



All-Party Parliamentary Loan Charge & Taxpayer Fairness Group

www.loanchargeappg.co.uk

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21st October 2021

Dear Phil,

Urgent – change to the FCSA Charter allowing FCSA accredited umbrella companies to use offshore arrangements

We are writing to you to express our concern at the change of the FCSA's Charter that appears to scrap the previous clear commitment that no FCSA accredited umbrella companies operate offshore solutions or structures. At a time when there is, rightly, considerable interest in the operation of umbrella companies and the role they have played in the Loan Charge scandal (which as you know, has involved rogue umbrella companies and offshore arrangements) this change appears to be a strange decision.

The previous FCSA Charter stated:

1.1 Members shall be UK based firms that do not provide any offshore solutions/structures.

However the revised Charter now in place, states instead:

1.1 Members shall be UK based firms that do not provide more than 25% offshore solutions/structures.

With the FCSA presenting itself as the main accreditation body for umbrella companies – and with HMRC themselves stating that they (only) use FCSA accredited organisations this seems a troubling change, that goes in the opposite direction that we would have expected the FCSA to go, considering all the concern about contractors and freelance workers being mis-sold disguised remuneration schemes, many of which involve offshore arrangements.

Co-Chairs: Sammy Wilson MP, Greg Smith MP, Mohammad Yasin MP

Vice-Chairs: Baroness Kramer, Dr Lisa Cameron MP, Gerald Jones MP, Sarah Olney MP, Rushanara Ali MP

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Previously, in statements and press releases and in evidence sent to the APPG, the FCSA has given the strong impression that it opposes the use of offshore arrangements.

In a press release responding to the TUC's call to ban umbrella companies, the FCSA issued this press release and it contains the following paragraph, referring to offshore arrangements:

Through a lack of action by the Government, the task of protecting contractors and ensuring they have full employment rights (as the FCSA Codes of Compliance insist on and independently assess) is becoming harder as many unlawful, rogue companies now use (often to the ignorance of contractors and the supply chain) highly sophisticated software to base themselves offshore in countries that do not have extradition treaties in place with the UK. And so, a final consequence of banning umbrella companies may be the immediate alternative of seemingly tax efficient employment models based outside of the UK being offered to freelancers inside the UK.

In the [FCSA's written evidence sent to our 'How Contracting Should Work' inquiry](#), sent in 30-Jan-2021, the FCSA warned of the danger involvement with companies who operate offshore structures/solutions:

The reality now is that IR35 reforms alone are creating an expanding market for non-compliant (often offshore) operators who are exploiting contract workers at an alarmingly increasing rate, especially within the healthcare sector, which has seen an influx of contingent workers coming back to the NHS to help with the pressures of the pandemic.

HMRC published [guidance on 29th April 2021, 'Working through an umbrella company'](#). The draft guidance was circulated by HMRC to a number of stakeholders, including the FCSA. It states the warnings clearly about offshore promoters.

Tax avoidance schemes do not work, including those that may claim to be tax efficient or offer to increase your take-home pay. They sometimes carry high, non-refundable fees and are often provided by, or through, offshore promoters.

These clear statements gives the strong impression that the FCSA was firmly against umbrella companies using offshore arrangements and the risks of models based outside of the UK. Now however, just a few months later, the FCSA is permitting its accredited members to use offshore solutions/structures. We are confused how these positions are not at odds with each other.

We note that the FCSA still states, on the ['About Us' page](#)

Importantly, no FCSA Accredited Member is allowed to operate Offshore Schemes, Loan Schemes, Trusts, Managed Services Company Schemes, Pay-day-by-Pay models, Hybrid; Mini Umbrella (MUC); Elected deduction model (EDM) or similar.

In addition, many agencies, accountants and advisers are still saying, in their online advertising, that "no accredited FCSA member can operate offshore schemes".

In light of the change to the Charter, there is inevitably speculation as to whether or not this clear statement and assurance is still the case.

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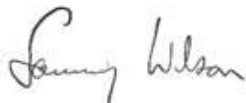
Please can therefore reply to us and:

- (1) Explain this change to your charter to us and why you have now permitted members to 'operate offshore solutions/structures' and what this means in practice.
- (2) Tell us how many FCSA members currently operate any offshore or part-offshore solutions/structures and what these solutions/structures are (and we hope, with confirmation, that none are involving contractor and freelancer pay or payment arrangements in any way).
- (3) If it is the case, that no FCSA accredited member is permitted to use any solution or structure involving contractor and freelancer pay or payment arrangements (and you are confident that none do) then why is this not stipulated in the Charter, to avoid any concerns, that have inevitably now arisen of what 'offshore solutions/structures' refers to?
- (4) Explain how contract and freelance workers, end clients and MPs can have full confidence in FCSA accreditation following this change to the Charter.
- (5) Confirm whether or not you are confident that no FCSA accredited company operates any schemes that HMRC regard or might regard as a 'disguised remuneration scheme'.

These are important questions, in light of the change to the Charter and we hope you will take this answer them all to assure clients, employees and MPs. HMRC, who themselves engage contractors, actually insist on any umbrella companies who are providers of such flexible workers being FCSA accredited, so the need for both explanation and reassurance is even more clear, especially in light of the fact that HMRC have suffered the embarrassment at it having been revealed that they have engaged and used contractors using 'disguised remuneration' schemes.

We look forward to hearing from you.

Yours sincerely,



Sammy Wilson MP
Co-Chair



Greg Smith MP
Co-Chair



Mohammad Yasin MP
Co-Chair

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