

Clamping down on promoters of tax avoidance - a consultation: CIOT and LITRG responses

Management of taxes

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The CIOT and LITRG have recently responded to HMRC's consultation document 'Clamping down on promoters of tax avoidance'.

The consultation (see tinyurl.com/484a9ett) was seeking views on further proposals to tackle promoters of tax avoidance schemes which complement proposals consulted on in summer 2020 that are now in Finance Act 2021. The latest proposals would give HMRC the ability to intervene earlier than they can now to disrupt promoters' activities, ringfence assets to protect HMRC's ability to collect penalties, and apply strong sanctions for promoting or enabling tax avoidance. HMRC are also proposing to provide more information on the promoters and their schemes to help support taxpayers to steer clear of avoidance schemes and to exit them more quickly.

In its response, the CIOT says that the government is right to be taking a robust approach to those who continue to devise, promote or sell tax avoidance schemes. There should be no place for such people and their schemes in the tax services market.

We welcome the fact that the consultation document recognises that most tax advisers adhere to high professional standards and provide sound advice and support to taxpayers, and that the extensions being proposed to HMRC's powers are not aimed at advisers adhering to high professional standards but are aimed at promoters who seek to exploit every opportunity to profit personally by sidestepping the rules. Indeed, many of these promoters - perhaps a majority - are not tax advisers or tax agents at all. We would like to see a clear statement from the

Financial Secretary to the Treasury to this effect.

HMRC's figures indicate that around 20 promoters have left the tax avoidance market since 2014, so the introduction of various measures to tackle promoters since then is having some success. However, there are around 20 to 30 active promoters still operating. We have yet to see any meaningful assessment of how much use HMRC are making of their existing powers; how many penalties under the various anti-avoidance regimes have been successfully charged; and how many Promoters of Tax Avoidance (POTAS) 'stop', 'conduct' and 'monitoring' notices have been issued, etc. It is therefore difficult for us to gain an understanding of how effective those powers are in reducing avoidance and tackling the 20 to 30 promoters still in the market. We do wonder how successful more legislative and other measures will be in tackling this 'hard core' of promoters who clearly do not wish to play by the rules.

We are pleased that HMRC are exploring more ways in which they can support taxpayers to identify and steer clear of exit tax avoidance. We have been calling for wider communications around the risks of avoidance and the types of schemes being promoted. However, we have concerns that the measures proposed will not be enough to address all the issues we are seeing today in the current tax avoidance market, in particular the proliferation of disguised remuneration schemes. HMRC statistics show that contractor loan and disguised remuneration avoidance arrangements were the principal type of avoidance in existence by 2018/19 (98% of the market compared to 60% in 2013/14).

There is an implicit assumption in the consultation document that those buying schemes - including disguised remuneration schemes - are 'in the market for tax avoidance'. Whilst there are undoubtedly still people who have an appetite to use tax avoidance schemes and who make an active decision to use one, we do not believe this is the 'norm' any longer and we are concerned that the consultation misunderstands the current position and consequently that the measures will fail to be effective. There appears to be a strong case for decoupling the disguised remuneration type schemes from HMRC's other efforts and presumptions in tackling tax avoidance.

LITRG's submission focused on this part of the consultation and provided strong support for such a 'decoupling', saying that the arrangements they see are basically a variation on the theme of an agency worker being paid (through an umbrella

company that they have probably been told to sign up to) a minimal amount of taxable income, topped up with a purportedly non-taxable element (whether it be loans, investment payments, advances, grants, loans, credits, etc.), with little or no paperwork to support the 'planning'. LITRG said that while some umbrella companies may be doing this as part of a bigger avoidance supply chain, others will have casually concocted such schemes in-house without any real 'promoter' behind them.

LITRG said it would appear that the agency workers are increasingly being paid via disguised remuneration schemes, with no understanding at all of the set-up, for the non-compliant umbrella companies' own gains. Naming promoters, the websites they use and the schemes they promote at the earliest possible stage, so that HMRC could share that information publicly to warn taxpayers of the risks, will do nothing to assist those who are being paid via disguised remuneration unknowingly. They will also do nothing for those who may have little choice to be paid by a non-compliant umbrella company if they want the work.

As against the backdrop described, LITRG urged HMRC to explore alternative strategies to tackle disguised remuneration, beyond narrowly focusing on promoters and changing taxpayer behaviour.

In terms of the other HMRC promoter proposals, CIOT also said that by the stage that a person or entity is threatened with any of the sanctions proposed in Chapters 2, 3 and 4 of the consultation document, this will be well outside the expertise of a tax adviser, even those experienced in dispute resolution. Any person or entity in this situation would need to take legal advice from a suitably qualified and experienced lawyer. Our comments on these measures are therefore necessarily limited since only a minority of tax advisers are lawyers. We also say that the measures should cover future actions and not have any retrospective effect, given that the intention behind them is to change these behaviours and stop these schemes once and for all. They should all be widely published before being brought in, as well as targeted at the active promoters and enablers HMRC know about, so that anyone who might be affected is put on notice to change their behaviour.

We recommend that a formal and consultative review of these measures, and HMRC's powers in relation to them, should take place in about three to five years' time. These measures are being introduced to tackle specific problems in the tax avoidance market that exist now, but in five years' time the tax avoidance market

may look very different to the way it looks today. A future review would enable the measures to be examined to ensure that they are still fit for purpose and operating effectively and as intended. We think this may be something for HMRC's Powers and Safeguards Evaluation Forum to consider.

The CIOT's response can be found here: www.tax.org.uk/ref775.

LITRG's response can be found here: www.litrg.org.uk/ref2469.