

From: Hartnett, Dave (HMRC Board)
Sent: 07 December 2010 21:36
To: Davidson, Chris (CTIAA Anti-Avoidance Group)
Cc: Hartnett, Dave (HMRC Board)

Chris can you let me know what, if anything, is wrong with the following analysis, please.

When we met GS on 19/11 LBS laid out the issues under consideration. No indication was given to GS or me that the issues could not be resolved there and then from an HMRC/Business Tax/LBS perspective. GS said any settlement would have to be cleared by Esther in the States. Steve Bunson as global head of tax had flown in from NY to keep Mike under control and to settle matters if possible.

There was no suggestion that GS was within HRCP or subject to HRCP processes.

You and I at least are very familiar with the HRCP processes.

Each issue was considered individually. On some issues GS were much stronger than Richard, you or I had previously realised.

When we looked at the NICs issue I remembered that there had been a significant weakness in our technical position on interest. Mike acknowledged that and you recalled the issue but none of us could remember the detail. I recall (now) a major firm of accountants saying we had been very commercial with the settlement proposal but they had not spotted the weakness. Steve suggested that we move on interest in return for them conceding 100% of NICs. That is what we ended up doing. I am looking for the 2005 legal advice.

Richard, you and I withdrew to consider a settlement proposal and came up with proposals which I called 7 items. LBS did not mention need for governance review (which Melanie and I always do even when we are settling HRCP cases as Commissioners).

Steve said he would recommend that GS sign up to Code but this was in no sense part of a package.

Early the following week you spoke to Freda about the possible need for a governance process and later you told me you had done so and that you saw going through HRCP governance as something of a formality. GS signed up to the code on a conditional basis which at my request you asked them to make unconditional. They did so. GS were not told there was no guarantee matters could be settled.

On 26 November Freda told me that HRCP governance was being extended to cases involving £100 million TUC. That seemed very sensible. Did Freda know that the settlement with GS had been without reservation?

The HRCP programme board rejected the planned settlement of the NICs issue on the basis that interest should have been charged from 2005. You spoke to MH at GS who went off the deep end at the suggestion they should pay interest. He left me a message - I was in India - alleging extreme bad faith on your part. He repeated this when I spoke to him on Monday.

I have asked Anthony Inglese to look at any legal issues here, particularly the 2005 advice.

My concern is not so much the decision of the HRCP programme board but rather the referral after GS had been made a without reservation offer. The technical issue on interest is yet to be resolved but if we were mistaken there is precedent for HMRC accepting an HRCP settlement offer which included "relief" for a mistake by a senior member of the Dept

I will talk to MH on Friday with a view to creating an opportunity for you to talk to him, if that is possible. If that gets us nowhere I will speak to Steve and, if necessary, see him in the US when I am there in early January.

The risks here are major embarrassment to the ChX, HMRC, the LBS, you and me, not

least if GS withdraw from the Code.

I will copy this to Melanie and Freda once we have agreed the facts.

Dave