

[33.02.05] Tax Avoidance

Tax Avoidance area on Revenue website

1. General

A dedicated tax avoidance webpage has been launched on the Revenue website which can be accessed via: Business & Self Assessment – Tax Avoidance. The webpage contains guidance on what Revenue considers to be tax avoidance, in addition to detail on the various legislative tools available to Revenue to detect and tackle tax avoidance. It is Revenue's policy to actively challenge tax avoidance transactions and to litigate such cases in the Courts where Revenue is of the view that a tax avoidance transaction is not effective under tax legislation.

The purpose of the webpage is to make taxpayers aware of the consequences of engaging in tax avoidance, to encourage taxpayers to review their tax and duty affairs regularly and to encourage taxpayers to quantify and report any irregularities to Revenue. The notes apply to tax avoidance transactions which commence after 23 October 2014.

1.1. Tax avoidance

In general, tax avoidance can be described as using tax reliefs and allowances in a way in which they were not intended to be used or seeking to re-label or re-characterise a transaction undertaken primarily to seek to claim a tax advantage and not undertaken primarily for business reasons.

The webpage contains guidance for taxpayers on the warning signs they should look out for in determining whether they are being offered efficient tax advice or whether they are being sold a tax avoidance scheme.

Revenue has sophisticated analytical tools and strategies to detect and combat taxpayers using tax avoidance schemes. Revenue will always investigate and challenge tax avoidance schemes and will litigate cases up to the High Court, Court of Appeal and/or and Supreme Court, if necessary.

Taxpayers who are tempted to use a tax avoidance scheme are encouraged to think very carefully about the costs involved, the possible disruption caused by having to deal with Revenue enquiries and potentially lengthy litigation, and uncertainty over the outcome they may face as a result.

Taxpayers who have doubts about a scheme or think that they may have already engaged in tax avoidance are advised to take advice from an independent, reputable tax advisor who is not connected with the scheme and who has no interest in encouraging people to engage in such transactions. Taxpayers who may have claimed a tax advantage for a tax avoidance transaction are advised to contact Revenue with a view to settling any tax liabilities that arise as a result of the tax advantage claimed.

1.2. Anti-avoidance legislation

Revenue has many legislative tools available to it to detect and tackle tax avoidance. The webpage contains information on a number of these legislative provisions as well as detailed guidance notes and links to relevant forms.

1.2.1. Mandatory disclosure

The Mandatory Disclosure regime places an obligation on those who sell or use tax avoidance schemes to provide details of those schemes to Revenue. The Mandatory Disclosure page contains a detailed guidance note on how the regime operates as well as links to the relevant forms required to be completed to comply with the regime.

1.2.2. General anti-avoidance rule

The general anti-avoidance rule (the "GAAR") is set out in section 811C of the Taxes Consolidation Act 1997. It permits Revenue to look at the substance of a transaction rather than being bound by its purported legal form. This means that Revenue can challenge transactions, which may carefully meet the letter of the law in relation to all other provisions of the taxing statutes, but which do so in a way that is contrary to the purpose of those provisions.

A new detailed guidance note has been published on the GAAR webpage. The guidance note sets out the implications of entering into a tax avoidance transaction, within the meaning of section 811C, and what taxpayers can do if they enter into or have already entered into a transaction that they are concerned may be a tax avoidance transaction. The guidance note also provides an outline of how interest and the tax avoidance surcharge can arise together with details of how a taxpayer can make a protective notification and the benefits it can provide. A link to the relevant protective notification forms are also contained on the webpage.

1.2.3. Qualifying avoidance disclosures

A taxpayer, who claimed a tax advantage that is withdrawn by either the GAAR or one of the specific anti-avoidance rules, will pay a reduced surcharge provided a full disclosure is made to Revenue and before an appeal in relation to the tax avoidance transaction is heard. The webpage contains a link to the Code of Practice for Revenue Audit and other Compliance Interventions which contains full detail of how the mechanism operates as well as links to the relevant forms to make a qualifying avoidance disclosure.

1.2.4. Payment notices

Under this regime, Revenue can issue a 'payment notice' to users of a tax avoidance scheme which has been successfully challenged before the Appeal Commissioners. Prior to the introduction of this mechanism, tax avoiders could defer paying the tax due until such time as Revenue had successfully challenged the scheme and the

appeal had been finally determined. This regime is aimed at reducing the attractiveness of tax avoidance and also at reducing the loss to the Exchequer through tax avoidance.

1.2.5. Specific anti-avoidance rules

In addition to the GAAR, there are many specific anti-avoidance rules ("SAARs") contained within the various taxation codes. These provisions typically apply to a more limited or specific set of circumstances than those to which the GAAR applies.

Schedule 33 of the Taxes Consolidation Act 1997 classified a number of these provisions as SAARs. Such classification does not have any impact on how they apply to taxpayers. However, as outlined in the Code of Practice for Revenue Audits and other Compliance Interventions, where a person seeks to obtain the benefit of any tax advantage which is withdrawn by one of these provisions, then a tax avoidance surcharge of up to 30% can apply.

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