

Call in for a Coffee - Tax News

UK Tax Avoidance Disclosure Rules

Following a few inquiries made to us, we have prepared this short summary article to help our Thailand based UK national clients who may be using tax schemes to understand the Her Majesty's Revenue & Customs ("HMRC") tax avoidance disclosure rules and when they may have to make disclosures to the UK Anti-Avoidance Group ("AAG").

HMRC requires disclosure of proposals and arrangements ("tax schemes") by a Promoter or a User of tax schemes. The objective is summed by the words of Dawn Primarolo spoken during the Finance Bill 2004 committee stage debate:

"... it is not the intention of the disclosure rules to stop accountants advising their clients on the tax breaks and the concessions that Parliament has introduced. That is entirely acceptable tax planning. Frankly, however, there is a world of difference between that and advisers designing outrageous schemes with the deliberate aim of exploiting tax loopholes that are plainly contrary to what the legislation seeks to achieve".

Pursuant to the legislation, a tax scheme is required to be disclosed to the AAG by Promoters or Users where:

1. The scheme enables a tax advantage to be obtained;
2. The tax advantage is the main benefit; and,
3. The scheme is prescribed in the regulations.

The tax schemes that have been deemed to be important for disclosure are those schemes that seek income tax, capital gains tax and corporation tax advantages from the use of Employment Products and Financial Products. Tax schemes that seek a stamp duty land tax advantage are also to be disclosed.

The Promoter of the tax scheme must usually make the disclosure. However, the User of the tax scheme needs to make the disclosure where the Promoter is based outside of the UK or the Promoter is a lawyer with legal privilege.

In addition, the legislation provides that any person who has designed and implemented his or her own tax scheme ("in-house tax schemes") must disclose the scheme at the time the relevant tax return is due.

Who Is A Promoter?

A Promoter makes available for implementation or design, tax schemes of a type within the regulations. The HMRC expects that mainly accountants, lawyers and boutique tax planning businesses are Promoters. Banks and securities houses are also specifically included. It should be noted that both UK and non-UK based Promoters are subject to the rules.

Users of Tax Schemes

The disclosure rules apply to taxpayers that use schemes disclosed by Promoters and schemes a taxpayer designs and implements without involving any person who is a Promoter known as in-house tax schemes.

A person who uses a tax scheme sold to them by a Promoter is required to disclose the use of that tax scheme, in most cases by entering the reference number given to them by the Promoter on a tax return form. The user must also state the earliest year in which the tax advantage is expected to arise (the promoter will be able to advise you on this).

Employers Using Employment Products

An Employment Product may result in a tax advantage to one or more directors or employees or persons connected to directors or employees or the employer.

Employers must notify the use of an Employment Product tax scheme directly to the AAG no later than the 19th May following either the end of the tax year in which the tax scheme reference number is received, or in which the expected tax advantage arises, whichever is the earlier.

Where an employee is expected to obtain a tax advantage from an Employment Product the employee *is not required* to include a reference number on his or her return on the basis the employer as User will submit a form to the AAG.

In-House Tax Schemes

Where a tax scheme is designed and implemented in-house and there is no person who is a Promoter in respect of the tax scheme then the User of the tax scheme must disclose it to the AAG. This rule applies to an individual, partnership, trust or company, and tax services that are provided by one company to another company in the same group are in-house.

Scope of the Disclosure Rules

Very importantly, we summarize for you the scope of the disclosure rules, being what is a tax advantage, the "filter tests", and what is included within Employment Products and Financial Products.

Tax Advantage

Those who plan or use tax schemes would understand the tax advantage test in that the relationship between the tax scheme and the tax advantage is usually obvious without the need for detailed explanation.

The Premium Fee Filter Test

The premium fee filter test filters out Promoters who have received a fee that is *not significantly* attributable to the tax advantage or contingent upon a tax advantage being obtained. (Thus RSM Tax Consulting is not a Promoter)

The Confidentiality Filter Test

The confidentiality filter test filters out Promoters who *do not keep their tax schemes secret* from other Promoters to maintain a premium fee potential.

The Off-Market Filter Test

The off-market filter test filters out Promoters who are *not a party to the tax scheme*. For example, a bank may be a party to a loan, derivative or other Financial Product that it has designed or made available.

Employment Products

An Employment Product must involve either securities or associated rights, payments to trustees or intermediaries, or loans. An employment product must be disclosed even where payments are made to a person other than the director or employee. The following are *not* Employment Products:

- a. Approved Share Incentive Schemes and Enterprise Management Incentive Schemes
- b. Payments to trust established for the purpose of:
 - i. approved pension schemes;
 - ii. approved share incentive plans;
 - iii. approved saving related share option schemes; and,
 - iv. approved Company Share Option Plan.

Financial Products

The Financial Products specified in the disclosure rules are Loans, Derivatives, Repos, Stock loans, Shares and anything which in accordance with UK accounting practice is *in substance a loan* or lending of money.

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