



HM Revenue  
& Customs

# **Call for evidence: tackling disguised remuneration tax avoidance**

## **Summary of responses**

23 March 2021

# Contents

1. Introduction.....	3
Background.....	3
The call for evidence on tackling disguised remuneration tax avoidance.....	4
Respondents to this call for evidence.....	4
Related consultations.....	5
2. Responses.....	6
The current market and effectiveness of the legislation tackling disguised remuneration schemes.....	6
The Government's response.....	7
Tackling promoters of tax avoidance.....	8
The Government's response.....	10
Supply chains and the use of disguised remuneration schemes in the flexible labour market.....	12
The Government's response.....	14
Helping taxpayers steer clear of and exit DR schemes.....	15
The Government's response.....	17
3. Next steps.....	19
Promoters.....	19
Supply chains.....	19
Annexe A: List of stakeholders consulted.....	21
Annexe B: List of call for evidence questions.....	22
Annexe C: Glossary.....	24
Parties in tax avoidance market and employment supply chains.....	24
Tax and tax avoidance terminology.....	24
Other Government departments and agencies.....	25

# 1. Introduction

1.1 This document sets out the Government's response to the [call for evidence: tackling disguised remuneration tax avoidance](#) which ran from 21 July to 30 September 2020.

1.2 The call for evidence asked for views and evidence on several issues including:

- What are the drivers of continuing use of disguised remuneration tax avoidance?
- Whether there are any variations of disguised remuneration schemes not covered?
- Where can the Government take further action to tackle disguised remuneration tax avoidance beyond its planned approach?

1.3 Chapter 2 of this document summarises the responses given to the questions posed in the call for evidence and the Government's response.

1.4 Chapter 3 of this document outlines next steps the Government will take.

1.5 Annex A details the individuals and organisations that responded to the call for evidence.

1.6 Annex B sets out a list of questions posed in the call for evidence.

1.7 Annex C is a glossary of terms. Both the call for evidence and this summary of responses refer to a number of different parties in the tax avoidance market and in employment supply chains; as well as a number of different abbreviations, relevant to disguised remuneration schemes and the labour market.

## Background

1.8 The Government is committed to tackling tax avoidance including disguised remuneration (DR) schemes. Tax avoidance deprives the Exchequer of funds to deliver vital public services. The use of DR schemes is unfair to the 99.8 per cent of taxpayers who have never used one of these schemes.

1.9 DR schemes are contrived arrangements that pay people amounts that purport to be non-taxable in place of a salary; these amounts are often described as a loan, annuities, shares or another payment that is said to be "non-taxable". These supposedly "non-taxable" amounts are no different to normal income and are, and always have been, taxable. The Government and HMRC have taken action to tackle these schemes over the course of the last two decades.

1.10 The [Independent Review of the Loan Charge](#), which reported in December 2019, highlighted the continuing use of these schemes, despite there being no doubt that the

schemes do not work, and recommended that the Government set out how it will continue to tackle these schemes in future.

1.11 HMRC is committed to tackling the continued use of these schemes in line with the wider compliance strategy of 'Promote, Prevent, Respond'. Our aim is to:

- Help taxpayers understand the risks of entering schemes, and convince those who have used the schemes to leave tax avoidance at the earliest possible stage, before they have built up large bills;
- Stop unscrupulous promoters of tax avoidance schemes and take action to stop the supply of schemes;
- Where taxpayers have used schemes HMRC will continue to support them to get out of avoidance and pay the tax they owe, by agreeing a manageable settlement wherever possible but through litigation if necessary.

1.12 The Government launched the call for evidence on tackling DR tax avoidance to seek views on where it should take further action, as part of this existing strategy.

## **The call for evidence on tackling disguised remuneration tax avoidance**

1.13 The call for evidence provided:

- Background on DR schemes, setting out the features of DR schemes today, requesting evidence on the current market for DR schemes and inviting comment on the effectiveness of the existing legislation to tackle these schemes;
- Details of past and future HMRC action to tackle promoters of these schemes. This includes disrupting the business models of promoters and the economics of avoidance;
- Details of supply chains and the use of DR schemes in the flexible labour market. This included exploring the role of intermediaries, engagers, employment agencies and umbrella companies with regards to DR tax avoidance.

1.14 The call for evidence also sought views on ways to help taxpayers steer clear of DR schemes, and ways to help taxpayers who have used schemes to get out of these schemes.

## **Respondents to this call for evidence**

1.15 We are grateful to everyone who took the time to respond to the call for evidence exercise. We received 34 written responses from a wide variety of stakeholders across different sectors.

1.16 We were pleased to see responses from individuals, small and large businesses, as well as professional bodies. Tax professional bodies as well as membership bodies in the recruitment sector were among those who responded.

1.17 We were particularly grateful to receive views from some individuals who have previously been involved in DR schemes; their responses provided a unique insight into how and why people became involved in such schemes.

1.18 Due to COVID-19, HMRC officials were unable to meet face to face with stakeholders. However, despite these challenges HMRC held calls with over 70 individuals from 40 different organisations, hosting both virtual round table discussions and one to one calls. We are grateful for both the input and flexibility of all those HMRC spoke to, especially given the difficult circumstances everyone has faced.

## Related consultations

1.19 The Government launched a number of other consultations in 2020 that are relevant to this call for evidence.

1.20 On 19 March 2020 the Government published a call for evidence on [raising standards in the tax advice market](#). A [summary of responses and next steps](#) document was published in November 2020. Responses to this call for evidence confirmed that the market for tax advice is not working as well as it should be. As announced in the summary of responses and next steps published in November, the Government is consulting on a definition of tax advice and a new measure that would make professional indemnity insurance compulsory for tax advisers, as a way of providing recourse for taxpayers, protecting consumers and raising standards in the tax advice market.

1.21 On 21 July 2020, the Government published a consultation on [tackling promoters of tax avoidance](#), which closed on 15 September 2020. This consultation included proposals to tackle promoters (and other enablers) of tax avoidance schemes to reduce the scope for promoters (and other enablers) to market tax avoidance schemes. The Government has published [a summary of responses to the consultation](#) and confirmed at Budget its intention to proceed with the proposals, which will be included in Finance Bill 2021.

1.22 Since the call for evidence on tackling DR tax avoidance closed, further measures were announced on 12 November 2020 to tackle promoters of tax avoidance schemes. These build on those that were consulted on in July 2020. It was confirmed at Budget 2021 that the Government will [consult](#) on these measures, which include ensuring promoters cannot escape the financial consequences of the penalties that are imposed on them, tackling offshore promoters and the UK entities that support them, providing that where companies promote tax avoidance they can be wound up and their directors disqualified, and supporting taxpayers to identify and exit avoidance schemes.

## 2. Responses

2.1 There was general recognition among respondents that DR schemes do not achieve the intended tax outcome as claimed by the promoters.

2.2 There was a general view that HMRC should do more to clamp down on promoters of tax avoidance schemes. Respondents highlighted the range of powers that HMRC already possess to do this, with a number of respondents arguing that HMRC should investigate these entities with a view to criminal prosecution. Tax advisers emphasised that those marketing these schemes are not regular tax advisers and the majority do not even purport to be providing tax advice.

2.3 Many respondents agreed that HMRC has an important role in tackling misinformation relating to these schemes and educating taxpayers and others about the risks involved. A number of respondents felt that HMRC's messaging should be clearer and simpler so it can be easily understood by non-tax experts.

2.4 Respondents expressed a range of views on both the drivers of behaviour in contingent labour supply chains and how to address these problems, with many supporting greater regulation of umbrella companies, including employment rights, which is planned by the Government. There was also some support for imposing more responsibilities on engagers to ensure workers they engage via third parties are taxed correctly. However, others cautioned that any further interventions in this area should only be made if there is a strong evidential base so as not to unnecessarily burden the sector.

2.5 In the call for evidence, twenty-one questions were posed. Some respondents provided general comments, whilst others answered some or all the questions. In many cases respondents made the same points in respect of several questions.

2.6 A more detailed summary of the responses is set out below.

### **The current market and effectiveness of the legislation tackling disguised remuneration schemes**

2.7 This section summarises responses to questions about schemes that are currently being marketed and the sectors targeted; what HMRC can do to encourage people to report schemes or promoters; and the effectiveness of the existing legislation in tackling DR schemes.

2.8 Respondents provided details of the schemes they were aware of. HMRC is grateful to those who provided this information, and where relevant this information will be used to inform appropriate compliance activity. In general, stakeholders highlighted schemes paying wages at national minimum wage level, with the balance of the remuneration paid via a third-party loan, which will not be repaid, from an offshore entity. In many of the schemes respondents told us about, interest is said to be chargeable on these loans at the official rate, and on that basis it was claimed by those

promoting the schemes that they fell outside the DR rules. Respondents also identified that schemes were utilising not just loans but also annuities, shares, capital advances involving co-ownership, or a payment derived from a revolving line of credit facility or something else the promoter marketed as “non-taxable” income.

2.9 Respondents highlighted a range of sectors where these schemes are targeted including IT, construction, medical, education, media, professions, life sciences, social workers, and sales. Several respondents raised concerns about public sector workers being targeted, especially where the use of temporary agency workers is commonplace. HMRC published a [Spotlight concerning schemes targeting NHS workers in 2020](#).

2.10 Respondents highlighted that individuals, often with low awareness of the tax rules, and smaller employment intermediaries that do not operate their own PAYE schemes, were often targeted by the promoters of these schemes.

2.11 Different views were expressed in response to what more HMRC might do to encourage people to report a scheme or promoter:

- A number of respondents felt that HMRC could promote use of the tax fraud hotline. One tax professional body proposed that as DR schemes are badged as tax avoidance then perhaps it would be more fitting to introduce a tax abuse hotline;
- Some respondents suggested that there should be financial rewards or incentives for those that provide information about these schemes, which might include a reduced penalty for individuals reporting these schemes;
- Others favoured anonymous reporting to ensure that scheme users were not penalised. One respondent suggested that HMRC should be encouraging professional bodies to highlight ways of reporting such schemes.

2.12 With respect to the legislative framework, the prevailing view was that these schemes do not work and that the existing legislation is effective. Many suggested that HMRC’s main focus should be on taking tougher action to tackle promoters who ignore this legislative framework. More detail on this feedback is set out in the following section on tackling promoters.

2.13 Others felt that clearer guidance on the legislation would be beneficial, in order to make it clearer to individuals that might use the schemes, that they do not work.

## **The Government’s response**

2.14 DR tax avoidance schemes do not work and the current legislation to tackle DR schemes is effective at defeating this abuse. The Government recognises that there remains a compliance challenge in tackling these schemes and is committed to taking action to address this.

2.15 HMRC will continue to look at ways of improving guidance so that the position is clear to those thinking about using these schemes.

2.16 With regards to rewarding those who report DR schemes, there will be times when it is appropriate for HMRC to make payments to individuals for providing information that helps to tackle avoidance and evasion. Rewards are discretionary and based on what is achieved as a direct result of the information provided. A range of

factors determine the exact amount, such as the tax recovered, an estimate of how much revenue loss was prevented and other benefits, such as time saved in working cases. In 2019 to 2020, HMRC paid out £473,000 in rewards for information.

2.17 HMRC is encouraging contractors, and others, to report DR schemes via an online portal or a hotline (Tel: 0800 788 887 or for those outside the UK Tel: +44 (0)203 0800871). HMRC is also encouraging taxpayers who want to get out of an avoidance scheme to contact HMRC via email ([exitsteam.counteravoidance@hmrc.gov.uk](mailto:exitsteam.counteravoidance@hmrc.gov.uk)) as part of its campaign on [Tax avoidance – don't get caught out](#). HMRC is also working closely with representative bodies and regulatory authorities who can help disseminate avoidance messages further and steer their clients clear of avoidance. This closer working helps to deter taxpayers from entering into avoidance arrangements and in turn disrupts promoter activity. Promoters may also face a wide range of potential sanctions from representative and professional bodies.

## Tackling promoters of tax avoidance

2.18 This section summarises responses to what further action the Government could take to tackle promoters, including:

- Addressing misleading information;
- Increasing the financial risk to those promoting tax avoidance;
- Non-compliant offshore entities;
- Other aspects of promoters' business models.

2.19 A range of views were expressed as to why promoters continue to operate. Many highlighted their continuing ability to mislead individuals by selling these schemes and incorrectly badging them as "HMRC compliant". Another common theme was that those promoters left in the market operate relatively risk free. Respondents recognised that promoters seek to avoid taxes and penalties by working through umbrella companies which they then collapse when HMRC make them liable for taxes or penalties, before going on to set up new ones and continuing to sell avoidance schemes. The fact that several promoters are based overseas was also highlighted by some as a factor in making it difficult for HMRC to tackle them.

2.20 Most respondents were keen for HMRC to do more to clamp down on promoters of these schemes, although ideas on the ways to do so varied.

2.21 A number of stakeholders felt that HMRC has considerable powers to tackle promoters, and that more visible use of existing civil and criminal powers to tackle promoters would help deter those promoting DR schemes.

2.22 Many respondents supported increasing the financial risk for promoters. A number of respondents proposed making promoters and enablers jointly and severally liable for any tax lost under these schemes that HMRC was unable to recover, with some wanting personal liability to be applied to the individuals behind the companies



that promote these schemes. Others wanted to see a significant increase in the value of penalties for promoting DR schemes.

2.23 A number of respondents felt that promoters of schemes are not deterred by financial penalties and sanctions. They supported greater use of existing criminal powers including prosecuting promoters for fraudulent conduct. A minority of stakeholders also favoured considering whether different types of criminal sanctions should be extended to ensure that they could be used against promoters. Suggestions included:

- That HMRC should engage Trading Standards to deal with promoters as they may be committing fraud by misrepresentation;
- That the Proceeds of Crime Act could be utilised or adapted to target the assets of promoters;
- That international arrest warrants should be used for promoters based overseas.

2.24 Many stakeholders suggested that HMRC should focus on the disruption of promoters' activities as early as possible. Stakeholders also suggested that educating taxpayers on the type of scheme to steer clear of, would be the only way to stop these schemes in real time.

2.25 There was widespread support for HMRC's work with the Advertising Standards Authority (ASA) to ensure that websites selling these schemes do not mislead taxpayers.

2.26 On 26 November 2020 HMRC and the ASA published a [joint enforcement notice](#) on misleading adverts by promoters of tax avoidance schemes. This aims to disrupt promoter activity and protect people from being presented with misleading adverts which may tempt them into tax avoidance.

2.27 There was also support for proposals, consulted on in the [consultation on tackling promoters of tax avoidance](#), to name both promoters and enablers of DR schemes at an earlier stage than has been possible before.

2.28 Other suggestions to tackle promoters of tax avoidance included:

- Auditing websites and social media that promote these schemes;
- Introducing a new legal requirement that those advertising a scheme that should be disclosed under DOTAS must make clear that the purpose of DOTAS is to ensure that HMRC can identify liabilities and collect the tax, rather than granting HMRC's approval for these schemes;
- Requiring promoters to pay securities or make payments for contractors (or others they engage with) to escrow accounts. It was suggested this requirement could apply where the promoter was selling a scheme covered by DOTAS or where the hallmarks of POTAS are identified;
- Regulating the ability to advertise their services;
- Improving Companies House protocols to identify offshore entities involved in these schemes;
- Making it possible for individuals that had not financially benefitted from using a scheme to recoup funds from promoters;
- Disqualification of directors of non-compliant companies.

2.29 Educating individuals of the risks of these schemes was a key point for many respondents, and these points are summarised in the subsection below on helping taxpayers steer clear of these schemes.

2.30 Another respondent proposed making UK intermediaries (such as UK based umbrella companies or employment agencies), or the clients with whom the offshore promoters contract, liable for either the tax or for promoter penalties. This respondent believed that this would ensure that UK intermediaries would conduct proper due diligence checks on their advisers.

### **The Government's response**

2.31 The Government agrees that tackling promoters should continue to be a priority. The Government agrees with the finding of the [House of Lords Economic Affairs Finance Bill Sub Committee report](#), published on 19<sup>th</sup> December 2020 which states:

“...a number of promoters – the so-called ‘hard-core’ – remain in business, despite HMRC knowing who these promoters are. Action against this remaining core of promoters must be a priority”.

2.32 The Government has already consulted on further steps to disrupt the activity of promoters and to enable HMRC to do this at an earlier stage, and intends to legislate the following changes:

- Introducing powers which will change the POTAS regime to:
  - Allow HMRC to issue stop notices to promoters much earlier than is currently possible, to make it harder to promote tax avoidance schemes that do not work;
  - Remove the risk of promoters avoiding their obligations under POTAS by hiding behind corporate entity structures. This will ensure that POTAS obligations can be transferred to other entities promoting schemes controlled by the same individuals;
  - Improve its efficacy by changing the time limits for conduct notices and ensuring that HMRC has the ability to withdraw and reissue conduct notices to promoters.
- Making changes to the DOTAS regime to introduce a new information power, to allow HMRC to obtain information from promoters earlier about the schemes that they promote. These new powers will ensure that HMRC can act more decisively where promoters fail to provide information on their tax avoidance schemes.

2.33 In addition to this the Government has published alongside this response [a further consultation](#) on measures to disrupt the business models of promoters, that include:

- Clamping down on promoters who dissipate or hide their assets by ensuring HMRC can protect its position and secure a promoter's funds to pay any relevant penalties;
- Tackle offshore promoters through the UK entities that support them, by pursuing the UK entities for penalties linked to their involvement in the offshore promoter's business;

- Disrupt the business activities of companies involved in promoting or enabling tax avoidance by closing them down where it has been shown they are not operating in the public interest and disqualifying the directors at the earliest point possible;
- Supporting taxpayers to steer clear of avoidance schemes, or get out of avoidance quickly, by providing more information on the products offered or sold to them by promoters, so they can make informed decisions.

2.34 The Government recognises that the design of arrangements that are sold as avoidance schemes may in fact enable fraud. Where this is the case, HMRC can, and does, use serious civil and criminal investigation approaches to tackle the promotion and enabling of such schemes. HMRC has a range of civil and criminal powers which it draws on to tackle deliberate non-compliance and criminal attacks, including asset recovery and confiscation powers. Existing powers ensure that HMRC are able to work with international law enforcement partners and fiscal authorities to take action against criminals who are based outside of the UK. Changes to these powers are considered on a regular basis, with the Government and HMRC considering the proportionality of any changes considered to address new and changing tax crime threats.

2.35 The Government also agrees that promoters of avoidance schemes should be exposed to financial risks. This is why the Government is strengthening the POTAS regime, and [consulting on introducing an upfront security payment and an asset freezing order](#). These changes would strengthen and add to existing powers that are already available to HMRC, to ensure that promoters and enablers can face the financial consequences of their actions. Existing penalties for enablers and promoters are considerable and can be applied to the directors and shadow directors of promoter businesses. HMRC will continue to use these powers, where appropriate, to ensure promoters feel the financial consequences of their actions.

2.36 Whilst the Government is keen to ensure that promoters are sanctioned effectively, it is not attracted to ideas involving the transfer of tax liabilities away from the individuals who use the schemes, to the promoters themselves. As one of the respondents has noted in this call for evidence, there would be risks that the promoters would use any change in liability to market these schemes as low or zero-risk to contractors and others. Any provision that transferred the tax risk to the promoter would mean that individuals could use avoidance schemes secure that there was no risk to them in using these schemes and they could be confident that they could receive their income without suffering any tax and never have to pay the tax due.

2.37 Last year, the Government introduced a measure to discourage directors from misusing insolvency to side-step liabilities which arise from tax avoidance, evasion and phoenixism. This will make directors, and other persons involved, jointly and severally liable for outstanding tax debts of insolvent companies and limited liability partnerships. Furthermore, directors of companies that promote avoidance, and other persons involved in the development and sale of avoidance, may be made jointly and severally liable for penalties they receive for promoting and enabling tax avoidance schemes, where there is a risk that the company will be made insolvent.

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

2.38 This section summarises the responses to questions on the impact tax avoidance has on the structure of employment supply chains, and the role of engagers, employment agencies and umbrella companies in DR schemes; the measures taken to assure the integrity of supply chains; and whether further action is needed to tackle those facilitating DR schemes.

2.39 Most respondents felt that commercial considerations, rather than tax avoidance, were the main drivers in the way employment supply chains are structured.

2.40 Many respondents highlighted the growing length of employment supply chains and the use of umbrella companies within them. It was suggested that recent legislative changes, such as the off-payroll working changes in the public sector, have sometimes led to the restructuring of contingent labour supply chains. It was suggested that this had increased the number of workers contracted through umbrella companies, and in turn had increased the risk of involvement with DR schemes. A few respondents thought that more contractors would get involved in DR schemes following the reform of the off-payroll working rules in the private sector and voluntary sectors from April 2021. HMRC has been engaging with stakeholders ahead of the changes to the off-payroll working rules to explore disguised remuneration scheme risks.

2.41 Most respondents did not have any evidence that engagers or employment agencies were directly involved in tax avoidance schemes. However, some respondents suggested that certain employment agencies both use and advise contractors to use such schemes, and in this way gain a commercial advantage over compliant competitors.

2.42 One respondent suggested that the practice of timesheet rebates may be a driver for DR schemes. This is a practice used by some employment agencies, consisting of a payment made to an employment agency by an umbrella company for each worker engaged through that agency. The respondent felt that rebates place commercial pressure on umbrella companies to reduce costs to meet these fees.

2.43 While some respondents suggested that in some cases individuals are pressured or persuaded to participate in schemes by exaggerated promises and misleading assurances of their legality, HMRC has not seen specific evidence of individuals being forced into DR schemes by employers.

2.44 Most respondents were unable to provide any evidence of a direct relationship between use of DR schemes and other forms of non-compliance in the labour market supply chain. Some felt that where a business is non-compliant with its tax obligations, it is more likely to be non-compliant with other regulations such as: National Minimum Wage, employment rights, annual leave entitlements, mileage reimbursements and health and safety obligations. Other non-compliance that was highlighted included use of mini umbrella company fraud, payroll fraud, and false self-employment.

2.45 A number of respondents commented that engagers and employment intermediaries already can and do assure the integrity of their supply chain. The following were highlighted:

- Those in the supply chain could seek a warranty that tax returns were up to date and paid with no continuing HMRC enquiries from counterparties;
- Checks on counterparties in their supply chain as per HMRC's [Advice on applying supply chain due diligence principles to assure your labour supply chains](#);
- Contractual terms could be used to improve compliance, as they could require evidence of PAYE returns being correctly filed and payment for employment income being made to HMRC; or that only umbrella companies approved by membership bodies should be used.

2.46 In terms of tackling the problem, there were mixed views on the option of requiring engagers and employment agencies to assure themselves of the tax compliance of contractors, and others, in their supply chains. There were also mixed views on whether the sanction for failing to carry out that assurance being that the engager, or employment agency, be made liable for any unpaid tax by others. Some were supportive of measures to require or encourage such due diligence checks to be carried out on counterparties. However, several respondents highlighted the difficulties, especially for smaller engagers, in carrying out checks beyond immediate counterparties. Others thought that if such a proposal was adopted, engagers would introduce indemnity clauses in contracts leading to increased costs for employment agencies and adding a barrier to market entry. A number of respondents thought that due diligence checks undertaken by engagers in the public sector could be strengthened.

2.47 Some respondents proposed further measures to tackle non-compliance by umbrella companies. Proposals included:

- Registration, regulation and approval of umbrella companies by HMRC;
- Accreditation by industry bodies, where any accreditation standard would need to determine what compliance looks like, along with a choice of accreditor;
- Publishing a list of HMRC approved umbrella companies;
- Naming or penalising non-compliant umbrella companies;
- A legal provision that enables employment agencies to collect information from umbrella companies to ensure that they are compliant with employment tax obligations;
- Making umbrella companies involved in these schemes face financial consequences, including the use of securities to stop phoenixism or making the companies, or those behind them, jointly and severally liable for unpaid taxes or penalties;
- A withholding regime where there is an overseas entity in the supply chain involved in the provision of contractors within the UK.

2.48 Other respondents highlighted existing powers that HMRC could use including:

- Use of the Criminal Finances Act against employment agencies where appropriate;
- Use of data from RTI returns to identify these schemes. It should be noted that HMRC compliance staff already use RTI to identify DR schemes.

2.49 Some respondents favoured HMRC working more closely with other Government Departments and agencies, such as BEIS (the Department for Business, Energy and Industrial Strategy), the EAS (the Employment Agency Standards Inspectorate), tax representative bodies, trade bodies and Non-Government organisations to raise

awareness of the risks to individuals of getting into avoidance and to disseminate guidance on compliant and non-compliant behaviours.

## **The Government's response**

2.50 The Government recognises that the majority of businesses operating in the contingent labour market are compliant and meet their obligations. The Government also acknowledges the comments received about the due diligence processes which many businesses already undertake to assure their supply chain. However, where a party in a contingent labour supply chain facilitates tax avoidance, it is important that HMRC are able to tackle this behaviour.

2.51 The enablers legislation already provides penalties for those who facilitate or enable the use of tax avoidance schemes. Further, [as part of the package of proposals](#) published alongside this response document, the Government will consult on additional powers to bring UK associates of offshore promoters into scope of charges against offshore promoters, to further increase the risks for these entities.

2.52 The Government recognises concerns raised by a number of stakeholders about the risk of contractors being tempted into avoidance and stakeholder support for the regulation of umbrella companies. The Government is committed to bringing forward an Employment Bill. This will include extending the remit of the Employment Agency Standards Inspectorate, who protect the rights of agency workers by ensuring that employment intermediaries treat their workers fairly, to include umbrella companies.

2.53 The off-payroll working rules ensure individuals working like employees are taxed like employees, even if they work through their own company (PSC). The changes to the off-payroll working rules in the public sector in 2017 have been effective in increasing compliance.

2.54. HMRC is aware that as a result of the off-payroll working rules some organisations are considering whether PSCs are the best way to engage contractors who are working like employees. This is a commercial decision for them to make. Some may choose to engage contractors through agencies or umbrella companies or offer contractors permanent roles instead. Clearly, individuals and organisations can comply with tax rules, including the off-payroll working rules, without entering a tax avoidance scheme. However, we will take action where processes or arrangements are designed or marketed to pay less tax than should be.

2.55 HMRC is delivering a comprehensive programme of education and support to help customers prepare for the off-payroll working reform. Raising awareness of tax avoidance, including DR schemes, forms part of the education and support materials for the off-payroll working changes, including for employers, contractors and employment agencies.

2.56 We have also contacted a large number of client organisations/engagers specifically to encourage them to support contractors, providing our [tax avoidance facts](#) and asking them to share if they are recommending that contractors change the way they work as a result of changes to the off-payroll working rules. The publication of compliance principles for the off-payroll working rules also highlights a specific focus on tax avoidance.

2.57 HMRC will continue to challenge other supply chain abuse, such as payroll fraud and Mini Umbrella Company fraud, where this falls within its remit to do so. Pages 11 and 12 of the [December 2020 Employer bulletin](#) provide guidance on how to spot Mini Umbrella Company fraud, as well as outlining what HMRC are doing to tackle this type of fraud.

2.58 The Government acknowledges the points made about ensuring the public sector is not contracting with those involved in DR schemes. We note that [the House of Lords Economic Affairs Finance Bill Sub Committee report](#), published on 19<sup>th</sup> December, recommended, at paragraph 78, that the Government:

“...ensure that no Government or public sector body contracts with an intermediary operating a disguised remuneration scheme...”

2.59 HMRC already carries out tax compliance checks when procuring goods or services. HMRC continues to work with other Government departments and public bodies regarding their wider tax compliance. HMRC also engages regularly with public sector representative bodies to discuss tax compliance and raise awareness of specific tax issues.

2.60 The Government is grateful to the stakeholders who provided comments on other potential further action the Government could take to tackle the use of DR schemes through supply chains. The Government is concerned about how these proposals would operate and the considerable impact and burden they could impose on the contingent labour market. The Government is committed to supporting a flexible labour market and is keen to ensure that any impact on the labour market is proportionate to the risk presented by DR schemes, especially in these challenging times.

2.61 HMRC will continue to monitor the market for DR schemes and other forms of tax non-compliance in the employment supply chain, and will keep under review whether further changes are needed.

## Helping taxpayers steer clear of and exit DR schemes

2.62 This section considers responses to questions that asked how HMRC and others can encourage taxpayers not to use DR schemes in the first place; the role of consumer protection for taxpayers; and how to support users to leave these schemes. It also considers what support might be provided to taxpayers who have built up big tax debts as a result of being involved in DR schemes.

2.63 A range of views were expressed about the users of DR schemes. Some respondents highlighted that some of the users of these schemes can be unfamiliar with tax matters in general and their own tax obligations in particular. It was noted that they are often misled about the benefits of these schemes by promoters. It was felt that such users deserved a less punitive response from HMRC than those users who were knowingly involved and continued in these schemes following contact from HMRC.

2.64 Many respondents felt HMRC's messaging, through publications such as Spotlights, was either too technical or was not reaching those at risk of joining DR schemes.

2.65 Some respondents highlighted that those who have used schemes for many years may find it difficult to exit schemes and settle their affairs, due to the considerable tax liabilities and penalties they will have built up.

2.66 In terms of how to address these problems, many responses focussed on the need to educate individuals and contractors about the risks of DR schemes. Some proposed ways to improve the method of HMRC communications to taxpayers through:

- Using the right communication channel to get through to these high-risk groups. Suggestions included using mainstream media, social media, online banners or communicating via the relevant trade bodies;
- Earlier communications to warn those individuals involved in the schemes about the risks involved;
- Targeting communications at employment intermediaries or high-risk sectors such as IT, management consultancy, and construction.

2.67 Others felt that the content of HMRC's messaging should change to:

- More clearly set out the hallmarks of the schemes, how they operate and why they do not achieve the benefits that promoters claim;
- Make it simpler. Suggestions were made on how to improve Spotlight articles to better target messages to those most at risk of becoming involved in these schemes.

2.68 Some respondents wanted HMRC to focus on tackling misleading claims made to individuals by:

- Encouraging individuals to speak to professional tax advisers. This included suggestions that the tax advice industry should be fully regulated, with approved advisers publicly listed;
- Reporting legal professionals providing legal advice, used to promote these schemes, to the Bar Council.

2.69 One tax professional body suggested a GOV.UK website tool to help individuals to check their payslips, as well as giving access to HMRC staff to help taxpayers to check that they are paying the correct amount of tax on earnings.

2.70 A number of respondents favoured earlier compliance action to tackle these schemes. One respondent suggested tougher penalties for deliberate users. Other respondents raised concerns about the Loan Charge and about what they perceived to be retrospective action taken by HMRC.

2.71 In terms of helping taxpayers get out of these schemes it was proposed that HMRC:

- Only levy penalties against those individuals who continued to use these schemes after they had been informed that they are non-compliant by HMRC;
- Provide scheme users with more time to pay their tax liabilities;
- Introduce a time limited amnesty for those involved in DR schemes.



## The Government's response

2.72 The Government agrees with the importance that respondents place on communicating the risks of these schemes clearly to taxpayers. Taxpayers need to know that DR schemes do not work, and that the financial consequences of becoming involved in them can be significant. HMRC already provides guidance for taxpayers on their tax position, including advice on the personal tax account which explains to taxpayers how to check they are paying the correct amount of tax. HMRC publish regular Spotlight articles to warn taxpayers about schemes when they arise. We are grateful to the respondents who provided comments on how we can improve these articles. HMRC will continue to improve this service.

2.73 However, HMRC recognises that it is a challenge to ensure taxpayers can access the information they need at the right time and is taking more action to communicate with taxpayers directly, in real time, to alert them to the risks involved.

2.74 HMRC uses many tools to identify taxpayers that look like they have started to use a DR scheme. HMRC's interventions have included contacting taxpayers individually to:

- Advise them that they appear to be involved in a tax avoidance scheme;
- Explain the tax risks associated with this;
- Explain what corrective action they can take to end their involvement;
- Provide them with relevant guidance and contact details if they need support.

2.75 In addition to this, HMRC launched a campaign in November 2020 to educate taxpayers in certain sectors of the economy where promoters are particularly active. The campaign advises taxpayers on how to spot avoidance schemes, what the risks are to them, how to report schemes and promoters to HMRC, and where they can find more information to help them to make informed choices. This online campaign is being promoted through working with external partners and online advertising.

2.76 The Government's aim is to support taxpayers, and to ensure that they are confident that they can get the right advice on their tax affairs. In November the Government published a [summary of responses and next steps document](#) to the call for evidence on raising standards in the tax advice market where it set out its intention to:

- Consult on making professional indemnity insurance compulsory for tax advisers as well as defining "tax advice" as the Government recognised the importance of applying the standards expected to the right activities;
- Raise awareness of [the standard for agents](#) with target audiences; and conduct and publish the results of an internal review of the powers currently available to HMRC that help enforce that standard;
- Work collaboratively with professional bodies, to understand the role they play in supervising and supporting their members and raising standards in the profession;
- Tackle the high costs to consumers of claiming tax refunds.

2.77 The Government agrees with respondents about the need to provide appropriate support to taxpayers to exit DR schemes. [The consultation on promoters](#) published alongside this response includes proposals on supporting taxpayers to get out of tax avoidance schemes quickly by providing more information to them about the arrangement they have entered into, and by disclosing information that HMRC are taking action against the promoter of the scheme. HMRC also expect that providing

information about avoidance arrangements or naming promoters at an earlier stage would both help those who have used those schemes and assist individuals to steer clear of these abusive arrangements in the first place. More details on these new measures are set out in the section on promoters above.

2.78 While some respondents suggested that HMRC should adopt a differentiated approach to taxpayers involved with DR schemes, it should be noted that the law on penalties for non-compliance already provides for consideration of taxpayers' behaviour. HMRC will only seek a penalty where there is evidence that a taxpayer has made a return which contains an inaccuracy leading to an understatement of liability to tax or National Insurance contributions. HMRC has to be fair to all taxpayers, and this includes those who have already settled their use of DR tax avoidance schemes with HMRC and those who have never used tax avoidance schemes in the first place. As set out in HMRC's Litigation and Settlement Strategy, HMRC will only settle for an amount that is consistent with the law.

2.79 Some respondents also raised concerns about the customer experience of individuals affected by the Loan Charge. [HMRC has previously](#) made clear that it can support any taxpayer who has concerns about paying the loan charge or any other tax due on their DR loans. HMRC will offer extended payment terms to any taxpayer who needs them; these are often referred to as Time to Pay arrangements, and there is no time limit to the length of a payment plan that can be agreed. Taxpayers subject to the Loan Charge were also able to elect to spread their loan balance over 3 tax years, which will make it more affordable for many. The deadline for making this election was 30 September 2020, but HMRC made use of its discretionary power to automatically accept any late elections to spread the loan balance which were made on or before 31 December 2020.

## 3. Next steps

**3.1 The Government has carefully considered all the responses to the call for evidence. It will continue to focus on taking action to tackle promoters of schemes and educate taxpayers. HMRC will continue with its ‘Promote, Prevent, Respond’ approach to tackling these schemes.**

3.2 The Government continues to support HMRC’s operational response to DR schemes.

3.3 HMRC is doing more to educate taxpayers about the risks of getting into avoidance, with an awareness campaign, launched in November 2020, targeting certain sectors of the economy where promoters are particularly active.

### Promoters

3.4 The Government consulted in July 2020 on a package of amendments to the existing promoters regimes and will proceed to legislate these changes [in Finance Bill 2021](#). In addition to this, [a consultation was launched](#) alongside this response on a number of additional measures that build on changes to existing avoidance regimes and ensure that promoters face stronger sanctions and feel the risks of their actions sooner.

3.5 In view of the priority that HMRC has given to tackling promoters, the Government was pleased to see the finding of the [House of Lords Economic Affairs Finance Bill Sub Committee report](#), published on 19<sup>th</sup> December 2020, that concluded:

*“We welcome the Government’s continued focus on tackling promoters of tax avoidance schemes through the Finance Bill measures and the related calls for evidence. Aggressive tax avoidance is unfair on those taxpayers who follow the rules. However, it is critical that the Government takes effective action against the people which promote aggressive tax avoidance.”*

### Supply chains

3.6 Whilst the Government recognises that most businesses operating in contingent labour supply chains are doing their best to comply with their tax obligations, it is right that HMRC tackle those in the supply chain who facilitate non-compliance. HMRC already has the powers to apply a penalty under the enablers legislation to those in the supply chain where appropriate, and the Government [is consulting](#) on a proposal to create a liability on UK entities that facilitate the whole structure of an offshore promoter’s tax avoidance arrangements.

3.7 However, the Government does not consider that there is sufficient evidence that further intervention is required in contingent labour supply chains at this time. The Government will continue to monitor the extent of the use of DR schemes and other forms of tax non-compliance in contingent labour supply chains. The Government will keep this matter under review and may consider taking action in the future.

# Annexe A: List of stakeholders consulted

The Government is grateful to the 18 individuals and the following organisations who provided written responses to this consultation:

Association of Accounting Technicians

Adecco

Association of Professional Staffing Companies

Association of Recruitment Consultancies

Chartered Institute of Taxation

Grant Thornton

Institute of Chartered Accountants in England and Wales

Institute of Chartered Accountants of Scotland

Law Society of Scotland

Low Incomes Tax Reform Group

NASUWT

PRISM – Trade body and association of Umbrella Companies and employment intermediaries

The Recruitment and Employment Confederation

TaxWatch

Coman & Co

Pearl Lily and Co Accountants

# Annexe B: List of call for evidence questions

## **Questions about the current market for disguised remuneration avoidance schemes.**

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?

## **Questions about the effectiveness of the legislation tackling disguised remuneration schemes**

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?

## **Questions about tackling promoters of tax avoidance schemes**

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?

## **Questions about supply chains and the use of DR schemes in the flexible labour market**

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?

### **Questions on helping taxpayers steer clear of and exit DR schemes**

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 existing 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?

# Annexe C: Glossary

## Parties in tax avoidance market and employment supply chains

A **promoter** of a mass-marketed tax avoidance scheme is 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.

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. They are often a link in the chain between the promoter and taxpayer.

The term **employment intermediaries** includes 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.

The term **employment agency** refers 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.

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.

An **engager** is used to refer to the person using the contractor's services.

The term **contractor** is used to refer to an individual who provides a service to a third party working through an employment intermediary.

**Contingent labour supply** means the provision of outsourced and non-permanent workers, such as contractors, to a business.

A **timesheet rebate** is a practice used by some employment agencies, consisting of a payment made to an employment agency by an umbrella company per worker engaged via that agency.

## Tax and tax avoidance terminology

**DR Scheme** is an abbreviation of **disguised remuneration scheme**, which is an arrangement through which individuals are rewarded through a third party in the form of loans, or other payment arrangement usually involving an offshore trust. DR schemes seek to avoid the need to pay Income Tax and National Insurance contributions.



**DOTAS** refers to the Disclosure of Tax Avoidance Schemes rules introduced to provide early information to HMRC about tax avoidance schemes and their users.

**POTAS** refers to the Promoters of Tax Avoidance Scheme rules to address the highest risk promoters, with penalties of over £1 million if they fail to change their behaviour.

**Stop Notices** are issued by HMRC and require promoters to stop promoting specific tax avoidance schemes. Failure to comply can lead to entry in to the POTAS regime. Proposed amendments to the POTAS regime announced in December 2019 mean that a penalty of up to £100,000 could be issued where there is a failure to comply, which could increase up to £1 million where a promoter is subject to a monitoring notice when the failure occurs.

**PAYE** refers to Pay As You Earn. This is a method employers use to pay income tax and National Insurance contributions, which are deducted from the employee's wages or occupational pension, before paying the employee their wages.

**RTI** refers to Real Time Information. Under RTI, information about tax and other deductions under the PAYE system is transmitted to HMRC by the employer every time an employee is paid.

**NICs** stands for National Insurance contributions.

## Other Government departments and agencies

**BEIS** is the Department for Business, Energy and Industrial Strategy.

**EAS** refers to the Employment Agency Standards Inspectorate. They protect the rights of agency workers by ensuring that employment agencies and businesses treat their workers fairly.