

# HMRC is awakening



It is not unsurprising that as the UK creeps towards normality, HMRC is awakening. Investigations have resulted in 165 individuals being charged with tax evasion in the six months ending September 2021. This number is a far cry from targets although it does demonstrate the machine is warming up. In 2019/20, HMRC's successful prosecutions were around 88% although for the past few months they have won 100% of all criminal cases - I see this as no reflection necessarily on skills and ability.

Parliament is also concerned with tax prosecutions although recently focused on promoters and operators. Just over two weeks ago (25 October), Daisy Cooper (Liberal Democrats) raised a question for the Treasury in Parliament: ***How many promoters and operators of schemes now subject to the Loan Charge have been prosecuted for promoting and operating those schemes to date?***

Lucy Frazer (conservatives) responded identifying that whilst promotion or operation of mass marketed tax avoidance schemes is not a criminal offence, those who promote tax avoidance schemes or advise on their use may by doing so commit other offences. It was confirmed that there were number of individuals who are currently under criminal investigation by HMRC for offences linked to schemes subject to the Loan Charge.

It was further confirmed that since 1 April 2016, more than 20 individuals have been convicted for offences relating to arrangements which have been promoted and marketed as tax avoidance. The offences which related to promoters, had

resulted in over 100 years of custodial sentences.

The response confirmed that:

*“HMRC are committed to continuing to tackle promoters and operators of tax avoidance schemes. This includes challenging the entities and individuals who promote disguised remuneration loan schemes.*

Prosecutions are only one type of intervention available to HMRC where they identify concerns.”

At the lighter end of intervention is the [taxavoidanceexplained.campaign.gov.uk](http://taxavoidanceexplained.com/campaign.gov.uk). The campaign sets out the guidance for someone considering an avoidance scheme and advises the stop-challenge-protect approach. Personal stories are shared:

- Tanya the nurse wished she had taken more time to consider what she was signing up to and had asked more questions.
- Duncan the IT contractor felt had he taken more time to consider and asked more questions he would have spotted the warning signs of tax avoidance.

The reality is that most entering an arrangement be knowingly or not, do so because they want to pay less tax. Maybe the reason is linked to the increased cost of living (allegedly following other poor Parliamentary decisions). At the time a person sees the financial benefit, the risk of planning not working or being challenged seems to be worth taking. The user wants to believe the arrangement works and they can save tax (like so many wealthy individuals, entrepreneurs, and politicians). If Harry Redknapp can receive gratuitous payments that appear to be linked to the provision of services into an offshore account in the name of his dog and not pay tax, surely a normal person can enter what appears to be a legitimate arrangement to save themselves a little tax?

The fault for entering an arrangement with tax benefits that is later found not to work, lies with the promoter or administrator of the scheme. Yes, the taxpayer must potentially pay the tax, but they can do so in the knowledge it was not their fault they didn't pay the correct amount in the first place.

The [taxavoidanceexplained.campaign.gov.uk](http://taxavoidanceexplained.com/campaign.gov.uk) includes the ability to report a

suspicious scheme, which can be done anonymously. Further information is available to deter the use of schemes in the form of links to previous publications and spotlights. Obviously, the potential user of a scheme would need to wish to check and find [taxavoidanceexplained.com/campaign.gov.uk](http://taxavoidanceexplained.com/campaign.gov.uk) and I am not sure many actively search for such material.

Certainly, the promoters of schemes are going to face a good amount of sport given the proposed legislative changes which comprise:

- a new power for HMRC to seek freezing orders,
- new significant penalties for UK entities, which facilitate the promotion of tax avoidance by offshore promoters,
- Enabling HMRC to present winding-up petitions to the court for companies or partnerships operating against the public interest, and
- new legislation to name promoters, details of the way they promote, the schemes they promote and help those already involved to leave the arrangements.

I refer to sport because assuming HMRC have heavily concentrated on disguised remuneration schemes (as they have done for over a decade) and they have recently hit some hurdles:

- The recent *Dukeries Healthcare Ltd v Bay Trust International Ltd & Ors* [2021] EWHC 2086 (Ch) (23 July 2021) and *Marlborough DP Ltd v Revenue and Customs Commissioners* [2021] UKFTT 304 (TC) are testament to how difficult it is to regard an arrangement as disguised remuneration. Evidently, HMRC sought to treat arrangements as disguised remuneration but did not quite succeed.

Over a decade ago, HMRC set out their goal to change the manner the public view taxes and tax avoidance. Through many different tactics, the aim was to deter taxpayers utilising avoidance schemes, accept paying tax as a necessary and fair and therefore view those avoiding taxes negatively. The recent Pandora Papers reveal how politicians, public figures and the wealthy elite structure their affairs through tax havens:

*“The Pandora Papers investigation is larger and more global than even the ICIK’s landmark Panama Papers investigation, which rocked the world in 2016, spawning police raids and new laws in dozens of countries.....The Pandora*

*Papers provide more than twice as much information about the ownership of offshore companies. In all, the new leak of documents reveals the real owners of more than 29,000 offshore companies.”*

Herein lies a massive problem for HMRC: **how can you change the mindset of taxpayers generally when to them, the elite appear to live by a separate set of rules?** For tax advisers specialising in offshore tax structuring such as I do, there are many legitimate ways to use offshore structures. Whilst tax advice provided may be correct, in my experience the implementation or some future act affects whether the structure remains tax efficient. Those utilising offshore structures therefore need to seek regular tax advice on everything that structure does and that creates a barrier (costs) to using such structures.

A lot of people don't seek advice regularly (even lots of wealthy people don't seek advice) because let's be honest, few people enjoy paying professional advisers. People also enter certain arrangements and as a result end up with an offshore structure - for example an: employee benefit trust 'EBT', employee remuneration trust 'ERT', remuneration trust 'RT'. The costs are all wrapped up in the set up/ongoing costs but those utilising such a structure hardly ever seek independent tax advice when undertaking transactions.

HMRC is in possession of information from many overseas territories relating to the beneficial owners of structures. This information has flowed since 2016 and apart from a short pre-Covid burst of nudge letters, HMRC has not visibly done anything to attack structures yet. Admittedly, they have attacked 'avoidance schemes' although as the Dukeries and Marlborough cases demonstrate, success is currently in doubt.

HMRC need to address the use of offshore tax havens and structures if they wish to progress changing the mindset of taxpayers generally. They will probably have to pursue high profile persons as well as lesser known persons. A few healthy prosecutions wouldn't go amiss and maybe the following largely so far unused provisions will assist:

- Finance Act 2013:
  - Section 162: penalties for enablers of offshore tax evasion or non-compliance.
  - Section 163: penalties in connection with offshore matters and

- offshore transfers.
- Section 164: offshore tax errors etc: publishing details of deliberate tax defaulters.
  - Section 165: asset-based penalties for offshore inaccuracies and failures.
  - Section 166: offences relating to offshore income, assets and activities.
- The new strict liability criminal offence for offshore tax evasion.
  - Finance Act 2016 introduced civil penalties for enablers of offshore tax evasion. The penalties came into force on 1 January 2017 and an equivalent corporate offence of failure to prevent the facilitation of tax evasion was introduced from 30 September 2017.
  - The Finance Act 2016 also provided several sanctions against tax avoidance and evasion.

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Article Key Points Title Executive Summary

Article Key Points Content How can you change the mindset of taxpayers generally when to them, the elite or Harry Redknapp's dog appear to live by a separate set of rules? For tax advisers specialising in offshore tax structuring, there are many legitimate ways to use offshore structures (a bank in your dog's name is not one...usually). Whilst tax advice provided may be correct, in my experience the implementation or some future act affects whether the structure remains tax efficient.

HMRC need to address the use of offshore tax havens and structures if they wish to progress changing the mindset of taxpayers generally. They will probably have to pursue high profile persons as well as lesser known persons. A few healthy

prosecutions wouldn't go amiss, and this is exactly what I believe we will see over the next few years. I just sincerely hope we get to offer our argumentative skills to defend clients and their pets that are subject to HMRC investigations.

Featured Image Alt Text HMRC is awakening

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The logo features the word "eododge" in a lowercase, light grey, sans-serif font. A thick, light grey diagonal line cuts through the letters from the bottom left to the top right. Below "eododge", the words "THE TAX" and "SPECIALISTS" are stacked in a smaller, uppercase, light grey, sans-serif font.

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