

MFL Professional's
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Tax Avoidance & Mitigation Schemes: PI Insurers Running Scared

As the government and HMRC continue to clamp down on tax avoidance and mitigation schemes, Professional Indemnity Insurers of those accountancy practices involved in the provision of advice to their clients in connection with such schemes are starting to panic.

The tax avoidance industry is in big trouble. Following on from the introduction of the Disclosure of Tax Avoidance Schemes (DOTAS) in 2004 and the new General Anti-Abuse Rule (GAAR) of 2013, the Chancellor stated in his March budget that taxpayers will have to pay their tax upfront pending the resolution of disputes between the providers of avoidance/mitigation schemes and HMRC. Furthermore, this requirement is to be backdated to 2004 when DOTAS began.

This increased determination on the part of the government and HMRC to tackle schemes that, in their words, bend "the rules of the tax system to gain a tax advantage that Parliament never intended" has prompted PI Insurers to consider very carefully their potential exposures to

professional negligence claims arising from the advice given to clients by the accountancy profession to enter into such schemes, even where this is framed in terms of generic advice or as a mere "introduction".

The recent case of *Mehjoo v Harben Barker* (2013) illustrated that, even though a firm of accountants may not be tax specialists, they may still be considered to be legally liable for client losses from complex taxation situations, in circumstances where they have been held to accept overall responsibility for the tax affairs of their clients through a course of prior conduct.

All this has led some PI insurers to take fairly drastic action with accountants' PII renewals where they have identified an exposure to tax mitigation products, including significant raising of premiums and excess levels and, in some cases, declining renewal altogether, particularly if complaints by accountants' clients regarding the ineffectiveness of tax schemes have already led to block notifications of potential claims under the policy.

If you are a practice faced with existing or past tax mitigation scheme exposures, you need to take action now to minimise the effect on your PII going forward:

- Fully review and identify your past exposures to these schemes,

including the legal relationships between you, your clients, financial advisers and the product providers;

- Disclose your exposures to your PI insurers in connection with the renewal process to avoid later accusations of non-disclosure, which could endanger the continued existence of your policy;
- Notify any potential claims that may arise from such schemes as soon as you become aware there could be a problem.

Most importantly, you need to take advice from your Professional Indemnity Insurance Broker on how to manage the risks arising from this work and how to approach the renewal process with the PII Market.

As experts in this field, MFL Professional would be pleased to assist you through this process, including:

- **Providing advice on what to disclose to the insurers;**
- **Providing advice on what to notify to current insurers by way of potential claims, and how to formulate such notifications;**
- **Obtaining renewal quotations with insurers who will cover future claims arising from tax schemes, provided they are happy your risks have been properly managed.**

Please contact us for a free discussion of your PII requirements:



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