

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 June 2012

**Public Authority:** Her Majesty's Revenue & Customs  
**Address:** 100 Parliament Street  
London  
SW1A 2BQ

### Decision (including any steps ordered)

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1. The complainant requested redacted information from VAT registration guidance published by Her Majesty's Revenue & Customs. The information was withheld by Her Majesty's Revenue & Customs under section 31(1)(d).
2. The Commissioner's decision is that Her Majesty's Revenue & Customs was correct to apply section 31(1)(d) to the request as disclosure of the information would, or would be likely to, prejudice the assessment or collection of VAT. He also agrees that the balance of the public interest favours the maintenance of the exemption.

### Request and response

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3. On 15 June 2011 the complainant wrote to Her Majesty's Revenue & Customs ('HMRC') and requested the redacted parts of its published VAT registration guidance V1 -28 – Book 2 ('VAT registration guidance').
4. HMRC responded on 12 July 2011. It stated that the requested information was withheld under section 31(1)(d). As HMRC had previously provided a response to an identical request from the complainant and had had the opportunity to look at the matter afresh because of his repeat request, it confirmed that it was waiving its right to carry out an internal review.

## Scope of the case

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5. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Following discussions with the Commissioner, HMRC provided the complainant with an internal review of its decision on 4 May 2012. This was also copied to the Commissioner. The internal review upheld the original decision to withhold the information requested under section 31(1)(d).
6. The scope of the Commissioner's investigation is the use of the section 31(1)(d) exemption by HMRC to withhold the redacted sections of its published VAT registration guidance.

## Background

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7. In submissions to the Commissioner, HMRC provided some relevant background information to the complainant's request.
8. In 2010/11, HMRC collected £90.3bn in VAT. This amounted to 19% of all revenue collected by HMRC. Estimates of the tax gap are produced by HMRC and the latest figures were published in September 2011.
9. The tax gap is defined as the difference between tax collected and the tax that should be collected (the theoretical liability). The theoretical liability represents the tax that would be paid if all individuals and companies complied with both the letter of the law and HMRC's interpretation of the intention of Parliament in setting law (referred to as the spirit of the law).
10. In 2009-10, the overall total tax gap was estimated to be £11.4bn.

## Reasons for Decision

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### Section 31 – Law enforcement

11. Section 31 provides an exemption where disclosure of information would, or would be likely to prejudice various functions relating to law enforcement.
12. Consideration of this exemption is a two stage process. Firstly, in order for the exemption to be engaged it must be at least likely that prejudice would occur to the process specified in the relevant subsection(s). Secondly, the exemption is subject to the public interest test. The effect

of this is that the information should be disclosed if the public interest favours this, even though the exemption is engaged.

13. In this case HMRC is relying on section 31(1)(d) with regard to the redacted sections of their VAT registration guidance. This deals with the assessment or collection of any tax or duty or of any imposition of a similar nature.
14. In its responses to the complainant HMRC contended that disclosure of the redacted information would undermine the compliance activity which it undertakes with regard to the VAT registration of businesses and prejudice the assessment and collection of tax. HMRC stated that, *'Release of this information could be used by opportunistic individuals to arrange their affairs or rehearse arguments to evade their liability to tax and reduce our ability to assess and collect tax'*. This was an area where HMRC had identified a significant potential for avoidance.
15. In submissions to the Commissioner, HMRC explained that as its approach to VAT compliance is targeted and risk-based, it needs to carefully direct its limited resources to tackle non-compliant behaviour in order to more effectively assess and collect VAT that is legally due. Indeed, it was against this background that HMRC had originally redacted the VAT registration guidance when it was first published on its website.
16. HMRC confirmed its belief that disclosure of the withheld information would undermine the compliance activity which it undertakes with regard to the VAT registration of businesses (VAT groups and single entities) and consequently result in prejudice to the assessment and collection of tax.
17. The Commissioner has viewed the exempt information and considers that its disclosure would be likely to prejudice HMRC's ability to accurately and effectively assess VAT in the sense that the information could easily be used by opportunistic individuals to arrange their affairs or provide arguments with the purpose of obscuring or evading their VAT liability. He is satisfied that there is a clear causal link between the disclosure and the prejudice claimed, and that the likelihood of the prejudice occurring must be considered high, given the considerable number of individuals liable to the payment of VAT and the fact that some (as with any tax) would be highly likely to seek to evade their liability to such payment if able to do so. Being satisfied that the exemption is therefore engaged, the Commissioner will now proceed to consider the public interest arguments.

## **Public interest arguments in favour of disclosing the requested information**

18. The Commissioner notes that when considering the public interest factors in favour of maintaining an exemption, a public authority should only consider the particular interest which the exemption protects. In this case it concerns the assessment or collection of any tax or duty or of any imposition of a similar nature.
19. By contrast, no such restriction applies to the public interest factors in favour of disclosure. In this case, these factors include the general public interests in promoting transparency, accountability and understanding of VAT registration and how HMRC approaches its investigations into this area.
20. The complainant argued that where a number of businesses were run which did not exceed the VAT registration threshold and upon inspection HMRC do not dispute the reasons for separation, then it would be particularly useful for such business owners to see the redacted sections of the VAT registration guidance as it would ensure that accountants and others involved in setting up business structures have a clear framework. Such disclosure would help prevent unnecessarily lengthy and costly investigations by HMRC.
21. The complainant confirmed that he did not agree with HMRC's assessment of the public interest since, *'compliance officers will always have the opportunity to examine business structures and decide upon the appropriate course of action on a case-by-case basis'*. Disclosure of the redacted sections of the guidance would assist persons properly setting up their business affairs for the right reasons, as they would have the opportunity to demonstrate to HMRC that they have correctly arranged their affairs. The complainant contended that compliance officers would be able to detect those whose intentions were less than transparent.
22. HMRC acknowledged that disclosure of the withheld information would help promote greater awareness of how taxes work and that in turn makes it easier for people and businesses to pay tax. In addition, HMRC recognised that publishing the information could reassure the public that its compliance activities are fair, robust and applied equitably.

## **Public interest arguments in favour of maintaining the exemption**

23. HMRC acknowledged the importance of individuals and businesses being aware and able of the ways in which they can challenge decisions made by it, but considered that this public interest in accountability was already met by the fact that HMRC was subject to review and oversight

by external bodies such as the National Audit Office, the Adjudicator's Office and (on an individual level) the Tribunals Service.

24. However, HMRC argued that there was a strong public interest in it being able to enforce the law properly and assess and collect the correct tax due as efficiently as possible at the least cost to the public purse and business. HMRC stated that, *'Evasion and avoidance unfairly shifts the tax burden onto honest taxpayers. As such, it is strongly in the public interest that attempted evasion should be frustrated in order to ensure that compliant persons and businesses are not disadvantaged and the general climate of business honesty is not prejudiced'*.
25. HMRC also contended that disclosure of the information could result in it collecting less VAT due and reducing the revenue available to be spent on public services. It stated, *'anything that puts at risk our compliance activities could undermine public confidence'*.
26. HMRC did not agree with the complainant's contention that even if some businesses saw the redacted guidance and tried to exploit it, HMRC would still be able to identify wrongdoers without difficulty. It argued that *'artificial separation is a complex issue and establishing the facts and the intentions of the trader can be difficult'*. Even if it were a straightforward process, HMRC argued that the disclosure of the redacted information would help those who were inclined to fabricate their situation and this would make the task of its compliance officers more difficult. In such an event it would be necessary for HMRC to seek more comprehensive evidence to establish the facts and this would necessarily increase the resources required by HMRC and the administrative burden on the trader. Neither of these outcomes would be in the public interest.
27. In submissions to the Commissioner, HMRC explained that it considered that its Statement of Practice, together with the published sections of the VAT registration guidance already available, provides a framework to traders and their advisers. As the Statement of Practice made clear (paragraph 13.8), HMRC does not see its role as extending to advising traders as to how they might set up their business structures.
28. Responding to the complainant's argument that there may be honest individuals who would benefit from the disclosure of the redacted information, HMRC stated that its decision must be based on the wider consequences of disclosure into the public domain, rather than the individual circumstances of a specific case. It considered that on balance, the harm from disclosure outweighed the potential benefits.

## **Balance of the public interest arguments**

29. In reaching his decision as to where the balance of the public interest arguments lies, the Commissioner has considered all of the arguments provided by both parties. What he must decide is whether or not it is appropriate for the requested information to be released to the general public. It is the wider public interest issues which the Commissioner must consider in making this determination, rather than any specific personal reasons which the complainant may have for wanting sight of the information.
30. The Commissioner notes that the information in question concerns redacted sections of HMRC's VAT registration guidance.
31. The Commissioner considers that maintaining public confidence in the collection of VAT is very important to the public interest. He does not consider that the public interest is served by releasing information which would be highly likely to enable some individuals to reduce their liability to pay tax or even avoid it altogether.
32. The Commissioner recognises and accepts that there is a public interest in the promotion of awareness of how taxes work and how businesses can best structure themselves so as to comply with and discharge their VAT obligations and similar tax liabilities. However, he considers that this public interest has been sufficiently met through the publication by HMRC of the vast majority of information contained in its VAT registration guidance, and its Statement of Practice entitled '*Should I be registered for VAT*' (a copy of which HMRC had previously given to the complainant) which clarifies its policy in relation to the areas of information redacted in the guidance.
33. The Commissioner considers that any further public interest benefit of transparency and openness that might be gained from releasing the redacted sections of the guidance would be substantially outweighed by the public interest detriment caused by the exploitation of this information by opportunistic individuals seeking to reduce or evade their VAT liabilities.
34. The Commissioner acknowledges that HMRC has a responsibility to collect taxes of all kinds, including VAT. Ultimately, the collection of such taxes benefits the public as a whole in terms of the revenue available to HM Treasury for public expenditure. It would not be in the public interest for HMRC to release information which would be highly likely to assist those individuals inclined to fabricate their situation and therefore make the task of its compliance officers more difficult at a time when resources are limited. The Commissioner therefore considers that in all the circumstances of this case, the public interest in

maintaining the exemption outweighs the public interest in disclosing the information.

## Right of appeal

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35. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

36. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
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**SK9 5AF**