Put to the test

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It is not every stand-up comedian who gets to be heckled on TV by the Prime Minister. The highly public exposure of Jimmy Carr’s tax affairs must have been more than usually excruciating for a man whose entire livelihood depends on being able to maintain audience sympathy and the moral high ground. Happily for him, he managed the crisis with typical agility, but he could have saved himself some bother if he’d only come to PKF in the first place. The advice that Carr was given might well have been legal, but it was demonstrably unsuitable for him. Highly contrived and artificial arrangements to reduce tax are not only vulnerable to moral scrutiny – they are also inferior in the long term. Proper tax advice, in our view, takes into account the particular circumstances and the long-term goals of the client in question, which no off-the-peg loophole can ever do. But sensible and sustainable tax planning is thankfully alive and well, and available from a PKF adviser near you.

On the subject of tax, there is unwelcome news from across the Channel for anyone who may have a holiday home in France. The new left-leaning French government has scented some easy tax revenue from those who are not actually French voters, resulting in a win-win situation for them and a potential holiday dampener for those affected.

Also in this issue we explore the challenges that a business may face on its path to growth. As difficult as it is at the moment, achieving growth is barely half the battle, and many find that the real difficulties come with trying to manage and sustain it. In our article we focus on some of the common pitfalls and how to overcome them, including ways in which your advisers can guide you safely through.

I hope you enjoy this issue of Forward Focus. If you want to find out more about any of the topics covered in this issue, just call, and your usual PKF partner can put you in touch with the appropriate expert here.

Nick Green
Editor, PKF (UK) LLP

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Do you think your company would make a good story for Forward Focus? Contact the Editor, Nick Green, at nick.green@uk.pkf.com.
As the economic climate continues to shift, many businesses are finding they have to update their strategy to weather the changes. But how? An independent expert view can yield vital insights into what could be improved and how to improve it, and give a business a new lease of life. Nick Green looks into the strategy review.

The workforce believes that they know what they are doing, but on closer examination it may turn out that everyone assumes something different. The strategy is outdated – and that’s if anyone remembers what it was in the first place.

Reasons to review

Every business should of course have a clear idea of why it exists and what its goals are, and also needs to be in agreement with itself about how it intends to go about achieving them. There, in a nutshell, is the strategy. The problem is that the ‘Why?’, ‘What?’ and ‘How?’ are unlikely to remain static for very long. Over the course of years they will inevitably change, sometimes by a little, sometimes by a great deal, and the business needs to adapt its approach accordingly. The most efficient way to do this is through a strategy review.

There are three main reasons for instigating such a review. The first is when an organisation has not reviewed its strategy for some time – ideally, this should happen every three to five years. Often the decision will be prompted by some unwelcome event; an indication that things are heading in the wrong direction, or rumblings of discontent from customers or staff. If anyone is beginning to ask, ‘Why are we doing this?’ it may be grounds for calling a strategic review. Similarly, external changes such as new legislation, new technologies or changes in the profile of consumers or stakeholders may create market forces that prompt a strategy review.

The second common trigger is the emergence of personal disagreements at board level. Differences of opinion are natural and healthy, indeed essential for good leadership, but the lack of an agreed way to resolve them is a sign that a strong strategy is not in place. When disagreements occur, it should be a simple matter to decide which view is more valid by deferring to the strategy: which course of action follows it more closely? Note too that if this decision should ultimately prove to be a bad one, then this is merely an indication that it is time to review the strategy, as outlined above.

The third – or really, the first – reason for conducting a strategic review is when the organisation has never done one at all. A proper review can establish that there really is a strategy, and that it is being followed as closely as possible.

Let us suppose, then, that you have called in your consultant to conduct a strategy review. What he or she will not do is attempt to tell you your strategy, or even advise you on it – this must come from the board itself and be agreed, not imposed. Cath Hardaker (Head of PKF’s Management Consultancy Services) outlines the process.

‘What we do is broker a debate at board level,’ says Cath. ‘We gather together the people whose job it is to steer the organisation, and ask them some simple but searching questions relating to this task. In most cases, you will eventually hit upon a question that they can’t answer, or where the question elicits quite different answers from individual board members. Once you have revealed these alternative views or gaps in the board’s knowledge, then you have areas that you need to address. It is also important to gather the views of all the board members in confidence. Then see how they differ from each other and crucially from those of the chief executive.

Collectively, these are the stress points that an updated strategy must try to resolve.’

Of course, no strategy is designed to be infallible. What it does provide is a framework in which considered decisions can be made. Without one, every decision becomes subject to the whims and egos of the board members, and gives rise to an inevitable meandering of direction. Nor can the boss be the exception to the rule; an autocratic organisation cannot also be strategic, if the boss can choose to ignore the strategy when it suits. A good analogy here is the law of the land: a government makes the law, but is also subject to it (or else it becomes a rogue state).

Remember, if a strategy isn’t working, you can always update it. And even if it seems healthy enough, it’s sensible to have a check-up every now and then.

Nick Green
nick.green@uk.pkf.com
020 7065 0674
A quiet revolution is underway in the energy industry, and it looks as if the UK is well placed to take a leading role. Renewable and low-carbon energy may still be in its infancy, with many challenges yet to encounter and overcome, but the pressures driving its development are more than just economic, and the indications are that it will eventually take its place as one of the essential global industries, as fundamental to the world economy as oil is today.

Thanks to carbon emission targets, government subsidies and the country’s early adoption of the technology, the UK has a very exciting place in which to be working and investing in these forms of energy. Nevertheless, the pressures to reach the government’s targets and justify all the investment need for more renewable and low-carbon energy, the region is ideally placed to lead the world in this emerging industry—PKF is ready to help. Nick Green, director of 4nRG, a research and development (R&D) company, is the Business Development Director of 4nRG, a research and development (R&D) company that specialises in renewable energy technologies, most notably for wave and tidal power.

 arises as a result. But this is another kind, tidal range. ‘Wherever you have a barrier, then close the gates at high water. You then have what is effectively a hydroelectric dam, to give you power when the tide is running and generate electricity,’ says Mark. ‘Because they’ve already sunk all that money—literally—into the infrastructure, in the form of substations, cables and vessels, so why not put tidal devices in the water as well? That would both increase the reliability of their delivery of power, and also massively improve the return on their capital.’

In addition to its wind and wave potential, East Anglia is also blessed with being a strong candidate for tidal power, which can be generated when tidal movements face restricted flow, and water accelerates as a result. But this is only one kind of tidal power—tidal flow—and Mark is quick to point out that there is another kind, tidal range. ‘Wherever there is a big difference between high and low tide, there is the possibility to erect a barrier when the gates at high water. You then have what is effectively a hydroelectric dam, to give you power exactly when you need it.’

The problem with tidal range projects is that, as large construction projects on the coast, they can have a big impact on the local environment, and so are very unlikely to get planning permission. Nevertheless, Mark sees real opportunities for tidal range. ‘We are already looking to link this technology with coastal defences. Where there is a risk of coastal erosion, you can install a barrier that also harvests energy from the tide,’ he said. In 2011, INGENUM unveiled plans for such a project to help protect the Norfolk coastline—yet another sign of East Anglia being at the cutting edge of renewable energy development.

A brighter future

Renewable energy remains far more expensive per kilowatt hour than other forms of electricity, and is at present heavily subsidised by government. However, Mark firmly believes that the industry can achieve its goal of self-sufficient profitability. This promises to be the tipping point; at present, the industry is confined to those countries that offer subsidies, but once this milestone is passed, Mark says, ‘the whole world will open up.’

PKF has a long-standing presence in both East Anglia and has built up strong relationships with the energy sector’s major players and funders. Great Yarmouth partner Bob Hawkins is keen to support the region’s burgeoning industries. ‘We know about the issues facing these kinds of projects, and the challenges they will face at every stage of their development,’ says Bob. ‘Our multi-disciplinary teams can deliver exactly what is needed in terms of both experience and specialist skills. We can provide the full service to companies in the sector using the PKF International network to complement tax planning and compliance advice.

We also have a dedicated corporate finance team who can source the most appropriate funding solutions, both through our relationships with the finance industry and government procurement agencies, and through our global contacts.’

The UK, and East Anglia especially, stands to reap impressive future benefits from its prudent investments in renewable energy development.

 Nick Green

To find out more about PKF’s work in the energy and renewables sector, please contact: Bob Hawkins on 01493 382503 or email bob.hawkins@uk.pkf.com.
The challenges of growth

Achieving growth in a lacklustre economy may seem like victory enough. But delight at your success can quickly turn to frustration if your business is unprepared for operating at this level. Nick Green looks at the hazards that lurk on the path to growth, and explores ways to cope with those growing pains.

Even if it’s a problem that many businesses would love to have at the moment, growth in itself can be as challenging as the pursuit of it. The best executive will find that he simply does not have enough hands, but at the same time is afraid of delegating to others who might not be up to the task. Communication breaks down, strategy goes out of the window, and morale dips even as sales are soaring (although profits, strangely, aren’t). Most frustratingly of all, you can’t get enough to feed the voracious appetite of your bigger business. When problems like these compound together, the first exuberant leap of growth can quickly peter out.

This happens because organisational growth involves more than just an increase in size. Sooner or later, there will come a tipping point after which the business can no longer continue in the same way as before. When these warning signs appear, it is an indication that your business may have outgrown its old skin, and needs to brave the next step.

Staying in control

The best approach to growth is the proactive one. That is to say, it is not enough simply to aim for increased turnover and a bigger market share, and trust that the expanding business will take care of itself. That is unmanaged growth, and leaves the organisation highly vulnerable to all the setbacks mentioned above, and more. Sustainable growth comes about when such problems are anticipated and -- as far as is practical -- prepared for in advance.

First and foremost, know what you are aiming for. Your business plan should give careful thought to growth milestones, and the strategic and operational roles that these milestones play (in the sense of, ‘Once we have achieved X, we will then be in a strong position to push for Y, which in turn will make Z possible,’ and so forth). This step-by-step approach helps to focus your attention on each stage, while reassuring you of its key role in your wider plan. Without such an approach, growth can easily take you in directions that are not part of your plan, or for which you are not yet adequately prepared. Conversely, if an unexpected opportunity does arise that seems too good to miss, it is still easier to update an existing plan than to improvise on the go.

With your growth milestones in place, you then need to ensure that you will have what you need at each stage to make them work. This means conducting detailed financial projections and models (your advisers can assist you with this) to help predict and manage future cashflows. This can help to identify potential weaknesses at any stage of your projected growth, and thus test the overall viability of your plan as a whole. You should end up with a plan underpinned with solid financial models, which in turn will be a great help in accessing the funding you need.

This brings us to the next major hurdle, which of course is funding. The issue here is not just one of quantity, but of obtaining the right kind of funding. Bank debt may be harder to obtain, but bringing in equity investors will dilute your stake in what is already a very controlling business. In fact, being too good at something may make a manager reluctant to delegate, or to misjudge the ability of their team. What is missing here is proper managerial development, whether through training of existing staff or external recruitment.

The Recruitment of managers of sufficiently high calibre can be exceptionally challenging, and few growing businesses will have the necessary skills for this in-house. Getting external help here is strongly recommended -- PKF offers a recruitment service for such senior personnel, and we can source potential candidates from our extensive network of contacts.

The human factor

Possibly the toughest challenge, however, is ensuring that you have the right people in place at the right time. The best business plan in the world is no good if there is no-one capable of executing it. Directors of entrepreneurial businesses are accustomed to doing huge amounts for themselves and working all hours to accomplish this. Beyond a certain size of business, however, this becomes impossible. It is also likely that not all of your existing management team may be ready for their expanded roles. People may have risen to their management positions through their talents in practical areas, such as sales, distribution or product development. But being able to do a job very well yourself does not necessarily make you an equally good manager. In fact, being too good at something may make a manager reluctant to delegate, or to misjudge the ability of their team. What is missing here is proper managerial development, whether through training of existing staff or external recruitment.

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The best business plan in the world is no good if there is no-one capable of executing it.

One senior post that many businesses create as they grow is that of a non-executive director (NED). Not only may entrepreneurs may lack sufficient experience of running a large-scale business, but they may also have lost some of the objectivity and free thinking that made them so successful in the first place. This can be a fatal combination for decision-making, but a NED can help you break the deadlock.

If not necessarily older than executive directors, NEDs are typically more experienced and are often cast in the role of the old hand who has seen most situations before. They can act as a sounding board for key decisions, anticipate issues that you may not, and generally provide the alternative viewpoint that can be so valuable. A good NED can be instrumental in helping you to walk the fine line between profit in the short term and growth in the long term.

The snag is that finding the right NED for you is even more of a challenge than getting top-class managers, but PKF can help here too. The most tried and tested way to recruit a NED is through professional contacts, where personal recommendations and association can tell you far more than a simple CV.

Communicate your strategy

In your drive to achieve planned, managed and sustainable growth, there is one thing you must never forget: your people. Do they know your plans as well as you think they do? People get locked into working habits that can be hard to break, and the belief that the business is still fundamentally the same as ever. If you have mapped out a clear future direction and strategy, then you cannot communicate this too much or too often. This way, your people will be able to assess which of their activities are most important, which markets are key, and how they could improve what they are doing. If your business has grown significantly but has not updated to a clear new strategy, this is something you will need to address – see our article ‘Changing for the better’ on page 3.

Growth is undoubtedly a daunting prospect, but for all its many challenges it is usually safer than attempting to stand still. By approaching growth in considered fashion, with the help of expert advisers, you can successfully manage the numerous risk factors while benefiting from your new standing as a business to be reckoned with.

Nick Green
nick.green@uk.pkf.com
020 7065 0674
If you like to keep a car for more than a couple of years, you know all about the joys of the MOT. There are some drivers who believe the best MOT providers are those who never find anything wrong and never suggest any repairs. So the motorist drives off happily in his magical car with the everlasting brake pads and the tyres that never perish, until the engine blows up. At the other end of the scale is the reputable mechanic who may find some unpleasant truths under the bonnet, but who ultimately preserves the safety and value of your vehicle.

Before you think you’ve picked up Top Gear magazine by mistake, we should mention that we are talking about audits. The question of quality is the point. An audit is not (or should not be) merely a box-ticking exercise. Although a statutory obligation for larger organisations, this does not mean it is a mere formality – rather the reverse. As with an MOT, what really matters is the quality.

So what is audit quality? Any reputable accountancy firm will talk at length about its commitment to quality, and PKF is no exception. But getting a simple explanation of what it means is not so easy. Although it is the keystone of professional auditing, there is, extraordinarily, no single agreed definition of what audit quality is, or any fixed standard against which it can be measured.

There are, of course, the International Standards on Auditing (ISAs) which by law must be adhered to in all statutory audits, but even within these standards there is scope for widely different levels of quality. It boils down to the fact that auditing is a subjective process – it is a team of professionals attempting to gauge, to the best of their ability, whether an organisation’s statements about its financial position are true, fair and accurate. But how well they manage to do this depends on a host of variables: the skill levels of individual members of the team; the range and spread of skills within the team; their knowledge and experience; their understanding of the client’s business and sector; how well the team works together; and how they are supported and developed by their firm – to name just a few.

Put to the test

Although an audit is a legal requirement for firms above a certain size, it should be about far more than ticking a box. A good audit brings clear benefits to the organisation concerned, while an inadequate one can lead to problems going unaddressed. Nick Green looks at the issue of audit quality and what it means.

With all these hard-to-quantify factors, it is no wonder that auditing is so subjective; and the measurement of audit quality similarly hard to pin down. Nevertheless, it is possible to get a fair idea of where quality is likely to be found.

The role of culture

The Financial Reporting Council (FRC) cites several elements which are often the hallmark of a high quality auditor. One important indicator is the culture of the firm in question: is quality seen to be valued and rewarded, and does it have an environment that encourages the right behaviours? For example, a firm that has a culture of rigorous internal competition may produce some exceptional individuals. But such a firm may also develop a ‘blame’ culture in which team members are unwilling to admit to uncertainty, leading to errors being made. By contrast, the best auditing team is one that has a culture of shared responsibility, where the less experienced members can always approach senior colleagues for advice, and where every individual can benefit from the combined experience of the team.

Culture also drives vital areas such as training and development, ensuring that standards are not dependent on just a few outstanding people, and that they do not slip over time. Furthermore, a firm’s culture should also emphasise quality over commercial considerations. In its eagerness to bag a prestigious client, or a large number of clients, a firm should never compromise on the quality of its delivery. The question must be asked: do we really have the resources to service a client of this size (or this number of clients) while maintaining our standards?
It is worth noting that the multi-billion dollar fraudster Bernie Madoff employed as his ‘auditors’ a firm with three employees and a single office in a shopping centre – he knew very well the potential benefits of a quality audit, and why it was the last thing he wanted. At the same time, high-profile failures by major auditing firms – some no longer with us – also warn that size and reputation alone are no guarantee of quality all the time.

‘Quality’ itself remains an elusive concept, perhaps best summarised by saying, “You know it when you see it.” It is the product of a complex chemistry arising from the audit partners themselves, the staff who support them, the development, the manner in which they approach their work, and the culture of the firm that nurtures them. The quest for quality is thus never-ending, and complacency is never an option. At PKF we always remember this.

Following an audit, the management report will highlight areas of weakness, possible improvements, cost impacts and other recommendations to help improve the way the business is run, for example by making changes to its internal controls, governance and business processes. Moving beyond the merely practical, the credibility that comes from a high-quality audit should not be underestimated. If a company is audited by a highly reputable firm (particularly if it is not even required to do so), banks, investors and other related parties, all of which must be fully documented in the audit file. Without this level of understanding, the audit will never get to the heart of the business, with the consequent risk that the auditors may overlook a key matter that should affect the financial statements.

As well as being uniquely focused, a good audit will be something of an ordeal. As with taking the car to its MOT, or going to the dentist, if the process is entirely a relaxing one then you are probably not getting your money’s worth. It must be a rigorous – if ultimately benign – interrogation of your financial position and how you present it, challenging all your estimates and assumptions and placing them under intense scrutiny. The term commonly used here is ‘professional scepticism’ – for every claim that is made about the financial position, the auditor’s default position is: “Prove it!” By ensuring that every assertion is backed up with evidence, the audit greatly reduces the risk that flaws in the financial statements, or in aspects of the business itself, will cause problems further down the line.

The project de loi de finances rectificative pour 2012 was released on 4th July and contains a number of measures which will necessarily affect individual taxpayers. As expected, areas such as wealth tax, inheritance and gift tax have been revised by the new government with a view to generating more income. French income and property gains received by non-residents of France are also targeted and may now be liable to French social surcharges known under the acronyms of CSIS, CRDS and PS and adding up to an extra 15.5%.

Wealth Tax

The new Finance Bill, which passed its Finance Committee stage largely unchanged on 16 July 2012, creates a contribution exceptionnelle in respect of calendar year 2012 and, therefore, with a retroactive impact for taxpayers whose net taxable assets are over €1.1m. This exceptional contribution will simply be calculated on the scale rates for 2011 (effectively reversing the tax cut introduced by the previous government) and will be payable by 15 November 2012. For ease of reference, below is the scale and rates that would be used to calculate the extra charge:

<table>
<thead>
<tr>
<th>Net Taxable Asset Value Rate (€)</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 800,000</td>
<td>0.00</td>
</tr>
<tr>
<td>Between 800,000 and 1,310,000</td>
<td>0.55</td>
</tr>
<tr>
<td>Between 1,310,000 and 2,570,000</td>
<td>0.75</td>
</tr>
<tr>
<td>Between 2,570,000 and 4,040,000</td>
<td>1.00</td>
</tr>
<tr>
<td>Between 4,040,000 and 7,710,000</td>
<td>1.30</td>
</tr>
<tr>
<td>Between 7,710,000 and 16,790,000</td>
<td>1.65</td>
</tr>
<tr>
<td>Above 16,790,000</td>
<td>1.90</td>
</tr>
</tbody>
</table>

Wealth tax paid to date by taxpayers, for 2012, will of course be set against the new tax. The rates from 2013 onwards will be confirmed in the Loi de Finances 2013 (expected to be issued in December 2012).

Increase in Death Duties and Gift Tax

The planned increase will be effected through the reduction of the tax-free allowance for transfers between ascendants and descendants from €159,325 to €100,000.

The French tax authorities will also be able to reassess gift tax up to 15 years in arrears, rather than 10 years currently, where lifetime gifts are made between the same parties.

Non-Resident Taxation

This proposal has already sent shock waves through the media as it will subject non-residents to the 15.5% French social surcharges on their French rental income or real estate gains. Up until now, these charges applied to residents only. Known as CSIS, CRDS and PS for Contribution Sociale Généralisée, Contribution au Remboursement de la Dette Sociale and Prélèvements Sociaux respectively, they were essentially set up to help fill the social security deficit. A portion of the CSIS applicable to income is deductible for French income tax purposes (currently 5.8%). Non-residents are unlikely to benefit from this deduction as they would have to be taxed at scale rates (barème) as opposed to the set 20% minimum rate.

Nevertheless, this is not specified in the text and it is an area that will need to be clarified. As these charges do not apply to any French benefits, they should really be treated as an extra income tax charge with no nil rate band and no allowances for dependents.

For non-residents who are currently assessed at the minimum rate of 20% on their net rental income, this would mean a capital gain arising on the sale of the property being swallowed by the French tax charge. To make matters worse, the measure is intended to apply to rental income received from 1 January 2012. As far as capital gains are concerned, the new rates would apply to gains realised from the entry into force of the law, i.e. possibly as early as the end of July 2012.

It is unclear at this stage how residents of non-dual tax treaty partner countries exposed to French income tax on a notional income basis (Art. 164c of the C0D) will be affected, if at all. Currently, the notional income attributed to these individuals is determined as three times the annual unfurnished rental value of the property. The taxable basis may be pro-rated to reflect the fact that the property might not have been available all year round if it is tenanted. The text refers to income and gains from real estate and does not seem to include ‘locus�‘ or ‘locus�‘ income, but this needs to be clarified.

New Law on Trusts

There is still no news of the long awaited decree or instruction on the filing obligations of trustees introduced by the new French tax-law on trusts passed last year. As a reminder, trusts in existence as at 31 July 2011 with French assets and/or French beneficiaries or settlors would need to be reported by the trustees. The filing deadline and tax forms required remain unconfirmed.

Finally...

In addition to the personal taxation and trust measures detailed above, there are also a number of proposals which will adversely affect French businesses.

For more information contact: french.tax@pkfci.com

France’s recent change to a left-leaning government is to be felt by some taxpayers here in Britain. UK-based owners of holiday homes in France will be hit with tax rises currently planned. Virginie Deflassieux of PKF (Channel Islands) Ltd explains the implications.
Thou shalt pay your fair share!

Tax avoidance appears to be the latest sin, with the financial affairs of celebrities, bankers and politicians hitting the headlines recently. But the issue is far from clear cut, with moral arguments holding forth as much as legal ones. Lisa Macpherson asks: is it still acceptable to be tax efficient?

In times past, the generally accepted position was that tax evasion (fraud) was illegal but tax avoidance was okay. You could undertake legal tax planning and, provided everything was fully disclosed to HMRC, that was that. However, in recent years, the government and HMRC have been taking an increasingly moralistic stance, making loud noises to the effect that everyone should pay their ‘fair share’ of taxes.

Undaunted, the Government is now taking a twin approach of preaching that it is immoral to pay only a small percentage of your income in tax while doing its best to remove that temptation by closing off as many planning opportunities as possible - moving the tax goalposts wherever it can. For example, the proposals on the capping of otherwise unlimited tax reliefs will probably seek to cap tax relief that is given for loan interest paid. However, even the Chancellor had to back track on arguing that giving money away to charity should be capped because it constituted tax avoidance; and no government wants to paint itself as the enemy of charities.

Facing with such a dilemma, it is not surprising that the government’s reaction has been GAAR. It is attempting to define the moral tipping point by introducing a general anti-abuse rule (GAAR) from April 2013.

GAAR – A new commandment?

The first significant thing to note is the language used. The Aaronson report suggests that the proposed GAAR has changed from an anti-avoidance rule to an anti-abuse rule. The idea is that it will be invoked only to counter artificial and abusive tax avoidance. But how do you decide whether or not a particular set of arrangements is abusive?

The draft GAAR says that arrangements are abusive if they ‘…cannot reasonably be regarded as a reasonable course of action, having regard to all the circumstances including –

(a) the relevant tax provisions [i.e. is this what the tax was created to do?]
(b) the substantive results of the arrangements, [i.e. did it reduce the tax payable in some way?] and
(c) any other arrangements of which the arrangements form part.’

What is ‘reasonable’ may still seem subjective, but the proposals say that all statements about the particular purpose of the tax provisions concerned made by Ministers and government spokesmen must be taken into account to decide if abuse has occurred. For example, a “gift” to charity that ends up being of much more financial benefit to the donor (through tax relief) is likely to be considered abusive.

While the GAAR may prove to be a workable backstop against the most aggressive tax avoidance schemes, it will still require HMRC to prove that deliberate tax abuse has occurred. However, the General anti-tax-avoidance principle (a principle included in the Finance Bill proposed by Michael Meacher, due to have its second reading in the Commons in September) could give HMRC the power to nullify the tax effect of schemes that it did not like and put the taxpayer in the invidious position of having to prove that the arrangements were bona fide and not for tax avoidance purposes. Guilty until proven innocent.

Buyer beware

What does this mean for the individual who simply wishes to order their affairs in the most tax-efficient way possible? It should not affect the kind of tax planning offered by PKF; as we have always steered clear of the kind of artificial arrangements that would fall within the ambit of the proposed GAAR.

At PKF we have always sought to protect our clients from the risks of aggressive tax schemes.

There have always been good reasons for this, even before the government’s latest moral crusade.

The recent fiasco over comedian Jimmy Carr’s affairs illustrates this very well. Without commenting on the rightness or wrongness of his tax arrangement, what can be said without controversy is that it did not turn out well for Carr. And it is possible to argue that this happened not through any fault of his own, but because he was simply given bad advice. The arrangement that Carr was offered, while technically legal, was a poisoned chalice for a man in his position. His advisers failed utterly to take into account his client’s particular circumstances; namely, his high profile career as a stand-up comic. A comedian’s success depends as much on their credibility as on their talent; audience sympathy may well be their greatest asset.

For a few days, Carr was in real danger of losing this asset, all because his tax advisors failed to consider the nature of their client.

That is a fundamental problem with such artificial arrangements; they tend to be one-size-fits-all (and often, they end up not fitting, or causing a lot of problems when HMRC attacks them). By contrast, expert advice that considers the particular needs, lifestyle and circumstances of the individual client, is much more likely to be beneficial in the long term – as well as being defensible from a moral as well as a legal point of view.

Future planning?

Leaving aside the somewhat vexed topic of politicians, newspapers and morals, it is important to remember that none of the proposed laws will make all tax avoidance illegal. So, for example, barring major changes in the law, it will still be permissible for individuals to claim tax relief of up to £300,000 per year from investing £1m in EIS qualifying shares that can later be sold tax free, no matter how big a gain you make (if the company is successful). Furthermore, the government will regard this as a ‘good’ use of a tax incentive, provided there are no add-on arrangements to limit the risk of the investment – even if it reduces the investor’s tax liability to a very small fraction of his or her income for that year.

At PKF we have always sought to protect our clients from the risks of aggressive tax schemes. As a result, we are experts in helping clients to use government-approved tax incentives that fall into the category of good tax planning. If you would like to discuss your tax planning options, please get in touch through your usual PKF contact. Equally, if you suspect you may have some past ‘tax sins’ that need resolving, please contact John Cassidy on 020 7065 0455 or email john.cassidy@uk.pkf.com.