Tax avoidance: Investor class actions

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We are continuing to see significant notifications to insurers which relate to tax avoidance schemes, and HMRC's so-called 'clamp down' on tax avoidance using accelerated payment notices (APNs) to recover disputed tax directly from taxpayers without the need for a court order.

These notifications come as no surprise; HMRC has now collected over £2bn using APNs since they were introduced in the Finance Act 2014. Claimant law firms and claims management companies have been actively recruiting investors who have been targeted by HMRC to bring large-scale claims against their advisers. Accountants and financial advisers remain the primary focus of such claims, although lawyers are also a target, particularly in relation to SDLT schemes.

The latest example is Withers LLP, which is launching a class action for investors in certain schemes. Withers appears to be particularly focusing on schemes sold to professional footballers. We have seen many such schemes, including schemes where the entire investor population was constituted of well-known footballers, and have seen claims being brought by present and former Premiership managers, having heard tell of presentations being given by financial advisers at football grounds. Withers' website states their view that "there is a strong mis-selling case against advisors", particularly where the individuals concerned were young and financially inexperienced. It claims some investors, faced with tax demands in the form of APNs from HMRC, have had to declare themselves bankrupt. A group action is threatened against multiple advisers across the country, with over a hundred clients already signed up as at February 2016, and with proceedings likely to be issued before the end of March 2016. Limitation will obviously be a key consideration for those responding to the claims, hence Withers' desire to proceed quickly.

The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2016 have been published. These seek to expand the reach of the Disclosure of Tax Avoidance Scheme (DOTAS) rules. This is a matter of some concern since one of the criteria, which allows HMRC to send an investor an APN is if the DOTAS rules apply to the tax planning at issue. These changes accordingly expand the scope of the APN regime, meaning that a greater number of investors could receive demands for payment of tax within 90 days if HMRC decides to challenge the planning.

Away from APNs, HMRC continues to experience success at court. The latest high-profile case is a long-running dispute concerning Deutsche Bank AG, UBS Group AG and so-called 'banker bonus plans'; the Supreme Court held last week that the tax avoidance plans applied to employee bonuses were "commercially irrelevant" and had no other purposes other than to avoid tax, ordering the banks to pay significant liabilities in tax dating back many years.

Please feel free to contact us should you have concerns about any exposures in this area.

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