

**Finance Bill (2023-24) Public Bill Committee
Clause 32 and Schedule 13: Disqualification for promoting tax avoidance
Briefing from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 Clause 32 and Schedule 13 introduce a new power enabling HMRC to bring disqualification action against directors of companies involved in promoting tax avoidance. This briefing builds on the representation made by our Chartered Institute of Taxation colleagues setting out that it is essential that HMRC appropriately target disqualification - the problem being that in some cases the 'directors' will be young, inexperienced, or otherwise vulnerable individuals. These individuals aren't the ones in charge but are attracted by the money they are offered to become a 'stooge' director.
- 1.2 This briefing sets out some evidence that we have as to the nature and scale of the 'stooge' director issue and recommends some additional words are reinstated to the draft legislation, to put it beyond doubt that the 'controlling minds' of these companies may not be the directors.
- 1.3 Given disqualification is a very serious matter and can have a major impact on one's life chances, in any case, we seek HMRC's commitment that they will put a strong internal governance structure in place so that they can identify stooge directors where appropriate, before disqualification proceedings are started.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and

practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Background

- 3.1 The proposal to give HMRC a new power here is, in many ways, understandable given the problems that there are with fraud, tax avoidance, disguised remuneration and certain umbrella companies. However LITRG's response to HMRC's consultation on 'tougher consequences for promoters of tax avoidance'¹ also highlighted a concerning, and growing, problem of individuals being recruited via social media to act as stooge directors to front umbrella companies that are not compliant with tax law.
- 3.2 These individuals are likely to be attracted by the fees on offer for agreeing to act as a director, but are not involved in the running of the company and so do not exercise any control or influence over it and are simply paid to forward on correspondence. More broadly, they may have no understanding or experience of a director's role and will not realise they are leaving themselves exposed to being fined, or to criminal prosecution¹.
- 3.3 While we know HMRC are 'alive' to the existence of stooge directors, their response to the consultation suggests that they do not have sufficient understanding of the issue and are not giving it enough consideration². The evidence we have seen indicates this is a 'real' issue, which needs addressing seriously, given its scale, nature and impact on those involved:
- A BBC expose about mini umbrella company fraud, showing that these companies are usually incorporated with a UK based director initially. There were thought to be 48,000 mini umbrellas created in the past five years (at the time of production).³
 - The same BBC expose also looks at some of the ways these directors are recruited - see Emma on Page 6 of the transcript⁴ – which is a particularly powerful example of a very vulnerable individual recruited via Facebook.

¹ Directors can be subject to a range of sanctions for breaching director duties, including fines, prosecution and disqualification but can also be fined or sent to prison for breaching the terms of any disqualification – see <https://www.gov.uk/running-a-limited-company> and <https://www.gov.uk/company-director-disqualification>

² For example, HMRC's consultation outcome said: 'HMRC will take into account all relevant factors in considering if disqualification is warranted against a director. However, part of the purpose of the proposal is to discourage people from acting as stooge directors of promoter companies and so mere ignorance of a director's obligations or a company's activities would not, by itself, be a reason for HMRC not to take action.' (<https://www.gov.uk/government/consultations/consultation-tougher-consequences-for-promoters-of-tax-avoidance/outcome/tougher-consequences-for-promoters-of-tax-avoidance-summary-of-responses>)

³ <https://www.bbc.co.uk/news/uk-57021128>

⁴ http://downloads.bbc.co.uk/rmhttp/fileon4/PG01_Britains_Ghost_Companies.pdf

- A link to an advert on YouTube from a company that recruits stooge directors¹ which includes step by step instructions on how to authorise documents².
- When we checked the Companies House record of one of the recent additions to HMRC's tax avoidance list³, the sole director of the umbrella company was a 22-year-old 'unknown' - that is someone who has no internet history of being involved in the temporary labour market sector or director footprint. We understand from an industry expert these are classic signs of a stooge director set up.
- In the past we have heard from other advisers' organisations who have been contacted by people who are stooge/nominee directors. For example: *'We have been contacted by a client who answered an advert to become a nominee director of several businesses through (nominee services business). The client is quite vulnerable and totally unaware of his duties as a director. As far as he is concerned, he is simply paid a fee to pass on any correspondence that he gets from Companies House or otherwise.... Any insight you have into similar cases would be really appreciated.'*
- Posts we have found on internet forums soliciting advice such as *'Anyone heard of these guys? Sign up and become director of a company for £75 for one month then it gets sold on?! I just can't get my head round this one and it really seems too good to be true'*. One of the responses includes that *'100's if not 1000's of stay-at-home mums are being targeted on Facebook and signing up'*.⁴
- A Mirror article suggesting that once induced to signing up, referral payments are then offered on top of usual fees, to help stooge directors recruit friends and family.⁵

4 Comments

- 4.1 Taking all of this evidence together, we think that in some cases where it may appear to HMRC that disqualification is appropriate, the directors are quite likely to be vulnerable stooges and potentially unaware that their appointment involves them being a tool to facilitate tax avoidance.
- 4.2 The legislation, as drafted, sets out that disqualification is only mandatory in winding up cases 'where **on application** to the court it appears' ... It is not mandatory for HMRC to make that application. They can use their discretion to do so (or not do so) where it is in the public interest. In terms of non-winding up cases, the terminology is **may** not *must*, which also gives the court an element of discretion, even if HMRC do put in an application.

¹ <https://www.youtube.com/watch?v=W1NxBYArKHM&t=36s>

² <https://www.youtube.com/watch?v=R9SzyPD5hHQ&t=18s>

³ <https://www.gov.uk/government/publications/named-tax-avoidance-schemes-promoters-enablers-and-suppliers/current-list-of-named-tax-avoidance-schemes-promoters-enablers-and-suppliers>

⁴ <https://forums.moneysavingexpert.com/discussion/5593401/kedros-formations>

⁵ <https://www.mirror.co.uk/news/uk-news/murky-plot-flood-britain-thousands-10163193>

- 4.3 A lot of power lies in HMRC's hands and we would like HMRC to commit that they will put a strong internal governance structure in place so that they can identify vulnerable stooge directors, where appropriate, before disqualification proceedings are started. Without this safeguarding, the consequences for vulnerable individuals who have unwittingly got involved are harsh. The stooge directors end up taking the fall for those actually promoting tax avoidance and there is no deterrent effect for the promoters. In our view, further avoidance is likely through recruitment of new stooge directors and so the problem has not been tackled.
- 4.4 In terms of the actual controlling minds behind the tax avoidance (that is, the people that HMRC *should* use the new powers against) they may not actually be directors themselves. In some ways the draft legislation recognises this as it refers to 'director' as including a 'shadow director'.
- 4.5 In the original draft legislation published in the summer¹, the wording referred to directors, shadow directors **and 'managers'** (a person is a "manager" of a company if the person is concerned, or takes part, in the management of the company in any way, whether directly or indirectly). We thought that the inclusion of 'manager' was helpful as it indicated to HMRC and stakeholders that the situation may be complex with a range of people potentially involved behind the scenes. The legislation has now been amended to remove reference to managers without explanation.
- 4.6 It may be that this is an oversight or that the extra category was ultimately considered superfluous because everyone understands a shadow director to be the one calling the shots/having significant influence anyway. However, in our view, the reinstatement of the 'manager' wording (while harmless if it is truly just a duplication) would make sure every possible category of person was covered. Even if only a very small number of individuals are likely to be managers but not directors or shadow directors, there does not appear to be a downside to extending the scope of the legislation in this way. We therefore propose an amendment to clause 32/Schedule 13 to re-insert the wording 'manager' in the definition of director in the relevant places.

LITRG

2 January 2024

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1171268/Dealing_with_promoters_of_tax_avoidance_draft_legislation.pdf