

**Tougher consequences for promoters of tax avoidance
HM Revenue & Customs consultation
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We welcome the opportunity to respond to this consultation. The document demonstrates that HMRC are committed to tackling promoters of tax avoidance schemes.
- 1.2 The proposals build on and complement the measures introduced in Finance Act 2021 and 2022 and would enable HMRC to:
- Seek, in appropriate cases, a criminal sanction against promoters of tax avoidance who fail to comply with a legal notice from HMRC to stop promoting a tax avoidance scheme
 - Expedite the disqualification of directors of companies involved in promoting tax avoidance including those who exercise control or influence over a company.
- 1.3 It is acknowledged at paragraph 1.15 of the consultation that the main form of tax avoidance is disguised remuneration (DR) schemes. We are not against the proposal to seek a criminal sanction against promoters who fail to comply with a legal notice from HMRC, but we think there are better ways to stop umbrella companies paying people through disguised remuneration (see 3.3 below).
- 1.4 The proposal to expedite disqualification of certain directors is not a tax issue, however it has come to our attention that often ‘innocent’ people are being recruited as (stooge or nominee) directors to front umbrella companies paying people through disguised remuneration (DR). They are not the ones controlling the company, so it therefore makes sense to widen this proposal to also include those who ‘control or exercise influence over a company that is involved in the promotion of tax avoidance’. However, it seems to us, depending on the case, that there may sometimes be good reasons for treating named directors of any particular umbrella company and the real people who are actually running it, very differently.
- 1.5 Indeed, where it is clear that a director is unaware of their role, given the wide ramifications that can flow from director disqualification and the blight that it can be on a person’s reputation, earning power and current and future career prospects, we urge HMRC to concentrate their efforts on pursuing the ‘controlling mind’, NOT the stooge or nominee directors who have been recruited to serve them.

- 1.6 A range of ‘safeguards’ are set out in the consultation; however, these all revolve around defending oneself in court proceedings. Given our understanding that the people recruited to be directors are sometimes low paid and/or vulnerable and so in our view are those least likely to be able to find and pay for legal advice or have the confidence to represent themselves effectively in court proceedings, in practical terms, the safeguards probably do not offer much protection at all for this particular group.
- 1.7 The key will be for HMRC to recognise the issue and have a strong internal governance structure in place to ensure that those stooge or nominee directors are weeded out where it is clear there is little or no understanding or involvement in day-to-day operations - before disqualification action is initiated. Instead, HMRC should concentrate their efforts on identifying the ‘controlling mind’.
- 1.8 To help educate people about the risks of becoming a director (particularly in view of these proposals) we would urge government to design some good and clear guidance and then publicise it in an effective way – all based on the needs/characteristics of those currently being targeted for recruitment - in easy read perhaps¹, and not just on GOV.UK but on social media too.

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 Introduction

- 3.1 We welcome the opportunity to respond to this consultation. The document demonstrates that HMRC are committed to tackling promoters of tax avoidance schemes.
- 3.2 The proposals build on and complement the measures introduced in Finance Act 2021 and 2022 and would enable HMRC to:

¹ Easy read documents are designed to make information accessible to people with learning disabilities but may be helpful more widely – for example to those with English as a second language.

- Seek, in appropriate cases, a criminal sanction against promoters of tax avoidance who fail to comply with a legal notice from HMRC to stop promoting a tax avoidance scheme.
- Expedite the disqualification of directors of companies involved in promoting tax avoidance including those who exercise control or influence over a company.

3.3 In several previous consultation responses², we have set out what we think is happening with regard to disguised remuneration (DR) in the labour market and put forward some recommendations for HMRC on how to deal with DR appropriately and robustly – these extend beyond focussing on promoters and changing taxpayer behaviour and look at the role that others in the supply chain play. Whilst the proposals in this consultation are a step forward, we think there is more HMRC can do.

3.4 We welcome HMRC’s recently published consultation on umbrella companies³ as it contains proposals along the lines of those we have previously suggested and we will be submitting a detailed response in due course. Therefore, we only offer some general comments on the proposal in section 2 of this consultation and answer question 7 in respect of the proposal in section 3. We hope that our comments, when taken together, will be useful input for HMRC – not just in respect of this consultation but also with regard to their DR strategy more widely.

4 A criminal offence for promoters for failing to comply with a stop notice – general comments

4.1 While we think there are better ways of stopping umbrella companies paying people through DR (see 3.3 above), we understand the desire of HMRC to implement measures that will produce a step change in results in terms of tackling promoters.

4.2 This consultation comes on top of a considerable amount of other anti-avoidance measures, targeted at 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). Until now, it appears to us that HMRC have faced a painstaking game of ‘cat and mouse’.

4.3 DR is an insidious issue. 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. It seems to us that if the threat of fines for not complying is not working, then criminal sanctions connected to stop notices are the intuitive next step.

4.4 As we have said before, HMRC need to find a way to get behind the limited liability that protects the ‘controlling minds’ of DR umbrella companies, to create an element of personal jeopardy. The proposal of criminal sanctions would appear to do that – we would have thought that someone’s

² See for instance <https://www.litrg.org.uk/latest-news/submissions/200923-call-evidence-tackling-disguised-remuneration-tax-avoidance> and <https://www.litrg.org.uk/latest-news/submissions/210601-clamping-down-promoters-tax-avoidance> and <https://www.litrg.org.uk/latest-news/submissions/220222-call-evidence-umbrella-company-market>

³ <https://www.gov.uk/government/consultations/tackling-non-compliance-in-the-umbrella-company-market>

liberty being at stake, no matter how persistent and determined they are, could potentially create an effective deterrent and so change their behaviour.

- 4.5 The question is how useful this power will be in practice, given it is contingent on a stop notice being issued first. Such notices appear difficult for HMRC to use at pace or scale (noting the issues set out in para 4.2 and all the technicalities and procedural requirements etc)^{4,5}. As an alternative, we think there is a good case for HMRC to be pursuing more general ‘cheating the public revenue’ criminal convictions. As we have said before, those behind disguised remuneration can’t honestly believe that what they are doing is tax avoidance – it appears to be something more akin to a casual, brazen intent to defraud, so perhaps this offers a slightly easier route to HMRC, notwithstanding the burden of proof.
- 4.6 If HMRC do find themselves using their new criminal prosecution powers (and we urge they do use them rather than leave them languishing on the statute books otherwise any initial ‘fear factor’ will quickly dissipate), we would like to stress the importance of HMRC publicising that they have used them, to send out a strong message to others who may be contemplating similar behaviour.

5 Expediting the disqualification of directors of companies involved in tax avoidance – answer to Question 7: What other factors should HMRC take into account when considering a director disqualification?

- 5.1 Becoming a director of a limited company is attractive for some people, who see it as an opportunity to increase their profile and to exercise influence; but it also brings with it significant responsibility to ensure that the various duties and legal obligations that come with running a company⁶ are met. Even when someone becomes a nominee director, for example, in relation to an off the shelf company or where there is a legitimate reason for the real owner wanting to remain anonymous, they are usually a good fit for that role because of their knowledge and understanding of the responsibilities of being a director.
- 5.2 Nominee directors are not illegal and can be useful in some contexts. However, there is a well-known issue with overseas stooge/nominee directors being recruited to front ‘fraudulent’ mini umbrella companies (MUCs). The overseas element frustrates HMRC’s attempts to tackle the phenomenon.⁷ As we assume these situations will remain hard or impossible for *any* HMRC initiative to reach, we focus our concerns and comments on UK based stooge/nominee directors of umbrella companies who we understand are being recruited on social media for a fee.

⁴ We note only a handful have been issued: <https://www.gov.uk/government/publications/named-tax-avoidance-schemes-promoters-enablers-and-suppliers/list-of-tax-avoidance-schemes-subject-to-a-stop-notice>

⁵ As set out here: <https://www.gov.uk/government/publications/promoters-of-tax-avoidance-schemes-guidance/promoters-of-tax-avoidance-schemes-guidance#stop-notices>

⁶ <https://www.gov.uk/running-a-limited-company>

⁷ <https://www.gov.uk/guidance/mini-umbrella-company-fraud>

- 5.3 A stooge/nominee director is typically used when the real operators of the company do not wish to put their details in the public domain. The use of a stooge/nominee director disguises the real ownership of an umbrella company but can also help where the true officers have already been banned; and possibly makes it a harder decision for HMRC and other authorities to decide to try and get behind the corporate veil for whatever purpose.
- 5.4 We understand from a BBC expose that UK based directors are used in mini umbrella company (MUC) fraud as well as overseas ones⁸ – each MUC needs a director, and these are usually incorporated with a UK based director initially. Once the company has been established, and relevant HMRC and Companies House correspondence forwarded on, the UK director usually resigns to be replaced by an overseas director, often from the Philippines.
- 5.5 We also understand nominee directors are used to ‘front’ DR umbrella companies. Indeed, we have recently heard from someone (an NHS worker) who has received a Schedule 36 information notice in respect of being paid through DR by an umbrella company. When we checked the very basic website of the umbrella company and the Companies House record, the sole director of the umbrella company is a 21-year-old ‘unknown’- that is someone who has no internet history of being involved in the temporary labour market sector or director footprint. We understand from an industry expert these are classic signs of a stooge director set up.
- 5.6 In the past we have heard from other advisers’ organisations who have been contacted by people who are stooge/nominee directors:
- ‘We have been contacted by a client who answered an advert to become a nominee director of several businesses through (nominee services business) The client is quite vulnerable and totally unaware of his duties as a director. As far as he is concerned, he is simply paid a fee to pass on any correspondence that he gets from Companies House or otherwise.... Any insight you have into similar cases would be really appreciated.’*
- 5.7 And previous posts we have found on internet forums expose that ‘100’s if not 1000’s of stay-at-home mums are being targeted on Facebook and signing up’⁹.
- 5.8 While we have no objections to HMRC wanting to expedite the disqualification of genuine directors of companies involved in promoting tax avoidance including those who exercise control or influence over a company, we are concerned that young, inexperienced, or otherwise vulnerable individuals, who have been recruited as nominee directors for a fee and who weren’t really the ones in charge but were just desperate for the money, could find themselves caught up in this.
- 5.9 The problem is that once a director is disqualified, there are real changes that will affect his/her personal and business life. As set out in the consultation, the immediate consequence is a ban from acting as the director of a company for a certain period (between 2 – 15 years) with huge ramifications, fines or a custodial sentence for those that breach (even inadvertently) a ban. But the

⁸ http://downloads.bbc.co.uk/rmhttp/fileon4/PG01_Britains_Ghost_Companies.pdf

⁹ <https://forums.moneysavingexpert.com/discussion/5593401/kedros-formations>

implications don't stop there. Because director disqualification is a public matter, the process can be embarrassing, stressful and damaging to someone's reputation. If they are disqualified as a director, they may also be prevented from becoming a school governor, or a trustee for a charity or occupational pension scheme. Professional bodies would also need to be informed and could ban them from membership¹⁰.

- 5.10 For some individuals, disqualification as a director will have only a limited impact on their lives – many will find employed work or may set up an unincorporated business. But for others, it might have a major impact.
- 5.11 A range of 'safeguards' are set out in paragraph 3.37 of the consultation, however given these all revolve around court proceedings and given our understanding that these people are often low paid and/or vulnerable, in practical terms we do not believe they will offer much protection at all. The key will be for HMRC to recognise the issue and have a strong internal governance structure in place to ensure that the stooge or nominee directors are weeded out where it is clear there is little or no understanding or involvement in day-to-day operations - *before* disqualification action is initiated.
- 5.12 Ideally, HMRC would also seek to discuss this situation with Insolvency Service, who are currently in charge of the disqualification process and remember - in terms of any income tax compliance investigations that HMRC might consider appropriate - these individuals are also the least likely to be able to understand or manage their income tax position in respect of any fee they may receive.
- 5.13 We also think it is incumbent on the government to do more to raise awareness of the dangers of signing up to be a 'stooge'/nominee director, in a way that the people being targeted for recruitment will see and understand. Hopefully the people concerned will then resign their directorships as soon as possible – and before these proposals come in.

LITRG
22 June 2023

¹⁰ <https://www.gov.uk/company-director-disqualification>