In the City

Mitchell's web

IT should have come as no surprise that international development secretary Andrew Mitchell is a fan of legal tax avoidance schemes. He is after all very rich, the scion of a Tory grandee family and a former City investment banker, so very much part of the tax scheme demographic.

As for Tory donor Jamie Ritblat, his property company Delancey is controlled from a favoured tax haven – the British Virgin Islands – and starred in that old *Eye* favourite, the Mapeley scandal, whereby the taxman did an offshore sale and leaseback on HM Revenue and Customs offices.

Between 2003 and 2007 Mitchell invested in the DV3 and DV4 property funds run by Delancey. These were based in the BVI in order to avoid or minimise UK tax on capital gains from the sale of office and shopping centre developments. DV3 also – so far successfully – sought to avoid £2.64m in stamp duty on its 2006 purchase for £65m of the Dickins & Jones site in London's Regent Street – sold in 2010 for £225m. HMRC lost a first appeal against the scheme, which it described as "aggressive tax avoidance" – no doubt the very sort that Mitchell's colleague George Osborne described in his Budget speech as "morally repugnant". It would be surprising if the same scheme had not been used on other DV3 or DV4 deals. Both companies moved into hotels – such as the development of the old Brooklands racetrack – while DV4 also invested in private schools.

Mitchell also invested in 2006 in a film tax scheme promoted by Ingenious Media. Much favoured by footballers, the particular scheme in which Mitchell invested also attracted the chancellor's uncle, James Osborne. HMRC has been investigating Ingenious Media and its film schemes for seven years on the suspected basis that they were more about tax relief than Hollywood and as such did not work. Ingenious denies such claims and backed some box-office winners.

The film scheme investment by Mitchell, which could provide tax relief from any losses the scheme generated, could in turn have been linked to a tax liability arising from the 2001 sale of his shares in the Mitchell family's El Vino wine bar and shippers business. This liability had been deferred by another more traditional tax deferral tactic – swapping shares for loan notes.

Just to complete the picture, Mitchell, like other members of the El Vino family, was a participant in family trusts which can have tax as well as other benefits for those wishing to preserve family fortunes.

So far, so Tory. But what is interesting about DV3 – and possibly embarrassing for Mitchell and the new transparent Tories – are the lengths to which Delancey and Ritblat went to preserve secrecy about its finances, operations and investors. DV3 and DV4 were run by Delancey, not the investors like Mitchell.

One of the early DV3 investments was in Bury St Edmunds – redevelopment of the old cattle market site into the £100m ARC shopping centre. When a local campaigner sought details in 2005 about DV3's role under the freedom of information act, the council – under intense pressure from Delancey and its lawyers – withheld information about DV3. The battle ended up with the information commissioner, who ruled against the council and insisted that the information be provided. But all that took until 2009.

In his ruling the information commissioner stated: "Delancey advised the council that the requested information was provided to the council in the strictest of confidence and should not under any circumstances be disclosed in response to the complainant's request… the three letters contain key commercially sensitive information about DV3 Ltd and its financial position. It argued that the requested information also contains commercially sensitive information about the wider Delancey Group… competing businesses may seek to poach DV3's investor base which, it highlighted, consists of high-net-worth individuals and corporations."

It was "stressed that as DV3 Ltd is an offshore subsidiary, the shareholder register is not publicly available… this reason in itself was sufficient to demonstrate that the company is entitled to expect that the confidential nature of its business and financial data should be respected. It also stated that investors in the company invest on the understanding that the investment is private and, particularly in cases involving some element of controversy, disclosure of their involvement may serve to make investors refuse to invest any further or require the company not to pursue riskier investments. As riskier investments often carry a likelihood of higher investment returns, this could in turn prejudice the returns investors can expect and also Delancey's earnings." No doubt investor Mitchell would agree with such sentiments.

When the information was finally published, it included a 2005 letter from Ritblat to the council revealing that DV3 had raised more than £300m in equity from investors including hedge fund pioneer George Soros, Royal Bank of Scotland, insurers Clerical Medical, the Pearson and Australian Post Office pension funds, plus "various other institutional and private investors". DV3 had £2bn available for property deals.

By the time the property bubble burst in 2008, DV3's portfolio was valued at more than £3bn. It included not just the Dickins and Jones site but also the Rolls Building, home of the new commercial court, as well as the nearby Mid City Place office block and several shopping centre developments around Britain.

DV3 was established with a ten-year life. Mitchell stated last week that the company was "now in liquidation" and that he "pays full UK tax on any resulting profits". Quite right, too. But that was never the point of DV3 or DV4, on which Mitchell says he faces a loss (his and Ritblat's timing was badly wrong, DV4 having been launched near the market peak in 2007).

For UK tax-resident private investors like Mitchell, the name of the game was to defer any tax until DV3 had boosted profits by its ability to take advantage of offshore status to avoid corporation tax on capital gains. Also, after seven years any profits made by UK private investors could be taxed at the lower capital gains tax rate of 18 percent or 28 percent, instead of at the 50 percent income tax rate. Worthwhile to a likely top-rate taxpayer like Mitchell.

Much tax avoidance is about deferral rather than absolute avoidance. But deferral means avoiding a known imminent tax liability for one year until a date possibly far in the future, by which time it may not be payable due to other allowances. The film schemes offered deferral or writing-off of current tax bills for up to 15 years by offsetting the investment in a vehicle such as Ingenious Film Partners 2, in which Mitchell invested. As partnerships, film schemes crucially include an offsetable share of the front-end losses on any film represented by the bank borrowings and other production costs.

Mitchell became a partner in IFP2 on 13 January 2006. By subscribing then, Mitchell would have been able to claim the tax relief of his share of the film partnership's losses – £756m – for the tax year 2005-06.

In 2001 there had been a split in the Mitchell family – the faction headed by Sir David Mitchell, Andrew's father, sold out to the faction headed by his uncle, Christopher Mitchell. At the time of the sale the two brothers held most of the shares as trustees for family members, ie in trusts. The takeover was achieved by a new El Vino company taking over the original one.

Andrew Mitchell and family swapped their shares in old EV for loan notes in new EV. The loan notes (total value almost £3.5m) could be repaid at any time over the next five years. Taking loan notes could have deferred any capital gains tax until the loan notes were repaid. Andrew

"Quick, lose the suit, you look like a banker…"

Mitchell held 2,840 of the 30,000 old EV shares in his own name but could have been a beneficiary of the trusts of which his father and uncle were trustees who owned 20,935 shares.

The El Vino Holdings loan notes were due for repayment by July 2006. There was £854,000 in notes outstanding in February 2005, which had been reduced to £495,000 by February 2006. All the notes had been repaid by February 2007. These could have included Mitchell's share. No capital gains charge would have arisen on the swap of the notes for the original El Vino Company shares; that charge would have been crystallised when the notes were repaid. So any tax liability Mitchell faced on the notes could have been offset by the IFP losses, as could any other gains.

If the taxman succeeds in a challenge to IFP2 and the associated tax relief, Mitchell and other investors would have to pay the original tax due plus interest, but probably not penalties. Mitchell now says he resigned from IFP2 in 2010 – the year the coalition government began.

Back in 2010, when the Mitchell revelations about DV3 and DV4 first surfaced on Channel 4's *Dispatches*, he was more reticent about his offshore investments: he merely pointed to the fact that the investments had been disclosed in his register of MPs' interests. Not that the entry indicated these were offshore companies – merely "an unquoted property investment vehicle". Mitchell, like other ministers, transferred his assets into a blind trust after the election.

But of course now we're all in it together, so naturally "Andrew Mitchell believes everyone should always pay their tax". But that does not mean tax should not be deferred or reduced for those with the cash to pay for expert advice and invest five or six-figures in clever, if legal, tax schemes.

Fraud focus

IT'S sometimes difficult to know whether the Serious Farce Office has developed a death wish or simply a desire to expedite the rapid end wished by its Whitehall and Westminster enemies among the Home Office and government lawyers.

First there was the legally flawed Tchenguiz warrants fiasco in December. Then came the pitiful plea bargain accepted from Terry Lindon and the collapse of the case against a second defendant in the Invaro fraud case in February.

Now we have another pathetic plea bargain at the end of an eight-year corruption inquiry involving Ministry of Defence contracts worth £16m. All four defendants pleaded guilty last month at Belfast crown court. Last week contractor James McGeown and civil servants William Marks and John Symington all received suspended prison sentences, while Marks's sister received a conditional discharge. McGeown faces a confiscation order for £1m, while Symington and Marks may yet have to repay some of the bribes they received from McGeown.

But what deterrent are such sentences? And how do they justify the time and cost of an investigation since 2004 and a trial process that began in 2010? No wonder judges have no confidence in the deferred prosecution plea bargains the government is determined to introduce as a future weapon for the SFO and other prosecutors.

No wonder, too, that defence lawyers rub their hands and tell clients, however guilty, to sit tight and say nothing until the trial is about to begin.