

# STRATEGIC TAX PLANNING

International & UK Tax Consultants

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## HMRC TO BLACKLIST TAX SCHEMES?

On 31<sup>st</sup> May, the UK HMRC published a Consultation Paper on High Risk Tax Avoidance Schemes (“HRTAS”).

The objective behind the Consultation Paper was to propose a new requirement for listing by HMRC of HRTAS.

The other objective was to prevent use of HRTAS as a cash-flow and cheap loan device because using a Tax Scheme defers paying tax until the Scheme is ruled ineffective. This can be between 3 – 7 years after entering into the Scheme. The only requirement is to pay interest at (currently) modest rates.

The Consultation Paper highlights a substantial weakness in HMRC’s approach to HRTAS. For the last year or so they have been highlighting various Schemes in a publication called “Spotlight”. Usually they give the broad outline of a Scheme (which they say is ineffective).

They have been incredibly reluctant to issue any sort of listing of specific Schemes and Promoters.

This has enabled Tax Scheme Promoters to argue that their particular Schemes have a substantial chance of being effective and are similar (but different) to the broad outlines in the Spotlight.

What HMRC really needs to do is to take the bold step of *naming and shaming* Tax Scheme Promoters who are ruthlessly selling HRTAS, primarily for their own monetary gain.

The other huge miscalculation that HMRC is making in this Consultation Paper is that they seem to think that the individual Taxpayers are entering into such Schemes to obtain a cash-flow advantage and a cheap loan.

They are however, forgetting one very important factor for individual Taxpayers. That is the cost charged by the Tax Scheme Promoter for entering the Scheme. These charges will range from anything between 5% - 15% of the tax liability and sometimes higher. If a Scheme is not successful then in addition to interest payable to HMRC, there are initial upfront fees charged by the Tax Scheme Promoters. Even if they are described as refundable, this is rarely the case.

The entity that sells the HRTAS goes into liquidation, ceases trading or is wound-up before the Scheme fails and therefore, this fee is a very real cost. Once that is factored in, there is no cash-flow or cheap loan advantage!

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However, being prepared to give a clear indication of which Schemes they don't consider to work by means of producing a list of HRTAS; in itself, can only be beneficial.

A better way forward would be to highlight the Promoters of these sorts of Schemes and give an indication of which Schemes (if any at all!!!) have been successful. One of the major reasons why Schemes are still being sold is that HMRC has never been clear about the effectiveness of specific Schemes.

Since they introduced the Disclosure of Tax Avoidance Scheme Legislation on 2<sup>nd</sup> December 2004 ("DOTAS"), they have been very good at producing statistics about the number of disclosures they have made, but have never clarified whether any specific Scheme has ever successfully been through the DOTAS regime and Investigation and been accepted as working by them!

To my knowledge, there has never been such a case and I have issued an open challenge to anyone whose Scheme has successfully been through DOTAS and never had a response.

If HMRC had made this clear much earlier then, they would have dissuaded far more people from entering into these sorts of HRTAS.

The other major issue and one which this listing of HRTAS will address, is that there are a number of leading Tax Counsel at the Bar who are quite happily signing off on Opinions stating that a particular Scheme does **not** require Disclosure.

There are also some *maverick* Promoters who are also issuing their own Opinions saying that the Schemes that they are selling do **not** require Disclosure. These Schemes are falling outside the remit of the DOTAS regime. The principle factor and driver is that many of them are being sold directly from Offshore tax havens such as Jersey, Guernsey, Isle-of-Man and Gibraltar.

That is why in my view, the only way forward for HMRC to genuinely help Taxpayers avoid these sorts of HRTAS, is to start *naming and shaming* the people behind them.

Obviously, HMRC would have to be on solid ground before they named or shamed anyone. However, the sorts of people involved in selling these HRTAS are quite happy to liquidate Companies overnight and reinvent themselves.

For legitimate tax advisers; Tax Scheme Promoters selling these HRTAS are merely ruining the opportunity for a Client to use effective tax mitigation where they can legitimately mitigate their tax liability rather than wasting their time and money on chasing *Tax Alchemy*, which supposedly eliminates their entire tax liability by merely signing a few documents!

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