

Anton has a rant!

Anton Lane examines the culture at HMRC and explores the impact of Government policies have on tax avoidance

A little while ago I was asked by someone working for our Government why the number of tax avoidance schemes was on the increase. This may be hard to believe after the raft of anti-avoidance legislation, but in 2023 the number of marketed avoidance schemes has increased.

Perhaps the question demonstrates the difference between someone in the safe employment of His Majesty and those either employed in the private sector or setting up and running businesses. The simple answer to the question went something like this: “In 2008 the world global economy crashed as a result of sub prime lending in America. In the UK, the financial crisis resulted in a coalition government. With a political desire to exit the coalition, the Conservatives offered a promise of a referendum. We had pre-Brexit, Brexit and post-Brexit. Since then we have had a pandemic which affected our lives and the lives of our children – and at the same time politicians partied. We have then had exceptional increases in the cost of living as a result of Brexit and the Ukraine war with Russia. The reason why tax avoidance is on the increase is because few citizens respect your employer.”

Whilst the performance of our politicians and the wider government is somewhat lacking gusto, it isn't a reasonable excuse for avoiding tax (or evading tax). Herein lies a problem. The taxpayer is effectively employing the government to provide a particular service but that service and the quality of that service is dictated by the provider. The complaint policy is somewhat of a joke. For example, three vulnerable and elderly taxpayers attempting to settle their tax liabilities for over 18 months still can't get closure.

The reason is that HMRC did not respond for a year and then eventually responded to confirm they would be in touch – but with nothing of substance. Meanwhile, in the absence of a settlement, interest accrues and the vulnerable taxpayer is left being, well, more vulnerable. Maybe that taxpayer feels like one last trip to Ibiza, a little partying, a little flirting and dancing and sailing off into the sunset, waving goodbye to the UK.

When it comes to tax enquiries or investigations (they are the same), it doesn't matter what the service provider has done: your responsibility is to accept bad services, economic and political turmoil and pay the tax that is due (whether fair or unfair). The fairness of tax is interesting – tax is not meant to be political, although those dastardly politicians feel it is.

But you still have an enquiry. The HMRC officer isn't interested in whether their employer has performed their duties. Their task, without a bonus scheme or immediate promotion, is simply to get 'the fair amount of tax' from you. Is that true? The approach of HMRC has been somewhat focused on maximising the amount of revenue they collect. The approach on remuneration trusts does kind of evidence the approach. Apparently, the legislation for disguised remuneration triggers a charge for income tax on employment income, regardless of the intention of the perpetrator.

If you read the case law it is not quite as clear as that, but HMRC has taken this 'policy' approach. The policy approach appears to mean that there is not deviation whatever the facts, which is evidently in contravention of the taxpayers' charter. The issue is that HMRC officers don't seem to understand the world outside HMRC (sorry to those officers I deal with who are really great, but some are not).

The world outside is pretty tough. The sales come in but the cash doesn't. You are on the accruals basis and VAT is due but there's no cash. You have worked 14 hour days and are an additional rate taxpayer, you employ people and realise that whilst taking the risk and providing people with jobs, you are paying a much higher percentage of tax (over 50%). It's not fun. You want to maximise your return for the risks you take in the shortest term possible, and either have an interesting idea proposed by an adviser or do something a little sneaky.

HMRC send you a letter

HMRC don't know what you have done. You know they don't, but it is more comforting to wait and see if they know. Besides, how do they know? Where and how could they get the information? (they can). The problem is that by not being 'honest' you may be making the eventual liability higher. The problem is curtailed by not handling any enquiries well at the outset. HMRC can't just ask questions about any year or anything they want, and whilst they are 'officially scary', similar to their employer they seem to push the boundaries.

For example, an offshore company made a disclosure of undeclared income. The company was owned by an offshore trust. HMRC made formal request for information and documents (schedule 36 Information Notice) to the company that related to the trust.

The notice was legally unenforceable. What is interesting is that not only did an officer prepare the notice but a senior officer approved the notice. Would that be two officers ignoring the legislation and the law, as well as their internal guidance? If this happened once so be it, but it doesn't, it happens on almost every enquiry. We deal with hundreds (maybe thousands) of enquiries/investigations.

We can handle these approaches but the inexperienced fall into the trap (not admitted by HMRC as a trap). What happens for those cases – they go on and on for a long time. Professional costs soar as does the tax (normally). It is surprising because in the illustration I made above, HMRC accepted the 'act' (that giving rise to a liability) was non-deliberate:

- HMRC were looking at 20 years.
- The act was non deliberate, they couldn't look at 20 years.

An adviser was appointed, there was a reasonable excuse and penalties could be mitigated.

I guess my rant has a two main points:

- Tax is a mechanism to pay for poor service and to pay those that check you paid the right amount of tax, and they may not have regard for the law and procedures they set themselves.
- If you don't get the right representation you get stung. Yes, that is a pitch for considering us but we are good at what we do and better than most and you might need us to look after you. No point beating about the bush!

Rant over!

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