



Loan Charge and Taxpayer Fairness All Party Parliamentary Group

Response to HMRC Consultation

‘Closing in on promoters of marketed tax avoidance’

June 2025

This response was researched and written by the Loan Charge and Taxpayer Fairness APPG. The Loan Charge and Taxpayer Fairness APPG Secretariat is staffed and funded by the Loan Charge Action Group.

This is not an official publication of the House of Commons or the House of Lords. It has not been approved by either House or its committees. All-Party Parliamentary Groups are informal groups of Members of both Houses with a common interest in particular issues. The views expressed in this report are those of the group.

Contents

1. Introduction.....	3
2. HMRC does not currently use the power it has	3
3. Key issues that the Government must tackle in responding to the consultation.....	4
4. The role of lawyers, accountants and tax advisers recommending schemes.....	6
5. The wider supply chain – the role of umbrella companies, recruitment agencies and end clients	6
6. The context of IR35 legislation and the lack of clarity for flexible workers	9
7. The agency provisions	9
8. Conclusion	10

1. Introduction

This is the response to HMRC's open consultation on 'Closing in on promoters of marketed tax avoidance' from the [Loan Charge and Taxpayer Fairness APPG](#).

The Loan Charge and Taxpayer Fairness APPG is an All-Party Parliamentary Group that exists to raise concerns about the nature and impact of the '2019 Loan Charge' and the wider context of fairness of tax legislation and about HMRC's conduct in enforcing it. It currently has 142 members.

Our overall view remains very strongly that the Government must act and do so clearly and decisively to stamp out the promotion and operation of all 'disguised remuneration' schemes, to prevent another Loan Charge Scandal happening. Action must also be taken, as the consultation suggests, against other professionals – including accountants, tax advisers but also recruiters/recruitment companies – who recommend schemes that are not approved by HMRC.

We again remind the government of the report on our inquiry into 'How Contracting Should Work' and the supply chain for contract and freelance workers. The report is [here](#). The conclusions and recommendations of this inquiry are directly relevant to the current consultation and we repeat them here.

The consultation also must look at related legislation, including the flawed 'IR35' legislation or there is a danger that it will be partial and could fail to tackle the issues related to flexible workers as a whole. One of the best ways of avoiding the proliferation of schemes – a demonstrable effect of the off-payroll rules – is to have a clear way of identifying and taxing those who are not employees, but work as contractors, freelance and contingent workers. They should not be taxed as employees, when they do not have the benefits (known as 'zero-rights employment') but instead should be treated differently and specifically, in both tax and employment law terms, recognising and acknowledging the very different reality of working as a contingent worker, without employee rights and benefits and needing to fund benefits such as pension and sick pay themselves.

2. HMRC does not currently use the power it has

We welcome the Government's commitment to take stronger and effective action against those who promote and operate schemes; however, the reality is that HMRC has a poor record in terms of taking action against promoters and does not use the powers that it already has. As the saying goes: "You can make the rule book as big as you like, but if you do not enforce it, then it's meaningless."

HMRC already have considerable powers, and they should use them. Making more rules isn't going to make any difference to promoters (and other professionals recommending schemes, for profit) who do not follow them.

We question why HMRC (and the Government) has not made much more use of the Criminal Finances Act 2017. There is evidence that shows that some of the activity related to the promotion of tax avoidance schemes (and specifically to the selling of further schemes that purported to get around the Loan Charge) involved potentially fraudulent activity. We therefore question why it appears that there has been no investigation into this, never mind any action taken.

This must therefore be acknowledged and a response is needed from both HMRC and the Treasury about how HMRC will use both existing powers and any new powers, or the problem will not be dealt with.

3. Key issues that the Government must tackle in responding to the consultation

The APPG has consistently and explicitly called for action against those who promote and operate schemes that lead to individuals facing HMRC action, especially when (as in the case of the overwhelming majority of people facing the Loan Charge) there is clear mis-selling of the legitimacy of the arrangements and the risk of HMRC action.

Much has been made of HMRC 'naming' promoters and issuing Stop Notices. However, the impact of these measures is limited (and flawed) and they will not stop the ongoing promotion and mis-selling of tax avoidance schemes by unscrupulous operators.

Under the Finance Act 2021, HMRC publicly names schemes, however only for a year after which they then remove them. This is not only weak but also confusing, as it signifies that these schemes are no longer unacceptable but acceptable again. In any case, simply publicly naming schemes and operators does nothing to deal with the fact that these schemes have been operational for some time and that there will have been people who were mis-sold them as legal and compliant and will face unexpected HMRC demands as a result. Often firms don't get put on the list until years after they have started operating, by which time many victims have been created that HMRC have issued with tax bills.

The only meaningful action is to stop schemes operating in the first place or at least as soon as they become operational. HMRC have the data to prevent this happening, but fail to do so. They need to upgrade their detection systems and put resource into doing what is really needed, to stop schemes *as they start*.

With regard to the proposal for HMRC to issue Stop Notices, this is also limited and weak in practice. Any promoter in receipt of a Stop Notice will of course stop that particular scheme, dissolve associated companies and disappear (as has been a common pattern) often leaving those who have already been mis-sold the schemes as being even more vulnerable. As HMRC cannot (under current legislation) go after the promoter, all liability falls on the scheme users. In addition, a Stop Notice makes it unlawful for a person subject to the notice to continue to promote the scheme subject to the notice *only*, but not to promote different schemes, which is a huge loophole that unscrupulous promoters can exploit.

What the Government and HMRC should be doing is to stop the schemes in the first place before they dupe people into using them and later being hit with unexpected and unaffordable bills. That is the only action which is meaningful. HMRC have a dreadful record of failure in that regard of failing to shut down schemes, failing to warn people and even signing off years of tax returns without raising any issue.

HMRC receives Real Time Information data that allows it to identify suspected tax avoidance schemes very quickly yet does not currently use the data it has. HMRC must properly link and reconcile the quarterly data of employment intermediaries with the Real Time Information (RTI) submissions to quickly detect tax avoidance schemes and then take action to shut them down.

The simple reality is that no promoter has been charged, never mind prosecuted, for promoting these schemes, nor is HMRC asking them to pay a single penny of the disputed tax, despite them making very significant amount of money from doing so. One of the biggest injustices of the Loan Charge Scandal is that HMRC is demanding maximum tax from those who were mis-sold schemes, whilst those who mis-sold and operated the schemes have been allowed to retain all the fees they charged for what they had assured clients were legal and compliant arrangements. This must change and doing so would make it too risky to promote and operate schemes in the first place.

We therefore also wish to see consideration of an overriding principle that where someone has been sold something as legal, legitimate and compliant, then any tax deemed avoided becomes the liability of the scheme promoter operator (or at least that any fees paid would be recoverable to offset tax due). We believe this would stamp out schemes overnight by putting the risk onto the promoter/operator, rather than the current situation, where they know that HMRC will simply pursue the scheme user, even where they are clearly the victim of mis-selling.

The DOTAS (Declaration of Tax Avoidance Schemes) should also be strengthened and simplified. Promoters of schemes now subject to the Loan Charge actually used DOTAS declaration as means of claiming legitimacy, by telling people that this showed that it was declared to HMRC and compliant. There needs to be much more clarity around DOTAS, but most importantly, it should simply become a criminal offence to operate, promote, recommend or market any scheme that has not been approved by HMRC.

We note that Ray McCann, who is currently undertaking the review into Loan Charge settlements for the Government, has stated to us, "It should be a criminal offence to promote any scheme that hasn't been approved by HMRC". We agree with this and it seems to be the most obvious, simple and decisive measure Government could take, to really stamp out the promotion and operation of illegitimate schemes and prevent more contingent workers and small company directors from facing ruin, through having been mis-sold them.

4. The role of lawyers, accountants and tax advisers recommending schemes

We are pleased that the role of lawyers is included in the consultation. We know from the Loan Charge Scandal that the fact that the approval of lawyers – specifically QCs (as they were) – was crucial in the marketing of schemes and one of the reason people were led to believe that they are legitimate.

Also, many accountants, including Chartered Accountants, have been involved in not only recommending and approving schemes, but also in working directly with promoters, to persuade workers (and small company directors) to use the arrangements that have later been subject to the Loan Charge.

Similarly, many tax advisers were involved, also receiving considerable financial benefit from doing so.

At the heart of the Loan Charge Scandal is the fact that HMRC only pursue the victims of mis-selling of schemes, not those guilty of mis-selling them. This is especially galling when current Treasury Ministers, including the Chancellor herself, has acknowledged that people caught up in the Loan Charge Scandal are victims of mis-selling – and that the previous Government was wrong to pursue them, when it should be going after the perpetrators of the mis-selling.

This sentiment is quite right – and must be central to any new legislation or powers going forward, to stamp out the mis-selling of DR schemes once and for all.

A related issue is that the response from professional bodies representing lawyers and accountants has been desperately disappointing when approached about professional members mis-selling schemes now subject to the Loan Charge. This needs addressing.

We would therefore recommend that this is looked into with ways to ensure that such professional bodies don't simply ignore this and instead take action against members who have done this.

5. The wider supply chain – the role of umbrella companies, recruitment agencies and end clients

The current consultation is, and must be, linked to previous Government consultations and action proposed regarding the umbrella company sector.

The 'How Contracting Should Work' inquiry and other evidence shared with the APPG has identified these current abuses and malpractice in the supply chain involving both umbrella companies and recruitment agencies:

- Recruitment agencies demanding 'kickbacks' or incentives from umbrella companies for being added to a preferred supplier list/recommended to clients, even sometimes including fitted kitchens and holidays for recruitment agency directors. This then incentivises non-compliant providers (who

because of non-compliance have higher margins) to offer larger bonuses to gain access to potential clients.

- Some contract, freelance and locum workers being pushed to use a specific umbrella company and in other cases being given no choice as to which umbrella company to use as a condition of employment (effectively being told 'take it or leave it'). This is a particular problem when the only source of work in a sector is via recruitment agencies. This is the case for many workers including some lower paid contract and locum workers.
- Some public sector approved agencies and organisations recommending people use umbrella companies that put them unknowingly into 'disguised remuneration' schemes.

The 'kickbacks' are funded in several ways. The agency quotes an 'assignment rate', and not a Pay As You Earn (PAYE) rate. 'Skimming' happens as the umbrella takes money it should not from this amount, before it is paid to the contractor/worker. This is an example of how flexible workers are exploited in a way that permanent workers are not. Agencies are not permitted to advertise permanent workers roles in this way, yet are not banned from doing so for contractors and temporary roles. This does not make sense and it opens the door to abuse. If instead agencies were forced to quote rates for workers as either gross (outside IR35) or PAYE (not outside IR35), then this practice would not arise.

As a result of the money they demand and receive from umbrella companies, recruitment agencies often make it a condition of work that the workers use a recommended umbrella company when they could instead operate their own payroll or use a payroll bureau to do so. This is also linked to IR35 determinations where agencies often say that the worker is inside IR35 and must therefore use an umbrella company. This can lead to the so-called 'Gross Payment Model' which must be outlawed.

Payments of any kind from a payment intermediary to an agency must be made unlawful, this is hugely important.

No workers should be obliged to use an umbrella company and it must be made unlawful to insist on the use of specific umbrella companies. Workers should always be given a choice, and agencies can and should offer a payroll for temporary workers.

A key issue that the Government must resolve as part of these reforms is who the employer is within the convoluted supply chain. This comes down to who provides the supervision, direction and control. Umbrella companies are claimed to be the employer of flexible workers, yet in reality clearly do not have supervision, direction and control, which often lies with the end client (which doesn't want to employ the worker directly, to save on employer taxes and to avoid having the responsibility of employment). If an umbrella company is merely acting as a payroll (which is because the recruitment agency doesn't want to do this, rather than because it is a benefit to the worker) then it cannot credibly be argued to be an employer. The

employer therefore must be either the recruitment agency or the end client. This lack of clarity (and indeed the unnecessarily complex supply chain) is a key cause of the Loan Charge scandal.

It appears that the Treasury consultation assumes that umbrella companies are the employers of the workers on their books, however this assumption needs challenging. The consultation must look at the role of recruitment agencies and end clients and not merely umbrella companies and must take heed on the question of whether flexible workers are employed or self-employed and provide certainty about this with applicable rights and benefits.

It is also time for end clients to be made responsible for debt transfer provisions so they enforce their own checks to ensure compliance. The consultation has presented three options, the easiest of which to implement is debt transfer, where the agency and/or their directors are liable for the tax if the umbrella does not pay the correct amount. This one simple measure would solve many of the issues.

The debt transfer provisions should apply to the end client because sometimes clients do not use agencies but an umbrella company is used simply so the client company can avoid paying employment taxes and having employer responsibilities. In these cases, the umbrella appears to be a sham employer. The only exception would be if there are associated companies in the same group, otherwise there can be no justification of this.

In many instances it is likely to lead to an agency moving the payroll in-house. There are many providers, some who offer umbrellas, that can provide an in-house service, for less than the cost of an umbrella or an external payroll function/bureau can be used (which is not an umbrella company nor performing any role other than payroll). If this happened, kickbacks would stop.

Debt Transfer would be the catalyst that solves a considerable number of the problems, and as the HMRC non-compliance list shows, HMRC do not have the resources to catch the operators early enough, often taking years before the operator goes on the list.

Amongst the biggest concerns in the sector is the way that some umbrella companies have been complicit and in some cases directly involved in the recommendation and proliferation of what HMRC calls 'disguised remuneration' schemes. With the APPG's remit of concern over the Loan Charge and overall taxpayer fairness, this is a particular area of concern regarding the supply chain, including umbrella companies, and something we have long called for more meaningful action over.

We therefore believe the law should be changed to make recruitment agencies/umbrella companies/payment intermediaries and their directors liable for taxes later deemed to have been avoided or not paid if a scheme is designated a tax avoidance scheme.

6. The context of IR35 legislation and the lack of clarity for flexible workers

In our 2019 report we concluded that:

- **‘IR35’/off-payroll legislation has been a clear driver in the proliferation and use of unregulated umbrella companies and related arrangements** (some of which have then involved ‘disguised remuneration’ schemes).
- **The lack of a single, approved model of working is a fundamental problem that causes uncertainty, prompts fear of HMRC action and has been a driver of tax avoidance schemes.**
- **The proliferation of ‘disguised remuneration’/tax avoidance schemes has been driven by a number of key factors, all of which need to be addressed (as such schemes are *still* being mis-sold):**
 - The lack of a clear and approved way of working for contractors, which has been made significantly worse by the ‘IR35’ legislation and the off-payroll working rules.
 - Some (non-compliant) umbrella companies/payment intermediaries facilitate and actively promote tax avoidance schemes to contractors.

Those conclusions have been demonstrated to be quite correct, following the implementation of the 2021 off-payroll rules roll-out.

The Treasury and HMRC should therefore accept the clear and demonstrable role that the so-called ‘IR35’ legislation has had in the proliferation and use of unregulated umbrella companies and related arrangements, some of which have then involved ‘disguised remuneration’ schemes. We welcome the fact that the Government intends to take to action to deal with part of this, namely umbrella companies and pleased that it appears that the APPG report and other evidence has been taken note of. However there also needs to be action beyond umbrella companies, to address other issues in the supply chain, but also wider legislative changes that create tax certainty for freelance workers which are appropriate and fair.

7. The agency provisions

One of the many troubling aspects of the Loan Charge Scandal is that HMRC persuaded Government to introduce the draconian retrospective Loan Charge, when it had failed to deal with the issue of scheme operation at the time, failed to inform users and in many cases signing off tax returns without raising enquiries. Part of the dereliction of duty is that HMRC failed to do its duty under the agency rules, in section 44 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) which obliges HMRC to collect Pay-As-You-Earn tax (PAYE) from whomever is deemed to be the employer, often recruitment agencies. HMRC has admitted in their recent discovery assessment letters that employers are liable, but there was a chronic failure to collect the tax due from them at the time.

One important question with regards to the current consultation is why HMRC needs further powers to collect PAYE at source when it appears to already have these powers (and indeed this duty).

If new powers were introduced, what is to say that HMRC would use them, having systematically failed to use them regarding the schemes now subject to the Loan Charge? Had HMRC done their duty and enforced the agency provisions, then the Loan Charge Scandal would never have happened. Lessons therefore must be learnt rather than this key failure being brushed under the carpet to spare HMRC's embarrassment. There still therefore needs to be a clear and honest answer from HMRC as to why they have failed to use the existing powers in section 44 of ITEPA 2003 to secure payment of PAYE in respect of contractors from employment agencies. If there is some shortcoming in the existing legislation (which is not apparent), why not amend ITEPA so that HMRC tax payment at source.

8. Conclusion

It is time to address the failure of HMRC and successive Governments to take action against those who promote and operate illegitimate tax avoidance schemes and all those associated with endorsing, recommending and advising people to use them.

These are key actions which we believe should be taken:

- HMRC must use the powers it currently has, including where appropriate and justified, its powers of criminal investigation and enforcement. The DOTAS scheme must be clarified and expanded, to ensure that all illegitimate schemes are identified, with promoters informed that they cannot operator or promote schemes until they are approved.
- The promotion and operation of any tax schemes that have not been notified to HMRC and given approval should be a criminal offence.
- Far better policing of the sector by HMRC, with additional resources directed at this as necessary. Any questionable schemes can be randomly checked by HMRC and forced to stop operations if they are illegitimate.
- The Government should legislate to make those who promote and operate schemes that are deemed to be forms of tax avoidance exclusively liable for any tax avoided.
- Stronger regulation of all professionals that give advice on tax arrangements.
- Legislation to stamp out malpractice and for proper oversight and regulation of the whole supply chain for flexible workers is needed. To make it a statutory obligation to quote only PAYE contract rates for temporary worker engagements that are not 'outside IR35'. The Key Information Document must include the full PAYE rate offered, which must be paid by the umbrella company.

- To properly address the issues created by the IR35 off-payroll rule reforms, which far from increasing clarity, have increased the confusion over flexible/contract working as well as pushing workers into zero rights employment. The mess is even greater than it was due to the ambiguity of IR35 determinations and the complexity of how they are being made.
- To commission a proper review into contracting and freelancing with the aim of creating clarity and certainty for all parties involved, to stamp out abusive practices and tax avoidance schemes, the Government must conduct a proper review of self-employment, which is both needed and long overdue.

It is long overdue for HMRC and Government to stamp out the promotion and operation of illegitimate ‘disguised remuneration’ schemes and we sincerely hope that proper, meaningful and decisive action – including where needed, changes to legislation – is taken. We also hope that HMRC then uses all of the power it has to do this and prevent another Loan Charge Scandal.

Loan Charge and Taxpayer Fairness APPG

June 2025