

Disguised remuneration: call for evidence

Employment Tax

29 October 2020

Despite the persistent efforts of successive governments to stamp them out, disguised remuneration schemes continue to operate. LITRG's response focuses on the problem of agency workers that work via umbrella companies getting caught up in disguised remuneration schemes.

In our response, we state LITRG's view that the disguised remuneration problem is driven by PAYE avoidance behaviour on the part of the umbrella companies, rather than the workers themselves having any kind of avoidance motive. This view is based on our understanding of the temporary labour market and emails we have received from workers, some of which we have shared with HMRC.

Based on our research into the types of schemes currently in circulation, we also query whether the arrangements are more akin to fraud than technical tax avoidance. Our submission states that it is vital that HMRC are clear on exactly what problem(s) they are trying to tackle; otherwise, their actions will fail to be effective.

We point out that the language used in the call for evidence demonstrates how the disguised remuneration problem is often misunderstood. It talks about taxpayers who should be deterred from entering schemes. The reality, as far as those LITRG represent are concerned, is that this is about workers who simply want a job – with no or little understanding that they are entering a tax scheme. This possibility is not addressed in the consultation document.

Our response suggests that HMRC need to focus resources on tackling the schemes at umbrella company level; for example, by working with the Advertising Standards Authority to intervene early when they see false advertising or marketing, or by demanding PAYE security deposits, which could help to stop potentially problematic providers entering the industry. On the basis that the way the insolvency regime works seems to allow the somewhat cavalier behaviour we have seen from certain umbrellas with regard to their PAYE obligations, we also urge HMRC to make use of their new 'joint and several liability' powers.

We highlight that once HMRC are clear on exactly what it is they need to tackle, it may be that there are other existing tools available to use. Or it may be that they need new powers. Ultimately, however, HMRC's ability to successfully tackle non-compliant umbrellas requires adequate resources, as well as a clear plan for action.

Overall, we think it would be hugely helpful if there was someone senior in HMRC with an overall responsibility for umbrella companies in general, under whom developing an action plan could sit. This could include the formation of some kind of trusted, expert stakeholder group to help challenge and guide HMRC in this area.

In our submission, we say that this expert group should include compliant umbrellas as many are potentially harmed by poor practices that undercut them. There is also a clear and unequivocal need for information sharing and working together between the employment law enforcement bodies and HMRC. Those umbrellas intent on escaping their PAYE obligations via the use of disguised remuneration schemes for some workers are also likely to be subjecting different workers to other violations.

Our full response can be found at: www.litrg.org.uk/ref394a.