HMRC defeats promoter who used their own avoidance scheme

HMRC has won a significant First Tier Tribunal case involving a tax avoidance promoter, Root2 Tax Ltd, that used an avoidance scheme designed and promoted by themselves.

The result could lead to the recovery of £2.4 million in tax and National Insurance Contributions (NICs) in this case, with a further £110 million in related cases.

The firm's Alchemy scheme involved an employee entering a high-risk form of gambling, known as spread betting. The scheme's intended result was a tax-free betting win for the individual employee, which was taken instead of taxable employment income, and a tax-deductible expense for the company.

HMRC defeated the avoidance scheme at the First Tier Tribunal, arguing that the scheme's main purpose was to provide tax-free employment income that should have been subject to PAYE and NICs. The tribunal agreed with HMRC, and decided that the payment made by the company represented income from the employment of the employee, and should have been taxed accordingly.

The judge also agreed with HMRC's argument that disguised remuneration legislation would apply to the arrangements. This legislation was introduced in 2011 to challenge PAYE avoidance schemes. The judge found that it would apply as an alternative to the income from employment decision.

Mary Aiston, Director of the Counter Avoidance directorate, said:

> This was an excellent win against a promoter who used their own avoidance scheme to try to take their profits tax free. The defeat of the Alchemy scheme shows that the department will tackle the people who sell these schemes head-on, ensuring that they do not escape paying the tax they owe.
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> There should have been no doubt that this convoluted scheme – where employment income came as a tax-free betting win – was too good to be true. Our message to people tempted by a tax avoidance scheme is, if something looks too good to be true, then it almost certainly is.

HMRC previously succeeded in litigation against Root2 Tax Ltd for the non-disclosure of the Alchemy scheme under the Disclosure of Tax Avoidance Schemes rules.

- Alchemy is a scheme that is intended to allow selected employees (usually directors) to receive income tax-free, paid for by an expense incurred by the company.

- The scheme relies on the idea that the employee is involved in a high-risk form of gambling known as spread betting. The employee hedges the bet with another contract known as a call spread option. This mitigates the risk for the employee. The option and its financial responsibilities are subsequently transferred to the employer.
- The Directors of Root2 developed Alchemy, marketed it and used it themselves. The intended result of the scheme was a tax-free betting win for the individual employee, rather than taxable employment income, and a tax-deductible expense for the company on its payment to take over the CSO.
- In September 2017 the FTT confirmed that Alchemy was disclosable under the Disclosure of Tax Avoidance Schemes (DOTAS) rules. That Tribunal decision considered only whether Alchemy was notifiable. This hearing has confirmed Alchemy does not work.
- This is the first time HMRC has litigated using the findings established by the Supreme Court in the high profile “Rangers” case, and applying those findings to non-loan arrangements. “Rangers” provided final clarity on PAYE avoidance that typically utilised Employment Benefit Trusts as part of the arrangements. This new decision builds on the findings in “Rangers”, applying the principles into PAYE avoidance that utilised the directors’ use of their own company for avoidance purposes.
- The disguised remuneration legislation was introduced in 2011 to challenge contrived PAYE avoidance schemes. It takes HMRC significant amounts of time to investigate these complex avoidance schemes and prepare for litigation, and this is the first time this legislation has been used in a Tribunal case. The disguised remuneration legislation can be found at Part 7A of ITEPA 2003.