Press release: HMRC wins £40 million battle against tax avoidance promoters

The victory over Hyrax means the promoter now has to disclose the details of their tax avoidance scheme to HMRC, along with the names and addresses of 1,180 high earners who used it.

If Hyrax fail to provide the required information to HMRC they could face a penalty of nearly £6 million, as well as £5,000 per day for not fully disclosing the scheme.

The scheme promoted by Hyrax was a disguised remuneration avoidance scheme which worked by paying scheme users in loans so they could avoid paying Income Tax and National Insurance on their earnings.

Scheme users were paid just enough to comply with the National Minimum Wage. The rest of their income was made up in loans which were transferred to an offshore trust in Jersey. The amounts received under loan agreements were not declared as income on the scheme users tax return, meaning they didn't pay tax on all their earnings.

Mel Stride, Financial Secretary to the Treasury said:

> HMRC is cracking down on the unscrupulous promoters who sell these highly contrived tax avoidance loan schemes.
>
> Promoters need to take note of this decision and make sure they contact HMRC urgently about schemes they haven't yet disclosed.

The First-tier Tribunal agreed with HMRC that Hyrax Resourcing Ltd had not complied with the Disclosure of Tax Avoidance Schemes (DOTAS) rules, which requires promoters to tell HMRC about the schemes they sell.

The Hyrax scheme was a successor to the K2 arrangements which became widely known about in 2012.

New legislation has been introduced every year since 2014 to help HMRC take on promoters and enablers of tax avoidance schemes.

Over 100 promoters and others involved in tax avoidance have been investigated by HMRC in recent years.

Read the First-Tier Tribunal decision in full.

The Tribunal confirmed Hyrax were the scheme promoters under DOTAS rules.

Hyrax Resourcing Limited accepted applications from users, created employment contracts, signed service contracts, paid employees and transferred loan agreements to offshore trusts. Scheme users paid Hyrax 18% promoter fees to allow them to access the scheme.

The Hyrax scheme operated as follows:

- UK earners quit their job
- they sign a new contract with a UK trust
- the UK trustees 'rehire' their new employee to their previous employers or previous customers but take their earnings and their 18% fee
- from the remaining 82% the trustees pay the employee just enough salary each month to comply with National Minimum Wage rules and the rest is paid in the form of 'loans'
- the trustee transfers its rights to be repaid the loan to an offshore trust in Jersey – with the intention that the loans are never repaid
- the amounts loaned are not included on the employees tax returns in an attempt to avoid paying Income Tax and National Insurance

The penalty for failing to disclose a scheme is £5,000 per client, as well as £5,000 per day for not fully disclosing the scheme.

Certain DOTAS failures could result in action being taken under the Promoters of Tax Avoidance Schemes (POTAS) legislation. Penalties under POTAS legislation can be up to £1 million.

New rules introduced 2017 allow HMRC to issue penalties up to 100% of the fees earned to anybody who designs, sells, or enables the use of a tax avoidance scheme. Further]information about enablers legislation is available on GOV.UK](https://www.gov.uk/government/collections/tax-avoidance-enablers).

The Tribunal said of Bosley Park and Peak Performance Head Office Services Ltd that they "promoted the arrangements in the colloquial sense by advertising them" but under DOTAS rules this wasn't enough to make them promoters.

The Tribunal found evidence that:

- Director of Hyrax Resourcing Limited is Joanne MacNamara
- Directors of Peak Performance Head Office Services Limited are Gordon Berry and David Gill
- Director of Bosley Park Ltd is Douglas Aitkin

There is no right of appeal against the Tribunal decision, although Hyrax can seek a Judicial Review.

DOTAS

DOTAS was introduced in 2004 and has been strengthened and broadened since its introduction to keep pace with the ever-changing tax avoidance landscape. It covers tax avoidance involving: Income Tax, Capital Gains Tax, Corporation Tax, National Insurance contributions, Stamp Duty Land Tax, Inheritance Tax and the Annual Tax on Enveloped Dwellings.

DOTAS relies on ‘hallmarks’ to describe what has to be disclosed. HMRC keeps these ‘hallmarks’ under review and they have been regularly updated and strengthened since DOTAS was introduced.

DOTAS is a self-assessment regime – the promoter must consider the scheme it is developing and disclose it to HMRC if it meets any of the hallmarks.

The forms that promoters and employers are required to use make it clear to the recipient that they are ‘involved in a Disclosed Tax Avoidance Scheme’. Promoters are required to give scheme users the tax avoidance ‘Scheme Reference Number. This doesn’t mean the scheme has been ‘approved’ or that the arrangements work. In fact, scheme users are being put on notice that it is likely HMRC will want to investigate their tax affairs.

Read the full DOTAS guidance.

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