



HM Revenue  
& Customs

Jim Harra  
Chief Executive and First Permanent  
Secretary

2/75  
100 Parliament Street  
London  
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29<sup>th</sup> April 2021

Dear Sir Ed, Sir Mike and Ms Cadbury,

Thank you for your letter of 16 February 2021, which raised a number of questions about the use of disguised remuneration (DR) schemes by contractors working for HMRC, and HMRC's actions in responding to this issue.

HMRC has been asked many questions about the tax position of its contractors both by Parliament and through Freedom of Information requests. We have always answered these questions accurately and transparently, drawing on the information available at that point in time.

Our most recent update was provided at the House of Lords Economic Affairs Sub-Committee evidence session on the 16 December 2020, and the position is unchanged since then.

I do not believe that I, or any of HMRC's officials, have breached the Civil Service Code, as suggested in your letter. Given the importance of maintaining public trust in the administration of the tax system, this letter seeks to address all your points in a single, comprehensive answer.

Where appropriate, I have referred back to the relevant sections of your letter and/or published report.

### **Use of disguised remuneration schemes by contractors engaged by HMRC and RCDTS**

To address the points that you raise, I will begin by setting out an explanation of the different types of contractor who work in HMRC and Revenue and Customs Digital Technology Services (RCDTS), the not-for profit limited company that delivers IT services for the Department. A timeline that sets out what HMRC, as an engager, understood about the tax position of its contractors since the issue was first raised in 2017 is included as an annex to this letter.

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## **Contingent Workers**

HMRC contracts with an agency that supplies individual contingent workers needed to fill specific roles in the Department on a temporary basis. While the contingent workers are engaged by the agency, their work is directed by the Department. Our contractual relationship with the agency includes conditions regarding workers' tax compliance. HMRC conducts tax checks on both the agency (as it does with all of its suppliers and in line with Government Procurement regulations) and the individual contingent workers.

## **Service Contractors**

HMRC also contracts with organisations that supply a service to the Department. These suppliers are responsible for delivery and performance, and may use a combination of payroll and off-payroll workers to deliver their services. They are responsible for the lawful engagement of their own workers. These individuals are referred to as service contractors.

HMRC has extensive contractual arrangements in place to ensure the tax compliance of its suppliers. Our contractual relationship is with the supplier organisation, which is the direct focus of our commercial scrutiny rather than individual employees or any service contractors it may engage.

## **HMRC action**

In addition to the checks we carry out in relation to our contingent workers and the compliance of our suppliers, HMRC has well-established tax compliance processes for acting on information that it receives from the public and other sources.

Regardless of how HMRC discovers that a contingent worker is a current user of DR, we always act to immediately terminate their engagement. Similarly, regardless of how HMRC discovers that a service contractor working for a supplier is a current user of DR, we will ask the supplier to take that individual off HMRC work.

The action to terminate relates to current use of DR - we do not view prior use of DR as suitable grounds to end an engagement or take someone off HMRC work.

In all cases we take tax compliance action as we would with any other taxpayer who uses a DR tax avoidance scheme.

## **Response to the House of Lords Economic Affairs Sub-Committee (Qs 1-3)**

Between October and December 2018, the House of Lords Economic Affairs Sub-Committee (the Committee) asked about current and historic DR use by contractors while they were engaged by HMRC.

HMRC responded to the Committee's questions, using the information available at the time. As the timeline in the annex shows, we had no evidence at that point that

any of HMRC's current or former contractors had been involved in DR schemes while they were engaged by HMRC.

We were aware that five contractors who had previously worked for HMRC had been involved in DR schemes prior to their engagement. At the time, we did not believe their scheme use was concurrent with their HMRC work.

There was no decision to withhold information from the Committee and I am confident that we answered the questions that were asked of us accurately and openly.

Having reviewed the statements made at the time, I note that we were open with the Committee that there was the potential for scheme use among our contractors. I would point to Ruth Stanier's letter to the committee on 19 November 2018:

*"It is possible for contractors to use disguised remuneration without the participation or knowledge of their engager. Any HMRC contractor identified in the course of our compliance work as using a disguised remuneration scheme would be investigated in the same way as any other contractor."*

I would also point to the Hansard record for 11 January 2019 where the then Financial Secretary to the Treasury was clear that "any [HMRC] contractor identified in the course of HMRC's compliance work as using a tax avoidance scheme would be investigated in the same way as any other contractor".

I believe this shows that we were open and did not seek to create the impression that there was no DR use among our contractors, which your report claims.

As your letter states, the first confirmation of concurrent DR scheme use by HMRC contractors came in November 2019. The Committee had not asked to be kept updated on this area of our work and therefore we did not write to them with this new information. However, it is information that we would have given if asked by an MP, Parliamentary Committee or through a Freedom of Information request.

Since November 2018, we have done more work to establish an accurate position of scheme use among HMRC contractors. As a result of clashing new compliance data against the details of the 'original' five contractors, we discovered in October 2020 that two of the five contractors referred to above had, in fact, been involved in DR schemes while doing work for the Department.

We released this information in response to a Freedom of Information request on 2 November 2020, and it was then given in evidence to the Committee by Mary Aiston, Director of Counter-Avoidance, on 16 December 2020. I do not believe this constitutes an unreasonable delay given that our officials were appearing before the Committee and the information was publicly available by that point (Q4).

I am content that my colleagues answered questions put forward by the Committee accurately and openly, using all information that was available at the time.

## **Engagement and identification of contractors (Q5)**

Since 2017, HMRC has matched the data in its centralised contingent worker database with the information it holds on known users of DR tax avoidance. As these contingent workers were engaged through intermediaries, the information held on the workers was initially limited.

Since then, we have worked to improve the quality of the information that we hold on HMRC's contingent workers. This has greatly enhanced our ability to detect DR scheme use among them and we now check the tax position of our contingent workers every four months.

In addition, we have strengthened our pre-employment checks and will shortly publish a report setting out HMRC's approach to tax compliance by its suppliers.

## **Estimated number of HMRC and RCDTS contractors who have used disguised remuneration schemes (Q7- 10)**

We have analysed the DR scheme use of all contingent workers for whom records are centrally held by the Department. As we told the Committee on 14 December, we know of 15 cases where DR use was concurrent with doing work for HMRC. 13 were contingent workers and two were contractors engaged by one of our many supplier organisations.

Our contingent worker checks do not extend to supplier organisations' workforces (Q7). As I explained earlier, our focus as an engager is on the tax compliance of the organisation in question. In addition to these organisation-level checks we have well-established processes that enable us to act on information received from the public and other sources which in turn may reveal individual cases of DR usage among our suppliers' contractors. This allowed us to identify scheme use by two contractors working for one of our suppliers concurrent with them doing work for HMRC.

It is possible that there will be more contractors who used DR while working for HMRC than the 15 cases currently identified (Q6, Q8).

You have also asked for a breakdown of the number of individual contractors engaged by HMRC/RCDTS who are subject to the Loan Charge. In previous disclosure on this topic we have confirmed that all the individuals concerned were subject to compliance action in relation to their use of a DR scheme.

The Loan Charge is a self-assessed charge, the liability to which is dependent on the specific circumstances of an individual taxpayer. For example, a taxpayer may have settled their use of DR with HMRC or chosen to repay their loans in full to the lender by 5 April 2019 and may therefore not be liable to the Loan Charge. The government gave taxpayers until 30 September 2020 to report the Loan Charge on their Self Assessment tax return. HMRC risk assesses these returns and investigate further, where appropriate, to establish the correct liability. All taxpayers have the

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right to appeal tax decisions made by HMRC, and where someone disagrees with HMRC's view that the Loan Charge applies, they are able to appeal that decision. Therefore, we cannot answer your question at this time (Q9).

**HMRC contractors' use of schemes meant the legal position and acceptability of disguised remuneration was not clear (Q10)**

In his Independent Loan Charge Review, Sir Amyas Morse, having drawn on a wide range of views and external expert advice, concluded that the government had made its position clear from 9 December 2010 that DR schemes did not work to achieve the tax savings claimed for them. His conclusion was that the targeted anti-avoidance legislation announced by the government on 9 December 2010 had put the tax position of DR schemes firmly beyond doubt.

We have been clear that it is possible for an engager not to know that a contractor has used a DR scheme. The fact that HMRC was unaware that some of its contractors had used a DR scheme does not mean that the correct tax treatment of the contractors' earnings was unclear.

Whenever HMRC has discovered that a contingent worker is a current user of DR scheme, we have acted immediately to terminate the engagement, and we continue to follow this approach.

We will continue to assess the suitability and effectiveness of the checks we regularly carry out on contingent workers engaged by HMRC and RCDTS.

Yours sincerely,



**Jim Harra**  
**CHIEF EXECUTIVE AND FIRST PERMANENT SECRETARY**

## **Annex One: Timeline of HMRC actions**

**In all instances where contractors are discovered to have used DR, they would be subject to compliance action by HMRC like any other taxpayer.**

| <b>Date</b>   | <b>Finding</b>  | <b>Action taken as engager</b>   |
|---------------|---|--|
| November 2018 | Following analysis in November 2017 and November 2018, HMRC is aware of 5 contractors (2 contingent workers and 3 contractors who worked for one of HMRC's suppliers) who had provided services to HMRC/RCDTS, who had a <u>non-concurrent</u> <sup>1</sup> history of using disguised remuneration schemes | None as DR usage was neither current, nor related to their work for HMRC   |
| November 2019 | Analysis identified 5 contingent workers whose use of a DR scheme was concurrent with the time period of their engagement by HMRC/RCDTS.  | 4 contingent worker engagements which were ongoing were terminated within two weeks of discovery. 1 contingent worker engagement had already ended at the point of identification. |
| April 2020    | Analysis identified 5 contingent workers whose use of a DR scheme was concurrent with the time period of the provision of services to HMRC/RCDTS.   | All 5 contingent worker engagements were terminated within two weeks of discovery.   |
|               | Analysis identified 2 contingent workers whose use of a DR scheme had been concurrent with a period of their engagement with HMRC/RCDTS, but who were not using DR at that time.  | The 2 contingent worker engagements were not terminated.   |
| July 2020     | A contingent worker was identified as using a DR scheme.  | The contingent worker engagement was terminated within two weeks of discovery.   |
| October 2020  | Analysis of HMRC's full population of contingent workers identified no current usage of a DR scheme.  | None   |
| October 2020  | <u>Further analysis of the 5 contractors identified in November 2018</u> , using updated compliance information, showed that for 2 service contractors their usage of DR was concurrent with the period when they provided services to HMRC/RCDTS.  | The contractors were no longer providing services to the department at the time of discovery.  |
| January 2021  | Analysis of HMRC's full population of contingent workers identified no current usage of a DR scheme   | None   |

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Note: HMRC does not view prior use of DR as suitable grounds to end an engagement or take someone off HMRC work. During the course of our analysis, we may discover contingent workers who are prior users of DR schemes. In these cases, no action has been taken. HMRC is aware of 12 contractors who were in DR schemes prior to their engagement but were not using DR during their engagement by HMRC. Three of these 12 are included in the table above.

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