A sleeping dragon wakes on tax avoidance

HM Revenue & Customs (HMRC) has come closer to using its weapon of last resort against tax avoidance schemes.

"Whack a mole" used to be a good summary of the battle between the extreme end of the tax avoidance industry and HMRC (together with its predecessor, the Inland Revenue). First, some 'creative' minds would dream up a scheme that weaved through the labyrinthine tax legislation to make a tax liability disappear. When the tax authorities became aware of the situation, more legislation would be produced to close the loopholes being exploited. The 'creatives' would then move on to another tax-evaporating idea, sometimes even exploiting the anti-avoidance laws used to block a previous scheme.

In July 2013 the then Chancellor George Osborne took what was seen as a controversial step to end this merry-go-round by introducing the general anti-abuse rule (GAAR). As its name suggests, the aim of the GAAR was to prevent the letter of the law being manipulated to prevent the spirit of the law applying.

The GAAR incorporates a "double reasonableness" test which basically required HMRC to show that the arrangement undertaken could not be "reasonably regarded as a reasonable course of action". The question of what represented a 'reasonable course of action' is determined by the GAAR Advisory Panel, which consists of three tax experts.

A dormant threat?

Once the GAAR was introduced, it seemed almost to disappear, as HMRC did not refer any cases to the panel. This was thought to be because the mere existence of the GAAR meant that there was the Sword of Damocles was hanging over any scheme that might be considered "abusive". There was certainly a noticeable drop off in new schemes being reported under the disclosure of tax avoidance scheme (DOTAS) rules.

In 2016 a GAAR penalty was introduce for newly caught schemes of 60% of the tax avoided, adding further power to HMRC's armoury. Then finally, last month, over four years after GAAR came into being, a first decision emerged from the GAAR Advisory Panel. The case involved a convoluted payment-by-gold-bullion scheme which some experts thought would anyway have been defeated in the Courts, given their current stance on artificial avoidance arrangements. In the event the Panel decided the arrangement was not reasonable.

Rather than a necessity, HMRC's use of the GAAR may have been a warning that they are prepared to use the GAAR weapon, particularly now it has a large penalty attached to it. The HMRC move is another reminder that, while there are plenty of legitimate ways to reduce your tax bill, something that looks too good (and/or convoluted) to be true is best avoided. To discuss the many GAAR-free tax planning opportunities, please talk to us.

The value of tax reliefs depends on your individual circumstances. Tax laws can change. The Financial Conduct Authority does not regulate tax advice.