Tackling disguised remuneration tax avoidance: CIOT response

Employment Tax

07 January 2021

The CIOT has suggested that more could be done to make it clear that disguised remuneration schemes do not work, that these schemes often involve sham arrangements, evasion and fraud, that HMRC should use its existing powers to pursue promoters and enablers, and that HMRC should be more helpful to taxpayers caught unawares by these schemes and who want to get out of them.

The CIOT has responded to the call for evidence on Tackling disguised remuneration tax avoidance. In November's Technical Newsdesk, we summarised LITRG's response to the call for evidence (see tinyurl.com/y3u44pwm) and in this article we summarise the CIOT's response.

We support the government's commitment to discouraging the continued use of abusive arrangements involving disguised remuneration schemes that distort labour market engagements. We hope that any legislative proposals by the government arising from responses to this call for evidence will be subject to full consultation. It will be important to ensure that such proposals meet their policy objective without impeding the legitimate use of differing modes of engaging labour.

Generally, we think that, taking on board the FA 2011 legislation on disguised remuneration (as amended), the general anti-abuse rule and the attitude of the courts to tax avoidance, it is difficult to see how disguised remuneration schemes of the sort described in the call for evidence can legitimately succeed. In fact, the arrangements, if as described, seem to be little more than shams.

HMRC need to clamp down on what appears to be knowing misrepresentation and concealment on the part of promoters and their associates and make examples of

those who have crossed the line into tax evasion. We also believe that the legislation should permit genuine economic transactions that genuinely incentivise and reward employees and allow flexibility in labour engagements.
In our response, we noted that the market for promoters of ‘mass-market’ disguised remuneration schemes has significantly shrunk – the call for evidence identifies around 20 boutique firms leaving the market since 2014 and only a small number of promoters continuing to operate. We suggest that HMRC concentrate on tackling these boutiques, utilising the significant financial penalties and sanctions available to HMRC to apply to promoters and enablers. HMRC should also consider whether extending these sanctions to all associated parties knowingly involved in promoting and enabling schemes that rely on misleading HMRC and taxpayers would be an appropriate response.

In our view, tax avoidance is not a widespread motivating factor in the structure of employment supply chains where the work is done in the UK by those engaged under employment contracts.

In fact, we think that the vast majority of businesses are intent on ensuring that the right amount of tax is accounted for to HMRC and have no interest in reducing tax liabilities by the use of contrived and abusive arrangements, such as disguised remuneration schemes, that will inevitably be challenged by HMRC and likely not succeed.

There are, however, other reasons for a rise in the use of umbrella companies recently, in particular as a result of the changes to IR35 and the new off-payroll working rules. Generally, we think the use of umbrella companies is not about tax avoidance, but due to a natural change in working practices to address concerns by end clients about their administrative responsibilities and potential exposure as regards PAYE and NIC where labour would otherwise continue to be engaged via personal service companies. Hence, any further anti-avoidance legislation needs to be appropriately targeted at abusive disguised remuneration arrangements rather than the legitimate use of, for example, umbrella companies.

In our response, we also suggest that HMRC should do more to help vulnerable taxpayers, by educating them and helping them to identify whether they are paying the right amount of tax and whether an offer is too good to be true. In addition, HMRC should help taxpayers to get out of disguised remuneration schemes they have entered into. In this regard, while ultimately the taxpayer is responsible for

their own tax affairs, we think that HMRC's help should range from penalty free escapes from schemes where
the taxpayer voluntarily comes forward unprompted, to PAYE/NIC credits where the taxpayer has been misled. In our opinion, taxpayers should not face additional taxes (over and above those which would have been due had they not entered into the disguised remuneration scheme) in the process of unwinding.

We think that too many taxpayers have felt that they are damned if they do something to extract themselves from the schemes and damned if they don't. We suggest, therefore, that there needs to be flexibility and a level of discretion given to HMRC to allow unwinding in a way which does not incur further adverse tax consequences.

In summary, the CIOT has suggested that HMRC should be targeting the promoters of disguised remuneration schemes by:

f) introducing financial incentives for taxpayers to contact HMRC with information about disguised remuneration schemes;
g) discussing with the Bar Council the circumstances in which disguised remuneration schemes are promoted by reference to 'Counsels' Opinion' (and how DOTAS is being addressed); and
h) considering directing workers to appropriate HMRC guidance through messages on umbrella company payslips or other communications from engagers and agencies.

The full CIOT response can be read at: www.tax.org.uk/ref700. After our response was submitted, HMRC launched their 'Tax avoidance: don't get caught out' campaign, seeking to help people make informed choices about their tax affairs, so they aren't tempted by avoidance schemes that promise higher take-home pay, only to be left with unexpected tax bills. The 'Tax avoidance: don't get caught out' (see tinyurl.com/y5jewk2s) page contains guidance and personal stories about the signs and dangers of tax avoidance schemes. HMRC have also published the 'Use of Marketed Tax Avoidance Schemes in the UK' report (see tinyurl.com/yymve3xh), which we are pleased to note says: 'These days, promoters are almost never members of the professional accountancy bodies
(such as the Chartered Institute of Taxation…).' HMRC have also announced a joint piece of work (see tinyurl.com/y4kptx9y) with the Advertising Standards Authority that will enable them to more quickly remove misleading online advertisements offering avoidance schemes. You may wish to consider sharing these resources with

your clients and professional contacts.