



Tax Avoidance:

A Family Lawyer's Perspective

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***“IN THIS WORLD
NOTHING CAN BE SAID
TO BE CERTAIN, EXCEPT
DEATH AND TAXES.” —
BENJAMIN FRANKLIN***

**“TAXES, AFTER ALL, ARE DUES
THAT WE PAY FOR THE
PRIVILEGES OF MEMBERSHIP IN AN
ORGANIZED SOCIETY.” —
FRANKLIN D. ROOSEVELT**

**“WHEN THERE IS AN INCOME TAX,
THE JUST MAN WILL PAY MORE
AND THE UNJUST LESS ON THE
SAME AMOUNT OF INCOME.” -
PLATO**

“What is the difference between a taxidermist and a tax collector? The taxidermist takes only your skin.”

- Mark Twain

**“I’m spending a year
dead for tax reasons.”**
- Douglas Adams

“Yes, the rich will find ways to avoid paying more taxes, courtesy of clever accountants and tax attorneys. But this has always been the case, regardless of where the tax rate is set.” - Robert Reich

- (1) A taxonomy of common 'tax efficient' arrangements
- (2) Practical and tactical considerations

Examples of 'tax avoidance'

1. Officially approved saving schemes.

- Pensions / ISAs

2. Efficient accounting arrangements.

- Incorporation of unincorporated business – hold-over relief

3. Tax deferral / mitigation.

- VCTs / EIS / Film Investments

4. Avoidance of income tax on remuneration.

- EBTs / EFRBS / offshore LLPs
- Commoditising a resource e.g. image rights

5. Outright non-disclosure (i.e. fraud)

- Offshore trusts / corporations

Acceptance that tax is due (Income tax / CGT etc) but seek to reduce it:

- Venture Capital Trusts ('VCTs')
- Enterprise Investment Schemes ('EIS')
- Seed Enterprise Investments Schemes ('SEIS')
- Social Investment Tax Relief ('SITR')
- In each case: must be a genuine venture being funded

Scheme	annual investment limit you can claim relief on	Income Tax relief	minimum qualifying period for share relief	tax payable on dividends
Enterprise Investment Scheme (EIS)	£1 million	30%	3 years	Yes
Seed Enterprise Investment Scheme (SEIS)	£100,000	50%	3 years	Yes
Social Investment Tax Relief (SITR)	£1 million	30%	3 years	Yes
Venture Capital Trusts (VCT)	£200,000	30%	5 years	No

Tax Deferral / Mitigation – Film Schemes

Film Companies Which Are Not Really A Trading Organisation:

- Eclipse Film Partners No 25 LLP v HMRC [2015] EWCA Civ 95.
- Tax liability magnified by borrowing.

- Held not to be genuine trading enterprise.
- Film investments still possible and tax efficient: usually within a EIS / SEIS wrapper

Other ‘artificial and uncommercial’ schemes: **The Clavis Liberty Scheme:**

‘The plan of the Partnership was to buy the right to the bulk of dividends to be declared by a company known (for short) as Helios for a purchase price of £59,958,000. The amount of the dividends to which it would become entitled, when declared, would be £60,000,000, generating a profit of £42,000.’

Other ‘artificial and uncommercial’ schemes: **The Clavis Liberty Scheme:**

‘The provisions of section 730 had the effect, according to the Partnership, of deeming the dividends still to be the income of the seller and not of the Partnership. If that is how the provisions work then the Partnership would bring in the cost of buying the dividend as an expense but would not bring in the actual fruit of the dividend as income. That is what is said to have given rise to the loss available to the members of the Partnership.’

STOP PRESS (19.10.2017):

Clavis Liberty Fund 1 LP v HMRC [2017] UKUT 418:

‘If tax considerations play a part in the purpose then the court does not necessarily totally ignore them, but they cannot denature a concurrent trading purpose. But if the fiscal purpose is, for example, the real purpose, and a suggested trading element, in terms of purpose, is no more than a fig leaf, then it can be concluded that there is no trading purpose.’

Clavis Liberty Fund 1 LP v HMRC [2017] UKUT 418:

‘It is an odd trade where the trader finances his or her own profit.’

‘All the partners lost their personal contributions to the capital of the Partnership (over £3.5m in aggregate) and there was no evidence of any complaint about that or to the effect that the Partnership had performed badly in relation to this transaction.’

- Employee Benefit Trusts (EBTs)
- Employer Funded Retirement Benefit Schemes (EFRBS)
- The ‘Glasgow Rangers case’: [2017] UKSC 45
- Where does the tax liability now lie?
- Are there any resources left in the trust and whose are they?

Remuneration diverted via an offshore LLP

How does it work?

- Assignment of earnings (less small element for costs) to LLP;
- Funds drawn from LLP by way of advances from partner's capital account
- Theory:
 - Income to LLP and untaxed in UK
 - Drawings are capital and untaxed in UK.

Commoditising an income generating resource and transferring it offshore

Image rights:

- Contract arranged with individual for services.
- Separate contract with company for use of image rights.
- Is PAYE due by employer?
- What happens to the image right payments?

Non-disclosure / Fraud

- Offshore funds
- Residence/domicile rules
- Tax charges

- Disclosure facilities:
 - 1999 to 2015 (Leichstenstein, Channel Islands, Isle of Man);
 - OECD Common Reporting Standard ('CRS') – effective from September 2017 - over 100 countries agreed.
 - Worldwide Disclosure Facility ('WDF') to volunteer information before CRS checks done.
- Advisors obliged to send notification letter about CRS to clients.
- Increased penalties for non-disclosure (including imprisonment) – a strict liability offence: no intent required.

Non-disclosure / Fraud

MOSSACK  FONSECA

- (1) Disclosure (including third parties).
- (2) Expert Advice.
- (3) Adjournment of proceedings / contingent reverse lump sums orders.
- (4) Risks of insolvency: s.423 IA 1986.
- (5) Proceeds of Crime Act 2002

The Form E Presentation:

- 'Full, frank **and clear**'
- 'a presentation that is immediately understandable by a solicitor of average financial sophistication.' GW v RW (2003)
- 'sophisticated offshore structures....neither impress, intimidate, nor fool anyone' J v V (2004)

The Form E Presentation:

- Privilege against self-incrimination does not absolve duty of full and frank disclosure: Regina v K [2009] EWCA Crim 1640.
- Protection of confidence: HMRC v Charman & Charman [2012] EWHC 1448 (Fam)

What to look out for:

- Self-assessment returns: disparity between income/capital gains and tax paid.
- Disparity between declared income and resources available.
- Company accounts
 - Movements of funds on P&L or balance sheet to a third party/trust etc rather than remuneration
 - EBT or EFRBS on balance sheet (Financial Reporting Standards)
- Employment contracts and side agreements / correspondence.
- Payments from third parties (often offshore) described as 'loan', 'capital advance' etc.
- HMRC investigations



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