Chamberlyns

In Perspective

Aggressive Tax Planning

November 2014

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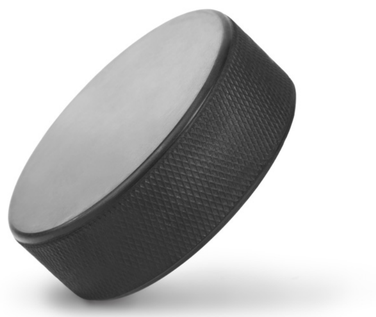
Opportunities to engage in 'exotic' tax planning abound – but beware, this might be a 'good idea' best avoided

I recently interviewed a potential new client and by the end of our meeting, I felt a mix of sympathy, frustration, surprise and relief: sympathy for his unfortunate experiences and what they had cost him financially; frustration that he didn't seem to realise that he might partly be to blame for the situation in which he found himself; surprise that he wanted to continue with the same damaging behaviours that had led him there; and relief that we do not involve ourselves or our clients in the kinds of high risk activities at the centre of this rather sorry tale.

Simon (not his real name) is a successful business owner who had received advice from his financial adviser and accountant for more than 10 years, before recently parting company with both. The reason for the souring of relations – and the legal proceedings he has begun against them – is that his adviser and accountant facilitated his participation in an aggressive tax planning scheme, which has failed spectacularly; so spectacularly, in fact, that with HMRC's ruthless reclamation of the unpaid tax, the corresponding fines and penalties, the huge fees that had been incurred on the way in to the scheme and the massive losses on the scheme itself, Simon could literally have purchased a house.



A wealth destruction, rather than preservation, strategy

As our meeting progressed, it became apparent that Simon believed this situation was brought about principally through a combination of poor, unscrupulous advice and bad luck; the fact that he himself had wanted to aggressively minimise his tax bill and encouraged his adviser and accountant to help him in this pursuit, apparently was not important when determining responsibility.

Indeed, while he may be a little more cautious in his approach in the future, he is undeterred from trying similar tactics again to avoid the tax for which he is liable (better advice and better luck should see him right next time) and meanwhile, he is confident that he will get back most of the money he's lost, via the legal wrangle with his former advisers ('those guys are the professionals who ultimately got me into this thing, so the case is bound to go in my favour, right?').

Leaving aside the moral aspects of aggressive tax planning schemes – schemes which often serve little purpose other than to reduce, via artificial means and to an artificially low level, the tax which a person could otherwise reasonably be expected to pay – when one reads the guidance on such schemes published recently by HMRC, I worry that Simon is likely to unnecessarily destroy more of his own hard-earned wealth in the years ahead:

'Those guys are the professionals who ultimately got me into this thing, so the case is bound to go in my favour, right?'

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10 things HMRC say you ought to know about tax avoidance schemes:

1. **Most schemes don't work.** If the scheme doesn't work, you'll have made an incorrect tax return which is not in accordance with the law. You are legally obliged to pay the tax that is due and you may be charged penalties if you try to avoid it.
2. **It could cost you more than you bargained for.** Avoidance schemes are complex. They can give rise to unintended additional tax consequences, and the fees you pay the promoter do not count as tax paid. So you could end up paying much more than just the tax you're trying to avoid.
3. **You may have significant legal fees to pay.** If the scheme is taken to litigation, you're likely to have hefty legal fees to pay.
4. **You could face criminal conviction.** If you deliberately mislead or conceal information from HMRC, you could be prosecuted and convicted.
5. **You could face publicity as a tax avoider.** If you are named in court papers when the case is litigated, or in public registers, you could be reported in the media as a tax dodger.
6. **Your scheme is never HMRC approved.** Getting an avoidance Scheme Reference Number from HMRC doesn't mean the department has cleared the scheme. HMRC simply issues these numbers when a scheme has signs of being designed to avoid tax.
7. **You could be marked out as a high-risk taxpayer.** Use of a scheme could mark you out as a high-risk taxpayer, which means that all of your tax affairs will be closely scrutinised in future, not just your claim for relief.
8. **HMRC is likely to beat your scheme in court.** HMRC wins eight out of ten cases that get as far as court. The rest are settled before legal proceedings begin.
9. **The risk is normally all your own.** It's unlikely that a promoter (or those advising you) will give you a guarantee that a scheme will work and they probably won't be around to support you once HMRC starts investigating your tax affairs. Some promoters set up simply to sell the scheme, and then disband.
10. **You'll have to pay the tax up front anyway.** You won't get a cash-flow advantage while HMRC investigates a scheme. New legislation means you'll have to pay the disputed tax up front.

Two key points to take away from Simon's story and HMRC's guidance:

1. **Don't get involved in aggressive tax planning schemes.** Instead, focus on the wide range of sensible, gradual, proven, effective and entirely legal tax planning steps which can be taken to ensure you organise your affairs as efficiently as possible.
2. **Don't be obsessed with saving tax.** Certainly, intelligent tax planning is a valuable and important element of the ongoing financial planning process, but is far from the only – or indeed, most important – element.

As you might imagine, we politely declined to take Simon on as a client as there was not a good fit between us, not least with regard to our respective beliefs about the ways in which a competent adviser can add value to a client's affairs.

Unfortunately, like financial markets, HMRC has an unerring habit of sending out expensive tuition bills to those who, whether unwittingly or deliberately, ignore the principles of a better way of doing things. Sadly, given Simon's preferred approach to planning and managing his finances (which unfortunately includes ignoring the multitude of other, non-tax related financial planning issues he has), it seems likely that another hefty tuition bill will be landing on his doormat in the near future.

Best regards

Michael

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In addition to being a Chartered Financial Planner, Michael holds the globally recognised Certified Financial Planner qualification and is a Fellow of the Personal Finance Society. Michael also sits on Chamberlyns' Investment Committee and produces the firm's regular series of concise 'In Perspective' articles, which consider, and provide perspective on, a range of current and timeless wealth planning issues.

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