



# HM Revenue & Customs

Stephen Smith

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Date: 30 August 2018  
Our ref: FOI2018/01672

Dear Mr Smith

## **Freedom of Information Act 2000 (FOIA)**

Thank you for your request, which was received on 1 August, for the following information in respect of Disguised Remuneration (DR) avoidance schemes:

*"Please can you answer these questions to enable my full understanding of the legal status of such schemes:*

- 1) Please can you provide a full list of schemes that you are aware of and if at any time they were considered by HMRC legal representatives to be*
  - 1a) Legal under UK LAW (i.e not illegal)*
  - 1b) Illegal under UK LAW*
  - 1c) Are still legal under UK LAW as of the date of this request*
  - 1d) Have since been made illegal under UK LAW as of <given date>"*

In response to the first part of your enquiry I can confirm that HMRC hold information within the scope of your request but consider disclosure of this information is exempt under section 31(1)(d) of the FOIA.

Section 31 states:

- 31.(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,

Disclosure of information about the schemes HM Revenue and Customs (HMRC) are aware of which have used Disguised Remuneration arrangements (DR) would be likely to undermine the compliance activity which HMRC undertakes and therefore would prejudice the assessment and collection of tax.

Releasing the information requested could prejudice and influence the behaviours of DR scheme users to pursue litigation or avoid settling their tax affairs in an ongoing enquiry thereby delaying the proper assessment and collection of tax at risk. Furthermore, if we put information about our compliance regime and risks in the public domain it would allow those individuals intent on abusing the system to arrange their affairs or rehearse arguments to cause delay to HMRC's compliance activities and/or avoid paying tax. For these reasons we conclude there is a real and probable risk to our ability to assess and collect tax and the exemption applies.

Section 31 is a prejudice-based exemption and having concluded that disclosure would be likely to prejudice the assessment and collection of tax, we will now consider the public interest test.

There is a strong public interest in HMRC being accountable for its performance and that it is as transparent as possible about how successful it is tackling tax avoidance.

Providing the information requested would, on the face of it reassure the public, that our activities to tackle and defeat tax avoidance arrangements are fair, robust and applied equitably. This would increase the public's confidence in such activities but take into account that litigious action taken in the courts and tax tribunals is a matter of public record. It should also be noted that the department is subject to review by external bodies such as the National Audit Office, the Adjudicators Office and on an individual level the Appeal Commissioners. Additionally, HMRC activities are also subject to public scrutiny by the Treasury Select Committee (TSC) and Parliamentary Accounts Committee (PAC) so the public interest in our accountability is met by the oversight of these bodies.

There is however, considerable public interest in the measures HMRC takes in tackling tax avoidance and the additional revenue collected through this. We feel that the level of public scrutiny currently in place satisfies the public interest for transparency and accountability.

As the UK's tax, payments and customs authority, HMRC needs to secure the revenue to the Exchequer to help pay for essential public services.

On balance we conclude the public interest to favour maintaining the exemption at section 31(d) of the FOIA.

Tax avoidance often involves contrived, artificial transactions that serve little or no purpose than to produce this advantage. It involves operating within the letter – but not the spirit – of the law. Most tax avoidance schemes simply do not work and those who engage in it can find they pay more than the tax they attempted to save once HMRC has successfully challenged them. You might like to know that HMRC wins around 90% of tax avoidance cases that taxpayers chose to take to court or the tribunal, with many more settling before that stage.

Where challenges are considered by the tax tribunal and courts their decision as to whether the intended tax result was achieved or not is a matter of public record. For example, it is the view of HMRC that DR schemes have never been effective and a number of court successes support this view. The most well-known judgment was the unanimous Supreme Court decision in favour of HMRC in the Rangers Football Club case. Further information is available at: [www.gov.uk/guidance/disguised-remuneration-a-supreme-court-decision-spotlight-41](http://www.gov.uk/guidance/disguised-remuneration-a-supreme-court-decision-spotlight-41).

Information and guidance about how to recognise a Disguised Remuneration tax avoidance scheme is available at: [www.gov.uk/government/collections/tax-avoidance-disguised-remuneration](http://www.gov.uk/government/collections/tax-avoidance-disguised-remuneration)

You also might like to be aware that HMRC publishes a quarterly list of 'schemes reference numbers' (SRN) where tax avoidance schemes have been declared under the 'Disclosure of Tax Avoidance Schemes (DOTAS) regime. Users of these arrangements are required to enter the SRN on their tax return and should be aware they have used a scheme that may be challenged by HMRC. Further information is available at: [www.gov.uk/government/publications/tax-avoidance-schemes-on-which-accelerated-payments-may-be-charged-by-hmrc](http://www.gov.uk/government/publications/tax-avoidance-schemes-on-which-accelerated-payments-may-be-charged-by-hmrc)

If you are not satisfied with this reply you may request a review within two months by emailing [foi.review@hmrc.gsi.gov.uk](mailto: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 make a complaint to the Information Commissioner's Office (ICO). Instructions about this process are available at the following link: <https://ico.org.uk/concerns/>

Yours sincerely,

Freedom of Information Team