HM Revenue & Customs

Tempted by Tax Avoidance?

A warning for people thinking about avoidance schemes

The vast majority of people in the UK don't try to avoid tax: they pay the tax they owe when it is due and don't try to bend or break the rules. A small minority of people are lured into tax avoidance schemes by the promise of big tax savings for little cost or effort. But trying to dodge tax carries risks.

HMRC is very successful at tackling tax avoidance and employs teams of tax, legal and accountancy experts to challenge those who try to get out of paying their tax. Anyone tempted to use a tax avoidance scheme should think very carefully about the costs, the disruption caused by having to deal with HMRC enquiries and potentially lengthy litigation, and uncertainty over the outcome they may face as a result.

How can I tell if it's tax avoidance?

You are entitled to plan your tax affairs in a way that makes sure you do not pay more tax than you have to. There are many legitimate ways in which you can save tax, for example by saving in a tax-free ISA, making donations to charity through Gift Aid, claiming capital allowances on assets used in your business or paying into a pension scheme. But there is a big difference between using tax reliefs and allowances in the way in which they are intended to be used, and trying to bend the rules to avoid tax.

There are warning signs you can look for which should help you decide whether you are being offered good tax advice about how to plan your affairs or whether you are being sold a tax avoidance scheme.

Case study

Real life: penalties and interest

An individual who had made a large capital gain used a tax avoidance scheme which was supposed to reduce his tax bill to zero by creating an artificial tax loss. He paid more than £270,000 in fees to the promoter to use the complicated arrangements required by the scheme. An in-depth investigation by HMRC showed that transactions which were supposed to have taken place had not in fact been carried out as claimed. In the event he had to pay more than £95,000 interest and penalties on top of all the tax he had tried to avoid. Many people used this particular scheme and also had to pay substantial penalties.

If something sounds too good to be true, it probably is

Don't be taken in by someone trying to interest you in a tax avoidance scheme which promises a result that sounds too good to be true. Instead of making your tax bill disappear, you are likely to find yourself subject to an in-depth enquiry by skilled, specialist investigators. Typically, you will tie yourself up in a dispute which may go on for years and end up in the courts. On top of the fee you pay to the promoter and other expenses of taking part in the scheme, you may find yourself paying the disputed tax plus interest. In some cases, you may also find yourself paying substantial penalties. Some particularly badly-designed schemes have left users with a far bigger tax bill than they tried to avoid.

If you use a scheme which relies on concealment, pretence, non-disclosure or misrepresentation of the true facts, you are breaking the law by evading tax. This means you are facing serious sanctions ranging from financial penalties (which may be as much as or even more than the tax you were trying to avoid) to possible prosecution and a prison sentence.

Look out for the warning signs

Any of the following signposts should make you think twice:

- It sounds too good to be true and cannot have been intended when Parliament made the relevant tax law. For example, some schemes promise to get rid of your tax liability for little or no real cost, and without you having to do much more than pay the promoter and sign some papers
- The tax benefits or returns are out of proportion to any real economic activity, expense or investment risk
- The scheme involves arrangements which seem very complex given what you want to do
- The scheme involves artificial or contrived arrangements
- The scheme involves money going around in a circle back to where it started
- The scheme promoter either provides any funding needed to make the scheme work or arranges for it to be made available by another party
- Offshore companies or trusts are involved for no sound commercial reason
- A tax haven or banking secrecy country is involved
- The scheme contains exit arrangements designed to side-step tax consequences
- There are secrecy or confidentiality agreements
- Upfront fees are payable or the arrangement is on a no win/no fee basis
- The scheme has been allocated a Scheme Reference Number (SRN) by HMRC under the Disclosure of Tax Avoidance Schemes (DOTAS) regime.

Don't fall for the sales pitch

Some promoters sell schemes that simply do not work. They tempt clients with tales of rich rewards but do not properly inform them about the risks involved. In some cases they even claim that there is no risk. But when the scheme fails it is the client who suffers.

You may be given a sales pitch which assures you that your money is safe and you are on to a sure-fire winner. Before you commit yourself to a scheme, you should thoroughly **check all claims made by the promoter** and make sure that you **understand the small print**.

"This is all approved by HMRC

This has been vetted by a top lawyer or accountant

We'll handle everything. There is no chance you'll end up in court

You can't lose. It's all fully insured"

HMRC never approves tax avoidance schemes

Sometimes you will be led to believe that the scheme has been approved because it has been given a scheme reference number (SRN) under the Disclosure of Tax Avoidance Schemes (DOTAS) rules. But all this really means is that the promoter has complied with his legal obligations to tell HMRC about an avoidance scheme. It does not mean that HMRC has approved the scheme or that you can rely on it.

Promoters will say they have **legal advice** which states that the scheme works. But have you read and understood that advice? Are you certain that the legal advice is based on precisely the same arrangements that the promoter is advising you to implement?

HMRC suggests you **take independent professional advice** to confirm that the scheme works in the way the promoter claims. We recommend that at the very least you should ask to see the promoter's legal advice and, importantly, their request for that advice to ensure that the facts set out in the request are identical to those of the scheme you are being offered. Legal advice might give you some confidence in the scheme, but will not guarantee that it is acceptable to HMRC or to the courts.

Using a tax avoidance scheme will mark you out as a high-risk taxpayer. This means that HMRC will subject your entire tax affairs to particularly close scrutiny, not just your participation in the particular tax avoidance scheme.

HMRC does take tax avoiders to court and is very successful at doing so. If you use a tax avoidance scheme you could find yourself being cross-examined in front of a tax tribunal. Do you want to take that risk? You can expect that the hearing will be in public and that the decision will be published. Although parties may apply for a case to be heard in private, or for a decision to be anonymised, that happens only in exceptional circumstances. The fact that you may be embarrassed by your financial affairs being discussed in public or concerned that your reputation and career will be damaged when it becomes known that you are a tax avoider is generally insufficient grounds for anonymity.

Promoters are highly unlikely to offer a cast-iron guarantee that you will get the tax result they say. **The risks of a scheme failing are taken on by the promoter's clients** and those risks are significant. Promoters are generally very careful to protect themselves against any claims when their schemes go wrong. And schemes can go very wrong, leaving the user exposed to very serious financial consequences.

You should make sure you understand what could happen if the scheme does not work as advertised or there are failures in the way it is implemented, otherwise you could find yourself exposed to an unexpected financial liability far greater than the tax saving which the scheme was supposed to achieve.

If you are a director of a limited company and you are considering involving the company in an avoidance scheme you must remember that you owe legal duties to the company and its employees, customers and creditors. This means that you could be personally liable for the company's tax or other debts if the company engages in risky tax avoidance which causes loss to the company.

Where promoters offer **insurance** you should ask yourself why that should be necessary if the scheme works as described. You need to read and understand the small print in insurance documents to know whether it will in practice cover you for all your costs.

Some people have found themselves in serious financial difficulties when a scheme fails. If you have tried to avoid tax HMRC will make every effort to ensure that tax, interest and penalties are paid, including taking insolvency proceedings where necessary.

Case study

Real life: privacy

A well-known broadcaster applied to the First Tier Tribunal to have his appeal heard in private. He was concerned that public awareness of his involvement in a marketed tax avoidance scheme might damage his career and reduce his earning capacity. But the judge decided that risk to a public reputation and career was not a compelling enough reason to grant anonymity. The judge refused the application, stating in the strongest terms that it is in the public interest that justice is public - it would not be justice if the wealthy or influential were able to have access to a privilege of privacy that others do not have.

Case study

Real life: convictions

Two tax advisers were jailed in 2012 for their part in a fraudulent tax avoidance scheme they sold to wealthy customers. The scheme abused a tax relief designed to benefit charities by arranging the gifting of virtually worthless shares. Not surprisingly, customers of the scheme got none of the tax relief they sought.

Case study

Real life: expensive mistake

Tax avoidance schemes are expensive and tax avoiders cannot count on being able to recover their fees and other costs when a scheme fails to deliver. For example, in the case of Brown v InnovatorOne plc ([2012] EWHC 1321 (Comm)) the claimants took action against the promoters of 19 failed tax avoidance schemes, which set out to abuse tax reliefs intended to encourage investment in information and communication technology. When their action failed in the High Court, the judge pointed out that not only did they not get the tax result they wanted, but they had also inadvertently exposed themselves to a liability of four times the amount of money they put into the schemes.

What should you do if you have doubts

- You should check on the HMRC website at www.hmrc.gov.uk/avoidance/spotlights.htm to see if HMRC has already set out concerns about the scheme you have been offered. You should still be wary of a tax avoidance scheme even if it does not feature on HMRC's website.
- HMRC recommends that you take advice from an **independent, reputable tax advisor** who is not connected with the scheme and who has no interest in encouraging people to take it up. If your tax advisor introduces you to a promoter, you should ask whether they are being paid commission or given any other form of reward for finding clients.

Contact us

If you're worried about a tax scheme you've already signed up to and want to withdraw from it, you can contact HMRC's Counter-Avoidance Directorate on **03000 530435** or use our secure online enquiry form available here: www.hmrc.gov.uk/avoidance to discuss your concerns. If HMRC has already been in touch with you about the scheme, you should contact the person you've been dealing with. Please remember to have to hand your National Insurance number and any reference numbers provided to you by HMRC (such as your Unique Tax Reference, VAT registration number and Scheme Reference Number) – this helps HMRC put you in touch with the right person to help you.

If you want to report a scheme that you believe has been set up to avoid tax, duty, National Insurance or VAT, you should tell HMRC. You can do this by contacting the Counter-Avoidance Directorate.

You should give HMRC as much information as possible so they can understand the arrangements being offered. If you're happy for HMRC to contact you should they need more information, please let them know how and when it's best to contact you.

Want to get out of a scheme you're in? Call us on 03000 530435 or visit our website www.hmrc.gov.uk/avoidance