

Professionals at Risk



On 16 April Accountancy Daily reported the imprisonment of an accountant for fraud:

“A former NHS executive and chartered accountant, who siphoned almost £1.5m from several companies, including those that care for vulnerable adults, has been jailed after a six-year investigation”

The investigation demonstrates the desire for the authorities to take action against professionals who abuse a position of trust. The accountant in this situation had financial control of his client’s bank accounts and paid money into his own company accounts instead of suppliers.

On 16 August 2018, Mike Hughes was jailed for nine and a half years following the use of a string of companies and bank accounts to steal £6.9m of taxes deducted from the wages of workers by clients through fraudulent payroll schemes. Three associates were also imprisoned. The act was clearly a severe fraud and it is no wonder the case resulted in prosecution. Maybe if the fraud was not so prolific, the case could have been dealt with under the Contractual Disclosure Facility (‘CDF’).

The CDF or Code of Practice 9 (‘COP9’) is for cases of suspected serious fraud and offers protection from criminal prosecution where a full disclosure is made. If the disclosure has material omissions, protection from prosecution can be withdrawn. Whilst professional advisers are at risk of prosecution, it is likely most

will have the opportunity to enter a contractual disclosure facility.

On 19 May 2016, Abdul Aziz Patel was found guilty of cheating the public revenue and sentenced to four years in prison. Patel was offered the contractual disclosure facility but ignored correspondence and a criminal investigation ensued. Abdul encouraged clients to pay him in cash as well as not declaring property income. Funds were deposited and held in various bank accounts including ones held in his children's name. HMRC stated that *"As an accountant, Patel was in a position of trust and knew only too well his actions were illegal and what the consequences would be when he was caught."*

Patel's 'fraud' has not been dissimilar to some of our COP9:

- An ex-partner of a then Big 6 practice brought funds into the UK from offshore investments without declaring the income gains. The funds were used to support his female companion who he visited on a regular basis for intimacy, although she fell pregnant with triplets. After the birth of what became one son, the companion sought maintenance and HMRC became aware. The accountant had kept records relating to offshore funds in the house he bought for his companion and their son. The accountant's wife was not happy. The case was settled under code of practice 9.
- An accountant Mr B, whilst under enquiry by HMRC, informed them he had a second office which he paid rent for. HMRC found the address to be a residential one and Mr B insisted he rented the front room. HMRC found the landlord according to Mr B did not own the property. Mr B kept true to his story. Mr B also paid a self-employed bookkeeper in cash although after she returned to Poland, he continued to draw the cash (for himself) and include an expense of the bookkeeper. Mr B successfully completed a contractual disclosure facility although made no payments on account but instead acquired some rental properties. HMRC wouldn't agree to a payment plan.
- A solicitor, Mrs F had omitted to declare income on her rental properties as well as gains realised on two disposals. Furthermore, Mrs F had undertaken an avoidance scheme to produce sideways loss relief. An enquiry was opened into the return claiming sideways loss relief. Given the length of time income had not been declared on the rental properties and gains, the Contractual Disclosure Facility was requested.

Even though Patel was a professional, it would have been entirely possible for him to have avoided prosecution. If the CDF process is not embraced, HMRC will investigate to the standard for bringing a prosecution case.

In November 2017, Rodney Whiston-Dew, a solicitor, was sentenced to ten years imprisonment for conspiracy to cheat the public revenue and acting with intent to prejudice or defraud HM Revenue and Customs. He was convicted along with six others for their role in a fraud. Whiston-Dew was used as general counsel to a tax avoidance scheme. The scheme created a claim for sideways loss relief against income tax and was utilised by high net worth individuals. Investors claimed tax relief of £270m of purported expenditure, although had only contributed £65m to the scheme. £16m was directed towards reforestation projects and £24m to the those promoting the scheme.

Whiston-Dew and his associates had acted fraudulently in addition to devising an avoidance scheme. Where an avoidance scheme is designed and promoted, HMRC hasn't normally looked to prosecute and have instead focused on civil measures. This may be reaffirmed by HMRC publishing a consultation on 23 March 2021: Clamping down on promoters of tax avoidance.

The consultation seeks views on proposed new measures including additional HMRC powers and strengthened sanctions:

- A security payment or asset freezing order. The measure is aimed at preventing promoters from dissipating or hiding their assets ahead of paying penalties charged as a result of them breaching their obligations under the anti-avoidance regimes.
- Allow HMRC to make a UK entity enabling the promotion of tax avoidance by offshore promoters subject to an additional penalty, up to the value of the total fees earned by all those involved in the development and sale of the tax avoidance scheme.
- A power to enable HMRC to present winding-up petitions to court and a new ground for director disqualification related to tax avoidance.
- Enable HMRC to name promoters, the websites they use and the schemes they promote at the earliest possible stage, sharing that information publicly to warn taxpayers of the risks and help those already involved to get out of avoidance.

HMRC state that the *“proposals do not target legitimate tax advisers. They are instead targeted at those promoters who profit by sidestepping the rules, and whose unscrupulous actions often leave taxpayers with significant tax bills”*.

Although, there are some fundamental flaws that HMRC has not yet manage to get to grips with. A long-standing problem has been the definition of avoidance. Obviously, HMRC will revert to the disclosure of tax avoidance scheme rules and whether the ‘scheme’ falls within the hallmarks. However, what if the scheme falls within the hallmarks if the motive were avoidance of tax but not if the motive were commercially driven. This analysis is subject of an article on its own merit. If the motive of the alleged promoter of the alleged scheme were only wanting clients to use the structure for commercial purposes and not tax avoidance, it might be difficult to find the promoter had acted with intent to prejudice or defraud HM Revenue and Customs. Regardless of the new powers and sanctions, HMRC will still have an uphill battle. When that is discovered, maybe they will introduce a promoters criminal offence to make their lives easier - it could operate similarly to the rather blinkered offshore criminal offence with of course a reasonable excuse get out of jail provision to keep some fun in it for advisers.

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Article Key Points Title Executive Summary

Article Key Points Content Professional advisers are at risk of prosecution but when and why? This week we look at when and why HMRC prosecute professionals and whether they can protect themselves from prosecution: “Depends what you’ve done governor”. Also, a recent consultation was released proposing new measures to provide more powers and sanctions in relation to promoters of tax avoidance schemes. Are promoters at risk of prosecution?

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