

Serial Tax Avoidance Regime ('STAR')

16 June 2017

INTRODUCTION

On 15 September 2016, new rules came into force in relation to 'serial tax avoiders'. These rules mean that it may be in the best interests of taxpayers who have used (or are using) tax avoidance schemes to declare to HMRC the use of and leave those schemes as quickly as possible.

Tax avoidance schemes that count towards serial tax avoidance status are:

- Schemes entered into on or after 15 September 2016 and defeated on or after that date; and
- Schemes entered into before 15 September 2016, and which are defeated after 6 April 2017, (unless the taxpayer took action before 6 April 2017 to leave the scheme and settle all tax due or fully disclosed or committed to fully disclose the scheme to HMRC).

All schemes entered into on or after 15 September 2016 will therefore count towards serial tax avoidance status and will trigger a warning period, if defeated, or if within a warning period will need to be declared (see below).

The definition of a tax avoidance scheme includes arrangements disclosed or disclosable under

Disclosure of Tax Avoidance Schemes (DOTAS) rules, arrangements for which HMRC has issued follower notices, and arrangements counteracted under the General Anti-Abuse Rule (GAAR).

FALLING FOUL OF THE STAR

If an individual has taken part in a scheme that is defeated (other than a pre-15 September 2016 scheme where action has been taken to leave and settle the tax due or disclose the scheme), they will then fall within the STAR warning period for a minimum of five years. The meaning of 'defeated' is widely interpreted, and includes any situation where the claimed tax advantage is counteracted. This may be because the taxpayer voluntarily withdraws from a scheme and settles the disputed tax with HMRC, because a follower notice is issued, or the scheme (or a similar scheme) is defeated in the Courts.

The implications of being within the STAR warning period are that the taxpayer will have to make an annual report to HMRC of any new avoidance schemes that have been used during the past 12 months. The warning period may be extended if the

taxpayer is either late or does not comply with their STAR reporting obligations.

There will be potential sanctions for the taxpayer if, within the STAR warning period, they enter into any new avoidance schemes, and any of those new schemes are subsequently defeated. These sanctions may include STAR penalties, being publicly identified as a serial tax avoider and restricting the taxpayer's ability to claim certain direct tax relief.

MONETARY PENALTIES

If further avoidance schemes are used and defeated within the STAR warning period then there will be additional penalties based on the potential lost tax, in the amounts of 20% for one scheme, 40% for two schemes and 60% for three or more defeated schemes.

PUBLIC EXPOSURE

If three or more defeated schemes are used during a warning period, the serial tax avoider may be publically named as a tax avoider. A taxpayer's name, address and business information may be made public for up to 12 months.

NO DIRECT TAX RELIEFS

If three or more defeated schemes are used during a warning period and these relate to the misuse of direct tax reliefs then the individual will be stopped from claiming direct tax reliefs (e.g. income tax loss relief) for three years.

The potential implications of the Government's latest attempt to curtail tax avoidance schemes are serious, and it is important to note that the use of even one tax avoidance scheme may result in an individual falling within the 'serial tax avoider' rules.

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