



HM Revenue
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J. Rice

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Date: 24 June 2021
Our ref: IR2021/10119

Dear J. Rice

Freedom of Information Act 2000 (FOIA)

Thank you for your email of 11 May, which seeks a review of our original response to your information request.

Section 1 of the FOIA gives applicants the right of access to recorded information held by a public authority. Requests requiring explanation or clarification are not requests for recorded information and therefore do not fall within scope of the FOIA.

In response to your initial request HMRC has provided copies of relevant information it holds. This information has been complemented with additional explanation provided on a discretionary basis.

An internal review gives a public authority an opportunity to reconsider the initial request. Having reviewed the representations you have made on this matter I note that you are primarily seeking explanation and posing hypothetical questions to the department based upon a misunderstanding of the information previously provided to you. Your representations do not contest whether the response provided to you was in itself compliant with the FOIA and in the majority are not appropriate to the internal review procedure. Where appropriate, I have responded to your representations below:

1. *What therefore constitutes 'HMRC's strengthened approach to tax compliance for its own procurements', when exactly the same rules are in place for all public authorities?*

I can advise that details of HMRC's "strengthened approach to tax compliance for its own procurements" are available within the corporate report: [Tax compliance of HMRC suppliers](#)

2. *why do HMRC continue to utilise the services of all these suppliers when (as far as is currently known) none of these have, as per their contractual obligations, 'settled the tax due'?*

As explained in IR2021/05293, the department has a single call-off contract for the provision of contingent labour, this contract is ongoing and has not been terminated by HMRC. HMRC is not aware of any defaults or breaches of this contract.

3. *It would, however, be reasonable to presume that any contract which HMRC have had with a professional service provider since 2010 would be subject to, and include a requirement to supply (at least annual) reports on the numbers and types of staff providing that service. If HMRC do not hold (or are not provided with) this information, then who does hold it and how can it be procured for public scrutiny, given the fact that it is (exclusively) public money from the Exchequer which is funding this provision of service?*

Details of any workers involved in the provision of a service contract would be held by the service provider.

4. *You also confirm that HMRC do not hold information about the utilisation of EBTs by departmental suppliers (in this case, limited companies) and explain that these types of trusts can be used for 'legitimate purposes' (such as 'providing benefits to a wide group of employees') as well as to 'facilitate tax avoidance schemes'. If you do not hold this information and have 'no need to record whether each of our suppliers has an EBT', then how exactly do you determine the legitimacy (or otherwise) of its use by the company in question?*

Having reviewed the initial response to this question, I note that you were seeking confirmation of whether HMRC and/or RCDTS had directly engaged any supplier which was making use of an Employee Benefit Trust. HMRC interpreted your question as seeking the precise number of such suppliers from 2010 to the present date. As the department do not have a business need to record such information the initial response advised that this information was not held.

Taking in to account that you were not seeking a precise figure, I have determined that the department should have explained that it can neither confirm nor deny whether information within the scope of your request is held.

[Section 12 \(1\)](#) of the FOIA states a department is not obliged to comply with its duty under section 1(1)(b) above if doing so would exceed the cost limit. This limit, for central government, equates to one person spending 3½ working days locating and extracting all of the information requested.

Section 12 (2) of the FOIA similarly states that a department is not obliged to comply with paragraph (a) of section 1(1) above where the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

In this instance, to confirm whether such information is held would require a manual review of all supplier records, such an exercise would far surpass the FOIA cost limit.

5. *Thank you also for confirming that the contractual relationship between a worker and the supplier could be one of employer and employee - that is a very clear statement. You also suggest that 'other arrangements are also possible', but have neglected to describe or detail what those other arrangements might be and what would distinguish these from the former. Please could you therefore elaborate on your answer and provide a more detailed and comprehensive list of those 'other arrangements'?*

In addition to the example provided, the relationship between worker and supplier may involve the use of an intermediary such as an employment agency.

6. *You also state that 'HMRC does not have contracts directly with the workers provided by those suppliers and is not the employer of the workers'. My understanding is that it is not within HMRC's gift to determine the employment status of any individual worker, and that in the event of any dispute over a worker's status, that responsibility would fall to a judge in an appropriate court. Please could you confirm that is also your understanding in the context of any of these worker's contracts covered and governed by employment law(s)?*

A person may be an employee in employment law but have a different status for tax purposes. If a dispute arises over employment status in either context then status can be determined by a Court of Tribunal, however it is appropriate for HMRC to take a view on who is and is not an employee based on the facts of the situation.

7. *...your claim that 'we are unable to confirm the nature of the relationship that exists between the suppliers and the workers themselves because HMRC is not a party to those contracts' is both inaccurate and misleading, as your OWN contracts with the provider, and by association those with the agencies/suppliers, give a clear indication as to their legal responsibilities (and liabilities) in relation to the payment of tax and National Insurance which HMRC (in this instance as tax authority) deem to be due. If you have evidence which you feel contradicts the relevant clauses published by government within these documents, then please provide it as part of this internal review.*

It has previously been explained that the PSR call off contract provides the terms and conditions specific to tax compliance which are applicable to the entire supply chain for contingent labour. Whilst HMRC require the inclusion of specific contractual clauses, it is not privy to the individual agreements between suppliers and workers.

If you are not content with the outcome of this internal review you can [complain to the Information Commissioner's Office](#).

Yours sincerely,

HM Revenue and Customs