



HM Revenue
& Customs

**Counter-Avoidance
Freedom of Information Team**
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Mr Arthur Lewis
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Our ref: FOI2018/02760

Dear Mr Lewis

Freedom of Information Act 2000 (FOIA)

Thank you for your request, which was received on 14 December, for the following information:

"I have received a letter from HM Treasury stating that:

1. "It is the view of HMRC and the courts that these schemes have never been effective and that tax was always due"
2. "The most well known judgement was the unanimous Supreme Court decision in favour of HMRC in the Ranger Football case"
3. " Furthermore, the tax consequences the DR schemes claimed to achieve were not allowed under the law at the time".

Please can I have specific information on:

- a) What court rulings are HMRC pointing to that would overturn Rangers (as Rangers said it was an employer liability and employer liability cannot be transferred to an employee)
- b) What specific laws/regulations are HMRC relying on to say " were not allowed under the law at that time"

Question (a)

HMRC welcomed the unanimous decision of the Supreme Court in confirming that the tax avoidance scheme used by Rangers Football Club did not work and that tax was due, as contended by HMRC. In the Rangers case the employer's (RFC 2012 Ltd) appeals were heard by the Supreme Court against PAYE determinations under the PAYE Regulations for Income Tax and NIC that ought to have been paid to HMRC but were not. Please see paragraph 7 of the Supreme Court decision in the link below.

In terms of who is chargeable, Pay As You Earn (PAYE) liabilities fall on the employer in the first instance and HMRC will pursue employers who have used DR schemes for the tax that



is due. 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 located offshore or is no longer in existence.

Regulation 80 of the Income Tax (PAYE) Regulations 2003 gives HMRC the power to determine the PAYE tax that ought to have been paid to HMRC but were not. Under Regulation 80, HMRC may serve a determination notice on the employer to recover the unpaid tax.

Once the Regulation 80 Determination is final and conclusive and 30 days have passed without payment being made in full or part, HMRC may consider issuing a direction under Regulation 81(4). This directs that the employer is no longer liable to pay the amount of tax due. The sums will instead be recoverable from the employee in accordance with the direction made, this aspect was not a decision before the Supreme Court.

From 5 April 2019, the loan charge taxes outstanding DR loans on the employer or employee depending on the circumstances and unless settlement of liabilities has been reached with HMRC.

Question (b)

Tax is charged on employees' earnings under Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and before that on emoluments, as defined, under Income and Corporation Taxes Act 1988. The legislative roots of employment earnings charges are explained by the Supreme Court from paragraph 5 of its judgment, which is available at: <https://www.supremecourt.uk/cases/docs/uksc-2016-0073-judgment.pdf>

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](#)

Yours sincerely,

Freedom of Information Team