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FOR THE INTENDED RECIPIENT CLIENT OF OCG ACCOUNTANTS ONLY

To be read in conjunction with the covering email and previous updates for important context.

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Dear Valued Client,

HMRC Letter to You Concerning Your 2021/22 Self-Assessment Tax Return and Other Matters

The Background to this Letter / Email

We received a letter from HMRC, dated November 7th 2023. There was attached an example of a letter which it is claimed has been sent to all of our clients, even those who have never been involved in “hybrid LLP”s.

Since allegations surfaced in the media in early October, Leading Tax Counsel, Robert Venables K.C., has been extensively advising, first, Less Tax for Landlords Limited and then, in addition, ourselves. He is the Senior King’s Counsel of Old Square Tax Chambers, Lincoln’s Inn. He has been a Q.C. / K.C. since 1990. He is a past Chairman of the Revenue Bar Association of England and Wales and a past member of the Council of the Chartered Institute of Taxation. Before practising as a barrister, he was an Oxford law don, holding posts at Merton College and St Edmund Hall Oxford, as well as at Oxford University. In 2020 he was installed, together with Lord Mark Sedwill, the former head of the civil service, as an Honorary Fellow of the College of St Edmund Hall, Oxford, joining the company of some very distinguished lawyers who include Lord Macdonald, Sir Keir Starmer and the Right Hon. Sir Stanley Burnton (a former Court of Appeal Judge).

Acting on Robert’s advice, we wrote to HMRC on 13th December. We pointed out in particular the ambiguities and lack of reasoning in their letters and asked for further details. We also set out Robert’s views why he did not believe that certain of HMRC’s unreasoned assertions could possibly be correct. We dealt not only with the sample letter sent to our clients, but with the attached “factsheet” and HMRC’s “Spotlight 63”, referred to at the end of the “factsheet”. We are still awaiting a reply to that letter.

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The Purpose of this letter

We feel we cannot wait any longer and have asked Robert to provide the content to write to all our clients, in order to provide some degree of reassurance and guidance as to whether you ought to make some sort of unspecified “declaration” or amend your 21/22 tax returns, as suggested in HMRC’s letter to you.

In this letter, we advise you on what should be your general response to such a letter. The summary position is that whether you are involved in a “hybrid LLP” or not, the advice at the moment, subject to any further responses from HMRC to our letter (provided by Robert) to them on 13th December 2023, is to do nothing in response to HMRC’s letter.

The rest of this letter is aimed at those individuals who have been involved in a “hybrid LLP”.¹

We are writing this letter to you after taking Robert’s advice. However, Robert has asked us to make it clear to you that he is advising only OCG Accountants Ltd and not any of its clients and that he cannot, for a number of reasons, himself accept any duty of care to any of you or to any other third party.

The advice to you in this letter thus comes from OCG Accountants Ltd. If you choose not to follow that advice, then we will need to discuss this with you and potentially ask you to sign a disclaimer that you are choosing not to follow our advice. This has been requested by the insurance broker who deals with our Professional Indemnity Insurance.

¹ In a very small number of cases, we shall be making further contact with our clients whose position may, for various reasons, be exceptional.

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Assumptions

It is assumed by Robert and ourselves that in most cases²,

two individuals (usually, but not always, husband and wife) who were previously the co-owners of residential properties which were let to third parties transferred them to a newly created LLP of which they were members and that immediately after the transfer they (indirectly) owned the properties in the same proportions as before;

that a limited company the shareholders of which were only the two individuals (“the corporate member”), became a member of the LLP;

that the profits of the LLP (both capital and income) were to “belong” to the two individuals except in so far as in their discretion they were allocated to the corporate member; and

you made your self-assessment return for 2021/22 in time (normally, by January 31st 2023).

² If this is not so in your case, his advice to us will not necessarily hold good, although it might, depending on your present circumstances.

Our Understanding of the Tax Position

Income Tax

HMRC have claimed that income which was in fact allocated to the corporate member is deemed to be taxable income of the individuals which should have been declared as such. HMRC have mentioned the “mixed partnership” rules and the “income stream” rules.

Robert has advised us that he has seen nothing in HMRC’s arguments which justifies the view that taxable income has been under-declared and does not see how their claim can be established on either basis.

Penalties

HMRC have suggested that unspecified penalties might be due from you.

Robert does not see how that can presently be the case.

Self-Amendment of Self-Assessment Returns for 2021/22

HMRC have suggested that you should amend your self-assessment return for 2021/22.

Robert does not see how it could be to your advantage to do so. He can see that it would very probably be to your disadvantage and to the advantage of HMRC

Invitation by HMRC for you to make a “Declaration”

HMRC have suggested that you should make a “declaration” to them and have threatened an enquiry into your self-assessment return for 2021/22 if you do not do so by January 31st 2024. They have not specified what the “declaration” should concern.

Robert does not see how it could be to your advantage to make such a declaration, even if you knew what it was you were supposed to declare. He sees the threat of HMRC making an enquiry into your self-assessment return if you do not do so by January 31st 2024 as a hollow one.

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Inheritance Tax

HMRC have also raised the question of inheritance tax.

To the clients where this is a current issue, separate steps are currently 'in progress' with HMRC and unless you have made some gift of your rights over the LLP, Robert sees this as being currently academic. He notes that in any event your self-assessment return has nothing to do with inheritance tax.

Stamp Duty Land Tax on Transfers of the Properties to the LLP

HMRC have not claimed in their letters to us or to our clients, in the "factsheet" or in Spotlight 63 that any stamp duty land tax should have been paid on the transfers of the properties to the LLP.

Robert had advised us that no stamp duty land tax should have been due on such transfers, except perhaps in exceptional circumstances. We shall be contacting separately our clients whose circumstances may be exceptional.

Capital Gains Tax

HMRC appear to accept that there was no capital gains tax payable when the properties were transferred to the LLP.

Robert has advised us that in general that must be correct, although he adds that there may be a small number of our clients who may require more specific contact relating to their specific circumstances.



Conclusion

Please be assured that we are doing our very best to protect your interests and ensure that you are not panicked into paying any tax which is not due and shall continue to do so.

We shall also do our very best to protect you against any adverse action which HMRC might try to take against you.

To help us help you, it is important that you notify us as soon as possible if you receive any correspondence from HMRC relating to this matter.

Yours Sincerely,

Chris Bailey
Group Director
OCG Accountants

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