Paper**

10: HMRC circulated this paper before the meeting. It considers points raised by forum members, and in recent public discussions. HMRC invited members to provide further comments by 7 June 2019, for HMRC to prepare a revised version before the next meeting.

11: The HMRC paper looks at the Jensal case, and confirms HMRC's view of the law, as established in Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497. Other major cases are also considered.

12: The paper also considers umbrella contracts and what happens if there are gaps between a series of individual contracts. HMRC restated that for tax purposes, each individual contract needs to be considered.

13: Members also commented that the paper should consider the issues raised by short term contracts, and referred to the differences in interpretation between Tax Tribunals and Employment Tribunals.

14: HMRC agreed there are difficulties raised by some interpretations of mutuality of obligation in Tribunal cases. HMRC sees this as a result of how mutuality is looked at through different lenses by Employment Tribunals when they are looking at continuity of employment. However, in the tax context, HMRC are prepared to litigate appropriate cases where necessary.

15: HMRC want to work with members and stakeholders to agree a final version for publication.

16: HMRC will also work with members and stakeholders to consider how mutuality of obligation can be included in CEST.

AP2/Feb – Members to submit comments on draft MoO paper by 7 June 2019.

AP3/Feb – HMRC to prepare updated MoO paper by next meeting.

### **Concerns about non-compliant intermediaries.**

17: There is a specialist team in HMRC to enforce the employment intermediaries legislation. HMRC are aware of the increased use of intermediaries and disaggregation, and are responding to that risk. Compliance teams work with Customer Compliance Managers, as well as examining evidence from all sources to improve their understanding of the changing risk, and to target resources effectively. When allocating resources to risks, HMRC considers a wide range of factors.

18: Fraud Investigation (FIS) teams are looking at disaggregation models, where companies split into smaller companies – also referred to as mini-umbrellas. Compliance teams are working with FIS to identify these cases. HMRC vigorously pursues perpetrators of fraud, prosecuting when appropriate.

19: HMRC reminded forum members of the tax evasion hotline, where any suspected fraud or tax evasion can be reported, and confirmed that all reports are followed up, using data analytics. All reports to the hotline are confidential.

20: Forum members said they are now seeing fewer issues from clients in respect of mini-umbrellas. HMRC was pleased their work in this area is showing results, but noted a new model seems to be the insertion of an additional intermediary into the supply chain.

21: Forum members commented that success with mini-umbrella work followed some high-profile publicity in this area, and requested further publicity from HMRC to raise awareness of what non-compliance looks like, as in the Spotlight 45 article, which members felt was excellent.

22: When asked to compare the benefits of Spotlight to nudge letters, some members felt that ideally a combination of both is needed. The message needs to be strong, but straightforward.

23: HMRC confirmed that they are looking at different and innovative ways to raise awareness, and agreed that this needs to start soon, as new models will start to appear before the implementation of the off-payroll reform in 2020.

24: HMRC confirmed that they are also working with the Employment Agency Standards Directorate.

### **Update on set-off in settlement cases**

25: HMRC referred to the slides shared with members at the previous meeting, and confirmed that these have now been published online: [here](#)

26: HMRC also confirmed this guidance is included in the Employment Status Manual (ESM) [here](#) and the links in the contents page will be updated as soon as possible.

27: HMRC thanked forum members for their submission on overpayment relief, and will respond separately.

28: Forum members asked that this item is kept open to allow time for comment.

AP4/Feb – Forum members to send comments on slide pack on settlements and overpayment relief guidance by 7 June 2019.

AP5/Feb - HMRC to report back to next forum meeting.

### **Guidance Products**

29: HMRC confirmed questions raised in previous action points, and subsequent correspondence, have all been considered. Updated guidance has been published, including the outsourcing exemptions examples, and the corrections highlighted by members. HMRC asked members to raise any issues they find with the published guidance.

30: Members raised concerns about the technical level of the guidance. They acknowledged HMRC's aim to make the guidance readily understood, but commented that there is a need for more detailed technical guidance on complex

issues to be available for specialists. HMRC commented that these details are available in the supporting technical notes and ESM.

31: HMRC confirmed that the accounting examples requested by members have now been agreed, and will be published shortly.

32: HMRC agreed to share the response to ICAEW's detailed note with members. Members also asked if the updated guidance could be shared. HMRC agreed that guidance would be shared as soon as available.

AP6/Feb – HMRC to share the response to ICAEW note on guidance.

### **AOB**

33: Members raised a question about the perceived discrepancy between the estimated impact of non-compliance (£1.3 billion in 2023-34), and the estimated amounts of additional revenue in the same year (£725 million in 2023-24). There is no discrepancy. There is normally a difference between the estimate of Exchequer cost of non-compliance and the estimated yield from measures to address it because of a range of factors including behavioural impacts and the design and scope of a measure.

34: Members asked whether it would be possible to share how NICs are split between Employer and Employee contributions. HMRC will discuss with data analysts and respond.

AP7/Feb – HMRC to discuss with data analysts the possibility of a breakdown of NICs between employee and employer contributions and report back at next meeting.

35: Members asked whether the detail of the small business exemption (SBE) would be in the consultation, and expressed concern about the time pressures caused by delays in issuing guidance, referring to the additional administration required by the SBE. HMRC were unable to comment on the detail on the consultation document before publication.

36: Members asked about the proposed timetable for CEST enhancements, including engagement and testing with members. HMRC confirmed that they are working with IT teams, and forum members, along with other stakeholders, have been invited to get involved in testing.

37: HMRC are aware of the need to release the enhanced version of CEST as soon as possible, but in the meantime confirmed that it stands by CEST, which was developed over an 18 month period in consultation with stakeholders, and is accurate.

**Provisional date of next meeting:**

11 July 2019

**Summary of New Action Points:**

AP1/Feb – Forum members to respond to HMRC’s invitation to participate in discussions on CEST enhancements.

AP2/Feb – Members to submit comments on draft MoO paper by 7 June 2019.

AP3/Feb – HMRC to prepare updated MoO paper by next meeting.

AP4/Feb – Forum members to submit comments on slide pack and overpayment relief guidance by 7 June 2019.

AP5/Feb - HMRC to report back to next forum meeting

AP6/Feb – HMRC to share the response to ICAEW note on guidance.

AP7/Feb – HMRC to discuss with data analysts the possibility of a breakdown of NICs between employee and employer contributions and report back at next meeting.