

Margaret Earing
Central Policy IS
Freedom of Information Team 04/52
100 Parliament Street
London SW1A 2BQ

Frank [request-22705-0xxxxxxx@xxxxxxxxxxxxxxxxxxx

Tel

Fax

Email

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Our Ref FOI 2397/09
Your Ref

www.hmrc.gov.uk

Freedom of Information Act 2000

Dear Mr Mustill

Re: Freedom of Information Act 2000

Thank you for your Freedom of Information request dated 5 November 2009. In relation to the legality of the new name and shame scheme you asked:

1. *What new changes in legislation will be coming in 2010 that will enable you publish these [personal details of individuals] details that would breach your current legislation in relation to:*
 - a. *section 44(1)(a) of the FOI Act*
 - b. *section 23 of CRCA*
2. *You[r] statement is not clear as to whether ONLY those found guilty by conviction will be named or whether those found guilty through HMRC investigations and found to have avoided tax will be named as well?*
3. *Will you be naming EVERYONE that is found to be guilty of tax evasion, no matter who they are (MPs and celebrities for example)?*
4. *Can you please confirm that is [if] someone has only made a part disclosure and NOT a full disclosure by the March 2010 deadline, they will be named and shamed full [with] the full amounts involved? (eg. if someone only declares £10,000 of extra income and you discover another £20,000 after the deadline, will they be shamed for the whole amount as undeclared?)*

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Type Talk service prefix number – 18001



INVESTOR IN PEOPLE



5. *Does this naming and shaming include CGT in relation to house flipping investigations of MPs or members of the House of Lords? If a Police investigation finishes after the deadline and an individual is found guilty of CGT avoidance over the £25,000 level, will they be named?*

I am writing to confirm that HMRC has now completed its search for the information and I can also confirm that the information is held. Section 94 of Finance Act 2009 (section 94) is the legislation to which you are referring. For further details of how the new legislation will be implemented, see

www.hmrc.gov.uk/about/tax-defaulters-q-a.htm.

In answer to your questions:

1. Section 23 of the Commissioners for Revenue and Customs Act 2005 (CRCA) is subject to any disclosure which is already lawful under section 18 CRCA. Section 94 expressly provides that the Commissioners for HMRC may publish the names of deliberate tax defaulters in certain circumstances. Naming of tax defaulters under section 94 is therefore permitted in the terms of section 18 CRCA because subsection 18(3) provides that information may be disclosed in accordance with any other enactment.

The provisions of section 94 have not yet taken effect. It is intended the provisions will start in April 2010.

2. Persons who will be named are those who have incurred a certain type of tax related penalty, which has become final, and who meet the other conditions in section 94. The types of penalty are detailed in section 94 and all relate to deliberate acts, i.e. careless errors will not result in naming (although they may result in penalties). Penalties for deliberate acts will generally be charged following an HMRC compliance check. The penalties are civil in nature rather than criminal; no criminal conviction will be necessary.
3. Section 94 provides that HMRC may name all persons who incur the relevant penalties, subject to the exceptions provided for in the section itself. However there is discretion not to name persons. The intention is that this discretion will be exercised only in exceptional circumstances. It would not be sensible to list the exceptional circumstances where publication would not be appropriate, as by definition it is difficult to predict fully what they will be. Examples might include risk to personal safety or to a criminal investigation. The aim will be to ensure that the scheme is applied consistently and fairly whilst retaining sufficient flexibility.

The fact an individual is a well-known public figure such as an MP or celebrity will not, on its own, be an exceptional circumstance. In such circumstances it may not be necessary to publish the individual's address however, if this might present a security risk for example, if they can be clearly identified by their name or title, and/or the nature of their business.

4. If a person seeks to avoid being named through making a disclosure, the person must make a disclosure which allows the penalty to be reduced to the full extent permitted by the law. Full reduction is only available where the quality of the disclosure merits it. Judgements on the quality of the disclosure will include the extent to which the person has told HMRC about the inaccuracy, given us reasonable help and allowed us access to the records. Detailed guidance on this subject can be found in our Compliance Handbook at CH82400 which is accessible on the HMRC website at

www.hmrc.gov.uk/manuals/chmanual/CH82400.htm

In the example you give, any disclosure made in March 2010 would not relate to periods covered by section 94. Names will only be published if the penalty for a deliberate default is incurred for tax periods beginning on or after 1 April 2010, or failures or acts that arise on or after 1 April 2010. If a full reduction for disclosure is given, the person's name and details will not be published.

5. The provision includes penalties for deliberate errors in relation to capital gains tax. Any penalties charged which meet the conditions in section 94, where the period covered by the relevant tax return begins on or after 1 April 2010, will lead to naming of the person, subject to HMRC's discretion not to name in exceptional circumstances.

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If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

If you are not happy with this reply you may request a review by writing to HMRC FOI Team, Room 4/52, 100 Parliament Street London SW1A 2BQ. You must request a review within 2 months of the date of this letter. It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

If you are not content with the outcome of an internal review, you may apply directly to the Information Commissioner for a decision. The Information Commissioner will not usually consider a case unless you have exhausted the internal review procedure provided by HMRC. He can be contacted at The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely

Margaret Earing (Mrs)