Disguised remuneration schemes: how to support those caught in the trap

Employment Tax

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How tax advisers can provide assistance to clients who have been involved in disguised remuneration schemes.

Key Points

What’s the issue?

Advisers can guide and support their clients to exit tax avoidance schemes, including how to talk to HMRC about making tailored instalment arrangements to pay their liabilities over time.

What does it mean for me?

For clients who don’t want to settle, it’s important to make them aware that HMRC is now planning formal action to resolve disputes and they may wish to exercise their right to appeal where appropriate.

What can I take away?

Advisers can also help taxpayers steer clear of tax avoidance schemes in the first place by clarifying the risks and the consequences of using them.

HMRC is planning its next phase of compliance activity in response to tax avoidance. We urge anyone who has used a tax avoidance scheme to contact us to discuss their circumstances and explore opportunities to settle.

Tax advisers play an important role in supporting clients who are involved in tax avoidance to make choices about their next steps, including settling their tax affairs and, where appropriate, exercising their right to appeal. Of equal importance is their role in helping their clients steer clear of tax avoidance schemes in the first place.

The focus of this article is individuals who have engaged in disguised remuneration schemes, many of whom will be subject to the loan charge.

Disguised remuneration schemes and the loan charge

As a brief overview, disguised remuneration schemes are currently the most common form of tax avoidance scheme, and involve workers being paid, in part or in full, via a ‘loan’ or similar allegedly non-taxable payment. Most tax avoidance schemes simply do not work, and those who use them may end up having to pay more than the tax they tried to avoid, including, in some cases, penalties.

In 2017, Parliament passed legislation requiring taxpayers who had used disguised remuneration schemes to declare the balances of their outstanding loans, as of 5 April 2019, as income on their 2018/19 tax returns and pay tax on it. This is the ‘loan charge’ and applies to individuals and employers who used disguised remuneration avoidance schemes between 9 December 2010 and 5 April 2019.

Clients involved in tax avoidance schemes

Tax advisers will encounter a range of clients who are, or have recently been, involved in tax avoidance. Some people who used disguised remuneration schemes will want to settle with HMRC, while others may not be willing to do so or feel unable to do so. It is important that your clients have a good understanding of their options, the support available for those who need extra help and the consequences for them of any action or inaction.

Those who wish to settle

Choosing to settle means that those who have used a disguised remuneration scheme gain certainty about their tax affairs. They will be able to end their engagement with tax avoidance and will not incur further interest on unpaid liabilities.

People who have used disguised remuneration schemes and want to settle with HMRC, regardless of whether or not the loan charge applies, can do this under the ‘Disguised remuneration settlement terms 2020’ (see bit.ly/3RCXjCo).

Advisers may also wish to share with their clients the page on how to settle, ‘Disguised remuneration: settling your affairs’, which clearly explains the process (available online at bit.ly/3ynqAKx).

While choosing to settle can provide greater peace of mind in the long term, clients may be concerned about how they will cope with payments and the impact on their finances in the short term. HMRC offers support and different payment options.

Taxpayers can ask to pay any settlement through instalment arrangements, where payments can be spread based on what they can afford. Individuals who earned less than £50,000 in 2017/18 will automatically be entitled to a five-year arrangement; and where they earned less than £30,000, up to seven years.

There is also the option of a Time to Pay arrangement, which can cover all outstanding amounts overdue, including any penalties and interest. Arrangements are tailored to an individual's personal circumstances, based on what they can afford to pay and are not subject to any maximum time or income limit.

Where an adviser is concerned about a client who may require additional support, we would ask that they reassure them and highlight HMRC's available support, including trained caseworkers or support specialists and, where a customer faces more serious and pressing issues, a named contact; for example, serious distress arising from a recent bereavement. If appropriate, HMRC refers customers to voluntary and community sector organisations for further advice and support.

Customers can phone HMRC to discuss their circumstances and options on 0300 0534 226.

Those who do not wish to settle

If a client states that they do not want to settle with HMRC, it is important to make them aware that if they have used a disguised remuneration avoidance scheme in the past, or they are using one now, they can expect HMRC to take action to establish and recover the tax due.

HMRC is now contacting individuals who filed a tax return for 2018/19 but did not tell us about their loan charge liabilities or who under-reported them. We are asking those customers to explain these omissions to us, and where appropriate, we will begin to issue closure notices, giving our assessment of the tax due and requesting payment.

Some individuals who need to pay the loan charge have not filed a tax return for 2018/19. We have been issuing 'notices to file' to these customers. For those who have not filed after receiving a notice, we are working to determine the tax due and issuing formal determinations to that effect. These determinations cannot be appealed but can be displaced by filing a tax return. It is important that individuals understand the need to file a tax return.

In some circumstances, where customers have not responded to HMRC contact, we may need to estimate liabilities like the loan charge, so it is best that they talk to us to get an accurate picture of what they owe. Where we have issued assessments and closure notices for customers (either individuals or employers), customers can either accept the closure notice or assessment as issued, settle by agreement or exercise their statutory rights to request a review and/or appeal.

Some individuals may have received loans via disguised remuneration avoidance schemes before 9 December 2010. These loans are not covered by the loan charge. Where we have open assessments or enquiries in respect of these loans, HMRC will continue to pursue the tax avoided using our statutory powers. We are contacting this group about these schemes now, and this compliance work will increase in the year ahead.

Helping clients to steer clear of tax avoidance schemes

We have noted what options clients who are in tax avoidance schemes already have. But advisers also play a key role in ensuring that they do not enter avoidance in the first place. This can be done in a variety of ways.

At its most basic level, this can simply be watching out for any clients who mention an opportunity to maximise earnings or reduce their tax. Discuss it with them to clarify what's really involved, and remind them that if it looks too good to be true, it almost certainly is.

HMRC is working hard to tackle both supply and demand in order to prevent people getting caught up in tax avoidance, and we are targeting promoters using all powers available to us. Legislation introduced in the Finance Acts 2021 and 2022 strengthens and accelerates our ability to tackle promoters and enablers of tax avoidance.

The effects of this can already be seen in the public naming of multiple promoters and tax avoidance schemes to help customers steer clear of these. The current list can be found at bit.ly/3fP5zCa. Advisers are encouraged to check this page regularly so they can advise their clients who could be engaging with one of these providers or using these schemes. However, if a tax avoidance scheme is not shown in this list, it does not mean that the scheme is approved by HMRC. HMRC does not approve tax avoidance schemes for use.

Further guidance

For anyone looking to review the basics, see ‘Report and account for your disguised remuneration loan charge’ (see bit.ly/2StLVu3), which summarises the situation to date and links to further guidance.

HMRC has also published a number of materials that advisers can share to help their clients spot whether they are at risk of being involved in tax avoidance and enable them to make informed choices if they want to leave an avoidance scheme. The ‘Tax Avoidance – Don’t get caught out’ materials are available at taxavoidanceexplained.campaign.gov.uk. They include a guide to working through an umbrella company and a new interactive risk checker to help contractors check whether they are at risk of being involved in tax avoidance.