



Property118 Ltd

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Web

www.gov.uk

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Promoters of tax avoidance schemes – stop notice

Where this notice refers to 'you', this means the company Property118 Ltd.

I'm giving you this stop notice under section 236A of the Finance Act 2014. The legislation requires that certain steps are taken by an 'authorised officer'. I'm the authorised officer for the purposes of this notice. Other steps under this legislation may be taken either by me or another authorised officer. I will specify the steps that are to be taken by an authorised officer.

I'm giving you this notice because I suspect that you promote, or have promoted, arrangements meeting the description specified below (or proposals for such arrangements).

Description of the arrangements

Capital Account Restructuring Scheme (CAR)-

The arrangements can be broken down into the following steps-

Step 1-

A property business undertaken by an individual, individuals or in partnership (the "users") obtain an agreement from a third-party lender for bridging finance to be provided to the property business.

Step 2-

The Users, a limited company of which the Users are directors and the lender enter into a "facility agreement". The amount provided to the business is to extract the capital from the business before the property business is incorporated into the company. The liability to the bridging loan is to be transferred to the company as part of the sale of the assets and liabilities of the company (whereas the existing mortgage liabilities on the properties are not). A fee is due for using the facility and repayment in full is required a short time after the amount is drawn down. The Users certify that the obligations under the loan facility will not breach any existing borrowing contractual agreements.

Step 3-

The bridging loan is drawn down by the individual.

Step 4-

A "Sale and Purchase Agreement" is entered into to substantially sell the property business to a Limited Company in exchange for shares. The business (the property business run by the users) includes all the assets and liabilities of the business. Schedule 1 of the agreement outlines the consideration in shares, schedule 2 outlines the properties and their values and schedule 3 outlines the mortgage liabilities and the bridging loan. The agreement

Description of the arrangements

specifies that a Trust Deed, Agency Agreement and Contract for Sale are also entered into which regulates the future relationship between the purchaser (the company) and the sellers (the users) post transfer.

The sale and purchase agreement purports to transfer all the assets and liabilities of the business (as outlined in schedule 2 & 3 of the agreement) to the company. However, the mortgage liabilities on the properties are not transferred or satisfied as part of the sale. Instead as a condition of the sale, the company adopts responsibility, in the form of an indemnity, for the servicing and repayment of any mortgages yet to be redeemed. This is achieved through the additional agreements entered into as part of the transfer.

Step 5-

The "Trust Deed" is entered into by the Users as trustees and the company as beneficiary which allows the trustees to hold the legal interest in the properties upon trust for the beneficiary.

Step 6-

The Users (as the mortgage holders) and the company enter into an "Agency Agreement" this appoints the Users as agents for the company for the purpose of making mortgage payments for the properties held in trust and the making and receiving of other payments and receipts in relation to the properties in the trust as required.

Step 7-

The Users as "sellers" enter in to a Contract for Sale with the company "the purchaser" dated the same as the sale and purchase agreement, to sell the "with full title guarantee" the properties to the company. The completion date will be 28 days after written notice is given by the company to the "Sellers" (or their "successors") that it wishes to complete the sale of a specific property. This is the deferment of the legal title transfer until the end of the existing mortgage contracts or earlier.

Step 8-

The transfer of the business takes place, and the company now holds the beneficial interests in the properties and the indemnity to pay the mortgages and the bridging loan.

Step 9-

The users as directors make a loan to the company of the amount equal to the bridging loan and the company repays the bridging loan it has now become liable for. The bridging loan is eliminated, and directors get a credit in to their loan account for the amount loaned to the company from which they are expected to be able to draw tax free.

The conditions for giving a stop notice are set out in section 236A of the Finance Act 2014. I may give you a stop notice if I consider that condition A and one of conditions B and C are met. Or that conditions B and D are met. The conditions that I consider are met, and the reasons why they are met, are shown below.

Condition A

Arrangements meeting the description set out above would (one of the following):

- if implemented before 5 April 2019, have been likely to cause (one of the following)
 - a person to be treated as taking a relevant step for the purposes of Part 7A of the Income Tax (Earnings and Pensions) Act 2003 by virtue of paragraph 1(1) of Schedule 11 to the Finance (No.2) Act 2017
 - a relevant benefit to be treated as arising for the purposes of section 23A to 23H of Income Tax (Trading and Other Income) Act 2005 by virtue of paragraph 1 of Schedule 12 to the Finance (No.2) Act 2017
- be the same, or similar, in form or effect to arrangements or proposed arrangements to which a reference number has been allocated under section 311 of the Finance Act 2004 or paragraph 22 of Schedule 17 to the Finance (No.2) Act 2017
- be the same, or similar, in form or effect to arrangements in relation to which a person has been given a follower notice under section 204 of the Finance Act 2014
- be the same, or similar, in form or effect to arrangements of a description specified in regulations

Condition B

Arrangements meeting the description set out above, or proposals for such arrangements (both of the following):

- have been, or are likely to be, marketed (in any manner, whether by you or otherwise) as capable of enabling a person to obtain a particular tax advantage
- it is more likely than not that such arrangements are not capable of enabling that advantage to be obtained

Reasons why the conditions are met

Condition A-

Scheme reference number (SRN) 07626525 was allocated to the arrangements under section 311 of Finance Act 2004 on 9 February 2024.

Condition A is met because the arrangements to which the SRN 07626525 is allocated means the requirements of section 236A(3)(b) of Finance Act 2014 are met. This is because the arrangements of the description in this notice are the same, or similar, in form or effect to arrangements or proposed arrangements to which a reference number has been allocated under section 311 of Finance Act 2004.

For completeness, an appeal against the allocation of the SRN under section 311B Finance Act 2004 does not prevent a power or duty conferred by Part 7 Finance Act 2004 (DOTAS) from continuing to apply as per section 311B(9) Finance Act 2004. Therefore, the SRN remains in place unless following an appeal, the tribunal decide to cancel HMRCs decision at which time HMRC will be required to withdraw the SRN.

Condition B-

Condition B is met because the arrangements described in this notice have been or are likely to be marketed as capable of enabling a person to obtain a particular tax advantage. The particular tax advantage is the ability to claim “*roll-over relief on the transfer of business*” under section 162 Taxation of Capital Gains Act 1992 (TCGA 1992). Where the transfer includes liabilities to be transferred as part of the sale, Extra Statutory Concession D32 is claimed to apply to the sale. This enables any business liabilities taken over by the company to be ignored when quantifying ‘other consideration’ in recognition of the fact that the transferor is not receiving cash to meet any tax liabilities on the transfer. In these arrangements the transfer includes the “bridging loan” as a business liability which is transferred as part of the sale. The loan is then repaid by the company on the same day or shortly after as a result of the directors loaning the money to the company in order to do so.

This tax advantage is the main advantage or one of the main advantages of the arrangements and any other commercial benefits are insignificant and secondary to the particular tax advantage. It is therefore reasonable to infer that the arrangements are likely to be marketed as capable of enabling a person of obtaining a particular tax advantage. Evidence obtained from websites confirms that the arrangements are likely to have been marketed on the basis of enabling a person to obtain the particular tax advantage.

It is my view that it is more likely than not, that the arrangements are not capable of enabling the particular tax advantage. This is because it is evident that the bridging loan is part of the overall transfer and not simply a way for the users to extract capital from that business as purported. Ultimately, the capital is not extracted, it instead creates a credit in the DLA for tax free drawings.

Therefore, it is considered the bridging loan is actually cash consideration for the transfer of the business and that it does not fall within ESC D32. Therefore, it is not a business liability and full section 162 TCGA 1992 relief is not available.

Therefore, it is more likely than not that arrangements of the description in this notice are not capable of enabling that tax advantage to be obtained.

The persons who are ‘subject to’ this stop notice

You are subject to this stop notice if you have been given this notice by an authorised officer. You are also subject to this stop notice if another person has given it to you and (one of the following applies):

- that person has control or significant influence over you
- you have control or significant influence over that person
- that person has made a relevant transfer to you

Being subject to a stop notice means that you must do everything the notice tells you to do.

You can find more information about why another person might have given you this notice in the sub-section below called 'Giving copies of the stop notice'.

What this means for you

You must not promote:

- arrangements that meet the description set out above or any arrangements that are similar in form or effect to arrangements of that description
- any proposals for
 - arrangements meeting the description set out above
 - arrangements that are similar in form or effect to arrangements of that description

What you must do now

You must (do both of the following):

- tell your clients and intermediaries that you are subject to a stop notice
- make quarterly returns about your clients

If you have been given this stop notice by an authorised officer, you must also give a copy of it to the following persons and provide us with information about them. These are:

- any company, limited liability partnership (LLP) or partnership that you control or have significant influence over
- each person who controls or has significant influence over you
- any person who you make a relevant transfer to

There is more information about each of these below.

Telling your clients and intermediaries

You must notify the following people in relation to arrangements falling within the description set out above, or proposals for such arrangements. These are:

- each of your clients
- each person you could reasonably be expected to know is an intermediary

You must:

- tell them that you are subject to a stop notice
- tell them that they are one of the following (as applicable) in relation to arrangements or proposals meeting the description in the notice
 - a client
 - an intermediary
- give them a copy of this stop notice

You must notify each client and known intermediary within 5 days of the day you received the stop notice. If you later find out that any other person is an intermediary, you must notify them within 5 days of you finding out.

A person is a client if you have at any time (done one or more of the following):

- made a firm approach to that person in relation to a proposal for arrangements falling within the description set out above
- made the proposal for such arrangements available for implementation by that person
- provided services to that person in relation to arrangements falling within the description set out above or in relation to a proposal for such arrangements

Giving copies of the stop notice

This section applies to you if you have been given this stop notice by an authorised officer.

If you control or have significant influence over a company, LLP or partnership, you must (do both of the following):

- give a copy of this notice to that company, LLP or partnership, within 5 days of the date it was given to you
- give HMRC the following information about the company, LLP or partnership, within 15 days of the day you were given this notice
 - their name
 - any current or previous business name or pseudonym

- their business address or registered office

The meaning of the terms ‘control’ and ‘significant influence’ are set out in sub-paragraphs (5) to (11) of paragraph 13A of Schedule 34 to the Finance Act 2014.

You must also (do both of the following):

- give a copy of this notice to each person who controls or has a significant interest over you within 5 days of the date it was given to you
- give HMRC the following information about each such person, within 15 days of the day you were given this notice
 - their name
 - any current or previous business name or pseudonym
 - their business address or registered office

If you make a relevant transfer to a person, you must (do both of the following):

- give a copy of this notice to that person, before you make the transfer
- give HMRC the following information about that person, within 15 days of the date of transfer
 - their name
 - any current or previous business name or pseudonym
 - their business address or registered office

The meaning of the term ‘relevant transfer’ is set out in paragraph 5 of Schedule 33A to the Finance Act 2014.

There’s more information in the enclosed letter about how to give HMRC the required information.

An authorised officer may give a copy of this notice to any person that you are required to give a copy to. If they do this, you are still required to give a copy of the notice to that person. If you do not, you may be liable to penalties. There is more information about penalties in the section below called ‘What if you do not comply with this notice’.

Receiving a copy of this stop notice

If you have been given a copy of this stop notice, you are not required to take any action if (both of the following apply):

- you received a copy from the promoter – this is the person who this notice is addressed to
- you have been told by the promoter who this notice is addressed to that you are a client – this means you are using or have used the arrangements described in the notice)

However, taking part in a tax avoidance scheme is high risk for you and may mean you have to pay more in tax, interest and penalties than the scheme claims to save you. If you are currently using these tax avoidance arrangements, HMRC strongly advise you to withdraw from them.

To learn about how to protect yourself from tax avoidance, go to www.gov.uk and search ‘tax avoidance facts’.

Quarterly returns

You must give HMRC the information shown below for each relevant period. A relevant period lasts for 3 months. The first relevant period is the 3 months from 23 July 2024 to 23 October 2024. You must make sure we receive this information by 7 November 2024. We call this a ‘quarterly return’.

There’s more information in the enclosed letter about how to make the quarterly return.

Information required for each quarterly return

- the number of relevant clients (which may be nil) in the period to which the return relates
- for the first relevant period, the number of existing relevant clients (which may be nil) at 23 July 2024
- for each client, their
 - name and address
 - unique taxpayer reference number (UTR)
 - National Insurance number – if you do not have your client’s UTR and/or National Insurance number, you must state that fact
- the name, if any, by which the arrangements or proposal are known or marketed

A person is a relevant client, if at any time during the relevant period, you have (done one or more of the following):

- made a firm approach to that person in relation to a proposal for arrangements falling within the description shown above

- made the proposal for arrangements falling within the description shown above available for implementation by that person
- provided services to that person in relation to arrangements falling within the description shown above or in relation to a proposal for such arrangements

You must continue to make quarterly returns for each subsequent 3 month period starting on 24 October 2024. You must do this for each 3 month period that starts before 23 July 2027. You must make sure that we receive this information within 15 days of the end of the relevant period. The 15 days start on the last day of the period.

What if you do not comply with this notice

If you do not do what this notice requires you to do, you may be (both of the following):

- committing a criminal offence
- liable to penalties

Any 'relevant person' whose actions contribute to the commission of a criminal offence by the company, will also be guilty of the offence. A relevant person is defined in section 277B(2) of the Finance Act 2014.

The enclosed factsheet CC/FS61 gives you more information about the consequences if you fail to comply with a stop notice.

If you continue to promote the arrangements or proposed arrangements

If an authorised officer suspects that you're still promoting arrangements or proposed arrangements that meet the description set out above, they may give a copy of this notice to:

- your clients
- any other person they consider might be affected by your failure to comply with this notice, or by the giving of the stop notice itself

The officer may also give them (any of the following information):

- your name
- your business address or registered office
- any other information the officer considers it appropriate to provide to identify you clearly
- details of any arrangements or proposals for arrangements that you promote which fall within the description shown above
- an explanation of the effect of the stop notice
- an explanation of why the stop notice was given

Publishing information

Now that you are subject to a stop notice, an authorised officer may publish:

- that you have been given a stop notice
- details of any arrangements or proposals for arrangements that you promote which the officer considers fall within the description shown above

If we publish information about you, this will include:

- your name
- your business address or registered office
- any business name
- any previous name or pseudonym
- any other information that the officer considers it appropriate to publish to identify you clearly

We cannot publish any information about you until after the appeal period. We explain what we mean by 'appeal period' below. However, we may at any time publish the description of arrangements or proposal for arrangements shown above. And the fact that arrangements of that description are subject to a stop notice.

The 'appeal period' means the period during which:

- you can ask for the stop notice to be withdrawn
- you can appeal against a 'decision notice', if you have asked for a stop notice to be withdrawn
- an appeal against a decision notice has not been determined, withdrawn or otherwise disposed of

We explain what we mean by 'decision notice' in the section 'What if you disagree'.

What if you disagree

You may ask an authorised officer to withdraw the stop notice if (any of the following apply):

- you do not intend to promote, and have not promoted, arrangements falling within the description shown above or proposals for such arrangements
- you consider that the conditions shown at the top of this notice have not been met
- you consider there are other reasons why the notice should be withdrawn

If you want to ask for the stop notice to be withdrawn, you must write to an authorised officer at the address shown at the top of this notice by 22 August 2024. Your request must explain the reasons why you think they should withdraw the stop notice and include any evidence that supports your explanation.

If you ask for the notice to be withdrawn, an authorised officer will tell you their decision within 45 days of the date we receive your request. They will do this by sending you a 'decision notice'. If they do not tell you their decision within 45 days of the date they receive your request, you will no longer be subject to the stop notice.

If the authorised officer does decide to withdraw your stop notice that does not mean that it will cease to have effect in relation to other persons who are subject to it. However, they may determine that a stop notice is to cease to have effect in relation to another person who has not made a withdrawal request by giving them a withdrawal notice.

You will be able to appeal against a decision notice. The decision notice will tell you how to do this. If you appeal, you may also make a request for the stop notice to be suspended. There will be more information about this in the decision notice.

Name of authorised officer

[REDACTED]

Using references and sending us documentation

If you send us any original documents or records, you must tell us that they are originals. You must also tell us, in writing, if you agree that we can securely destroy any documents or records you send us. We securely destroy documents and records 50 working days after we have digitally scanned them. This applies to copies of documents or records as well as originals. If you do not tell us that you agree, we will return everything to you except any files or folders.

If you tell us that you agree, you have the right to change your mind. If you do, you must tell us this in writing within 40 working days of the date that you sent us those documents or records.

Our standard policy is to destroy any memory sticks or other removable digital media you send us. We strongly recommend that you encrypt the data you send us, to make it more secure. Whichever method you choose to contact us, you need to quote the case reference CFS-2212357.