

IR35 Forum Minutes

100 Parliament Street,
10 January 2020

Attendees:

Paul Smyth	Chair, HMRC
Samantha Hurley	Association of Professional Staffing Companies (APSCO)
Lesley Fidler	Chartered institute of Taxation (CIOT)
Lewina Farrell	Recruitment and Employment Confederation (REC)
Jason Piper	Association of Chartered Certified Accountants (ACCA)
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)
Matthew Lewis	Confederation of British Industry (CBI)
Peter Bickley	Institute of Chartered Accountants in England & Wales (ICAEW)
Paula Jarnecki	HMRC
Phil Horswill	HMRC
Mark Frampton	HMRC
Alan Reay	HMRC
Chris Simons	HMRC
Camilla Walker	HM Treasury
Roy Osbourne	HMRC (Secretariat)

Apologies:

David Kirk	Institute of Chartered Accountants in England & Wales (ICAEW)
Phil McNeill	Institute of Chartered Accountants of Scotland (ICAS)
Rowena Fletcher	HMRC

Welcome & Introductions

Paul welcomed Forum members.

Matters Arising from the Minutes and Review of Action Points

HMRC apologised for the delay in publishing the minutes from the previous meeting, due to amendments needing to be made.

A member raised the issue of tax offsets for calculating interest on late paid tax and repayment supplement. HMRC reported that this remained under consideration. The member reminded the forum of HMRC's policy, that tax is offset before calculating interest/ repayment supplement.

AP 1 – HMRC agreed to expand the published note to clarify its position on MoO – **Keep Open**

AP 2 – HMRC will respond in detail to the correspondence on MoO from Members - **Keep Open**

AP 3 – HMRC to consider if it is possible to provide the planned support earlier than November – **Closed**

AP 4 – HMRC to send examples of the letters being sent by the CCMs to members – **Closed**

AP 5 – HMRC to review adding job reference space to CEST PDF – **Closed**

AP 6 – HMRC to develop further guidance for (i) guidance on contracted out services (ii) contracts finishing prior to 5 April 2020 with payments made after that date – Addressed in the ESM update published on 7 February 2020 – **Closed**

Members were concerned that a date for the updated ESM guidance had not been provided, considering the April 2020 implementation. HMRC confirmed that all comments on the draft guidance would be taken into consideration.

Off-Payroll working reform – Update

HMRC explained that the review announced on 7 January 2020 is focused on the implementation of the reform, due in April 2020, and how organisations are preparing for the reform. HMRC will be holding a series of stakeholder roundtables to look at ways in which HMRC can better help businesses and contractors prepare for the changes.

Members stated it was important the review was conducted quickly to allow time to implement any changes. Members also raised a concern that the announcement of the review may lead some organisations to slow preparations as they anticipate implementation being delayed. Additionally a delay would impact other organisations who were already well advanced in their preparations.

Members highlighted that due to the short time before implementation, it was important that draft ESM guidance should be published as soon as possible.

Members also raised concerns that the review announcement referred to a post-implementation review of CEST, and that this raised uncertainty around current CEST determinations.

HMRC explained that the review is due to be finalised in February and organisations should continue to prepare for the reform to be implemented in April 2020. Although the post implementation review of CEST is part of the review, significant changes are not expected.

Members raised concerns that the issue of the transition period, where work finishes before the implementation of the reform but the payment is made after 6 April 2020 as something to be considered as part of the review.

Members asked for clarity on the meaning of “genuine business failure”.

Members drew attention to websites offering umbrella companies and said that consultancies are being set up to get around the new rules in ways that probably won't work technically.

Members said that there should be an obligation on “small” clients to notify that fact to contractors with a reminder that they therefore need to comply with IR35.

Update on the education and support package

Members sought confirmation that HMRC will be delivering the education and support package as discussed at the August 2019 Forum. HMRC said the plan was to deliver the package as previously discussed, just to a tighter timeframe. The intention is to recommence the education programme next week, with additional resources to deliver in the shorted timeframe available. The webinars are to recommence and some members confirmed that they had received notification of this.

HMRC will be writing to over 40,000 organisations that will be affected by the reform. Members asked for a communications note that they can flag to their members to raise awareness of the letters. They also asked for a copy of the letters.

AP1 - HMRC to send Members a draft of the letter being sent out to businesses for cascade.

Members requested further guidance on how RTI records are updated if during the tax year the status of the worker changed. In addition, they asked for clarification of what a genuine business failure includes. HMRC said these issues would be covered in the ESM.

Members asked for a more accessible version of the ESM, pointing out that the volume of pages in the ESM made it difficult to navigate with a risk content may be missed due to the quantity of links.

AP3 - HMRC to look into providing a consolidated version of the ESM

At this point in the meeting the Fire Alarm sounded and the meeting was ended early.

The following agenda items were not discussed at the meeting as a result, and were carried forward:

Compliance

CEST – Update

AOB and close

Continued Action Points:

AP 1 – HMRC agreed to expand the published note to clarify its position on MoO.

AP 2 – HMRC will respond in detail to the correspondence on MoO from members.

AP 3 – HMRC to develop further guidance for (i) guidance on contracted out services (ii) contracts finishing prior to 5 April 2020 with payments made after that date, and (iii) the appropriate timescale for reviewing contractual arrangements.

New Action Points:

AP 4 – HMRC to send the Forum a draft of the letter being sent out to businesses with a short blurb so members can cascade down.

AP 5 – HMRC to look into providing a consolidated version of the ESM that can be attached to one of our guidance pages online.

The next meeting is scheduled for the 24th January 11am – 1pm

IR35 Forum Minutes

100 Parliament Street,
24 January 2020

Attendees:

Samantha Hurley	Chair. Association of Professional Staffing Companies (APSCO)
Lesley Fidler	Chartered institute of Taxation (CIOT)
Lewina Farrell	Recruitment and Employment Confederation (REC)
Frederich During	Association of Chartered Certified Accountants (ACCA)
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)
Lora Murphy	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)
Stuart Farrow-Smith	Confederation of British Industry (CBI)
Paula Jarnecki	HMRC
Paul Smyth	HMRC
Phil Horswill	HMRC
Lauren Court	HMRC
Andrew Young	HMRC
Andrew Tilley	HMRC
Owen Williams	HMRC (Secretariat)

Apologies:

Jason Piper	Association of Chartered Certified Accountants (ACCA)
Matthew Lewis	Confederation of British Industry (CBI)
Julia Kermode	The Freelancer and Contractor Services Association (FCSA)
Phil McNeill	Institute of Chartered Accountants of Scotland (ICAS)
Rowena Fletcher	HMRC
Camilla Walker	HM Treasury

Welcome & introductions

Samantha welcomed Forum members and explained that this was a continuation of the Forum meeting of 10 January that was disrupted by the fire alarm.

Compliance

HMRC explained that compliance in this area was data led and only operates where there is an identifiable risk of non-compliance. HMRC will sometimes use a campaign style compliance activity where targeted communications are used when certain roles/sectors are identified as having a risk of non-compliance. Where possible HMRC's aim is to steer customers towards compliance and self-correction when there are errors.

HMRC said their current focus is on providing education and support to help those affected comply with the upcoming reform.

HMRC recognised there will be those who offer schemes as a way of getting around the rules.

HMRC shared an update on the work by HMRC's Fraud Investigation Service (FIS) to address mini umbrella companies (MUCs), including an explanation of what constituted a MUC and how MUCs were being used to avoid employment taxes. HMRC explained that the way MUCs were structured mean the managed service company provider (MSCP) rules do not generally apply.

Members asked if HMRC had a list of suppliers that they considered non-complaint that could be shared with members so members could advise clients. HMRC does not have such a list. Members stated that schemes that offered high net pay over an extended period were likely to be non-compliant and this should be communicated to the public.

Members asked if there was a possibility of HMRC increasing their deterrent effect by publicising compliance activity in this area more. HMRC explained that there is a broad spectrum of compliance activities being undertaken and they had already held a series of externally facing webinars about the risks of using MUCs, but would take the members comments on board when planning future outreach/communications.

Members expressed concern at the continued growth in the use of umbrella companies. HMRC acknowledged that umbrella schemes were an issue and action, e.g. recently knocked 100,000 schemes out of the flat rate VAT scheme, was being taken by HMRC. Members replied that this is the kind of action they felt should be better publicised to show the public HMRC was taking steps to address non-compliance.

In response to questions at a previous Forum meeting HMRC reminded members of the best way to report non-compliance, HMRC provided a reference that could be included in reports to the appropriate mailbox, or fraud hotline, to ensure information got through to the correct person.

Members explained that there was already a requirement for financial advisers (but not agencies) to report any proceeds of crime, including tax evasion, to the National

Crime Agency (NCA) and that they thought it unlikely that organisations would make separate reports to the NCA and HMRC. HMRC agreed to look into this and update the forum at a future meeting. HMRC also clarified that all submissions were looked at by HMRC even if no feedback was sent to those who make submissions.

AP1 - HMRC to clarify routes for reporting non-compliance

AP2 - HMRC to send members the address of the mailbox for submissions

Members raised a concern that despite the known issues with disguised remuneration, there were still plenty of people signing up for similar schemes. They were particularly concerned that these could be marketed widely in the construction industry, and as a result, numbers in that sector using these schemes are likely to increase. Members explained that the messaging about the use of loan schemes still wasn't reaching customers, and that messaging was not sufficient on its own – it was necessary for HMRC to take action against the schemes.

AP3 – Members to provide HMRC with examples of messaging they think would be effective in deterring the use of loan schemes

Members stated that in the recruitment sector that they would appreciate guidance on how to recognise schemes when they are part of the supply chain, as it is not always clear.

CEST

HMRC thanked members for their help in developing the enhanced CEST. The enhanced version of CEST launched in November and has been well received.

HMRC provided an update on how enhanced CEST has been used since launch; feedback suggested the wording of the questions was easier to understand, and this was part of the reason the completion rate had increased.

Members asked what role the helpline played and how experienced the people working on the helpline are? HMRC explained helpline staff could help clarify CEST questions but didn't tell callers how to answer questions. HMRC explained that all call handlers had training on the enhanced CEST before it was launched. Call handlers are also feeding back queries they are unable to answer and this is being used to by HMRC to update their guidance.

Members asked if there had been a change in the number of users determined to be inside/outside IR35 and how statistics relating to the enhanced CEST compare to the old CEST. HMRC did not have the numbers to hand but agreed to provide them at the next Forum meeting, members stated that a month by month breakdown of these figures would be helpful.

AP4 - HMRC to provide update on the use of enhanced CEST at April's Forum meeting

HMRC explained that in anticipation of Freedom of Information requests they will be releasing data relating to the development of the enhanced CEST. This will cover the scoping work, interim improvements made after stakeholder roundtables,

anonymised details of user testing, costings, statistics of use, details of technical testing and links to the supporting decision engine. HMRC agreed to share a draft of this with Forum members in advance of its release to the public.

AP5 - HMRC to send Forum members draft of the data release on the development of enhanced CEST

Off-payroll review

Since the 10 January Forum meeting, HMRC has undertaken roundtables with a broad range of stakeholders to seek input on what further steps would contribute to a smooth and successful implementation of reforms due take effect in April 2020.

Members asked when they could expect the results of the review to be made public. HMRC explained that the current timeframe was for the review to be published by mid-to-late February.

HMRC stated that they planned to send members a further draft of the guidance shortly.

AOB

Members asked about the possibility of an additional meeting being scheduled for the period between the review being published and the next Forum meeting scheduled for April. HMRC agreed to send an email to gauge interest in a meeting for the end of February/beginning of March.

Summary of New Action Points:

- 1.) HMRC to review and clarify routes for reporting non-compliance
- 2.) HMRC to send members the address of the Counter Avoidance mailbox
- 3.) Members to provide HMRC with examples of messaging they think would be effective in deterring the use of loan schemes
- 4.) HMRC to update on the use of enhanced CEST at the next meeting
- 5.) HMRC to send Forum Members a draft of the data release on the development of enhanced CEST.