No To Retro Tax

Press information

Contact
Carl Thomson
+44 (0)20 7138 3228 / +44 (0)7531 780 378
carl.thomson@whitehouseconsulting.co.uk

New campaign launched against retrospective taxation and Section 58(4) of the UK Finance Act 2008

20th April 2012. Following reports that Chancellor of the Exchequer George Osborne MP warned his Indian counterpart that proposals to retrospectively impose capital gains tax liabilities would damage the investment climate in the country, a new campaign has been launched against retrospective taxation in the UK by individuals and families affected by Section 58(4) of the Finance Act 2008, or 'S58(4)'.

S58(4) targeted tax planning schemes that made use of offshore trusts and double taxation treaties to reduce tax paid by the scheme's users. These schemes were marketed to freelancers and contractors after the introduction of IR35 as they offered more certainty than would be the case if running a limited company. They were legal, open and transparent and regularly reported to HMRC under the disclosure rules.

By introducing S58(4), the Government retrospectively changed the law so that not only could these schemes not operate in future, but they were effectively made unlawful for the whole period they were in operation. As a result, some 3,000 people who used trust schemes to plan for greater certainty have been left with unexpected tax bills for retrospective liabilities going back to 2001, plus up to 50% interest, despite the fact that the schemes were entirely legal at the time, with many facing bankruptcy as a result.

Although the Judicial Review and recent Court of Appeal hearing into the legislation in 2011 confirmed Parliament's supremacy to act retrospectively, No To Retro Tax campaigners argue that the evidence revealed during the hearings suggests information presented to Parliament when the Bill was passed lacked the full background necessary to make an informed judgement. This includes:-

- No mention of a previous acknowledgement by HMRC in 2002 that the affected schemes were widespread and could not be challenged in the tax court.
- Serious discrepancies in HMRC's argument that the retrospective changes were a clarification of the 'Padmore' legislation.
- No Impact Assessment carried out, and breach of HMRC protocol and established procedures for introducing retrospective taxation (the Rees Rules and the Dorrell doctrine).

Alistair Renshaw, Chair of the campaign, has today written to the Treasury Select Committee asking them to investigate whether Parliament was furnished with all the facts when the recommendation was made by HMRC to apply S58(4) retrospectively.

The No To Retro Tax campaign is calling on Parliament to amend the retrospective elements of S58(4) to bring the Finance Act in line with the Rees Rules and HMRC protocol, enabling the victims to challenge the changes in the tax courts – an option that the retrospective application of the legislation denied them.

Alistair Renshaw, Chair of the No To Retro Tax campaign, said:

"With the current political climate against perceived 'tax dodgers', HMRC is entirely within its right to close down tax planning schemes or loopholes that no longer work properly or go against the intentions of Parliament. However, the principle of retrospection – that someone can be punished for doing something that was perfectly legal and acceptable at the time – is wrong, particularly when it is done against Parliamentary and HMRC protocol. It undermines confidence in the rule of law and creates uncertainty about the UK as a place to invest and do business.

"George Osborne is lecturing the Indian Government against applying retrospective taxation, despite the fact that in the UK thousands of people are facing huge back demands for tax simply for arranging their affairs in a perfectly legal, open and transparent manner that HMRC knew about at the time.

"We agree that retrospection is unfair and are calling on Parliament to amend Section 58(4) of the Finance Act 2008 to remove the retrospective elements that will push innocent people to bankruptcy for following the law as it existed at the time, and to carry out due diligence

and give greater consideration as to whether retrospection is the best way of achieving legitimate policy aims."

Notes for Editors

- No To Retro Tax is a newly launched campaign group organised and supported by individuals affected by the retrospective elements of Section 58(4) of the Finance Act 2008. The campaign is lobbying Parliament to change the wording of S58(4) from "as always having had effect", so that it reads "to have effect from 12th March 2008". This would bring it in line with the Rees Rules and HMRC protocol and mean that retrospective tax liabilities would only start to accrue from the moment the intention was announced to close down the affected schemes through publication of Budget Note 66.

- More information about the campaign can be found on their website, www.notoretrotax.org.uk, or by following them on Twitter at @notoretrotax.

For further information or comment from Alistair Renshaw, contact Carl Thomson on 020 7138 3228 / 07531 780 378, or email carl.thomson@whitehouseconsulting.co.uk.