

The Taxation Disciplinary Board
30 Monck Street
London
SW1P 2AP
21/03/2022

Complaint regarding Arthur Lancaster

I am writing to you to raise a complaint about the conduct of Arthur Lancaster, a Chartered Tax Adviser and Chartered Accountant. Mr Lancaster is the director of AML Tax (UK) Limited, a company which marketed and operated a number of disguised remuneration tax avoidance schemes. He is also the managing director of Lancaster Knox, and Director of the Knox House Trust as well as a number of other companies within the Knox Group.

This complaint has two parts. The first is that as the director of companies involved in the sale and marketing of disguised remuneration tax avoidance schemes, and schemes designed to get around the loan charge, Mr Lancaster was not compliant with rules relating to Professional Conduct in Relation to Taxation.

Secondly, that Mr Lancaster failed to act with integrity in relation to his evidence to the Upper Tier Tax Tribunal in the case of AML Tax (UK) Limited and HMRC, contrary to his professional obligations under the rules for Professional Conduct in Relation to Taxation and the Professional Rules and Practice Guidelines of the CIOT.

Disguised remuneration schemes

Disguised remuneration schemes are a form of tax avoidance where payments arising from employment are made to a third party, often offshore, which then arranges to transfer these payments to the employee or contractor in some other form. This can be in the form of loans (where there is no expectation that the loan will ever be repaid) or some other kind of payment. These payments are then not declared as income in the tax returns of the employee or contractor and so no Income Tax or National Insurance Contribution is paid.

The government made it clear as long ago as 2004 that it did not view disguised remuneration schemes as an acceptable form of tax planning and would seek to close down disguised remuneration schemes with retrospective effect in the “Primarolo Declaration”. In a written statement, the then Paymaster General set out the government’s position:

“This Government are determined to ensure that all employers and employees pay the proper amount of tax and NICs on the rewards of employment, however those rewards

are delivered... experience has taught us that we are not always able to anticipate the ingenuity and inventiveness of the avoidance industry. Nor should we have to. Our objective is clear and the time has come to close this activity down permanently.

I am therefore giving notice of our intention to deal with any arrangements that emerge in future designed to frustrate our intention that employers and employees should pay the proper amount of tax and NICs on the rewards of employment. Where we become aware of arrangements which attempt to frustrate this intention we will introduce legislation to close them down, where necessary from today”¹

In 2010, the Government announced that it would legislate to stop loan based disguised remuneration schemes, and in 2011 The Income Tax (Earnings and Pensions) Act 2003 was amended to make sure that loans made to an employee via third parties were subject to income tax and national insurance contributions.

Despite this, accountants and tax advisors continued to mass market schemes, and in the 2016 budget the Government introduced the ‘Loan Charge’ in an attempt to recover taxation not paid due to the use of disguised remuneration schemes.²

Currently, HMRC has 17 people under criminal investigation for offences relating to arrangements promoted as disguised remuneration tax avoidance schemes.³

Professional Conduct in Relation to Taxation

The latest edition of Professional Conduct in Relation to Taxation sets out “the fundamental principles and standards of behaviours that all members *must* follow”. The document is clear that members must provide advice that is “client specific” and act lawfully at all times. Specifically, the requirement to act lawfully means that tax planning should be based on a realistic assessment of the facts and a credible view of the law. The guidance states that:

“Members must not create, encourage or promote tax planning arrangements or structures that:

- i) set out to achieve results that are contrary to the clear intention of Parliament in enacting relevant legislation; and/or
- ii) are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation.”

These requirements would appear to prohibit the sale and operation of mass marketed disguised remuneration schemes by chartered accountants and chartered tax advisors.

1 Finance Bill, Written Ministerial Statement, Paymaster General, HC Deb 2 December 2004 cc44-46WS, https://publications.parliament.uk/pa/cm200405/cmhansrd/vo041202/wmstext/41202m02.htm#41202m02.html_spmi0

2 Independent Loan Charge review: HMRC report on implementation, *HMRC*, 03 December 2020, <https://www.gov.uk/government/publications/independent-loan-charge-review-hmrc-report-on-implementation/independent-loan-charge-review-hmrc-report-on-implementation>

3 Treasury Select Committee, Letter from HMRC relating to ‘The work of HMRC’ session, dated 4 March, <https://committees.parliament.uk/publications/9269/documents/160357/default/>

The involvement of Mr Lancaster with companies promoting disguised remuneration schemes

It has been public knowledge for a number of years that AML have been involved in the design and promotion of Disguised Remuneration schemes. In a debate on the Loan Charge held in the House of Commons in October 2019, the Member of Parliament for Glasgow North West named AML as one of the companies that had sold disguised remuneration schemes that had led to “seven needless deaths”.⁴

In August 2019, AML acknowledged in court proceedings that it was promoting and implementing an “annuity planning arrangement”, a form of disguised remuneration scheme.⁵

In March 2022, the Upper Tier Tax Tribunal found: “there is a real possibility that AML’s activities extended well beyond the design and implementation of the annuity planning arrangement and small amounts of work in relation to legacy EBT schemes and general tax advice.”

Following the introduction of the Loan Charge, in 2016, AML recommended to its clients that they use Vanquish Options Limited which could “provide a mechanism” to reduce the Loan Charge.⁶ Vanquish reportedly offered those facing Loan Charge fees with the option to repay the loan through them for just 5% of their original value.⁷ Mr Lancaster served as a Director of Vanquish Options until April 2020, just prior to its liquidation.⁸

As such, the Taxation Disciplinary Board should investigate whether Mr Lancaster has been non-compliant with rules of Professional Conduct in Relation to Taxation.

AML Tax (UK) Ltd vs HMRC

On 17 March 2022, The Upper Tier Tax Tribunal published their judgement in AML Tax (UK) Limited vs HMRC.

The judgement concerned an application by HMRC for an additional penalty to be imposed on AML Tax (UK) Limited, following an alleged failure to comply with an information notice under Schedule 36 Finance Act 2008.

That failure was confirmed and a penalty of £150,000 imposed.

The judgement contained a number of remarks which called into question the integrity of the evidence presented by Mr Lancaster to the Tribunal.

A copy of the judgment is attached to this complaint. However, I would like to draw your attention to the following sections.

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- 4 Loan Charge debate, *Hansard*, 01 October 2019, <https://hansard.parliament.uk/Commons/2019-10-01/debates/8D88171C-DC77-48A3-A19C-9857312FE0CE/LoanCharge>
 - 5 AML Tax (UK) Limited vs HMRC, paragraph 92 [2022] UKUT 00081 (TCC)
 - 6 Loan schemes offering help to ruined clients — for a fee, *The Times*, 24 February 2019, <https://www.thetimes.co.uk/article/loan-schemes-offering-help-to-ruined-clients-for-a-fee-6fmlpgq9v>
 - 7 “File On 4” – “Taxing Situations”, *BBC Radio 4*, 20 October 2020, http://downloads.bbc.co.uk/rmhttp/fileon4/PAJ0561PG17_taxing_situations.pdf
 - 8 Vanquish Options Limited, *Companies House*, <https://find-and-update.company-information.service.gov.uk/company/06574968/officers>

At paragraph 70, the Tribunal cited “real concerns as to the reliability of Mr Lancaster’s evidence”. The Tribunal found that: “His witness statements and oral evidence contained significant inconsistencies, either acknowledged by him or in light of the documentary evidence.... It is notable how much relevant evidence was adduced by Mr Lancaster in cross-examination when it ought to have appeared in his witness statements. Overall, we were left with the impression that Mr Lancaster was evasive, providing as little evidence as possible and that he did not wish to volunteer anything more than he considered necessary. As a result, it seems to us that the evidence Mr Lancaster gave in his witness statements and orally was confused, lacking in candour, in some respects incorrect and littered with inconsistencies.”

The tribunal went onto stress that they made no finding of dishonesty against Mr Lancaster, and no such allegation was made by HMRC. However, they treated any evidence he provided that was not supported by documentary evidence with “considerable caution”.

The Taxation Disciplinary Board does not require a finding of dishonesty to take action against a member.

At paragraph 95, the Tribunal found that Mr Lancaster’s evidence in relation to “critical aspects” of AML’s activities to be “inconsistent and seriously misleading”.

Paragraphs 114 to 116 of the judgement sets out evidence of serious accounting discrepancies, with large numbers of invoices missing from the accounts of AML.

Paragraph 123 makes reference to an email sent by Mr Lancaster’s solicitors to HMRC which “could not be right”. The tribunal notes that the email would have been sent on Mr Lancaster’s instructions.

Paragraph 139 sets out how AML failed to comply with the requirements of the Companies Act when it failed to notify creditors of an application to strike off the company.

At paragraph 140 the Tribunal finds that it is likely that Mr Lancaster was aware that a consultant acting for the company was ignoring HMRC’s requests for information.

At paragraph 142, Mr Lancaster’s first witness statement is described by the Tribunal as “seriously misleading”.

In light of the above, I would like to request that the Taxation Disciplinary Board institutes a disciplinary investigation into Mr Lancaster. I would be grateful if you could keep me updated of any progress in this matter.

Yours faithfully,

George Turner

Executive Director

TaxWatch