HMRC Aggressive Tax Planning Schemes

Tax planning, within the meaning of organising your financial affairs by claiming permissible allowances and deductions in order to lower the amount of tax you pay, has long been a part of the advice which good tax accountants give to their clients.

However, in recent years, a number of schemes were promoted which go further than simple tax planning. These schemes have used aggressive interpretations of tax law to push at the boundaries of tax planning. Increasingly, they have been viewed by HMRC as tax avoidance schemes. Tax evasion has always been illegal but tax avoidance has not. However, attitudes to aggressive tax planning have changed.

In 2014, HMRC set up the Counter Avoidance Directorate and has since taken active steps to discourage the use of tax avoidance schemes. This unit has concentrated its attention on schemes which have been notified to HMRC under the Disclosure of Tax Avoidance Schemes rules ("DOTAS Rules"). Every scheme notified to HMRC under DOTAS is given a Scheme Reference number ("SRN").

For a full listing of SRNs and to check if a scheme you invested in is listed, please visit mlmsolutions.co.uk

The number of notifications under DOTAS is now falling. However, these rules came into force in 2006 and HMRC is intent on dealing with the schemes which have previously been notified to it, using the greater powers given to it in the Finance Act 2014.

OVERVIEW

In the Finance Act 2014, the UK Government gave HMRC the power to issue Accelerated Payment Notices (APNs) and Follower Notices. These give HMRC the right to demand an upfront payment of tax, essentially a payment on account, in cases where the precise sum due has not been determined, or is in dispute. They can therefore be used where HMRC deems a particular tax planning scheme to be a tax avoidance measure, even when the matter has not yet been determined by a Tax Tribunal. Follower Notices can be issued where a Tax Tribunal has issued a ruling in relation to a scheme which HMRC believes to be similar to the scheme you invested in. These notices require you to correct your historic tax returns and pay additional tax due within 90 days, failing which you will incur substantial penalties of up to 50% of the additional liability. The sums demanded can, therefore, be substantial.

This can give rise to a number of problems. Because HMRC has historic reach, going back for up to 10 years, individuals who believed the scheme they invested in was legal, may have spent the money they 'saved' by being a member of the scheme. When an APN is issued, they may simply be unable to pay. For example, a number of football players used these schemes. At the time they invested, they were high earners. Now, they may be earning considerably less. Because APNs must be paid within the relatively short period of 90 days, they may have difficulty finding liquid funds to meet the liability and, in some cases, they may be unable to meet the liability at all.

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RELATED SERVICES

- Debt Arrangement Scheme
- Business Debt Arrangement Scheme
- Protected Trust Deeds
- Sequestration
- Restructuring or accelerated M&A for companies

WHEN TO CONSIDER SEEKING ADVICE AND ASSISTANCE

If you're worried that you have used a tax planning scheme which may come under scrutiny by HMRC, then you should be proactive and seek advice as soon as possible. Ask your accountant to check that the scheme you invested in was properly notifiable under DOTAS. There have been 2 recent cases where HMRC was forced to withdraw APNs because the schemes they referred to did not fall under the DOTAS Rules.

You can also use our online APN checker to input your 8 digit SRN to find out if the scheme you invested in is under investigation. If it is, contact your accountant for information about the extent of your potential liability. If you think you will have difficulty in finding liquid funds to settle it, contact us and we will help you establish what your options are. We are happy to meet both you and your accountant.

If you have already received an APN or Follower Notice, contact us immediately to discuss your options. It may be helpful for your accountant to attend that meeting. Remember, you only have 90 days to deal with it. If you do not pay the tax demanded within that period, HMRC can move to enforcement action, which can involve a raid on your bank account, or even an insolvency process such as bankruptcy.

DID YOU KNOW?

- APNs have raised over £3bn since they were launched in 2014.
- Only around 5% of the 70,000 notices issued have been withdrawn.
- APNs are sent out for each year of the avoidance scheme and for each type of tax involved.
- Failure to pay an APN by the due date could lead to late payment penalties or surcharges becoming due and potential enforcement action.
- The APN will only cover the tax or NICs advantage relating to the specific avoidance scheme covered by the APN so paying the APN liability does not mean you have settled your tax affairs in full. There may be additional penalties or interest charges to pay.

CASE STUDIES

FILM SCHEME
We were contacted by an adviser acting on behalf of an investor in one of the Film Schemes which were promoted to high earners as a means of minimising their tax liabilities. This scheme had been deemed to be a tax avoidance scheme by HRMC and APNs had been issued to a number of investors. We established that HMRC's finding was being appealed by the promotor but the investor was keen to exit the scheme to minimise his risk going forward. We helped him to do this and, having discussed matters fully, helped him make an offer to settle with HMRC.
HMRC are still willing to enter into time to pay arrangements. However, if it believes it is likely to succeed in any litigation, it will insist on payment in full, usually over a period of 2 years.

EBT
We advised a company which had set up an Employee Benefit Trust to make payments to employees. Working with the company and its accountants, we advised on the transfer of the business and assets to a new company at full market value while making a provision for an offer of settlement with HMRC.
We did this because it was clear that the company would not be able to pay the tax over a 2 year period. It was important to make a provision for payment of the liability because the beneficiaries of the trust can be held personally liable for NI and PAYE on sums paid to them by the Trust under the Disguised Remuneration Rules.

INVESTOR
We met with an investor following the issue of an APN. He had previously been a very high earner but his earning capacity had reduced substantially since he had made the investment. We quickly established that he had insufficient assets to meet the liability in full and had no realistic prospect of doing so within a 2 year period. Working with him, we assisted him to apply for bankruptcy and arranged the sale of his assets to his wife at pre agreed, market values. From the proceeds of these sales, we paid a dividend to HMRC.

In Scotland, the Debt Arrangement Scheme ("DAS") can also be a useful tool. If you are not able to pay in full over 2 years but could do so over a longer period, it is worthwhile considering this as an option. Our specialist advisors can help you with this.