

## IR35 Forum Minutes

100 Parliament Street, G57  
Tuesday 10 May 2016  
11:00 to 13:00

### Attendees

Rowena Fletcher (Chair)	HM Revenue and Customs (HMRC)
Rebecca Wilkinson	HMRC
Neil Chattell	HMRC
Adrian Dixon	HMRC
Mark Frampton	HMRC
Julie De Brito	HMRC
Alan Reay	HMRC
Christopher Tait	HMRC
Asif Chaudhry	HMRC
Philippa Madelin	HMRC
Jon Couzens	HM Treasury
Simon McVicker	Association of Independent Professionals and the Self-Employed (IPSE)
James Collings	Association of Independent Professionals and the Self-Employed (IPSE)
Kate Cottrell	IR35 Specialist
David Kirk	The Institute of Chartered Accountants in England and Wales (ICAEW)
Philip McNeill	The Institute of Chartered Accountants of Scotland (ICAS)
Jason Piper	Association of Chartered Certified Accountants (ACCA)
Julia Kermode	Freelancer & Contractor Services Association (FCSA)
Carl Henning	Freelancer & Contractor Services Association (FCSA)
Lesley Fidler	The Chartered Institute of Taxation (CIOT)
Samantha Hurley	Association of Professional Staffing Companies (APSCo)
Tania Bowers	Association of Professional Staffing Companies (APSCo)
Lewina Farrell	Recruitment and Employment Confederation (REC)
Sam Davies	Dains LLP

### Welcome and introductions

1. Rowena Fletcher (RF) introduced Philip McNeill as the new ICAS member, Tania Bowers as the new APSCo member and Sam Davies (Dains LLP) who accompanied Lewina Farrell.
2. HMRC expect the consultation document on off-payroll working in the public sector to be published in the summer, in line with the announcement at Budget. RF confirmed HMRC will let Forum members know as soon as the document is published.

3. When the document is published, HMRC will invite responses through email and roundtables. The consultation will cover the definition of public sector, details of how the new rules will work, and how we might minimise burdens on business operating the rules. The new online tool which is planned to support everyone who has to operate the off-payroll working legislation will be developed in parallel.
4. RF confirmed HMRC will publish a summary of responses following the publication of the discussion document in July 2015.

### **Off-payroll working in the public sector: Reforming the intermediaries legislation - Process for consultation**

5. Julie De Brito outlined the plan for the consultation process.
6. Some members raised concerns about the scope of the consultation. RF reminded the Forum that the consultation is in line with the Budget announcement in March 2016, which built on the discussion that took place during 2015. A technical note was published at Budget which set out more detail about the Budget 2016 announcement and the framework for the consultation.
7. Members raised a number of issues about the proposed changes to the off-payroll working rules, including:
  - Whether agencies, rather than public sector bodies, would be able to determine whether the new off-payroll rules apply and whether the end-client should be compelled to pass information to the agency
  - Numbers of those affected, and the proportion who work through agencies
  - Whether we could publish details of taxes collected under IR35
  - Whether the new rules would contain an appeal mechanism
  - Whether the public sector assurance process would remain in place or be revised
  - How the changes to the rules would impact on workers claiming employment rights
8. RF thanked the Forum for their contributions and confirmed that the consultation period would enable a full discussion of all the issues and concerns raised by the Forum.

### **Developing the online tool**

9. Mark Frampton (MF) shared HMRC progress on developing the new online tool which will support customers in making decisions about whether off-payroll working rules apply and provide greater certainty. He invited comment on the main questions that HMRC should include as part of the tool. He explained that HMRC are keen to work closely with stakeholders to develop the tool, alongside the consultation.

10. Members were concerned about the challenges agencies would face in completing the questions because they might not have the necessary information. This led to wider discussion about respective responsibilities of engagers and intermediaries. MF highlighted the existing responsibilities that the public sector has in to ensure off pay roll workers comply with tax rules.
11. MF confirmed the tool would not replace the IR35 helpline, however, the ambition is to make it good enough to be a first line point of assistance.
12. Customers will have the opportunity to help HMRC develop questions. This will take place alongside the consultation. HMRC will use the input to design the tool and will test further in a beta version before April 2017.
13. Members made a number of suggestions about the draft questions:
  - Use answers that cover the full range of possibilities eg “sometimes” or “depending on the circumstances”
  - Take care with wording and possible interpretation
  - Use a sliding scale for answers
  - Clarify who is an “office holder” in the public sector
14. Members asked whether it would be possible to have a copy of people HMRC intended to consult about the online tool. MF explained that some organisations would naturally want their contributions to remain anonymous. RF confirmed HMRC will consult a wide range of stakeholders.
15. MF confirmed that over the course of the consultation he will share case law on which questions are based.

### **Managed Service Companies – update**

16. MF gave an overview of the recent HM Revenue and Customs case in *Christianuyi Limited and others v HMRC* [2016] UKFTT 022 (TC) which considered whether the Managed Service Company legislation applied. This is the first of a series of cases in a well-developed compliance response and HMRC are actively pursuing promoters of these types of schemes.
17. The managed services company rules provide an important tool to address the use of aggressive avoidance schemes. HMRC are planning a Spotlight article to highlight the risks of these schemes to counter increasing marketing.

### **Operational issues – update**

18. Philippa Madelin (PM) gave an update on operational issues. The off-payroll working reforms are part of a wider approach to improve compliance with the intermediaries legislation. HMRC continues to take an even-handed treatment across customer groups, prioritise resources to highest risk and identify strategic trends to tackle.

## **Review of Forum ToRs and membership**

19. RF reminded members that the forum was set up to improve the administration of the current intermediaries rules. The proposed reforms will provide an opportunity to review both the current remit of the group and its membership. HMRC will bring a proposal for discussion to the next meeting.

## **AOB**

20. Kate Cottrell requested a list of IR35 cases in the pipeline for tribunal. MF explained that this is not possible for reasons of confidentiality ahead of a case being listed and of course people may choose to settle.
21. Lewina Farrell and Julia Kermode raised concern about use of employment allowances and VAT flat rate schemes and the competitive disadvantage that compliant intermediaries face.

## Annex 1

### Action Log – IR35 Forum

<b>Action Point (AP)</b>	<b>Owner</b>	<b>Status</b>
<b>AP 1</b> Issue Spotlight on Managed Service Company case discussed.	Mark Frampton	Open New 10/05/16
<b>AP 2</b> Lewina Farrell to send Rowena Fletcher correspondence for response, regarding queries on travel and subsistence guidance.	Lewina Farrell	Open New 10/05/16
<b>AP 3</b> HMRC to review membership of the forum and produce a paper for the next meeting.	Rowena Fletcher	Open New 10/05/16
<b>AP 4</b> Mark Frampton will speak to relevant colleagues about action on use of employment allowances and VAT flat rate schemes and will update Lewina Farrell and Julia Kermode.	Mark Frampton	Open New 10/05/16