

## IR35 FORUM MINUTES – 24<sup>th</sup> July 2014, 12.30pm

Location: 100 Parliament Street, London

### Attendees

Rowena Fletcher	(HMRC Policy) (Chair)
Robin Wythes	(HMRC Policy)
Robert Burton	(HMRC Policy)
Joanna Were	(HMRC Policy)
Jacqueline Gray	(HMRC Policy)
Sophia Harrington	(HMRC Policy)
Mike Brown	(HMRC Operational)
Asif Chaudhry	(HMRC Operational)
Tom Hadley	(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)
Kate Cottrell	(IR35 Specialist)
Samantha Hurley	(APSCo – Association of Professional Staffing Companies)
David Kirk	(ICAEW – The Institute of Chartered Accounting in England and Wales)

### Apologies

Lewina Farrell	(REC – Recruitment and Employment Confederation)
Philip Lloyd	(HMRC Operational) –stand-in Asif Chaudhry
Sarah Radford	(HMRC Policy)
David Ramsden	(Federation of Small Business)

### Welcome and Introduction

1. Rowena Fletcher opened the meeting and thanked everyone for coming. Robert Burton was introduced as the new IR35 policy lead, replacing Sarah Radford who has joined a different policy team within HMRC.
2. A review of the action points from the minutes of the meeting held in May 2014 was undertaken (**See Annex 1 for action points**).

### House of Lords Select Committee

3. HMRC updated the Forum on the Government's response to the House of Lords Select Committee Report on Personal Service Companies. Of the recommendations and conclusions that fall within the remit of the IR35 Forum, those covering the Contract Review Service, Business

Entity Tests, Forum membership and communicating IR35 are already being reviewed as part of the Forum's IR35 Review. Two further recommendations were made relating to the administrative burden imposed by IR35 and the service company questions on the RTI End of Year Return and the ITSA Return. HMRC will address these with the help of the Forum.

4. HMRC aim to produce an assessment of the average administrative burden and invited the external Forum members to comment on calculating the administrative burden of IR35, and whether they think there are other actions aside from those already identified by the administrative burdens toolkit. HMRC requested comments by Friday 22 August. An electronic version of this request will be sent out to Forum members after the meeting. **ACTION POINT 17**
5. HMRC will be in touch with the external Forum members about the review of the questions on the SA and RTI returns. **ACTION POINT 18**

#### **Discussion on the recommendations of the IR35 review**

6. Robert Burton and Rowena Fletcher thanked everybody for their contributions to the IR35 review. The draft report now includes each work strand's text and recommendations and now needs to be brought together into a single cohesive document. Rowena explained although the report will contain a number of recommendations, whether HRMC is able to implement them will depend on a number of factors, including whether the recommendation aligns with HMRC's standard general processes. Where any recommendation cannot be implemented, HMRC will explain why.
7. Rowena invited the external Forum members to summarise the recommendations of each of their respective strands.

#### **External Guidance Review**

8. Lesley Fidler reported that although re-written guidance is on the HMRC website, guidance has not yet migrated to GOV.UK. HMRC explained that migration to GOV.UK is expected to take place after a final facts check.
9. External members suggested that there is more work to do on guidance, particularly employment status which may require more detailed guidance on a topic by topic basis. HMRC explained their ambition is to make the Employment Status Indicator tool capable for wider use, including in IR35 cases. There was agreement that guidance needs regularly review and updating and HMRC welcomed suggestions including when guidance has migrated to GOV.UK.

#### **Promotion and Communication of IR35**

10. Kate Cottrell led on the promotion and communications strand with Sarah Radford. Thirteen recommendations resulted from their review, and highlighted that there is a need to prioritise what can be done for best value and to capture quick wins.

11. HMRC explained the importance of finding the most effective way to promote IR35, understanding what will provide good value for taxpayers money and produce the required response. It will also need to align with HMRC's commitment to digital by default. Forum members agreed that there needs to be a consistent approach to promoting and communicating IR35.

### **Business Entity Tests (BETs)**

12. Samantha Hurley led on the BETs discussion, having worked alongside Lewina Farrell, Simon McVicker and Jacqueline Gray. It was reported that BETs are not generally known about or used. During the review process Forum members on the review came to the conclusion that the BETs are being misused, and recommend abolishing them. If HMRC adopts this recommendation there will need to be a clear handling and communication process.
13. Simon praised Jacqueline's work on the report and found the post-IR35 meeting with HMRC on the BETs helpful to create the clear recommendations made. Kate Cottrell pointed out the impracticable demands placed on contractors by clients in the public sector in order to comply apparently with HM Treasury and Cabinet Office guidelines. HMRC acknowledged that if the BETs are withdrawn it will be necessary to provide targeted information to HM Treasury, Cabinet Office and Government Departments.
14. Forum Members agreed that if the BETs are withdrawn, the Forum will continue to work together to provide greater clarity as to when IR35 is likely to apply although it was recognised that a further iteration of the Business Entity Tests would not be helpful.

### **HMRC IR35 Helpline and Contract Review Service**

15. Carl Henning provided a run through of the recommendations already reviewed at a previous Forum meeting. He suggested that it is worth having a section on the 'public sector' within the IR35 Forum Report. HMRC will consider this. **ACTION POINT 19**
16. Kate Cottrell highlighted a case where there could be a perception of a conflict of interest between compliance activity and the customer service provided by the HMRC IR35 Helpline and Contract Review Service. HMRC asked to discuss the specific case in more detail to better understand how we might address this issue. It was agreed that we will get further details from Kate to fully identify the issues and how conflicts of interest, actual or perceived, can be addressed effectively. **ACTION POINT 20**
17. In respect of the contract review statistics, external members asked whether they could be broken down to show how many of the opinions provided were verbal? HMRC said they will look at the extent to which statistics can be broken down further. **ACTION POINT 21**

### **New Compliance Approach**

18. Simon McVicker led the discussion on this strand, having worked alongside Julie Stewart and Mike Brown. He explained that PCG analysed the results of the survey and put their points together. As a result the recommendations are not definitive. HMRC explained that these are recommendations we can certainly respond to but cannot necessarily fulfil. HMRC can only implement recommendations within existing operational and legislative constraints.
19. PCG explained they were keen to publish findings from the advisers they surveyed, and have their recommendations included, as the advisers were making legitimate points.
20. Simon would like to recommend that Mike meets with some of the advisers once a year. Mike responded that the meeting held on 4 February hosted by the PCG and attended by HMRC, PCG representatives, members of the compliance reform forum and representatives of firms who have been involved in IR35 enquiries was a useful event that he would be happy to see repeated. However, he pointed out that IR35 had to be administered within HMRC's general compliance operational framework.
21. A discussion arose on the issue of penalties, particularly the abatement for co-operation. Forum members were concerned about how delays in providing information, for what taxpayers consider legitimate reasons, are viewed by HMRC. HMRC explained that penalty mitigation has to take into account an individual's overall behaviour - any delay in responding to enquiries being only one of a number of factors considered. HMRC would consider specific representations from the Forum on this in conjunction with HMRC's overarching approach and policy on the application of penalties.

### **IR35 Review: Next steps**

22. Rob Burton explained that the next stage is to finalise the review report, share a final draft and publish as soon as this has been agreed by the Forum members.
23. It was agreed that further comments of the draft report from Forum members would be received by 22 August 2014. Another draft report will be sent to members in September for final agreement. HMRC confirmed that they will acknowledge those that have contributed to the report.

### **ACTION POINT 22**

### **Terms of Reference (TOR) including membership**

24. It was agreed at the previous Forum meeting that Forum members would suggest possible new members and comment on the terms of reference. HMRC explained that the resignation of Anne Redston provided additional impetus to review the terms of reference, including by setting out clearer guidelines of the expectations of members. HMRC invited the Forum's

comments on the TOR by 22 August 2014. Some Forum members suggested that their role is to assist HMRC and it is therefore up to HMRC to tell them if it is working. Some members agreed that there needs to be a good balance of specialist advisers. Simon suggested that the Forum is lacking the client's voice. Kate Cottrell suggested having more guest attendees. **ACTION POINT 23**

### **Statistics**

25. HMRC announced that they will publish the following IR35 statistics via the IR35 Forum:

Annually in April relating to the preceding tax year, April to March

- Number of IR35 cases taken up for compliance review in the period
- Number of IR35 cases settled in the period
- Number of IR35 cases settled for nil in the period
- Total yield from settled IR35 cases in the period
- Average time taken to settle IR35 cases concluded in the period

Annually (as soon as the end of year data is available)

- The number of employers filing an RTI end of year return and the number answering the service company question.

**(See Annex 2 for released statistics)**

26. HMRC explained that the release of these statistics is subject to e-data availability. The Forum welcomed this move by HMRC.

### **AOB**

27. Simon McVicker explained that he wrote to Robin Wythes on 3<sup>rd</sup> July 2014 on the application of the onshore intermediaries' legislation. A member is being given what is believed to be incorrect instructions by a party within the contractual chain. Robin acknowledged receipt of the letter, apologised for the delay in responding and promised a response next week.

28. REC suggested that it is important to think about the wording of guidance etc. in terms of flexible staffing, as we do not want to be seen to be precluding flexible working. HMRC agreed that the flexibility of the UK labour market is important to the UK economy and guidance needs to reflect the different ways labour is provided.

29. Jason Piper brought up a practical point about the BETs and if they are abolished: the 3 year guarantee. Mike Brown confirmed that HMRC would stand by the 3 year guarantee for anyone who had applied the BETs pre abolition, in accordance with current guidance.

30. Rowena Fletcher thanked members for attending today.

31. The next meeting will be held on the 5 November 2014 at 11am.

## Annex 1 Action Log – IR35 Forum

ACTION POINT	HMRC LEAD	Status
<p><b>ACTION POINT 9</b> HMRC to make it clearer in the new IR35 guidance what the service levels are and that advice will be given to customers anonymously.</p>	Jacqueline Gray	Guidance has been checked and amended where possible. Waiting for migration to GOV.UK CLOSED.
<p><b>ACTION POINT 10</b> 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>	Robert Burton	All members received a draft version- discussion on the agenda. CLOSED <b>(See updated action point 20)</b>
<p><b>ACTION POINT 11</b> Minutes of the meeting about compliance improvement are to be circulated to Forum members.</p>	Mike Brown	Notes from the meeting sent out together with the 24 July minutes. CLOSED.
<p><b>ACTION POINT 14</b> HMRC to feedback to digital services about the issues with the search function to GOV.UK.</p>	Jacqueline Gray	Jacqueline fed feedback into representations to GOV.UK. CLOSED.
<p><b>ACTION POINT 15</b> HMRC stakeholders and the BETs review team to meet to discuss the recommendations.</p>	Jacqueline Gray	A meeting took place after the Forum to discuss the BETs in more depth. CLOSED
<p><b>ACTION POINT 16</b> HMRC to write to Forum members for ideas for possible new members and suggested changes to the terms of reference for the Forum.</p>	Robert Burton	Agenda item on 24 July- discussion on the TOR (See action point 21). CLOSED

## New action points arising

<p><b>ACTION POINT 17</b> HMRC to send an electronic version of the request to external Forum members to comment on calculating the administrative burden of IR35.</p>	Sophia Harrington	Sophia emailed the Forum members immediately after the meeting. CLOSED
<p><b>ACTION POINT 18</b> HMRC to write to Forum members on feeding into the review of questions on the SA and RTI returns.</p>	Sophia Harrington	OPEN
<p><b>ACTION POINT 19</b> HMRC to consider having a section on the 'public sector' within the IR35 Forum Report.</p>	Robert Burton	OPEN
<p><b>ACTION POINT 20</b> HMRC will get further details from Kate about the specific case with a view to fully identifying the issues and how conflicts of interest, actual or perceptual, can be addressed effectively.</p>	HMRC	OPEN
<p><b>ACTION POINT 21</b> HMRC will look at the extent to which Contract Review Statistics can be broken down further.</p>	Philip Lloyd	OPEN
<p><b>ACTION POINT 22</b> Redrafts of some of the review reports to be completed by the Forum Members and referred back to HMRC by 22 August 2014</p>	Robert Burton	OPEN
<p><b>ACTION POINT 23</b> Forum members to comment on the ToR (including membership) by 22 August 2014.</p>	Robert Burton	OPEN

## Annex 2

### Analysis of answers to the Service Companies question of the P35

We are reporting from tax year 2007/8, as this is the year the Managed Service Company legislation came in and the questions on the P35 changed.

<b>Tax Year</b>	<b>No. of Main P35 Returns (nearest '00,000)</b>	<b>Q6 Part A (nearest '000)</b>	<b>Q6 Part B (nearest '000)</b>
2007/8	1,800,000	72,000	29,000
2008/9	1,700,000	84,000	10,000
2009/10	1,700,000	97,000	10,000
2010/11	1,800,000	107,000	10,000
2011/12	1,900,000	120,000	12,000

Data is not yet available for 2012/13 and 2013/14, but will be released when it does become available.