

Tax avoidance schemes – Joint campaign (Lecture P1259 – 15.22 minutes)

On 26 November 2020, HMRC and the Advertising Standards Authority launched a major campaign to put a stop to misleading marketing by promoters of tax avoidance schemes.

The newly announced joint enforcement notice aims to disrupt the activity of promoters and to protect people being presented with deceptive advertisements which might otherwise tempt them into tax avoidance. In particular, it requires promoters to be clear about the potential consequences of tax avoidance in any online marketing. Immediate sanctions include having promoters' paid advertising removed from search engines, along with follow-up compliance action such as referral to Trading Standards.

This course of action came into being alongside the introduction of HMRC's 'Tax avoidance: don't get caught out' awareness drive, warning and educating contractors about:

- how they can identify that they are being offered a tax avoidance scheme; and
- the pitfalls of using such schemes.

The main message from Government is that, if any arrangement involving tax looks too good to be true, it almost certainly is.

Simultaneously, HMRC published on their website a very interesting report entitled 'Use of marketed tax avoidance schemes in the UK' which, for 2018/19 (the latest tax year for which data is available), discusses:

- the main types of scheme used; and
- the characteristics of taxpayers taking advantage of schemes.

With regard to the size of the problem, HMRC state:

'Tax avoidance is not as widespread as people might think. In 2018/19, we estimate that 95.3% of all the tax that was legally due in the UK was paid. That is £627.9 billion in revenues in 2018/19. Of the revenues HMRC brought in, £34.1 billion was additional tax from tackling avoidance, evasion and other non-compliance.

In the same year, HMRC estimate that around £1.7 billion was lost to tax avoidance. Around half of this gap (£0.9 billion) is attributed to corporation tax. The £0.6 billion element relating to avoidance schemes marketed to individuals is made up of unpaid income tax, NICs and CGT. Other direct taxes and VAT account for the smallest share of avoidance (each at £0.1 billion).'

The report goes on to tell us that the reasons why tax goes unpaid involve several other areas where the relevant amounts are significantly greater.

One of HMRC's charts shows the following:

<u>Reasons why tax goes unpaid</u>	<u>Tax lost</u>
Failure to take reasonable care	£5.5 billion
Legal interpretation	£4.9 billion
Evasion	£4.6 billion
Criminal attacks	£4.5 billion
Non-payment	£4.1 billion
Error	£3.1 billion
Hidden economy	£2.6 billion
Tax avoidance	£1.7 billion

As you can see, tax avoidance comes a long way down the list.

HMRC's analysis reveals that the overall amount lost through tax avoidance schemes targeted at individuals has more than halved since 2013/14. This reduction is mainly the result of policy and operational reforms such as the introduction of the GAAR in FA 2013 and the development of follower and accelerated payment notices in FA 2014 which, in the words of HMRC, 'fundamentally changed the economics of avoidance (for example, by requiring any disputed tax to be paid in full up front while any dispute was resolved or went through the Courts)'.

In 2013/14, the main tax avoidance schemes for individuals involved:

- (i) disguised remuneration arrangements; and
- (ii) sideways loss relief.

With reference to (ii) above, many of these schemes were marketed as representing investment opportunities for high-income investors. For example, the 'Ingenious' scheme used losses arising from investments in a range of blockbuster films such as 'Avatar' and 'Die Hard 4'. The 'Icebreaker' scheme, to take another example, created losses from investments in LLPs. HMRC summed up the effect of participating in such arrangements as follows:

'In both schemes, the individuals using them tried to claim more in tax relief than they had invested. These schemes did not work and individuals faced big bills for interest and legal fees on top of the unpaid tax.'

Another of HMRC's charts illustrates the change in the proportion of scheme types between 2013/14 and 2018/19:

<u>Scheme type</u>	<u>2013/14</u>	<u>2018/19</u>
Disguised remuneration/contractor loan	60%	98%
Sideways loss relief	36%	1%
Other	4%	1%

Nowadays the investment schemes utilising sideways loss relief have largely disappeared and the market has been dominated by disguised remuneration arrangements (and their variants). However, it is anticipated that, as a result of the loan charge legislation in F(No2)A 2017 (which was significantly amended by FA 2020), they too will dry up.

An interesting statistic about individuals involved in tax avoidance schemes in 2018/19 is that their use was most prevalent among the 41 – 60 age group. And many of these individuals were involved in more than one scheme. Turning to the individuals' incomes, HMRC's 2018/19 data shows that the percentages involved in tax avoidance at different income levels were as follows:

<u>Reported income</u>	<u>Individuals in this category</u>
Up to £25,000	87%
£25,001 – £50,000	8%
£50,001 – £75,000	2%
£75,001 – £100,000	1%
Over £100,000	2%

On reflection, it is perhaps not wholly surprising that 95% of those who used tax avoidance schemes reported having an income of no greater than £50,000, given that taxpayers involved in disguised remuneration schemes would originally not have returned their full income for tax purposes.

HMRC have commented further:

'It is unclear what proportion of the people who reported income of £0 – £25,000 were genuinely on incomes of this level. However, anecdotal evidence in the wake of the loan charge and the fact that promoters of avoidance schemes targeted nurses and other NHS workers indicates an increased level of interest from promoters in individuals on middle incomes.

As would be expected, given the density of the population in these areas, tax avoidance in the UK is concentrated in London and the south-east of England. However, we are seeing a significant shift away from the London postcodes more usually associated with those on higher incomes, including the City of London and Knightsbridge, towards the outer boroughs and commuter belt. There are noticeable concentrations in Barking, Dagenham, Thurrock, Greenwich and Croydon.'

If you have clients who live in these areas, you will need to be on the alert!

Contributed by Robert Jamieson