



Taxing Matters

Challenging tax avoidance

- Alice** Hello, and welcome to Taxing Matters, your one stop audio shop for all things tax brought to you by RPC. My name is Alice Kemp and I will be your guide as we explore the sometimes hostile and ever-changing landscape that is the world of tax law and tax disputes. Taxing Matters brings you a fortnightly roadmap to guide you and your business through this labyrinth. In case any of you miss any crucial information or just want some bedtime reading, there is a full transcript of this and indeed every episode of Taxing Matters on our website at www.rpc.co.uk/taxingmatters.
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- Alice** As ever the figures bandied about in relation to the tax gap can make for eye-watering reading. As a result the tax gap and the parts that it that relate to tax avoidance are an area of increasing focus for HMRC and have been so for a number of years. HMRC have been provided with a number of different types of powers to try and tackle tax avoidance over the years. In the new Finance Act 2022 it acquired a new one. Here to set the scene for us and explain what came before and what has been newly introduced is Danielle Ford. Danielle is a recognised specialist in tax disputes and resolutions, having racked up over 20 years of advising individuals and businesses on their tax affairs, she leads haysmacintyre's tax disputes and resolutions team where she excels at advising clients on complex matters including tax avoidance schemes. Danielle displays a level of dedication for tax that is either impressive or slightly terrifying. She told her school friends at the age of 16 that she was going to go into tax and at the tender age of 17 she did. Danielle, how come you were so sure?
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- Danielle** I love numbers and I love people. I think the two together are just showing that actually it's the career for me, I've loved every moment of it.
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- Alice** Fantastic. So, let's start with setting the scene. We all know that HMRC are cracking down on tax avoidance, but what is tax avoidance and why is it a problem?
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- Danielle** Tax avoidance I think in the simplest of terms is going to be the arrangement to minimise a tax liability. Now, HMRC's view on tax avoidance is that it is the bending of the rules of the tax system to try to gain a tax advantage that parliament never intended in the first place. The problem with tax avoidance is that the taxpayers that are involved in the avoidance schemes are not paying their fair share of taxes and following Covid-19 and the current rise in the cost of living it has never been more important for each and every one of us to pay their contribution to the state.
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- Alice** So what had HMRC done to tackle the issue, what powers did they have?
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- Danielle** HMRC have had a number of powers for the last 20 years. Most of us would have known follower notices, where HMRC was taking a scheme through the courts and where there has been a successful challenge, HMRC were issuing follower notices to each of the taxpayers whether it be a corporate, an individual or unincorporated individual who had used the same or similar schemes as those that had gone through the court. They were liable for a penalty of up to 50% of the tax that was at stake. They also had accelerated payment notices. HMRC used these together with partner payment notices in order to get the tax that they felt was due at an earlier stage than what we had seen previously. We have also seen Dotas, this was where there is a disclosure of tax avoidance scheme and they were required to notify HMRC of those and they were given a reference. Those references were required by the taxpayer to actually put them on their returns. We also had the promoters of tax avoidance schemes a process that required monitored promoters disclose to details of the schemes and the clients they had to HMRC. We've also seen enabler penalties more recently we have been seeing HMRC have use of disclosures, so we are actually putting the emphasis on the taxpayer to put things right rather than HMRC approaching them in the first place.
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- Alice** HMRC however was given a new power under section 86 in part six of the Finance Act 2022. So what is that power and what problem was it intended to solve?
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- Danielle** The new power under section 86 was intended to allow HMRC to challenge misleading information provided to taxpayers by promoters and to tackle tax avoidance earlier than it was previously able to. So it's being proactive rather than reactive. It is intended just to raise awareness for the taxpayers at the outset. I think

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| | what we were finding was a number of promoters were saying that they were being successful in a number of schemes, they'd been there and done it before and then selling these schemes on the back of that and so it's just to raise that awareness and get taxpayers on the front foot. |
| Alice | So how does it work? |
| Danielle | What is going to happen is they are going to be informing taxpayers of the risks associated with the schemes so that they can avoid entering them at the outset or exit them have they already entered into such schemes and what they are going to be doing is publishing details which will include information identifying promoters of the schemes or even connected persons and I think that is quite interesting in this legislation. One of the guidance parts also states that anyone and authorised officer suspects of being a promoter or a connected person will be identified so this could be quite far reaching, so it's going to be interesting seeing how they are going to be implementing it. The information is actually going to be published on the government's website, they are going to be sending letters direct to taxpayers and they are going to be using other channels that HMRC believe appropriate to reach the widest audience. Specific information may be published, nothing's been stated in any of the revenue's guidance at the moment so we don't know exactly what it will be but we've got indications from previous legislation. We know that they normally issue the publication of someone's name, address, the trading name together with a description of their business together with any other details that HMRC believe is necessary in relation to the avoidance that is taking place. |
| Alice | You mentioned their guidance, how have HMRC said that they are going to use this power? |
| Danielle | They are actually going to be using this power by having an authorised officer, doesn't necessarily have to be one person, but it could be a collection of officers at HMRC. The authorised officer of HMRC are going to have the power to inform taxpayers of those they believe are promoting tax avoidance schemes or are connected to those in relation to tax avoidance. This is going to be a really powerful tool for HMRC because they are the ones who are in control, they don't have to apply to tribunal to enable them to enact this power, they can do it themselves, that could be both worrying and that could be a good thing. I think it could be a good thing because it just allows them to have that proactive action at the outset of actually trying to address the issues that we are currently facing. One of the things we have been seeing as well is going to be writing to the promoters, or the connected person. They are only going to have 30 days to respond. |
| Alice | That's a short timeframe. |
| Danielle | That is a very short timeframe, especially at the moment with the postal system, I think we've been seeing letters coming through from HMRC two weeks later after they have been addressed and I think that could truly be a problem for people to actually make their representations within that time. |
| Alice | The power is a very broad one and has the potential to create huge impact. What do you see as being some of the issues which could arise? |
| Danielle | The issues that we've got is the possibility of HMRC naming and shaming the wrong people. We've only got 30 days to make our representations, we know with the postal system we are already experiencing delays in them coming through, it doesn't give enough time for an individual to fully address what is being proposed in the letter to them and make their representations for HMRC. If HMRC gets it wrong we are going to see a number of innocent people having their names put out there for everybody to see and even though HMRC have the power to redact that and take it away, once it's out there you can never truly take it back and I think that's what we've seen with the use of social media over the years. That's one of my key concerns, I think what we've seen with the CIOT and the ACT, they've also made representation, they have high standards that are expected of each of their members, should one of their members be named and shamed will it have an impact on their career once it's out there, that's my true worry, actually how HMRC are going to be using these powers and are they going to use them in the right way and directed at the right people being those promoters who are aggressive rather than our tax advisers who are trying to do the right thing and adhere to the standards. Another point to consider is legal professional privilege, a notification that is sent to a legal professional may have legal professional privilege applicable. We recommend that that is stated in any representations that are made to HMRC, it may have no impact on it itself but it will prevent representations being made and that could be something that is going to be a tricky subject for those making the representations and how HMRC actually apply those rules. |
| Alice | If a person does find themselves being provided with a notice that HMRC do intend to publish their details what should they do? |
| Danielle | First things first, contact a professional adviser, as soon as the letter lands on your doorstep make contact and do so immediately. As we said we've only got 30 days to do all of the work and make the representation |

to HMRC, it doesn't allow a lot of time so time is of the essence. Please make sure that you contact the professional adviser to make sure we get a response through to HMRC within the 30 days. Outside that time limit we still don't know how HMRC are going to be flexible, if there's going to be a flexibility at all, so we just adhere to the rules now and then we can see actually how it unfolds when the legislation is used by HMRC in the coming days, weeks, months and years. In the early 2000s HMRC used to repay the tax on the submission of a claim to HMRC prior to opening an enquiry, now, HMRC changed those rules around 2010 to stop making the repayments on the submission of the claim and to wait until the outcome of the enquiry had been agreed. This had a huge impact on taxpayers because those who submitted claims right out the outset of these tax avoidance schemes was receiving the money straightaway and are now seeing that there's huge interest liabilities accruing, one of the things, it was just a change of policy, it didn't even need legislation, it was just actually how they were processing those claims. A further concern would be how heavy handed HMRC are going to be in implementing this guidance. What we don't want to see is them using the guidance to tackle legitimate tax planning by tax advisers who are going about their day to day business, adhering to their membership's regulations and guidance, what we want to see is it just used against those how are out there to defraud the state effectively and to make money off the back of it, that's what we want to see this guidance used for. Another concern that I've got is in relation to those connected to the promoters, how far reaching is that going to be? Could that be the receptionist on the desk who's in the office, could that just be the secretaries or is it those who are actually helping implement the avoidance schemes, those who are going out and actually selling the avoidance schemes to the taxpayers. We're not going to know that until they start enforcing it but I just think it's another thing of interest for us to be looking at, how far reaching are the connected persons to these promoters under the guidance.

Alice Unfortunately that's all we've got time for in this week's episode. Thank you again to Danielle for joining us. You can find Danielle through LinkedIn and on haysmacintyre's website. If you have any questions for me or for Danielle or any topics you'd like us to cover in a future episode please do email us on taxingmatters@rpc.co.uk, we'd love to hear from you.

Alice Now as ever a full transcript of this episode together with our references can be found on our website www.rpc.co.uk/taxingmatters.
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