

MRS CAROLINE CLARK - WRITTEN EVIDENCE (DFE0010)

Draft Finance Bill 2020-2021 inquiry

1. How effective are the existing powers of HMRC in tackling promoters and enablers of tax avoidance schemes?

The powers for collecting taxes are relevant.

Issue is that Organisers promoting and enable financial advice including tax avoidance schemes are not regulated – there are no warnings on products and there is no accountability. Pensions are tax avoidance schemes, warnings and clarity on taxation on products need to be provided with key features etc on all financial products including tax advice as for other financial products – where these are mis-sold then the miss-selling needs to be dealt with.

2. What has been your experience of the Promoters of Tax Avoidance Schemes (POTAS) rules and the enablers rules in practice?

Tax avoidance schemes are a means of financial/tax planning including Pensions, purchasing a primary residence. The tax payer has no means of distinguishing between what the HMRC consider a bona fide tax avoidance and one that is not. There are no regulations or controls afforded in the rest of financial services that apply to promoters of tax avoidance scheme products.

The Promoters of tax avoidance schemes have free reign as the tax system is complex and unintelligible to workers, there is nowhere a tax payer can reference simply to see what tax might be due on a financial product (e.g. there are on-line calculators where one can enter salary and get total NI etc this should be available for all products) and promoters have no requirements to provide potential scenarios of the tax which could be due e.g. Pensions provide projected pension.

The service the promoters provide me were packaged under an umbrella that was an employer and provided associated services including dealing with contracts, covering insurance, PAYE and reward schemes – the latter in the form of a loan. They were polite and efficient.

Many companies now hiring my skills are off-shore/overseas suppliers, none of the rules or penalties would apply to offshore/overseas companies / promoters.

Being a normal worker and not ever having considered tax avoidance schemes I had no concept of there being such promoters. If organisations are taking on the responsibility of renumeration of a worker on an employer basis then they must be responsible for the tax as there is no visibility of the complex associated rules or access to their accountants, tax advisers etc often who can be in different countries that an employee can be expected to be responsible or in control of.

To find out a decade later that there is new retrospective legislation that could not have been imagined, and that open years that had been lying around for a decade suddenly were activated despite all the tax protection rules for a tax that had never been shown to be legally wrong or I had been notified of is to do with complete mis-management or opportunity tax.

3. Are HMRC's communications likely to be effective in informing potential scheme users about schemes, and so deter them from participating?

Yes but only if they notify them immediately. To do this all related transactions would need to be notified in a timely manner e.g. employee loans should be entered as part of the PAYE and expenses. Once filed (with a minimum of a quarters delay) the HMRC should notify the tax payer immediately of any tax liability over and above the PAYE that the company is paying and that they need to file a self assessment form.

4. How effective will the proposed measures be against those who promote aggressive tax avoidance schemes, and in informing and deterring potential scheme users? What else could HMRC be doing in this area?

Promoter fines and penalties do not help victims – the best mechanism is to simplify the tax rules, and notify the tax payers of the tax due from regular notification of renumeration. If there are to be fines and penalties then the promoters or organisations implementing the scheme must pay the tax due.

The threshold of £25k is completely arbitrary and insignificant to many, while potentially putting small tax advisers out of business if they make a mistake – there are promoters raking in billions, it will just make sure the promoters are big companies.

5. Are the safeguards being proposed sufficient to ensure an appropriate balance is struck between HMRC and taxpayer?

No – this deals with promoters they are not responsible for others taxes, this is a regulation not tax collection issue and so regulating providers should be with the financial regulator – HMRC should put their efforts into simple taxation and rules, with minimal clear exceptions where tax-payers get timely notification of taxes due / potentially due.

Naming and shaming does not help workers, they are completely unaware of any publications as they think the employer is responsible – if they are not employee's they generally pay a professional to look after their tax – so again they are depending on the professional so there is no point in "publishing" lists workers don't know about.

This particularly hits migrants who have no idea about the UK systems and will go to such organisations and follow everything they say. It is up to the regulator to regulate them and HMRC to notify workers in a timely fashion what the tax due is.

New tax checks on licence renewal applications

6. Are the proposals for tax checks on licence renewal applications fair and proportionate? How effective is the legislation likely to be, and is any amendment needed?

No comment

7. What is your view of the principle of conditionality and its use in the tax system?

No comment

8. How do you view the Government's stated intention to extend conditionality to Scotland and Northern Ireland, as well as to other trades?

No comment

9. Could the problems this measure is designed to address have been tackled effectively by other means? If so, what are they?

No comment

Amendments to HMRC's civil information powers

10. What is your view of the removal of the requirement to obtain tax tribunal approval before issuing a Financial Institution Notice? Are the safeguards promised instead adequate and, if not, what more should be done?

If there is to be access to data then this needs to be done through an independent body, and the people must be notified that the information is going to be provided.

There is a big danger of the tax payer being put in a position of having to prove where income as come from / gone rather than the onus on the HMRC to evidence wrong doing. A lot of people move money from one account to another for savings management, interest etc.

An example where there is easy mis-interpretation which would cause problems if the onus is on the tax payer is was I paid a friends mortgage while they were out of work on a personal informal loan basis – when my mortgage company saw the regular outgoings they refused to give me another mortgage as I could not prove that I did NOT have another mortgage (other than getting my friend to write a letter – and if that was evidence then anyone could do that – and opens up corruption type activities).

11. Is the scope of the new power in terms of the information to be reported to HMRC appropriate and sufficiently clear?

No there must be an independent trusted organisation – it is not for the HMRC to determine themselves that it is valid.

12. How can the need for adequate taxpayer safeguards and timely international exchange of information be balanced? What steps should be taken to ensure that taxpayer safeguards are not treated as dispensable when they make it more difficult to meet other obligations?

Create an independent organisation in replacement of the tribunal which has the same independence – or beef the tribunal system up.

Other measures of interest

The Sub-Committee is also interested in the proposed introduction of new requirements for certain businesses to notify uncertain tax treatments, where the business considers that HMRC may have a different view of the tax treatment to its own. We welcome general views on this proposal.

This looks like an opportunity for HMRC to have fuzzy rules and then fine companies for not complying.

Tax advisers are trained to advise on tax – if the rules are not clear for tax advisers to do this reliably then the whole tax system fails. If they are unclear then they can already consult HMRC.

Tax advisers have access to HMRC if they need clarity on anything. They should be able to discuss / write to HMRC and ask advice – but that is no different to as now when they can agree expense arrangements etc.

In addition, the Government proposes to make certain technical amendments to the corporate interest restriction retrospective to 2017. The Sub-Committee is interested in views on the impact and appropriateness of proposed retrospective measures in the Finance Bill, in relation to uncertainty within the tax system.

No comment

6th October 2020