FINANCIAL TIMES

November 1, 2013 7:23 pm

Borrowers warned over convoluted tax planning

By Tanya Powley

Wealthy homeowners who use complex tax avoidance planning could find it difficult to get a mortgage if they cannot clearly demonstrate their income to the lender.

Mortgage brokers say they are seeing more instances where borrowers have struggled to get a loan because of the tax structures they have in place.

"Increasingly we are seeing clients with more and more elaborate tax structures where they are distancing themselves from their assets – to the point where they can't actually demonstrate their income any more," said Jonathan Harris of mortgage broker Anderson Harris.

The use of aggressive tax planning by the wealthy has come under scrutiny over the past year thanks to a string of high-profile scandals. The likes of comedian Jimmy Carr and corporates such as Starbucks have recently found themselves at the centre of the tax avoidance storm.

Mr Harris says using tax planning strategies to "hide" assets can cause a problem as it is harder to prove the borrower's income. For example, Anderson Harris has seen a lot of clients who have set up nominee companies to hold their assets. Another problematic issue is bearer shares, which do not require the identity of the holder to be made public. "It is all perfectly legitimate but it presents a real funding challenge," said Mr Harris.

Nigel Bedford of Largemortgageloans.com recently had a self-employed property and development consultant who failed to get a mortgage because of his complex income structure. The borrower is engaged on a contract basis by his clients, usually two or three at a time. The clients pay his limited company, but an offshore company invoices the company for the full amount so the limited company shows zero profit. The offshore company pays him a small salary, but directs the vast bulk of his earnings into a Jersey trust from which he draws funds when he wants. These are not subject to UK income tax.

According to Mr Bedford, this failed with banks on three counts: the very low UK taxable income, the complexity of all the layers, and the fact that banks regarded this structure as very aggressive tax planning, which carried reputational risk.

"Whilst these structures are tried and tested and certainly not illegal in any way, banks feel they push the boundaries between tax avoidance and tax evasion," explained Mr Bedford.

Mr Harris believes it is not just the super rich who are falling into this category. "Too many overzealous accountants and tax advisers, with the sole objective of saving their clients tax, means the professional self-employed, such as surveyors and architects, are also struggling to prove their income," he said.

High-street banks are typically more cautious about these arrangements than private banks, who are generally more comfortable with schemes such as employee benefit trusts and offshore income overall.

"High street lenders want to keep things simple and avoid any possible controversy, now or later," said Mr Bedford.

However, according to lawyers and accountants, people's attitude to risk has changed dramatically over the past year. Many are now moving away from tax avoidance strategies because of a concern about reputational risk and future HMRC investigations.

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