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'Dutch-Sandwich' – on the menu for Kent's SMEs?

Q: Having watched the recent TV coverage on tax avoidance arrangements used by multinational companies, including BB2's "The Town that took on the Taxman", I'm feeling disgruntled at my company's corporation tax liability. These shows indicate UK corporation tax is optional! Can I really "opt out" by using a "Dutch Sandwich" or any of the other suggestions?

A: For readers' background information, "The Town that took on the Taxman" focussed on the local traders of Crickhowell, a town in the Brecon Beacons, coming together to attempt to replicate the tax avoidance techniques used by their multinational rivals.

In a nutshell, their approach was to create intellectual property offshore - in this case they created a "Fair Tax Town" brand and housed this in an Isle of Man company - and licence this to their various companies to reduce their UK profits, and create profits in an offshore company. For the licensing arrangements to work tax efficiently they interposed a pass-through entity in the Netherlands - taking advantage of its treaty network and low tax rates - and created what is known as a "Dutch-Sandwich".

This kind of arrangement is not uncommon in multinational businesses - there has been significant press coverage of how certain brands in the UK have used these types of structures to pay staggeringly low levels of UK corporation tax. – and we can understand the frustrations of directors of SME's when it comes to their own corporation tax liabilities. However, several areas of the tax structuring in the TV shows were overly simplified and HMRC have means of attacking these structures including:

- HMRC can take companies to task using the Transfer Pricing rules, forcing traders to justify the value of, for example, the licence costs for which the Crickhowell traders were claiming a UK tax deduction. Discussions on value with HMRC can be difficult and lengthy, often incurring significant professional fees in defence of the taxpayer's position. It was these rules that HMRC used to attack Google in their 6-year tax audit!
- Tax avoidance structures commonly involve overseas companies – HMRC might challenge whether they are in fact UK resident for tax purposes – a successful challenge would undo all of the tax benefit obtained but the costs associated with running additional companies would remain!
- In April 2015 HMRC introduced the Diverted Profits Tax (affectionately known as the Google-tax), to charge a punitive tax rate on profits which HMRC believe have been artificially diverted away from the UK tax net.

So why, with such weapons at their disposal, has HMRC failed to tackle these apparently errant multinationals? To add context, over the last decade, corporation tax receipts have made up just 10% on average of HMRC's total receipts. Couple this with the deeper pockets and greater resources multinationals have at their disposal when it comes to defending a strategy, and perhaps HMRC have had pick their battles to suit their relatively meagre resources!

Serving 'Dutch Sandwiches' may not therefore, be in your best interests. However, there is an onus on Government to maintain a level playing field between SMEs and multinationals.

How can we help?

Do contact us if you would like further help or advice on this subject.