

THE 2012 FINANCE ACT, THE GAAR PROPOSALS AND THE HNWI

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The introduction of the proposed GAAR (general anti-abuse rule) promoted in the 2012 Budget has placed focus on HMRC's special units for the very rich and "almost very rich".

"High Net Worth" (HNW) individuals tax affairs are dealt with by a special HMRC unit dedicated to the personal tax affairs of the UK's wealthiest individuals – the HNWI (High Net Worth Unit). At first the unit was perceived perhaps cynically to be a way for HMRC to group together all the very wealthy taxpayers, in order to monitor and tax them harder. The definition of HNWI is considered to be wealth of approximately £20 million.

HMRC have brought in a unit underneath the HNWI. This is known as the "Affluent Unit" which is a new enquiry-focused team for wealthy taxpayers who are categorised as sitting below the HNWI level. The Affluent Unit was set up in September 2012 and will target people who are typically 50% rate taxpayers (changing to 45% from 6 April 2013). So how do tax advisers make sure tax planning doesn't become what HMRC views as tax avoidance or within the proposed general anti-abuse rules (GAAR)?

General Anti-Abuse Rules

The current proposals for the introduction of a GAAR result in further uncertainty for those undertaking a legitimate restructuring. What is the definition of legitimate? Much of the GAAR suggestions rely on emotive and often undefined language such as 'exploiting' and 'avoiding'.

There are many who consider that the GAAR legislation cannot be introduced without providing a clearance procedure which could be used before a proposed transaction is undertaken.

It is more than reasonable for an adviser to adopt an alternative interpretation of legislation to HMRC in a wide variety of circumstances. It can be useful to have proactive and pre-filing engagement with the HNWIs or more formally via HMRC's non-statutory clearance process.

What are the advantages of working with the HNWI?

- Earlier clarification of the facts and important technical issues.
- Non-confrontational dialogue as opposed to the harsh enquiry environment.
- Access to HMRC's technical specialist resource within a realistic timescale.
- Early certainty in understanding how successful the claim will be and whether litigation is a likely outcome.

There would be those that would argue that the decision as to whether to voluntarily engage with the HNWI comes down to the personal preference of both adviser and taxpayer and possibly their attitude to risk. Pro-actively talking to the right people within HMRC can go some way to mitigating risk on both high value and complex transactions and structuring but can also highlight problems to HMRC.

Practical Planning

Every adviser must now try to ensure their clients understand what being in the HNWI or the Affluent Unit means. This is important for those clients who already belong to the unit and those who could consider migration or will soon be asked to transfer. Complex family affairs where some members are in the unit and some are not should consider a transfer to the HNWI.



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