

IR35 FORUM MINUTES –15th December 2015, 12:00pm

Location: 100 Parliament Street, London

Attendees

Rowena Fletcher (RF)	HMRC (Chair)
Clare Sheehan (CS)	HMRC
Mark Frampton (MF)	HMRC
Erin Robinson(ER)	HMRC
Joanna Were (JW)	HMRC
Jacqueline Gray (JG)	HMRC
Adrian Dixon (AD)	HMRC
Lewina Farrell (LF)	Recruitment and Employment Confederation
Simon McVicker (SM)	The Association of Independent Professionals and the Self-Employed
James Collings (JS)	The Association of Independent Professionals and the Self-Employed
Lesley Fidler (LF)	The Chartered Institute of Taxation
Kate Cottrell (KC)	IR35 Specialist
Carl Henning (CF)	The Freelancer and Contractor Services Association
Julia Kermode (JK)	The Freelancer and Contractor Services Association
Samantha Hurley (SH)	Association of Professional Staffing Companies
Jake Rigg (JR)	Association of Professional Staffing Companies
David Kirk (DK)	The Institute of Chartered Accounting in England and Wales

Apologies

Jason Piper	Association of Chartered Certified Accountants
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Welcome and introductions

1. RF opened the meeting and thanked everyone for coming. RF reminded attendees that the meeting held on 16 July formed part of the discussion on how to improve the effectiveness of the IR35 legislation held over the Summer and the Travel and Subsistence (T&S) consultation proposals. It was not part of the usual IR35 Forum discussion and therefore not recorded for minutes.
2. The previous minutes from February were accepted and the action points reviewed. (See Annex 1 for Action Points (AP)).

Update on IR35 Reform

3. RF provided background to the Chancellor's announcement on starting a dialogue with business about how to improve the effectiveness of the IR35 legislation made at Summer Budget on 8 July. A number of stakeholder roundtable events were held and over 160 written responses were received. The objectives of the discussion document were to explore options to make the legislation more effective in protecting the Exchequer and levelling the playing field between direct employees and those who work in a similar manner to direct

employees but through their own limited companies. The discussion document set out that a core principle of any change would be not to create disproportionate burdens on businesses or individuals.

4. The discussion reinforced the fact that non-compliance with the current rules is widespread and HMRC are continuing to work through the responses.
5. Points raised in discussion:
 - Although some members felt that some form of transfer of liability to the end client might be inevitable, opinions on how this should be achieved differed.
 - For representative body members there is a lack of clarity on the timescales, although there was general consensus that taking extra time to fully consider the options for change is valuable.
 - There was general recognition that the stakeholder engagement during the discussion period had been good and thorough. Although some members were concerned that delays in addressing the non-compliance with the IR35 rules would cause problems because of the link to IR35 in the travel and subsistence changes for people working through intermediaries being introduced from April 2016.
 - Changes will affect business planning for recruitment members.

Final points raised: Forum Members highlighted the success of the round table events over the summer and praised HMRC on running the events well. However, some members were concerned about reported leaks. HMRC explained that they were unable to comment on press speculation but that the government's objective remains to find a solution that protects the Exchequer and improves fairness in the system without creating disproportionate burdens on business, or widening the scope of the rules. HMRC confirmed that draft legislation for Finance Bill 16 had not been published and that the government is considering the responses to the discussion document.

Travel and Subsistence (T&S) proposals

6. AD provided an update on the T&S proposals following Autumn Statement announcement on 25 November.
7. The government will legislate to restrict relief for T&S expenses for workers engaged through an employment intermediary, such as an umbrella company or a personal service company (PSC). Subject to Parliamentary approval, this change will take effect from 6 April 2016. Draft legislation and guidance was published on 9 December 2015.
8. AD explained the government has amended the original proposals, so that relief for T&S expenses is only restricted for individuals working through PSCs where IR35 applies. AD confirmed that changes are being made to the draft legislation to ensure that it does not create any double negatives.
9. The Forum raised the following points in discussion:

- Concerns that that an employment business may disagree on whether a PSC is subject to IR35. AD confirmed that the employment business does not need to ask the PSC anything. Liability can be transferred to the directors and office holders of the PSC; and upstream compliance is built in if the PSC thinks they are in IR35.
- Concerns on due diligence, particularly related to fraudulent documents and transfer of liability.
- Possibility that those unfamiliar with the Employment Income Manual might be caught out using the wrong rules.

Final points raised: HMRC will look to see if any concerns can be covered in guidance, particularly to signpost where people need to be and make clear who is in and out. AD confirmed that HMRC is looking for examples to get things right and meeting with people over January 2016. The closing dates for getting comments for draft legislation is 3 February 2016.

OTS Cross-Government Working Group for Employment Status

10. Following the OTS report in March 2015 on Employment Status and tax, the need for a common definition of employment status across the piece was highlighted.
11. AD confirmed that on 25 November 2015, David Gauke MP, Financial Secretary to the Treasury, announced that a Cross-Government Working Group for Employment Status will be established. The group will include officials from HMRC, HM Treasury, the Department of Work and Pensions, and the Department for Business, Innovation and Skills.
12. Full details of the membership are not yet available as discussions about the make-up of the group are still in progress. HMRC expect the Working Group terms of reference to be released in early 2016. This group will consider the benefits of and barriers to an agreed set of employment status principles and a statutory employment status test.

Final point raised: The Forum welcomed the announcement and highlighted the importance of broad consultation and sharing views openly.

Improving Administration of the current IR35 rules

13. MF provided an update on plans to improve the Employment Status Indicator (ESI) tool and highlighted that he is keen to involve stakeholders in developing it.
14. HMRC plans to have an IR35 specific ESI tool which will act as an online tool for people remotely. Once this is fully implemented the existing Contract Review Service (CRS) will be aligned with the wider HMRC approach to providing clearances. HMRC are looking to increase the number of customers it can reach, support and provide certainty to. MF confirmed the following:
 - To have a mass market approach where users will receive a quick response based on a set of circumstances.
 - Scope to amend and vary the tool to cater for particular groups.

- Test on real contracts and build with stakeholders, including the Forum.
- Aiming to have a beta version ready for testing for spring 2016, subject to IT timelines.
- Questions are being reviewed to create meaningful questions for users.
- The ESI will be more accessible than the CRS.

Forum members raised the following points in discussion:

- Getting round the trust of tool is the biggest challenge.
- It will be important to build in proper time for testing it and getting the wording right (will ideally need to be accessible outside of HMRC to allow larger scale testing).
- External Forum Members agreed to tell their members about the tool.
- Need to have people agreeing to the fundamental questions HMRC are putting into it so transparency will be very important.
- Anonymity is welcomed.

Final points raised: In response to a question about whether the ESI would be adaptable to work for any further legislative change to the IR35 rules, HMRC confirmed that this would depend on what Ministers decide and therefore what would be needed. The Forum agreed it is important to get this right and get the necessary feedback. It will therefore be a test, learn and build approach.

Supporting customers/improving compliance

15. ER provided an update on the latest statistics concerning the IR35 Helpline and CRS and the following points were discussed:

- 600 calls were made to the helpline from April 2015 to date.
- Voice recognition improvements mean that the majority of the calls are now IR35 calls and are going to the right person.
- Good record on dealing with calls - nearly 100% dealt with within a couple of days.
- A technical issue during a recent upgrade meant that some IR35 customers experienced difficulties getting through for two to three days and HMRC apologised for the inconvenience caused.
- HMRC will continue to provide the service of the CRS and the helpline until the new ESI tool is developed and bedded in. ER welcomed thoughts on how and when to deal with the transition to non-statutory clearances.

AOB

16. The Forum discussed Terms of Reference, and established that changes agreed previously had been actioned except the agreement for representation from The Institute of Chartered Accounting in Scotland (ICAS). The Forum agreed representation was needed. **AP 5**

17. It was agreed the next meeting will be held late April/early May. A date will be circulated to the Forum as soon as possible. **AP 6**

Annex 1

Action Log – IR35 Forum

Action Point (AP)	Owner	Status
AP 1 HMRC will update the Forum on the final publication date of the administrative burden.	CS	Closed. Published 13 th March.
AP 2 HMRC will make the agreed changes to the Terms of Reference.	CS	Closed. Discussed in meeting on 15 December under AOB.
AP 3 HMRC will look at how best to provide guidance and support for customers on IR35 including the contract review service. Provide an update on the on-going work.	MF/CS/ ER	Closed. Discussed in meeting on 15 December.
AP 4 HMRC to send guidance links on the employment intermediaries reporting requirements to members after the meeting.	MF/JW	Closed.
AP 5 DK to provide RF with a name of a representative from ICAS.	DK	Open – New 15/12/15
AP 6 Circulate the next meeting date.	JW	Open- New 15/12/15