Property Update

THOMSON COOPER ACCOUNTANTS

Beware of Property Tax Avoidance Schemes

A recent HMRC publication and a huge amount of discussion in the tax and property press has brought tax avoidance schemes into the spotlight. If you're a landlord considering "aggressive" methods to save tax, then you could be at risk of penalties and interest, not to mention unexpected tax bills, if you unwittingly enter into a tax avoidance scheme.

Tax avoidance: the basics

What are tax avoidance schemes?

HMRC say that "tax avoidance involves bending the rules of the tax system to try to gain a tax advantage that Parliament never intended. It often involves contrived, artificial transactions that serve little or no purpose other than to produce this advantage."

There are warnings signs that a scheme could be one of tax avoidance, such as:

- It sounds too good to be true;
- The transactions involved have no commercial purpose;
- Payments are diverted through a chain involving companies and trusts; and
- It has a HMRC Scheme Reference Number (SRN).

Indeed, if a scheme has an SRN, it means that HMRC have identified it as potential tax avoidance and are investigating it. HMRC do not 'approve' schemes.

What are the implications of using a tax avoidance scheme?

If you are involved in a tax avoidance scheme and HMRC investigate your affairs, you may receive an 'accelerated payment notice', which requires you to pay the tax you are trying to avoid upfront, within 90 days of the notice. Other implications include legal costs, penalties and interest.

Why is this issue relevant?

HMRC Tax Avoidance Spotlight

HMRC have recently published Tax Avoidance Spotlight 63, which addresses a well-publicised scheme in which tax is saved by individual landlords transferring their properties into a Limited Liability Partnership (LLP) that also has a limited company as a member. HMRC say that the scheme does not work and they outline the legal reasons for this in the spotlight.

Those involved in the schemes outlined in Spotlight 63 are advised how to contact HMRC so they can discuss how to settle their position.

Also in the news:

In recent months there have been articles in the news casting doubt on other much-publicised schemes that involve using a trust to hold property, with the individual landlord as the trustee and the landlord's limited company as the beneficiary.

Such schemes have not yet become the subject of a HMRC Tax Avoidance Spotlight, but some tax and legal experts believe that such schemes carry the hallmarks of tax avoidance and simply do not work. In disputes that have played out online, the scheme promoters have defended what is known as the "Substantial Incorporation Structure". It's reasonable to assume that the schemes are already on HMRC's radar.

How to protect yourself

Remember the old adage "If it sounds too good to be true, it probably is".

If you are considering using a scheme and are concerned about tax avoidance, it is wise to seek advice from an independent qualified accountant or tax adviser. Such advisers will also be able to help you if you believe that you are already involved in a tax avoidance scheme.

Further information –

HMRC's guidance on tax avoidance schemes can be viewed here: https://www.gov.uk/guidance/tax-avoidance-an-introduction

HMRC Agent Spotlight 63 can be viewed here: https://www.gov.uk/guidance/property-business-arrangements-involving-hybrid-partnerships-spotlight-63