

IR35 Forum Minutes

Conference Call
21 August 2020

<u>Attendees</u>	
Samantha Hurley (Chair)	Association of Professional Staffing Companies (APSCO)
Lesley Fidler	Chartered Institute of Taxation (CIOT)
Lewina Farrell	Recruitment and Employment Confederation (REC)
Samantha Mann	Chartered Institute of Payroll Professionals (CIPP)
Alasdair Hutchinson	The Association of Independent Professionals and the Self-Employed (IPSE)
Chris James	The Freelancer and Contractor Services Association (FCSA)
Sheldon Brown	Confederation of British Industry (CBI)
David Kirk	Institute of Chartered Accountants in England & Wales (ICAEW)
Christopher Simons	HMRC
Paula Jarnecki	HMRC
Declan Greaney	HMRC
Benjamin Jones	HMRC
Mark Frampton	HMRC
Alan Reay	HMRC
Jon Couzens	HMRC
Oscar Plummer	HMRC
Bertie Wnek	HM Treasury
Owen Williams	HMRC (Secretariat)
Gemma Cross	HMRC
<u>Apologies</u>	
Jason Piper	Association of Chartered Certified Accountants (ACCA)
Phil McNeill	Institute of Chartered Accountants of Scotland (ICAS)
Justine Riccomini	Institute of Chartered Accountants of Scotland (ICAS)
Andy Chamberlain	The Association of Independent Professionals and the Self-Employed (IPSE)

Welcome & Introductions

- Samantha Hurley welcomed Forum members and passed on apologies for those who were unable to attend.

Review of Action Points

- Minutes from the previous IR35 Forum held in May 2020 were distributed to members by email for comments. Members have submitted requested amendments which have been reviewed and a final version of the minutes will be shared with members for agreement.
- HMRC reviewed the action points arising from previous meetings and proposed updates to their status.

<u>AP Number</u>	<u>Meeting</u>	<u>AP Owner</u>	<u>Action Point</u>	<u>Status</u>
1	Nov 18	HMRC	To research the position on provisional claims and backdating of offsets to be used in calculations and respond	Propose Closure – Taken forward by Item 7 in agenda.
2	Aug 19	HMRC	To expand the published note to clarify its position on MoO	Propose Closure – Taken forward by item 3 in agenda
3	Aug 19	HMRC	To respond to the correspondence on MoO from members	Propose Closure – Taken forward by item 3 in agenda
4	Jan 20	HMRC	To look into providing a consolidated version of the Employment Status Manual	Propose Closure – Taken forward by item 6 in agenda
5	Jan 20	All Members	To provide HMRC with examples of messaging they think would be effective in deterring the use of loan schemes	Propose Closure – Members do not require further time to submit suggestions
6	May 20	HMRC	To send members a link to the text of legislation and a summary of amendments	Closed

7	May 20	HMRC	To share scope of external public sector research once defined	Propose Closure – Taken forward by item 4 in agenda
8	May 20	HMRC	To share link to press release and PGMOL Tribunal decision	Closed No press released was issued for PGMOL but link to the PGMOL decision was shared with members
9	May 20	HMRC	To consider providing a background briefing on the compliance commitment to forum members and rep bodies	Propose Closure – Taken forward by item 5 in agenda
10	May 20	HMRC	To share CEST contractor usage stats	Closed
11	May 20	HMRC	To share a flowchart of CEST questions with Forum members	Closed
12	May 20	HMRC	To look into providing an update on Umbrella companies	Keep Open
13	May 20	David Kirk (ICAEW)	To share paper on Offsets with forum members prior to next meeting	Propose Closure – Taken forward by item 7 in agenda

- HMRC provided a verbal update on AP12. HMRC understand members' concern around increased use of non-compliant umbrella companies and non-compliant actors in the umbrella space. HMRC are considering the issue and are looking to involve forum members and other stakeholders in a material conversation once work has progressed to a suitable point.
- A member raised Professional Employer Organisations (PEO), another kind of umbrella company, as having an increased presence in the marketplace.

They asked HMRC to make sure these were being considered in any cross-Government work around regulating the use of umbrella companies. PEOs operate in a similar way and may be used as an alternative if they are not also regulated.

- Members raised views that an update should be provided before the next forum meeting in November. HMRC noted member's concerns and will aim to schedule a further discussion before then.

Item 3: Update: MoO/Litigation

- HMRC provided an update on the two recent Tribunal cases concerning Mutuality of Obligation: PGMOL v HMRC and Kickabout Productions Ltd v HMRC.
- HMRC have been successful in applying for leave to appeal to the Court of Appeal (CoA) on PGMOL. HMRC understood from points raised at the last forum meeting that members were concerned that a long delay before the appeal was heard might lead to uncertainty. HMRC hope that the pace with which the Upper Tribunal has granted leave to appeal mitigates this concern.
- HMRC stated that they would like to arrange a special meeting with stakeholders after the CoA judgement is published to talk through the ramifications of that judgement and to discuss next steps.

HMRC to schedule a meeting with forum members to discuss CoA's judgement in PGMOL (AP2)

- HMRC drew members attention to the Kickabout case. The Tribunal found in favour of HMRC by finding that there was an overarching contract, but didn't address the issue of whether there was sufficient mutuality. HMRC thought that the judgement was positive for both HMRC and the public as it provides some clarity to the media sector where these types of contracts are common. A member asked if the latest paper shared by HMRC regarding Mutuality of Obligation remained confidential. HMRC confirmed that it had published its view on MoO alongside the minutes of a previous IR35 Forum in 2018 and did not intend to publish anything new, or revise its view, until the CoA had provided its judgment, given the vital insight into the legal position this could provide.

Item 4: Public Sector and Agency Research

- HMRC provided an overview of the planned research into the 2017 public sector reform. HMRC understands that stakeholders had concerns about the previous research and have taken that feedback on board. HMRC requested members' views on particular areas that should be focused on, whilst acknowledging the constraints posed by budget, time and needing to get the best possible value for money. HMRC also asked members for thoughts on the best way to communicate the findings with both forum members and wider stakeholders.
- HMRC explained that this is the 2nd round of research carried out after the 2017 changes to the off-payroll working rules and that the research was being

carried out by the same contractor that carried out the initial research following an open procurement exercise. Fieldwork is planned to start in September and it is expected that the results will be finalised in early February 2021, with publication shortly after that.

- HMRC stated that the research will be quantitative and qualitative and will take views across sectors within the public sector. It will be based on a representative sample and will look to identify how engagement of contractors has changed, whether disputes over status have arisen, what further support end-clients may require and how public sector organisations are making status determinations. HMRC are looking to make the research comparable to the previous research, but won't be using identical questions.
- HMRC are also planning research into agencies, following on from views expressed by members at May's forum meeting. Fieldwork is planned for October/November 2020 with the results expected to be published around the same time as the public sector research. HMRC explained the research will be qualitative, with plans to undertake around 30 interviews, primarily focused on public sector engagements but will also include agencies that also work with private sector clients, as well as with umbrellas. The research will be geared towards identifying changes to how contractors are engaged, any difficulties in supplying workers, any impact on client bases, any knowledge of schemes that circumvent the rules, admin burdens and areas in need of further education and support.
- HMRC also reiterated that the FST has stated the Government is committed to carry out further research six months after the 2021 reform. HMRC will engage with forum members early on in that process to feed in views to the scoping of the research.
- A member asked if the research would include individual contractors as well as agencies and additionally that contractor rates would be a useful area to consider. HMRC said that changes in contractor rates is an area that the research will cover. Members understood HMRC's time and budget constraints, and the need to prioritise – which led to a choice to focus additional research into the impact on agencies rather than contractors.
- Members expressed concerns that HMRC might come in for criticism if the research is not published until February 2021 as it would not provide sufficient time to address any issues arising from the research ahead of the April 2021 forms. HMRC replied that they would be receiving interim reports throughout the project and would look to act on any issues flagged at those points, rather than waiting until formal publication.
- Members also asked about how the public bodies and the agencies would be chosen. HMRC explained that they provide a source dataset (setting out the whole population) from which the contractor will build a representative sample. It is intended that this sample will reflect the full range of public bodies and recruitment agencies. HMRC does not choose any of the organisations included in the sample; their influence over who is involved is limited solely to describing the types of groups they wish to survey.

- A member asked if the research was intended to look at how the ways of engaging contractors had changed and whether there was a move away from personal service companies to using umbrella companies. HMRC said this is something the research will focus on.
- A member asked for a commitment from HMRC that if the results of the research are unfavourable then they are still included in the final report. HMRC stated that the research was commissioned to get an independent view on how the reform had landed and that the report will reflect the views obtained. The way that HMRC research is conducted and published is governed by a code of conduct which ensures that findings are accurately portrayed.

Item 5: Feedback on HMRC Compliance Commitment

- HMRC expressed gratitude to those members that provided feedback on the draft note and language produced on the compliance commitment. HMRC explained that it remains important for HMRC to reassure the public that the reform to the off-payroll working rules is not intended to create legacy tax bills and that the focus is on helping people get it right.
- HMRC have taken members comments on board and will share a final version of the note on the compliance commitment to be shared as members see fit.

HMRC to share the final draft of the compliance note with forum members for distribution (AP3)

Item 6: ESM Guidance Updates

- The draft changes to the ESM guidance were previously distributed to members for their comment. HMRC thanked members for their feedback and summarised the changes made in line with the comments from stakeholders. HMRC stated they were keen to know if any areas where members think new guidance should be added.

HMRC to share a written summary of the updates made to the ESM following member feedback (AP4)

- HMRC explained that there were some areas where members comments were looked at, but it was decided not to make changes. These included including definitions for some subjective terms used in the guidance, and comments regarding organisations being required to issue a negative SDS.
- A member raised concerns about some communications products that were published alongside the review in February 2020. HMRC stated that they were aware of the items referred to and that they were being updated.
- A member asked about how HMRC planned to structure guidance where off-payroll interacts with other legislation such as employment allowance. HMRC explained that they plan on including guidance to highlight unique interactions with other pieces of tax law, but where interactions were more commonplace and business-as-usual they would provide links where helpful but would not replicate guidance that was already published elsewhere.

- A member also noted that with frequent updates to the CJRS guidance an archive page which set out the iterations of guidance had been valuable. HMRC noted the usefulness of the archives and that the ESM guidance functioned similarly.
- HMRC asked members' views on whether smaller, more frequent updates to the ESM guidance or less frequent bundles of updates were preferred. Members stated that their expectation was that there may initially be a need for frequent updates, but once past the initial review period updates would be expected to be less frequent.
- A member asked if it would be possible to publish a consolidated pdf version of the ESM. HMRC explained that there were constraints around publishing material on GOV.UK and that offline versions carry a risk that people may inadvertently rely on out-of-date versions of the guidance. HMRC will share a consolidated version of guidance for members' use.
- A member raised an issue relating to statutory payments and box 58A. HMRC stated they were aware of the issue and explained further changes are being made to the statutory payments sections of the guidance and were working on the broader implications of the points raised. The intention is to consult with external stakeholders, including the statutory payments consultation group, in short order to further understand the concerns and identify solutions. HMRC also stated that as the new statutory payments guidance doesn't affect the remainder of the ESM there is not a need to delay publishing the remainder of the guidance whilst this work is taken forward. Members agreed with this approach but noted that payroll software developers need information as soon as possible to allow them to test software before implementation.
- A member stated there were 3 main points to the statutory payments issue: who are they provided by; how are they calculated, and; how are earnings they are based on reported. Members acknowledged that the HMRC guidance addresses the first aspect and that the second and third aspects are what need to be clarified now.
- HMRC stated that there are other areas where more work on the guidance is needed (non-residency and remittance basis, and interaction with benefits in kind) and that HMRC will look to share the updates to these sections going forward. HMRC also confirmed that the intention was to publish the updates to the ESM guidance in mid-September 2020.

Item 7: Presentation on Offsets/Interest Rates

- David Kirk provided a brief outline of the paper which had submitted on offsets.
- HMRC thanked him for submitting the paper and agreed that it was a technical topic of discussion better dealt with via written correspondence. Mr Kirk agreed that the forum was the place to raise the issue rather than debate it and he was happy to pick up offline with HMRC and any other forum members who had an interest in the topic.

HMRC to respond to member's paper on offsets (AP5)

Item 8: Feedback on Tax Advisor Call for Evidence

- Members were asked if they had any additional comments or feedback on the recent call for evidence regarding tax advisors. CIOT and ICAEW stated that they have already taken this up separately as an area they are both involved in.

Item 9: AOB and close

- HMRC provided a brief update on their plans for Education and Support in advance of commencing webinars and workshops in the Autumn. HMRC are looking to open pre-registration in advance of the dates being launched. HMRC are still currently attending events and conferences with the aim of tailoring their education and support towards the requirements of key sectors.
- HMRC explained that the processes required to have outside organisations join video calls with HMRC is lengthy, and we are trying to find an alternative to having everyone dial in to meetings.
- A member noted previous correspondence on the split between employee and employer NICs; HMRC agreed to respond via email.

Continued Action Points:

<u>AP Number</u>	<u>Meeting</u>	<u>Owner</u>	<u>Action Point</u>
1	May 20	HMRC	To look into providing an update on Umbrella companies

New Action Points:

<u>AP Number</u>	<u>Meeting</u>	<u>AP Owner</u>	<u>Action Point</u>
2	Aug 20	HMRC	To schedule a meeting with forum members to discuss the CoA's judgement on PGMOL after it is published.
3	Aug 20	HMRC	To share the final draft of the compliance note with forum members for distribution as they see fit
4	Aug 20	HMRC	To share a written summary of the updates to the ESM guidance following member feedback
5	Aug 20	HMRC	To respond to member's paper on offsets

--	--	--	--

The next meeting is scheduled for the 20 November 2020 2pm - 4pm