





4. In or around 2017, HMRC commenced an inquiry into the Scheme, and CTL subsequently asked Mrs D to appoint them to deal with HMRC inquiries on her behalf.
5. Save for a single letter dated 24 April 2017, neither Mr Hannah nor CTL kept Mrs D informed about the progress of the HMRC inquiry or their response to HMRC on behalf of Mrs D.
6. On or around 22 March 2021, Mr and Mrs D were contacted directly by HMRC. HMRC challenged the validity of the Scheme and Mr and Mrs D decided to not contest this further before the First-tier Tribunal. Given the other case law in this area, this was a reasonable decision for them to take. As a result both now have been required to make a payment to HMRC of £13,750 each, plus interest.
7. As a result of the actions and omissions of Mr Hannah and/or CTL, Mr and Mrs D have suffered financial loss.

Mr Hannah faced the following Charges:

### **Charge 1**

Mr Hannah failed to advise Mr and Mrs D appropriately about the risks of entering into the Scheme. In terms of the risks of entering the scheme, the letter of advice of 6 July 2016 gave inadequate risk warnings in relation to:

- a) Whether the TAAR in para 18 of Sch. 2A to FA 2003 would apply. In particular, given that the arrangements were or were likely to be seen as “tax avoidance arrangements”, it is unclear on what basis CTL advised that para 18 would be disapplied by s.75A and in any event it ought to have warned that there was a material risk that it would not be.
- b) Whether s.75A would itself apply in any event. In particular for the same reasons given in *Newton v HMRC* [2019] UKFTT 688 (TC) at paras 151 to 172 (albeit concerning a similar but earlier scheme), there was a substantial risk that s.75A would apply.
- c) Assuming that the “annuity” involved in this planning was similar to that considered in *Newton*, the letter ought to have highlighted the risk of whether the arrangements would have qualified as an annuity within the meaning of s.52 FA 2003.
- d) The tax investigation risk. In particular, the advice that the risk of HMRC seeking to challenge the planning was a “low one” was one which no reasonably competent tax advisor should have given in particular against the context of HMRC’s approach to sub-sale schemes (evidenced in the substantial changes introduced in FA 2013). Further the advice that a successful challenge was “a remote possibility” was again one which no reasonably competent tax advisor should have given.

The above constituted breaches of paragraphs 1.6, 2.4.1, 2.6.1, 2.6.2, 5.1.1, 5.3 and 5.6 of the Professional Rules and Practice Guidelines 2011 (“PRPG 2011”); and paragraphs 2.1, 2.4, 2.6 and 2.12 of Professional Conduct in Relation to Taxation 2014.

### **Charge 2**

Mr Hannah failed to respond appropriately to the HMRC investigation into the Scheme or keep Mrs D updated about the HMRC investigation.

The above constituted breaches of paragraphs 1.6, 2.4.1, 2.6.1, 2.6.2, 5.1.1, 5.3 and 5.6 of the PRPG 2011, paragraphs 1.6, 2.4.1, 2.6.1, 2.6.2, 2.6.3, 5.1.1, and 5.3.1 of the Professional Rules and Practice Guidelines 2018; and paragraphs 2.1, 2.4, 2.6 and 2.12 of Professional Conduct in Relation to Taxation 2014.

### **Charge 3**

Mr Hannah and/or CTL have failed to respond adequately to the concerns raised by Mr and Mrs D and have subsequently refused to correspond with them about the matter. Accordingly, Mr Hannah has:

- a. failed to uphold the professional standards of the CIOT; and
- b. failed in his duty:
  - (i) to act towards his clients Mr and Mrs D, with professionalism;
  - (ii) not to act in such a way as to bring CIOT into disrepute.

The above constituted breaches of paragraphs 1.7, 2.6.1, 2.6.2, 2.6.3 of the Professional Rules and Practice Guidelines 2018; and paragraphs 2.1, 2.4, 2.6 and 2.12 of Professional Conduct in Relation to Taxation 2014.

### **Charge 4**

Mr Hannah has failed to ensure that the businesses of which he was a Director were conducted with honesty and integrity. In particular, Mr Hannah failed to ensure that the selling of the Scheme was done in a way which properly highlighted the risks to potential clients.

The above constituted breaches of paragraphs 1.7 and 2.6.2 of the PRPG 2011; and paragraphs 2.1 and 2.13 of Professional Conduct in Relation to Taxation 2011.

### **Charge 5**

Mr Hannah has:

- a) failed to uphold the professional standards of the CIOT; and
- b) failed in his duty not to act in such a way as to bring CIOT into disrepute:

The above constituted breaches of paragraph 2.6.2 of the PRPG 2011 and paragraphs 2.1 and 2.13 of Professional Conduct in Relation to Taxation 2011.

The Tribunal found that the facts pleaded in the background were proved.

In relation to the Charges, the Tribunal found that Mr Hannah was in breach of the following in relation to one or more of the Charges:

#### **PRPG 2011**

1. Rule 1.6 – Duty to act with reasonable care and skill
2. Rule 1.7 – Bringing the CIOT into disrepute/ harming the reputation or standing of the CIOT
3. Rule 2.1 – Integrity and professional behaviour
4. Rule 2.2.2 – Engaging in illegal activity
5. Rule 2.4.1 – Regard for technical and professional standards
6. Rule 2.6.1 – Upholding professional standards
7. Rule 2.6.2 – Bringing discredit / breaching the laws of the CIOT
8. Rule 5.1.1 – Duty of care to clients
9. Rule 5.3 – Responsibility for supervision
10. Rule 5.6 – Form and content of advice to client

#### **PRPG 2018**

1. Rule 1.7 - Bringing the CIOT into disrepute/ harming the reputation or standing of the CIOT
2. Rule 2.6.1 – Professional behaviour
3. Rule 2.6.2 - Upholding professional standards/due care
4. Rule 2.6.3 – Bringing discredit
5. Rule 5.3.1 - Managing client expectations

#### **PCRT 2011**

1. Rule 2.1 - Integrity
2. Rule 2.13 – Compliance with legal obligations

#### **PRCT 2014**

1. Rule 2.1 – Professional competence and due care
2. Rule 2.4 – Explaining material risks of tax planning to client

3. Rule 2.6 – Acting with requisite skill and care
4. Rule 2.12 – Tailoring advice to circumstances of client

### **Sanction**

The Tribunal determined that in relation to the Charges found proved in this case, the appropriate sanction was that Mr Hannah be expelled from membership of CIOT.

It also ordered that he pay compensation of £3,000 to Mr and Mrs D.

### **3. Complaint by Mr and Mrs L**

The Tribunal decided that it did not have jurisdiction in relation to this complaint

Having found the Charges proved in relation to two of the complaints, the Tribunal ordered that Mr Hannah pay costs to the TDB of £36,365.

A link to the decision of the Tribunal can be found [here](#).