

IR35 Forum - minutes

Date: 14 September 2011

Location: Room 2/51, 100 Parliament Street

Time: 11.00 to 13.30

Attendees

Tony Johnson (HMRC) (Chair)

Chris Bryce (Professional Contractors Group)

Kate Cottrell (IR35 Specialist)

Gillian Econopouly (Recruitment and Employment Confederation)

Lesley Fidler (CIOT)

Martin Hesketh (Freelancer & Contractor Services Association)

Samantha Hurley (The Association of Professional Staffing Companies)

Simon McVicker (Professional Contractors Group)

Anita Monteith (ICAEW)

Jason Piper (ACCA)

Mike Brown (HMRC Operational)

Graeme Conlon (HMRC Technical)

Philip Lloyd (HMRC Operational)

Robin Wythes (HMRC Policy)

Phil Hogan (HMRC Policy)

Apologies

Priyen Patel (Federation of Small Business)

Anne Redston (IR35 Specialist)

Welcome and introductions

1. The Chair welcomed the attendees and advised that he was standing-in temporarily. Since the previous meeting Sam Mitha has moved to another HMRC post. A permanent Chair will again be in place at the next Forum meeting. The Forum welcomed the Association of Chartered Certified Accountants to their first meeting.

Feedback to HMRC

2. HMRC expressed gratitude for the feedback so far received but were concerned that there was a risk that not enough detailed, specific information was being provided about areas where it was perceived HMRC needed to improve its administration of IR35. HMRC were mindful that in the absence of detailed information, development work in such areas as guidance, conduct of reviews etc. there was a risk that HMRC would make assumptions about what is considered wrong with the way IR35 is administered. Representatives considered that there was a misunderstanding as they thought the Forum was only at the stage of agreeing the broad framework areas. Some representatives felt hampered because they had been asked to be discrete with the material provided by HMRC and had not therefore consulted with members/colleagues.
3. It was agreed that HMRC would set out the broad framework areas where specific detailed comments and views were being sought. HMRC agreed that Forum representatives should consult members/colleagues in order to obtain as comprehensive and detailed a view as possible.

Broad framework areas

4. HMRC agreed to publish the outline new organisational structure chart previously provided to the Forum but emphasised that the chart was very much early thoughts on how HMRC might restructure in order to identify customer groupings and respond appropriately to each group.
5. HMRC listed four framework areas where it was seeking specific detailed comments on how to make improvements:
 - Helpline - role and method of operating
 - guidance - content, accessibility and target audiences
 - reviews - opening, conduct and closure of reviews
 - risk - which types of businesses represent high or low risk and why
6. The Professional Contractors Group (PCG) advised that they were working, in conjunction with their professional advisers, on a paper proposing an end to end IR35 process and intend to provide Forum members with a copy in approximately three weeks' time.

IR35 Helpline

7. HMRC explained that changes to the way the Helpline operates could be made to accommodate previous suggestions made by Forum representatives, particularly allocating callers a reference number and making clear at the outset of calls that they are not used to initiate any compliance activity.
8. There ensued a discussion about the anonymity of the caller. HMRC clarified that the caller's anonymity was dependent on what the caller wanted from their contact. If they wanted general advice about IR35, then it was their choice whether they wanted to provide their details. If the caller wanted a definitive opinion on whether IR35 applied to a contract, then HMRC would need to take all the relevant details and almost certainly approach the end user.
9. HMRC confirmed that IR35 opinions are not issued over the phone because of the necessity to seek information from end clients. Some Forum representatives felt that the Helpline could only ever provide general guidance because of most contractors' reluctance to give permission for end clients to be contacted. There was discussion about the content of the calls. HMRC advised that a minimal amount of information is recorded, which in essence was the nature of the caller's enquiry.
10. The discussion about the Helpline identified that there was potentially a misunderstanding regarding what the Helpline would be able to deliver in a given set of circumstances. Some representatives questioned whether the Helpline would be able/should do more than provide general advice. A view expressed was that end clients should not be discussed and that the Helpline should focus on advising the caller whether they are inside or outside of IR35.
11. A view also expressed was that the Helpline was used mainly by accountants and that it should be established who actually currently uses the Helpline, particularly as some of the calls to the Helpline are not about IR35.

12. The discussion concluded with agreement for representatives to ask their members/colleagues what their experiences were with the Helpline and to provide feedback of these experiences to the Forum. It was agreed that HMRC would revisit the role of Helpline in terms of what it can achieve.

HMRC guidance

13. HMRC reported that those working on the IR35 Helpline had recorded the ten most frequently asked questions and that as part of the process of reviewing the current HMRC guidance, HMRC will ensure that the guidance addresses those questions. HMRC will share these ten frequently asked questions with the Forum.
14. HMRC were grateful for the comments so far received about the guidance and acknowledged that in addition to reviewing the content of the guidance there was also a requirement to consider the accessibility of the guidance on the HMRC website.
15. HMRC are keen to receive further detailed comments from the Forum about the guidance, particularly in terms of the extent to which it meets customers' needs.

Operational work (reviews)

16. HMRC explained that as part of looking specifically at its operational work, it was in the process of arranging to meet with a number of external stakeholders to seek their detailed views on HMRC's administration of IR35. So far one meeting has been held with specialist agents, which had been very helpful in identifying specific issues relating to how HMRC select cases for review, conduct reviews and close reviews. Some views expressed echoed what had previously been said at Forum meetings.
17. A particular annoyance expressed about HMRC is that HMRC do not appear to consider closing a review early when the circumstances dictate that perhaps they should. Another complaint is that when HMRC decides not to pursue a case it is not made clear why, leaving the taxpayer and their agent none the wiser as to HMRC's view on the application of IR35. Representatives expressed concern that closing cases in such a manner raised the spectre of HMRC reopening the review at a later date. This was not conducive to providing certainty.

18. HMRC said that across compliance generally, and IR35 specifically, there were already practices in place to identify those cases that should be pursued and those that should be brought to a conclusion (for a variety of reasons). For example, recently a case was closed following new information obtained during an interview. These processes will be built upon as part of the IR35 changes in order that reviews do not continue longer than necessary.
19. There was an acknowledgment that recently there had been a marked improvement on the closing of outstanding cases by HMRC.
20. HMRC advised that although they are committed to concluding reviews as soon as feasibly possible, they are sometimes hampered by non-cooperation. In this respect Forum members believe that HMRC should more actively use their information powers. HMRC noted that the use of information powers can itself be time consuming. All members of the Forum believed it is in everyone's interest that information is provided voluntarily in a timely manner.
21. Forum representatives again expressed, the view that there are too many HMRC people involved in a review with no clear focus for the taxpayer or their agent regarding who is the case owner or decision taker. HMRC have acknowledged this criticism and are considering how best to address this concern. HMRC advised that already in some cases, case ownership has passed to the Status Inspector, who is the person who provides the technical expertise. The effect of this is that the Status Inspector is liaising directly with the taxpayer or their agent, rather than through other HMRC officers. HMRC will monitor whether this approach is the best solution to address the problem.

22. It was suggested that HMRC could improve its IR35 case administration if administrative support was provided so freeing-up compliance staff's time to concentrate on investigating cases. Provision of administrative support would help ensure effective case progression. HMRC advised that improving case progression was a priority. Administrative support existed, but there was not access to unlimited resources for this purpose. However, the move by HMRC to concentrate IR35 reviews in specialist teams whose main purpose will be to work IR35 cases will enable HMRC to consider, amongst other things, how to improve case administration.

Identifying and informing 'low risk' customers

23. HMRC advised that there are two distinct low risk groups which need to be considered in terms of guidance and support:

- individuals working through intermediaries
- end clients/employers

24. HMRC believe that it will be more challenging to provide guidance and support to many end clients, as those which are larger organisations are more likely to have taken conscious, informed decisions about the engagement of individuals operating through intermediaries.

Risk assessment

25. HMRC reiterated that it would share its broad risk assessment with the Forum but would not share detailed risk profiling.

26. It was suggested that HMRC should risk profile based on whether or not the taxpayer is in business on their own account, rather than on the nature of individual contracts. HMRC advised that the way IR35 is structured, the legislation applies contract by contract. The challenge will be to have regard to the nature of the business in terms of identifying risk whilst not undermining the legislation.

27. HMRC confirmed that the service company question on the ITSA Return is used as part of its wider risk assessment process. It was acknowledged that in many cases the question is left blank which itself can be risk profiled against other entries on the return which would tend to indicate that the question should have been answered. The question is only one factor in HMRC's wider risk profiling.
28. HMRC made clear that whilst it would strive only to select for review high risk cases, risk profiling is such that inevitably in some cases selected it will subsequently be accepted that IR35 does not apply. HMRC's strategy will be to reduce to a minimum cases selected which subsequently transpire to be not caught by IR35, but where that occurs, to close such cases at the earliest possible time.
29. Further discussion ensued about the messages HMRC could provide in cases which are closed. The suggestion was made that HMRC should emphasise that as far as the relevant contract is concerned, that would not be re-visited. Also, where the evidence is considered borderline and HMRC does not pursue IR35, HMRC could provide some indication what change in factor or factors would have indicated that IR35 applies. This could help the taxpayer better understand why HMRC had reached the conclusion it had. HMRC agreed to consider the proposals and the content of closing letters in order that far greater clarity is provided both in terms of HMRC drawing a line under the past and explaining to the taxpayer relevant factors to be considered in the future.
30. The suggestion was made that as agreement/disagreement between HMRC and taxpayers and their agents regarding when IR35 applies and when it does not (based on the same set of facts) is a critical issue, it would be helpful if Forum representatives came to a view collectively on the application of IR35 to 12 varying scenarios (based on real cases) in order to identify where there is agreement with HMRC, where there is disagreement with HMRC, and where there is uncertainty. It was felt that it would then be beneficial to concentrate on the areas of uncertainty - the grey area - in order to identify the reasons with a view to trying to reduce the uncertainty as much as possible.

31. It was agreed that Forum representatives (that is, excluding HMRC) would meet to undertake this work and present their views to the entire Forum at the next meeting (subsequent to the meeting HMRC agreed to provide 12 wide ranging scenarios for the group to consider). They reiterated that the professions they represent are keen to get their obligations to IR35 legislation right.

Engagement with other stakeholders

32. HMRC asked Forum members to provide HMRC with the names of any stakeholders it was felt HMRC should consult. Two names were provided.

Any other business

33. It was requested that minutes reflect where there is disagreement rather than, as previously, imply that there is always unanimity.
34. It was also requested that HMRC engage with the Department for Business, Innovation and Skills (BIS), to identify common issues.

Action points

1. Forum representatives to ask their members what their experiences have been with the Helpline and to feed back those experiences to the Forum.
2. Forum representatives to ask their members for specific views on how HMRC could improve its guidance, risk profiling and conduct of reviews and feed those back to the Forum.
3. Forum representatives to provide HMRC with the names of any external stakeholders it is felt HMRC should consult with.
4. PCG to provide Forum members with the PCG's end to end process paper in due course.
5. Forum representatives to meet to consider the application of IR35 in 12 scenarios (to be provided by HMRC) and to report back to the next Forum meeting.
6. Forum representatives to share with HMRC the names and circumstances of any current IR35 cases which are either long-running or otherwise causing concern.
7. HMRC to share with Forum members the ten most frequently asked questions the IR35 helpline has received.
8. HMRC to publish the provisional organisational structure chart.
9. HMRC to liaise with the BIS about the review of IR35 to identify issues of common interest.

Date of next meeting

9 November 2011 (11.00 to 13.30) at 100 Parliament Street.