Is tax avoidance legal?

Priya Kotecha discusses an issue which has been in the public eye over recent months

It is hard to open a newspaper these days without reading about a high-profile celebrity in trouble for avoiding tax. But tax avoidance is perfectly legal and the description by Lord Tomlin in the House of Lords in IR v Duke of Westminster in 1936 is still referred to today: 'Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less that it otherwise would. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.'

The definition was updated somewhat in 1981 when the outcome of the Ramsay case signalled the end of tax avoidance if a scheme was wholly artificial. Tax avoidance simply changed its form and continued as it is not illegal, unlike tax evasion which is a crime punishable by fiscal penalties as well as, potentially, imprisonment.

Tax avoidance in its simplest form could be utilising tax deductions or changing structure to say, a limited company. At its more advanced, or aggressive, it may be the use of a tax avoidance scheme. Every tax avoidance scheme is assigned a DOTAS number (disclosure of tax avoidance scheme) which must usually appear on the tax return of the individual taking part. Such schemes are thought by some to flout the spirit of the law whilst actually following it to the letter, so they are not illegal.

For tax evasion to exist there has to be 'mens rea', Latin for 'guilty mind', and generally includes misrepresenting or concealing the factual state of affairs to mislead the tax authorities into accepting a lower tax liability.

According to a former Chancellor of the Exchequer, Denis Healy, the difference between tax avoidance and tax evasion is 'the thickness of a prison wall'.

Clamping down

In the current age of austerity measures we find ourselves in, there has been an attempt to clamp down on tax evasion. This is a good thing because tax evasion, as stated before, is illegal.

There has also, however, been renewed interest in attempting to cut down tax avoidance as this is seen as a major loss of tax revenue. The concept of a General Anti Avoidance Rule (GAAR, affectionately) has enjoyed a revival. A consultation period (now closed) was held by HMRC with a view to introduce legislation in the 2013 Finance Bill.

Many experts believe that a GAAR will not simplify the tax regime – far from it in fact. There is also much suspicion surrounding the subjective nature of the 'abusiveness test' and how 'reasonable' any arrangement is.

The clamp down on tax avoidance seems to target the wealthy – the same group of people who will see their highest rate of income tax dropped to 45% from 50% from April 2013. Many people have commented on this ironical decision, but in actual fact, HMRC found their income tax revenue did not increase as much as expected when the 50p tax was introduced in 2010/2011. It was predicted to raise £2.5 billion but did not manage even half of that, raising only £1 billion.

Tax avoidance is thought to represent about 14% of the UK tax gap (the gap between what is due to be collected and what is actually collected), with the largest loss in tax attributed to VAT.

For now, the debate on the morality of tax avoidance continues…

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New dental venture capital fund launched

A new venture capital fund has been set up with a niche in the field of dental innovation.

The structure of the fund is novel in that it focuses its investments only on dental and oral health innovation and attracting opportunities in the dental field, as opposed to dilution within a regular medical fund.

There is a regular fund structure in place but in addition there is a handpicked international advisory board made up of leading international dentists. All board members are invested in the fund and products they put forward.

The board's initial role is to help analyse from a clinical view what innovative products will work in a dental surgery environment. Once the investment is in place, these board members will use their contacts and expertise to help the invested companies develop the product, and aid with distribution and promotion.

The aim of using this strategy is to improve the numbers of successful companies that will develop to a profitable exit.

The Dental Venture Capital Fund is always looking for innovative dental companies and investment in companies from pre IPO (initial public offering) and near exit to early development.

For further information please email Dr Ilan Preiss at ilanpreiss@gmail.com.