Low Incomes Tax Reform Group.
A voice for the unrepresented

New proposals to clamp down on the promoters of tax avoidance – Draft legislation
Response from the Low Incomes Tax Reform Group (LITRG)

1 General comments

1.1 We welcome the opportunity to make this submission. LITRG responded to the Clamping down on the promoters of tax avoidance consultation in June 2021[1].

1.2 As previously stated – LITRG fully supports HMRC's efforts to take strong action against the promoters of tax avoidance schemes. From a tax perspective, none of the proposed measures seem particularly controversial to us and we have no further comments to make on the draft legislation, in terms of what is there.

1.3 However, we do not believe that the government response to the consultation or this draft legislation addresses the more general concerns we have raised as to HMRC's direction of travel. We therefore take this opportunity to reiterate, in brief, our main observations (as set out in full in our original response) regarding HMRC's strategy to tackle tax avoidance.

1.4 We understand from HMRC's own data that around 98% of tax avoidance is Disguised Remuneration (DR) based.[2] The DR arrangements LITRG and TaxAid see today 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

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[1] https://www.litrg.org.uk/latest-news/submissions/210601-clamping-down-promoters-tax-avoidance

[2] https://www.gov.uk/government/publications/use-of-marketed-tax-avoidance-schemes-in-the-uk/use-of-marketed-tax-avoidance-schemes-in-the-uk

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purportedly non-taxable element (whether it be loans, investment payments, advances, grants, loans, credits etc.).

1.5 They do not seem to involve particularly sophisticated or convoluted planning – those umbrella companies involved seem to be designating a portion of otherwise taxable earnings as a non-taxable payment, with little or no paperwork to support the 'planning'. It should be noted that there are many compliant umbrella companies who operate without using DR schemes, but there are a number of non-compliant umbrella companies who do so.

1.6 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, casually introducing such schemes in house without any real 'promoter' behind them.

1.7 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 money[1] from the amount they turnover. So, it would not be surprising if this was now a significant driver of the DR problem as opposed to taxpayers 'being in the market' for tax avoidance.

1.8 Whilst there are undoubtedly still people who have an appetite to use tax avoidance schemes and who make an active decision to use one, we do not believe this is the 'norm' any longer – we are concerned that HMRC does not appreciate this fully and consequently their strategy of narrowly focussing on promoters and changing taxpayer behaviour, will fail to be effective.

1.9 LITRG think there is a now a very strong case for decoupling the DR schemes from HMRC's other efforts and presumptions in tackling tax avoidance, and for HMRC to explore alternative strategies.

1.10 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 DR problem. For example, HMRC could take action at employer level (so against the umbrella companies) for failure to operate PAYE correctly. Indeed, it is open to HMRC to issue a Regulation 80 determination[2] against an umbrella company and then when they inevitably fold, use their new 'joint and several' liability powers[3] to pin the

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[1] 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

[2] https://www.legislation.gov.uk/uksi/2003/2682/regulation/80/made?view=plain

[3] https://www.legislation.gov.uk/ukpga/2020/14/schedule/13

liability personally on the director. However, this does not appear to be happening in practice, which is a missed opportunity to stop this type of DR usage.

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.

LITRG
10 September 2021