

What's your partner up to?

GERAINT JONES QC AND MARC GLOVER EXPLAIN HOW ACCOUNTANTS NEED TO BE WARY ABOUT THEIR PARTNER'S ACTIVITIES IN ORDER TO AVOID NEGLIGENCE CLAIMS

The principle that a partner can be liable for the wrongful acts or omissions of a fellow partner is widely known. What is less understood is the extent to which that liability can extend to activities carried out by a fellow partner which are both unknown to the partnership and fraudulent.

The recent decision in *Goldberg & Oths v Foster Squires* brings into sharp relief the risks of partnership and raises warnings that any accountant would be well advised to heed.

In *Goldberg* the court found that two accountants (M and B) in partnership with a third accountant (X) were liable in negligence and deceit for losses suffered as the result of negligent investment advice provided by X. That advice was given in furtherance to a multi-million pound (Ponzi) fraud committed by X against third parties, including clients of the firm.

A principal part of M and Bs

defence was that (i) X was not authorised to provide investment advice by the Financial Service Authority and the firm itself, (ii) the partnership did not give investment advice of the type provided by X, and (iii) a reasonable person would not have believed that the advice given by X was being given by him as an accountant. As such, the firm should not be liable for the wrongful acts of X who was engaged on a frolic of his own.

In *Goldberg* there were particular facts that assisted the claimants. The letter paper of the firm had the printed words "Regulated by the FSA in the conduct of investment business". It did not seek to identify those partners who conducted such business. Further, the website of the firm included statements that it provided "investment advice", again without qualification. However, of general importance were the court's findings that (i) it is in the ordinary



course of the business of an accountant to express a view as to the risks associated with an investment (it matters not whether for regulatory purposes they should or should not be giving such advice), and (ii) where no limitation on a partner's authority to give investment advice is drawn to the attention of any actual or potential client, it is not unreasonable for such a person to proceed on the basis that the partner is able to give such advice.

The lessons provided by the decision in *Goldberg* are clear. The first, and no doubt widely practised, is to ensure that checks and balances are in place to prevent an accountancy practice's good

reputation being utilised in a fraud.

However, liability may arise not only on the basis that advice was given fraudulently, but simply negligently. Therefore, the particular guidance that follows *Goldberg* is (i) If an accountancy firm provides investment advice, it should take steps to delineate which partners or employees are authorised to give such advice and to make that known to its clients, and (ii) if a firm does not provide investment advice as part of its ordinary course of business, it should make that position clear to its clients and the public, if it hopes to avoid liability for a maverick or over enthusiastic colleague providing such advice.

A failure to heed such warnings may lead to a partner being liable for advice being provided by a fellow partner, which the innocent partner was not aware was being proffered and was understood, at least internally, not being given.

Further, while limited liability partnerships may reduce a personal liability, hard won professional reputations (and increased insurance premiums) remain at risk. *Geraint Jones QC & Marc Glover of Tanfield Chambers are counsel for the claimants in Goldberg & Oths v Foster Squires*



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FROM THE BLOGS

audit remains shrouded in mystery... Alexander the berated...

The Financial Reporting Council appears to have conceded that measures introduced three years ago to improve the audit market have had little or no effect.

Not only that, but corporate governance measures introduced to make companies more transparent about their auditors seem to have failed dismally too. Few of the disclosures envisaged have been made and, where companies have revealed something, it is usually only in the most superficial way.

For example, and perhaps most significantly, we know precious little more on whether the banks are forcing companies to employ Big Four auditors. The audit world is full of stories about knock backs

because of these apparent "contractual obligations". And yet, somehow the FRC cannot find out if it actually happens.

FRC research reveals that most companies are staying silent on the issue. They are simply not saying. This could be for any number of reasons. It could be that they don't want us to know that the banks are forcing them into a corner over audit, or it could be they were simply distracted by the battle to survive the recession and really couldn't be bothered with new bits of corporate governance.

Either way, as well intentioned as the measures were back in 2007, the FRC report reveals - what everyone outside the Big Four already knew - they weren't

⚡ [Companies] don't want us to know that the banks are forcing them into a corner over audit ⚡

working. Non-Big Four firms have, to some extent, lost interest in the issue. Their fight to keep doing business during the crisis was perhaps all consuming and left little room for continued lobbying.

The FRC has now given itself six months to come up with something fresh. This will be interesting given that the new leadership appears

sceptical about whether improving competition to the Big Four is even an issue. We shall see what happens. **Gavin Hinks, Insider.accountancyage.com**

Poor old Danny Alexander. The papers are full of stories of how he "avoided CGT" on the disposal of a second home. *The Telegraph* accuses him of taking advantage of a "loophole". But a moment's examination suggests this is a non-story. Did he seek advice about how to pay less CGT than would otherwise have been the case? No. Did he undertake some pre-packaged abusive avoidance scheme? No. Did he actually do anything other than sell his property? No.

After the headlines, most of the

media stories then include a key fact - that the new financial secretary to the Treasury was legally able to take advantage of rules which exempt people from paying CGT for three years on their homes after buying a second property, on the condition that it used to be their main residence.

In fact, these rules are set out as part of the private residence relief from CGT and they apply in the same way to everyone who disposes of their main residence within three years of moving out.

So, on what possible definition of the concept of tax avoidance can it be said that Danny Alexander avoided CGT?

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