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Our Ref FOI 1901/09

Your Ref

www.hmrc.gov.uk

Dear Mr Cross

Introduction

Thank you for your email dated 24 August 2009 in which you confirmed that you wanted an internal review of your Freedom of Information Act (FOIA) request. You asked HMRC to particularly consider the following points in conducting the internal review:

- (1) HMRC's general duty to assist people in making FOI requests
- (2) the need to address all the points raised in an FOI request
- (3) the need to properly explain what searches of records have been undertaken
- (4) the need to properly explain reliance on exemptions

Your request

In your email dated 26 July 2009 you made the following request:

"a list of the titles of all current instructions, manuals, policies or guidance issued by HMRC not already published in full on the HMRC website that in any way suggest treating any of the following categories of people differently to other taxpayers:

- (1) Government Ministers
- (2) MPs
- (3) Members of the House of Lords
- (4) Senior Civil Servants
- (5) Members of the Royal Family
- (6) High profile individuals ('Celebrities')

Information is available in large print, audio tape and Braille formats.
Type Talk service prefix number – 18001



INVESTOR IN PEOPLE



I am not asking for any person data you might hold in relation to individual tax payers.”

Our response

On 24 August 2009, Mrs Chance responded to your request. She explained that your request for guidance was being interpreted as meaning internal guidance issued to HMRC staff and officials in relation to the tax treatment of individuals in the categories you mention. She confirmed that HMRC does not hold such information. There are no internal instructions to HMRC staff and officials which deal with specific issues relating to the tax liabilities of the categories of people cited in your request. She confirmed that there are no specific statutory provisions relating to the classes of individual in categories (3), (4) and (6).

There are specific statutory provisions relating to categories (1) and (2), and Mrs Chance provided a link to the HMRC booklet for Members of Parliament and Government Ministers entitled “MPs, Ministers and Tax” which can be found on the HMRC website.

In relation to category (5), Mrs Chance advised that the information you requested, if held, would be covered by the exemption provided in section 44 of the FOIA, which relates to information covered by a statutory duty of confidentiality. She provided a copy of the publicly available Memorandum of Understanding which forms part of the Royal Trustees’ Report laid before Parliament in September 1993. This sets out the arrangements under which HM the Queen pays tax voluntarily, and HRH the Prince of Wales pay tax voluntarily on his income from the Duchy of Cornwall. Outside the terms of the FOIA, she also confirmed that Members of the Royal Family other than The Queen and The Prince of Wales are subject to tax in the ordinary way.

Internal Review

I have been asked to review your FOIA request and its handling. The purpose of the Internal Review is to provide a fair and thorough review of decisions made pursuant to the FOIA.

I note that you made your request on 26 July 2009 and HMRC provided its response on 24 August 2009, within the statutory deadline as required by section 10(1) of the FOIA. I note that the response also set out HMRC’s review procedure and your right to complain to the Information Commissioner, as required by section 17(7) of the FOIA.

I see that Mrs Chance interpreted your request to mean HMRC internal guidance to staff on the tax treatment of individuals in the categories you mention. In addition to confirming that no such internal guidance exists, she also provided, or provided links to, published information about the tax treatment of those individuals. In your original email, you stated that you wanted to access information about how the classes of people referred to in your request are treated compared to tax payers generally so that you could determine whether or not they were receiving favourable treatment. I consider that Mrs Chance’s response both answered your specific question, and enabled you to access other information related to your request.

I will now turn to the specific points which you wanted us to address in our review.

(1) HMRC’s general duty to assist people in making FOI requests

I believe that HMRC was helpful in providing a copy of the booklet which is specifically provided for MPs and Ministers. It did not fall exactly within the scope of your request since it was already published on our website. To be helpful, HMRC also provided the Report of the Royal Trustees setting out the basis for the terms under which HM The Queen and HRH Prince of Wales pay tax. This was also out of the scope of your request because it was not guidance issued by HMRC.

In the course of my review, I have located a document which sets out the statutory provisions which relate to Government Ministers and MPs. This was not within the scope of your request since it is not internal guidance issued by HMRC but is simply extracts from the relevant statutes. To be helpful, I am providing this to you now.

You asked for advice and assistance that would help you to identify HMRC policies, guidance and instructions for the purpose of making future requests. Mrs Chance concluded that you wanted assistance in making future requests about these categories of people. She explained that, since HMRC did not hold information of the kind you requested, she was unable to provide any tables, lists or indexes of the type sought.

Looking at your request again, I see that you did not specifically say that you wanted to make future requests about these categories of people. I have therefore considered what advice and assistance HMRC could offer in general terms to help you identify HMRC policies, guidance and instructions.

The FOIA requires all public authorities to produce a Publication Scheme that specifies the classes of information which the public authority publishes or intends to publish. I include below links to HMRC's Publication Scheme and to the description of the classes of information which HMRC publishes. The first link explains how you can search for information on HMRC's website. From these two links, you should be able to find HMRC policies, guidance and instructions on a range of subjects.

<http://www.hmrc.gov.uk/freedom/find-info.htm>

<http://www.hmrc.gov.uk/freedom/classes-of-info.htm>

The link below will take you to HMRC's disclosure log which contains a sample of FOIA requests and responses that we believe may be of wider public interest. You will see that this includes a selection of recent requests on the subject of MP's expenses.

<http://www.hmrc.gov.uk/freedom/disclosure-log.htm>

Finally, the link below provides guidance on how to submit a FOI request to HMRC.

<http://www.hmrc.gov.uk/freedom/foi-index.htm>

(2) the need to address all the points raised in an FOI request

I believe that the initial response did address all the points raised in the FOIA request itself. Our response confirmed that the information requested was not held.

(3) the need to properly explain what searches of records have been undertaken

I can see that Mrs Chance did not explain what searches were undertaken to determine whether any information was held. I have established that colleagues within HMRC Personal Tax operational group were consulted at initial request stage. They confirmed that there are no specific statutory provisions relating to the classes of individual in categories (3), (4) and (6). They confirmed that there are no instructions or manuals for dealing specifically with the tax affairs of Ministers/MPs and the other categories listed in the FOIA request and that they are not dealt with differently from other taxpayers.

(4) the need to properly explain reliance on exemptions

In our response to your request, HMRC did not withhold any information within the scope of the request and therefore did not rely on any exemptions.

Conclusion

My conclusion is that HMRC correctly advised you that no information within the scope of your request was held. To be helpful, some related information was provided to you. Further assistance could have been given to assist you in making further requests to HMRC on other matters and I have now done that.

Appeal Process

As previously advised, if you are not content with the outcome of this review, you may apply directly to the Information Commissioner, who can be contacted at:

The Information Commissioners Office
Wycliffe House Water lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely

John Sharpe

Appendix

Extract from Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”)

Statutory exemptions

291 Termination payments to MPs and others ceasing to hold office

(1) No liability to income tax in respect of earnings arises by virtue of any grant or payment to which this section applies (but see Chapter 3 of Part 6: payments and benefits on termination of employment etc).

(2) This section applies to grants and payments—

(a) made in accordance with a resolution of the House of Commons to a person ceasing to be a Member of that House on a dissolution of Parliament,

(b) made under section 4 of the Ministerial and other Pensions and Salaries Act 1991 (c 5) (grants to persons ceasing to hold certain ministerial and other offices),

(c) made under section 3 of the European Parliament (Pay and Pensions) Act 1979 (c 50) (resettlement grants for persons ceasing to be Representatives),

(d) made under section 81(3) of the Scotland Act 1998 (c 46) to a person—

(i) ceasing to be a member of the Scottish Parliament on its dissolution, or

(ii) ceasing to hold an office corresponding to a relevant office,

(e) made under section 20(3) of the Government of Wales Act 2006 to a person—

(i) ceasing to be a member of the National Assembly for Wales; or

(ii) ceasing to hold office as the Presiding Officer, Deputy Presiding Officer, or such other office in connection with the Assembly as the Assembly may determine, but continuing to be an Assembly Member,

(ea) made under section 53(3) of the Government of Wales Act 2006 to a person ceasing to be a member of the Welsh Assembly Government, ...²]¹

(f) made under section 48(1) of the Northern Ireland Act 1998 (c 47) to a person—

(i) ceasing to be a member of the Northern Ireland Assembly on its dissolution, or

(ii) ceasing to hold an office corresponding to a relevant office[, or

(g) made under section 26A of the Greater London Authority Act 1999 (payments on ceasing to hold office as Mayor of London or as a member of the London Assembly).]²

(3) In this section “a relevant office” has the same meaning as in section 4 of the Ministerial and other Pensions and Salaries Act 1991.

292 Overnight expenses allowances of MPs

(1) No liability to income tax arises in respect of an overnight expenses allowance paid to a Member of the House of Commons in accordance with a resolution of that House.

(2) “Overnight expenses allowance” means an allowance expressed to be in respect of additional expenses necessarily incurred by the Member in staying overnight away from the Member's only or main residence, for the purpose of performing parliamentary duties-

(a) in the London area, as defined in such a resolution, or

(b) in the Member's constituency.

294 EU travel expenses of MPs and other representatives

- (1) No liability to income tax arises in respect of a sum that is-
 - (a) paid to a Member of the House of Commons in accordance with a resolution of that House providing for Members of that House to be reimbursed EU travel expenses, or
 - (b) paid to a member of-
 - (i) the Scottish Parliament under section 81(2) of the Scotland Act 1998,
 - (ii) the National Assembly for Wales under section 16(2) of the Government of Wales Act 1998, or
 - (iii) the Northern Ireland Assembly under section 47(2) of the Northern Ireland Act 1998,and expressed to be made in respect of EU travel expenses.
- (2) "EU travel expenses" means the cost of, and any additional expenses incurred in, travelling between the United Kingdom and-
 - (a) a European Union institution in Brussels, Luxembourg or Strasbourg, or
 - (b) the national parliament of another member State or of a candidate country.
- (3) In subsection (2) "candidate country" means Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic, Slovenia or Turkey.
- (4) The Treasury shall by order make such amendments of the definition in subsection (3) as are necessary to secure that the countries listed are those that are from time to time candidates for membership of the European Union.

295 Transport and subsistence for Government ministers etc.

- (1) No liability to income tax arises in respect of the provision of transport or subsistence provided or made available by or on behalf of the Crown to-
 - (a) the holder of a ministerial office, or
 - (b) a member of the family or household of the holder of a ministerial office.
- (2) No liability to income tax arises in respect of payments and reimbursements by or on behalf of the Crown of expenses incurred in connection with the provision of transport or subsistence to a person within subsection (1).
- (3) "Ministerial office" means-
 - (a) an office in Her Majesty's Government in the United Kingdom,
 - (b) any other office which is one of the offices and positions in respect of which salaries are payable under section 1 of the Ministerial and other Salaries Act 1975 (c. 27), and
 - (c) an office under one of the following Acts which corresponds to an office within paragraph (a) or (b)-
 - (i) the Scotland Act 1998 (c. 46),
 - (ii) the Government of Wales Act 1998 (c. 38), or
 - (iii) the Northern Ireland Act 1998 (c. 47).
- (4) In determining whether a particular person holds an office within subsection (3)(b), it is irrelevant whether or not a salary is paid or payable to that person under the Ministerial and other Salaries Act 1975.
- (5) In this section references to the provision of transport to a person include references to-
 - (a) the provision or making available to that person of a vehicle with or without a driver,
 - (b) the provision of fuel for a vehicle provided or made available to that person, and
 - (c) the provision of any other benefit in connection with such a vehicle.
- (6) In this section-
 - (a) "subsistence" includes food and drink and temporary living accommodation, and
 - (b) "vehicle" means a mechanically propelled road vehicle