

**Private Client Law Bulletin****Disclosure of Tax Avoidance Schemes**

The Government is currently consulting on whether the disclosure of tax avoidance schemes ("DOTAS") should apply to inheritance tax ("IHT") in order to provide HMRC with information concerning new and innovative tax avoidance schemes. The proposed system would differ from other tax DOTAS and would be contained in separate regulations. The consultation document states that the regulations will be introduced later this tax year, to take effect in April 2011.

**How DOTAS work**

- The promoter of new tax avoidance schemes (such as a solicitor, accountant or tax adviser) which fall within the Government's definition of 'notifiable arrangements' must provide information about the scheme to HMRC within certain timeframes
- A scheme reference number ("SRN") is issued by HMRC which scheme users must then quote to HMRC when they first implement the scheme
- Civil penalties apply for failure to comply within the time limits specified.

**The Proposal**

Arrangements will be notifiable if:

- (a) As a result of any element of the arrangements, property becomes 'relevant property'; and
- (b) A main benefit of the arrangements is that a charge to IHT is avoided, reduced or deferred when the individual makes a transfer of value during his lifetime. It does not include anniversary or exit charges.

Arrangements which satisfy the above definition will be exempt if:

- (a) They were made before a date to be specified; or
- (b) They secure a tax advantage only because of the application of business property relief, agricultural property relief, the heritage maintenance funds exemption, or the conditional exemption for national heritage property.

The arrangements will only be exempt if the relief is relied on in the same way as if the individual had made a gift to another person. If any other element of the arrangements is necessary to secure the advantage then the arrangements will need to be disclosed.

'Usual' tax and succession planning methods such as putting nil rate band value assets into trust in the hope of the settlor surviving 7 years should not be caught by the DOTAS requirements as HMRC are looking solely at new and innovative schemes.

**Administration requirements**

Disclosure needs to contain "sufficient information as might reasonably be expected to enable HMRC to comprehend the manner in which the proposal is intended to operate". This must include names and addresses of the promoter, details of the scheme and how it works

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together with the statutory provisions on which the tax advantage is based. It is expected that a new form will be created to record and submit this information.

The time limit for submitting the information will be one year from the end of the month in which the scheme user first enters into a transaction forming part of the notifiable arrangements.

### Enforcement & Penalties for non-compliance

- Promoters: initial maximum penalty of £5,000, plus up to £600 per day for which the failure continues after the Tribunal has imposed the initial penalty
- Users: £100 for failure to include the SRN on their tax return. Can increase to £1000 for repeated failures
- HMRC also has powers to investigate and seek information from promoters.

### Additional Provisions: Finance Act 2010

The Finance Act 2010 contains a number of provisions concerning disclosure requirements of promoters, to include an obligation to provide HMRC with lists of SRNs issued to clients who have implemented a scheme and an increase in penalties for non-compliance. These are expected to come into force in Autumn 2010.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Private Client issues, please contact: Duncan Bailey in Liverpool on 0151 600 3451, Richard Bate in Manchester on 0161 836 8840 or Stephen Marriott in Preston on 01772 229 816.

If you no longer wish to receive the bulletin please let us know by return e-mail to [helen.calvert@brabnerscs.com](mailto:helen.calvert@brabnerscs.com)

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