



Tackling DR tax avoidance: Call for evidence

Response from the Low Incomes Tax Reform Group (LITRG)

1. Executive summary

- 1.1. We are a group of tax specialists with expertise in the tax and related issues of the low-paid. We welcome the opportunity to respond to this call for evidence.
- 1.2. Despite the persistent efforts of successive governments to stamp them out, disguised remuneration (DR) schemes continue to operate and continue to recruit new workers. We understand there is currently a big problem with agency workers that work via umbrella companies getting caught up in DR schemes. Our response focuses solely on these workers.
- 1.3. We have devoted significant time and resource over the past few years in trying to help lower paid agency workers understand what the loan charge means for them and the options open to them. As a consequence of this work, and our understanding of the inner workings of the temporary labour market more widely, we have some good insight as to what drives, and therefore what can be done to prevent, the use of DR schemes in this space.
- 1.4. While tax avoidance schemes may have originally been the domain of sophisticated and wealthy taxpayers searching out clever ways to increase their take home pay, these days, the use of schemes, particularly at the lower end of the market, is largely driven by PAYE avoidance behaviour on the part of some employers (the umbrella companies). It is vital that HMRC recognise and understand this so that appropriate strategies can be developed, otherwise there is a risk that HMRC's actions will fail to be effective because they are based on an erroneous underlying assumption.
- 1.5. We share an example (at para 4.1.9) that shows that an agency worker (working 35 hours at a rate of, say, £10 an hour) is around £15 a week better off by being in a loan arrangement. Yet the engager is likely to have made savings of nearly £40 a week – generating more profit for them and/or making them more competitive through the savings being passed up the supply chain, potentially to the benefit of the end client.

- 1.6. While we have no interest in protecting those who intentionally seek to minimise their taxes by using aggressive DR arrangements, in our view, this example demonstrates how easy it is for innocent agency workers to end up as pawns – in a game being played by their umbrella companies.
- 1.7. HMRC, therefore, need to tackle the schemes at umbrella company level, for example by:
- Working with bodies such as the ASA to intervene when they see false advertising or marketing, early – before harm is done.
 - Demanding PAYE security deposits from certain umbrella companies, as this would surely help weed out potentially problematic providers.
 - Using their new joint and several liability powers, to help level the playing field (the insolvency regime seems to be behind the somewhat cavalier behaviour we have seen from certain umbrella companies with regard to their PAYE obligations).
- 1.8. We also think it would be hugely helpful if there was someone senior in HMRC with an overall responsibility for umbrella companies, under whom developing an action plan to tackle non-compliant umbrella companies, could sit.
- 1.9. Thinking holistically, HMRC also need to put more onus on other actors in the supply chain, such as employment agencies and end clients, to secure their supply chains. We put forward several ideas that we think could help improve standards in supply chains and stop such schemes at source, including:
- From the perspective of the end client, particularly in the public sector, labour procurement contract templates should be amended to include an emphasis on tax law obligations. Currently, in the NHS for example, although there is a requirement that all agency staff sourcing must be done through approved framework agreements, these framework agreements do not cover tax. Alternatively, public bodies should have to report annually on the steps they have taken to secure their supply chains from tax avoidance behaviour.
 - There seem to be few consequences for agencies if they push workers towards non-compliant/high return umbrella models. Could debt transfer provisions or the Criminal Finance Act 2017 be helpful here? The new requirement for agencies to hand out key facts documents is vital to ensuring more transparency within the sector and in the longer term, potentially levelling the playing field. Is it being complied with?
- 1.10. We also query whether the arrangements at the lower end of the market are more akin to fraud than technical tax avoidance. It is vital that HMRC are clear on exactly what problem (or problems) they are trying to tackle, so that they are able to formulate the correct responses around things like resourcing, communications, taxpayer education etc.
- 1.11. In terms of umbrella companies and other areas of non-compliance, it is several years ago that the Director of Labour Market Enforcements (despite tax not being part of his formal remit) highlighted that there are significant issues around non-compliant intermediaries and that there

is a gap in enforcement, both for protecting worker employment law rights and around tax avoidance.

- 1.12. This, along with the need to ensure transparency in supply chains more broadly, continues today and there is a clear and unequivocal need for HMRC's tax compliance function and the forthcoming Single Enforcement Body to work together, in partnership, to tackle abusive models such as the elective deductions model.
- 1.13. In the immediate future, we recommend HMRC join ASCOR, the Association of Compliance Organisations, which is a cross-departmental, joint public and private sector body working together to tackle labour market issues in supply chains by gathering and sharing intelligence on those operating outside of the law.
- 1.14. In terms of taxpayer interventions, HMRC need to reach out to taxpayers at risk of being caught up in DR, which is different to helping people already in tax avoidance schemes recognise the error of their ways and get out of them. If the starting point is that people don't know they are in DR schemes, then actually what is required is help to recognise the warning signs and how to self check their position – signposting to Personal Tax Accounts where people are able to monitor payments being received against payments being reported to HMRC, for example.
- 1.15. Also, passively posting Spotlights and other publications to GOV.UK isn't working – they are simply not being seen or absorbed. Examples of other approaches could be:
 - Procurement people in the public sector organisations such as NHS that use agency workers, putting up 'hard hitting' posters/leaflets on their own premises.
 - Unions relaying messages in their worker bulletins.
 - HMRC using social media etc. to spread messages but also to proactively provide advice that flags issues and signposts accordingly, when workers post queries online and in forums.
- 1.16. More generally from a consumer protection perspective, HMRC need to vastly improve the guidance available on umbrella companies, including the difference between a compliant and non-compliant umbrella. Despite the fact that the majority of agency workers are now told by agencies to work through umbrella companies, umbrella companies are not mentioned once in the GOV.UK guidance for agency workers.
- 1.17. HMRC, to date, have appeared reluctant to work with responsible providers on 'what good looks like'. Yet reputable agencies and umbrella companies could be great allies to HMRC in this fight. They would not only be able to help post blogs/website articles/online newsletters etc, they could also be a rich source of information when it comes to *reporting* suspicious new models to HMRC, as they are potentially harmed by poor practices that undercut them.
- 1.18. We think that HMRC working with responsible providers would take us a further step forward better standards within the sector and, hopefully in time – fewer troublesome providers.
- 1.19. We look forward to continuing to engage with HMRC on these issues and would be happy to discuss any element of our response in more detail if that would be useful.

2. About us

- 2.1. 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 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. Introductory comments

- 3.1. In general, we wholeheartedly agree with the principle of everybody paying their fair share of tax. We have no interest in protecting those who intentionally seek to minimise their taxes by using aggressive DR arrangements.
- 3.2. Despite persistent efforts from HMRC, loan and other DR arrangements continue to proliferate. One possible reason for this is that HMRC's efforts to date, which have been largely focussed on targeting promoters and changing taxpayer behaviour, have failed to address the root causes of the use of DR schemes.
- 3.3. In our experience, what drives the use of schemes involving agency workers and umbrella companies, is PAYE avoidance on the part of the umbrella company, not a personal avoidance motive on the part of the worker. Looking at DR through this lens, it is clear that what is needed is action to be taken at engager level combined with a holistic approach to raising standards across all entities in the supply chain – including end clients and agencies.
- 3.4. The language used in the call for evidence also demonstrates how this is often looked at inappropriately. It talks about promoters and taxpayers who should be *deterred* from entering schemes. The reality from the taxpayer end, for many people, is that this is about employers, and employees who want a job at a fair rate – with no or little understanding that they are entering a tax scheme.
- 3.5. With this in mind, we have answered questions where we feel we can add most value, namely 8 to 18.
- 3.6. It is worth saying that we recognise that there might be a number of other drivers of use across the whole of the taxpayer population. In order to be successful at tackling the proliferation of DR schemes, HMRC will need to understand and address all the different types of drivers.

- 3.7. We should stress that most of our response focusses on the role of umbrella companies in the use of DR schemes, however not all umbrella companies act or would seek to act in this way.

4. Specific questions

- 4.1. *Question 8. To what extent is tax avoidance a factor in determining the structure of the employment supply chain and why?*

4.1.1. One of the most prominent developments in the labour market over recent decades has been the growth of supply chains and the use of umbrella companies within them. The driver for this business model is to reduce the incidence of PAYE.

4.1.2. Employment agencies do not like operating PAYE – it is a cost and burden for them – so they outsource this function to umbrella companies.

4.1.3. However, there is often only a small margin between the money that is received by an umbrella company and the amount that they pay the worker, from which to fund all the costs of employment and to take their fee. As a result, anything that they can do to reduce the costs of employment means that:

1) they become more profitable; and/or

2) they become more competitive (as tax ‘efficiency’ throughout the supply chain means that contracts can be negotiated at lower prices, thus benefiting the hirer or end user in the form of cheaper labour – and/or the consumer in the form of cheaper products and services).

4.1.4. This is one of the reasons that instead of agency workers being used as an additional labour resource, they are increasingly being brought in instead of directly hired staff to make up the bulk of the workforce, for example as in the case highlighted in 2016 of Sports Direct¹.

4.1.5. In recent years, there have been a number of legislative changes that have reduced the number of methods available to umbrella companies to reduce employment costs. In 2014, there were the onshore intermediary changes² that stopped agency workers being treated as self-employed.

4.1.6. In 2016, there were the travel and subsistence changes³ that stopped umbrella companies being able to designate some of their workers’ pay as tax and National Insurance (NIC) free

¹ <https://publications.parliament.uk/pa/cm201617/cmselect/cmbis/219/219.pdf>

² <https://www.gov.uk/government/consultations/onshore-employment-intermediaries-false-self-employment>

³ <https://www.gov.uk/government/publications/employment-intermediaries-travel-expense-guidance/travel-and-subsistence-expenses-for-workers-engaged-through-employment-intermediaries-from-6-april-2016>

reimbursed travel expenses. (Briefly, prior to this, if an agency worker worked under a special type of contract called an overarching contract or 'umbrella' contract, they were able to receive tax- and NIC-free home-to-work expense reimbursements under the 'temporary workplace' rules – swapping taxable salary for tax- and NIC-free expenses reimbursements also saved the employer 13.8% National Insurance on the expense element.)

- 4.1.7. In 2017, there were the off-payroll changes in the public sector⁴, which heavily restricted the ability of umbrella companies to pay their workers through limited companies (gross). Indeed, there has been much commentary that one of the outcomes of the 2017 public sector changes, was a mass shift of agency nurses into highly aggressive umbrella models including ones based on loan arrangements⁵.
- 4.1.8. By using a loan arrangement, an umbrella company will typically pay a minimum wage salary to a worker as normal, subject to tax and NIC, and then top it up with a loan element, which they say is neither taxable or NICable. Doing this means they can carve a higher net pay to a worker out of a lower gross amount.
- 4.1.9. This is probably best explained by way of an example:

It is April 2017. Jenny accepts an assignment at £10 per hour pay rate, for 35 hours per week. Ordinarily, this would result in gross taxable pay of £350. The amount that Jenny would actually receive in her pocket from this £350 after deductions of tax, NIC and pension contributions is £299.15⁶.

In order for an umbrella company to deliver gross pay of £350 under normal conditions, it would actually cost them a minimum of £424.75⁷. If they want to take a £20 fee, then the minimum amount that they should receive in funds from the agency (who will onward bill this to the end client, along with their mark-up) is £444.75.

Suppose the umbrella company continues to receive £444.75 as per the agreed contract rate, but instead of using this to deliver a £10 an hour base rate to Jenny and take a £20 fee, it only delivers a base rate of £7.50 per hour to Jenny (the main minimum wage rate in April 2017). On a

⁴ <https://www.gov.uk/government/publications/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note>

⁵

https://www.contractorcalculator.co.uk/nurses_agencies_umbrella_loan_schemes_5%2038610_news.aspx

⁶ Tax = £350 less £221 (personal allowance) x 20% = £25.80, NIC = £350 less £157 (primary threshold) x 12% = £23.16, Pension £350 less £113 x 0.80% = £1.89

⁷ Taking into account £26.63 of employers NIC, auto enrolment contributions of £2.37 and holiday pay provision at 12.07% or around £45.75.

weekly gross salary of £262.50 (7.50 x 35 hours), their employment costs are reduced to £312.20 – leaving £132.55 from the received £444.75, for the umbrella company.

Of course, Jenny, who is expecting something like £299.15 in her pocket, isn't going to accept £240.35 (that is, £262.50 less deductions). But if the umbrella company frames Jenny's overall weekly pay as a 'net' amount of earnings (say, 90%⁸), it only has to channel an additional £74.65 to Jenny through a loan arrangement (received by Jenny 'gross' in addition to her £240.35) in order to make her pay up to £315 (90% of £350).

Thus, through using a loan arrangement, the umbrella company has made £57.90 rather than its usual £20 (£132.55 less £74.65). Jenny is £15.45 better off than she would have otherwise been if she had of simply received a gross pay of £350 (£315 less £299.15).

- 4.1.10. We hope that this example helps demonstrate that the use of loan arrangements in the agency worker sector is often more about avoidance behaviour on the part of the engager, rather than because the worker had any real avoidance motive themselves. We think the use of other DR schemes is rooted in this same ground.
- 4.2. *Question 9. What action do engagers take to assure themselves of the tax compliance of any intermediaries they use to hire their contingent labour force?*
- 4.2.1. We do not know. However, we do not suspect that many end clients take much action given it is not a legal requirement apart from within the GLAA regulated sector, where we understand labour users must only use workers supplied by a licensed labour provider.⁹ The maximum penalty for using an unlicensed gangmaster is six months in prison and a fine.
- 4.2.2. Outside of this area, we note that there is a lot of guidance on best practice. For example, HMRC have some guidance available on GOV.UK on Due Diligence if you use labour providers, that end clients may find helpful.¹⁰ However – it is just that – guidance.

⁸ <https://www.gov.uk/guidance/umbrella-companies-offering-to-increase-your-take-home-pay-spotlight-45>

⁹ Since 2006, the GLAA have set out requirements for businesses supplying labour into the agricultural, horticultural, shellfish-gathering and associated processing and packing industries. Their licensing regime covers areas like health and safety, accommodation, pay, transport – and tax, with the requirements for pay and tax:

Licensing Standard 2.1 Critical: PAYE, NI and VAT: This Standard requires a license holder to accurately calculate and deduct tax and National Insurance from all workers' pay and pay the correct amount to HMRC in a timely manner.

¹⁰ <https://www.gov.uk/government/publications/use-of-labour-providers/use-of-labour-providers-advice-on-due-diligence>

- 4.2.3. We are fairly surprised that even within the public sector, although there are framework agreements for the procurement of labour, often the use of those agreements is voluntary and even where they are not, for example, in the NHS, they do not cover tax compliance¹¹.
- 4.2.4. Yet at the same time, the NHS have limits on agency worker spend, which creates huge downward pressure in the supply chain. It is a perfect storm – in many ways it makes bad practice by some umbrella companies almost inevitable.
- 4.3. *Question 10. Should the government explore further options to require engagers to assure themselves of the tax compliance of their flexible workforce? How should HMRC check that assurance? Would this be effective? If not, what would be?*
- 4.3.1. Yes – in particular, public bodies as a first step, should certainly be bound to secure procurement from ethical bodies.
- 4.3.2. There are many ways of achieving this. One way would be for public sector procurement templates to be amended to explicitly compel compliance with tax law.
- 4.3.3. Another way would be for public bodies to have to report annually on the steps they have taken to secure their supply chains from tax avoidance behaviour. Given the enormity of this topic and the fact that the workers involved are often low paid and vulnerable agency workers, we do not see why there shouldn't be a requirement on public bodies to publish a statement on eradicating problems with tax compliance from its supply chains, in a similar way as is required for modern slavery¹².
- 4.3.4. However, as a first step, and to give the matter context, it seems to us that HMRC could work more with end users to ensure they better understand why some agencies and umbrella companies can provide staff at low rates. For public sector bodies in particular, this is merely 'robbing Peter to pay Paul', with a third party in the middle taking a cut – hardly a model of efficiency.
- 4.4. *Question 11. Do you have any evidence of engagers specifically requiring individuals to participate in tax avoidance schemes, or of dismissing individuals who don't participate in tax avoidance schemes?*
- 4.4.1. It is our understanding from contact with workers affected by the loan charge that they may have had little choice about how they were to be paid by an umbrella company if they wanted

¹¹ <https://www.gov.uk/guidance/nhs-improvement-approved-health-temporary-staff-frameworks>

¹² The Modern Slavery Act 2015 includes a requirement for large businesses to report annually on the steps they have taken to prevent modern slavery in their operations and global supply chains. Indeed, to lead the way for the public sector, the UK government has recently published its own statement which assesses the risk of modern slavery across around £50bn of its annual spending: <https://www.gov.uk/government/publications/uk-government-modern-slavery-statement>

to work or they may have been induced into using the loan arrangements, by exaggerated promises of 'legality'/payment of incentives etc, from people who they trusted.

4.4.2. In some cases, it seems that workers may simply not have known about the arrangements in the background and may not have had the necessary knowledge or skills to spot them – as can be demonstrated by these examples sent to our mailbox (there are others):

- *i am being asked to pay a loan charge but i didnt know i was apart of a tax avoidance scheme - is there anyway out of this?*
- *Advised by HMRC that I was involved, to my surprise in a loan scheme whilst working with an umbrella company for approx 1 year. I was asked to submit what I owe etc. After much discussion with HMRC they concluded that I was not part of one of these schemes due to the fact that the Umbrella company had dissolved and my payslips and bank statement do NOT show any evidence of any loan I have since had letters which have prompted me to reply again via email sending all the evidence again to show my innocence I'm still to get a reply many months on. I'm concerned about what I may owe even though i had no idea i was 'involved' and at one stage told I was in the clear. The months are ticking on and I worry that this is not only a mark against my name, but I am racking up costs/fines etc for not complying with something I do not understand Thanks*
- *To whom it may concern; I have received an email claiming that I have been involved in a Loan Tax avoidance scheme at some point in my working life within IT a few years ago. I will state for the record that to the best of my knowledge this is erroneous as I have used recruitment/employment agency recommended payroll services of which I have paid for to administer and settle my legal tax and NI obligations. I have since receiving the email been both disgusted and aghast at how such a scheme could even exist within an organised and regulated society. I was recommended quite a few years ago whilst working on a contract by the recruitment agency a specific payroll service. If this organisation has misled me and taken advantage of my trust then I want to know what my options are as this is clearly unacceptable and unprofessional business practice of indeed HMRC's claim has any validity. Please contact me at your earliest convenience as this is now worrying me and I don't believe I should have any worry inflicted upon me through other peoples pre-conceived, pre-meditated deceit.*
- *I left my permanent job in 2015 and started working through a recruitment agency as a locum in 2015. They said I needed an umbrella company and recommended one to join- who have since shut down. I left them in 2018 when my recruitment agency rang me and said they had failed an audit and i couldn't use them anymore. I have just found out (Jan 31st by letter) that I apparently have to pay the DR loan. Its the first I'd heard of it. I'd already done my tax return and paid my tax for the year. Is the recruitment agency responsible as they recommended the umbrella company? My weekly payslips show PAYE and NI deductions, there's nothing implying an advance or loan. I believed they were doing their job and managing my taxes. I sent weekly timesheets and received single weekly payments. Your website suggested contact regarding this for guidance. I'd be grateful for guidance.*

- *I've just received a letter from HMRC re Changes to the Loan Charge. It sounds like I need to pay some money but I don't understand what it is for and it doesn't say how much. It says that I should pay it on 31/01/20 but I only received the letter on the 31st in the evening after work. I'm not a British national and was googling to try and find out what a loan charge is. Can you advise what I should do?*

- 4.4.3. Hopefully these examples demonstrate the extent and breadth of the practice of putting lower paid agency workers into loan schemes without their knowledge. To reiterate, we think this same practice will also be behind the some of the current 'use' of DR schemes.
- 4.4.4. Further 'evidence' of this practice can be taken from the amount of contact we understand TaxAid¹³ received following the issue of the Notice to File letters, sent to all those that need to report the loan charge (according to HMRC records). It seems that many of the callers simply have no idea about loan schemes and the loan charge, let alone how to go about quantifying the amount they may have received in loans.
- 4.4.5. It is vital that HMRC take on board that in many cases, workers were not even given a Hobson's choice of using a scheme or not – they were merely put into a scheme without being aware of how they were being paid and the potential implications. So far, we have not seen any evidence of HMRC really accepting this as a legitimate scenario. Even if it is accepted, at times, there seems to be a further assumption than even if they didn't know, then they *should have known* – but we do not accept that is the case, for the following reasons:
- Granted, workers may have received slightly more net pay than they were expecting and it may have been going into their bank accounts in two payments (although we understand that some people only received a single monthly payment). But it should be remembered that many workers are not sufficiently well versed in HR and payroll matters to understand how their pay and taxes should be calculated and delivered and not everyone has ready access to their pay documents anymore – often they are only provided online/are password protected, if at all. (Even if people do have access to their payslips, how many people regularly check (and understand) them?)
 - Many agency workers are young and inexperienced, they may have limited education with lower levels of numeracy and literacy or have English as a second language. In any case, for the majority, it is important to appreciate that the PAYE system discourages employees to engage with their tax affairs. The employer is the tax gatherer, administering an employee's tax for them and the employee can become very passive, assuming it is all taken care of. This is an excellent system when it works well, but it can contain pitfalls for the unwary. Certainly, our experience of working with unrepresented taxpayers more generally is that people rarely understand how their net pay is calculated and often don't question figures because they put trust in their engager.

¹³ <https://taxaid.org.uk/>

4.5. *Question 12. Can you provide examples to support or disprove reports that some employment agencies use DR schemes?*

4.5.1. We are not aware of agencies using DR schemes directly themselves – but they will undoubtedly be recommending and passing on workers to umbrella companies, some of which still seem to be actively using DR schemes.

4.5.2. The below is an extract from a marketing email that we have recently received from an umbrella company:

I understand that you may be interested in using our services. We have a range of payment solutions that you may wish to consider...

Capital Gains

- *Up to 85% take home*
- *You would be set up as self-employed*
- *All funds taxed and declared on your year-end self-assessment*
- *You will receive two types of payments, pre-payments from the profit of shares and self-employed gross payments*

Loans

- *Up to 89% take home*
- *You would be set up as self-employed*
- *The gross self-employed income you receive will be subject to Tax and NI*
- *you will receive two types of payments, low-interest loans and self-employed gross payments*

Self-Employed

- *All your funds, less our fees will be paid to you as gross self-employed payments*
- *You will need to pay the Tax and NI on all your income*
- *Expenses can be used to reduce your tax liability*
- *Your return will depend on your income and expense*

etc.

4.5.3. A quick search on the internet will provide countless other examples. For instance, here is an interesting question recently posed to a contractor forum¹⁴:

¹⁴ <https://www.contractorweekly.com/general-news/take-home-pay-umbrella/>

Contractor Weekly Question:

Hello, I have been working outside of ir35 via my Ltd company for the last 18 months. I may well be offered a role inside ir35 and have been looking at umbrella companies. The quotes on net pay has varied 57%, 67%, 68% and 78% of daily rate. Naturally, the higher rates are attractive but some are higher than my outside ir35 rate through my Ltd company. Please can you help me understand which rates are likely to be HMRC compliant? One of the umbrella referred to a & Growth Share scheme.

- 4.5.4. Ideally, HMRC would be scouring the internet for potential issues (as we have done), and would have a quick and easy way of shutting down umbrella companies that appear to be advertising and marketing non-compliant schemes, before harm is done. Even if HMRC do not have these powers themselves, we assume that other bodies do. Could HMRC be working more in partnership with bodies such as the ASA and Trading Standards?
- 4.5.5. Finally, we would like to highlight that a recent BBC Moneybox programme¹⁵ exposed an umbrella company offering payment in 'investment payments'. The transcript of a call with the umbrella company was shared with us. We think it would be useful for the transcript to be shared with HMRC, if it hasn't been already.
- 4.5.6. What struck us about the arrangement was that it did not seem to involve particularly sophisticated or convoluted planning. The umbrella company simply seemed to be designating a portion of otherwise taxable earnings as a non-taxable 'investment payment'. We would have thought that HMRC, the courts, the GAAR panel etc. – would all agree the 'planning' to be hopeless. This, therefore, isn't risky tax avoidance, using complicated and technical planning – it is something much more akin to fraud. HMRC need to be clear on what the problem is exactly, that they are trying to tackle in order to be able to formulate the correct response.
- 4.6. *Question 13. What options should the government explore to tackle employment agencies which facilitate DR schemes? Would this be effective? Please provide views both on the options set out above and any other options.*
- 4.6.1. There are huge incentives for agencies to push workers into umbrella companies – including (but not limited to): a commercial advantage (as explained previously), reduced payroll and HR function costs and the receipt of commission if workers use a 'preferred' umbrella company. Yet there seem to be few consequences for agencies if they push workers towards non-compliant/high return models.
- 4.6.2. Ideally, we would prefer an employment landscape where agency workers were not 'forced' to use umbrella companies, and we think the law should be changed to stop agencies being able to 'outsource' like this. If this were to happen, many of the issues facing agency workers would start to melt away.
- 4.6.3. Recognising that there are probably certain market and commercial forces at work that preclude this, making agencies take some joint responsibility for what happens to their workers in an

¹⁵ <https://www.bbc.co.uk/news/business-52935252>

umbrella company could help regularise some of the negative behaviour that currently occurs in the sector.

- 4.6.4. From 6 April 2020, employment agencies must give all new agency workers a key information document before agreeing contractual terms¹⁶ (even where an umbrella company is used). Are agencies handing off workers to non-compliant umbrellas giving out this document to workers? Are the Employment Agency Standards inspectorate (EAS) enforcing compliance? Agencies who use non-compliant umbrella companies may have a vested interest in keeping their workers in the dark but if this new requirement on them was enforced then this would be harder to do.
- 4.6.5. Could debt transfer provisions be better used? (e.g. where due diligence is not demonstrated). In our view, the risk of debt transfer around DR could well lead to agencies carrying out a range of regularly repeated spot-checks on how and where the workers are actually paid¹⁷.
- 4.6.6. Could the Criminal Finance Act play a part? Under this Act, penalties can arise for agencies where a worker evades tax and the commissioning of that offence is facilitated by a third party (e.g. an umbrella company) who is 'associated' with the agency. Agencies are required (if they want to have a defence) to have reasonable procedures in place to prevent the facilitation of tax evasion. (If DR issues are not already covered under 'tax evasion', this would obviously require a change in the wording of the Act to ensure it covers tax avoidance.)
- 4.6.7. In addition to making agencies take some joint responsibility, we reiterate that the position of the end-user of the services should also be looked at. It is often the low rate dictated by the end-user for the services that encourages DR schemes to be used. Involving the end-user in some kind of joint responsibility if they don't do due diligence in their supply chains (in addition to the points made in para 4.3), may help cut the problem off at the source.
- 4.7. *Question 14. What options should the government explore to tackle the role of umbrella companies in facilitating the use of DR schemes? Would this be effective? Please provide views both on the options set out above and any other options.*
- 4.7.1. Underlying DR schemes, is a PAYE failure on behalf of the umbrella company employer. The correct response to a PAYE failure is a Regulation 80 determination¹⁸.
- 4.7.2. Although there have been shortcomings in the way that HMRC have policed umbrella company PAYE failures¹⁹ we do recognise that thus far, it has not been easy for HMRC to take action

¹⁶ <https://www.gov.uk/government/publications/providing-a-key-information-document-for-agency-workers-guidance-for-employment-businesses>

¹⁷ <https://www.osborneclarke.com/insights/hmrc-set-issue-latest-regulation-80-determinations-targeting-msps-staffing-companies-end-users-risk/>

¹⁸ <http://www.legislation.gov.uk/uksi/2003/2682/regulation/80/made>

¹⁹ This has been concerning LITRG since we published our [report looking at pay-day-by-pay-day umbrella schemes](#), in which we highlighted that HMRC were pursuing individual workers for unpaid taxes, rather

against umbrella companies, due to the insolvency regime being there to act as the ultimate backstop.

- 4.7.3. The barriers for operators to enter the umbrella industry are low – it is relatively easy to set up an umbrella structure without a significant capital outlay and they have few other creditors or suppliers to worry about. Therefore, there seems to be a pattern in place whereby certain businesses roll out non-compliant/high return PAYE arrangements (under which a rich windfall is garnered), wait for HMRC to catch up with them (if at all), then close the company – thus completely bypassing the tax arising from their deliberate failure to apply the rules.
- 4.7.4. As such, we think the ‘joint and several liability’ powers in place from April 2020²⁰, offer a good opportunity for HMRC get a firm grip on umbrella companies once and for all. Even where HMRC cannot rely on these powers, e.g. because there is a foreign director who is outside the reach of UK’s jurisdiction, it seems to us that HMRC could try and weed out potentially problematic providers by making more use of their ability to require a PAYE security deposit in the form of cash, or a guarantee in the form of a performance bond issued by a financial institution²¹.
- 4.7.5. 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 HMRC need to consider whether they need new powers.
- 4.7.6. Ultimately, HMRC’s ability to successfully tackle non-compliant umbrella models requires adequate resources as well as a clear plan for action. To this end, we would also like to stress the importance of HMRC not only **using** their powers but **publicising** that they have used them to send out a strong message and to help act as a disincentive to other umbrella companies considering exploiting their workers and the system.
- 4.7.7. We also think it would be helpful if there was someone senior in HMRC with a responsibility for umbrella companies, under whom developing an action plan to tackle non-compliant umbrella companies could sit. This could include the formation of some kind of trusted, expert stakeholder group (which could include the compliant umbrella companies mentioned in para 4.11.3) to help challenge and guide HMRC in this area and hold HMRC to account.
- 4.8. *Question 15. Do you have any evidence of different types of labour market supply chain noncompliance taking place together?*
- 4.8.1. Umbrella companies historically tended to offer models that exploit the fault lines that exist in the tax system – e.g. tax and NIC, employment and self-employment, temporary and permanent

than their unscrupulous employers: <https://www.litrg.org.uk/latest-news/reports/141117-travel-expenses-low-paid-%E2%80%93-time-rethink>

²⁰ <https://www.gov.uk/government/consultations/tax-abuse-and-insolvency>

²¹ <https://www.gov.uk/government/publications/securities-in-respect-of-payee-and-national-insurance-contributions>

workplace, etc. Some of the models are legitimate when used correctly, e.g. the travel and subsistence schemes. Others are not.

- 4.8.2. More recently, some of the more unscrupulous umbrella companies have started to offer models, particularly to lower paid workers, that impact on employment rights – the costs and obligations of which, only ever seem to rise.
- 4.8.3. Some umbrella companies market different pay ‘solutions’ depending on the situation. It is therefore likely that those umbrella companies intent on escaping their PAYE obligations via the use of DR schemes for some workers, are also likely to be subjecting different workers to other violations.
- 4.8.4. In particular, we understand that the following non-compliant umbrella company models are currently in operation for low paid workers:
- **Travel and subsistence models:** the rules were changed with effect from April 2016 by virtue of s 339A and s289A ITEPA 2003, which together mean the exploitation of the tax/NIC-free travel expenses rules should no longer really be possible. But the rules in s289A do not apply to mileage reimbursements (they are not a part 5 ITEPA deduction but a part 4 ITEPA exemption) and some umbrella companies continue to process salary sacrificed expenses at the point of pay where they are in respect of mileage reimbursements. Given the employer NIC saving that comes from doing this, it is unsurprising that we hear that some workers are being arbitrarily assessed by umbrella companies as being outside of their ‘supervision, direction or control’ in order to claim home-to-work travel relief and take full advantage of this loophole.
 - **False self-employment:** amendments were made to the agency legislation from April 2014 to make it more difficult for temporary workers to be treated as ‘self-employed’, however we understand this is now starting to creep back into the landscape – particularly in the construction industry.
 - **Elective deductions model:** under this model, the individual is treated as an employee for tax purposes so that PAYE is operated as is required under law (meaning that as far as HMRC are concerned, everything appears to be in order), but treated as self-employed for all other purposes, meaning that they are not paid the minimum wage, not given paid annual leave, etc.
 - **Wage theft:** because of problems inherent in very short-term agency work when it comes to calculating holiday leave and pay, workers used to get extra pay on top of their hourly rate instead of being given paid holiday. However, this ‘rolled up’ system has now been deemed unlawful. If a worker is not on a rolled up system and leaves an umbrella company having taken fewer holidays than they are entitled to, they should be paid in lieu of the untaken holiday – but it is our understanding that this does not always happen.
 - **Mini-umbrella companies:** this model sees the formation of lots of individual companies, often with foreign nationals as directors. On the face of it, all is well as the worker will be having PAYE operated. However, in the background, workers are being put into mini

companies, where the Employment Allowance is being claimed inappropriately. Despite an HMRC spotlight²², and media/press attention, we have recently heard of someone seemingly in mini umbrellas – the key giveaway is that each of their payslips had a different PAYE reference.

- **Payroll-fraud:** it would appear that some umbrella companies are calculating and taking deductions from people's pay based on one set of (proper) pay figures but are then understating these pay figures in their submissions to HMRC thereby reducing the tax/National Insurance amounts that are calculated and that they pay over.

4.9. *Question 16. In what areas of non-compliance could HMRC go further to work effectively with other regulatory authorities to support labour market compliance?*

4.9.1. As demonstrated above, not all of the wrongdoing that goes on with umbrella companies is tax driven, some of it is employment law driven. However, progress over the issue of regulating umbrella companies from an employment law perspective has been extremely slow and indeed, questions over whether the EAS should do this²³, now seem to have been subsumed into discussions over the introduction of a Single Enforcement Body (SEB).

4.9.2. When the SEB is established, there is a clear and unequivocal need for information sharing and working together between the employment law enforcement bodies and HMRC. It seems to us that this **must** include the GLAA. Many umbrella companies operate in GLAA licensed sectors. They will have good experience and insight on policing umbrella companies from both perspectives as they have licensing standards covering basic employment rights and tax. They are also widely regarded as having been robust and effective in helping to stamp out bad practices.

²² <https://www.gov.uk/government/publications/spotlight-24-employment-allowance-avoidance-scheme-contrived-arrangements-caught-by-existing-rules/spotlight-24-employment-allowance-avoidance-scheme-contrived-arrangements-caught-by-existing-rules>

²³ The Director of Labour Market Enforcement's recommendations were as follows:

Current EAS powers should be expanded to include intermediaries to enable them to follow up on cases of worker exploitation as they would for employment agencies. Their resources should be increased in line with the additional requirements to do this.

The GLAA, EAS and HMRC NMW/NLW team should work closely with the other relevant HMRC tax enforcement teams to share information of non-compliant intermediaries that they identify through their enforcement work. The relevant teams in HMRC should take effective action against such organisations, ensuring that successes are widely publicised to demonstrate that the enforcement environment is changing.

EAS and HMRC should work together to develop the options for enforcing regulations around intermediaries, assessing the likely impact, costs and benefits of each.

- 4.9.3. In the meantime, we recommend that HMRC tax join the ASCOR²⁴ (Association of Compliance Organisations), which has been developed by BEIS to improve standards in supply chains and protect workers in the flexible economy.
- 4.9.4. ASCOR observes 4 Core Principles:
- To share relevant information across participating bodies at a tactical and strategic level;
 - To enable collaboration between labour enforcement bodies and recognised stakeholders to support intelligent enforcement and identify those operating outside the law and falling below industry best practice;
 - To ensure worker voice and worker rights are central to labour market policy and enforcement; and
 - To educate workers and hirers about working with labour suppliers and the appropriate avenues for recourse.
- 4.9.5. Current stakeholders include the EAS, GLAA, the Director of Labour Market Enforcement, the Home Office, Crown Commercial Services, SaferJobs, HMRC minimum wage, unions and LITRG. This would be an excellent opportunity for HMRC's tax compliance team to gather understanding and insight into umbrella companies and how they evolve, which would not only be useful for compliance and enforcement purposes but would be useful for their policy development and decision-making processes more generally. In our view, HMRC (tax) are currently a glaring omission from the group.
- 4.10. *Question 17. How could HMRC improve and target communications with taxpayers to warn them about DR schemes, and what other approaches could HMRC and other organisations take to help taxpayers to recognise a DR scheme was being marketed to them?*
- 4.10.1. HMRC's awareness raising and other publicity around DR has until recently tended to be 'passive' – taking the form of Spotlights/guidance being posted on GOV.UK, rather than any kind of specific outreach work.
- 4.10.2. Spotlights often seem to be designed for people that know that they are in avoidance schemes (to tell them how to get out of schemes they are already in). However, many people have not sought out a tax advantage and do not even know they are in a scheme, so these Spotlights pass them by. Even if they do reach people at risk of getting caught up in a scheme, they are just too general and vague.
- 4.10.3. For example, HMRC's Spotlight 54²⁵ got a lot of attention recently as it highlighted the surge in tax avoidance promoters targeting those returning to work in the NHS to fight the COVID-19 pandemic – a very sensitive and topical subject.

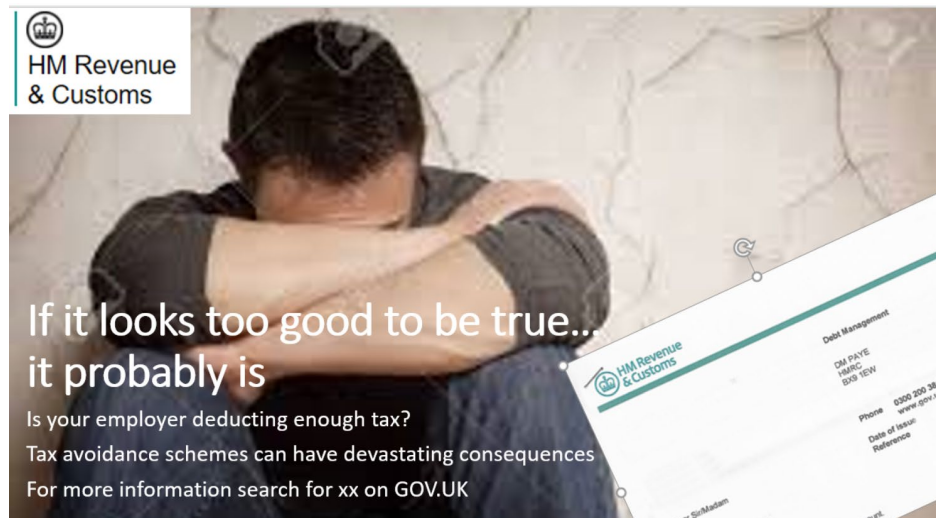
²⁴ <https://www.theascor.org>

²⁵ <https://www.gov.uk/guidance/tax-avoidance-promoters-targeting-returning-nhs-workers-spotlight-54>

- 4.10.4. However, it gave the impression that it was aimed at doctors and nurses returning to work directly for the NHS who were being pursued by promoters who had found their names on the GMC register (or wherever). Actually, our understanding is that the main problem here, is the 'old' one of agency workers (of which there are many in the NHS, including administrators, cleaners etc. as well as clinicians) being paid through unscrupulous and non-compliant umbrella companies.
- 4.10.5. In our view, it did not help workers self-identify as at risk but also it did not help them truly understand what the risks are.
- 4.10.6. As we were so concerned, we took the liberty of 'unpacking' Spotlight 54 in an article we wrote for our own website. We include a copy of it as Appendix 1 in case it is useful for HMRC to see the type of guidance/material this vulnerable group of employees needs on such a complex issue.
- 4.10.7. In particular, we tried to identify which factors were likely to be misleading or confusing workers the most and put out specific messages to try and counter them. For example, it seems that the umbrella companies in new DR activity are often majoring on the fact that the non-taxable payment is paid direct from the employer and not via a third party, so the DR rules can't apply.
- 4.10.8. To your average agency worker, the sales information around this point is very credible, but of course totally neglects to mention that even if this is outside the DR rules (and even if it hasn't been tested yet in a court) it is just very likely to be s62 (ITEPA 2003) general earnings.
- 4.10.9. Designing good material that helps workers understand things is only one half of the challenge. The second part of the challenge is ensuring that the information reaches the people who need it. Unfortunately, it is often the case that people don't search for tax information or guidance until they have a problem or their circumstances change which raises a question about their tax position.
- 4.10.10. As such, we think that it is time for a different, more hard-hitting approach, considering the insidious nature of this behaviour and the type of worker that is involved.
- 4.10.11. For example, is it possible for HMRC to design some simple posters/leaflets with key messages about the risks and encouraging workers to self-check their position, with links to documents containing more detail? These documents should contain information about how to access your pay and tax data in your Personal Tax Account (remembering that there is a problem with payslips not being provided by umbrella companies involved) and how to check what net pay you should be paying on a particular gross amount.
- 4.10.12. The posters and leaflets could then be displayed and disseminated in end client workplaces and by unions and reputable agencies/umbrella companies (e.g. those that belong to trade organisations etc.) They could also be pushed out by HMRC via social media. We are sure that many worker and compliant umbrella representative bodies would be pleased to help HMRC get messages out. Investment in broader communications to increase knowledge amongst the general public, for example through hard-hitting radio and TV adverts, may also be needed. Not

only would this raise awareness more generally, it could get people who were thinking about willing signing up to a DR scheme, to think twice.

- 4.10.13. Additionally, workers often raise questions and concerns about umbrella company schemes online, on different forums and social media platforms, sometimes knowingly in relation to risks and other times without necessarily making the connection to possible avoidance issues. We therefore wonder whether HMRC could take a more active role by joining in online conversations and posting advice/signposting to the posters/leaflets.
- 4.10.14. We have taken the liberty of mocking up something that we think might work as a poster or leaflet (apologies if we have broken any copyright rules!):



- 4.10.15. Finally, we know that, following the Morse review, HMRC has committed to letting people know as early as possible where they believe them to be using tax avoidance schemes and that as part of that commitment they are looking into developing an avoidance advisory service that would allow taxpayers to seek a view from HMRC on whether the employment arrangements they are considering using are likely to involve avoidance.
- 4.10.16. This is helpful and we understand that 100 letters have recently been sent out in a pilot. We would like to commend HMRC for taking on board our previous comments that starting letters with opening lines such as 'I'm writing as I believe you have used a tax avoidance scheme' is ineffective. It implies intention/deliberate action and many workers that are put into schemes without their knowledge just wouldn't recognise that it applies to them, so the letters are dismissed.
- 4.10.17. We would urge HMRC to work with bodies such as LITRG to gather views on, and build on, the small scale pilot, recently undertaken. We would also urge HMRC, in respect of people that come forward, to ensure that they apply the PAYE regulations properly²⁶, under which the general principle is that it is the **engager's responsibility** to get PAYE right. It is clearly vital that

²⁶ <http://www.legislation.gov.uk/uksi/2003/2682/regulation/80/made>

people are not put off contacting HMRC in these circumstances, through fear of the consequences.

- 4.11. *Question 18. The government would welcome any comments on the role of consumer protection for taxpayers using DR schemes if not raised in response to the call for evidence on raising standards in tax advice.*
- 4.11.1. One of the biggest leaps forward in terms of consumer protection for taxpayers in this area would be for government and HMRC to acknowledge the presence of umbrella companies in the modern day labour market. The current provision of official information available on GOV.UK for agency workers, looks like it is from a different era.²⁷ The guidance is largely based on the concept of the old 'tripartite' arrangement, giving the worker nothing in the form of guidance or assistance that they can use or apply to the circumstances before them.
- 4.11.2. There is a definite need for some clear and independent 'central' information about umbrella companies. In particular, and in line with the premise that prevention must surely be better than cure, this needs to outline the hallmarks of a compliant umbrella company²⁸ so that people can make informed choices from the outset.
- 4.11.3. In addition, there are many responsible providers in the umbrella industry that are desperate to find consensus with HMRC as to 'what good looks like' and to raise standards. We would like to stress how important it is that HMRC build contacts and relationships with these providers.
- 4.11.4. To date, HMRC have kept such providers at arm's length, but in reality providers would be a rich source of information for HMRC as they are potentially harmed by poor practices that undercut them. As a priority, HMRC should develop and publicise a central gateway within which both workers and compliant umbrella providers can report wrongdoing and have clear protocols in place for dealing with those reports. This would allow HMRC to have the most up to date information available.

LITRG

22 Sept 2020

²⁷ <https://www.gov.uk/agency-workers-your-rights>

²⁸ Given the lack of existing guidance on the issues that arise for workers using umbrella companies, as part of our remit as an educational tax charity, we have created a factsheet in conjunction with PRISM (a not-for-profit umbrella company representative body) to help workers inform, navigate and protect themselves: <https://www.litrg.org.uk/sites/default/files/files/LITRG-Factsheet-working-through-an-umbrella-company-2020.pdf>

Appendix 1

Agency workers: being promised the world by an umbrella company? Don't fall for it!

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Entering into an arrangement where you are paid in the form of artificial 'non-taxable' investment payments, grants, loans, credits and so on, is very likely to be tax avoidance and is extremely high risk – you could end up paying far more than just the tax back to HMRC.



(c) Shutterstock / Talaj

[HMRC's Spotlight 54](#) got a lot of attention recently as it highlighted the surge in tax avoidance promoters targeting those returning to work in the NHS to fight the COVID-19 pandemic – a very sensitive and topical subject.

But the main problem here, as we understand it, is one of agency workers (of which there are many in the NHS, including administrators, cleaners etc. as well as clinicians) being paid through unscrupulous and non-compliant umbrella companies – which is actually a long-standing issue which goes far wider than just NHS workers.

Here we look at the problem in more detail.

What is an umbrella company?

Umbrella companies act as the employer of agency workers.

Agencies like finding people work assignments, they don't like having to do all the HR/payroll stuff for those on their books, so they essentially outsource it to umbrellas.

When umbrellas take on agency workers, they should be passed an amount from the agency (which has received the money from the end client), to pay the worker at the agreed rate, pay all the 'on top' employment costs (such as Employer NIC and holiday pay) and take a small margin (fee) for their services.

What is the problem with umbrella companies?

Often nothing – many umbrella companies act within the law and take the welfare of their workers very seriously.

We outline how a compliant umbrella company should work in our [factsheet](#). (The key things to look out for are that you are given employee rights and that all your pay (excluding, perhaps, some mileage expenses in a few cases) has PAYE operated on it by the umbrella company.)

But there are a huge number of umbrella companies out there and so the marketplace is very competitive. There is often only a small margin between the money that is received by an umbrella company and the amount that they pay the worker, from which to fund all the costs of employment and to take their fee. Anything that they can do to reduce the costs of employment means that 1) they become more profitable or 2) they become more competitive (as tax 'efficiency' throughout the supply chain means that contracts can be negotiated at lower prices, thus benefiting the hirer in the form of cheaper labour – and the consumer in the form of cheaper products and services).

Historically umbrellas used to be able to make legitimate savings by using things like travel and subsistence schemes, under which umbrella companies designated some of their workers' pay as tax and NIC free reimbursed travel expenses (which reduced their employer NIC). But most of these opportunities have been [closed down by changes to the law](#).

These two things, along with the fact that there is no single body in charge of regulating or overseeing umbrellas, make poor practice by some, all too common.

Why is the umbrella company offering to pay me in a non-taxable form?

Simple – because it saves money. They will often focus on the fact that it saves you money but remember – anything they can do to reduce employment costs increases their profitability too.

If an umbrella makes you a non-taxable payment – at the very least, there is no need for them to pay Employers NIC on it, which saves them 13.8%.

Some non-compliant umbrella companies simply frame things in terms of you receiving a specific amount of take home pay or a percentage – 78%, 80% etc. – meaning that they may make even more out of you being in such a scheme (as they can potentially keep the difference).

What does the law say?

Some non-compliant umbrellas pay people using non-taxable payments, often routed through a third party like a trust. But if payments are routed through a third party like this, they are very likely to fall foul of very substantial suite of anti-avoidance legislation that we have, called the ['DR' rules](#).

Some non-compliant umbrellas major on the fact that the non-taxable payment isn't routed through a third party so therefore doesn't fall foul of the special DR rules.

That may be correct but what they fail to mention is it is highly likely to be plain old employment income under general principles – the charging provision for employment income is very wide indeed.

(For anyone with a technical interest in the rules section 62 ITEPA 2003 is the main charging provision and defines “earnings” as:

- Any salary, wages or fee;
- Any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money's worth;
- Anything else that constitutes an emolument of the employment.)

Why are they selling these schemes if they probably don't work?

Often legislation can be open to interpretation. HMRC administer the tax law, they do not make it. While HMRC may issue descriptions of how they view the law and intend to apply particular legal provisions, taxpayers (including umbrella companies) are free to interpret the law in a different way.

So, in the case of an 'investment payment' paid directly from an umbrella company to a worker for example, the umbrella company may think that they have a good argument that it is not caught under the definition of earnings. HMRC may think that because it is [a payment of money that stems from an employment](#), it is very clearly caught.

Ultimately, such different interpretations will only be resolved if they are tested in the courts, which then must interpret the words in the statute and decide what they mean.

It can take a very long time for cases to be heard in court, and (even if the case is bound to fail) in the meantime, there is a cash flow benefit for the umbrella company.

Furthermore, in the event that the case fails, even though the PAYE Regulations say that in most circumstances an employer should remain liable for the tax that should previously have been accounted for to HMRC, sometimes, HMRC pursue the worker instead.

This is because HMRC are sometimes not able to follow their own normal approach, as the company is based offshore or at the first sign of any trouble goes into liquidation, leaving the worker potentially liable for what is owed.

What is the risk to me?

We would have thought it very likely that a court would pay short shrift to an argument that something like an investment payment does not count as employment income (even if the umbrella company has a QC's opinion saying otherwise!) As stated above, where they win a case, HMRC can pursue workers for any tax that is owed.

Furthermore, where usage of certain schemes becomes widespread, rather than try and tackle schemes through the courts, HMRC can also ask the government to tighten up the legislation to address the tax loss. It is extremely important to note that this can be done with retroactive effect which is what happened with 'DR' schemes and the [loan charge](#).

The upshot is that if you use such a scheme, one way or another, you will likely end up with a bill for any back taxes owed, including interest on tax paid late and possibly a penalty. Remember that HMRC can often go back and look at your tax position for many years so it can be very, very expensive.

Having HMRC pursuing you for tax can be intrusive, lengthy and stressful and can have a devastating impact on you and your family.

If you need any further persuading, consider the fact that many umbrella company workers who used loan schemes in the past, are now having to deal with the 'life-changing' loan charge.

What should I look out for?

Some possible signs of tax avoidance in the context of schemes involving 'non-taxable' payments are:

- Arrangements that offer to let you keep more of your pay than you normally would
- A contract of employment showing that you'll only be paid the National Minimum Wage, when you know you'll be paid more than that
- An agreement where you get payments that you are told are not taxable
- Receiving more than one payment into your bank account each pay period
- Perhaps paying a hefty fee – which you won't be able to get back if the arrangements don't work
- Confusing or unclear paperwork (contract/payslips etc.) – or none at all

We look at other types of non-compliant umbrella schemes currently in use in our [website guidance](#).

We should reiterate that not all umbrella companies act non-compliantly, but you should ensure you check any arrangements carefully.

Should I get involved in these types of schemes?

No. We would strongly urge all agency workers – not just those returning to work for the NHS - to be careful not to sign up to these schemes.

If you have already got involved – then again, we would strongly urge you to get out. Take advice from a [professional tax adviser](#) – or if you can't afford one, [TaxAid](#).