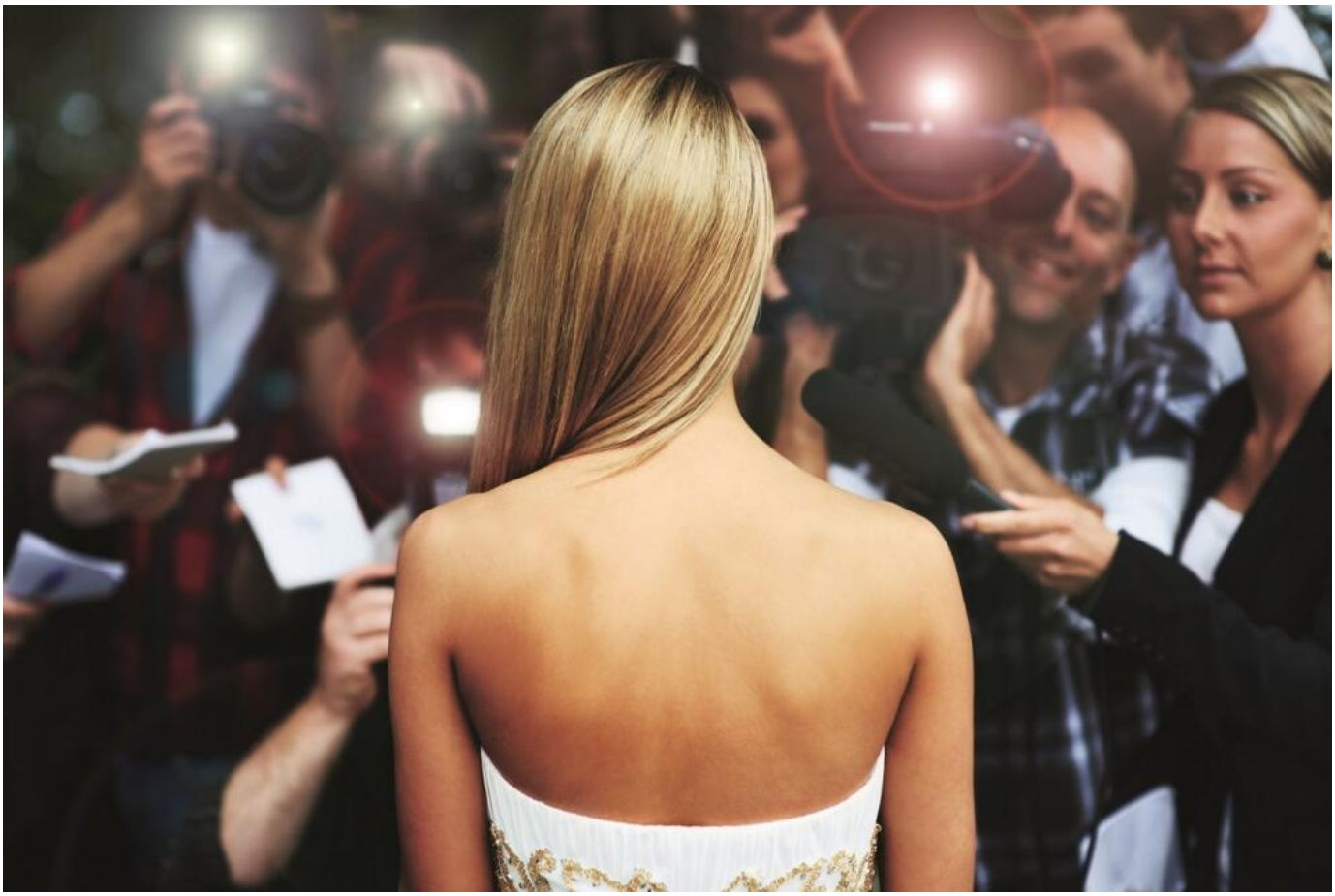
STARs beware!

Management of taxes



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Hilesh Chavda and *Elyse Waller* examines who will be affected by the STAR, and the sanctions enforced

Key Points

What is the issue?

The Serial Tax Avoidance Regime (STAR) applies to tax arrangements that are defeated after 5 April 2017. The sanctions include enhanced disclosure obligations,

restriction of tax reliefs, public naming as a serial tax avoider and penalties.

What does it mean to me?

Taxpayers who entered into arrangements on or after the date that the STAR was introduced (15 September 2016) will fall within the regime if they suffer a defeat after 5 April 2017. Taxpayers will potentially be subject to some serious sanctions. Taxpayers who entered into arrangements before the introduction of STAR will also be subject to the regime if they suffer a defeat after 5 April 2017, but not all of the sanctions.

What can I take away?

Taxpayers who entered into tax arrangements on or after 15 September 2016 that are defeated after 5 April 2017, should be aware of the sanctions, particularly where they have entered into multiple arrangements as the sanctions increase with subsequent defeats. A defeat is construed widely and includes entering into a settlement with HMRC. Taxpayers who suffer a defeat after 5 April 2017 of a tax arrangement entered into before 15 September 2016 will still be within the scope of the regime. This is despite them entering into the arrangements before the STAR came into force. However, such defeats will only be subject to the enhanced disclosure obligations. What is important is that all taxpayers who fall within the STAR should critically evaluate any sanction imposed by HMRC particularly those of disclosure.

Serial tax avoiders beware

There have been numerous salacious stories over the past few years about celebrities, footballers and other wealthy individuals entering tax avoidance schemes. This has fed into the mood among many people that the wealthy are not paying their fair share of tax.To assuage such concerns, the government introduced the STAR with an aim of deterring the ‘small but persistent numbers’ of people engaging in tax avoidance.

What is captured by the STAR

The STAR will apply:

- to anyone who entered into a tax avoidance arrangement,
- where the tax avoidance arrangement is defeated, and
- where the defeat becomes final after 5 April 2017.
- Tax avoidance arrangements are those:
- disclosable under the Disclosure of Tax Avoidance Schemes (DOTAS) legislation (or its VAT equivalent),
- where a follower notice has been issued or
- where there is a notice of a decision under the General Anti-Abuse Rule.

It is important to note that *defeat* has a wide meaning. It is not restricted to a defeat at court as you might think. It can also include a taxpayer who reaches a settlement with HMRC agreeing to make an amendment to their return or claim to remove or decrease the tax advantage sought by HMRC.

For there to be a defeat there must be a final counteraction:

- under the GAAR;
- as a result of a follower notice where
    - the Return or claim is amended to counteract the advantage,
    - the taxpayer agrees to relinquish the tax advantage or
    - the counteraction is final (this includes settlement with HMRC or a final decision by a tribunal where there is no prospect of appeal)
- of DOTAS arrangements or
- of VAT arrangements including those arrangements involving a supplier.

Sanctions

A defeat will trigger issuance of a warning notice. This notice remains in place for five years. Any subsequent defeats will also trigger warning notices thereby extending the warning period.

Where a taxpayer has entered into a tax avoidance arrangement before 15 September 2016 but falls within the STAR because of a defeat after 5 April 2017 (an Old Arrangement) the sanctions are restricted compared to arrangements entered into on or after 15 September 2016 that suffered a defeat after 5 April 2017 (a New Arrangement).

New Arrangements

During the notice period the taxpayer must report the use of any tax avoidance schemes.

Where there is a subsequent defeat of another New Arrangement a penalty will be charged. The penalty is a percentage of the counteracted advantage (usually the additional tax due). The penalties increase depending on the number of defeats during the notice period.

After the defeat that resulted in the warning period the penalty will be:

- 20% of the counteracted advantage for the first subsequent defeat,
- 40% of the counteracted advantage for the second defeat and
- 60% of the counteracted advantage for the third and any further defeats.

Further where three New Arrangements are defeated within the five year warning period HMRC can:

- publicly name the taxpayer as a serial tax avoider; and
- stop the taxpayer claiming, or making use of, direct tax reliefs for three years where the defeated arrangements involved misuse of direct tax reliefs.
- Listing names of people publicly as tax avoiders has clearly attracted a lot of attention. The government has not yet published details of how this will work in practice. However, it may well be on a similar basis to the details of deliberate tax defaulters which are already published publicly. In that case the names, addresses and details of the default are published at www.gov.uk for anyone to inspect.

Old arrangements

Where an Old Arrangement is defeated during a warning period penalties, publishing names and restriction of direct tax reliefs will not apply.

The only sanction that will apply is the reporting obligation. Taxpayers who entered into Old Arrangements might breathe a sigh of relief, however, the reporting obligations could be onerous. We do not yet know what level of disclosure HMRC will require. They may choose to request significant amounts of information about arrangements, some of which the taxpayer does not have or is not able to obtain

readily.

Complying with reporting obligations could be quite time consuming and costly for the taxpayer. If taxpayers do find themselves in this position, it is important they seek advice to ensure HMRC are allowed to request the information as some suspect they may use this to gather information they might not be entitled to. It might be that HMRC review the information they have on file and work with taxpayers. We will have to wait and see the approach taken as the STAR is applied to defeats going forward.

Transitional provisions

For Old Arrangements, taxpayers who disclosed the details of the arrangement to HMRC or confirmed that they intend to disclose details of the arrangement before 6 April 2017, fall outside the scope of the STAR.

It could be argued for many Old Arrangements that taxpayers have already made full disclosure in the process of assisting HMRC with their enquiries. Having said that, HMRC will only look at whether all information has been disclosed to them at the time of a defeat. They could ask for further information. Some fear that HMRC may use this as a fishing expedition to gather more information. Hopefully this is not the case, however it is important to consider any information requests carefully.

Conclusions

The STAR sounds alarming as penalties can include naming and shaming as a serial tax avoider, restricting tax reliefs and penalties of up to 60% of the tax advantage. This is particularly concerning given that the STAR can apply to Old Arrangements (being those entered into before 15 September 2016) as well as New Arrangements.

The tax avoidance market today is very different to that of 10 or even five years ago. Entering into aggressive tax arrangements is far less common now. Anecdotally taxpayers caught up in lengthy ongoing disputes with HMRC as a result of their participation in such aggressive arrangements are unlikely to enter into further aggressive tax arrangements. Given that the public naming, restriction of tax relief and penalties only applies to New Arrangements, it is possible that only ‘small but persistent numbers’ (as the government put it) will be caught and arguably they are

going to be difficult to stop anyway as they are determined to enter into arrangements.

Those taxpayers who are in Old Arrangements will only be subject to the reporting obligations. It does remain to be seen how HMRC will use their powers regarding information requests. Hopefully they will stay within the letter and spirit of the rules and work with taxpayers.

Some taxpayers availed themselves of the transitional provisions by writing to HMRC in general terms that they had disclosed everything, and to the extent that they had not, they intend to do so. In our experience it was positive to see that in some cases HMRC wrote to acknowledge the declarations made.

In summary, it is important that taxpayers caught by the STAR remain vigilant on HMRC’s use of their powers under the regime.