

## **IR35 Forum - minutes**

Date: 9 November 2011

Location: Room 2/51, 100 Parliament Street

Time: 11.00 to 12.40

### **Attendees**

Tracy Gale (HMRC) (Chair)  
Chris Bryce (Professional Contractors Group)  
Andy Chamberlain (Professional Contractors Group)  
Kate Cottrell (IR35 Specialist)  
Lesley Fidler (CIOT)  
Martin Hesketh (Freelancer & Contractor Services Association)  
Samantha Hurley (The Association of Professional Staffing Companies)  
Simon McVicker (Professional Contractors Group)  
Jason Piper (ACCA)  
Andrew Tomlinson (Recruitment and Employment Confederation)  
Jane Page (HM Treasury)  
Mike Brown (HMRC Operational)  
Graeme Conlon (HMRC Technical)  
Philip Lloyd (HMRC Operational)  
Sarah Radford (HMRC Policy)  
Robin Wythes (HMRC Policy)  
Phil Hogan (HMRC Policy)

### **Apologies**

Gillian Econopouly (Recruitment and Employment Confederation)  
Anita Monteith (ICAEW)  
Priyen Patel (Federation of Small Business)  
Anne Redston (IR35 Specialist)

### **Welcome and introductions**

1. The Chair welcomed the attendees.

### **Action points from meeting of 14 September 2011**

- Forum representatives to ask their members what their experiences have been with the Helpline and to feed back those experiences to HMRC.

Some feedback had been received. HMRC would be grateful to receive any further feedback. PCG stated that their members did not use the Helpline and that therefore they had no feedback to give.

- 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 HMRC.

Some feedback had been received and this action point would be further addressed in the meeting.

- Forum representatives to provide HMRC with the names of any external stakeholders it is felt HMRC should consult with.

HMRC advised that meetings had been held with four other external stakeholders and that they would be pleased to receive the names of any other external stakeholders members felt should be consulted.

- PCG to provide Forum members with the PCG's end to end process paper in due course.

PCG circulated their paper on 7 November 2011.

- 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.

Analysis of external views on the scenarios, of which there were 13, circulated to HMRC on 7 November 2011.

- Forum representatives to share with HMRC the names and circumstances of any current IR35 cases which are either long-running or otherwise causing concern.

None as yet received.

- HMRC to share with Forum members the most frequently asked questions the IR35 Helpline has received.

HMRC circulated the most frequently asked questions on 4 November 2011 to Forum members.

- HMRC to publish the provisional organisational structure chart.

The chart was published on the HMRC website on the 6 October 2011.

- HMRC to liaise with the BIS about the review of IR35 to identify issues of common interest.

HMRC confirmed that they have started this liaison.

## **Presentations by PCG and HMRC**

2. Prior to the meeting papers had been circulated by HMRC and some external stakeholders. Two short presentations were given by the Professional Contractors Group (PCG) and HMRC.
3. The PCG explained in their presentation that the paper they circulated had in a previous form been presented to the Office of Tax Simplification. However, since then they had worked extensively on the paper with the help of their advisers and also discussed the paper with the external members of the Forum.

4. The PCG acknowledged that as the Government had decided to retain IR35, any tests to distinguish whether an intermediary was inside or outside IR35 would have to be within the parameters of the legislation.
5. On that basis, the PCG said they wanted to propose a tiered test approach where the indicators of business dictate the level of HMRC intervention. HMRC queried how they would know about particular test indicators that are not currently captured by HMRC data. The PCG advised that their proposed indicator tests would already be in existence in some sort of data form that could be requested or researched. For example, a business could be asked for documentary proof of the amount spent on training in a given year.
6. HMRC, in their presentation, advised that they were aware from feedback that the contract by contract articulation of the legislation causes particular difficulties for someone operating through a personal service company in understanding if they are caught by IR35.
7. HMRC emphasised that the policy intention of IR35 is to address situations where intermediaries are used to disguise employment. In order to reduce burdens on businesses which HMRC accepts are not being used to disguise employment, HMRC said in their presentation that they are proposing amending their risk rules to consider the overall nature of an intermediary, rather than narrowly at isolated contracts.
8. HMRC explained that they want to focus and increase their compliance activity against those higher risk cases being used to disguise employment. This activity will comprise a range of interventions across various sectors. HMRC said they also proposed to publish their general risk criteria to enable those providing their services via intermediaries to identify whether they are considered high or low risk, but would not publish their entire, detailed risk profile. As well as increased compliance activity, HMRC said they also wanted to revise and update their internal and external guidance to reflect this changed approach.
9. Reaction to HMRC's proposal was welcomed but the point was made that the proposed published risk criteria may be insufficient for someone to know whether their company was inside or outside IR35. HMRC said they believed that published risk indicators, allied to guidance, would enable the majority of those providing their services through intermediaries to judge their level of risk. Some risk parameters would always need to remain confidential otherwise those seeking to disguise employment could manipulate their information in an attempt to present themselves as a bona fide business.

10. The Forum agreed that the PCG and HMRC proposals appear to have areas of parity. There was a consensus that when HMRC review an intermediary business they should focus initially on the nature of the business and only if considered a risk should it then consider status case-law indicators. Forum members were keen that in order to develop this approach, the work on the scenarios should now be progressed in more detail.
11. As part of the general discussion, it was suggested that another indicator HMRC could take into account is whether the business concerned has taken reputable professional advice. One representative said that they give clients an initial view but ultimately base their final view on the actual working practices the business undertakes. HMRC said they would consider this as something they could explore in conjunction with other HMRC Forums.

## **Conclusions**

12. It was agreed that HMRC's current risk strategy is broad and that there is scope to refine it in order to focus on the high risk intermediaries. The Forum recognised that despite the broad consensus around the approach, there will always be some differences of interpretation, ultimately with some cases still being decided by the Tribunals. HMRC indicated that in the event that a low risk case was selected for intervention, then they would seek to withdraw from the case as soon as they could.
13. The Forum agreed that there was merit in considering both how to funnel out the lower risk cases and how the technical arguments are then to apply to the remaining high risk cases and the role of model scenarios in such thinking.
14. The issue of workers being manipulated/forced into providing their services via intermediaries was discussed. It was agreed that there was an education task to be undertaken to provide guidance to employers and end clients regarding the implications of effectively employees providing their services through intermediaries.
15. Current proposals are for HMRC to introduce the new risk profiling and process from April 2012.

## **Next steps**

16. It was agreed that:
  - I. A subset of the Forum should meet as soon as practicable to discuss the detail the scenarios in order to establish where there is agreement and where differences of interpretation remain. It was recognised that inevitably there would remain some grey areas.

- II. A subset of the Forum would meet to discuss the operational processes underpinning the new proposals.
- III. HMRC would update the Forum before the next Forum meeting on progress against the four specific areas (Helpline, Guidance, Risk and Reviews) previously identified.

### **Action points**

- 1. HMRC to research their department's understanding surrounding taxpayers receiving advice, professional or otherwise.
- 2. HMRC to set up a technical meeting with their counterpart external Forum members before the next Forum meeting to establish agreement and differences on the indicators that define a business for the purposes of IR35.
- 3. HMRC to take forward, in consultation before the next Forum meeting with external stakeholder Forum members, the development of their operational approach.
- 4. HMRC to update the Forum before the next Forum meeting on progress against the four specific areas (Helpline, Guidance, Risk and Reviews) previously identified.

### **Date of next meeting**

18 January 2012 (11.00 to 13.00) at 100 Parliament Street.