

**When tax avoidance
becomes tax fraud
and how trustees may
detect the warning
signs**

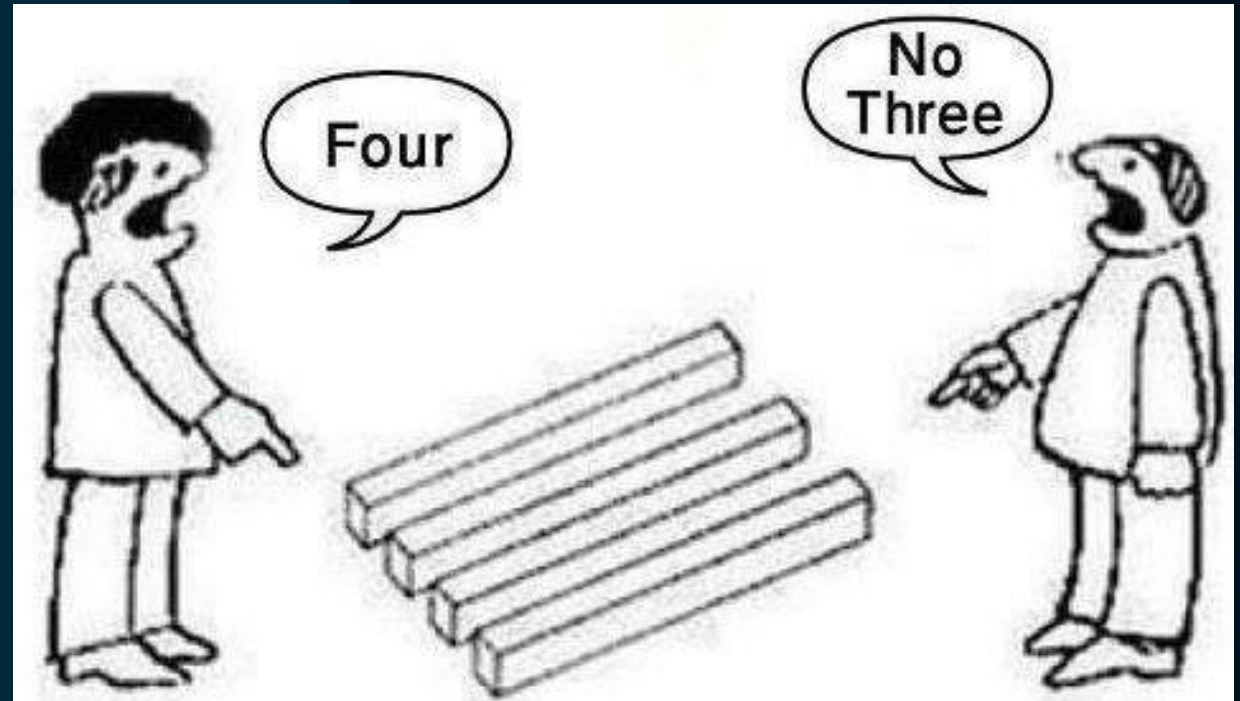
Paul Malin



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Nothing is ever that straightforward

What you see and what I see is not necessarily what HMRC see.



What's the difference?

- The thickness of a prison wall
- Tax evasion – illegal
- Tax avoidance – legal but no statutory definition

"Tax avoidance is compliant with the law, though aggressive or abusive avoidance, as opposed to simple tax planning, will seek to comply with the letter of the law, but to subvert its purpose"

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Where do you draw the line?

- The wording used is subjective and can be interpreted in different ways
- Whose role is it to define where the line is to be drawn?
- Which tax or taxes are we talking about?





The line can be blurred

- Taxpayers can be complicated
- Taxpayers can seek advice from more than one adviser on the same matter (or a connected matter)
- Advisers need to document all advice
- Advisers need to refresh any advice periodically (and record that fact)

Crossing the line

- Not necessarily in a single step but a build up over time
- Despite all the regulations we have in place, there is nobody looking over your shoulder in real time to take that sharp intake of breath
- There is the dilemma of what to do and what to say when you realise that the line has been crossed





A simple case of tax avoidance #1?

- A Trust is established
- The Trustees are appointed
- The class(es) of Beneficiary are identified
- The funds arrive into the Trust's account
- Payments are made out of the Trust by way of loans

What tax is being avoided?



A simple case of tax avoidance #2?

- ~~A Trust is established~~
- ~~The Trustees are appointed~~
- ~~The class(es) of Beneficiary are identified~~
- The funds arrive into the Trust's account
- Payments are made out of the Trust's account by way of loans

What tax is being avoided?

How can this be?

- AML undertaken on the financial account
- But what are the Trustees told about what has been done in the past?
- Nothing. Zero. Zilch. Zip. Nada. Diddly-squat
- You are the professional. You are insured. You are holding the baby





What was actually done?

The taxpayer was told that

- the money would be held by ABC Trust
- The company would pay money into ABC Trust and get a CT deduction
- ABC Trust would make loans to taxpayer up to 80% of amount paid in
- The loans were not secured
- Any interest would be rolled up

Where is the tax fraud?

- No direct contact between the ABC Trust and Settlor
- The payments made by UK company were not to the ABC Trust
- No receipts were sent from the ABC Trust to the UK company
- Not all the money was held by ABC Trust
- No supporting documentation regarding any loans made
- No statements were produced by ABC Trust showing individual loan balances and interest accrued



FRAUD

What steps can be taken?

1. Ask to see all correspondence in the name of the Trust and the Settlor
2. Ask to see all correspondence in the name of the Trust and the Beneficiaries
3. Ask to see a full transaction history of the Trust and supporting documentation





THANK YOU!

Any questions?

Mobile:

07979 313 010

Email

paul@pmc.tax