



**Low Incomes
Tax Reform
Group.**

A voice for the unrepresented

Clamping down on the promoters of tax avoidance Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

- 1.1 We welcome the opportunity to respond to this HMRC consultation. We do so as a group of tax experts with insight and expertise into the use of disguised remuneration 'DR' arrangements by umbrella companies to pay workers.
- 1.2 LITRG fully supports HMRC's efforts to take strong action against the promoters of tax avoidance schemes and appreciates the difficulties HMRC have in addressing the remaining hard core of promoters.
- 1.3 None of the proposed measures seem particularly controversial to us. But they are bolted on to a regime that was designed to tackle traditional tax avoidance. The 'DR' arrangements that LITRG see today are no longer always, or mainly, an issue of traditional tax avoidance but often more about exploitation of the economics of supply chains and the nature and scale of the temporary worker labour market.
- 1.4 Many of the DR arrangements we are aware of appear, to us at least, to be more akin to casual, fraudulent abuse as opposed to sophisticated tax avoidance. In many cases, the umbrella companies involved seem to simply refer to an element of a worker's pay as an advance or loan or other non-taxable element with little or no paperwork to support the 'planning'.
- 1.5 The overall objective of Chapter 5 (Supporting taxpayers to identify and steer clear or exit tax avoidance) is that HMRC would like to ensure so far as possible that anyone who makes a *decision* to use a tax avoidance scheme is in possession of all the facts and understands what they are getting into. This is a worthy aim. However, many of the taxpayers we hear from

these days, have not made a decision to use a tax avoidance scheme – they are put into them unknowingly, for non-compliant umbrella companies' own gains.

- 1.6 The proposed measures do not address this central problem. 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 DR 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.
- 1.7 To the extent that there are still some taxpayers actively getting into DR because of a personal avoidance motive, or who may be induced into DR, by exaggerated promises of 'legality'/payment of incentives etc (for whom the proposed measures might help), HMRC will need to deal with the problem of 'perceived compliance', if the names of certain schemes and promoters do not get captured on the 'bad' list.
- 1.8 A much more effective idea to help protect workers might be to put together a public list of 'good' umbrella companies instead. HMRC could potentially identify umbrella companies that are compliant by marrying up datasets that they already hold (that is, employment intermediary reporting and RTI datasets) and that give unique insight into the marketplace and supply chain.
- 1.9 In terms of HMRC countering marketing claims made by promoters, a hard-hitting 'myth busting' DR campaign, over and above simply telling people that if it looks too good to be true, it probably is, is long overdue. An umbrella company specific take home pay calculator on GOV.UK and an HMRC campaign clarifying what a 'QC's opinion' means (or doesn't mean) would also be a good idea.
- 1.10 Having said this, unless HMRC design a strategy to deal with the phenomenon of workers being put into DR schemes without their knowledge, HMRC's actions in terms of tackling DR will probably continue to fail to be effective. This is because they are based on the erroneous underlying assumption that individual taxpayers seeking out opportunities for themselves is still the key driver.
- 1.11 There is also a fairness issue with regards to the impact of the status quo on taxpayers – who are not the main drivers of the current problem. Against the backdrop that we have described, headlines such as 'Medical staff are prolific tax avoiders' and 'It's not just the rich that avoid tax: it's teachers and nurses too' are simply misleading as they suggest such workers have deliberately set out to avoid tax.
- 1.12 Assuming the nature of the problem has indeed shifted, alternative strategies could be explored by HMRC, beyond narrowly focussing on promoters and changing taxpayer behaviour, which could be quicker, easier and more effective. For example, end clients of these workers need to be looked at. These end clients may benefit from a cheaper supply chain yet there seems to be no incentive for them to ensure that no entities in the chain use

DR schemes. Since these end users often seem to include public sector organisations, we think this needs to be addressed as a matter of urgency.

- 1.13 In summary - what is before us today, is a different, more complex problem, and it requires a different, more holistic approach from HMRC to stop it proliferating. As a first step and a priority, HMRC should analyse the data and evidence they have to try and understand and identify how big 'today's' problem actually is.

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 General comments

- 3.1 When most people picture tax avoidance, they would probably think of scenarios involving celebrities and loss schemes like Icebreaker or footballers being remunerated via Employee Benefit Trusts.
- 3.2 HMRC's proposals in this consultation document seem to be based on this view of tax avoidance and to the extent that the problem is, indeed, this problem, of mastermind overseas promoters, sophisticated planning, organised and networked avoidance supply chains and boutiques enabling potential wealthy clients with a personal avoidance motive to avoid their taxes, then we agree that these proposals might help clamp down on tax avoidance.
- 3.3 But our understanding is that much tax avoidance today no longer consists solely of sophisticated planning like this. In addition, there is an altogether more difficult issue of umbrella companies being set up and inserted into temporary worker supply chains in order

to exploit the economics of supply chains and the nature and scale of the temporary worker labour market.

3.4 ***Today's problem***

- 3.4.1 The arrangements we see are basically a variation on the theme of an agency worker being paid (though an umbrella company that they have 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.).
- 3.4.2 They do not seem to involve particularly sophisticated or convoluted planning – the umbrella companies seem to be designating a portion of otherwise taxable earnings as a non-taxable payment. Some umbrella companies are not even attempting to hide what they are doing, and, in many cases, they simply refer to an element of a worker's pay as an advance or loan or other non-taxable element with little or no paperwork to support the 'planning'.
- 3.4.3 While some umbrella companies may be doing this as part of a bigger avoidance supply chain, others may have simply seen an opportunity to get an advantage in the marketplace and jumped on the bandwagon – casually concocting such schemes in house without any real 'promoter' behind them.
- 3.4.4 Some agency workers will go along with things but will have little understanding that the way they are being paid is 'tax avoidance'. Some may have an inkling that something isn't right but dare not probe as they need the job (in some instances, the 'umbrella comes with the job')¹.
- 3.4.5 Furthermore, the evidence that LITRG and TaxAid have in terms of low-income workers presenting with DR issues, suggests that some workers are being paid through DR schemes by the umbrella companies they are working through with no knowledge or awareness of this. The temporary labour market is buoyant, and the industry is worth billions. DR arrangements mean umbrella companies can make a huge amount of money² from the amount they turnover, that they can use to increase their profitability or use to generate further business for themselves. So, it would not be surprising if this was now a significant driver of the problem.

¹ We explain more about why and how agencies can push workers to use umbrella companies in Chapter 2 of our report: <https://www.litrg.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

² As we explain and illustrate in our recent news article: <https://www.litrg.org.uk/latest-news/news/210527-received-a-letter-from-hmrc-tax-avoidance>

- 3.4.6 We note that HMRC's own data suggests that there has been a shift in the tax avoidance market in recent years. For example, HMRC's own figures¹ suggest in 2018/19, DR made up 98% of all tax avoidance (as opposed to 60% in 2013/14).
- 3.4.7 HMRC's recent research also states that about 30,000 individuals and 2,000 employers were involved in DR arrangements in 2018/19. This compares to 22,000 individuals and 6,000 employers during 2013/14 (which were mainly close companies run by owner directors).
- 3.4.8 We also understand that the amount of money 'locked up' these days in DR is much less than previously – those involved tend not to be higher or additional rate taxpayers but basic rate taxpayers.
- 3.4.9 All of this supports the fact that there has been a significant shift in scheme usage from being predominantly about individuals and employers who are 'in the market' for tax avoidance, to being one about lower paid agency workers who are exploited by some non-compliant umbrella companies (and potentially those higher up in any avoidance supply chain) for their own gain.
- 3.4.10 As such, we think it is incumbent on HMRC to explore all possibilities and seek a deeper understanding of exactly what is happening in today's market. Otherwise, there is a risk that HMRC's actions will fail to be effective because they are based on the erroneous underlying assumption that individual taxpayers seeking avoidance opportunities for themselves is still the key driver.
- 3.4.11 There is also a fairness issue with regards to the impact of the status quo on taxpayers - who are not the main drivers of the current problem. Against the backdrop that we have described, headlines such as 'Medical staff are prolific tax avoiders' and 'It's not just the rich that avoid tax: it's teachers and nurses too' are simply misleading as they suggest such workers have deliberately set out to avoid tax².
- 3.4.12 We know there are a variety of reasons why people get into DR – the 'unknowing' clearly will not account for all usage – but we think it is incumbent on HMRC to explore *all* possibilities. As well as identifying the different 'groups' using DR schemes and the underlying motivations (either by the worker or others in the chain), HMRC must try and understand the numbers involved in each group. Having the data on both parts will allow HMRC to tailor their response and communications accordingly and also ensure that sufficient resources are targeted where they are needed most.

¹ <https://www.gov.uk/government/publications/use-of-marketed-tax-avoidance-schemes-in-the-uk/use-of-marketed-tax-avoidance-schemes-in-the-uk>

² As David Pett, tax barrister, has said in a blog (<https://davidpett.tax/2021/03/26/tax-avoidance-in-dagenham/>) - this is lazy journalism, the content has been gleaned from an HMRC corporate report on the 'Use of marketed tax avoidance schemes' and relayed without challenge!

3.5 ***What can be done?***

- 3.5.1 Assuming the nature of the problem has indeed shifted, alternative strategies could be explored by HMRC, beyond narrowly focussing on the promoters and changing taxpayer behaviour. There are other entities in the supply chain that have a role and some responsibility that HMRC could target, which would be potentially quicker, easier and more effective at clamping down on the problem.
- 3.5.2 Agencies, for example, currently face few consequences if they push workers towards non-compliant umbrella companies. Could debt transfer provisions or the Criminal Finance Act 2017 be helpful here?¹
- 3.5.3 The role of end clients of these workers must all be considered. These end clients may benefit from a cheaper supply chain yet there seems to be no incentive for them to ensure that no entities in the chain use DR schemes. Since these end users often seem to include public sector organisations, we think this needs to be addressed as a matter of urgency.
- 3.5.4 Areas to consider could include:
- penalties (as an incentive to do something)
 - amending labour procurement contract templates to include an emphasis on tax law obligations
 - measures to encourage additional transparency in the supply chain (for example, making public bodies report annually on the steps they have taken to secure their supply chains)
 - rules on checks the end user needs to perform to secure their supply chains
 - joint responsibility provisions – in our view, the risk of being liable around DR could well lead to agencies and/or end clients carrying out a range of regularly repeated spot-checks on how and where the workers are actually paid.
- 3.5.5 Under general principles, HMRC should also take action at employer level - the umbrella companies – as the employing entity, have a responsibility for operating PAYE correctly – in addition to HMRC focussing PAYE enforcement activities on them, could they demand PAYE security deposits from certain umbrella companies, as this would surely help weed out potentially problematic providers?

¹ 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.)

- 3.5.6 Without such a holistic rethink of HMRC strategy, there is a serious risk that it will fail to have the intended effect and DR schemes will continue to proliferate.¹

4 Specific comments

- 4.1 We will now go on to answer the questions.
- 4.2 Because the consultation document describes a tax avoidance landscape that is so far removed from what we see or understand to be going on, many of the questions raised in this consultation are outside of our core expertise and experience.
- 4.3 While we have not answered the questions in Chapters 2, 3 or 4, in general, none of the proposed measures seem particularly controversial to us. The Government is right to take a robust approach and indeed, there may even be further, additional or complimentary measures that could be explored by the Government to tackle recalcitrant promoters of tax avoidance. We fully endorse the comments made by the CIOT in its response to this consultation which sets out some ideas.
- 4.4 We have limited our comments to Chapter 5 – which proposes new legislation that would enable HMRC to name 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 and help those already involved to get out of avoidance.
- 4.5 We hope that our comments, when taken together, will be useful input for HMRC – not just in respect of Chapter 5 but also with regards to their DR strategy more widely.
- 4.6 ***Q32 – How helpful would this information be to taxpayers?***
- 4.6.1 HMRC want to ensure taxpayers are aware that they are looking into a specific scheme or promoter.
- 4.6.2 Under the relevant proposals, HMRC would publish the name of the scheme, the names of those believed to be the promoters and the fact that HMRC were enquiring into them. HMRC would publish this information on GOV.UK and would also make this information directly available to taxpayers in relevant circumstances.
- 4.6.3 We can see that the publication of such information (with an adequate explanation of what ‘enquiring’ actually means in this context) might be of some help in warning those members of the public that are actively researching the marketplace. Including the specific name of the scheme and the name of the promoter, will help prevent promoters simply claiming that their scheme is “different” to those highlighted in Spotlights for example.
- 4.6.4 However, we can also see that some promoters might simply explain away the entry, change their names or tell taxpayers to ignore whatever HMRC puts on the list. We also note that

¹ We set out our ideas in full in our submission: <https://www.litrg.org.uk/latest-news/submissions/200923-call-evidence-tackling-disguised-remuneration-tax-avoidance>

HMRC will only put an entry on the list after a number of criteria are met, including where a promoter has not adequately responded to HMRC's request for it to make representations as to why the information should not be disclosed.

- 4.6.5 This last requirement means that there still seems to be quite a lot of scope for promoters to drag things out for significant periods of time. DR can do quite a lot of damage, quite quickly – workers could still go through many more pay cycles in which they are being paid via DR, before the umbrella company shows up on the list. Alternatively, once the umbrella company has been put on notice that HMRC are aware of them (which will inevitably be the case if HMRC write to them asking if they want to make representations), they could simply fold, phoenix into a new limited company and move all the workers to the new entity. So, this proposal doesn't seem like anything near a complete solution considering the reality of the likely response from the non-compliant umbrella companies involved.
- 4.6.6 Moreover, for workers who are in an economically weak position and have no choice to be paid via a particular umbrella company if they want to work or who do not know that they are being paid through a DR scheme, a published list of schemes/promoters HMRC are making enquiries into, will not be any help at all.
- 4.6.7 In terms of the latter, usually, the only name of any relevance to workers will be the name of their employer – the umbrella company. As they do not know that their umbrella company is paying them through DR, they will not know (or know to seek out) the name of the scheme or promoter (if indeed, the scheme even has a formal name or a promoter). As they do not know they are within a DR scheme, they are extremely unlikely to even look into this issue or realise that any publicity they might see is of relevance to them.
- 4.6.8 These taxpayers will need to be warned that there is a problem with the way they are being paid. HMRC need to contact them directly, via 'You may be involved in tax avoidance' type communications as per the type sent out currently (referenced in paragraph 5.7 of the consultation document) – although possibly via email rather than via post to help speed things up.
- 4.6.9 In terms of the wording of these communications, HMRC need to be aware that the receipt of such letters can be very concerning for people who may genuinely have no understanding of their situation. It can also be very confusing – currently the wording assumes some workers may not fully understand what they are in, but it does not cover the eventuality that some workers may have no knowledge that they are in a scheme at all. Often the recipients are decent, law abiding, public sector workers – the impact on them must be considered carefully.
- 4.6.10 The impact on TaxAid must also be considered if it is suggested low-income workers contact them for help – as is happening now, workers will probably need to draw on TaxAid's already stretched resources to help them make sense of the letters and their situation.

- 4.6.11 We have a great deal of experience in this area and are committed to helping HMRC tackle this problem. As such, we are ready and willing to work with HMRC collaboratively on this, by review and comment on the wording of the letters etc. if that would be useful.
- 4.6.12 At the same time as sending out the letters, and on the basis that the RTI data must have triggered enough concern to issue the letter, HMRC **must** challenge the employer entity - the umbrella company – for not operating PAYE properly, with immediate effect.
- 4.7 **Q33. How can HMRC ensure that taxpayers do not incorrectly assume that if a promoter or scheme was not on the list then they cannot be involved in tax avoidance?**
- 4.7.1 Unfortunately, it is not possible to stop them making that assumption. Of course, you could put warnings on the list saying that it is not exhaustive, but these may not be seen or may not be absorbed.
- 4.7.2 HMRC are right to be concerned about this because one of the reasons for the proliferation of some of the most problematic models in the umbrella company marketplace, such as Elective Deductions Model, mini umbrella and Pay Day by Pay Day, is ‘perceived compliance’.¹
- 4.7.3 Those behind such unscrupulous practices are very clever and convince people of their legitimacy by suggesting that if it were not right HMRC would have already taken action. Workers, agencies and other umbrella companies, who do not have any other information or knowledge of HMRC’s internal functions and processes readily accept this – particularly where the arrangements have been openly marketed and around for a long time. They then become rife, and it becomes even more of a struggle for HMRC to shut them down. This is indicative of a wider issue we see with taxpayers we deal with where silence/lack of action by HMRC is assumed to equal agreement/consent.
- 4.7.4 There is every reason to think that an error or omission from the list would be manipulated by umbrella companies operating DR in exactly the same way.
- 4.7.5 It is important to remember that most umbrella companies operate within the tax and employment law rules. Rather than a ‘bad’/non-compliant list then, a much more effective idea might be to put together a public list of ‘good’/compliant umbrella companies who satisfy relevant criteria, to help workers who need to use an umbrella company get to a ‘safe harbour’. This would help cut the DR problem off at the pass.
- 4.7.6 HMRC should do some kind of verification process to identify umbrella companies to go on the ‘good list’. There are a number of considerations, but one quick and easy way for HMRC to tell, at a glance, whether an umbrella company is being compliant with the rules is for it to cross check the information it receives in from agencies about the amount they have paid to

¹ We explain more about these models in our research report: <https://www.litrg.org.uk/latest-news/reports/210324-labour-market-intermediaries>

umbrellas on the employment intermediary reporting form,¹ with the RTI pay and tax data it receives in from umbrellas².

- 4.7.7 For traditional, compliant, umbrella companies, the vast majority of income received in by agencies is paid out in the form of worker salaries and on top employment costs (such as employers' national insurance), with the company retaining a small 'margin'. Marrying up these two datasets would allow HMRC to trace the payments made through the supply chain. For example, where, on average, only 50% of the payment from the employment intermediary reporting form appears in the RTI data, it may be a 'fail'. Where, on average, 90% of the payment from the employment intermediary reporting form appears in the RTI data, it could be a 'pass'.
- 4.7.8 The benefit of doing this is that there would be an incentive for compliant umbrella companies to come forward for 'testing' as being on the verified list would be a selling point for them, so it is likely the list will be as full and complete as possible.
- 4.7.9 It is of note that there has still been no progress on the question of the wider regulation of umbrella companies since it was first raised in 2017 by Matthew Taylor in Good work: the Taylor review of modern working practices³ and agreed to by the Government in the Good Work Plan.⁴
- 4.7.10 Regulation is urgently needed to protect workers and level the playing field for compliant umbrella companies⁵. It would drive away those umbrella companies that do not respect employment law, which will help protect lower paid agency workers who are vulnerable to exploitation. As they are likely to be the umbrella companies that are also non-compliant with tax law, there is a potential double benefit to regulation. This would be an effective way of helping clamp down on DR.
- 4.8 **Q34. To what extent would information of the sort described here help taxpayers understand the risk of entering into tax avoidance?**

¹ <https://www.gov.uk/government/publications/employment-intermediaries-reporting-requirements>

² An idea explained further in this article <https://www.computerweekly.com/news/252498695/IR35-reforms-HMRC-denies-squandering-datasets-that-could-rid-umbrella-sector-of-rogue-players>

³ <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>

⁴ Recommendation 17: <https://www.gov.uk/government/publications/good-work-plan> - The new Director of Labour Market Enforcement should consider whether the remit of EAS ought to be extended to cover policing umbrella companies and other intermediaries in the supply chain. Response Accept – we will extend EAS's remit to cover umbrella companies in the supply chain.

⁵ As we explain in our recent press release: <https://www.litrg.org.uk/latest-news/news/210520-press-release-tax-campaigners-urge-government-take-action-protect-umbrella>

- 4.8.1 We agree that some umbrella companies make claims that do not provide taxpayers with a full picture of risk concerning the schemes that they run. Claims by umbrella companies of them 'legitimately' or 'tax efficiently' being able to 'maximise' take-home pay to upwards of 80%, have been abundant in recent years.
- 4.8.2 HMRC want to publicly challenge such misleading information provided by a promoter. We agree a DR counter-marketing campaign, based on specific facts and over and above simply telling people that 'if it looks too good to be true, it probably is', would also be a good idea and is long overdue. We also think some kind of independent, umbrella company pay calculator, hosted online on GOV.UK for workers to use would be helpful, where they could get a full and complete personalised net pay illustration based on their headline umbrella company assignment rate.
- 4.8.3 However, it should also be remembered some umbrella companies make no claims at all and simply pay their workers through DR without their knowledge. These people do not need to understand the personal risks of tax avoidance – they need to understand that there is risk they may be exploited by their umbrella company.
- 4.8.4 As such, and more generally, we think that it is time for a different, more hard-hitting approach, considering the insidious nature of this 'tax avoidance' and the type of worker that is involved.
- 4.8.5 For example, is it possible for HMRC to design some simple posters/leaflets with key messages such as 'Given the unregulated nature of the umbrella market, you need to be on guard that you don't end up in a DR scheme without knowing', encouraging workers to self-check their position, with links to documents containing more detail?
- 4.8.6 These documents should contain information about how to access pay and tax data in their Personal Tax Account (given there is a problem with payslips not being provided by umbrella companies involved) and how to check what net pay they should be receiving on a particular gross amount.
- 4.8.7 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 highlighted 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, but it could also get people who were thinking about signing up to a DR scheme, to think twice.
- 4.8.8 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.

4.9 **Q35. What other information would be helpful for HMRC to share with taxpayers to clarify claims made by promoters?**

4.9.1 We are aware that some umbrella companies market their schemes off the back of having 'QC opinion' – which they offer up as compelling evidence that their scheme will not be attacked.

4.9.2 Although not related to HMRC's own actions, we think it would be most useful if HMRC or another government department could do some myth busting around the term QC opinion.

4.9.3 For example:

- It is an opinion – it can be common for QCs to have dissenting opinions on what the law means!
- QCs are paid a fee in return for issuing their opinions
- In practical terms, there is likely very little risk of comeback against the QC concerned if the opinion is wrong
- The answer to the question depends on what was asked! For example, the question may have been how likely it is that the activity will be investigated by HMRC rather than is the activity tax avoidance (which are two different things)
- It may have been given based on misrepresented or presumed facts
- It can be taken out of context – for example, it may be heavily caveated or dependent on a list of circumstances that may not be relevant – but only certain parts of the opinion may be shown
- It may only have been intended for Person A to rely on for a particular purpose and not Person B
- It may have been delivered verbally – the precise nature of the opinion may have not been noted correctly or accurately.

4.10 **Q36. Do you agree that a 30-day period strikes the right balance between giving promoters sufficient time to make representations and ensuring that taxpayers can be informed quickly? Q37. Do these proposals strike the right balance between safeguarding promoters and acting swiftly? Q38. To what extent do the safeguards described above, provide adequate protection for those on whom information is shared?**

4.10.1 We understand the desire of HMRC to ensure that measures are targeted carefully so that they impact only upon promoters and not upon bona fide tax advisers or benign arrangements.

4.10.2 However, this consultation, which comes on top of a considerable amount of other anti-avoidance measures, is about the remaining 'hardcore' of promoters, who seem to have little fear of HMRC and continually find ways of getting around the various regimes, by changing structure, perpetually obfuscating or using delay tactics (for example not responding to requests for information or appealing every request). Up until now, it is not controversial to say that HMRC have faced a painstaking game of 'cat and mouse'.

4.10.3 DR, rather than being in retreat, seems to be increasing. As well as being a problem for HMRC in terms of loss of tax, it can significantly impact the life and well-being of the workers caught up in it. Increasingly this includes public sector staff like nurses and teachers. It seems to us that time is of the essence here and HMRC should take firm, swift, action to shut down DR once and for all.

4.10.4 Moreover, promoters who are abusing the tax system, should not be considered as equivalent to bona fide tax advisers. The vast majority of professional tax advisers would not be associated with DR activity in any way at all. Indeed, for those who are members of professional bodies such as the CIOT or ATT, this would be a breach of the Professional Conduct in Relation to Taxation rules. We do not see how it is possible for the proposals to affect professional advisers who are members of the CIOT or ATT, for example, who are providing legitimate advice.

LITRG

28 May 2021