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# The New Face of HMRC

Behind the Tangled Web



Daniel Dover and Helen Adams

With cartoons by Pugh

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# Foreword

This book is intended to give you, the reader, a taste of what life might be like should Her Majesty's Revenue and Customs (HMRC) decide that you've got your sums wrong and have, as a consequence, paid insufficient tax. It updates and adds to BDO's previous tome on the subject, *HMRC – Her Majesty's Roller Coaster: Hints on How to Survive a Tax Investigation*, a widely recognised work of genius published in 2014 and the fifth book in the series.

Since that date the tax world has changed almost beyond recognition. Dealing with the taxman has never been a bundle of joy (although taxpayers have been known to shout 'Hallelujah' when a settlement was in sight). But there were times when laughter was possible ... and useful as a safety valve. Nowadays those times are hard to come by. Governments are putting more and more pressure on HMRC to raise revenue and to prosecute greater numbers of tax evaders – especially those making use of offshore arrangements.

The leak of the so-called Panama Papers in 2016, and of the Paradise Papers a year later, revealed to an incredulous general public the extent to which privileged individuals and corporations with access to trusts and bank accounts in tucked-away places may avoid paying tax without breaking the law.

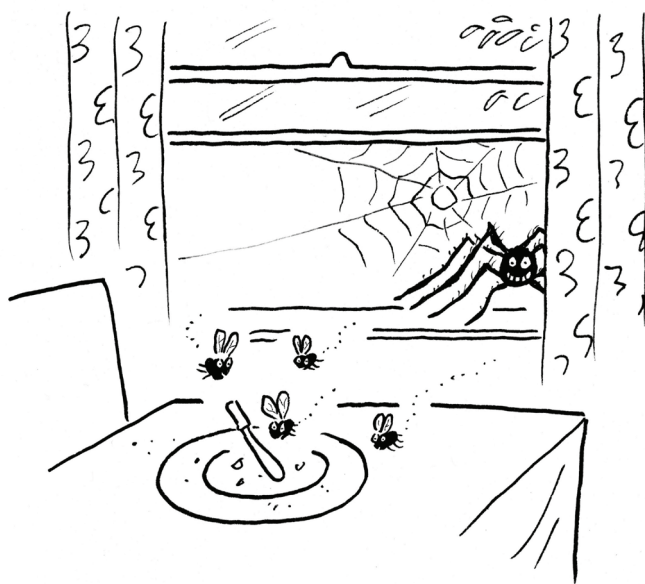


To help HMRC check whether it can gather more tax from these offshore avoiders, the government passed reams of new legislation and gave the agency powers that some believe take it into dangerously uncharted waters. The once-clear dividing line between what is legal, acceptable tax planning and what is not has become ever more blurred. Honest taxpayers (i.e. most of us) are no longer certain about what a fair tax bill looks like. Inevitably, more and more of us feel that we need advice – on the one hand, so we don't pay any more than we owe; on the other, so we don't become an object of interest to HMRC's sleuths.

A previous book in this series used the metaphor of a roller coaster to describe the experience of a tax investigation, suggesting some of the ups and downs that the experience

entails. For this book we chose something darker to suit the change of times and the change of mood. A tax investigation, we suggest, has become akin to a spider's search for food. HMRC spins a web out of new legislation enacted by the government, as well as the information that it receives. The amount of that information increased dramatically in the year or so before this book was published, multiplying the strands of that web considerably, and with this expanded and reinforced web, HMRC aims to catch out errant taxpayers as they buzz around doing whatever they normally do.

Our aim in this book is to inject a little humour into the increasingly serious business of calculating and collecting tax. At the time of writing, our crystal ball has not cleared sufficiently for us to predict the effect of Brexit on the HMRC



investigations web, so things may be somewhat different by the time you read what follows.

This book also comes with a wealth warning. Whatever you do, don't go anywhere near the taxman's web without decent intelligence – far more of it than can be provided in this slim volume; the law is far more complex than these pages give us space to portray.

## In the beginning



Who would have guessed 200 years ago that Sir Walter Scott's famous quote 'Oh what a tangled web we weave, when first we practise to deceive' would inspire the title of this book?

HMRC once declared that 'Tax doesn't have to be taxing', but things have changed as HMRC, taxpayers, investigations and the world around us have all become more complex. We therefore aim to show how HMRC currently uses its web of legislation and information to tackle the provision of disinformation – or no information – by errant taxpayers. To begin with, it is worth clarifying exactly what is meant by 'evasion', 'avoidance' and 'tax planning'.

# Introduction

Ever since the Romans first introduced Britons to the idea of taxes, people have looked for ways to avoid paying them. Some of these ways have been legal and some of them have not. Those that were legal were generally called ‘tax avoidance’; the rest were described as ‘tax evasion’. Denis Healey, a former chancellor of the exchequer, once said that the difference between tax evasion and tax avoidance was ‘the thickness of a prison wall’.

But nothing is that simple anymore (if it ever was). Quite the contrary. As HMRC fights a constant rear-guard action to close loopholes, many of them the unintended consequences of earlier legislation, so the rules become ever more opaque. HMRC now states that ‘tax avoidance involves bending the rules of the tax system to gain a tax advantage that Parliament never intended ... It involves operating within the letter, but not the spirit, of the law.’ In other words, some ‘old-fashioned’ tax avoidance may now be deemed unacceptable. The once-clear distinction between avoidance and evasion has, to some extent, disappeared.

In this new world, the taxpayer is left to interpret what Parliament intended. ‘Read my lips, not just what is in Hansard’ seems to be Westminster’s new rule – an ironic echo, perhaps,

of George Bush Sr's famous line on his presidential nomination in 1988: 'Read my lips: no new taxes.'

It is perfectly natural to feel aggrieved at the growing complexity of the rules. Nobody (well, almost nobody) minds paying their dues. At 5.7 per cent, Britain has one of the lowest tax gaps (the difference between what HMRC thinks it is owed and what is collected) in the world. But few Brits today feel they have the ability to calculate what those dues legitimately are as the rules are very complicated. Differing interpretations of the law are arguably one of the biggest causes of the tax gap, alongside evasion, 'criminal attacks' and failure to take reasonable care.

Left to their own devices to decide on what is right and proper, honest taxpayers do two things. Firstly, they turn increasingly to professional advisers. Secondly, in the absence of clear guidance, they rely on instinct and guesswork, neither of which is inclined to work in their – or HMRC's – favour.

HMRC's number-one objective now is to 'maximise revenues due and bear down on avoidance and evasion'. Little distinction is made between the two. Incidentally, if you google the phrase 'bear down' you will find two dictionary definitions. One (referring to a woman in labour) is to 'exert downwards pressure in order to push the baby out'. The other is to 'move quickly towards you in a threatening way', not unlike like what HGVs seem to do on motorways. Take your pick.

HMRC is now much more assertive in its pursuit of unpaid taxes, especially the offshore variety. It is literally telling taxpayers: 'Come to us before we come for you.' It is offering a number of 'confessionals' – routes whereby taxpayers can own up to previous misdemeanours without the full bite of the law snapping at their wallets.

At the heart of this new regime is what HMRC calls 'aggressive tax planning' – schemes promoted by tax planners to fulfil what Lord Justice Clyde deemed, in a famous tax case, to be the right of 'astute' taxpayers to pay no more than is honestly owed (*Ayrshire Pullman Motor Services v Inland Revenue*, 1929). Increasing numbers of these 'tax avoidance arrangements' (TAAs) are now considered to fall outside of what Parliament intended. As that happens, tax is being clawed back from people who (sometimes in all innocence, thinking they were an investment) used such schemes. At the same time,



measures are being introduced to discourage TAAs from being used in future, alongside a broad catch-all provision known as the General Anti-Abuse Rule (GAAR).

While HMRC is going after the schemes themselves, it is

also going after those promoters of the schemes whom it says ‘exhibit certain behaviours’ – a phrase that George Orwell would undoubtedly have enjoyed (although, of course, we are not for a moment suggesting that HMRC’s world outlook is beginning to resemble *Animal Farm*).

All this is adding yet more to the piles of tax legislation already on the statute books. The UK tax code runs to almost 20,000 pages. That is many times the length of *War and Peace*, and far less exciting. Some are already saying that our tax law is spinning out of control, a tangled mess of incomprehensible detail. In 2010 the government was moved to set up the Office of Tax Simplification in order to identify areas where complexities might be reduced. If only it were that simple...

The government could perhaps learn a lesson from some of the spiders whose webs their legislation increasingly resembles. Webs lose their stickiness over time, so spiders simply chew up their old silk strands and recycle the protein in a new web. Maybe the 20,000 pages of the UK tax code could similarly be swallowed up and subsequently regurgitated at half the length. It would then perhaps gain greater stickiness and become more effective at catching the big-time tax evaders and avoiders who continue to slip through it.

## CHAPTER 1

# Acceptable tax planning, unacceptable avoidance or evasion?

Before we launch into our exploration of HMRC's web or the taxpayers it wants to trap within it, we need to understand the basics. What do we mean by tax evasion? Is it worse than tax avoidance? And what about tax planning, can we still do that?



For as long as tax legislation has existed, people have employed advisers to find the loopholes in it and reduce their tax bills. Directors are obliged by law to maximise company profits, and one way to do this is to minimise expenses, legally. Parliament expects this – indeed, it even helps sometimes. On other occasions, the results are not what Parliament wants, so law is added and the web expands.

Tax planning is legitimate. Gift aid, capital allowances, and research and development tax reliefs are, to name a few, examples of holes deliberately made in the HMRC tax web to encourage taxpayers to behave in certain ways. Even the transfer pricing and tax residence rules anticipate a certain level of tax planning as taxpayers arrange their tax affairs to minimise the money going to HMRC.

Tax laws are complicated. Many people, and almost all businesses, will need professional help from time to time to successfully navigate them – for example, when selling a business, expanding to trade overseas or moving to the UK. Much better to take and follow advice from a specialist than make mistakes trying to understand it yourself from the brief, simplified guidance on the internet.

A debate is now raging about what is acceptable tax planning and what is unacceptable avoidance. Where is the line, or indeed the edge of the web?

At times in the past, too much effort was expended trying to find holes in the web of legislation that the government never intended to exist, or trying to shoehorn things into these same holes. This was usually done by way of tax avoidance schemes – series of transactions that, when done in sequence, aimed to reduce or delay tax bills. They involved such things as film investments, used cars, second-hand watches and



manufactured dividends. The mantra of 'If it sounds too good to be true, it probably is' was forgotten. With hindsight, this was the face of what is now considered unacceptable tax avoidance.

The government wants the tax system to be fair and to fund 'essential' public services – otherwise voters start to feel aggrieved. UK businesses complain, too, if they are trying to play by the rules and consider their competitors are not doing likewise – the interaction of multi-jurisdiction tax rules used by multinational online businesses, for example, creates an uneven playing field. So the government continually reworks the tax rules to reduce taxpayers' and advisers' ability to avoid

taxes, and to deter them from trying to do more, but there seems to be a limit to what can be achieved, particularly where borders are crossed.

Don't forget that some schemes were tax evasion, not avoidance, if tax returns were submitted relying on steps which did not actually happen (such as companies which were not incorporated when the loan was made or false diary



entries) – they stepped to the wrong side of the prison wall. In some evasion cases, prison cells awaited those professionals and their clients who should have known better.

So what is tax evasion? This occurs when a taxpayer

deliberately gives HMRC a document that he knows contains an error, with the intention that HMRC will rely on it as an accurate document. It also occurs when a person consciously chooses not to find out the correct position, despite knowing they should do so.

Examples include:

- Omitting interest from an overseas bank account from a tax return, despite it being taxable in the UK;
- Including too low a sales figure in accounts, reducing the profit and using the lower profit figure in the business's tax return;
- Creating false invoices to hide the diversion of funds into a private bank account, making them look like legitimate business expenses;
- Intentionally failing to register to pay tax; and
- Deliberately failing to submit tax returns.

Knowledge and intent are the crucial elements of evasion.

In summary – tax evasion involves deliberate actions to mislead HMRC. Tax avoidance that stretches the web in a way that Parliament never intended is usually unacceptable to HMRC. Tax planning is usually perfectly acceptable as long as it is implemented properly so that it meets all the rules. Saying that your company was set up and is run overseas, so is not taxable in the UK, is fine – as long as that is shown to be the reality.

## Knowledge is power

We live in an information age, and HMRC is no exception to this – everything it does begins with information. It starts



spinning its web with data drawn from the UK and across the globe. It wants to know everything about everyone. It can then identify the evaders and avoiders to lure into its web for investigation.