

IR35 FORUM MINUTES – 7th May 2014, 11.00am

Location: 100 Parliament Street, London

Attendees

Rowena Fletcher	(HMRC Policy) (Chair)
Robin Wythes	(HMRC Policy)
Sarah Radford	(HMRC Policy)
Joanna Were	(HMRC Policy)
Jacqueline Gray	(HMRC Policy)
Sophia Harrington	(HMRC Policy)
Mike Brown	(HMRC Operational)
Philip Lloyd	(HMRC Operational)
Lewina Farrell	(REC – Recruitment and Employment Confederation)
Jason Piper	(ACCA – Association of Chartered Certified Accountants)
Simon McVicker	(PCG – Professional Contractors Group)
Julie Stewart	(PCG – Professional Contractors Group)
Lesley Fidler	(CIOT – The Chartered Institute of Taxation)
Carl Henning	(FCSA – The Freelancer and Contractor Services Association)
David Ramsden	(Federation of Small Business)
Kate Cottrell	(IR35 Specialist)
David Heaton	(ICAEW – The Institute of Chartered Accounting in England and Wales)
Samantha Hurley	(APSCo – Association of Professional Staffing Companies)

Apologies

David Kirk	(ICAEW – The Institute of Chartered Accounting in England and Wales)
Anna Monteith	(ICAEW – The Institute of Chartered Accounting in England and Wales) replaced by David Heaton.

Welcome and Introduction

1. Rowena Fletcher opened the meeting and thanked everyone for coming. Joanna Were was introduced as the new IR35 Forum secretariat. Sophia Harrington was also introduced as a lead on the Government response to the House of Lords Select Committee Report.
2. HMRC addressed concerns that contracts can confer status. They clarified that whether someone was employed or self-employed would always depend on actual working practices. For that reason, HMRC would not endorse a contract as confirming a particular status.

**Update on previous action points
(See Annex 1 for open and closed action points)**

House of Lords Select Committee

3. HMRC updated the Forum on the House of Lords Select Committee Report on Personal Service Companies which was published on 7 April 2014. There will be a formal Government response to the recommendations and conclusions which will be published on 9th June 2014.

Updates on IR35 review

External guidance review and transition to gov.uk

4. HMRC confirmed the new guidance will be placed on GOV.UK. The HMRC website will be archived and all new updates placed on GOV.UK. People will automatically be forwarded from the current HMRC page to the new guidance on GOV.UK.
5. As the IR35 guidance is classed as technical, specialist guidance by GOV.UK and one of the first pieces of this type of guidance to transition, there has been some delay on the publication. HMRC assured the Forum that the new guidance would be published as soon as possible.
6. A concern was raised about the search function on GOV.UK. One of the Forum members had used it earlier that day and instead of getting links to what they had searched for received links to what seemed like a random collection of pages. HMRC responded that digital services are aware of this problem, they are working to fix it and this is one of the reasons for the delay in the IR35 guidance going live on GOV.UK. HMRC agreed to feedback to digital services this experience which will hopefully be resolved soon.

IR35 Publicity and Awareness raising

7. Sarah Radford and Kate Cottrell are leading on the promotions and communications strand. They reported that the critical problem was having no budget.
8. Some smaller accountancy firms do not fully understand the IR35 legislation and it was felt that they were a key group to reach as they are often the contact for new contractors. It was recognised that this can be a hard to reach population. It was suggested that this group may be able to be reached through the accountancy bodies. Those representing the accountancy bodies were happy to host regional events if HMRC would like to present at them.
9. HMRC asked if there was a population of smaller agents that are not members of the accountancy bodies represented on the Forum. It was

confirmed that there would be some but Forum members were happy to approach the smaller accountancy bodies.

10. HMRC highlighted that they would much rather provide people with the tools to understand the legislation up-front rather than having to undertake compliance investigations to put it right later.
11. It was suggested from the external members that HMRC conduct 'candidate focused' events i.e. finance and banking sectors. HMRC said that they will look at this and see how it will fit with the wider strategy. HMRC suggested setting up IR35 links on the new guidance.
12. It was suggested that segmenting the population will help. This may include:
 - people who are very aware of IR35 and know where to go for help;
 - contractors who are setting up a limited company for the first time and are completely unaware of IR35;
 - those who have been contracting for a long time but are unaware of IR35; and
 - vulnerable customers.
13. Forum members all agreed that this would be a good idea. There may also need to be a similar segmentation exercise for agents.

Business Entity Tests (BETs)

14. There have been two meetings, hosted by the PCG, to consider the BETs, enabling an in-depth consideration and an honest and frank discussion.
15. The meeting included a focus group, made up of independent advisers. One of the concerns raised was that the BETs were being used incorrectly in the public sector. The consensus of the group was that the BETs were not working in the way they were intended and that it would be best if they were abolished.
16. The six scenarios were also discussed at the meeting. These are less controversial than the BETs but many of the focus group didn't find them helpful. It was felt that there was not enough detail in the scenarios and that it would be better to have a summary of the case law. It was agreed that a post-meeting to discuss the recommendations for the BETs would be held.

Update on the Compliance Review

17. The compliance review has consisted of a two stage process - a face to face meeting and a questionnaire which was issued to agents who had experienced the new IR35 enquiry process.
18. Unfortunately the level of response to the questionnaires has been disappointing, only six out of the thirty questionnaires issued have been

completed. HMRC confirmed that although this was a very small number, the agents represented 100 of the PSC's that have been the subject of an IR35 investigation. HMRC will provide minutes from the face to face meetings. The external members of the Forum commented on how impressed they were with the HMRC investigators who attended the meeting and requested that this was fed back to them.

19. HMRC reported that feedback so far has been positive on the consistency of approach and that were more transparent about the information they needed and focused on the key issues. It was noted however, that enquiries would naturally diverge from a standard approach as the enquiry progressed. Some concern has been expressed that there has recently been a move away from the new approach to opening an enquiry by some compliance workers. HMRC is keen to continue to improve and will look to address the following areas:

- Maintaining openness and consistency;
- Being clear about the reasons for continuing the enquiry;
- Ensuring that agency and the PSC are kept informed; and
- Managing delays to ensure that the case continues to move forward.

20. HMRC commented that in many cases enquiries could be progressed much more quickly where they are able to meet with the client. It was noted that there seems to be a general reluctance by some agents for this to happen. It was suggested that agents may be happier with their clients meeting with HMRC if a clear agenda, possibly with questions was sent with the meeting request.

21. There was a discussion about what level of detail would be required in the agenda as it would not be possible to set out all of the questions that would be asked at the meeting. It was also suggested that some of the reticence to meeting with HMRC was that it invalidates some of the insurance policies.

22. It was asked if it was possible for inspectors to make a decision at the end of the meeting. If this was the case then it was suggested that it might be a way to incentivise people to agree to a meeting. HMRC responded that all officers are empowered to make such decisions but unless it was very clear cut then they are likely to want to consider the answers they have received during the meeting rather than making a decision on the spot.

Update on the Terms of Reference and Membership

23. Anne Redstone has officially resigned from the Forum to avoid any potential conflict of interest.

24. HMRC explained that they are intending to write and ask Forum members if they are still happy to take part in the Forum and ask them to recommend new members. It was highlighted that there was probably only capacity to have a few more members or it would become unmanageable.

25. The external members suggested that end clients should be represented on the Forum. It was suggested that possibly a member from the British Banking Association or the Cabinet Office might fulfil this role. There was concern that having someone that only represented one business area might lead to difficulties. Instead it was suggested that permanent members can invite guests where there are agenda items that might be of interest to them.
26. As a final point, HMRC asked the members whether they thought that the terms of reference for the Forum needed up-dating. It was agreed that HMRC would include this in their letter.
27. HMRC confirmed that the Forum would still be in existence after the general election. This is because the remit of the Forum is to help HMRC improve the administration of IR35 and this would not be affected by the election.

Update on HMRC helpline and Contract Review Service

28. The purpose of the helpline is that people are better informed about IR35 than when they started the call. The recommendations from the report were presented to, and discussed by the Forum.
29. HMRC once again confirmed the complete independence of the helpline and contract review service from the HMRC compliance function.
30. The external members asked about the timescales for HMRC providing a full contract review. They felt that the length of time it took may be putting people off using the service. The timescales depend on how quickly the contractor provides information. It was suggested that HMRC should provide service standards for completing a contract review.
31. One of the recommendations is that the contract review service should be able to provide a caveated opinion where the contractor does not have all of the contracts and does not want HMRC approaching the end client. The Forum agreed that this would be a really useful development as many contractors would be very concerned about HMRC approaching the end client in any capacity.
32. They also thought that this would make the service far more attractive to contractors as often they want an opinion before the contracts are in place. HMRC said that they are happy to do this but this would not be something that a contractor could rely on in the event of an enquiry in the same way they can a full contract review.
33. It was suggested that one of the reasons contractors will pay for a contract review rather than using HMRC's free helpline and contract review service is that it often invalidates their insurance if they talk to HMRC.
34. The recommendations were agreed by the Forum.

AOB

- 35.** The plan for finalising the report was set out. It was agreed that the aim should be to publish the final report, bringing together the strands and recommendations, in September.
- 36.** It was proposed that the next Forum meeting should take place in July rather than August as it was likely that many of the members would not be available to attend during peak holiday season. This was agreed.
- 37.** Rowena Fletcher thanked members for attending the meeting. HMRC will send out invites to attend the next Forum meeting in July.

Annex 1 Action Log – IR35 Forum

ACTION POINT	OPEN/CLOSED	HMRC LEAD
<p>ACTION POINT 1 HMRC to analyse the yield breakdown for settled cases</p>	CLOSED	Mike Brown
<p>ACTION POINT 2 HMRC to access the data of how many employers tick the 1st question in Box 6 on the P35, but not the 2nd one relating to IR35</p>	<p>Some data was given in evidence to the House of Lords PSC Select Committee. For 2011–12, which is the last year for which we have the data, 1,000 individuals completed the question on the income tax self-assessment return and 120,000 employers answered “yes” to the question on the P35 that they were a service company; and of those 120,000, 12,000 answered “yes” they have operated the Intermediaries legislation (sometimes known as IR35) or the Managed Service Companies legislation. CLOSED.</p>	
<p>ACTION POINT 3 HMRC to collect anecdotal information on how investigations proceed when accountants from large firms as compared to accountants from smaller firms are representing IR35 clients.</p>	<p>It was reported almost all of the accountancy representation was from specialist firms so it was not possible to undertake any meaningful analysis. CLOSED.</p>	
<p>ACTION POINT 4 All Forum members to provide feedback on the new guidance the end of the week.</p>	<p>The feedback has been provided and this has been incorporated into the new guidance. HMRC thanked the</p>	All

	Forum members for providing their comments at such short notice and apologised that the guidance hadn't yet been published. CLOSED.	
ACTION POINT 5 All IR35 Forum members to email their suggestions as to whom HMRC should invite to contribute to the Review to HMRC.	HMRC reported that they had only received a very small number of suggestions, but that individual strands were getting a lot of input from people outside of the Forum. CLOSED	All
ACTION POINT 6 HMRC to investigate the possibility of making users aware that there is newer guidance.	Anyone visiting the existing HMRC IR35 guidance will be automatically re-directed to GOV.UK once the new guidance is live. CLOSED.	Jacqueline Gray
ACTION POINT 7 HMRC to find out if GOV.UK pages are SEO tagged.	HMRC confirmed that SEO stands for Search Engine Optimization, it actively searches the pages to be viewed by the public and that the GOV.UK pages would be SEO tagged. CLOSED	Jacqueline Gray
ACTION POINT 8 HMRC to change the draft guidance to reflect the separation between the contract review service, disclosures and compliance teams.	This is now reflected in the new guidance. CLOSED	
ACTION POINT 9 HMRC to make it clearer in the new IR35 guidance what the service levels are and that advice will be given to customers anonymously.	OPEN	Jacqueline Gray

<p>ACTION POINT 10 Strand leads to consider the Forum's comments and produce a final report to be circulated amongst the Forum and then published for wider comment.</p>	<p>OPEN</p>	<p>Sarah Radford</p>
<p>ACTION POINT 11 Minutes of the meeting about compliance improvement are to be circulated to Forum members.</p>	<p>OPEN</p>	<p>Mike Brown</p>
<p>ACTION POINT 12 HMRC to seek agreement to survey customers at the end of IR35 enquiries.</p>	<p>This is something that has been discussed before in HMRC and it was decided that it was not appropriate. CLOSED</p>	
<p>ACTION POINT 13 Jacqueline Gray to visit PCG to discuss the response to the PCG survey to the questions about the Business Entity Tests (BETs) and scenarios.</p>	<p>The meeting was held 24th April, feedback will be provided as part of the discussion on the BETs. CLOSED</p>	<p>Jacqueline Gray</p>
<p>ACTION POINT 14 HMRC to feedback to digital services about the issues with the search function to GOV.UK. NEW</p>	<p>OPEN</p>	<p>Jacqueline Gray</p>
<p>ACTION POINT 15 HMRC stakeholders and the BETs review team to meet to discuss the recommendations. NEW</p>	<p>OPEN</p>	<p>Jacqueline Gray</p>
<p>ACTION POINT 16 - HMRC to write to Forum members for ideas for possible new members and suggested changes to the terms of reference for the Forum. NEW</p>	<p>OPEN</p>	<p>Sarah Radford</p>