

A Modern Approach to Lifetime Tax Planning for Private Clients (with Precedents)

Christopher Whitehouse and Lesley King

Published by
Jordan Publishing Limited
21 St Thomas Street
Bristol BS1 6JS

Whilst the publishers and the author have taken every care in preparing the material included in this work, any statements made as to the legal or other implications of particular transactions are made in good faith purely for general guidance and cannot be regarded as a substitute for professional advice. Consequently, no liability can be accepted for loss or expense incurred as a result of relying in particular circumstances on statements made in this work.

© Jordan Publishing Limited 2014

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any way or by any means, including photocopying or recording, without the written permission of the copyright holder, application for which should be addressed to the publisher.

Crown Copyright material is reproduced with kind permission of the Controller of Her Majesty's Stationery Office.

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978 1 84661 518 4

Typeset by Letterpart Limited, Caterham on the Hill, Surrey CR3 5XL

Printed in Great Britain by CPI Antony Rowe, Chippenham and Eastbourne

PREFACE

The line between acceptable tax planning (aka tax avoidance) and tax evasion has become increasingly blurred in the last 12 months. At one time the distinction was clear: avoidance was legal (eg taking advantage of an exemption or relief provided for in the legislation, even exploiting a loophole) whilst evasion was an illegal activity (eg making a false statement in a return). Now the two have been run together with politicians and the press condemning activities which, whilst perfectly lawful, have the effect of reducing the tax take. Such behaviour is condemned as anti-social in putting a greater share of the tax burden on the rest of society. All of which is a far cry from the approach once adopted by the House of Lords of accepting that a taxpayer was free to so structure his affairs as to pay no (or at worst, minimal) tax. At that time this was backed up by the view that there was no equity in a taxing statute which has to be interpreted on the basis of the language used, not by reference to some supposed intention of Parliament.

The growth of a tax avoidance industry which produced schemes of unbelievable complexity and artificiality has had the effect of destroying the old certainties. It has led to legislation deliberately designed to prevent avoidance (for instance in denying a relief if a purpose of the arrangement in question is to avoid or reduce tax) and in increasingly vague language so that in some cases Revenue practice (how matters are perceived by HMRC) has become of greater significance than the wording of the legislation.

A brave new world has come into existence with senior judges not immune from the pressure to condemn what in the past would have been considered innocuous tax planning. A particularly low point has been reached in the speech of Lord Walker of Gestingthorpe in the Supreme Court in the ‘Hastings-Bass’ appeals where he refers to the taxpayer who sought to avoid a 64% CGT charge as ‘hardly an exercise in good citizenship’ and more generally that:

‘artificial tax avoidance is a social evil which puts an unfair burden on the shoulders of those who do not adopt such measures.’

It is unlikely that the introduction of GAAR will do much to improve matters: determining when an arrangement is ‘abusive’ by reference to a ‘double reasonableness’ test seems calculated to test the mightiest brains in the land whilst the difficulties of selecting an advisory panel free from conflicts of interest has already been made manifest. The fact that the GAAR Guidance notes conceive of arrangements which are ‘blatantly abusive’ and to which

different standards apply is hardly encouraging. It is easy enough to bandy around vituperative epithets but it does nothing for certainty in the tax legislation and consistency of treatment: instead basic rights of taxpayers are being steadily eroded.

This book deals with middle of the road non-abusive planning: arrangements which it is difficult to characterise, in any sense, as anti-social. Particular thanks are due to Elouise Dale at 5 Stone Buildings whose organisational skills in dealing with continual revisions of the manuscript have been fully tested and to Jordans for their forbearance in coping with the delays.

The law is stated at 1 December 2013 although changes proposed in the Pre Budget Report on 5 December 2013 have been noted where appropriate.

CJW/LK
London