Tax avoidance and evasion? Legal or Illegal?

Tax avoidance and tax evasion are two areas that fill the column spaces of many papers. And almost inevitably, as many sportspeople are high earners, they will be mentioned in them. However, local authorities are now also getting into the act. So, in light of the recent articles and leaks on the subject including those written on Ronaldo and Jose Mourinho and the Spanish authorities, Yasin Patel looks at the areas that cause so much debate.

What is the difference between tax avoidance and tax evasion?

Tax evasion is illegal whereas tax avoidance is not. And if so clear, why are so many people accused of tax evasion? Because they have not been advised clearly enough in relation to taxation.

Tax evasion is just that: not paying the taxes that you are liable for. Evasion is against the law and there are a number of penalties and punishments for those found foul of evasion.

The scheme that is legal, allows you to reduce your tax liability, covers broad areas such as tax planning, mitigation, avoidance and tax-efficiency is what is permissible. All these sub-headings aim at one result. To reduce the tax liability so that it is legal. Tax 'Avoidance' has now become the dirty word. But why? It is not illegal. It is given an unfair write-up. Those who have planned tax efficiency by making investments, savings, purchases and more are doing nothing wrong.

High earning sports stars are told that to avoid paying extortionate taxes there are a number of scheme's they should be investing in. People are told of SIPP[1]'s, ISA[2]'s, off-shore companies and accounts, film-investment funds and plenty of other schemes to 'save tax'.

So, what schemes should one be looking at and what should be avoided? The ones to embrace are those that require conduct that you <u>honestly</u> believe will reduce your tax

[1] Self-Invested Personal Pension
[2] Individual Savings Account

liability. Ultimately, it is a question of interpretation, but if one invests in a scheme or project that is legal, done within the law and the way money is invested or developed can be accounted for, then it is likely to be legitimate. Good tax planning and you are likely to avoid paying greater taxes then are necessary: and most importantly, tax avoidance is not a crime.

Let's take ISA's as an example. ISA's are a legitimate way of saving money: it was a scheme introduced by the government so that people put money into ISA's so that to save. You avoid paying income tax on the interest earned: an example of tax-savings that are legitimate and as per how Parliament intended.

However, there is a very ambiguous area in relation to many other tax avoidance schemes.

What of offshore mutual funds?

It's not clear that Parliament ever "intended" anything in relation to these sorts of investment vehicles.

The primary concern of the tax authorities then and today is that the UK-resident owners of the shares of such funds pay income tax on the dividends they receive from their holdings and also capital gains when they sell the shares.

So what of funds incorporated in one tax-haven and based in another although registered in the UK? Normally, mutual funds in such schemes do not pay UK corporation tax. They are not profit-making corporations but investment funds where all cash surpluses are rapidly distributed to investors (or re-invested in the fund). Those surpluses are taxable under the law when they are received and realised by investors in their home countries.

Are Ronaldo and Mourinho cheating the Spanish taxman?

The European Investigative Collaborations (EIC) consortium which includes German newspaper *Der Spiegel*, Spain's *El Mundo* and the UK's *Sunday Times* recently made strong allegations against two footballing icons, linked very closely to the United Kingdom.

They allege that Cristiano Ronaldo and Jose Mourinho have avoided paying tax on millions of dollars of earnings by channeling money abroad, through tax avoidance.

Ronaldo, the Juventus star, and Mourinho, the ex-Manchester United manager, allegedly moved large sums to the British Virgin Islands. But the agency that represents them, *Gestifute,* rejects this allegation. They insist that "Both Cristiano Ronaldo and Jose Mourinho are fully compliant with their tax obligations with the Spanish and British tax authorities".

One of the papers in the consortium, the Dutch *NRC*, alleges that Ronaldo moved €63.5m (£53.1m, $67.7m) to the British Virgin Islands at the end of 2014. They say he received sponsorship fees which were moved via two Irish companies to the tax haven, 11 days before Spain changed an advantageous tax law.

Mourinho is reported to have moved €12m (£10m) into a Swiss account owned by a British Virgin Islands company, according to the EIC.

According to the reports, when the first batch of leaks were released, they centered on "a system" put in place by Mr. Mendes, whose company has denied any wrongdoing.

As we know, but Ronaldo and Mourinho settled their differences with the Spanish authorities and avoided any jail term I return for large payments to the Spanish authorities. What exactly was the liability? What rules were broken? What was the wrongdoing? I suspect it is as per the earlier paragraphs in this article namely, of tax avoidance.

<u>Council Hoping to avoid Tax in Sports Scheme?</u>

In Aberdeen, a new concept of sports service provision has been accused of being a 'tax-avoidance' scheme. Not too long ago, local authority chiefs proposed to put the service in the hands of a charitable trust.

The arms-length organisation would be in charge of swimming pools, libraries and other community buildings as part of a £15million annual contract.

Consultants Ernst and Young have estimated the council could save as much as £1million in VAT and rates payments every year by handing the services over to a new charity exempt from some taxes and fees.

Already, over 30 local authorities in the UK are taking advantage of such a scheme.

By adopting such a scheme, the local authority could save millions in tax. But is this just a clever way of tax evasion?

Tax Avoidance Becoming Harder

This has been the general pattern in the last few years: tax legislation has become tighter, anti-avoidance rules are shrinking and the courts hearing tax avoidance cases have been tending to favour HMRC in their judgments. Lawyers have their work cut out in this respect.

Fine Line between Avoidance and Exemption

However, it is important for the client, lawyer and advisor to use caution at all times. A lawyer may advise a client he has no tax liability due to a certain scheme, a tax return is filled out on this advice. HMRC challenge the scheme and the court agrees with their analysis. So what next? Well, if the tax liability relates to offshore income or assets and is over £25,000, then the client may be guilty of a new criminal offence which is to be introduced under the Finance Act 2016. To make prosecution easier, the prosecution has only to show that the client got the return wrong. The client may plead that they were careless and there was no intent to be dishonest: well, according to HMRC, neither matters: you are guilty! Thank goodness for the European Convention of Human Rights, as the client can argue that he took reasonable care as a defence. It is inevitable that the lawyer will be rolling their sleeves up for another battle with HMRC.

Conclusion

Most people do not mind paying tax: but it is the fact they pay ‘too much’ that they look towards tax avoidance schemes. The onus is now on the client to ensure that the avoidance schemes are legal, proper and have not slipped into the tax exclusion bracket as otherwise it is as the late Denis Healey stated: *the difference between avoidance and exclusion is the thickness of a prison wall*!

Yasin Patel

Barrister