Fairhurst

Accounting for your potential

HMRC determined to close tax loopholes

From April this year there will be a new tax charge on disguised remuneration, with more controls on extracting company profits on their way, as HMRC close down more tax loopholes. This is known as the “2019 loan charge”. The new tax charge will apply to all payments made to individuals through disguised remuneration loans since 6 April 1999, if they remain outstanding on 5 April 2019. The charge is also supplemented by the “General Anti-Abuse Rule” which in certain instances allows HMRC to charge a 60% penalty on ineffective tax avoidance transactions on or after 15 September 2016.

Disguised remuneration schemes aim to avoid income tax and national insurance contributions by replacing them with a loan or other payment from a third party, such as an Employee Benefit Trust. The terms generally ensure that the loan is unlikely to ever be repaid.

However, a Supreme Court decision in July 2017 strengthened HMRC’s hand by finding that an Employee Benefit Trust scheme used by Rangers Football Club did not work. HMRC now considers that the same principle can be applied to a wide range of disguised remuneration schemes, including payments routed through Employer-Funded Retirement Benefit Schemes.

The associated loan arrangements stemming from these schemes designed to avoid tax have left many entrepreneurs, high earners and also certain contractors and agency type workers operating through umbrella company arrangements with potentially huge tax bills to pay.

HMRC offered a chance to settle any liabilities under relatively favourable terms, but the deadline has since passed. Unless the tax scheme is unwound, the only means of avoiding the 2019 loan charge now is to repay the loan.

Some scheme promoters claim that it is possible to avoid the loan charge by entering into new arrangements that may describe the loan as something else or provide untaxed funds to repay the loan. HMRC’s view however is unchanged and they consider that none of these schemes work and they will continue to pursue them aggressively.

If you are worried that you might be caught up in a questionable scheme and are concerned about contacting HMRC, we would advise you to speak to an accountant or tax advisor who could to act on your behalf. We would also add that HMRC has recently announced that under certain circumstances they may extend tax settlement periods, known as “time to pay arrangements” to a term of up to 5 years.

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