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TAX

# TAX AVOIDANCE REVIEW

A REVIEW SERVICE FOR PARTICIPATORS  
IN TAX AVOIDANCE ARRANGEMENTS  
TO ADVISE ON THE OPTIONS

# TAX DISPUTE RESOLUTION

## TAX AVOIDANCE REVIEW

### DISGUISED REMUNERATION LOAN CHARGE REVIEW

HMRC have been actively challenging Disguised Remuneration ("DR") arrangements for over 10 years now. On 11 September 2019, an independent review was commissioned by the Government into the loan charge.

The loan charge required clients to report outstanding loans from DR arrangements as at 5 April 2019 on their 2018/19 tax returns, and to pay the associated tax liability by 31 January 2020. Many taxpayers sought settlement with HMRC in advance of this date to avoid the loan charge.

On 23 December 2019, the recommendations following the independent review were released and in the period since then, significant changes have been made.

The loan charge now only applies to loans made on or after 9 December 2010. This date coincides with the change in law to target the use of DR arrangements.

In addition, the loan charge will not apply to loans made between 9 December 2010 and 5 April 2016 where the DR arrangement was fully disclosed and HMRC did not open an enquiry. The meaning of what constitutes 'fully disclosed' is complex and unclear.

Taxpayers who now fall within the above definitions and have settled with HMRC will be due a refund. Those taxpayers who have not settled but now fall outside the scope of the loan charge will need to apply for a waiver. Taxpayers must make a claim for a refund or waiver before 1 October 2021.

The loan charge review also made some welcome changes to payment terms, including where the loan charge is still due. In this instance, the loan charge can be spread evenly across three tax years rather than being due in one lump sum. Other payment terms are also available.

Given the complexities of the outcome of the review, immediate action is recommended to understand your tax position and how you are impacted.

### GENERAL ANTI-ABUSE RULE

General Anti-Abuse Rule ('GAAR') was introduced as a deterrent to those undertaking tax avoidance arrangements and to enable HMRC to tackle such arrangements and impose punishment to those who 'over-stepped' the line. GAAR came into force on 17 July 2013 and applies to arrangements entered into on or after that date (unless specifically stated).

The GAAR is a test which HMRC may seek to apply to tax avoidance arrangements. It effectively limits the tax planning that a person can do and rejects the proposition that taxpayers have unlimited freedom to invent ways to reduce their tax liabilities by lawful means. GAAR is triggered if the tax result of an arrangement is more favourable than that which Parliament anticipated when it introduced the tax rules that the arrangement is trying to get around.

HMRC is now actively using GAAR to tackle avoidance arrangements. If taxpayers or advisers/enablers receive a proposed counteraction notice in respect of the GAAR from HMRC, they must act immediately to understand their position and options.

### GAAR BINDING NOTICE

HMRC can make a generic referral to the GAAR Advisory Panel in respect of a tax avoidance arrangement. If HMRC considers there are other arrangements equivalent to the ones counteracted by the GAAR Advisory Panel, a GAAR Binding Notice can be issued. HMRC do not need to refer each taxpayer's case to the GAAR Advisory Panel individually.

Taxpayers can make representations within a limited time period to explain why they consider the arrangements entered into are not equivalent to the counteracted ones.

### EXPERT WITNESS

Tax Expert Witness services are often required in a number of contentious situations and/or during dispute resolution. This may include professional negligence claims in respect of entering into failed tax schemes or the tax consequences of separation or divorce.

## CORPORATE INSOLVENCY & TAX AVOIDANCE

HMRC are continuing to crack down on tax avoidance arrangements. In some instances, companies that implemented these arrangements are now being placed into insolvency proceedings. The creditors often include HMRC and often relates to disputed tax liabilities arising in respect of the tax planning arrangements. In a number of these cases, HMRC has instructed its own liquidator to pursue former directors / shareholders of the companies for the tax that HMRC feel is due (even in instances where the tax remains disputed).

HMRC's appointed liquidators are often alleging various offences under the 1986 Insolvency Act, including misfeasance, wrongful trading and defrauding creditors. This is not to be taken lightly. The dynamics in play between the liquidator, HMRC, the client and other parties are complex and there are numerous considerations to understand. Clients facing this situation should take expert advice as soon as possible.

### APNS AND FNS

Accelerated Payment Notices ('APNs') are issued to individuals and companies participating in 'notifiable' tax avoidance arrangements, giving them 90 days to pay HMRC the tax in dispute.

Follower Notices ('FNs') require taxpayers to amend their tax returns in order to remove any entries relating to a tax avoidance arrangement that HMRC considers was proven ineffective in Court, either directly or as a result of a Judgement on another similar arrangement.

Acting now before you receive a FN or APN means that you have more time to consider your options. In addition, if you need a Time to Pay arrangement, the sooner you come forward, the better.

### PENALTIES FOR AVOIDANCE

**HMRC are now considering charging penalties for inaccurate tax returns or other documents where the inaccuracy:**

- ▶ Relates to the use of tax avoidance arrangements
- ▶ The inaccuracy is as a result of careless behaviour.

**The penalties apply to tax returns or documents that:**

- ▶ Relate to a tax period that began on or after 6 April 2017 (and ended after 15 November 2017)
- ▶ The tax return or document was sent to HMRC on or after 16 November 2017.

Careless behaviour is where you failed to take reasonable care i.e. doing everything you can to make sure the tax returns and other documents sent to HMRC are accurate. If a taxpayer is deemed to have taken reasonable care, HMRC will not charge a penalty. The rules around reasonable care however deem much advice disqualified and ignored for the purposes of establishing behaviours.

### TIME TO PAY

Taxpayers can seek time to pay ("TTP") from HMRC in respect of tax debts relating to their participation in tax avoidance arrangements if they cannot afford to fund a settlement in full and on time. Notwithstanding this, if taxpayers are impacted by Covid-19 but still want the certainty of bringing their tax affairs up to date, HMRC are diverting significant resources to its TTP offering as an essential lifeline.

### HOW CAN BDO HELP?

- ▶ Consider whether the tax avoidance arrangement(s) may be caught by these provisions
- ▶ Advise you on the benefits and risk of exiting from a scheme or remaining in it
- ▶ Review old HMRC enquiry correspondence and procedures
- ▶ Consider the impact of the loan charge review on your tax position (historical and current)
- ▶ Review the use of 'discovery' provisions
- ▶ Re-calculate tax computations and loss relief
- ▶ Negotiate and manage your withdrawal from schemes
- ▶ Check the notices and make representations to HMRC
- ▶ Negotiate Time To Pay and penalties
- ▶ Advise you about other payment options to manage your cash flow if you participated in several schemes
- ▶ Utilise our relationship with Counter Avoidance Directorate ('CAD') within HMRC.

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