

**Finance (No. 2) Bill 2021 – Clauses 117-119**  
**Tax avoidance**  
**Briefing from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive summary**

- 1.1 Clauses 117 to 119 widen and strengthen HMRC's ability to sanction people for promoting or enabling certain forms of tax avoidance.
- 1.2 None of these measures are particularly controversial. But they are bolted on to a regime that was designed to tackle traditional tax avoidance. The 'disguised remuneration' 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. HMRC should urgently but comprehensively explore other ways of tackling current arrangements. We believe that these would offer quicker, easier and more effective routes than via HMRC continuing to focus on 'promoter powers' (even if they are widened and strengthened). What is before us is a different, more complex problem, and it requires a different, more holistic approach. 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.

**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 HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

### **3 Background**

- 3.1 Clauses 117 to 119 widen and strengthen HMRC's ability to sanction people for promoting or enabling certain forms of tax avoidance.
- 3.2 They do this by seeking to give HMRC powers to issue 'stop notices' to promoters of tax avoidance at an earlier stage to stop the sale of schemes and to publish the details of the promoters and scheme when a stop notice has been issued. These measures would also give HMRC the power to issue a notice where they suspect someone has failed to disclose arrangements or proposed arrangements under DOTAS (the Disclosure of Tax Avoidance Schemes regime) and, if the person cannot satisfy HMRC that the arrangements are not disclosable, to allocate a DOTAS scheme reference number. Various amendments are also made to strengthen HMRC's powers in relation to penalties for enablers of defeated tax avoidance.
- 3.3 The measures in all three clauses have come about as part of the government's response to Sir Amyas Morse's Independent Review of the Loan Charge in which it announced that it would take further measures to tackle promoters of tax avoidance schemes that would reduce the scope for promoters to market such schemes.
- 3.4 The Loan Charge is an anti-avoidance measure, introduced in Finance Act 2016 to address the tax loss to the Exchequer from a variety of 'disguised remuneration' schemes.
- 3.5 Under such schemes, individuals were paid in the form of loans, replacing part or all of their salary. Under the Loan Charge, any such loans taken out in such circumstances since 9 December 2010 and still outstanding on 5 April 2019 became taxable as income in one go on that date.
- 3.6 The Loan Charge is very controversial for many reasons, but one reason is that under the Loan Charge, only the worker pays (often facing very large bills), even if they ended up in schemes inadvertently, and even though there may have been others that saved money or made money as a consequence of the worker being in the scheme, such as the promoters of the schemes.

## 4 LITRG comments

- 4.1 Despite the Loan Charge, which has turned out to be ‘life-changing’ for many taxpayers affected, disguised remuneration has not gone away – indeed, HMRC’s own figures<sup>1</sup> suggest in 2018/19, it made up 99% of all tax avoidance (as opposed to 60% in 2013/14).
- 4.2 HMRC’s recent research also states that about 30,000 individuals and 2,000 employers were involved in DR arrangements in 2018/19. We understand that HMRC believe these employers to be mainly ‘umbrella companies’. This compares to 22,000 individuals and 6,000 employers (which were mainly close companies run by owner directors) during 2013/14. This represents a shift in scheme usage.
- 4.3 In 2013/14 the typical use of ‘disguised remuneration’ was by employers operating third party Employee Benefit Trusts and Employer Funded Retirement Benefit Schemes for their employees (including owner directors). In more recent times, the arrangements are basically a variation on the theme of a worker being paid 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.). They do not seem to involve particularly sophisticated or convoluted planning – the scheme providers simply seem to be designating a portion of otherwise taxable earnings as a non-taxable payment.
- 4.4 We also understand that the amount of money ‘locked up’ these days in disguised remuneration is much less than previously - those involved tend not to be higher or additional rate taxpayers but basic rate taxpayers.
- 4.5 What has changed?
- 4.6 Through writing and researching our recent report looking at labour market intermediaries<sup>2</sup>, it would appear that the ‘tax avoidance’ problem has shifted from being predominantly about individuals and employers being ‘in the market’ to seek out ways of gaining an advantage via some kind of scheme sold to them by a promoter, to being one about lower paid agency workers being exploited by some non-compliant umbrella companies (and those higher up in the avoidance supply chain) for their own gain.
- 4.7 Our findings in relation to current disguised remuneration arrangements include that:
- Some agencies do not offer workers the ability to be paid through an agency payroll. If workers want to accept an assignment with any particular end client, they have no choice but to work through an umbrella company.
  - At the same time, some agencies are incentivised by a commission into encouraging workers to join up to certain umbrella companies.

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

<sup>2</sup> <https://www.litrg.org.uk/latest-news/reports/210324-labour-market-intermediaries>

- Large sums of money flow through supply chains in which an umbrella company may be present. For traditional, compliant umbrella companies, the vast majority of income is paid out in the form of worker salaries and on other employment costs (such as employers' national insurance), with the company retaining a small 'margin'.
- Most traditional umbrella companies don't get involved in DR schemes. We understand that it is more likely that the 'umbrella companies' that use DR schemes to pay workers will have been specifically set up by promoters to operate their DR schemes.
- Where DR arrangements are used, the entity can increase the 'margin' significantly. So, for example, an umbrella company agrees a contract rate with an agency of £500 per week for a particular worker. Under normal conditions, they would have to pay £400 of that to the worker for their gross pay and £70 on other employment costs such as NICs, leaving them with only £30 margin. If they use DR arrangements, they can deliver the worker a similar level of net pay, out of a lower gross amount, and cut their NIC and other employment costs. The umbrella company can easily double or triple their margin from a particular contract rate.

4.8 Taking all of this together, along with the evidence that LITRG and TaxAid have in terms of low-income workers presenting with disguised remuneration issues, it is becoming increasingly clear that some workers, without a personal avoidance motive, are being put into such disguised remuneration schemes by the umbrella companies they are working through, without their full knowledge or understanding – often they have no understanding of the set-up at all.

## 5 Recommendations

- 5.1 These clauses, focussed on promoters who sell schemes to taxpayers, are based on a traditional view of tax avoidance.
- 5.2 But there are fundamental questions, currently, over how taxpayers find themselves in disguised remuneration schemes and the contexts in which the schemes are used. It is imperative that HMRC seek a deep understanding of exactly what is currently happening and design a full response to the problem accordingly. 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.
- 5.3 Assuming the nature of the problem has indeed shifted, alternative strategies could be explored by HMRC, beyond narrowly focussing on the promoters. There are other entities in the supply chain that have a role and some responsibility that HMRC could target for example, which would be potentially quicker, easier and more effective at clamping down on the problem.
- 5.4 Agencies, for example, currently face few consequences if they push workers towards problematic umbrella companies. Could debt transfer provisions or the Criminal Finance Act

2017 be helpful here? Or the end clients (who may well be in the public sector) – could labour procurement contract templates be amended to include an emphasis on tax law obligations? Or the umbrella companies – which, as the employing entity, have a responsibility for operating PAYE correctly – could HMRC focus PAYE enforcement activities on them?

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

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LITRG

4 May 2021