Tackling disguised remuneration tax avoidance: Call for evidence

Evidence from ICAS

15 September 2020

Introduction

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants; we represent over 22,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.

2. The ICAS Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 board and committee members.

3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. ICAS welcomes the opportunity to respond to 'Tackling disguised remuneration tax avoidance: Call for evidence', published by HMRC on 21 July 2020.

5. As noted in paragraph 4 of the Call for Evidence, the government is seeking evidence on issues in the market which lead to the persistent use of disguised remuneration schemes.

6. The call considers 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.

7. We find it difficult to provide extensive evidence on this subject; feedback from our members in practice indicates that in general they do not have dealings with such schemes – they do not recommend them, nor are they involved with those who use the schemes. ICAS therefore does not generally receive reports from members about who uses disguised remuneration schemes, or why those who use them do so.

8. Anecdotal evidence from conversations with ICAS members indicates that:
   - Those who promote or enable the use of disguised remuneration schemes are a small set of 'advisers' who are not members of ICAS. It is a niche area of activity.
   - Higher earning employees no longer tend to enter into these schemes
   - Lower earning employees, who might be tempted or pushed into disguised remuneration schemes, are unlikely to have an independent tax adviser.

9. As noted in paragraph 7 of this call for evidence, there is some crossover with the recent call for evidence on raising standards in the tax advice market. In our response to the latter, we discuss those who purport to give advice in relation to tax avoidance schemes, but we are unable to provide evidence of the standards of those who are not our members.

10. The ICAS response to the call for evidence on standards in the tax advice market also discusses ways in which HMRC and the government could provide better information to taxpayers to assist them in choosing an adviser. These suggestions are equally relevant to this call for evidence.

11. We consider that both the Scottish and UK Governments could take action to prevent some employees (particularly lower paid ones) being pushed into disguised remuneration schemes. Government departments and public sector bodies taking on workers could be required either to employ them through the official payroll or, where employment agencies are used, to ensure that those agencies are not using any type of disguised remuneration scheme. For instance, as part of procurement procedures all government departments and public sector bodies could insist on a written confirmation from employment agencies providing staff that they will not use any disguised remuneration scheme.

12. More broadly, we believe that the use of disguised remuneration schemes could usefully be tackled by reforming some of the distortions in the tax system relating to income tax, NICs and workers and in the longer term addressing the cost of employer NICs. We believe that the fundamental issues of taxpayer behaviour, employment ethics and falling NIC revenues urgently need to be addressed, as set out in our paper 'The Future of Taxation in the UK'.

13. In the context of taxpayer behaviour there is some overlap between this call for evidence and the consultation on Tackling Promoters of Tax Avoidance. In our response to that consultation we noted that it would be useful for HMRC to publish as much information as possible about avoidance schemes, at an early stage, with the intention of helping potential purchasers of a scheme understand the risks of using it.

14. The published information would include details of how the scheme purports to operate and why HMRC believes it fails – and a clear statement that HMRC will challenge users of the scheme. This would assist agents and advisers in explaining the true position to clients/prospective clients who have been approached by promoters of schemes (often with misleading information). HMRC already publishes information in Spotlights but currently these can take a long time to be issued – the longer the delay the more users are likely to have signed up to the schemes in the meantime.

15. Whilst agents and advisers belonging to the main professional bodies will generally be aware of Spotlights (and Spotlights are referenced in Professional Conduct in Relation to Taxation) we are concerned that awareness amongst taxpayers in general is very low. HMRC could consider use of social media and mainstream media for campaigns which would make information about schemes more accessible. Publicity aimed at making disguised remuneration schemes less socially acceptable and decreasing demand for them could reduce the scope for promoters to attract clients.

16. We also see scope for the development of more targeted approaches by HMRC, to counter information provided by promoters. This would be easier for disguised remuneration schemes than in some other areas because HMRC has RTI information which could alert it to the possibility that someone has started to use a scheme.

17. Many scheme users (particularly those who only talk to the promoters and do not have access to independent professional advice) have little understanding that the scheme they have been sold is unlikely to work and will be challenged by HMRC. As noted above, in the context of disguised remuneration schemes, anecdotal evidence from members indicates that higher earning employees no longer tend to enter into these schemes and that lower earning employees who might be tempted or pushed into the schemes are unlikely to have an independent adviser.

18. The loan charge review noted ongoing promotion of loan schemes (with approximately 3,000 first time users in the first half of the 2019-20 tax year) and one of its recommendations was for HMRC to consider direct communication with taxpayers where it suspects they may be engaging in tax avoidance: *"the strategy for communicating what is considered tax avoidance must be improved to reflect the 'mass market' nature of loan schemes. In particular, HMRC should continue enhancing its usage of Pay As You Earn (PAYE) Real Time Information to communicate with taxpayers who they suspect may be engaging in tax avoidance, and proactively put taxpayers directly on notice of its view.*"

19. We agree that direct communication from HMRC would be useful. We are aware that HMRC is looking into the development of an avoidance advisory service which would allow taxpayers to seek a view from HMRC on whether the employment arrangements they are considering using are likely to involve avoidance. A small number of letters have recently been issued to individuals HMRC thought were likely to be using employment schemes, offering access to HMRC advice, as part of a pilot. This is a promising development which (subject to the outcome of the pilot) we hope can be expanded in future.

20. As the introduction to the consultation on Tackling Promoters of Tax Avoidance notes, promoters "*are often deliberately silent in their marketing to taxpayers about the risks of successful challenge by HMRC*". Some advertising by promoters is also actively misleading. HMRC has had some success in tackling misleading advertising by referring cases to the Advertising Standards Authority. It obtained rulings in three cases (two of which involved disguised remuneration schemes) – and subsequent adverts have tended to avoid, for example, claiming HMRC endorsement for schemes. We welcome the fact that HMRC is now working with the ASA to develop a joint enforcement notice covering the advertising of tax avoidance schemes.