



HM Revenue
& Customs

Freedom of Information Team
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Mr Dave Chaplin

By email:

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Web www.gov.uk

Date: 19 May 2021
Our ref: FOI2021/08099

Dear Mr Chaplin

Freedom of Information Act 2000 (FOIA)

Thank you for your request, which was received on 26 April, for the following information:

“The Intermediaries Legislation (Chapter 8 of ITEPA 2003) was enacted in 2000.

An “IR35 enquiry” for the purposes of this FOI is to be considered as one where HMRC have (a) checked a taxpayers situation and evaluated whether taxes should be due under IR35, and (b) concluded that taxes are due.

A “Penalty Sanction” for the purposes of this FOI is to be considered as a penalty applied under schedule 24 Finance Act 2007 - Penalties for Errors, part 1 liability for penalty. Please consider the following cohorts of IR35 Enquiries, as defined above:

- 1) IR35 Enquiries that have been appealed to tax tribunal and won by HMRC.
- 2) IR35 Enquiries where opinions have been made by IR35, and are awaiting FTT.
- 3) IR35 Enquiries settled by taxpayers, that have not been appealed to a tax tribunal.

For each of the above cohorts, please can HMRC provide the following:

- a) The number of cases where HMRC have argued a Penalty Sanction is due.
- b) The number of cases where a Penalty Sanction has been paid.”

We can confirm we hold information within scope of your request. We will respond to each of the three requests in turn, with the corresponding ‘Penalty Sanction’ request, respectively.

- 1) Under [section 21](#) of the FOIA, we are not required to provide information in response to a request if it is already reasonably accessible to you. [First-tier Tribunal](#) and [Upper Tribunal](#) case information is in the public domain.

In relation to the penalty sanction requests, the intermediaries legislation commonly known as ‘IR35’ was enacted in 2000, with the first IR35 case being heard in tribunal in 2001. We do not hold all of the information covering the last 20 years. We do hold the

information for 2016 onwards, however, we consider this to be exempt from release under section 31(1)(d) of the FOIA. This exemption applies to information held where the disclosure of which would, or would be likely to, prejudice the assessment or collection of tax. We believe disclosing information at this level of detail would allow opportunistic individuals and would be avoiders identify where we are devoting resources and arrange their activities to escape challenge, thus putting at risk proper assessment of tax.

Section 31 is a qualified exemption which means that we must consider whether the balance of the public interest favours withholding or disclosing the information.

There is strong public interest in ensuring that we are accountable for our activities and are transparent about the way we apply resources. Publishing the information requested would, on the face of it, reassure the public that our compliance activities are fair and robust and applied equitably across the range of customers. Against that, we have taken into account that we are subject to review by external bodies such as the National Audit Office, the Adjudicators Office and the Public Accounts Committee, so the public interest in our accountability is met by the oversight of those bodies.

It is strongly in the public interest that we are able to enforce the law properly so that the tax burden is shared equally. Anything that might assist those intent on avoiding tax is not in the public interest. Evasion and avoidance unfairly shift the tax burden on to honest taxpayers and that is not in the public interest. Anything that puts at risk our compliance activities could undermine public confidence in the tax system. This could damage the general climate of honesty among the overwhelming majority of taxpayers who use the system properly and that is not in the public interest.

So, on balance, we conclude it is not in the public interest to set aside the exemption.

- 2) We can confirm we hold the information requested but it is being withheld under [section 31\(1\)\(d\)](#) of the FOIA, for the same reason as highlighted above.

In terms of the penalty sanction request concerning the number of cases we have argued a penalty sanction is due, we can confirm we hold this detail, but it is being withheld under section 31(1) (d) of the FOIA, for the same reason as highlighted above.

In relation to the penalty sanction request concerning the number of cases where a penalty sanction has been paid, this request cannot be addressed. For IR35 reviews, a penalty is issued under schedule 24 of the Finance Act 2007 when there is an underpayment of tax/National Insurance (subject to other considerations). If that underpayment of tax/National Insurance is subject to an appeal to the First-tier Tribunal, then no penalty will be paid until at least the appeal is finalised.

- 3) As the intermediaries legislation commonly known as 'IR35' was enacted in 2000, we do not hold all of the information covering the last 21 years.

In relation to the penalty sanction requests, for the above reason we do not have information covering the last 20 years. We do hold the information for 2016 onwards, however, we consider this to be exempt from release under section 31(1)(d) of the FOIA, for the same reason as highlighted above.

If you are not satisfied with this reply you may request a review within two months by emailing foi.review@hmrc.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](#).

Yours sincerely,

HM Revenue and Customs