

Mr Gary Tinker

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19 February 2021

Ref: FOI2021/02845

Dear Mr Tinker

Freedom of Information Act 2000

Thank you for your enquiry of 23 January 2021, which we have considered under the terms of the Freedom of Information Act 2000 (the FOI Act).

You asked for the following information:

"Thank you for the response to my request. However, I think that you need to check into it a little further before attempting to pass the problem onto HMRC. The law and regulation, some of it written by HMT stipulates that the public organisation should know the status of its contractors.

"Please can you undertake a search of records to find any contractors that have been found to use disguised remuneration schemes from 2016 to present day."
Or

Confirm that HMT have broken the law by not knowing whether any of its resources are users of such schemes.

A key paragraph in one of the documents referred to below :-

"All government departments and their arm's length bodies which employ appointees 'off payroll' for more than six months have to report to the Treasury about the financial arrangement, to make sure it is transparent and that the appointee in question are paying the right amount of tax and National Insurance."

You may also want to read the response to an FOI raised to HMRC

https://www.whatdotheyknow.com/request/713163/response/1707233/attach/3/FOI2020%2003467%20FOI%20response.pdf?cookie_passthrough=1

It stated amongst other things the following:-

On 31 January 2012, the Chief Secretary to the Treasury announced a review of the tax arrangements of public sector appointees. The aim of the review was to ascertain the extent of arrangements which could allow public sector appointees to minimise their tax payments, and to make appropriate recommendations.

The review considered the different categories of public sector off-payroll engagements and their associated levels of tax avoidance risk. HM Treasury subsequently introduced a set of rules which required the most senior staff to be on the payroll, unless there are exceptional temporary circumstances. For long-term contractors, employers were required to include contractual provisions to ensure that income tax and National Insurance Contributions (NICs) obligations are being

met and allow departments to terminate the contract if assurance is not received when sought.

All government departments and their arm's length bodies which employ appointees 'off payroll' for more than six months have to report to the Treasury about the financial arrangement, to make sure it is transparent and that the appointee in question are paying the right amount of tax and National Insurance. Details of the assurance undertaken by HMRC is available in the department's Annual Reports and Accounts.

For short-term contractors it is for departments to determine where contractual provisions and assurance were appropriate.

Further details of the assurance undertaken is available in Procurement Policy Note – Tax Arrangements of Public Appointees. Compliance is monitored through an annual review, the results of which were presented to Parliament by the Chief Secretary to the Treasury in a Written Ministerial Statement. Sanctions were considered on a case-by-case basis where a department was found to be in breach of the rules.

Further to this FOI

You will also find the document

Managing Public Money, published by HMT

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835558/Managing_Public_Money__MPM__with_annexes_2019.pdf

5.6.1 Public sector organisations should not engage in, or connive at, tax evasion, tax avoidance or tax planning. If a public sector organisation were to obtain financial advantage by moderating the tax paid by a contractor, supplier or other counterparty, it would usually mean that the Exchequer as a whole would be worse off – thus conflicting with the accounting officer's duties (section 3.3). Thus artificial tax avoidance schemes should normally be rejected. It should be standard practice to consult HMRC3 about transactions involving non-standard approaches to tax before going ahead.

This document also contains a link

Section A4.6.19

HM Revenue and Customs on tax avoidance issues

(<http://www.hmrc.gov.uk/avoidance/>)"

We can confirm that HM Treasury does not hold information within the scope of your request.

HM Treasury reimburses the 3rd party supplier responsible for resourcing our departmental contingent labour needs rather than through a direct arrangement with the individuals themselves. For example, when using our call-off contract from the Public Sector Resourcing framework agreement. To have complete visibility of the payment arrangements between a supplier and the interim staff members concerned would require accessing HM Revenue & Customs' records, which is not possible for the reason we have already stated.

Information regarding HM Treasury's non-payroll staff and details of its off-payroll transactions can be found in its Annual Report and Accounts.

If you have any queries about this letter, please contact us. Please quote the reference number above in any future communications.

Yours sincerely

Information Rights Unit

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Email: foirequests@hmtreasury.gov.uk

It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

If you are not content with the outcome of the review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner will not make a decision unless you have exhausted the complaints procedure provided by HM Treasury which is outlined above.

The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF (or via their website at: <https://ico.org.uk>).