Neutral Citation: [2022] UKFTT 00453 (TC)

Case Number: TC08658

FIRST-TIER TRIBUNAL
TAX CHAMBER

Decided on the papers

Appeal reference: TC/2020/00778

DOTAS – application for Order that certain arrangements are notifiable or, alternatively, that they are to be treated as notifiable – sections 306A and 314A Finance Act 2004 – application approved under 314A

Judgment date: 05 December 2022

Decided by:

TRIBUNAL JUDGE BAILEY

Between

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Applicants

and

DARK BLUE UMBRELLA LIMITED

Respondent

The Tribunal determined the application on 11 and 12 April 2022, without a hearing under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 on the direction of Judge Sinfield, having first read the Application dated 13 February 2020, the witness statement of Jack Lloyd made on 11 February 2020, the documents in the application bundle and the correspondence on the Tribunal file.

DECISION

INTRODUCTION

1. This is an application by the Applicants for an Order under Section 314A or, in the alternative, Section 306A of the Finance Act 2004 ("FA 2004") that certain arrangements should be treated as "notifiable arrangements" within the meaning of Section 306(1) FA 2004. Those arrangements, known as an "annuity arrangement scheme", are described below.

PRELIMINARY POINT - THE BARRING OF THE RESPONDENT

2. The application in this matter was filed with the Tribunal on 13 February 2020. At that time the Respondent was controlled by two directors: Mr Darren Harding and Mr Jeremy Clark. The Respondent was notified of the application and, on 29 April 2020, served a Statement of Case on the Applicants but apparently did not file a copy with the Tribunal.

3. A copy of the Respondent's Statement of Case was provided to the Tribunal by the Applicants in September 2020, along with a request for Directions. The Tribunal then issued case management directions directing, amongst other matters, that the parties provide agreed dates for a hearing. Following the issue of those Directions, the Applicants informed the Tribunal that they understood Mr Clark had passed away in August 2020. It appeared that Mr Harding had resigned as a director in July 2020 and no other director had been appointed.

4. Correspondence from the Tribunal to the Respondent over the next few months went unanswered, including correspondence warning about the consequence of not replying. On 19 August 2021, the Chamber President directed that the Respondent was barred from taking further part in the proceedings. Although the Respondent was permitted to apply within 28 days to have the barring order lifted, or apply within 56 days for permission to appeal, no application was made.

5. On 2 November 2021, the Tribunal issued further case management directions. Mr Harding then emailed the Tribunal enquiring about the possibility of lifting the barring order or appealing against the barring order. In January 2022, the Tribunal wrote to Mr Harding to explain the process for making a late application and directed that, if the Respondent intended to make an application, it should confirm that within 14 days and also provide contact details for the new director and any appointed representative. There was no reply to that letter. The Tribunal wrote again to Mr Harding in February 2022 enquiring whether any application would be made and warning that, in the absence of a response, the Applicants' application would be decided without further reference to the Respondent. Neither Mr Harding nor the Respondent replied.

6. In the absence of any application to lift the barring order, the Respondent remains barred from taking any further part in these proceedings. Rule 8(8) of the Tribunal Procedure (First-tier tribunal) (Tax Chamber) Rules 2009 (S.I. 2009/273) as amended provides:

> (8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submissions made by that respondent, and may summarily determine any or all issues against that respondent.

7. Therefore, although the Respondent served (but apparently did not file) a Statement of Case in April 2020, I need not consider that document when making my decision in respect of this application.

EVIDENCE BEFORE THE TRIBUNAL

8. The evidence before the Tribunal consists of the witness statement of Mr Jack Lloyd dated 11 February 2020, and an application bundle containing the exhibits to Mr Lloyd's

statement, documents relating to seven individuals (unrelated to each other) who participated in the arrangements under consideration, and additional material created or discovered as a result of the Applicants' investigations. There has been no challenge to the evidence of Mr Lloyd and I accept his evidence in full.

BACKGROUND TO THIS APPLICATION

9. The Respondent was incorporated on 2 April 2015. Its directors at all times relevant to the operation of the arrangements that are the subject of this application were Mr Clark (appointed on 2 April 2015) and Mr Harding (appointed on 1 July 2019). Mr Lloyd believes that from 2017/18 onwards, the arrangements considered below were used by approximately 300 individuals.

10. On an unknown date the arrangements came to the Applicants' attention. From late 2018 there was correspondence between Mr Lloyd and Mr Harding initially regarding another company (dissolved in early 2019) of which Mr Harding was also director, and then regarding the Respondent. In early 2019, Mr Lloyd sought documents from users of the arrangements. On 4 July 2019, Mr Lloyd wrote to the Respondent enquiring why the arrangements under consideration here had not been notified under the disclosure of tax avoidance schemes legislation. Mr Harding sought a two month extension to reply; this was granted on 19 July 2019 when Mr Lloyd also formally requested various documents from the Respondent.

11. The Respondent provided a letter, dated 26 July 2019 and drafted by counsel, in reply to the Applicants' question as to why the arrangements had not been notified. Mr Lloyd took the view that the Respondent had not engaged with the questions he had asked but had had instead focussed on the issue of whether the DOTAS regime itself infringed EU rights. A further letter from the Respondent, received on 20 September 2019, similarly failed to engage with the Applicants' enquiries. Mr Lloyd concluded that prolonging the correspondence would not resolve the differences between the parties, and that an application to the Tribunal was required. After reviewing documents provided by individual users of the arrangements, on 23 December 2019, Mr Lloyd wrote to the Respondent to inform it that the Applicants intended to apply to the Tribunal for an Order under Section 314A 2004.

SECTION 314A

12. Section 314A provides as follows:

> (1) HMRC may apply to the tribunal for an order that–
>
> (a) a proposal is notifiable, or
>
> (b) arrangements are notifiable.
>
> (2) An application must specify–
>
> (a) the proposal or arrangements in respect of which the order is sought, and
>
> (b) the promoter.
>
> (3) On an application the tribunal may make the order only if satisfied that section 306(1)(a) to (c) applies to the relevant arrangements.

13. The onus of proof is on the Applicants to satisfy me that the arrangements that are the subject of this application are notifiable and that the Respondent is the promotor of those arrangements. The burden is the civil standard of the balance of probabilities.

14. I am grateful to the Applicants for their careful and detailed submissions in support of this application; however, in considering this application, I have not found it necessary to refer to every aspect of those submissions.

THE ARRANGEMENTS UNDER CONSIDERATION

15. The arrangements implemented by the Respondent take the form set out below. The description refers to a number of users, depending on the documents available in the bundle (and, presumably, available to the Applicants).

16. Each individual user of the arrangements entered into a contract to become an employee of the Respondent, with the intention that the user would carry out successive assignments for various clients. While on an assignment, the user would be under the control of the "End client"; in the case of Dr AA (a hospital consultant) the relevant hospital; in the case of Mr FF (a project planner) the commercial organisation to which his services were provided. Although the employment contract terms provided that the individual users were obliged to work where the Respondent directed, each individual user was required to source their future assignments.

17. The terms of the employment agreement provided that the Respondent would pay the user the applicable UK National Minimum Wage ("NMW") rate for all hours worked on an assignment. In the bundle there were examples of Dr AA's pay slips demonstrating that Dr AA's hourly rate was at the NMW rate and that this increased to the new NMW rate when that rate increased. A sample pay slip provided to Dr AA by the Respondent showed that on a week in April in 2018, the Respondent paid him a gross weekly salary of £307.13 (calculated as 35 hours at the NMW rate plus accrued holiday) from which tax and National Insurance Contributions ("NICs") totalling £148.33 had been deducted.

18. At the same time as entering into the employment contract with the Respondent, a user would enter into two agreements with a Jersey company named Scope Self Employment Jersey ("Scope"), a Jersey based company.

19. Under the terms of the first agreement (the "Annuity Grant Agreement"), the user gave an undertaking to Scope that he or she would enter into an Annuity Agreement with Scope, and in return Scope (the grantee under the agreement) agreed to make "Grantee's payments" to the user "at its own discretion from time to time". The user was only required to enter into the Annuity Agreement on the latest of either the first date on which 300 consecutive days had passed without any Grantee's payments being paid by Scope, or, if later, the date on which Scope paid the user £500. It was made clear to the users that, even if 300 consecutive days had passed, Scope still had the choice about whether or not to make the £500 payment and thus require entry into the Annuity Agreement. In an email dated 5 June 2018 to Dr OZ, the Respondent wrote:

> There is a genuine expectation that we[1] could exercise the annuity (should we decide to do so) at which point we would ask that you accept a payment from Scope of £500, and pay back to Scope 10% of the amount you received in that annuity year…

20. Scope was permitted to assign any or all of its rights under the Annuity Grant Agreement without the consent of the individual user.

21. Under the Annuity Agreement, the user agreed that upon execution of the Annuity Agreement, he or she would pay Scope an annuity (calculated as 10% of the "Grantee's payments" he or she had received under the terms of the first agreement) every year for the rest of his/her life. Again, Scope was permitted to assign any or all of its rights under this agreement without the consent of the individual user.

22. Once the contracts were signed, each individual user provided his or her services to an end client (commonly via an unrelated staffing agency), and provided the Respondent with a

[1] Under the contracts, the right to pay £500 and require the user to enter the Annuity Agreement was that of Scope, not the Respondent. That confusion as to their respective roles does not affect the conclusions in this decision.

timesheet for the work he or she had undertaken. The Respondent invoiced the staffing agency for the services provided to the end client by the individual user. In the bundle is an example of an assignment for Dr AA with a medical locum services agency that sought the services of Dr AA for a UK hospital. The terms of the engagement provided that Dr AA would be engaged as a contractor, paid at a rate of £110 per hour and that Dr AA and his umbrella company would be responsible for ensuring that the correct amount of tax and NICs was paid to HMRC. There is an obvious and significant difference between the hourly rate of £110 per hour that Dr AA had agreed with the agency, and the NMW rate that Dr AA agreed to be paid under the employment contract he had agreed with the Respondent. In the bundle there are also examples of the invoices sent by the Respondent to the agency which stood between it and the end client in the case of Mr SA, a management consultant.

23. Once the Respondent had received payment from the end client or intervening agent for the services provided by the individual user, the Respondent paid that user the rate agreed under the employment agreement for those services, i.e., the NMW rate. For example, despite the services of Mr SA being charged out at £425 per day, the payslips in the bundle show that Mr SA received the NMW rate (then £7.83 per hour) as his apparent remuneration. Tax and NICs were deducted from this NMW rate payment.

24. The Respondent retained a percentage of the payment made to it by the end client or intervening agent and, after paying the individual user, the Respondent forwarded the remainder of the payment it had received to Scope. Scope then paid a "Grantee's payment" to the individual user out of the amount forwarded by the Respondent. Scope did not deduct tax or NICs from the "Grantee's payments" it made to the user, and so the total amount received by the user was larger than it would have been had the user been an employee of the end client and paid with the deduction of tax and NICs from the full amount paid by the end client.

25. Although the Grantee's payments were stated to be entirely at the discretion of Scope, the bank statements provided by Dr NA show that payments from Scope were received regularly, either on the same day or the day after the payments received from the Respondent. Similarly, another user of the arrangements, Mr RD (a paramedic) provided bank statements showing he also received payment from Scope on the same day or the day after he received payment from the Respondent. In the bundle there are also examples of notifications sent by Scope to Mr FF informing him of each of the regular Grantee payments made.

26. The advice given by the Respondent to (at least) Dr OZ, in an email dated 18 October 2017, was that there was no requirement to complete a tax return:

> … as Tax and NI is paid to HMRC throughout the year as part of your PAYE salary. You will receive a PAYE payslip detailing these contributions.

27. In the illustration pack provided to Mr RD, the final step in the arrangements is said to be that, at the end of each calendar year, Scope assigns its rights under the Annuity Agreement to a Trust registered in Cyprus. However, there are no documents showing any such assignment. There is also no evidence that the circumstances were such that Scope ever ceased making Grantee's payments to any user for a period of 300 consecutive days or, if that did happen, that Scope then paid that user £500 to require him or her to enter an Annuity Agreement that could be assigned.

WHETHER THE CONDITIONS ARE MET FOR ORDER UNDER SECTION 314A FA 2004

28. As provided by Section 314A FA 2004, I may make an Order only if I am satisfied that Section 306(1)(a) to (c) FA 2004 applies to the arrangements I have described above. Therefore, it is necessary to consider Section 306(1) and its potential application.

SECTION 306 AND MEANING OF NOTIFIABLE ARRANGEMENTS

29. Section 306 provides as follows:

> (1) In this Part "notifiable arrangements" means any arrangements which—
>
> (a) fall within any description prescribed by the Treasury by regulations,
>
> (b) enable, or might be expected to enable, any person to obtain an advantage in relation to any tax that is so prescribed in relation to arrangements of that description, and
>
> (c) are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage.
>
> (2) In this Part "notifiable proposal" means a proposal for arrangements which, if entered into, would be notifiable arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it).

30. As Section 306(1)(a) refers to arrangements that fall within any description prescribed by the Treasury by regulations it is also necessary for me to consider The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006, SI 2006/1543 ("the 2006 Regulations").

THE 2006 REGULATIONS

31. The Applicants submit that the arrangements that are the subject of this application fall within Regulations 8, 10 and 18 of the 2006 Regulations. Below I have set out Regulation 10. (For an Order to be made it is not necessary for the arrangements to fall within more than one regulation; I have not found it necessary to consider either Regulation 8 or 18 as alternatives.) Regulation 10 describes standardisation, and it provides:

> (1) Subject to regulation 11, arrangements are prescribed if a promoter makes the arrangements available for implementation by more than one person and the conditions in paragraph (2) are met.
>
> (2) The conditions are that an informed observer (having studied the arrangements and having regard to all relevant circumstances) could reasonably be expected to conclude that—
>
> (a) the arrangements have standardised, or substantially standardised, documentation—
>
> (i) the purpose of which is to enable a person to implement the arrangements;
>
> (ii) the form of which is determined by the promoter; and
>
> (iii) the substance of which does not need to be tailored, to any material extent, to enable a person to implement the arrangements;
>
> (b) a person implementing the arrangements must enter into a specific transaction or series of specific transactions;
>
> (c) the transaction or series of transactions is standardised, or substantially standardised, in form; and
>
> (d) either the main purpose of the arrangements is to enable a person to obtain a tax advantage or the arrangements would be unlikely to be entered into but for the expectation of obtaining a tax advantage.

Section 306(1)(a)

32. Under Section 306(1)(a), the first aspect on which the Applicants must satisfy me is that the arrangements I have found existed and have described above, fall within any description prescribed by the Treasury by regulations. The Applicants' submission is that the arrangements described above fall within Regulation 10 of the 2006 Regulations; I agree.

33. I am satisfied that Regulation 10(1) applies, and that the promoter of the arrangements made them available for implementation by more than one person. The documents in the bundle demonstrate that (at least) seven unrelated individuals participated in the arrangements.

34. The conditions in Regulation 10(2) must also be met. The Applicants' submission is that all of these conditions are met including that the primary purpose of the arrangements was to enable users to be remunerated free of tax and NICs. Putting myself in the position of an informed observer, I am satisfied that the arrangements have standardised or substantially standardised documentation as required by Regulation 10(2)(a). The employment contracts I have seen are substantially similar, as are the Annuity Grant Agreements and the Annuity Agreements (that, as I mentioned above, drafts that were not in fact entered into). There are slight differences in some cases, in particular the Annuity Grant Agreement for Mr TR (described as an Options Agreement) has an agreed amount of Grantee's payments, whereas they are left to the discretion of Scope in the other agreements I have seen. Also, the amount required to be paid to Mr TR for Scope to require entry into the Annuity Agreement (renamed the Option) is £1,000 rather than £500. However, I do not consider these differences to be significant. But, even if I am wrong in considering that differing document names and amounts are not relevant differences, it is clear that there are no such differences between the Annuity Grant Agreements entered by Dr AA, Mr SA, Mr RD, Mr FF and Dr NA.

35. I am also satisfied that standardisation or substantial standardisation of the documentation was for the purposes of Regulation 10(2)(a)(i), (ii) and (iii). That is to say, I am satisfied that the documentation was standardised to enable the implementation of the arrangements, in a form determined by the promotor and without any need to tailor the documents to implement the arrangements. I reach this conclusion on the basis of the similarity of the documents, and on the similarity of the descriptions given to individual users about how the arrangements were intended to work. I have also noted that the Respondent was unable to vary the arrangements when an individual user (Mr SA) asked for them to be varied.

36. Staying in the position of an informed observer, I am also satisfied that Regulation 10(2)(b) and (c) are both met. It is clear from the documentation supplied that each of the individual users enters into specific agreements to enable the arrangements to take place in a standard way, and the series of transactions is standardised. There is uniformity to the agreements, to the timing of the payments, to the payslips and to the explanations given to the individual users.

37. The final part of Regulation 10(2) is that to meet the conditions of sub-paragraph (d) I must be satisfied:

> either the main purpose of the arrangements is to enable a person to obtain a tax advantage or the arrangements would be unlikely to be entered into but for the expectation of obtaining a tax advantage.

38. I am satisfied on both counts. In considering whether the main purpose of the arrangements is to enable a person to obtain a tax advantage, I bear in mind the comments on the Umbrella Illustration Pack provided for Mr RD and the correspondence sent to various users of the arrangements. The Illustration Pack describes the Respondent as being:

> Experts in legally reducing your tax liabilities and maximising your income!

39. The Pack includes the following descriptions by the Respondent of the arrangements:

> Everyone has the right to arrange their financial affairs to be as tax efficient as possible
>
> Many contractors seek an intelligent outlook on their financial affairs with the view of reducing their tax liabilities …
>
> … providing our clients with a compliant, dependable and up to date financial plan that **reduces their personal tax exposure**. (Emphasis added)

40. The correspondence sent to individual users also appears to emphasise the availability of a tax advantage. An email sent from the Respondent to Dr OZ on 18 October 2017 includes the following:

> In short you would become an employee of our UK Umbrella Company (Dark Blue) and Dark Blue Umbrella would contract with your agency/client. The solution is IR35 compliant and requires minimal administration on your side; Dark Blue makes the necessary income tax and NI deductions as your employer.
>
> - £920 daily rate x 220 days = £202,400 per annum
> - You can legitimately expect to receive an **90%** return of contract value net of VAT, giving you £820 per day (£182,160.00 pa) after ALL costs, taxes, fees deducted.
> - Please note the financial benefits will increase as the contract value increases. (Emphasis in the original.)

41. The emphasis on the 90%, in the statement that Dr OZ could expect to receive 90% of his salary of £920 per day, indicates that the Respondent considered that the tax advantage to be gained was the main purpose of the arrangements. (This figure contrasts with the approximately 55-60% a person earning £202,400 p.a. could have expected to receive after deduction of income tax and NICs under PAYE.) Similarly, in an illustration pack provided for Mr RD, the Respondent wrote:

> Using [the Respondent] you have a legitimate expectation to receive a net return of 83%.

42. The totality of the material in the bundle confirms to me that the purpose of the arrangements is to enable a person to obtain a tax advantage.

43. I also conclude that the arrangements would be unlikely to be entered into but for the expectation of obtaining a tax advantage. In reaching this conclusion I bear in mind that some individuals have no choice but to use an umbrella company service where organisations are loathe to take on the commitment of additional employees. However, there are many different umbrella company services available. I consider that a person choosing the specific arrangements under consideration in this decision in preference to other umbrella company services would do so because of the expectation of obtaining a tax advantage from the arrangements. In reaching my conclusion on this aspect I have taken into account the email chain provided by Mr SA, setting out correspondence between himself and the Respondent. I am satisfied Mr SA did not wish to obtain a tax advantage but he recognised that the arrangements described above provided such an advantage. The email chain provided shows that Mr SA asked the Respondent if it could provide "a standard PAYE service" demonstrating that although Mr SA was happy to work under an umbrella company arrangement, he wished (using his own words in his explanation to the Applicants) to pay:

> … my full tax in the 'normal' manner without making use of any 'tax efficient' systems.

44. The Respondent's response was that it could only offer the arrangements described above, whereupon Mr SA chose to end his relationship with the Respondent in order to avoid obtaining the tax advantage that he understood the arrangements would provide to him.

45. Viewing the arrangements as a whole, including the promotional material available and communications indicating the percentage of gross income retained, I am satisfied that other individuals who participated in these arrangements might have required an umbrella company service for their work but they would have been unlikely to have entered into the specific arrangements set out above but for the expectation of obtaining a tax advantage from these arrangements.

46. I conclude that the arrangements set out above fall within Regulation 10 of the 2006 Regulations, and I agreed with the Applicants that Section 306(1)(a) is satisfied.

Section 306(1)(b)

47. For Section 306(1)(b) to be satisfied it must be the case that the arrangements under consideration "enable, or might be expected to enable, any person to obtain an advantage in relation to any tax that is so prescribed in relation to arrangements of that description".

48. Section 318 FA 2004 defines certain terms for the purposes of Part 7 of FA 2004. Those definitions provide that "tax" includes income tax, and an "advantage" in relation to any tax includes the avoidance or reduction of a charge to that tax and also the avoidance of any obligation to deduct or account for any tax. The Applicants' submission is that, although they do not agree that the arrangements do achieve the purpose intended by the Respondent, nevertheless those arrangements might be expected to enable a person to obtain an advantage because the users are remunerated without deduction of income tax on a large part of their employment income. The Applicants submit that the Respondent also gains an advantage because, as an employer, it is enabled to avoid deducting income tax from a large part of the employment income earned by each of the users.

49. I agree with the Applicants that Section 306(1)(b) is satisfied. The arrangements set out above are marketed to users as enabling them to reduce their income tax, and those users might be expected to obtain that tax advantage by using the arrangements. Nowhere is that as evident as the email to Dr OZ where the Respondent advises that Dr OZ can expect to achieve a 90% return of the gross amount paid for his work; and the illustration pack provided for Mr RD who is advised by the Respondent that he can expect an 83% return. It is also clear from the response of Mr SA, who wanted to pay "full tax in the normal manner" that he expected to obtain an (unwanted in his case) income tax advantage if he continued using the arrangements.

Section 306(1)(c)

50. For Section 306(1)(c) to be satisfied, the Applicants must satisfy me that one of the main benefits that might be expected to arise from the arrangements is obtaining of the expected tax advantage. The Applicants' submission is that Section 306(1)(c) is met as there is no reason, other than the tax advantage, for the users to enter into these arrangements.

51. As I have noted above, there are commercial reasons why individual users might enter into arrangements with umbrella companies, and umbrella company arrangements (in general) can offer commercial benefits for users. However, as I concluded above, one of the main benefits of these specific arrangements is the tax advantage that the arrangements are said to provide; users (such as Mr SA) who did not wish to have that advantage exited from the arrangements, suggesting that any commercial benefit of the arrangements was outweighed by the (unwanted) tax advantage he expected to obtain. I am satisfied from the material provided that one of the main benefits that might be expected to arise from these arrangements is the obtaining of an income tax advantage, and that Section 306(1)(c) is satisfied.

WHETHER THE RESPONDENT IS A PROMOTOR WITHIN SECTION 307?

52. I must now consider whether the Respondent is a promoter of the arrangements set out above. The relevant parts of Section 307 FA 2004 (as it applied when this application was made) provide

> (1) For the purposes of this Part a person is a promoter—
>
> (a) in relation to a notifiable proposal, if, in the course of a relevant business, the person ("P")—
>
> (i) is to any extent responsible for the design of the proposed arrangements,
>
> (ii) makes a firm approach to another person ("C") in relation to the notifiable proposal with a view to P making the notifiable proposal available for implementation by C or any other person, or
>
> (iii) makes the notifiable proposal available for implementation by other persons, and
>
> (b) in relation to notifiable arrangements, if he is by virtue of paragraph (a)(ii) or (iii) a promoter in relation to a notifiable proposal which is implemented by those arrangements or if, in the course of a relevant business, he is to any extent responsible for—
>
> (i) the design of the arrangements, or
>
> (ii) the organisation or management of the arrangements.
>
> …
>
> (2) In this section "relevant business" means any trade, profession or business which—
>
> (a) involves the provision to other persons of services relating to taxation, or
>
> …

53. The Applicants' submission is that the Respondent is a promotor of the arrangements under consideration here by virtue of being a person who carries out a relevant business (i.e., the provision of services relating to taxation) and who both made the arrangements available, and was also responsible for the organisation and management of the arrangements.

54. I agree with the Applicants that the Respondent carries out the business of providing services relating to taxation. The Respondent also appears to agree, describing itself (on the illustration pack provided to Mr RD) as being:

> Experts in legally reducing your tax liabilities and maximising your income!

55. Regarding the question of whether the Respondent either made the arrangements available or was responsible for the organisation or management of the arrangements, in the illustration pack provided for Mr RD, the Respondent states:

> The Respondent] provide contractors **with an accessible service**…
>
> **The solution DBU offers** has been created with the assistance and knowledge provided by leading UK Tax experts, Tax Counsel, Financial Advisors and Accountants. …
>
> Many contractors seek an intelligent outlook on their financial affairs with the view of reducing their tax liabilities whilst remaining compliant with all current UK Taxes Acts. **[The Respondent] provides just that; a reliable**

> **service** compliant with all current UK taxes Acts, MSC, IR35 and in particular Part 7a of ITEPA. (Emphasis added)

56. Later in that same pack, the Respondent explained:

> [The Respondent] work as an agent on behalf of Scope …
>
> During the sign up process with [the Respondent] …
>
> … [the Respondent] will be acting as your umbrella provider.

57. In addition, in an email to Dr OZ dated 30 April 2018, the Respondent wrote:

> … it is in our best interest to offer you a safe and robust structure obviously it is our business so we are confident with Tax counsels opinion that this works.

58. On the basis of all the material in the bundle, including the emails sent to the individual users, I agree with the Applicants that the Respondent made the notifiable proposal available for implementation and/or was responsible for the organisation or management of the arrangements. I am satisfied the Respondent is a promotor of the arrangements.

OTHER ISSUES

59. Although I need not give any consideration to the Respondent's Statement of Case, in that document a number of arguments were raised by the Respondent concerning the supposed discretion of the Tribunal as to whether to make an Order once the Applicants have shown all the conditions of Section 314A are met, and also whether the DOTAS regime infringes rights under EU law relating to the free movement of capital.

60. These arguments have already been considered and dismissed in the admirably clear and detailed decision of the Tribunal in *HMRC v Opus Bestpay Limited* [2020] UKFTT 0408 (TC). I agree with, and cannot improve upon, what Judge Morgan has to say in that decision with regard to those points. It is unnecessary to comment further.

ORDER

61. I am satisfied that Section 306(1)(a) to (c) applies and this application succeeds. For the reasons set out above, IT IS HEREBY ORDERED pursuant to Section 314A FA 2004 that the arrangements that are the subject of this decision are "notifiable arrangements" within the meaning of Section 306(1) FA 2004.

NO RIGHT OF APPEAL

62. This document contains full findings of fact and reasons for the decision.

63. By virtue of Article 3(i) of the Appeals (Excluded Appeals) Order 2009 S.I. 2009/275, no right of appeal under Section 11(1) of the Tribunals, Courts and Enforcement Act 2007 arises in respect of this decision.

JANE BAILEY
TRIBUNAL JUDGE

Release date: 05th DECEMBER 2022