



# HM Revenue & Customs

Mr Nathan Hamilton

By email:

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## Counter-Avoidance

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Date: 26 June 2018

Our ref: FOI2018/01112, FOI2018/01197 &  
FOI2018/01199

Dear Mr Hamilton

## Freedom of Information Act 2000 (FOIA)

I am writing regarding your emails of 31 May and 8 June 2018 requesting the following information under the FOIA:-

### **FOI2018/01112**

“Could you please describe what measures you have taken to notify tax payers who may be potentially impacted by the 2019 Loan Charge as passed by the UK Parliament in the 2017 Finance Act.

In particular I need to know

- 1) The date of the communication
- 2) The medium (Spotlight, e-mail, postal mail, journal article etc)
- 3) Where applicable, the name of the site or journal/paper
- 4) Where applicable, the number of tax payers contacted (e-mail, post only)

If the information is available, please also specify your plans for future notifications in the run up to the reporting deadline”

### **FOI2018/01197**

Please provide the following information in relation to schemes registered under the DOTAS reporting regulations of 2007.

3.4. How many scheme operators has HMRC pursued annually since 2007

3.4.1 How many of those have been prosecuted/fined? Please provide case references for any which were decided by First or Second Tier Tribunal.

3.4.2 How many of those have been found compliant?

3.4.3. How many schemes have been closed down in that period?

3.4.4. How many scheme operators are HMRC actively pursuing at present? How many of these are at either First or Second Tier tribunal.

3.4.5. How many individuals are currently declaring use of loan schemes on their tax returns?

3.4.6. How many individuals currently using loan schemes has HMRC contacted to inform them that 'they don't work'?

3.4.7. How many individuals having used loan schemes in the past have been contacted by HMRC warning them about the schemes?

### **FOI2018/01199**

In 2017 the Supreme Court ruled in the case commonly referred to as Rangers that the employer was liable for the unpaid PAYE and NIC tax.

1) How many cases have HMRC opened to pursue the employer per the SATR for the unpaid tax and NI.

2) Are HMRC using their powers to "pierce the corporate veil" and pursue the directors of these companies personally for tax?

Under section 12(4) of the FOIA, with reference to regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, when estimating the cost of complying, HMRC may aggregate two or more requests made by the same person, when the same or similar information is requested and where those requests are received within a period of sixty consecutive days (see the links below).

- <http://www.legislation.gov.uk/ukpga/2000/36/section/12>
- <http://www.legislation.gov.uk/uksi/2004/3244/regulation/5/made>

I am therefore aggregating your requests and this response covers all three requests. I can confirm that HMRC holds some information that falls within the scope of your requests. However, we estimate that it would exceed the FOIA cost limit to deal with them. The cost limit, which is specified in regulations, equates to one person spending 3½ working days locating and extracting all of the information within scope of the request.

HMRC published detailed settlement terms on 7 November 2017 as part of a campaign to encourage taxpayers to come forward and settle their tax affairs ahead of the loan charge introduction. We notified these taxpayers through letters, emails, phone calls, and in webinars. To provide exact details of every measure we used would mean searching manual and electronic records across a number of HMRC systems. We would have to review each record to identify the method of notification and the date that action took place.

I have established that the time necessary to complete this task would exceed the cost limit by some way. Consequently, under section 12(1) of the FOIA, HMRC is not obliged to comply with your request and we will not be processing it further.

Although I am unable to answer your FOIA request, I can provide some information outside of the Act on a discretionary basis.

### **Outside of the FOIA**

You may be interested to know that at the end of 31 May 2018, we had recorded 20,919 registrations/interests to settle. However, this figure is subject to change as a number of interests received close to the 31 May still need to be logged.

Guidance on how disguised remuneration users can settle their tax affairs is available on GOV.UK at <https://www.gov.uk/guidance/disguised-remuneration-settling-your-tax-affairs>

Users or their agents must send us all of the required information by 30 September 2018 if they want settle their tax affairs before the loan charge arises on 5 April 2019. If we do not receive all the information by 30 September 2018 we may be unable to reach a settlement with the user before the loan charge arises. We continue to raise awareness of this deadline through letters, emails, phone calls, and webinars.

HMRC's view is that disguised remuneration schemes do not work, and this view has been made clear on many occasions. This includes through highlighting tax avoidance schemes via the 'Spotlight' series. You can find these online at:

[www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight](http://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight).

Pay As You Earn (PAYE) liabilities always fall on the employer in the first instance and the loan charge will not change this principle. However, the liability may be transferred to the employee where it cannot reasonably be collected from the employer. The technical consultation, published on the GOV.UK website on 10 August 2016, sets out a number of examples to demonstrate where this may apply.

<https://www.gov.uk/government/consultations/tackling-disguised-remuneration-technical-consultation>

Disclosure of tax avoidance scheme (DOTAS) statistics are published on GOV.UK and available at:

<https://www.gov.uk/government/statistics/tax-avoidance-and-disclosure-statistics>

List of tax avoidance litigation decisions are published on GOV.UK and available at:

<https://www.gov.uk/government/publications/tax-avoidance-litigation-decisions/tax-avoidance-litigation-decisions-2015-to-2016>

HMRC regularly makes announcements regarding successful tax avoidance cases and these can be found by searching HMRC press releases published at:

<http://www.mynewsdesk.com/uk/hm-revenue-customs-hmrc/pressreleases>. Most of these announcements include links to the particular court or tribunal decision.

If you are not satisfied with this reply you may request a review within two months by emailing [foi.review@hmrc.gsi.gov.uk](mailto:foi.review@hmrc.gsi.gov.uk), or by writing to the address at the top right-hand side of this letter.

If you are not content with the outcome of an internal review, you can complain to the Information Commissioner's Office. The following link explains how to do this:

<https://ico.org.uk/concerns/>

Yours sincerely,

Freedom of Information Team