**TACS Partnership case study 2 – When HMRC came visiting…**

The TACS Partnership (TACS) was approached by Jamie, who was ill. He had run a family Italian takeaway for many years and had done well enough to bring up his family in comfort but not luxury. But now he had a serious medical condition and feared about how he might help provide for the family if he was unable to work. When he found out that his condition was worsening, he took a radical step. He decided to turn off the tills in the takeaway at 7pm each night, with sales after that point being pocketed as his family nest egg. This went on for some time before an HMRC VAT visit uncovered the problem. Test purchases and a period of self-invigilation revealed potentially significant profit diversion.

HMRC were heading towards attacking this fraud through the criminal code. Jamie took advice from TACS, and with a mixture of good luck and special pleading because of his circumstances, HMRC agreed to consider the case under Code of Practice 9 (COP9). This gave Jamie a chance to avoid criminal prosecution. Before a formal offer to deal with the matter under COP9 was made, Jamie was invited to make an outline disclosure. TACS interviewed Jamie and were told about the profit extraction. TACS also established that Jamie had some rental from properties, which he had not fully recorded on his tax return. All the relevant issues were included in the outline disclosure submitted to HMRC.

HMRC held a meeting with Jamie at TACS’s office to review the outline disclosure and to discuss the fraud and how matters might proceed. HMRC were made aware of Jamie’s medical problems. Halfway through this discussion Jamie revealed that the fraud had been going on for far longer than he had previously said. This prompted a short adjournment of the meeting during which a frank exchange was had between the TACS representatives and Jamie. This issue could have led to the collapse of the COP9 offer. However, on recommencing the meeting the TACS representatives managed to get HMRC to agree that the revised details now disclosed would be taken as part of the taxpayer’s initial disclosure and that they would maintain their offer of treating this case under COP9. The meeting concluded with Jamie confirming he would commission a report to confirm and quantify the tax lost through the fraud.

It was very challenging to quantify the sums Jamie had extracted. However, through the experience and expertise of the TACS representatives, it was possible to arrive at a suggested figure for profit diverted, which was then checked against information gleaned about the destination of the money. Similar work was done on the property income issues, so that a report came together which made sense in the light of the statement of assets and liabilities of the taxpayer included in the document. The sums calculated were reconciled to estimated expenditure on debt servicing and lifestyle, to put together a picture which was consistent and robust.

HMRC reviewed the report and questioned some of the details but they could not break the logic of the approach adopted. Off the record the TACS representatives were told that HMRC had anticipated a higher level of tax lost, but they could find no way to realistically challenge the methodology adopted or the conclusions arising. Agreement was reached on the tax lost, and the interest due on that tax. The penalty charged for the fraud was negotiated at an effective rate of 40%, which given the nature of the fraud was at the lower level of expectations. A payment plan was put in place to settle matters over a three-year period, with the VAT element of the settlement being paid up front after the issue of assessments. The final piece of the jigsaw was getting an agreement that Jamie would not be named on the HMRC list of deliberate defaulters. Successful representations were made that such a step would produce an unnecessary additional strain on a man struggling with severe health issues.