



HM Revenue
& Customs

Tackling disguised remuneration tax avoidance

Call for evidence

Publication date 21 July 2020

Closing date for comments 30 September 2020

Subject of this consultation:	This call for evidence seeks views on ways to tackle future use of disguised remuneration tax avoidance, beyond our planned approach.
Scope of this consultation:	This call for evidence asks for views and evidence on: what are the drivers of continuing use of disguised remuneration tax avoidance; whether there are any variations of disguised remuneration schemes not covered under the current legislation; and where the government can take further action to tackle disguised remuneration tax avoidance beyond its planned approach.
Who should read this:	Anyone who has experience of disguised remuneration schemes, for example, accountants, tax agents, legal professionals, financial advisers, their clients, and businesses in sectors where we find these schemes. Software providers and employment agencies, umbrella companies and other intermediaries who arrange for the provision of workers to those who pay for their services, and end engagers of labour. Workers who have used or have received marketing for DR schemes, trade unions and other workers' representatives.
Duration:	The call for evidence will run for 10 weeks starting on 21 July 2020 and ending on 30 September 2020.
How to respond or enquire about this consultation:	Please email tacklingdravoidance@hmrc.gov.uk . You can also post responses and enquiries to Tackling disguised remuneration call for evidence, Room 2E/11, 100 Parliament Street, London SW1A 2BQ, United Kingdom.
	Please note that HMRC strongly recommends you respond by email, given the temporary closure of HMRC's office and the wider impact of COVID-19 on postal services. Sending responses by post may result in a delay to your submission being considered.
Additional ways to be involved:	HMRC will be holding a limited number of roundtable discussions with interested parties. Please email tacklingdravoidance@hmrc.gov.uk if you would like to be involved.
After the consultation:	Responses to the call for evidence will be used to inform any further policy design, which would be subject to a full consultation.
Getting to this stage:	The government announced its intention to launch this call for evidence at Spring Budget 2020. The call for evidence forms part of the government's response to the independent review of the Loan Charge, published in December 2019.

Contents

1. Introduction	4
Terminology	5
2. Background on disguised remuneration schemes	7
Features of disguised remuneration schemes today	8
HMRC action underway to tackle ongoing scheme use	11
3. Gathering evidence on the current market for disguised remuneration avoidance schemes	13
4. Effectiveness of the legislation tackling disguised remuneration schemes	15
5. Stopping schemes at the source – tackling promoters of tax avoidance schemes	17
Who are promoters of tax avoidance schemes	17
Planned action to tackle promoters	18
Disrupting the business model of promoters.....	19
Disrupting the economics of avoidance	20
Additional powers to tackle promoters	21
6. Supply chains and the use of disguised remuneration schemes in the flexible labour market	22
Understanding the role of intermediaries in supply chains	22
Engagers	24
Employment Agencies	25
Umbrella companies.....	26
7. Helping taxpayers steer clear of disguised remuneration schemes	28
8. Helping taxpayers get out of disguised remuneration schemes	30
Early intervention with taxpayers	30
Encouraging taxpayers to settle their tax liabilities	30
9. Assessment of Impacts	33
Summary of Impacts	33
10. Summary of Consultation Questions	34
11. The Consultation Process	37
Annexe A: The tax status of contractors	40
Annexe B: Responsibilities of employment agencies in ensuring tax compliance	42

1. Introduction

1. At the Budget in March 2020, the government committed to launching a call for evidence on how to tackle future use of disguised remuneration tax avoidance arrangements, referred to hereafter as “DR schemes”. This is part of the government response to the independent review of the Loan Charge led by Sir Amyas Morse.
2. The government remains committed to tackling the promotion and use of DR schemes, which deprive the Exchequer of funds for public services. DR schemes often make large sums of money for those who design and sell schemes, while leaving those who use them in lengthy and costly disputes with HM Revenue and Customs (hereafter “HMRC”) and facing large tax bills that the promoter had led them to believe they would not have to pay. The government’s aim is to discourage taxpayers from entering into tax avoidance, ensure that taxpayers are clear about the advice and intermediaries they can trust, and ensure that promoters cannot profit from tax avoidance. This will reduce the number of people who end up in costly disputes with HMRC and face large tax bills for past years. The government recognises that improvements are needed to achieve these aims and is seeking views on how best to achieve them.
3. The government and HMRC have already taken significant steps to tackle DR schemes. The government is committed to tackling promoters of schemes – those who design, market and profit from these schemes – to stop the supply of DR schemes at their source. This is why the government announced at Spring Budget 2020 a number of measures to tackle promoters and is consulting on these. The government is also consulting on raising standards in tax advice to support taxpayers in identifying advice they can trust. Finally, HMRC is increasingly using real time interventions with taxpayers to help them identify DR schemes early and leave them before they have built up large bills. Despite these actions, DR schemes continue to be marketed by promoters and used by taxpayers.
4. In this call for evidence, the government is seeking views on where it can take further action. The government wants to seek views on the issues in the market which lead to the persistent use of these schemes, and what further action to take to tackle them. The call for evidence will consider in particular:
 - a) further options to tackle promoters of tax avoidance schemes and stop the supply of schemes at their source;
 - b) supply chains, and whether the government should take further action to put more onus on actors in the supply chain, such as employment agencies, umbrella companies or engagers, to prevent people getting drawn into scheme use;
 - c) taxpayer behaviour, and whether the government should take further action to ensure taxpayers understand the risks of entering schemes and are deterred from doing so; and

- d) whether there are any other areas where we can act to stop the use of these schemes.
5. Feedback from this call for evidence will support ongoing work to further tackle promoters of tax avoidance schemes, will be used to inform HMRC's compliance activity to shut down schemes, and to develop any further policy interventions to tackle DR schemes if the government considers these are required.
 6. At this stage, the government is not putting forward specific proposals for reform. The government will consider the views and evidence presented in response to this call for evidence and weigh up the options for targeted reforms accordingly.
 7. The government is seeking views separately on raising standards in the tax advice market.¹ The government recognises that there is some crossover between the issues explored in that call for evidence and those covered in this document. The government will ensure that the feedback from both documents will be considered together in formulating any next steps.

Terminology

8. The call for evidence refers to a number of different parties in the tax avoidance market and in employment supply chains.
9. A **promoter** of a mass-marketed tax avoidance scheme is generally someone who designs or markets the tax avoidance scheme or is responsible for its organisation. Promoters may use a network of enablers to sell their schemes.
10. An **enabler** of a mass-marketed tax avoidance scheme is broadly defined as anyone who plays a part in designing, marketing, managing or financing the scheme.
11. The call for evidence refers to **employment intermediaries** such as employment agencies or umbrella companies. An employment intermediary is any person who makes arrangements for an individual to work for a third party or pay for work done for a third party. An employment intermediary may also be an enabler, where they have facilitated a tax avoidance scheme, but the majority of these businesses perform legitimate functions.
12. The term **employment agency** is used throughout this document to refer to an employment intermediary which typically sources work for an individual via a third party. The individual may be engaged in a contract with the third party or with the employment agency.

¹ If you would like to comment on the issues explored in that call for evidence, please respond to the call for evidence, available at: <https://www.gov.uk/government/consultations/call-for-evidence-raising-standards-in-the-tax-advice-market>, which closes on 28 August 2020.

13. An **umbrella company**, while also an employment intermediary, does not source work, and typically will enter into a contract with an employment agency who will source work from end clients. The umbrella company will have a contract of service, i.e. an employment contract, with the contractor.
14. An **engager** is used throughout to refer to the person using the contractor's services.
15. The term **contractor** is used throughout to refer to an individual who provides a service to a third party working through an employment intermediary.

2. Background on disguised remuneration schemes

16. Over the last 15 years, HMRC has devoted significant energy to identifying and litigating avoidance schemes, and a number of policy measures have been introduced which have changed the economics of tax avoidance for taxpayers and promoters of tax avoidance schemes. These have included:

- Disclosure of Tax Avoidance Schemes (DOTAS) rules introduced to provide early information to HMRC about tax avoidance schemes and their users (2004)
- Anti-avoidance legislation tackling DR schemes (2011)
- the General Anti-Abuse Rule (2013)
- Promoters of Tax Avoidance Scheme (POTAS) rules to address the highest risk promoters, with penalties of over £1 million if they fail to change their behaviour (2014)
- Follower Notices (FNs) and Accelerated Payment Notices (APNs) (2014)
- Code of Practice on Taxation for Banks (2014)
- Serial Tax Avoiders Regime (2016)
- Enablers Penalty Regime to tackle other people involved in the design and sale of abusive tax avoidance schemes (2017).

17. As a result, the tax avoidance landscape has changed significantly in recent years, and HMRC has been able to close the avoidance tax gap from approximately £3.7 billion in 2005-06 to approximately £1.7 billion in 2018-19. The range of tax avoidance schemes being marketed has also changed. In the National Audit Office's 2012 report on "Tax avoidance: tackling marketed avoidance schemes", they listed five of the largest types of avoidance schemes marketed at that time: Partnership Losses; Employee Benefit Trusts (DR); Interest Relief; Employment Intermediary (DR); and Stamp Duty Land Tax (SDLT).² HMRC's success over the last 6 years has seen the range of avoidance schemes available in the marketplace significantly reduce.

18. Schemes being promoted today are largely limited to DR schemes. DR schemes are contrived arrangements that pay people amounts that purport to be non-taxable in place of salary; these amounts are often described as a loan, but recent schemes may also refer to annuities, shares or another "non-taxable" payment. Schemes typically route the "non-taxable" amount through an offshore trust in a low or no tax jurisdiction, with the sole purpose of avoiding income tax and National Insurance contributions (NIC). These supposedly "non-taxable" amounts are no different to normal income and are, and always

² <https://www.nao.org.uk/report/tax-avoidance-tackling-marketed-avoidance-schemes/>

have been, taxable. Those who are paid through these arrangements will be referred to hereafter as “scheme users”.

19. HMRC has undertaken extensive action against DR schemes over the course of the last two decades. This has included opening tens of thousands of enquiries into the tax affairs of scheme users and litigating schemes where necessary. Where litigation has gone through the courts, schemes have been found to be ineffective in achieving the intended tax outcome, but promoters often attempt to step round the court’s decision by devising new schemes with slightly different arrangements, requiring fresh litigation. Enquiries and litigation can take a long time to complete, during which time users may build up big tax bills for which they have not saved, more users may take up the schemes and the promoters may dissolve their firm (and set up afresh under a new guise).
20. In 2016, the government announced the introduction of the Loan Charge, intended to draw a line under DR schemes. Many scheme users had persisted in disputing their tax bills under the existing law, and schemes continued to be marketed and used despite the introduction of earlier anti-avoidance legislation in 2011. The Charge was legislated in Finance (No.2) Act 2017. It applied to DR loans which were still outstanding on 5 April 2019. In response to concerns about the Loan Charge the government set up an independent review led by Sir Amyas Morse, which reported in December 2019.³ The government accepted all but one of the Review’s recommendations and is currently implementing changes to the policy. Meanwhile, HMRC’s priority is to work with taxpayers to help them settle their DR liabilities quickly and get out of tax avoidance for good.
21. However, use of DR schemes has continued, despite there being no doubt that the schemes don’t work. Between April 2019 and May 2020, HMRC identified over 45 schemes being marketed, aimed at individuals and designed to avoid tax on employment income. In his independent review, Sir Amyas Morse noted the continuing use of DR schemes, and recommended that the government should set out further action to tackle these schemes. The government is launching this call for evidence to seek views on its planned approach and further steps it can take to tackle these schemes.

Features of disguised remuneration schemes today

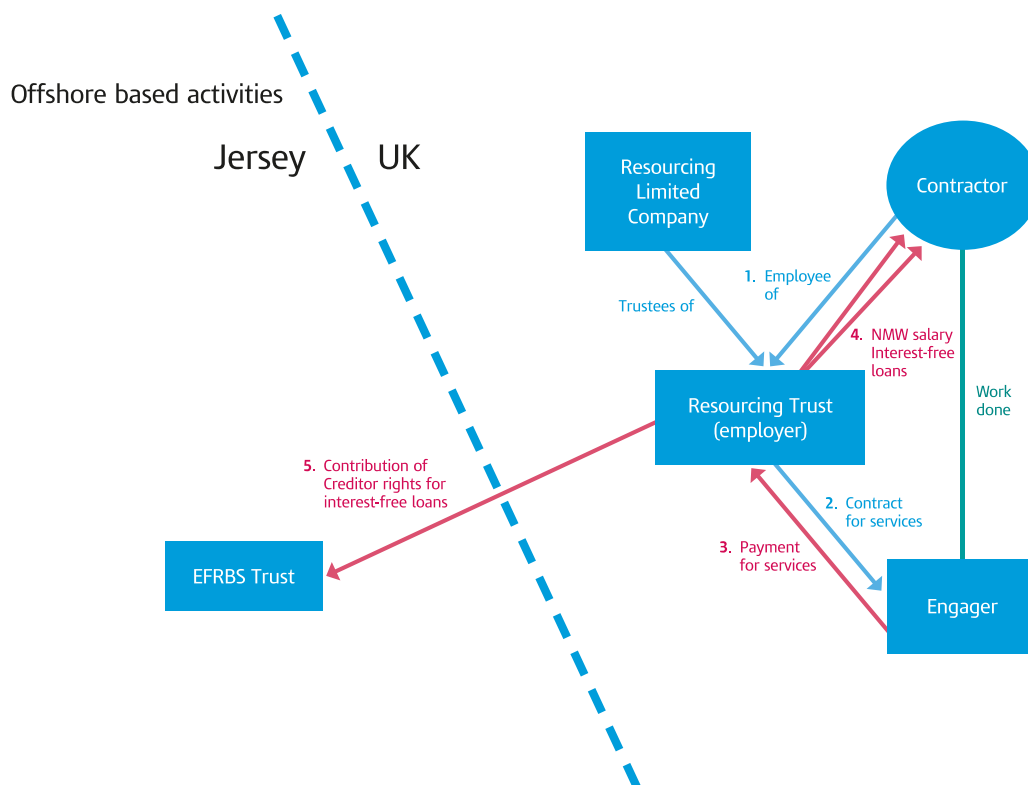
22. The population using DR schemes has also shifted over time as a result of earlier action taken to tackle their use. Schemes were first used by large employers, such as financial institutions, to deliver purportedly tax-free pay and bonuses to their employees, but many of these stopped using schemes as a response to legislation in 2011 to tackle DR schemes. Today, the vast majority of DR schemes are used by contractors working in a range of industries from management consulting to healthcare, or in some cases by small and medium businesses to remunerate their directors and employees.

³ <https://www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review>

23. A typical contractor scheme involves creating an offshore “employment”, which is an artificial construct set up for the purposes of the avoidance scheme, rather than being a direct employment. These schemes often involve a chain of companies, trusts or partnerships through which money is routed.

24. The diagram below sets out a typical structure for a DR scheme. In this example, the contractor is employed by a UK based Resourcing Trust, and the contractor’s services are sub-contracted to the end engager. The engager will pay the Resourcing Trust for the contractor’s services. The Resourcing Trust will pay the contractor the National Minimum Wage that is taxed under PAYE and provide a loan (repayable on demand but rarely demanded) which is untaxed. The Resourcing Trust will transfer the right to repayment of the loans to an offshore Employer Financed Retirement Benefit Scheme.

Figure 1: typical structure of a DR scheme



25. The precise structure of these schemes has changed over time, with the development of self-employed, partnership and onshore employer schemes after 2011 when anti-avoidance legislation was introduced. As with earlier schemes, these later schemes have never achieved the intended tax outcome, and income taken through these schemes has always been taxable.

26. Use of DR schemes remains a small proportion of the estimated population of 2 million freelancers in the UK.⁴ The table below set out the number of scheme usages by individual and employer between tax year 2013 to 14 and tax year 2017 to 2018.⁵

Figure 2: Scheme usages by year

Tax year	Individuals		Employers	
	First avoidance scheme usage	Subsequent avoidance scheme usage	First avoidance scheme usage	Subsequent avoidance scheme usage
2013 to 2014	3,420	8,840	850	2,250
2014 to 2015	2,510	9,080	930	2,020
2015 to 2016	3,490	7,270	890	1,850
2016 to 2017	1,450	4,970	910	1,240
2017 to 2018	6,080	1,620	220	820

Scheme use is more common in some sectors, as set out in the table below.

⁴ There is no single estimate of the number of freelancers in the UK, however for this purpose it is defined as contractors working in highly-skilled managerial, professional and technical occupations. This estimate is based on data from the Association of Independent Professionals and the Self-Employed.

<https://www.ipse.co.uk/resource/exploring-the-rise-of-self-employment-in-the-modern-economy-pdf.html>

⁵ A scheme usage is defined as an instance of a scheme being used by an individual during a tax year. Where an individual uses the same scheme more than once during the year it is recorded only once. Where an individual uses the same scheme in multiple tax years it is recorded under “First avoidance scheme usage” in the first year of use, and under “Subsequent avoidance scheme usage” in subsequent years. Data from HMRC iCA database as at 3 July 2019.

Figure 3: Scheme users by sector

Sector	Percentage of DR user population
Business services e.g. management consulting or IT consulting	65%
Construction	10%
Engineering	4%
Medical and education services	3%
Accountancy	2%
Dentistry	2%
Retail distribution	2%
Other professional and technical services	2%
Recreational services	<2%
Other financial activities	<2%
Other transport and storage	<2%
Social and community services	<2%

HMRC action underway to tackle ongoing scheme use

27. HMRC is working to tackle continuing use of DR schemes and has already taken significant action against both the promotion, and the use of these schemes. Most recently, HMRC published its promoters strategy, with a particular focus on action it is taking to tackle promoters of tax avoidance schemes to stop these schemes being marketed.⁶

28. HMRC is already taking the following actions to tackle promoters and enablers:

- Enforcing the legal obligations of promoters.
- Undertaking targeted and intensive enquiries into promoters, enablers and their business entities using its full range of powers for those who design, promote or market tax avoidance schemes.

⁶ <https://www.gov.uk/government/publications/tackling-promoters-of-mass-marketed-tax-avoidance-schemes/tackling-promoters-of-mass-marketed-tax-avoidance-schemes>

- Stepping up its work with regulatory bodies, such as the Advertising Standards Authority, to make sure that all government and regulatory powers are used to tackle promoters, and to protect taxpayers.

29. HMRC is also taking the following action to tackle scheme usage:

- HMRC already provides information for taxpayers on the pitfalls of avoidance, such as in [guidance for contractors and agency workers on how to identify tax avoidance schemes that wrongly claim to increase your take-home pay](#) and in [Ten things a promoter of tax avoidance will not always tell you.](#)
- HMRC is stepping up its communication plans to better educate taxpayers so that they are less likely to be tempted to get involved in avoidance in the first place. As a first step, in 2020 to 2021 HMRC is running an awareness campaign targeting certain sectors of the economy where promoters are particularly active.
- HMRC is increasingly intervening in real time - writing to customers who appear to have started using employment-based avoidance as early as possible to give them an opportunity to get out of DR schemes early.
- HMRC will continue to tackle scheme use through enquiries, encouraging scheme users to settle their liabilities and litigating where they do not do so.

This call for evidence will seek views on whether any further government action is required to effectively tackle these schemes.

3. Gathering evidence on the current market for disguised remuneration avoidance schemes

30. As set out in the previous chapter, the government is already committed to tackling DR schemes, including through HMRC action to challenge promoters of schemes, and uses many sources of information to investigate schemes and collect the tax due.
31. The government would like to gather any evidence about schemes currently being used and marketed, to assist with action to counter the existing use of DR schemes and the growth of new ones. The government is interested to receive evidence both on the structure of schemes, how they are marketed, what taxpayers are looking for when they find marketing material and any other information which may assist HMRC to challenge schemes.
32. Some recent trends HMRC is aware of include:
- Promoters continue to adapt schemes in an attempt to argue that they fall outside of legislation tackling scheme use. For example, rather than describing payments from schemes as loans, schemes may describe payments as an annuity, shares, a capital advance involving mutual, joint or co-ownership, or a payment derived from a revolving line of credit facility, or some other “non-taxable” form.
 - Online comparison or broker websites advertising umbrella companies continue to feature in non-compliant schemes, including unrealistic claims that the taxpayer can “keep 80 to 85% of your wages and be tax compliant”.⁷
 - Promoters have adapted schemes quickly to target particular sectors and groups within the labour market. For example, recently promoters of tax avoidance schemes have targeted workers returning to the National Health Service (NHS) to help respond to the coronavirus (COVID-19) outbreak. HMRC has published a Spotlight to warn individuals in this situation of the risks of taking up one of these schemes.⁸

1. What DR schemes are you aware of being marketed currently, and how are these being marketed? Are these being targeted specifically at your profession or sector? How did you come across these schemes?

⁷ <https://www.gov.uk/guidance/comparison-and-broker-websites-marketing-umbrella-companies-are-not-always-what-they-seem-spotlight-55>

⁸ <https://www.gov.uk/guidance/tax-avoidance-promoters-targeting-returning-nhs-workers-spotlight-54>

33. Taxpayers and others are able to report to HMRC any information about a tax avoidance scheme through the HMRC Fraud Hotline.⁹ The government is interested in exploring what more it can do to encourage those who are aware of disguised remuneration and other tax avoidance schemes to come forward with information to help tackle scheme use, and any improvements HMRC could make to the reporting process.

2. What more might HMRC do to encourage people to report a scheme or promoter?

⁹ <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/report-fraud-to-hmrc>

4. Effectiveness of the legislation tackling disguised remuneration schemes

34. Promoters of DR schemes claim they work by allowing an individual to receive “non-taxable payments” in place of salary. However, these payments are, in reality, no different to normal income. These payments are, and always have been, taxable.
35. There is a strong legal basis to support this position. In addition to tribunal and court judgments, the government has legislated to clarify the position on DR schemes:
- In December 2010 the government announced the introduction of part 7A of the Income Tax (Earnings and Pensions) Act 2003 to tighten up income tax legislation. These rules gave rise to an employment income charge on employment income paid through a third party as if it were paid directly to the employee by the employer. The legislation received Royal Assent with the passing of the Finance Act 2011 and put beyond doubt that DR schemes did not work.
 - In 2017 the government legislated for self-employed DR schemes. Section 35 Finance (No.2) Act 2017 introduced, from 6 April 2017, a tax charge on trading profits disguised as other receipts.
36. Recent litigation has also demonstrated that different variations of DR schemes which HMRC is aware of are covered by the legislation when they are challenged, and has confirmed that DR schemes did not achieve the intended outcome prior to the 2011 anti-avoidance legislation:
- Case RFC2010 v Advocate General (known as “Rangers”), where payments were made by the employer football club into offshore trusts and the trust typically loaned the money to the players. The hearings started in the Tax Tribunal in 2010 and culminated in a Supreme Court decision in 2017. The Supreme Court held unanimously that contributions into a trust were taxable as employment income between 2001 and 2009.¹⁰
 - HMRC applies the Rangers precedent to other cases which used similar schemes and follower notices have been issued following the Rangers decision. These are issued to known users of tax avoidance arrangements that are similar to those which a Court has found not to work.
 - A number of other cases concerning similar schemes, including five in 2017, have also been found in HMRC’s favour. Most recently, in February 2020, the part 7A legislation was tested in litigation won by HMRC against Root2 Tax Ltd.¹¹ In this case it was demonstrated that the part 7A legislation applied to a scheme disguising earnings as gambling winnings.

¹⁰ <https://www.supremecourt.uk/cases/docs/uksc-2016-0073-judgment.pdf>

¹¹ <http://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j11458/TC07502.pdf>

37. While the DR legislation is effective in applying to the variations of DR schemes HMRC is aware of, the government would like to seek views on whether there are any variations of DR schemes that are not covered by the existing DR legislation. It will also consider any suggestions about how the legislative framework might be strengthened.

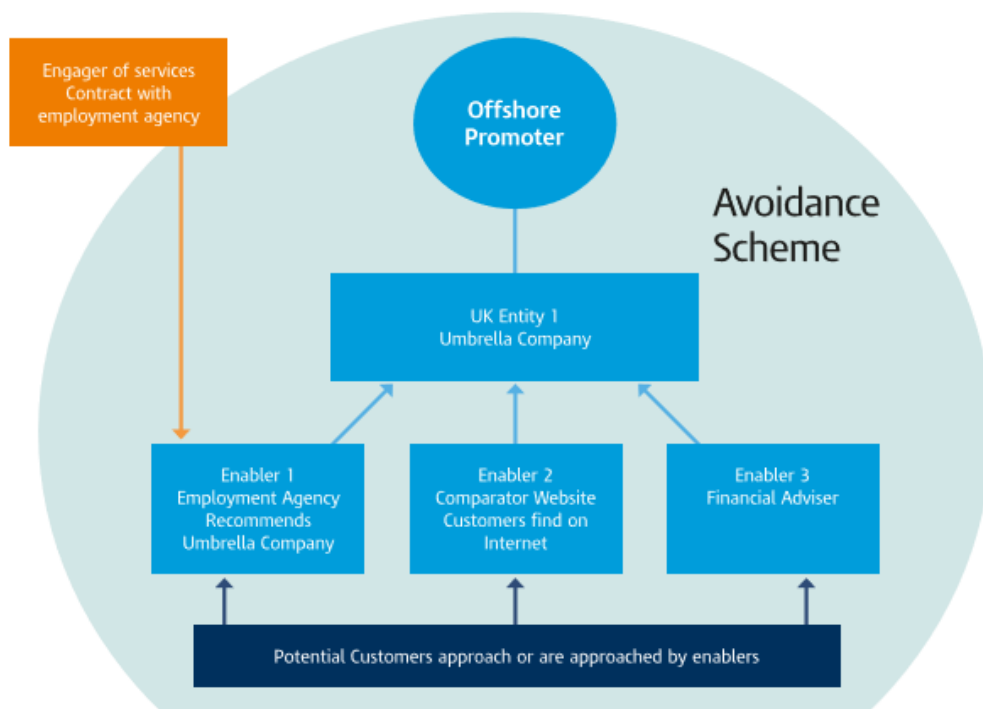
3. Are there any variations of DR schemes which are not covered by the existing DR legislation? How else could the government strengthen the legislative framework?

5. Stopping schemes at the source – tackling promoters of tax avoidance schemes

Who are promoters of tax avoidance schemes

38. A promoter of a mass-marketed tax avoidance scheme is generally someone who designs or markets the tax avoidance scheme or is to any extent responsible for its organisation. Promoters often use a network of enablers to sell their schemes to scheme users.

Figure 4: illustration of the network of enablers who promoters use to sell their schemes



39. The government has driven changes over the past ten years to tackle promoters of schemes, including changes to place significantly more responsibility and potential penalties on promoters and their enablers.

40. This has changed the economics of avoidance and as a result the tax avoidance market has changed considerably. The government has seen banks, tax professionals and

around 20 boutique promoters leave the tax avoidance market since 2014. A small number of promoters continue to operate. These promoters are rarely members of professional bodies and are often based, or claim to be based, offshore. They will take every opportunity to sidestep the rules, including obscuring their identity behind other entities which they frequently dissolve and replace. They do not comply with their disclosure obligations so that they can continue to market their schemes and profit from their activities.

41. Promoters and their enablers often fail to make it clear to scheme users that they are getting involved in an avoidance scheme that HMRC is likely to challenge and often do not explain objectively the risks of entering tax avoidance schemes. Instead, the promoter may point out that they have received an opinion from an eminent QC that the scheme is likely to be effective in reducing tax and give false assurances that their schemes cannot be successfully challenged by HMRC, or even that HMRC has approved it.
42. Taxpayers may not ask the promoter sufficient questions to understand the risks or know where to get objective advice. However, it is the taxpayer who remains accountable for getting their tax right and will eventually need to pay the additional tax they owe on the schemes, often having already paid out substantial fees to the promoter.

Planned action to tackle promoters

43. In Spring Budget 2020 the government announced measures as a next step to tackle promoters in response to the Loan Charge Review. The government is consulting on these changes, which will:
 - ensure HMRC can more effectively stop promoters from promoting avoidance schemes at an early stage to protect taxpayers from aggressive schemes;
 - prevent promoters from abusing corporate structures to avoid their obligations under the POTAS rules and ensure that they remain responsible for fulfilling those obligations;
 - ensure HMRC can obtain information about the enabling of avoidance schemes as soon as they are identified by strengthening information powers for the enablers regime; and by ensuring enabler penalties are felt without delay when a scheme has been defeated at tribunal;
 - ensure that HMRC can act decisively where promoters fail to provide information on their avoidance schemes. These changes will help HMRC obtain the information needed to bring a scheme into DOTAS and empower HMRC to act faster where avoidance schemes are being promoted;
 - make further technical amendments to the POTAS regime including ensuring that the process of scrutinising promoters is not disrupted by legal challenges, so the regime can continue to operate effectively; and

- make additional changes to the GAAR to ensure it can be used to counteract avoidance through partnerships as intended.

44. The government intends to go further to tackle promoters of tax avoidance schemes to reduce the supply of schemes to taxpayers.

45. Promoters rely on certain structures and conditions for their businesses to thrive. The government is looking closely at all aspects of how promoters run their business, for example how they advertise and market their schemes, how they earn their fees and their relationships with enablers and clients.

46. The government has identified three key themes where further action is warranted and would welcome views on how it can go further in the areas set out below, whether these approaches would be effective, and views on any other action it could take forward to tackle promoters.

47. As mentioned in the introduction, the government recently published a call for evidence on raising standards in the market for tax advice. This explores a range of potential approaches which could be considered in order to raise standards among people who provide tax advice and tax services, including promoters. The government recognises the interaction between the issues explored across both documents and will work closely with stakeholders to ensure that changes are carefully considered.

Disrupting the business model of promoters

48. Promoters and their enablers often mislead taxpayers, for example maintaining secrecy around any challenges to their schemes and using misleading advertising for their products.

49. The government is already exploring further approaches to tackle misinformation and failure to disclose relevant information to taxpayers by promoters and enablers, including:

- ensuring that HMRC has the powers it needs to name a promoter or enabler who is marketing avoidance schemes at an early stage, exposing their scheme and warning the public about the dangers of using the scheme;
- working with third parties such as the Advertising Standards Authority to stop misleading advertising for DR schemes.

50. The government is interested to hear views on further steps it can take to tackle misleading information being provided by promoters.

4. What further action could government take to tackle misleading information promoters provide to taxpayers?

Disrupting the economics of avoidance

51. Promoters can reap potentially substantial rewards from the sale of mass-marketed avoidance schemes. They charge significant fees, and they will often leave scheme users without support when HMRC later challenges the scheme user's tax return. The government has already introduced substantial penalties for promoters, including penalties under the Disclosure of Tax Avoidance Schemes (DOTAS) and Promoters of Tax Avoidance Schemes (POTAS) regimes, to ensure promoters face the financial consequences of their actions, including potential penalties of over £1 million if they fail to change their behaviour. While these changes have resulted in a significant reduction in the number of promoters, some promoters still continue to operate using every means at their disposal to delay HMRC taking action against them.

52. The government is interested in exploring whether there are further options to disrupt the financial gains for promoters by using the relationship between the promoter and others in the avoidance supply chain and ensuring that promoters do not benefit financially from the promotion of DR schemes. This may include:

- options to increase the financial risk to promoters from the avoidance schemes they promote;
- exploring ways to directly disrupt the money flows between the scheme user and promoter or enabler to impact their profits; and
- options to increase financial risk to enablers of tax avoidance such as requiring them to shoulder the burden of ensuring that everyone in the supply chain, and the promoter, satisfy their tax obligations with liability for the tax and penalties if they fail to comply.

5. What further action could government take to increase the financial risk for promoters of tax avoidance and would this be effective in deterring promoters?

Additional powers to tackle promoters

53. Promoters use every means at their disposal to avoid HMRC's notice, they attempt to keep their tax avoidance schemes 'under the radar' and when the tax avoidance scheme is investigated do all they can to delay the investigation. This may include:
- obscuring their identity behind different entities, including entities that are offshore;
 - moving their clients from entity to entity and from scheme to scheme in an attempt to stay one step ahead of HMRC;
 - trying to hide their activities from HMRC by not complying with their legal obligations to disclose their scheme;
 - delaying HMRC action as long as possible with a range of tactics, such as ignoring or only partially answering HMRC enquiries and information notices;
 - only settling a case just as it is going to court to delay the court's ruling publicly on the tax avoidance scheme; and
 - using insolvency as a way of seeking to escape the repercussions of their actions.
54. Where promoters are based offshore, HMRC will continue to join forces with tax authorities in other countries, sharing information through established gateways and building joint strategies and plans to tackle overseas elements of the promoter business.
55. Further, the government is consulting on a package of measures announced at Spring Budget 2020 to tighten the rules that apply to promoters, making it harder for them to sidestep the rules.¹² Nevertheless the government will look to further strengthen any areas where promoters are seeking to build in delay or obscure transactions to avoid complying with the rules.
56. The government is interested in seeking views on where it can go further to counteract action taken by promoters to avoid complying with the rules, both action it can take to ensure that promoters based offshore comply with all their obligations and any action that would make it harder for promoters to sidestep their obligations.

6. What further action could HMRC or the government take to ensure that promoters based offshore comply with all government regulations and liabilities and make it harder for them to avoid their obligations?

7. What further action could government take to disrupt other aspects of promoters' business models?

¹² <https://www.gov.uk/government/consultations/tackling-promoters-of-tax-avoidance>

6. Supply chains and the use of disguised remuneration schemes in the flexible labour market

57. The majority of DR schemes today are used by taxpayers who provide their services to a third party, while working through an employment intermediary such as an umbrella company. In this chapter, individuals working in this way are referred to as “contractors”.
58. The government values the UK’s dynamic flexible labour market, which forms an important part of the UK economy. Analysis of businesses operating in areas relating to agency work showed around 1.4 million individuals on their PAYE payrolls over the course of Q1 of 2019/20.¹³ The great majority of these individuals will be supplied to engagers, rather than undertaking work directly for agency businesses. Employment intermediaries also supply hundreds of thousands of individuals to engagers where PAYE is not operated on the payments by the agency.
59. However, due to the concentration of DR schemes being used through employment intermediaries, the government is interested in exploring the role of employment supply chains in the proliferation of DR schemes, and whether it should take further action to tackle any issues in this market.

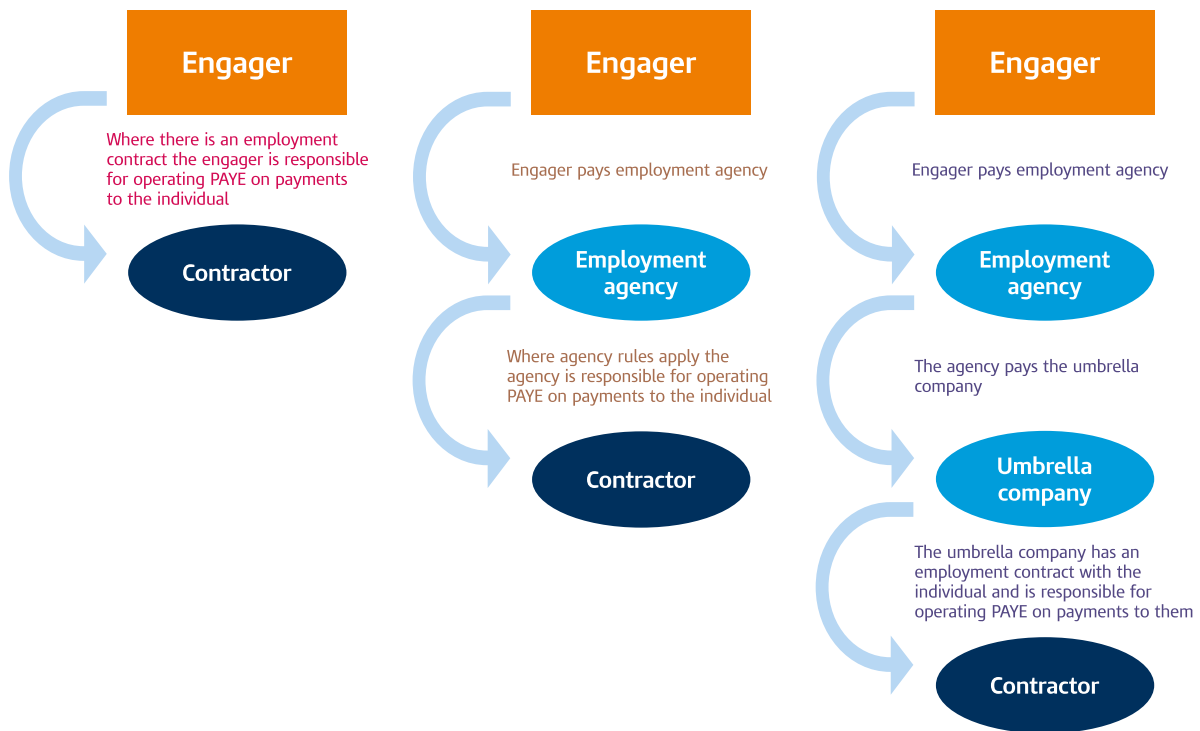
Understanding the role of intermediaries in supply chains

60. Individuals can provide their services to a business in a number of ways – they may be hired directly by the end engager they are providing services to. Or they may work via an employment intermediary such as an employment agency or an umbrella company, or work via their own intermediary, most commonly a personal service company.
61. The government recognises that in some circumstances engagers may prefer to engage individuals indirectly and may have a preferred method for doing so. For example, they may have a longstanding relationship with employment agencies who provide them with contractors, either to carry out short term, contingent tasks, or to fill short term gaps in their permanent workforce.
62. Where intermediaries are used, the circumstances of individual situations vary. There may only be one intermediary between the contractor and the end engager, or there may be multiple intermediaries with more complex supply chains. The tax status of the

¹³ Ad-hoc HMRC analysis of Real Time Information (RTI) returns from businesses with associated recorded SIC codes 78109 (Activities of employment placement agencies (other than motion picture, television and other theatrical casting), 78200 (Temporary employment agency activities), and 78300 (Other human resources provision).

individual, and the identity of the person in the chain who is responsible for administering PAYE where required, will vary depending on the individual circumstances of the relationship. The diagram below sets out some of the situations in which PAYE is operated in an employment supply chain (further detail on this is set out in Annex A). Individuals may also be self-employed, or the off-payroll working rules may apply. In all circumstances, the individual remains responsible for ensuring they are paying the correct tax on their income.

Figure 5: illustration of situations in which PAYE is operated in employment supply chain



63. The government is interested to seek views on the extent to which tax is a factor in determining the nature of the supply chain as opposed to other commercial factors, and if so, why this is the case.

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

Engagers

64. While individual taxpayers are responsible for complying with their tax obligations, businesses can play an important role in ensuring the tax compliance of their workforce where they engage individuals directly.
65. Where a business engages a contractor indirectly via an intermediary, the end engager is generally not responsible for the contractor's tax compliance. However, the government is implementing changes to the off-payroll working rules, which will place more responsibility on engagers for the tax compliance of individuals who work through their own intermediary, most commonly a personal service company. Under these rules, which are already in place in the public sector, engagers will be required to determine whether the off-payroll working rules apply, and in some circumstances to administer PAYE on the contractor's pay.¹⁴
66. More widely, engagers may still influence the tax compliance of their contractors, even where they are not responsible themselves, through the employment intermediaries which they use to hire contractors. The government recognises that engagers may not always be aware of tax non-compliance by employment intermediaries in their supply chain.
67. The government would like to understand any steps that engagers take to assure themselves of the tax compliance of any third-party employment intermediaries they use, and views on what it can do to promote this behaviour to increase compliance. The government would also welcome views on whether it should explore taking further steps to require engagers to assure themselves of the tax compliance of their flexible workforce, including whether there is a role for HMRC to check this assurance.
68. The government has also received reports of individuals being required by an engager to use an intermediary arrangement using a DR scheme, in order to obtain a particular job. While the government has not seen any evidence to support claims that engagers require individuals to work through a DR scheme to date, it would also welcome any evidence of engagers requiring contractors to participate in tax avoidance schemes, or not employing individuals who would not do so.

<p>9. What action do engagers take to assure themselves of the tax compliance of any intermediaries they use to hire their contingent labour force?</p>
--

¹⁴ More information on the off-payroll working rules is available at: <https://www.gov.uk/guidance/understanding-off-payroll-working-ir35>

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?

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?

Employment Agencies

69. While the majority of employment agencies are tax-compliant, HMRC is aware that some use DR schemes to undercut their competitors by offering higher take-home pay.

70. Employment agencies contracting with engagers already have a range of responsibilities for ensuring, and helping HMRC assure, that the correct taxes are being paid in the labour supply chain. In particular, employment agencies have responsibility for:

- Administering employment taxes, or validating that contractors are being paid correctly by another intermediary, in accordance with the agencies tax legislation;
- Providing HMRC with the information it needs on non-PAYE agency labour market supply chains;
- Operating PAYE where appropriate under the off-payroll working rules where end-clients are in the public sector.

Further detail on the responsibilities of employment agencies can be found in Annex B.

71. There are penalties which can apply to employment agencies and other intermediaries who facilitate tax avoidance, incentivising compliance. The Enablers Penalty Regime was introduced in 2017 and is a tough financial penalty of 100% of the fees earned by any person who knowingly enables a tax avoidance arrangement that is later defeated by HMRC. The Enablers Penalty Regime applies to defeated tax arrangements where enabling took place on or after 16 November 2017.

72. The government is interested in exploring whether it should take further action, such as:

- Building on the responsibilities that employment agencies contracting with engagers have for ensuring tax compliance in the labour supply chain;
- Building on existing HMRC powers to ensure that employment agencies which actively promote tax avoidance schemes are penalised for their actions;
- Better communications of HMRC's existing powers to tackle non-compliance by employment agencies and other intermediaries.

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

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.

Umbrella companies

73. Umbrella companies employ people who carry out work for third party engagers, rather than within the umbrella company's business. In contrast to agencies, umbrella companies will not source work with the engager for their workers. The sourcing of the work will typically be undertaken by an employment agency, which then contracts with the umbrella company. The majority of umbrella companies are tax compliant.
74. However, HMRC is aware that some umbrella operators use DR schemes offering workers unrealistically high take-home pay rates, to outcompete compliant actors in the market.
75. HMRC is already considering further action it could take to tackle this behaviour by umbrella companies, including:
- Working with the Advertising Standards Authority and other third parties to ensure that umbrella companies and others cannot publicise misleading information about schemes;
 - Working with the Employment Agency Standards Inspectorate to promote awareness of the risks of tax avoidance.
76. As umbrella companies enter into a direct employment contract with the individual, like any employer they are responsible for administering employment taxes on earnings paid to their employees. Where umbrella companies enter into a genuine employment contract with an individual, employment agencies and engagers further up the labour supply chain are not required by the tax rules to ensure employment taxes are correctly administered on the earnings paid to the contractor.
77. The government would like to seek views on whether it should explore options to take further action to address the role of umbrella companies in marketing and distributing DR avoidance schemes, and whether this would be effective.
78. For example, the government is interested in views on:

- Whether existing penalties and risks associated with enabling tax avoidance are sufficient to deter umbrella companies from distributing DR schemes, and whether these powers can be made more effective;
- Whether engagers or agencies which use workers supplied by umbrella companies are able to obtain the information they would need to assure themselves that the umbrella company is operating employment taxes compliantly.

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.

79. The government recognises wider concerns about the employment protections of workers working through umbrella companies and other intermediaries in supply chains. The government has committed to expand the remit of the Employment Agency Standards Inspectorate to include umbrella companies.

80. The former Director of Labour Market Enforcement, Sir David Metcalf, has noted that different types of labour market supply chain non-compliance – for example tax and employment rights – go hand and hand. The government is interested in receiving evidence of this and would like to seek views on which areas of non-compliance HMRC could work effectively with the EAS and other regulatory authorities to support labour market compliance.

15. Do you have any evidence of different types of labour market supply chain non-compliance taking place together?

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

7. Helping taxpayers steer clear of disguised remuneration schemes

81. The government is committed to taking action to tackle promoters of schemes and is seeking views on whether further action is required to make labour market supply chains take responsibility for ensuring contractors pay the correct tax.
82. However, taxpayers remain accountable for getting their tax right. Taxpayers who enter DR schemes will eventually need to pay the tax they always owed despite the schemes, often having already paid out substantial fees to the scheme promoter or another intermediary. It remains the taxpayer's responsibility to understand their tax obligations and abide by them.
83. Many scheme users are aware that they are entering into highly artificial arrangements with a view to avoiding tax. However, some taxpayers may find themselves in tax avoidance because they do not understand the transactions they are entering into or their tax obligations and they do not take sufficient steps to assure themselves that they are paying the correct tax. They may not understand where to get advice and rely on advice from a promoter of a tax avoidance scheme who does not give them full, objective information or advice.
84. Where taxpayers rely on tax advice from a promoter, there is a risk that they will be unprotected in the event that something goes wrong. It may be that the only recourse the taxpayer will have against the promoter is to instigate a claim on the basis of negligence: this is dependent on the promoter still being in business and the consumer having funds to pursue legal action.
85. The government would like to seek views on what more it can do to protect taxpayers in this situation, both by equipping taxpayers with the tools they need to recognise avoidance and steer clear of it, and by improving consumer protection for taxpayers.
86. To equip taxpayers to steer clear of avoidance, HMRC is committed to using targeted communications on the risks of tax avoidance schemes and already undertakes a range of communications activities to target taxpayers at risk of entering DR schemes, including:
- HMRC publicises where it is aware of schemes which are ineffective, for example through its Spotlight series, and to publicise successful litigation against schemes.¹⁵ HMRC communications make clear that these schemes are ineffective and will be challenged.
 - Working with external organisations to communicate our message about the risks of entering these schemes.

¹⁵ <https://www.gov.uk/government/news/hmrc-wins-40-million-battle-against-tax-avoidance-promoters>, and <https://www.gov.uk/government/news/hmrc-defeats-promoter-who-used-their-own-avoidance-scheme>

- As part of the promoter strategy, HMRC committed to undertake in 2020 to 2021 an awareness campaign targeting certain sectors of the economy where promoters are particularly active, for example, the IT, medical and oil and gas industries. This will advise people how to spot avoidance schemes, explain the risks involved and point out where people can get more information to enable them to make informed choices.

87. The government and HMRC welcome views on how HMRC can improve these communications to have greater impact in influencing decisions they make to go into DR avoidance schemes, including views on the channels it uses to reach taxpayers, ensuring communications are timely and what messages would be most effective. The government would also like to seek views on whether there are any other approaches it or HMRC should explore to help taxpayers recognise a tax avoidance scheme and understand the risks of entering one.

88. The government also welcomes views on how it may be possible to provide better consumer protection to taxpayers, including how it may be possible to provide better support, what impact increasing consumer protection may have on taxpayer behaviour and the responsibility taxpayers take for their own tax affairs. Views on this issue are also being sought as part of the call for evidence on raising standards in the tax advice market. The government will ensure that responses to both documents are considered together in formulating next steps.

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?

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.

8. Helping taxpayers get out of disguised remuneration schemes

89. HMRC is seeking to tackle DR scheme use by reducing the risk of taxpayers entering these schemes to begin with. However, where taxpayers do enter DR schemes, they remain liable for the tax due and HMRC has an obligation to collect tax that is legally due.

Early intervention with taxpayers

90. HMRC will help taxpayers move out of avoidance schemes before they build up large tax liabilities. As soon as it becomes aware that a taxpayer may have entered an avoidance scheme, HMRC will contact them to highlight the risks they face and provide advice on how they can leave the scheme. This will mean that it can help them out of their avoidance schemes before they have built up large tax bills.

91. HMRC is interested in exploring whether there are other approaches it could use to intervene early in this way, assisting taxpayers to identify schemes and get out of them early.

19. What do you see as the barriers for users exiting avoidance? What other approaches should HMRC consider to intervene early in DR avoidance schemes and to support taxpayers leave these schemes?

Encouraging taxpayers to settle their tax liabilities

92. Taxpayers remain responsible for their tax affairs, and HMRC will seek to recover the tax they owe as well as encouraging them to get out of tax avoidance. HMRC has a responsibility to collect the tax due by challenging schemes and pursuing tax which is due under the law – including through litigation where required.

93. The framework for HMRC investigations into unpaid tax and litigation is carefully balanced to allow HMRC to collect the tax due while including safeguards for taxpayers. However, where taxpayers dispute HMRC's position the settlement process can be drawn out, making it harder to encourage taxpayers to get out of tax avoidance for good.

94. For example, HMRC's past experience of tackling DR scheme cases was that where a lead case has been finally defeated in the courts, other users of that scheme were very

reluctant to settle, often encouraged by promoters or enablers of schemes not to cooperate. They would highlight often minor distinctions between their scheme and those in the lead case. Frequently, such users would pursue appeals as far as the First-Tier Tribunal, often conceding immediately before the hearing.

95. A number of policy changes the government has introduced in recent years have been specifically designed to change the economics for taxpayers to discourage them from entering tax avoidance and encourage them to settle their tax liabilities.
96. **Follower Notices (FNs) and Accelerated Payment Notices (APNs):** FN and APNs were introduced in Finance Act 2014.
97. The purpose of FNs is to discourage avoiders from spinning out their dispute with HMRC when the avoidance scheme they have used or the principles which they claim make the scheme work, have been shown to fail in another party's litigation.
98. The policy intent of APNs is to change the economics of avoidance by moving disputed funds from the avoider to the Exchequer while the dispute is resolved. Any tax enquiry or appeal remains in train and is not affected by the APN. If a customer was ultimately successful in showing that no tax is due any tax paid under the APN would be repaid to them with interest where appropriate.
99. These measures apply across all forms of tax avoidance and can only be used in specific circumstances and subject to certain safeguards for taxpayers. Both regimes aim to discourage people from entering into avoidance in future, as well as encourage settlement of cases on hand.
100. **Serial Tax Avoiders Regime (STAR):** The STAR was introduced in Finance Act 2016. Its purpose is to discourage people from continuing to engage in tax avoidance and to encourage those who are already avoiders to get out of avoidance. Once a person's use of a scheme is defeated by HMRC, that person receives a formal warning that if they use any further avoidance schemes in the following 5 years and HMRC defeat them, they will face a series of escalating sanctions, including penalties, being named as a serial tax avoider and possible restricted access to tax reliefs. Each such defeat extends the warning period further.
101. **Penalties for careless inaccuracies:** These changes were introduced in Finance (No2) Act 2017 and affect penalties for inaccuracies on tax returns or other documents resulting from tax avoidance. These changes move the onus of proof so that when a person's return is found to be inaccurate through the use of an avoidance scheme which does not work, that inaccuracy is regarded as 'careless' and the onus is on the taxpayer to demonstrate that he or she took reasonable care. Certain types of evidence, such as advice which takes no account of an individual's circumstances or which was not given by

a person qualified to give it, is excluded from any consideration of whether or not reasonable care was taken.

102. While these policies have changed the economics of tax avoidance for taxpayers, the government would welcome views on whether there are any further steps it could take to encourage taxpayers in DR avoidance schemes to settle their tax liabilities, and to help HMRC effectively collect the tax due from these schemes.

20. What further action could the government take to ensure that HMRC can effectively collect the tax due from those who enter DR tax avoidance schemes?

21. Beyond the planned approaches and options set out in this document what other action should the government take to prevent the use of DR schemes.

9. Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	2019 -20	2020 -21	2021 -22	2022 -23	2023 - 2024
	+/-	+/-	+/-	+/-	+/-
Economic impact	This is not expected to have a fiscal impact at this stage.				
Impact on individuals, households and families	Any impacts on individuals, households and families arising from this will be fully identified and outlined in due course.				
Equalities impacts	No equalities impacts have been demonstrated at this stage. These will be considered as part of the consultation process.				
Impact on businesses and Civil Society Organisations	Any impacts on businesses or civil society organisations will be fully identified and outlined in due course.				
Impact on HMRC or other public sector delivery organisations	No operational impacts have been identified at this stage. These will be considered as part of the consultation process.				
Other impacts	Other impacts will be considered as part of the consultation process.				

10. Summary of Consultation Questions

1. What DR schemes are you aware of being marketed currently, and how are these being marketed? Are these being targeted specifically at your profession or sector? How did you come across these schemes?
2. What more might HMRC do to encourage people to report a scheme or promoter?
3. Are there any variations of DR schemes which are not covered by the existing DR legislation? How else could the government strengthen the legislative framework?
4. What further action could government take to tackle misleading information promoters provide to taxpayers?
5. What further action could government take to increase the financial risk for promoters of tax avoidance and would this be effective in deterring promoters?
6. What further action could HMRC or the government take to ensure that promoters based offshore comply with all government regulations and liabilities, and make it harder for them to avoid their obligations?
7. What further action could government take to disrupt other aspects of promoters' business models?
8. To what extent is tax avoidance a factor in determining the structure of the employment supply chain and why?
9. What action do engagers take to assure themselves of the tax compliance of any intermediaries they use to hire their contingent labour force?
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?

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?
12. Can you provide examples to support or disprove reports that some employment agencies use DR schemes?
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.
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.
15. Do you have any evidence of different types of labour market supply chain non-compliance taking place together?
16. In what areas of non-compliance could HMRC go further to work effectively with other regulatory authorities to support labour market compliance?
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?
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.
19. What do you see as the barriers for users exiting avoidance? What other approaches should HMRC consider to intervene early in DR avoidance schemes and to support taxpayers leave these schemes?
20. What further action could the government take to ensure that HMRC can effectively collect the tax due from those who enter DR tax avoidance schemes?

21. Beyond the planned approaches and options set out in this document what other action should the government take to prevent the use of DR schemes.

11. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

How to respond

A summary of the questions in this consultation is included at chapter 10.

Responses should be sent by 30 September 2020, by e-mail to tacklingdravoidance@hmrc.gov.uk or by post to: Tackling disguised remuneration call for evidence, Room 2E/11, 100 Parliament Street, London SW1A 2BQ, United Kingdom

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of

confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation.

Your Data

The data

We will process the following personal data:

Name

Email address

Postal address

Phone number

Job title

Purpose

The purpose(s) for which we are processing your personal data is: *Tackling disguised remuneration tax avoidance*

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by us with HM Treasury.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue and Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer
HM Revenue and Customs
7th Floor, 10 South Colonnade
Canary Wharf, London E14 4PU
advice.dpa@hmrc.gsi.gov.uk

Consultation Principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website:
<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process, please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue and Customs, 100 Parliament Street, London, SW1A 2BQ. **Please do not send responses to the consultation to this address.**

Annexe A: The tax status of contractors

In this document, we use the term contractor throughout to refer to individuals who provide a service to a third party through an intermediary. However, the tax status of an individual providing a service to a third party depends on a number of factors, including whether they are directly hired by the end engager they are providing services to, or via an intermediary. It may also vary depending on the type of intermediary the contractor is engaged through.

Individuals directly engaged by an engager

Where an engager directly hires a contractor to work for them, they are required to assess whether employment taxes should be due on any payments to the worker. This will be the case if, according to the tests for employment status, there is a contract of service between the engager and contractor – in other words, for the duration that the contractor works for the engager, they are their employee, and the engager is the contractor's employer. The engager is therefore responsible for the administering employment taxes on the contractor's earnings from this employment. Although the engager can contract with another party, for example a payroll company, to discharge their duty of assessing and remitting employment taxes on their employee's earnings, responsibility and liability for ensuring these employer duties are fulfilled lies with the engager.

In the absence of a contract of service, the contractor's relationship with the engager is that of a self-employed trader. The payment to the contractor does not constitute earnings, employment taxes are not due, and the contractor is responsible for assessing and administering their own tax liabilities, through the self-assessment system.

Individuals engaged via an intermediary

Many contractors work through an intermediary such as a personal service company, employment agency or an umbrella company, and will receive pay via this intermediary. The individual will often seek work through an employment agency, and the agency will match the services of the individual to an end engager seeking contractors to work on a temporary project or plug an existing skills gap. In some situations there will be only one intermediary between the individual and the end engager, and in some situations supply chains can be more complex, with multiple intermediaries.

The way in which the contractor working through an intermediary will be taxed for their work will depend on the individual circumstances and the nature of the intermediary:

- The agency the individual is working through should operate PAYE if the agency rules apply.
- The intermediary should operate PAYE where the individual is an employee of the intermediary. This will be the case, for example, where the individual is employed by an umbrella company.

- Where the off-payroll working rules apply in the public sector, the fee-payer or deemed employer should operate PAYE. Broadly speaking, the fee-payer or deemed employer is the intermediary which pays the individual's intermediary. The individual's intermediary is usually a personal service company.
- Where the off-payroll working rules apply in the private or voluntary sectors, the personal service company should operate PAYE. From 6 April 2021 where the engager is medium or large, this will become the responsibility of the fee-payer or deemed employer as in the public sector. Where the engager is small or is medium or large but does not have a UK connection, the individual's personal service company should continue to apply and operate the off-payroll working rules.

Annexe B: Responsibilities of employment agencies in ensuring tax compliance

Employment agencies are responsible for administering employment taxes, or validating that contractors are being paid correctly, in accordance with the agencies tax legislation.

Employment taxes are due in respect of most agency worker engagements, where the individual works under the supervision, direction and control of another party, and the other conditions of the agency legislation apply. The liability for administering PAYE in these situations lies with the employment agency contracting with the engager. Employment agencies contracting with an engager also have these obligations when they supply a worker who either has an off-shore employer or is paid through an off-shore intermediary.

This liability can be discharged by another party, for example where there are further employment agencies between this first employment agency, and the individual. However, responsibility and liability for ensuring employment taxes are correctly operated on the agency workers earnings from the engagement remains with the employment agency which contracts with the engager; if that employment agency does not directly discharge these responsibilities it should ensure these responsibilities are in practice being discharged by another party within the labour supply chain.

Additionally, where PAYE is not operated on the payment made by the employment agency – for example where they supply a worker who is employed by an umbrella company, or who is self-employed - they are required to inform HMRC of the payment to the worker, via an intermediaries return. These returns help HMRC assure that employment agencies and other intermediaries, and the individuals they supply to engagers, are correctly paying the taxes that are due.