

Tougher Consequences for Promoters of Tax Avoidance

APSCo UK and OutSource Response: 20th June 2023

About APSCo

The Association of Professional Staffing Companies (Global) Ltd (APSCo) is an international trade body offering global services with local delivery to the international professional recruitment sector through its offices in Australia, Germany, Southeast Asia and the UK.

APSCo helps differentiate the professional recruitment market by raising standards and delivering expert support and market intelligence to members of APSCo around the world.

APSCo Global comprises APSCo Asia, APSCo Australia, APSCo Deutschland and APSCo United Kingdom as well as APSCo OutSource, the trade body for the RPO and MSP sectors.

APSCo and OutSource members range from SMEs to the largest global, listed recruiters and outsourcers. Members recruit professionals into permanent and contract roles across STEM, accountancy, legal, finance, marketing and media in addition to highly regulated sectors such as qualified social work, teaching and clinical healthcare.

Should you wish to discuss this response in further detail please contact Tania Bowers, APSCo's Global Public Policy Director – tania.bowers@apsco.org

1. Do you agree that focusing a criminal offence on the continued promotion of a scheme covered by a Stop Notice will help to deter promoters?

Members have some scepticism as to whether this measure will be sufficiently high profile or visibly enforced to deter promoters. Further, they doubt the types of individuals engaged in this activity will be particularly concerned about a potential criminal offence unless there is well publicised enforcement.

One chief legal officer notes that unfortunately the "mischief" will likely have ceased by the time of enforcement, which could be years later. The more immediate the mechanism the more effective the deterrent and a clearer message to the wider marketplace. They consider that an injunction mechanism to cease and desist or even asset freezing would be more effective routes. Comparable powers are exercised by the Department of Environment and the ICO.

However, the fact it is a "strict liability" offence should make it more enforceable.

Some of these promoters may not be situated in the UK, necessitating cooperation with other tax authorities to create an effective criminal and civil framework.

2. Do you agree that the twofold approach of civil penalties and a criminal offence will provide a comprehensive deterrent for promoters?

It will help, but ultimately the promoters of these schemes need to be blocked from supply chains. Unless the entire supply chain is notified then there is no way to stop the promoter offering adjunctive services, including legitimate activity. The communication needs to be widely publicised so that any party in a supply chain supplying a worker could undertake a

simple compliance check. The umbrella consultation now open with HMRC, HMT and DBT is important in this regard in terms of supply chain responsibilities.

3. In such circumstances, as Mr A is significantly influencing the continued promotion activity, do you agree that Mr A should be subject to the new criminal offence?

Yes, our members agree. This is essential for the new criminal offence to have impact.

4. Do you agree that these other obligations [e.g. relating to the provision of information both to HMRC and to clients and intermediaries linked to the recipient of the Stop Notice] where they do not relate to continued promotion, should not be subject to the criminal offence?

This is difficult to have a view on. Relevant questions include: are the civil penalties a sufficient deterrent; what is the harm caused; and consequences of the failure to comply? For reasons above we do think it is very important that details are provided promptly to the supply chain.

5. Do you agree that these safeguards provide the right level of protection for those that may face potential criminal prosecution?

Yes, we think so, although this is not our area of expertise.

6. Do you agree that allowing HMRC to consider and bring disqualification proceedings against directors and those who control or exercise influence over a company involved in promoting tax avoidance will help deter and tackle tax avoidance?

Yes. APSCo UK undertake thorough financial and legal due diligence for Umbrella Trusted Partner membership, including a preliminary review of public Companies House records. We see "serial" directors of new umbrella company start-ups involved in multiple companies sometimes into the hundreds, many of which will have been dissolved, struck off or not trading. These directors are seeking to market a purported legitimate, compliant umbrella solution, and require accreditation to be accepted in the marketplace. Therefore, we along with FCSA and Professional Passport are gatekeepers given current law, a responsibility we take seriously. We would welcome more effective legislation to speed up the disqualification proceedings.

7-11 No further comment.