

Badging tax risk

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Jolyon Maugham [has made another interesting contribution to tax debate on his blog](#), using the above title. I suspect this is in advance of the Hardman Lecture he is giving at the Institute of Chartered Accountants in England and Wales next week, which I will not, unfortunately, be able to attend.

What Jolyon is arguing is that a taxpayer should be able to identify at least twelve factors in a potential transaction recommended to them by a tax adviser that might suggest that the arrangement is inherently risky for tax purposes. I'm not going to reiterate the list here, but think that some of the comments on his blog are relevant, and in particular note what Martin Hearson has to say, which is that many of the questions are too complex for a layperson to answer, and in themselves were precisely what they asked the professional adviser they engaged to consider. This is, I think, because Jolyon has concentrated too heavily upon the nature of the transaction that is being looked at, and not about the environment in which advice is being offered.

I would add to Jolyon's list of questions in that case, with my focus being upon the tax adviser themselves, because this is the person whose behaviour should signal most tax risk to an astute taxpayer considering using their services. My additions to Jolyon's list would be, as a result, as follows:

Tax Adviser Risk. All of us have inbuilt risk assessment tools based upon our assessment of the people that we meet and how they behave. We may not all be tax experts but we do have the ability to appraise those who claim to have that status. Just as some people in life are more risk averse than others, whilst some positively relish taking an aggressive stance on most issues, the same is also true of tax advisers. The following questions are an appropriate part of any tax risk appraisal in that case.

13. Is the tax adviser you are talking to a member of a recognised professional body? In other words, are they a barrister, a solicitor, a chartered or chartered certified accountant or a member of the Chartered Institute of Tax? If not there may well be considerably increased risk involved in taking advice from them, including the fact that they may not be insured to provide that advice in the first place so that you will

have no effective recourse against them if anything goes wrong.

14. Is the tax adviser using aggressive language with regard to tax, and is their general position with regard to HM Revenue & Customs one of apparent hostility? If so you need to have doubt as to whether they are being truly objective with regard to the advice they provide. A tax adviser can, and should, have an opinion on various taxation issues, but if sentiment clouds their judgement they may not be appraising tax risk objectively, and that can have an impact on your own situation.

15. Does the tax adviser appear organised, tidy, methodical and diligent with all their paperwork? This is an important trait in a tax adviser, because getting everything documented correctly is fundamental to getting anyone's tax affairs right. If they cannot apparently achieve this themselves, there is little chance that they will deliver for you, and your tax risk will be increased as a result.

16. It may be hard to appraise a person's opinion on complex tax advice, and on complex tax avoidance schemes, but in that case ask them questions about something that is quite straightforward to do with your affairs, such as how and when you might owe tax, or if a particular type of income is taxable, or what you should do with regard to the children's tax affairs (if you have any). If they can provide you with straightforward, unambiguous advice in plain language that you can easily comprehend then you have some basis for believing that when they talk about more complex issues they are at least trying to do their best to explain it in terms that you might understand. If you cannot understand their simple explanations, it is best to steer clear of their more complex ones.

17. Do you trust this person? Apply the 'would you buy a second-hand car from this person?' test. If you wouldn't buy a car from them definitely do not buy tax advice from.

These are questions I think anyone could understand.