

Article topic: Tax Planning

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Beware of HMRC scare tactics!



In the run-up to an election, there's nothing new in HMRC becoming a political pawn, as Mark Tuckwell, Director of Tax Planning explains.

This time around, the message coming from within and glossed-up by hired PR help is very simple – 'we will clamp down on high-earners trying to escape tax'. So, is this a real threat, or more a case of a bark without the bite?

In terms of front page news, articles about the latest HMRC clampdown come a close third behind Ashley Cole and Tiger Woods. If it's not targeting bankers' bonuses or sports stars' image rights, it's a campaign against medical professionals, landlords, or offshore bank account holders. Targeting specific groups is not new, but what has changed is the nature of some of the standpoints being adopted by HMRC.

In the 2008 Budget, HMRC first announced a more '*purposive*' approach to considering tax planning. The ambition here was clear; where there is no genuine commercial rationale for something, tax planning should not be viable and associated tax relief not permitted. However, there is one small problem with this - the law. Various recent articles have, therefore, focused on specific tax planning schemes and HMRC's '*purposive*' view on them. In many cases, despite having entered into formal enquiries over a period of many years (with no successful challenge in law) all that is left is this commercial viability argument. Whilst those in the know would see this for the last resort that it is, there's no substitute for a good article, particularly where some of the opponents are famous faces!

The desired effect here is clear – to deter others from tax planning. Quite apart from public opinion around the election, there are other reasons why HMRC is keen to do this now. Firstly, to take some small steps towards balancing the books. Secondly, because top-tier personal tax rates are going up from 6 April 2010 and the concern is that more people will be drawn towards tax planning. Thirdly, because a recent Court of Appeal case (HMRC v Tower MCashback – 2 February 2010) confirmed the High Court's ruling and taxpayer's victory in a well known and long standing tax planning strategy case. In the ruling, the purposive rationale bore no relevance in the face of the legal position.

All that said, the media attention should not be ignored. HMRC is undoubtedly scrutinising tax planning more now than ever before. Whilst the press releases are often alarmist and uninformed, HMRC's intentions are clear. As a result, it is increasingly important to understand the relative levels of tax risk associated with any particular planning undertaken. Except for those tax planning strategies that are pre-approved, there will always be a degree of risk and it's about understanding what those risks are and where they lie.

For information and advice on how the latest HMRC clampdowns affect you, please contact us:

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