



HM Revenue
& Customs

Mr Chris Sawyer

By email:

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Counter-Avoidance

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Our ref: FOI2018/01155; 01307; 01304; 01306;
01296; 01293; 01294, 01292; 01204;
01308; 01315.

Dear Mr Sawyer

Freedom of Information Act 2000 (FOIA)

Thank you for your requests, which were received on 5, 8, 21, 22 and 25 June 2018, for the following information:

FOI2018/01155

"In a recent answer to Tax Avoidance:Written question - 146722, found online at the following URL:

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-05-22/146722/>

the Rt Hon Mel Stride MP said " Its announcement at Budget 2016 provided scheme users with a three year period to repay their loans, or to agree a settlement with HMRC before the charge takes effect."

I would like the following information:

- 1 - Did HMRC directly notify scheme users of the loan charge?
- 2 - How were scheme users directly notified, by HMRC, of the loan charge becoming due in 2019? e.g. letter, email, text, phone
- 3 - On which date were scheme users directly notified of the charge by HMRC?
- 4 - How many of the estimated 50,000 scheme users have been directly notified by HMRC?
- 5 - If HMRC did not directly notify the scheme users, is HMRC aware of any other body notifying scheme users of the loan charge in 2019?
- 6 - Can people NOT contacted by HMRC (or any other agency) assume that the loan charge is not applicable to their circumstances?"

FOI2018/01307

"With reference to "Tax Avoidance:Written question - 152724" found here <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-06-12/152724/>

Stride's answer says "HMRC will only go to the employee to settle their income tax liability in cases where it cannot reasonably be collected from the employer, for example where the employer is no longer in existence."



He also says "However, these schemes never worked and the amounts paid were always taxable under the law at the time."

For individuals and employers who were involved in arrangements expected to be subjected to the 2019 Loan Charge

- 1) Please tell me how many individuals will be taxed under the 2019 Loan Charge where their employer is no longer in existence.
- 2) Please tell me how many employers went out of existence while under tax avoidance enquiries by HMRC.
- 3) Please tell me how many employers that are no longer in existence but should have paid income tax liability under the law at the time they were in existence will have that income tax liability transferred to individuals via the 2019 Loan Charge.

Where HMRC failed to open an enquiry on a taxpayer or employer/scheme:

- 4) Can please give me the number of individuals that will have income tax liability transferred to them (from the employer) under the 2019 Loan Charge that could not be transferred to them on 5/4/19 (using the law at the time the amounts were paid) as standard enquiry time limits will no longer be available for HMRC to open an enquiry."

FOI2018/01304

"With reference to "Tax Avoidance:Written question - 152724" found here <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-06-12/152724/>

Stride's answer says "HM Revenue and Customs (HMRC) continues to challenge avoidance schemes that are declared, and carries out extensive investigation work to track down those that are not."

- 1) Can you please give me information on how many schemes that were not declared have been found by HMRC's extensive investigation work?
- 2) Please provide a breakdown of how many schemes that were not declared have been found by HMRC's extensive investigation work in each of the years 2000 to 2018.
- 3) If you cannot provide me with the information I requested in 1) and/or 2) for reasons of time and/or cost, please provide me with the information given to the Treasury to allow them to state HMRC "HM Revenue and Customs (HMRC) continues to challenge avoidance schemes that are declared, and carries out extensive investigation work to track down those that are not."
- 4) Can you tell me which HMRC department estimated that 50,000 individuals will be affected by the 2019 Loan Charge?"

FOI2018/01306

"With reference to "Tax Avoidance:Written question - 152724" found here <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-06-12/152724/>

Stride's answer says "HMRC will only go to the employee to settle their income tax liability in cases where it cannot reasonably be collected from the employer, for example where the employer is no longer in existence."

For taxpayers subjected to the 2019 Loan Charge:

- 1) Can you tell me how many individuals are expected to have the income tax liability transferred to them from the employer?

Stride gave an example of one instance where the income tax liability can be transferred to an individual from the employer

- 2) Please provide a breakdown of the different types of transfer of liability from the employer to the individual and the number of individuals affected for each type of transfer of liability."

FOI2018/01296

"With reference to "Tax Avoidance:Written question - 152724" found here <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-06-12/152724/>

Stride's answer says "Enquiries into DR tax avoidance cases can be time consuming and take several years because of the very complex nature of the arrangements"

- 1) Can you give me any documents which detail the penalty policy for taxpayers subjected the 2019 Loan Charge?
- 2) Can you confirm that the "very complex nature of the arrangements" will be taken into account when deciding on penalties for arrangement caught under the 2019 Loan Charge?
- 3) Can you provide me with the guidance document to be used by taxpayers to determine if a very complex arrangement would be subject to the 2019 Loan Charge?"

FOI2018/01293

"With reference to "Tax Avoidance:Written question - 152724" found here <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-06-12/152724/>

Stride's answer says "However, these schemes never worked and the amounts paid were always taxable under the law at the time."

- 1) Can you give me any documents where HMRC explain to the Treasury why they did not tax the schemes under the law at the time they were in use?

HMRC proposed the the 2019 Loan Charge in advice to Treasury Ministers in September 2015. See the FOI request response here https://www.whatdotheyknow.com/request/2019_loan_charge#incoming-1156445

- 2a) When the Treasury were considering the proposal for the 2019 Loan Charge, can you confirm if the Treasury asked HMRC why the 2019 Loan Charge was required if the schemes never worked and were taxable under the law at the time?
- 2b. Can I please have copies of any documents related to the answer in 2a?
- 2c) Can you please provide a copy of the HMRC document which proposed the introduction of the 2019 Loan Charge to the Treasury?
- 2d) Can you please provide any Treasury documents which explain the decision why the HMRC proposal to create the 2019 Loan Charge was accepted even though the amounts paid were taxable under existing laws at the time?"

FOI2018/01294

"With reference to "Tax Avoidance:Written question - 152724" found here <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-06-12/152724/>

Stride's answer says "HMRC is proactively reporting DR scheme promoters to the Advertising Standards Authority and professional bodies where they make misleading claims about their products and services or provide misleading advice."

Can you tell me how many DR scheme promoters have been reported to the ASA (or any historically equivalent agency) in each year 2000 to 2018?"

FOI2018/01292

"With reference to "Tax Avoidance:Written question - 152724" found here <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-06-12/152724/>

Stride's answer says "HMRC pursues those who promote or enable tax avoidance schemes to ensure that nobody profits from selling avoidance. HMRC is able to charge tough penalties of up to one million pounds where promoters do not provide clear and accurate information to their clients, and penalties of 100% of the fees earned by anyone who designs, sells, or otherwise enables the use of tax avoidance arrangements."

How many promoters or enablers have been charged a penalty related to tax avoidance schemes?

2. Please give the number of penalties charged for promoters and/or enablers for each year 2000 to 2018

3a) Before the promoters of tax avoidance schemes (POTAS) legislation and enablers legislation was introduced, can you give me details of how HMRC tackled promoters who did not provide clear and accurate information to their clients?

3b) Following on from the answer to 3a, can you give a breakdown of how many promoters were tackled in the years 2000 to 2017."

FOI2018/01204

"In the response here

https://www.whatdotheyknow.com/request/counter_avoidance#incoming-1170778

The following is claimed:

"We currently win over 90% of avoidance cases taken to litigation by taxpayers, many more choose to settle before their cases get this far."

- 1) Please provide the total number of avoidance cases used to make this claim.
- 2) Please provide me with details of how many cases have been under enquiry by HMRC (where HMRC claim the taxpayer is avoiding tax) that have not been taken to litigation by taxpayers and have been closed by HMRC in the past 4 years with zero yield."

FOI2018/01308

"1) Can you please tell me when the term "Disguised Remuneration" was first used by HMRC..

2) Can you provide me with the HMRC document that contains the first usage of the term "Disguised Remuneration"

3) Can you provide me with the formal definition of Disguised Remuneration used by HMRC?

4) Can you provide examples of the term "Disguised Remuneration" used by HMRC before 9 December 2010."

FOI2018/01315

"With reference to the Disguised remuneration: detailed settlement terms found here

<https://www.gov.uk/government/publications/disguised-remuneration-detailed-settlement-terms/disguised-remuneration-detailed-settlement-terms>

1a) Please tell me the date when the settlement terms were first proposed internally within HMRC.

1b) Please give me a copy of the internal HMRC document which proposed the settlement terms, redacted where required.

2) Please tell me which HMRC department(s) were involved in the proposal of the settlement terms.

3) Was the Treasury notified that these settlement terms would be made available to individuals and, if so, on what date was the Treasury first notified?

4) When the 2019 Loan Charge was proposed to the Treasury Ministers in September 2015 was there mention of any settlement terms being available to individuals affected by the 2019 Loan Charge?"

Response

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 the above requests as they relate to disguised remuneration schemes.

I can confirm that HMRC holds some information that falls within the scope of your request. However, we estimate that it would exceed the FOIA cost limit to deal with it. 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.

Normally, HMRC would explore with you how you might be able to narrow or refine your request so that it did not exceed the FOIA cost limit. However, in this case, I cannot see any scope for doing this.

HMRC published detailed settlement terms on 7 November 2017 as part of a campaign to encourage disguised remuneration users to come forward and settle their tax affairs ahead of the loan charge introduction. We have contacted users through letters, emails, phone calls, and webinars to inform them of the settlement terms. The information you have requested is held manually and electronically.

To provide the number of users that have been contacted would require HMRC to review approximately 50,000 individual records to determine method of notification and the date action took place.

I have established that the time necessary to complete this task would clearly 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

At the end of 31 May 2018, we had recorded 20,919 registrations in settling under the disguised remuneration settlement terms published on 7 November 2017. However, this figure is subject to change as a number of interests received close to 31 May 2018 still need to be logged.

Litigation

Information regarding the number of avoidance cases taken to court by taxpayers and won by HMRC is available in the Tax Assurance Commissioner's Annual Report which can be found at the link below:

<https://www.gov.uk/government/collections/how-we-resolve-tax-disputes>

<https://www.gov.uk/government/collections/hmrcs-annual-report-and-accounts>

List of tax avoidance litigation decisions are published and these can be found via the links below:

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

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.

All tribunal and court decisions are published and these can be found via the links below.

First Tier Tribunal and Upper Tribunal:

<http://www.financeandtaxtribunals.gov.uk/Aspx/default.aspx>

Court of Appeal:

<http://www.judiciary.gov.uk/judgments/>

Supreme Court:

<http://supremecourt.uk/decided-cases/index.shtml>

This non-government website has all decisions in one place is:

<http://www.bailii.org/>

The Advertising Standards Authority ruling

Disguised remuneration trust schemes: misleading advertising (Spotlight 40)

<https://www.gov.uk/guidance/income-trust-schemes-misleading-advertising-spotlight-40>

Tax avoidance: disguised remuneration

General information about disguised remuneration is published on GOV.UK and available at:

<https://www.gov.uk/government/collections/tax-avoidance-disguised-remuneration>

If you are not satisfied with this reply you may request a review within two months by emailing 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