

Request to members: Transactions in securities

Briefings



27 January 2023

Pete Miller and Philip Ridgway are reaching out to members about cases relating to counteraction assessments under the transactions in securities rules.

We are asking members to contact us with details of any cases from the year 2015/16 where HMRC have issued counteraction assessments under the transactions in securities rules after 5 April 2020.

There are a large number of cases where HMRC have issued counteraction assessments under the transactions in securities rules for the year 2015/16. In all of the cases that we are aware of, the assessments were issued during the tax year 2021/22, mostly in the first three months of calendar year 2022.

This is important because, under the rules that applied until 5 April 2016, we believe that the assessments had to be issued within four years of the end of the tax year in which the tax advantage arose, in other words by 5 April 2020, so that assessments

raised by 5 April 2022 were two years too late.

Given the number of cases that rely, in whole or in part, on whether HMRC have raised assessments in time, we are of the view that a sensible approach, saving work for all parties, would be to arrange for a lead case on this issue to be considered by the tribunals and the courts.

If the final outcome is that HMRC's assessments were issued too late, all the cases fall away. On the other hand, if HMRC win on the timing issue, a number of cases will probably concede, on the basis that the income tax advantage was the main or one of the main reasons for entering into the transactions in securities. Either way, this approach means considerably less work for all the parties, which is why we are advocating it as a sensible way forward.

The reason for this note, is therefore to ask if any members are aware of cases from 2015/16 where HMRC have issued assessments after 5 April 2020.

If you are aware of any such cases, please pass details either to Pete at Jerroms Miller at petemiller@jerromsmiller.co.uk or to Philip at Temple Tax Chambers at Philip.Ridgway@templetax.com.