

## A can of HMRC worms



For a casual onlooker, HMRC's recent obsession with retrospective tax legislation (once a taboo and something to be strictly reserved for **“wholly exceptional” situations**) as well as their extreme level of vindictiveness against normal, non-fat-cat individuals, may be somewhat puzzling.

Indeed, what is it that is “wholly exceptional” about contractor arrangements that have been (and still are) marketed to tens of thousands of independent professionals for over a decade, with HMRC's tacit approval? The answer is: **“nothing”**.

So, we have to look elsewhere for clues.

To understand HMRC's otherwise inexplicable resort to what can only be seen as very *desperate* measures, we have to go back to the beginning to the early noughties and in particular to the introduction of the infamous **IR35 legislation**, which came into force in April 2000.

As is the case anytime HM's paper-pushers attempt to micromanage the behavior of contractors and entrepreneurs (*species so alien to them that they might as well inhabit another dimension*), a slew of unintended consequences followed.

One of these unintended consequences was the sprouting of the so-called “contractor scheme” industry, which restored to independent professionals **the certainty as to their tax status which had been taken away by IR35**.

**For nearly a decade and a half, HMRC allowed these schemes to exist, to be promoted, to operate, without batting an eye.**

For nearly a decade and a half, year after year HMRC accepted fully transparent tax returns from taxpayers utilizing such structures without ever uttering a bad word about the arrangements.

The problem is that by adopting this complacent stance, HMRC in effect **validated the very narrative used by the promoters**: *“HMRC is fine with it. They are not saying anything*

*about it because they know it is all above board”.*

Sometimes, not always, an individual would receive a “notice of enquiry” from HMRC, which would state in essence: *“I would like to look into your tax return. Every year we check a number of tax returns. You have nothing to do, and **I will let you know if I find anything wrong**”.*

This would more often than not prompt a panicked contractor (whose risk appetite generally stops at “being out of contract”) to run to the structure’s operator, only to be reassured that *“HMRC routinely sends this letters to anyone who has disclosed participation in a contractor arrangement” (keyword: **disclosed**)*.

*“Don’t worry. They will not do anything further“*, they would say.

And....

### **That is precisely what would happen**

For **10 years**, there would be no follow-up whatsoever. Result? **“What the promoter said is true!”**, the contractor would think.

So the contractor is reassured. The contractor recommends the scheme to other contractors looking for certainty and peace of mind.. Lather, rinse, repeat. The scheme industry grew exponentially. Promoters got rich beyond their wildest expectations.

### **At this point, it is necessary to pause, and understand this crucial point:**

“Contractor schemes” would have remained **a very marginal thing** had HMRC done as little as lift a finger, get off their behinds, and produce **back then** one of the cutesy little **“tempted by tax avoidance?” leaflets** that they have been sending lately to every contractor and their dog – **a good ten years too late.**

**By looking the other way, HMRC did in effect validate the promoters’ narrative that “HMRC is ok with it”**, resulting in schemes being recognized in the contractor community by and large as a “safe” vehicle (**even more so if DOTAS-registered**).

If you are looking for the number 1 factor for the boom of “Contractor schemes”, there you have it. The operators simply couldn’t have dreamed of a better ally (or dare we say *tout?*)

The proliferation of “schemes” could have been trivially easy to stop dead in its tracks, if it hadn’t been for the complacency/incompetence/complicity of HM’s services.

**What have HMRC been doing (or rather, not doing) in the previous 10 years? Who was in charge, and who failed miserably in their most basic duties?**

**This is the can of worms that they don’t want opened.**

With this in mind, it becomes crystal clear why the Revenue are now so busy trying to organize a cover-up of epic proportions, **from which there will be no coming back for contractors**. And why, seemingly, *anything* goes: **retrospection, lies, revisionism, exceptional “2019” charges**.

**It’s a tough job though, with some 30 000+ witnesses to silence** (some of which – imagine that – insist on exercising their legal rights)

HMRC did not want to litigate sound schemes and lose (current count of HMRC victories against contractor schemes: **zero\***), so effectively it appears that someone high up had a long silent think over whether and how to go retro. **Thus the abomination we know as APNs were born.**

Make no mistake: **HMRC do NOT want their failings examined by the judiciary.** Therefore everything must be and is being done to prevent any “contractor scheme” court case to go ahead.  
But this too shall fail.

**This pungent can will soon be cracked open in earnest, and the many worms it contains will be put under a microscope one by one for detailed examination.**

Something tells us that there is going to be a lot of “Oh”‘s and “Ah...”‘s.

*\*: for all of HMRC’s references to the “Boyle case”, it is important to consider that “Boyle” failed on implementation, not on the underlying principles of the arrangement.*