

Alliance Boots and the use and abuses of Limited Liabil...

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Last year War on Want published [a report](#) revealing that Boots the Chemists — a fixture of most U.K. high streets — had dodged over £1 billion in the six preceding years since it was taken over by the Alliance group. War on Want have now sent a letter to HM Revenue and Customs (which we copy in full below), co-signed by me, TJN and others, requesting the tax authorities to investigate the use of Limited Liability Partnerships (LLPs) by Boots and other companies as a part of their tax avoidance strategies.

As the letter explains, HMRC appears to have allowed the use of LLPs to become an acceptable part of tax planning:

HMRC appeared to have allowed the practice of profit shifting to become embedded as ‘acceptable tax planning.’’ The Subcommittee noted that HMRC estimates that 23,000 of the roughly 420,000 partnerships had a corporate member. Of those, almost one-half were partnerships consisting only of non-individual (corporate) partners. While this is a small percentage of the total number of partnerships, it is a very large number of entities that are designed for uses distinctly different than traditional partnerships of individuals.

In its submission to the Subcommittee, the Government noted that, in LLPs, “profits may be allocated to a low tax entity, such as a company, while individual partners taxable at higher income tax rates ultimately receive the benefit of those profits in low-taxed or even non-taxable forms.” The submission made by War on Want and Change to Win makes clear that a similar problem exists with all-corporate-member LLPs, except that the profits may be received by corporate entities in low or no tax jurisdictions, such as the Cayman Islands.

The AllianceBoots case study indicates the potential scale of revenue losses arising from the use of LLPs, but the government appears not to be taking action to either investigate Boots or other companies employing LLPs for tax avoidance purposes, or taking steps to determine whether the use of LLPs by Boots and others conforms with UK law. Hence the specific requests made in the letter for HMRC to take action:

(1) Whether HM Revenue & Customs will publish data about the prevalence of LLPs, all members of which are corporate entities and at least one is a foreign corporate entity? a. Of those, how many have a foreign corporate entity based in a jurisdiction that is generally understood to be a tax haven or a financial secrecy jurisdiction?

(2) Whether HM Revenue & Customs is concerned about the marketing of tax avoidance schemes involving LLPs, all members of which are corporate entities and at least one is a foreign corporate entity?

(3) Whether HM Revenue & Customs has initiated any investigations into companies employing this form (ie LLPs in which all members are corporate entities, at least one of which is a foreign corporate entity) as a means of tax avoidance or tax evasion?

(4) Whether HM Revenue & Customs has undertaken, or will undertake, an investigation or other form of inquiry to determine whether Alliance Boots' use of LLPs conforms to UK law — and is within the spirit of those laws — as suggested by the Subcommittee? a. If so, what is the time frame of that investigation?

The full letter is copied below:

*Lin Homer, Permanent Secretary and Chief Executive
HM Revenue and Customs
London, SW1A 2BQ*

May 30, 2014

Dear Ms Homer,

We write to request information from your office and to urge you to instigate an investigation into certain matters concerning the use of limited liability partnerships (LLPs) by multinational corporations for purposes that obscure the substance of economic activity and may result in tax avoidance.

The House of Lords Economic Affairs Committee sub-committee on the Draft Finance Bill recently examined measures affecting limited liability partnerships in this year's Draft Finance Bill. As a part of that inquiry, the Subcommittee received evidence from a variety of groups and individuals. We write to follow up on the submission made by two organisations, War on Want and Change to Win. A copy of their submission is attached.

As an initial matter, the Subcommittee concluded that, in the realm of LLPs, "HMRC appeared to have allowed the practice of profit shifting to become embedded as 'acceptable tax planning.'" The Subcommittee noted that HMRC estimates that 23,000 of the roughly 420,000 partnerships had a corporate member. Of those, almost one-half were partnerships consisting only of non-individual (corporate) partners. While this is a small percentage of the total number of partnerships, it is a very large number of entities that are designed for uses distinctly different than traditional partnerships of individuals.

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low-taxed or even non-taxable forms." The submission made by War on Want and Change to Win makes clear that a similar problem exists with all-corporate-member LLPs, except that the profits may be received by corporate entities in low or no tax jurisdictions, such as the Cayman Islands.

The War on Want and Change to Win evidence charges that, as part of its leveraged buyout, the acquiring parties of Alliance Boots set up a series of LLPs, to which the ownership of its high street properties had been transferred, and which guaranteed its debt, and used a Cayman Islands partner to provide flexibility and a veil of secrecy to the whole business. The complex structure of Alliance Boots' property holding companies, with a tax haven-based partner, raises serious questions about how a multinational company is using the LLP form to obscure, and possibly divert, taxable income.

In light of this evidence, we write to enquire:

(1) Whether HM Revenue & Customs will publish data about the prevalence of LLPs, all members of which are corporate entities and at least one is a foreign corporate entity? generally understood to be a tax haven or a financial secrecy jurisdiction?

(2) Whether HM Revenue & Customs is concerned about the marketing of tax avoidance schemes involving LLPs, all members of which are corporate entities and at least one is a foreign corporate entity?

(3) Whether HM Revenue & Customs has initiated any investigations into companies employing this form (ie LLPs in which all members are corporate entities, at least one of which is a foreign corporate entity) as a means of tax avoidance or tax evasion?

(4) Whether HM Revenue & Customs has undertaken, or will undertake, an investigation or other form of inquiry to determine whether Alliance Boots' use of LLPs conforms to UK law — and is within the spirit of those laws — as suggested by the Sub-Committee? If so, what is the time frame of that investigation?

Regarding the latter point, we strongly urge HM Revenue & Customs to bring an investigation into Alliance Boots' use of these LLPs and that HMT consider the attendant policy matters as it moves forward with reform of partnership structures. We are gravely concerned that these structures are being used to erode the British tax base and to shift profits to foreign jurisdictions that offer financial secrecy and low, to no, taxes.

We believe such an investigation is particularly timely given the Government's commitment to carrying out the OECD Base Erosion & Profit Shifting (BEPS) Action Plan. Private equity backed firms depend on complex structuring and massive debt to carry out their deals, and the BEPS Action Plan acknowledges that such structures lead to profit shifting through interest deduction. In the case of Alliance Boots, the company avoided an estimated £1.12 billion to £1.28 billion through interest deduction over six years. The BEPS plan aims to address this through either restrictions on "earnings stripping" or requirements for "allocation of interest" across a multinational group. The Government can demonstrate its commitment to participate fully in the BEPS Action

Plan by investigating structures like the one described above and moving aggressively to limit debt interest deduction.

We hope to hear from you on this matter at your earliest convenience, particularly given the immediate relevance of these questions to the current Finance Bill.

Sincerely,

*John McElroy, Executive Director, War on Want
John McElroy, General Secretary, United Union
Richard Murphy, Director, Tax Research LLP
John Christensen, Executive Director, Tax Justice Network
David McCoy, Chair, MPA
Neil Geler, Associate Director of Retail Initiatives, Change to Win*

CC:
*Hon. Margaret Hodge MP, Chair of the Public Accounts Committee
Tim Harries, Director General, Business Tax, HM Revenue and Customs
Fergus Harradence, Deputy Director, Corporate Tax, HM Treasury*

I will await a reply with interest.