

# Named tax avoidance schemes, promoters, enablers and suppliers – evidence

Under Section 86 of Finance Act 2022 (FA 2022), HMRC can publish any information, which includes documents, that HMRC considers appropriate to inform taxpayers about the risks associated with a tax avoidance scheme and/or to protect the public revenue.

HMRC is publishing documents under FA 2022. This will include, but is not limited to, marketing and communication materials such as emails, letters and newsletters that promoters and suppliers of tax avoidance schemes often use to explain and justify how a scheme is claimed to work.

Further information regarding what HMRC may publish can be found on GOV.UK.

# Evidence – published 3 May 2023:

# The 'NOVA Declaration', Buckingham Wealth Ltd

We have published a document that shows Buckingham Wealth Ltd and Minerva Services Ltd (the 'Promoters') encouraging Umbrella Remuneration Trust (URT) users to sign a declaration that claims the URT to which contributions were made is void, and HMRC must close its enquiries as they are invalid, and instead make a 'replacement" contribution to a newly founded 'Nova' Trust.

HMRC considers this to be an acknowledgement by the Promoters that the URT arrangements do not work. The enquiries remain valid and HMRC considers that the Nova Trust arrangements are a continuation of the arrangements used by the URT, and therefore subject to tax and National Insurance contributions (NICs). HMRC would encourage all users of the URT not to enter into Nova without obtaining independent advice.

Note: In the newsletter, 'RT' stands for remuneration trust.

# 1 ORCHID GARDEN STREET, BELMOPAN, BELIZE

## THE NOVA DECLARATION and NOVA TRUST

HMRC enquiries into RT's have become a volumised, but self-defeating nuisance:

As BW noted in a News Release back in 2020 the more of the enquiries HMRC begin, the less useful they are. HMRC cannot bring 3,000 or more cases to the Tribunal. Not within the current century. The current rate is HMRC just about managing 2 Tribunal cases a year, on RTs. Each one stands on its own facts. Because, unlike the High Court, the Tribunal does not work on a precedent basis. As everyone has seen with the Tribunal cases in the latest batch: *Marlborough*, *Strategic Branding*, *CIA*. No case is consistent in reasoning or application of tax law, with another. HMRC just throws opportunistic, completely self-contradictory arguments at the Tribunal, and sees if any actually work: in whole or part.

Taxpayer companies and sole traders have understandably become fed up with the waste of time and resources involved in these HMRC enquiries. Of course, an enquiry does not produce a tax bill in itself. Only an assessment does that. HMRC have themselves become disillusioned with their own enquiry strategy. As we have seen from the recent HMRC Settlement Options paper, they are now using the nuisance value of enquiries to try and generate settlement agreements.

#### So, now it's time to change the RT landscape.

The HMRC Cheat and Its Consequences: Those Tribunal cases have now provided the very means by which to change the landscape. HMRC has got the Tribunal to agree to treat the Trust monies as if the Trust had operated in certain ways. Ways which are expressly prohibited by the Trust Deed. Yes, it's a total cheat by HMRC. But now HMRC has to pay the price.

- Trust law operates under the basic rule of *The 3 Certainties*. This rule is so old and so basic, that you can read about in in Wikipedia: <a href="https://en.wikipedia.org/wiki/Three\_certainties">https://en.wikipedia.org/wiki/Three\_certainties</a>
- How do you establish whether the 3 certainties are met? You refer to the RT Deed. The RT Deed is what the Trustees and the Founder agreed to.
- But now the Tribunal has repeatedly said that the standard RT Deeds don't work according to their express terms; excluded people are not really excluded; excluded benefits are not really excluded. And so on.
- So by definition *The 3 Certainties* were not met. The Founder and Trustee did not agree upon those written terns of the trust.

### Failure of the 3 Certainties - Legal Results

The original Trust is void. It never happened. It was never created.

No property in any attempted contributions money ever passed to the Trust.

Property in that money stayed with the attempted contributor.

The HMRC enquiries are into past contributions and uses of Trust monies: that never in law happened.

#### **The Nova Declaration**

provides documentary legal proof of these Legal Results. Proof that binds HMRC and any Tribunal.

It works like this:

- Taxpayer company / sole trader adds up the total of previous attempted RT contributions: £RTX
- Taxpayer company / sole trader pays Minerva a fee of 1% of £RTX
- Taxpayer company / sole trader receives the Nova Declaration Pack.
- (1) Taxpayer company / sole trader signs the Nova Declaration Pack documents.
- (2) These can then be used to terminate or otherwise forestall the HMRC Enquiry.
- (3) Then decide whether to make a valid 2022 contribution to the Nova Trust.

## **The Nova Trust**

The Nova Trust: Using exactly the "arrangement" arguments run by HMRC at the Tribunal, the *Nova Trust Deed* declares that the Nova Trust cannot be party to any such "arrangements". By definition, those HMRC arguments and Tribunal judgments cannot apply to the Nova Trust.

A company may "re-contribute" to the Nova Trust (i) the full original amount; or (ii) decide simply to pay the corporation tax, and contribute the net amount. In either event, on ordinary accounting principles, the contribution is "for" the year of the void contribution. So, the company accounts don't need to be restated in relation to that contribution amount.

All documentation and administration, plus BW help with HMRC, is provided within the Nova 1% Fee.

If HMRC wants to persist in pointless enquiry, then HMRC has to start all over again. With a new enquiry for that old accounting period. And so on for each relevant Nova contribution accounting period.

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With the NOVA DECLARATION and NOVA TRUST.



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# THE NOVA DECLARATION and NOVA TRUST: Q&A

#### HEALING THE PAST

Q1: Does Nova apply only if taxpayer company/individual has had an HMRC Enquiry?

A1: No. Nova applies to everyone, because the scope of the HMRC arguments and (strange) Tribunal decisions apply to all 2010 generation RT Deeds.

Q2: Does this mean that any taxpayer company/individual is bound to lose at the Tribunal?

A2: Not at all. But why waste time, money and stress of continuing HMRC Enquiries, when Nova now makes all that irrelevant.

Q3: So, we do Nova: and we can forget about HMRC Enquiries into any previous years?

A3: Yes. There will inevitably be a staged approach: (1) HMRC told that RT is void, therefore no contributions, therefore no valid Enquiry. Taxpayer no longer engages with invalid Enquiry (2) HMRC scratches head, then buries it in the sand. (3A) Representative cases are taken through arbitral process in BVI (no involvement of HMRC). Arbitral award and English High Court "stamping judgment" follow. Taking 3 to 6 months. (3B) HMRC, and any Tribunal, now bound by Arbitral and High Court judgments. (4) HMRC are compelled by law to close their historic Enquiries.

Q4: Who deals with all this?

A4: The usual team.

Q5: So, we can forget about the HMRC Enquiries and end the time, cost and stress?

A5: Yes. Just sign the Nova Declaration.

Q6: What is the Nova Declaration?

A6: A neat 2 page document. Your Introducer can provide a copy.

Q7: What does it cost?

A7: Minerva Nova Fee is 1% of historic contributions. (The Company will have a record of those, as will the Introducer.)

Q8: Does the Nova Fee pay for the work at Q3?

A8: Yes

Q9: When is the Nova Fee payable?

A9: Upon signature of the Nova Declaration.

Q10: Where do I pay the Nova Fee?

A11: Your Introducer will provide that information.

#### PROTECTING THE PRESENT

Q12: So now all the historic contributions are back in the Founder Company?

A12: Yes. But let's have clarity on this. The Company now has *beneficial ownership* of that money. It does not matter who has possession of that money, or where in the world (in what bank account) it is.

Q13: So the value of those historic contributions would, if nothing else happens, go back on the Company's balance sheet for 2022?

A13: No. The RT Deed is void. So the contributions never happened. For example: a contribution supposedly made in 2012, was never made. So that void contribution money would show in the Company's balance sheet for 2012.

Q14: And the same for the P&L?

A14: Yes. If nothing else is done, the P&L for 2012 would now show no expense item for the void contribution in that year.

Q15: So, now the Company signs the Nova RT Deed 2022?

A15: Yes.

Q16: The Company then contributes an amount equal to the (for example) 2012 void contribution?

A16: Yes

Q17: It says above "If nothing else is done, the P&L for 2012 would now show no expense item for the void contribution in that year." So even though the 2022 contribution is made under the Nova RT Deed 2022, the accounts show an expense for 2012?

A17: Yes. Substance over form. The Company earned that income in 2012, and tried to make an expenditure out of that income in 2012. That attempt failed. Now that has been put right. So it's a 2012 expense.

Q18: Won't HMRC argue about that?

A18: Very likely. What a lovely argument to have, dragging on years, and ultimately pointlessly. More importantly, to get to have that argument, HMRC must first accept that the original contribution was void. HMRC must first accept the effectiveness of Nova.

Q19: Can the Company just put the (example) 2012 Contribution in, and not claim the CT deduction for that year? So as to avoid another round of HMRC correspondence argument?

A19: Yes, if the Company prefers to do that.

Q20: What documentation is necessary to make the re-contribution?

A21: A Nova board written resolution. Your Introducer will have templates for tailoring to individual case circumstances.

Q21: And all this is included in the 1% Nova Fee?

A21: Yes

Q22: What about PMC's.

A22: See A12. (1) Immediately upon Nova Declaration signing: the PMC now holds its money/assets upon "constructive trust" for the Company. (2) Upon Nova RT Deed 2022 signing and Re-Contribution, the PMC now holds its money/assets upon "constructive trust" for the trustee under the 2022 Trust.

Q23: Does PMC need to sign a new Fiduciary Agreement with the trustee under the 2022 Trust.

A23: Can do. Does not legally need to.

Q24: What about borrowers or fiduciary receipts persons?

A24: Same principle applies as in A22 and A23.

Q25: So basically, all the stuff "under" the void RT - PMC, loans. Fid receipts - just get left alone?

A25: Yes. No new paperwork required. Although do new documentation if you want to.

Q26: What about Trustees fees since, say, 2012?

A26: No change. The Trustee provided services and so would be entitled to a *quantum meruit* for trying to act as trustee. The same \$ trustees go forward from 2022, just with a different trust deed.

Q27: What about Umbrella Trusts?

A27: It works just the same. Lots of Company contributors. One failed Umbrella Trust. New **Nova** Umbrella Trust 2022 established. Companies then follow Q/A 16-26 above. Each Company that was an Adhereing Company needs to sign the **Nova Umbrella Declaration**.

Q28: Can **Nova** be done straight away? A28: Yes. Please contact your Introducer

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