Why a Fintech loyalty card scheme amounts to tax avoidance

Synopsis: Information about a business-to-business (BTB) loyalty card, which offers 80% cashback but hides a flawed tax avoidance scheme that could cost clients dearly.

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Accountingweb recently published a warning about the following tax avoidance scheme...

Fintech company B2B Tradecard has run a successful loyalty card business for eight years, which lists a reduction in corporation tax as a benefit, but the hidden saving is in the form of income tax and national insurance contributions (NIC).

Only purchases of advertising on the B2B Tradecard website qualify for the 80% cash back. The SME company spends say £10,000 on advertising and in return B2B Tradecard gives the SME a visa card pre-loaded with £8,000. The scheme is advertised as "releasing up to 10% of the company turnover" for a net cost to the company of just 1%.

The SME company has spent £10,000 on advertising and has received £8,000 back. But it claims a tax deduction for a valid business expense of £10,000 not the net value of £2,000.

HMRC could reasonably argue that the £10,000 cost is not deductible as it is not a payment for genuine advertising. Indeed the net value of £2,000 could be viewed as a non-deductible payment for a tax avoidance scheme (please see Northwood v HMRC TC08778).

How does that transaction save income tax and NICs?

On its own the transaction **would not save** income tax or NICs, but the avoidance trick is who benefits from the £8,000 loaded on the visa card. The understanding is that the SME company passes the pre-loaded visa card on to its directors to spend as they wish, except that cash withdrawals from that card are not permitted.

Of course, giving a director a card holding £8,000 to spend as they wish should be taxed as one of the following...

1. Earnings.
2. Benefit in kind.
3. Disguised remuneration.

Option 1) is most likely and the company should apply PAYE to the value deducting tax and both employers' and employee's NIC.

Option 3) could see the employee (the director) bearing the tax cost under ITEPA 2003, s 222 if the company has not deducted the PAYE and NIC as required.

However, part of the attractiveness of this scheme is that loyalty card hides the tax avoidance mechanism which makes it almost invisible in the company's accounts. The marketing of the scheme makes it clear that one of the benefits of using the loyalty card is to "release up to 10% of the company turnover for a net cost to the company of just 1%."

Presumably, the promoters of the scheme hope that HMRC will not notice this "benefit".

HMRC treats airmiles and other incidental credit card points as a non-taxable benefit (please see EIM21618), if those points are acquired in the same way as would be for any other member of the general public. But those benefits are typically worth around 1% of the purchase price and can only be used in a very limited way. Here the benefit is 80% of the purchase price and it is almost as good as cash.

How long will HMRC take to close this scheme down?

HMRC has already listed a similar loyalty points scheme as Spotlight 37 back in 2017, and it is only a matter of time before the B2B TradeCard scheme is listed too.

It is important to try to persuade clients against entering into such schemes. If a client has used this scheme, they need to take specialist advice as to how to make an unprompted disclosure to HMRC.

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