



HM Revenue
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Dear Mr Wilson, Mr Smith and Baroness Kramer,

The Financial Secretary to the Treasury has passed me your letter of 9 January 2023 regarding the Loan Charge, as I am able to respond in more detail on the areas of the tax system you have referred to.

In the Independent Loan Charge Review, Lord Morse recommended that the Loan Charge should only apply to loans made on or after 9 December 2010. However, he was also clear that, for years before this, where there is an open enquiry or assessment under appeal, HMRC should still have the ability to pursue the tax due under the pre-existing rules. In the Government's response to the Review, it committed to investing in teams within HMRC to pursue those liabilities through enquiries and assessments, and where necessary through litigation. Those teams are working to bring in the tax due from employers or, where appropriate, individuals.

Income tax is an individual's own liability and the overall principle remains that an individual is ultimately responsible for their own tax affairs. Even in cases where the tax system puts an obligation on an employer or agency to withhold tax, an individual is still required to report their full income as part of their overall income on their Self Assessment return if they are required to complete one. Where appropriate, HMRC may use powers to collect tax from an individual rather than from a third party with an obligation to operate PAYE.

The agency rules

Your letter focuses on the provisions at section 44 Income Tax (Earnings and Pensions) Act 2003 ('the agency rules'). As the Financial Secretary stated in her response to Sir Iain Duncan Smith's written question, under the agency rules most agency workers must be treated as employees for income tax and National Insurance contributions (NICs) purposes. This ensures that people engaged through agencies and working in a similar way to employees pay the same tax as employees. Broadly, these rules apply when a worker's services are provided through an agency and the income is not chargeable as employment income under other provisions. This means that they do not apply in cases where an employment contract is in place, which is the case in many disguised remuneration (DR) tax avoidance schemes.

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Where HMRC finds that a UK agency has failed to account for tax and NICs in circumstances where the agency rules apply to them, it will usually seek to recover unpaid amounts due from them. This is the position for agency workers generally and is not specific to the minority of workers who have used DR schemes.

It is incorrect to suggest that better enforcement of the agency rules would have prevented the need to introduce the Loan Charge. The agency rules do not apply in many cases where a DR scheme has been used. Whether the agency rules apply in a particular case is dependent on the facts of that case. As I have noted above, it is usually the case that the agency rules will not have applied where the arrangements include an offshore or UK employer.

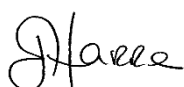
You ask a number of specific questions about agencies and our approach to their compliance. As set out above, where the agency legislation applies, this provides parity of treatment with any other employer for the purposes of PAYE and NICs. Our data doesn't show whether employment duties compliance action relates to employment agencies or other employers.

Support for those who have used DR schemes

I know that paying tax due where DR schemes have been used can have a significant impact on scheme users. Our teams work carefully to provide the appropriate support, including, for example, time to pay.

As I told the Treasury Committee in my letter of 6th January 2023, which the Committee has published, HMRC takes issues relating to loss of life or serious injury extremely seriously. HMRC has made ten referrals to the Independent Office for Police Conduct (IOPC) where a taxpayer has sadly taken their life and has used a DR scheme. Following referral to the IOPC, HMRC has conducted internal investigations; eight investigations have concluded and there was no evidence of misconduct by any HMRC officer. Two investigations are currently ongoing. HMRC is taking forward organisational learning from concluded investigations and is committed to learning and making improvements so that we do not cause undue stress and, wherever possible, we identify taxpayers who may be in vulnerable circumstances and give them the extra help they need.

Kind regards,



Jim Harra
CHIEF EXECUTIVE AND FIRST PERMANENT SECRETARY