



TACKLING DISGUISED REMUNERATION TAX AVOIDANCE: CALL FOR EVIDENCE

Issued 30 September 2020

ICAEW welcomes the opportunity to comment on the Tackling disguised remuneration tax avoidance call for evidence published by HMRC on 21 July 2020, a copy of which is available from [this link](#).

This response of 30 September 2020 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

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BACKGROUND AND OVERVIEW

1. ICAEW fully supports HMRC's efforts to further understand and challenge disguised remuneration tax avoidance. We consider our response to this call for evidence is closely linked to both [ICAEW 69/20 Tackling promoters of tax avoidance](#) and [ICAEW Representation 45/20 Raising standards in the tax advice market: call for evidence](#).
2. We would therefore like to reiterate some of the comments made in respect of the individuals and organisations involved in promoting aggressive tax avoidance arrangements. Our members' view is that such promoters are abusing the tax system and should not be considered as equivalent to bona fide tax advisors. We would not expect any ICAEW member to be involved in such activity. If HMRC became aware of any ICAEW members or member firms acting in this manner we would urge them to contact us so we can investigate them under the appropriate disciplinary procedures.
3. Because our members see those involved in mass marketed avoidance schemes as so far removed from what they would expect to see of a competent and ethical professional, many of the questions raised in both this call for evidence and the Tackling Promoters of tax avoidance consultation are viewed to be outside of their core expertise and experience. The vast majority of ICAEW members would not (and as noted above should not) be associated with such activity in any way at all. We have therefore not received the level of feedback necessary to provide HMRC with a comprehensive response to the questions posed in the document.
4. This was particularly marked in the case of disguised remuneration schemes. Given the considerable amount of specific anti-avoidance measures that have been implemented to combat such schemes, we would not expect our members to be part of the implementation of any such arrangements.
5. ICAEW's Representation 69/20 sets out our high-level thoughts and notes any key areas of concern which have been raised by members in respect of HMRC's approach to tackling promoters. Clearly much of what was discussed in this document will also be pertinent to this call for evidence, as will our earlier response to the Call for Evidence on the market for tax services mentioned above. As such, our comments below reflect some general comments about the proposals and cross refer to our responses on the earlier consultation document and call for evidence.

GENERAL COMMENTS

6. The document makes a number of reasonable suggestions to try and address some of the problems in this area, for example, encouraging reporting of schemes through the 'fraud hotline' Many of these schemes appear close to, or are, fraudulent in nature and those knowingly involved in this activity should understand the risks of criminal sanctions, not least as other civil measures are merely likely to be sidestepped.
7. We therefore would encourage HMRC to consider more extensive use of criminal powers to address this type of activity. We appreciate that this can be time consuming and resources intensive and is not without its risks, but it should send a clear warning message that those involved will face criminal sanctions. This would help to support those professional agents who might come such arrangements and enable them to warn taxpayers off such schemes.

Usage of disguised remuneration schemes

8. We note that in figure 2 of the call for evidence, the individual usage of such schemes declined over the period from 2013 to 2017 but then increased substantially in 2017/18. This trend was the opposite of the use of these schemes by companies, which showed a marked decline in 2017/18. This data suggests that the main problem now is now in the individual market. We would be happy to work with HMRC to explore what more could be done to warn individuals off such schemes but, as already noted, we suspect that these individuals will not be using one of our members. There is also a read across to the call for evidence on tax services and whether more could be done to ensure that taxpayers are encouraged to speak

to a professionally qualified adviser and that less scrupulous advisers may not give taxpayers the reassurance that their arrangements are in order.

9. We also note that nearly 2/3rds of schemes are in the business services area, which suggests that more resources might needed to address this sector of the market and the drivers for these behaviours identified. Again, this is potentially useful information which might merit further publicity among professional advisers about the business areas which appear to carry the highest risk of uncovering these sorts of arrangements.
10. We also note that usage of these schemes by the medical and educational sector is quoted at 3%. This appears to be very low given the concerns, for example, about returning NHS staff etc being targeted by these schemes which is mentioned in para 32 of the call for evidence. It would be helpful to have some better data on whether this area continues to present a problem.

The public sector needs to play its part

11. We remain concerned that the answer to removing some of these schemes might lie within the hands of the public sector. As noted above, we are surprised that the figures for usage in the health sector are low, but we do think that the NHS and other Government departments must take a greater responsibility in identifying and rooting out some arrangements. It cannot be right that HMRC has to spend valuable time and resources in addressing these schemes down the line, when they really need to be headed off at the pass. Other Government departments have a clear responsibility to help and support HMRC's efforts to stop these arrangements and this should be made explicit.

Offshore promoters

12. We appreciate the difficulties in addressing offshore promoters. It would be helpful to understand how other countries address problems which may be caused by offshore advisers. What are the problems in the UK tax advice market that allow this problem to proliferate and what best practices could we share?
13. More generally, we do not think that such abusive behaviours undertaken by promoters of disguised remuneration schemes should be operating from the UK's dependent territories. We do not know the extent of the problem, if any, and appreciate that these promoters may then move further afield, but it cannot be right that this type of abusive activity is allowed to take place within them. The relevant Government departments need to work with HMRC and the territories concerned to identify and stop such activity.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).