



All-Party Parliamentary Loan Charge & Taxpayer Fairness Group

www.loanchargeappg.co.uk

Victoria Atkins MP
Financial Secretary to the Treasury
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

9th January 2023

Dear Victoria,

HMRC's historic failure to abide by the agency rules & unacceptable transfer of liability years later

We are writing regarding the historic failure by Her Majesty's Revenue and Customs to abide by the Agency rules and the way they are now unfairly and unreasonably transferring liability years later, from the agencies they should have pursued, to the individuals who are now facing retrospective action.

You have recently answered a written question from Sir Iain Duncan Smith, who is a member of the Loan Charge and Taxpayer Fairness APPG, which is about this issue.

The question tabled by Sir Iain Duncan Smith on 24th October 2022 was:

To ask the Chancellor of the Exchequer, for what reasons HMRC did not enforce the agency rules under (a) section 134 of the Income and Corporation Taxes Act 1988 and (b) section 44 of the Income Tax (Earnings and Pensions) Act 2003.

Your answer, on 1st November 2022 is as follows:

Under section 44 of the Income Tax (Earnings and Pensions) Act 2003, and previously section 134 of the Income and Corporation Taxes Act 1988, most agency workers must be treated as employees for Income Tax and National Insurance contributions (NICs) purposes by the agencies that pay them. These agencies are required to make deductions of Income Tax and employee NICs, where these are due, from the workers' pay in the same way and at the same level as with direct employees. The agencies will also be liable to pay employer NICs, where these are due, in respect of payments to the workers.

HMRC has a risk-based approach towards compliance activities and will investigate evidence of non-compliance or avoidance. Where HMRC finds that an agency has failed to account for tax and NICs, it will seek to recover unpaid amounts due.

Co-Chairs: Sammy Wilson MP, Greg Smith MP

Vice-Chairs: Baroness Kramer, Dr Lisa Cameron MP, Gerald Jones MP, Sarah Olney MP, Rushanara Ali MP

Office of Sammy Wilson MP, House of Commons, London, SW1A 0AA
contact@loanchargeappg.co.uk

We want to follow this up, as this question (and answer) gets to the very heart of the Loan Charge scandal.

First of all, it is very notable that you make clear that most agency workers must be treated as employees and that the agencies are required to make deductions of Income and Tax and employee NICs. The answer also makes clear that HMRC must seek to recover any tax it believes should have been paid from agencies. This therefore would also have been the case previously, over the last twenty years, as there has not been any change of the law that has altered this situation or HMRC's duty to enforce it.

However, as the Treasury and HMRC know, this didn't happen with the tens of thousands of contractors who have faced the Loan Charge (and who either have been pressurised into settling or still face the Loan Charge), nor with those workers who despite no longer facing the Loan Charge due to the recommendation of the 2019 Morse Review, still find themselves facing HMRC demands for pre 2010 tax years.

The unavoidable conclusion, therefore, is that HMRC manifestly failed to do its duty on an industrial scale, when it came to workers who worked through agencies using umbrella companies (which were of course recommended by the agency). HMRC very clearly failed to investigate non-compliance relating to these agencies (and the tens of thousands of contractors and freelancers who were on their books), because if they had, they would have found that non-compliance is widespread throughout the recruitment sector. **Indeed, if HMRC had policed this sector properly and enforced compliance upon the Agencies, there would have been no need to legislate for the Loan Charge, nor cause all the distress it has caused, because the vast majority of the workers providing their services to recruitment agencies, all provide a personal service and as such should have had PAYE Deducted by the Agency at source.**

What makes this even worse, is that at present HMRC are issuing s.684 notices claiming that any outstanding tax arises on the employee, thereby setting aside the PAYE system. To date, for almost every scheme that HMRC has issued such a notice, there exists a UK-based agency, that was controlled by the same controlling minds as the umbrella itself. Despite this, during the intervening 15 years that HMRC has been enquiring into these arrangements, the s.684 notices still suggest that the employer had "no UK presence". They then invite the taxpayer to provide information that may affect HMRC's decision. It is clear therefore that no reasonable assessment of the taxpayer's circumstances have been undertaken. On this basis, HMRC have not adhered to the approach set out in your response, because if they had then enquiries would have been issued to the UK corporate entity that was part and parcel of the umbrella arrangement.

These section s.684 notices are being sent to many people who have open enquiries from before 9th December 2010, the cut-off date for the Loan Charge proposed by Sir Amyas Morse and accepted by the Government. For HMRC to be pursuing people for years prior to 2011 – and on such a dubious premise considering their clear failure to enforce the agency rules *at that time* – is very clearly not in the spirit of the review recommendation, nor in the spirit of the Government accepting that review recommendation.

All of this shows yet another unacceptable facet of the whole Loan Charge scandal and something that we urge you to seek a resolution to, in the light of the nine tragic suicides that one of your predecessors as Financial Secretary to the Treasury confirmed in July in a letter to MPs.

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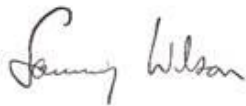
Office of Sammy Wilson MP, House of Commons, London, SW1A 0AA
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We have a number of important questions we wish to ask in relation to this matter:

1. You state that HMRC has a “risk-based approach towards compliance activities and will investigate evidence of non-compliance or avoidance”. Can you provide to us, any evidence to back-up this statement and also provide, examples that demonstrate, that HMRC have indeed pursued and investigated non-compliance and/or avoidance?
2. Can you confirm, the number of agencies that HMRC have found to be non-compliant between 1999 and 2017?
3. Can you confirm, the value of any tax that HMRC believes should have been paid from non-compliant activity by agencies between 1999 and 2017?
4. Can you confirm the value of the tax collected by HMRC following enforcement action regarding non-compliant activity of agencies between 1999 and 2017
5. Can you advise and give examples of any action taken by HMRC, to retrospectively pursue agencies for non-compliance of the Agency Rules?
6. Why is the Government allowing HMRC to aggressively pursue people with pre-9th December 2010 open enquiries, when the Morse Review gave this as a cut-off date?

We look forward to hearing from you.

Yours sincerely,



Sammy Wilson MP
Co-Chair



Greg Smith MP
Co-Chair



Baroness Kramer
Vice-Chair

Cc : Rt Hon Sir Iain Duncan Smith
House of Lords Economic Affairs Committee
Treasury Select Committee

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