

Curiouser and curiouser...

Russell Cockburn is puzzled by a redacted section in a recent HMRC press release. What are they trying to hide?

As a tax consultant I have to do my best to keep up with the latest developments in tax so that I can advise my clients properly. One of the sources of information I use regularly is, of course, any official press releases issued by HMRC and there is a page on their website devoted to these of which there is a regular flow. I tend to check these on a more or less daily basis to see if there is anything new they have put out that I ought to be aware of and which might need passing on to my clients.

So, in the current awful 'outbreak' situation my attention was inevitably drawn quickly to a press release entitled 'COVID-19 Guidance' issued on 30 March, apparently as an update to HMRC's own Internal Compliance Manual. These internal manuals have been made available to the public and the practising professions freely for many years via the HMRC website and apart from being an authoritative source of guidance on UK tax law can give a useful insight into the department's own interpretation of tax laws and regulations. So, I clicked on the link and followed it, only to find to my surprise that it led me to a page containing nothing but the following rather puzzling comment: "This content has been withheld because of exemptions in the Freedom of Information Act 2000". (See <https://www.gov.uk/hmrc-internal-manuals/compliance-handbook/ch930000>)

Now it is not that unusual to see some content in HMRC Internal Manuals being 'redacted' and usually there is some similar comment referring to the 'national interest' or the 'Freedom of Information Act' provisions. HMRC's view since it started publishing its internal guidance manuals has always been there are some parts of its instructions and guidance to officials, particularly tax inspectors, that have to be kept secret as they cover sensitive aspects of their use of statutory powers and their intelligence gathering techniques and, of course, their own interpretation of particularly sensitive pieces of legislation that it would be against the national interest to make public.

As a former tax inspector myself I have always had some sympathy with this viewpoint, although in recent years HMRC has become more and more transparent about its own internal practices and procedures and the way it interprets some particular controversial or complex areas of tax legislation. I have wholeheartedly approved of this approach. Indeed, HMRC has generally been widely applauded for the increasingly open and transparent and cooperative way it manages its approach to tax compliance. Hence it puzzles me greatly that there should be some change to its Internal Compliance Manual so early on in the progress of the epidemic, and which is clearly dealing specifically with the virus outbreak that they currently feel unable to publish. What might this be commenting on or advising HMRC officials about and why is it so sensitive?

Could it be that some cases have already come to light where individuals or businesses have been using the virus outbreak to evade tax in some ways that HMRC wants to keep secret, and where it wants to keep its approach to dealing with these cases to itself for the moment? This seems unlikely to me. There have indeed apparently already been some cases of unscrupulous businesses in the 'murkier' end of the tax advisory world, targeting former NHS employees returning to the NHS to laudably help with the current crisis. These firms

have been approaching such individuals posing as tax avoidance specialists, offering them specifically designed schemes to ostensibly reduce their tax bills very significantly.

HMRC has already published a statement on its website about these schemes, intimating that in their opinion (and mine by the way) these particular schemes are unlikely to work. They are in all probability fraudulent or at least very close to being capable of deserving that description and almost certainly come within the scope of the extant 'disguised remuneration' legislation. But I can see no reason on earth why anything connected with dealing with compliance cases arising from the activities of these sort of 'specialists' needs to be redacted from public availability.

Similarly, there are provisions in the UK's statutory residence test rules, introduced from April 2013, which provide that an allowance can be made when someone is prevented from leaving the UK due to 'unforeseen and exceptional circumstances' and thereby perhaps accidentally breaches one of the day counting rules for the purposes of the statutory residence test. For example, someone with 75 days presence in the UK in tax year 2019/20 who got stuck here at the beginning of March this year could conceivably exceed the 90-day threshold. In some cases this might technically serve to render them inadvertently tax resident in the UK for that tax year. This would clearly be unfair and in the past when there have been international transport problems (for example when the unpronounceable Icelandic volcano prevented international air travel for a period of days a few years ago), HMRC was very quick to confirm that the exceptional circumstances provision would indeed apply there to mitigate the effects of this problem. Could this be something similar? If so, why keep it a secret? I can't see that it can be anything to do with that. Indeed, I am fully expecting HMRC to release some official commentary on precisely this issue very shortly now.

I can also conceive of the possibility that where there is an ongoing tax investigation or 'compliance check', to use the modern HMRC term, on an individual or business who contracts corona virus, or whose business or personal financial situation is severely adversely affected by the outbreak (as will be the case for many individuals and businesses this year), then HMRC might take the internal decision to hold-off on continuing with the investigating for a period of time. It might even accept that the investigation could actually be brought to an early end in view of such problems; but again I cannot for the life of me see why HMRC would keep such a revised policy approach secret.

Actually, I just don't think they would and I believe they would in all probability start publicising it quite quickly as part of the overall government's approach to being seen to help businesses of all sorts as much as they can through these difficult times. I can well understand why they might adopt such a 'softer' approach for a while and I would applaud it.

So where does this leave us? In the dark I'm afraid, and this is something that for a number of years now HMRC as avowed it will not do as regards its internal procedures and instructions to its officials in the interests of openness and transparency, especially where its approach to dealing with Compliance Checks is concerned.

We are all supposed to know and understand how things work and what HMRC's approach is to applying the law and carrying out its compliance functions. Generally this works well, and in my experience it has led to a much-improved climate when one is dealing with HMRC

officials carrying out compliance checks. So it is really rather worrying, to me at least, that something connected with this serious national emergency has been redacted in this manner. One can only assume that it deals with something so sensitive or potentially controversial that HMRC feels it would cause a lot of difficulty for its officials if it was made public.

Personally I have a lot of confidence in the way HMRC generally carries out its compliance activities nowadays. It just strikes me as very odd that within a week or so of the stringent lockdown conditions being imposed on the population of this country there is someone working away inside HMRC who has come up with a revision to its internal manual on compliance that directly relates to COVID-19 and which they feel must not be made available to the public, presumably because it is against the national interest for it to be so made available?

Perhaps I am just being a conspiracy theorist here, and that would be unusual for me as I am normally opposed to that sort of thing, but this press release has teased my brain and I look forward to hearing if anyone else has any ideas or can shed light on what is going on here.

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