Serial Tax Avoidance – an update on the serial tax avoiders' legislation in Finance Act 2016

Management of taxes

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Clients who have taken part in historic tax avoidance schemes may need to take action before 6 April 2017 to avoid the serial tax avoiders' regime.

The key message to advisers from HMRC during a recent Talking Points webinar on serial tax avoidance was that taxpayers who make full disclosure and/or settle open avoidance cases before 6 April 2017 (regarding tax avoidance schemes entered into before 15 September 2016) can avoid falling into the serial tax avoiders' regime as long as they do not enter into further tax avoidance schemes. HMRC advised listeners to make contact with them as soon as possible to discuss individual cases.

Finance Act 2016 Schedule 18 introduces a new 'serial tax avoidance' regime to address taxpayers who engage in tax avoidance schemes which HMRC defeat. The regime comes into effect on 6 April 2017 and consists of a series of warnings and escalating sanctions, including financial penalties and 'naming and shaming'.

Although the regime uses the word 'serial' it is not just aimed at frequent users of avoidance schemes. In fact, use by a taxpayer of just one scheme which is defeated by HMRC could result in the taxpayer falling into the regime.

The warnings will apply to schemes that are:

- Defeated by HMRC after 5 April 2017, whenever they were entered into; or
- Entered into and defeated by HMRC, on or after 15 September 2016.

In other words, defeats of schemes entered into before 15 September 2016 will not count for the serial tax avoidance legislation if before 6 April 2017 the scheme user

either:

- settles their existing avoidance arrangements by working with HMRC to resolve their tax position; or
- provides HMRC with full information about their existing avoidance arrangements or agrees to provide HMRC with full information about their existing avoidance arrangements and does so within the time set by HMRC.

The new sanctions will apply to defeated schemes entered into on or after 15 September 2016 and used during a warning period.

Schemes or arrangements included are those which are:

- Disclosed or disclosable under DOTAS or VADR;
- Arrangements for which HMRC have given a follower notice to the taxpayer;
- Arrangements counteracted under the GAAR.

A scheme is defeated when counteraction becomes final.

Following the first defeat, HMRC will place the taxpayer on warning that the use of any avoidance schemes in the following 5 years which HMRC defeats, will result in the warning period being extended and a penalty based on the amount of the understated tax, initially 20% rising to a maximum of 60% of the understated tax for further defeats.

During the warning period the taxpayer will be required to send details to HMRC about any DOTAS schemes used, why they think the scheme achieves the intended tax advantage and how much tax would be payable had the scheme not been used.

If HMRC defeat three tax avoidance schemes whilst the taxpayer is on warning the taxpayer's details can be published. If three avoidance schemes are used whilst under warning which exploit reliefs and HMRC defeat them, the taxpayer will be denied further benefit of the reliefs until the warning period expires.

A recording of the Talking Points webinar can be found on the GOV.UK website. Here you will also find information about other HMRC Talking Points webinars, including recordings of previous webinars and how to register for future meetings.